

202X No.

MENTAL CAPACITY, ENGLAND

**The Mental Capacity (Deprivation of Liberty: Training and
Approval as an Approved Mental Capacity Professional)
(England) Regulations 202X**

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 65(1)(b) of, and paragraph 40(1) and (3) of Schedule AA1 to, the Mental Capacity Act 2005(a).

PART 1

General

Citation, commencement, extent and application

1.—(1) These Regulations may be cited as the Mental Capacity (Deprivation of Liberty: Training and Approval as an Approved Mental Capacity Professional) (England) Regulations 202X.

(2) Except as specified in paragraph (3), these Regulations come into force on *[insert date]*.

(3) The following provisions come into force on *[insert date – 6 months earlier than above]*—

- (a) this regulation;
- (b) regulation 2 in so far as it relates to regulations 4(2), 11(3) and 12;
- (c) regulation 4(2), for the purposes of regulation 12;
- (d) regulation 11(3);
- (e) regulation 12.

(4) These Regulations extend to England and Wales.

(5) These Regulations apply in relation to England only.

Interpretation

2. In these Regulations—

“the 2005 Act” means the Mental Capacity Act 2005;

(a) 2005 c. 9. Schedule AA1 was inserted by section 1(4) of the Mental Capacity (Amendment) Act 2019 (c. 18). See the definitions of “prescribed” and “appropriate authority” in paragraph 40(5) and (6) respectively of that Schedule.

“the 2001 Order” means the Health Professions Order 2001(a);

“AMCP” means an Approved Mental Capacity Professional;

“approving local authority” means—

- (a) the local authority that approved a person as an AMCP under regulation 4, or
- (b) where regulation 6(1) or (2) applies, the local authority to which a person’s approval as an AMCP is transferred;

“best interests assessor” means a person selected to carry out a best interests assessment under paragraph 38 of Schedule A1 to the 2005 Act as in force immediately before [insert date];

“conversion course” means—

- (a) training approved by the Secretary of State pursuant to regulation 11(3);
- (b) training, approved by a body prescribed by the Welsh Ministers in regulations made under paragraph 40(1)(c) of Schedule AA1, for best interests assessors who wish to be approved as AMCPs;

“further training” means—

- (a) training approved by Social Work England pursuant to regulation 11(1)(b), or
- (b) a postgraduate level course of education, approved by a body prescribed by the Welsh Ministers in regulations made under paragraph 40(1)(c) of Schedule AA1, for persons who are approved as AMCPs;

“initial training” means—

- (a) training approved by Social Work England pursuant to regulation 11(1)(a), or
- (b) a postgraduate level course of education approved by a body prescribed by the Welsh Ministers in regulations made under paragraph 40(1)(c) of Schedule AA1, for persons who wish to become approved as AMCPs;

“Schedule AA1” means Schedule AA1 to the 2005 Act;

“Social Work England” means the body corporate established by section 36(1) of the Children and Social Work Act 2017(b).

PART 2

AMCPs

Eligibility for approval

3. A person is eligible for approval as an AMCP by a local authority in England(c) if that person is—

- (a) a first level nurse, registered in Sub-Part 1 of the Nurses’ Part of the Register maintained under article 5 of the Nursing and Midwifery Order 2001(d),
- (b) registered as a social worker—
 - (i) in the register kept by Social Work England under section 39(1) of the Children and Social Work Act 2017(e),
 - (ii) in the register maintained by the Scottish Social Services Council under section 44 of the Regulation of Care (Scotland) Act 2001(f),

(a) S.I. 2002/254.

(b) 2017 c.16.

(c) “Local authority in England” has the meaning given by paragraph 4(1)(a) of Schedule AA1 to the 2005 Act.

(d) S.I. 2002/253.

(e) 2017 c. 16.

(f) 2001 asp 8.

- (iii) in the register maintained by the Northern Ireland Social Care Council under section 3 of the Health and Personal Social Services Act (Northern Ireland) 2001(a),
- (iv) in the social worker part of the register kept by Social Care Wales under section 80 of the Regulation and Inspection of Social Care (Wales) Act 2016(b),
- (c) a practitioner psychologist registered in Part 14 of the register maintained under article 5 of the 2001 Order,
- (d) a speech and language therapist registered in Part 12 of the register maintained under article 5 of the 2001 Order, or
- (e) an occupational therapist registered in Part 6 of the register maintained under article 5 of the 2001 Order.

Approval: matters to be taken into account by a local authority

4.—(1) A local authority in England may approve a person who satisfies the eligibility requirements set out in regulation 3 as an AMCP if—

- (a) paragraph (2) applies, and
- (b) the local authority is satisfied that that person has—
 - (i) an applied knowledge of the 2005 Act and the code of practice prepared or revised under section 42 of that Act, and
 - (ii) the ability to keep appropriate records and to provide clear and reasoned reports in accordance with legal requirements and good practice.

(2) This paragraph applies if—

- (a) the person has completed initial training within the 12 month period prior to approval being sought,
- (b) except where sub-paragraph (a) applies, the person has completed initial training within the 24 month period prior to approval being sought and, in the 12 month period prior to approval being sought, has completed at least 18 hours of further training,
- (c) the person is not already approved as an AMCP by a different local authority,
- (d) the person’s registration is not suspended from the register relevant to that person’s profession mentioned in regulation 3,
- (e) the person has practised for at least 2 years in one of the professions mentioned in regulation 3,
- (f) the person has in force an adequate and appropriate indemnity arrangement which provides cover in respect of any liabilities that might arise in connection with the carrying out of that person’s functions as an AMCP, and
- (g) the person has an enhanced criminal record certificate issued under section 113B of the Police Act 1997(c).

(3) In this regulation, “indemnity arrangement” means—

- (a) a policy of insurance,
- (b) an arrangement made for the purposes of indemnifying a person, or
- (c) a combination of a policy of insurance and an arrangement made for the purposes of indemnifying a person.

(a) 2001 c. 3 (N.I.)

(b) 2016 anaw 2.

(c) 1997 c. 50. Section 113B was inserted by the Serious Organised Crime and Police Act 2005 (c. 15). It was amended by the Armed Forces Act 2006 (c. 52) and by the Crimes and Courts Act 2013 (c. 22). It was amended in relation to England, Wales and Northern Ireland by the Safeguarding Vulnerable Groups Act 2006 (c. 47) and the Policing and Crime Act 2009 (c. 26) and in relation to England and Wales by the Protection of Freedoms Act 2012 (c. 9) and by S.I. 2009/203, S.I. 2010/1146 and S.I. 2012/3006. It was amended in relation to Scotland by the Protection of Vulnerable Groups (Scotland) Act 2007 (asp 14), the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) and by SSI 2015/423.

Conditions of approval

5.—(1) A person approved as an AMCP must, before the end of each year of approval as such, satisfy the approving local authority that they have—

- (a) completed at least 18 hours of further training during that year of approval, and
- (b) carried out their AMCP functions to a standard such that it would be appropriate for the approval to remain in place.

(2) Except where their approval has been transferred in accordance with regulation 6, an AMCP must not, without the agreement of the approving local authority, carry out AMCP functions for another local authority.

(3) Unless regulation 9(4) applies, for the purposes of paragraph (1), “year of approval” means—

- (a) the 12 month period beginning with the date on which that person was first approved as an AMCP, and
- (b) in subsequent years, the 12 month period beginning with the anniversary of that date.

Transfer of approval

6.—(1) A person’s approval as an AMCP under regulation 4 may be transferred to another local authority in England if the AMCP so requests and both the approving local authority and the local authority to which the transfer is requested agree to the transfer.

(2) A person’s approval as an AMCP by a local authority in Wales^(a) under Part 4 of Schedule AA1 may be transferred to a local authority in England if the AMCP so requests and the local authority in Wales and the local authority in England to which the transfer is requested agree to the transfer.

(3) Where a person’s approval as an AMCP is transferred under paragraph (1) or (2) the local authority to which it is transferred is, from the date on which the transfer takes effect, the approving local authority in respect of that AMCP.

(4) Where—

- (a) a person’s approval as an AMCP is transferred under paragraph (1),
- (b) pursuant to regulation 9(1), that person is exempt from the requirements of regulation 5(1), and
- (c) the local authority which is the approving local authority by virtue of paragraph (3) so agrees,

then that person continues to be exempt from the requirements of regulation 5(1) for the remainder of the period notified under regulation 9(2).

Notification requirements

7.—(1) Where—

- (a) a person approved as an AMCP ceases to be eligible for approval under regulation 3, or
- (b) an AMCP’s registration is suspended from the register relevant to their profession specified in regulation 3,

they must notify the approving local authority of that fact without delay.

(2) Where paragraph (1)(a) or (b) applies, a person must not carry out functions as an AMCP.

Suspension of approval

8.—(1) If, after their approval as an AMCP, a person’s registration is suspended from the register relevant to their profession specified in regulation 3, the approving local authority must suspend that approval for as long as the person’s registration is suspended.

(a) “local authority in Wales” has the meaning given by paragraph 4(1)(b) of Schedule AA1 to the 2005 Act.

(2) The requirement in regulation 5(1)(b) does not apply in respect of any part of a year of approval in which a person's approval as an AMCP is suspended.

(3) Where the approving local authority is notified that the suspension of the person's registration from their professional register has ended, the approving local authority must end the suspension of that person's approval as an AMCP.

(4) Where a person's suspension of approval as an AMCP is ended under paragraph (3), that person must not resume their functions as an AMCP unless the approving local authority is satisfied that the person has appropriate competence to carry out those functions.

Exemption from the requirements of regulation 5(1)

9.—(1) Except in a case falling within regulation 8, an approving local authority may exempt a person approved as an AMCP from the requirements of regulation 5(1) if that person—

- (a) requests this for reasons relating to—
 - (i) pregnancy or childbirth;
 - (ii) childcare or other caring responsibilities;
 - (iii) ill-health;
- (b) requests this on other compassionate grounds;
- (c) requests to take a break from their role as an AMCP.

(2) Where an approving local authority exempts a person from the requirements of regulation 5(1), the approving local authority must notify that person of the period during which that person is exempt from the requirements of regulation 5(1).

(3) Where a person is exempt from the requirements of regulation 5(1) they must not—

- (a) carry out functions as an AMCP during the period notified under paragraph (2), or
- (b) resume their functions as an AMCP unless the approving local authority is satisfied that the person—
 - (i) has completed, or will have completed, at least 18 hours of further training in the 12 month period preceding the date on which they will resume those functions, and
 - (ii) has appropriate competence to carry out those functions.

(4) Where a person resumes their functions as an AMCP, their “year of approval” for the purposes of regulation 5(1) means—

- (a) the 12 month period beginning with the date on which the person resumes their functions as an AMCP, and
- (b) in subsequent years, the 12 month period beginning with the anniversary of that date.

Ending approval

10.—(1) The approving local authority must end a person's approval as an AMCP if—

- (a) that person ceases to be eligible for approval under regulation 3,
- (b) except in a case falling within regulation 8(1), regulation 4(2) ceases to apply in respect of that person,
- (c) it is not satisfied as to the matters specified in regulation 4(1)(b) or regulation 5(1),
- (d) where regulation 8(1) applies, that person does not comply with the requirements of regulation 7(2),
- (e) that person does not comply with the requirements of regulation 8(4) or 9(3),
- (f) that person's approval as an AMCP is transferred to another local authority, or
- (g) that person requests the approving local authority to do so.

(2) The approving local authority may end a person's approval as an AMCP if the person has not complied with the requirements specified in regulation 5(2) or regulation 7(1)(b).

(3) Where the approving local authority ends a person's approval as an AMCP under paragraph (1) or (2), it must notify the person that their approval as an AMCP has ended and give reasons for the ending of that approval.

Prescribed body to approve training

11.—(1) Social Work England may—

- (a) approve training for persons who wish to become approved as AMCPs by a local authority in England;
- (b) approve training for persons who are approved as AMCPs.

(2) Training approved under paragraph (1) must be a postgraduate level course of education.

(3) The Secretary of State may approve training for best interests assessors, who have practised as such for at least one year, who wish to be approved as AMCPs by a local authority in England.

Transitional provision

12.—(1) Paragraph (2) applies in respect of a best interests assessor who completes a conversion course before [*insert date*].

(2) A local authority in England may, within the 12 month period beginning with the date on which that person successfully completes a conversion course, approve that person as an AMCP if the conditions in regulation 4(2)(c), (d), (f) and (g) are satisfied.

PART 3

Amendment of the Social Workers Regulations

Amendment of the Social Workers Regulations

13. The Social Workers Regulations 2018(a) are amended in accordance with regulations 14 to 16.

14. In regulation 20, in paragraph (1)—

- (a) delete “and” at the end of sub-paragraph (c);
- (b) at the end of sub-paragraph (d) insert—

“and

- (e) courses for persons who are, or wish to become, Approved Mental Capacity Professionals by a local authority in England under regulations made under paragraph 40(1) of Schedule AA1 to the Mental Capacity Act 2005(b) (“AMCPs courses”).”;

(c) after paragraph (1) insert—

“(1A) Paragraph 1(e) does not apply in respect of courses approved by the Secretary of State under regulations made under paragraph 40(1) of Schedule AA1 to the Mental Capacity Act 2005.”.

15. In the following regulations, for “and AMHPs courses” substitute “AMHPs courses and AMCPs courses”—

- (a) regulation 20(4), (5), (6)(a), (g)(i) and (i);
- (b) regulation 22(1);
- (c) regulation 24(1).

(a) S.I. 2018/893.

(b) 2005 c. Schedule AA1 was inserted by the Mental Capacity (Amendment) Act 2019 (c. 18).

16. In regulation 23, in paragraph (1), for “or an AMHPs course” substitute “an AMHPs course or an AMCPs course”.

Signed by the authority of the Secretary of State for Health and Social Care

Name

Parliamentary Under-Secretary of State
Department of Health and Social Care

Date

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Mental Capacity (Amendment) Act 2019 (c. 18) (“the 2019 Act”) amended the Mental Capacity Act 2005 (c. 9) (“the 2005 Act”) to provide for a new process for authorising arrangements enabling the care or treatment of persons who lack capacity to consent to the arrangements, which give rise to a deprivation of their liberty (“the arrangements”). In particular, the 2019 Act inserts a new Schedule AA1 into the 2005 Act which contains the new administrative scheme for the authorisation of the arrangements (“Liberty Protection Safeguards”). The Liberty Protection Safeguards will replace the scheme set out in Schedule A1 to the 2005 Act (“Deprivation of Liberty Safeguards Scheme”).

Before the arrangements can be authorised, a pre-authorisation review must be carried out to determine whether the authorisation conditions are satisfied in respect of the arrangements or whether it is reasonable for a body to conclude that the authorisation conditions are satisfied. In certain circumstances, this pre-authorisation review must be carried out by an Approved Mental Capacity Professional (“AMCP”). An AMCP will also, in certain circumstances, determine whether authorisation conditions are met upon a review of the arrangements.

These Regulations prescribe the criteria which must be met by a person to be eligible for approval by a local authority in England as an AMCP. Regulation 3 provides that a person must be registered in the register of one of the professions mentioned in that regulation. Regulation 4 specifies the matters that a local authority must take into account before approving a person as an AMCP.

Regulation 5 provides for conditions of approval as an AMCP including that, in each year of approval, an AMCP must undertake at least 18 hours of training.

Regulation 6 enables a person’s approval as an AMCP to be transferred to a different local authority.

Regulation 7 provides that an AMCP must notify the approving local authority, and cease to act as an AMCP, if they are no longer registered in the register of a profession specified in regulation 3 or if their registration in that register is suspended.

Regulation 8 makes provision regarding suspension of approval as an AMCP when a person’s registration is suspended from the register relevant to their profession.

Regulation 9 makes provision regarding exemption from the requirements of regulation 5(1).

Regulation 10 specifies the circumstances in which an approving local authority must or may end a person’s approval as an AMCP.

Regulation 11(1) and (2) provides for Social Work England to approve training for persons who wish to become, or who are, AMCPs. Regulation 11(3) provides for the Secretary of State to approve courses (“conversion courses”) which will enable persons who have practised as best interests assessors for at least one year under the Deprivation of Liberty Safeguards Scheme to become AMCPs.

Regulation 12 enables a local authority in England to approve a best interests assessor who successfully completes a conversion course as an AMCP if the local authority is satisfied as to the matters set out in regulation 4(2)(c), (d), (f) and (g) and that person is not already approved as an AMCP by another local authority.

Regulations 13 to 16 amend the Social Workers Regulations 2018 (S.I. 2018/893) (“The Social Workers Regulations”). Regulation 14 amends regulation 20 of the Social Workers Regulations to include AMCP courses as a course in respect of which Social Work England must operate an education and training approval scheme and regulation 15(a) makes consequential amendments to regulation 20. Regulation 15(b) and (c) amends regulations 22 and 24 of the Social Workers Regulations respectively to enable Social Work England to attach conditions to the approval and re-approval of AMCP courses and, in specified circumstances, to refuse to approve, or withdraw approval for an AMCP course. Regulation 16 amends regulation 23 to provide that Social Work England may charge a fee in connection with its approval and re-approval of AMCPs courses.

An impact assessment was produced for the 2019 Act which can be found at []. An impact assessment has not been produced for this instrument.