

202X No.

MENTAL CAPACITY, ENGLAND

The Mental Capacity (Deprivation of Liberty: Monitoring and Reporting) (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 paragraph 44(1) of Schedule AA1 to the Mental Capacity Act 2005(a).

Citation, commencement, extent and application

- 1.—(1) These Regulations may be cited as the Mental Capacity (Deprivation of Liberty: Monitoring and Reporting) (England) Regulations 202X and come into force on [].
- (2) These Regulations extend to England and Wales.
- (3) These Regulations apply in relation to England only.

Interpretation

2. In these Regulations—
- “the 2005 Act” means the Mental Capacity Act 2005;
- “the Chief Inspector” means Her Majesty’s Chief Inspector of Education, Children’s Services and Skills appointed by an Order in Council made under section 113(1) of the Education and Inspections Act 2006(b);
- “the Commission” means the Care Quality Commission established by section 1 of the Health and Social Care Act 2008(c);
- “Schedule AA1” means Schedule AA1 to the 2005 Act.

The Commission’s duty to monitor and report

- 3.—(1) The Commission must monitor the operation of Schedule AA1 where the operation of that Schedule is in respect of persons aged 18 and over.
- (2) The Commission must report to the Secretary of State on the operation of Schedule AA1 insofar as the Commission has a duty to monitor its operation under paragraph (1), at such times as the Secretary of State may request.

(a) 2005 c. 9. Schedule AA1 was inserted by section 1(4) of the Mental Capacity (Amendment) Act 2019 (c. 18). See definition of “appropriate authority” in paragraph 44(3) of that Schedule.

(b) 2006 c. 40.

(c) 2008 c. 14.

The Chief Inspector's duty to monitor and report

4.—(1) The Chief Inspector must monitor the operation of Schedule AA1 where the operation of that Schedule is in respect of persons aged 16 and 17.

(2) The Chief Inspector must report to the Secretary of State on the operation of Schedule AA1 insofar as the Chief Inspector has a duty to monitor its operation under paragraph (1), at such times as the Secretary of State may request.

Joint reports

5. The Secretary of State may request the Commission and the Chief Inspector to produce a joint report in pursuance of their respective duties under regulations 3(2) and 4(2) and, if so requested, the Commission and the Chief Inspector must report jointly to the Secretary of State.

Assistance with monitoring and reporting

6.—(1) The Commission may request assistance from the Chief Inspector, including in relation to the matters specified in regulation 7, for the purposes of carrying out its duty under regulation 3.

(2) The Chief Inspector may request assistance from the Commission, including in relation to the matters specified in regulation 8, for the purposes of carrying out their duty under regulation 4.

Monitoring and reporting: Commission's powers

7.—(1) For the purposes of carrying out its duty under regulation 3, the Commission may—

- (a) visit any place where authorised arrangements^(a) are being carried out;
- (b) subject to paragraph (2), meet with a cared-for person who is subject to an authorisation^(b);
- (c) require access to, and inspect, records relating to the care or treatment of a cared-for person who is subject to an authorisation;
- (d) meet with a person engaged in caring for the cared-for person or who is interested in the cared-for person's welfare.

(2) The Commission may meet with a cared-for person who is subject to an authorisation only if—

- (a) that person has capacity to consent to meeting with the Commission and does so consent, or
- (b) where that person does not have capacity to consent to meeting the Commission, the requirements of paragraph (3) are satisfied.

(3) The requirements to be satisfied for the purposes of paragraph (2)(b) are that—

- (a) either a donee of a lasting power of attorney granted by the cared-for person, or a deputy appointed for the cared-for person by the court, makes a valid decision that such a meeting is in the cared-for person's best interests, or
- (b) where there is no donee of a lasting power of attorney or deputy appointed by the court, a person engaged in caring for the cared-for person or interested in the cared-for person's welfare decides that such a meeting is in the cared-for person's best interests.

(4) For the purpose of paragraph (3)(a), a decision of a donee of a lasting power of attorney or of a deputy appointed by the court is valid if it is made—

- (a) within the scope of the donee's or deputy's authority, and
- (b) in accordance with Part 1 of the 2005 Act.

(5) A decision made by a person under paragraph (3)(b) must be made in accordance with Part I of the 2005 Act.

(a) See paragraph 3 of Schedule AA1 for the meaning of "arrangements".

(b) See paragraph 3 of Schedule AA1 for the meanings of "authorisation" and "cared-for person".

Monitoring and reporting: Chief Inspector's powers

- 8.**—(1) For the purposes of carrying out their duty under regulation 4, the Chief Inspector may—
- (a) visit any place where authorised arrangements are being carried out;
 - (b) subject to paragraph (2), meet with a cared-for person who is subject to an authorisation;
 - (c) require access to, and inspect, records relating to the care or treatment of a cared-for person who is subject to an authorisation;
 - (d) meet with a person engaged in caring for the cared-for person or who is interested in the cared-for person's welfare.
- (2) The Chief Inspector may meet with a cared-for person who is subject to an authorisation only if—
- (a) that person has capacity to consent to meeting with the Chief Inspector and does so consent, or
 - (b) where that person does not have capacity to consent to meeting the Chief Inspector, the requirements of paragraph (3) are satisfied.
- (3) The requirements to be satisfied for the purposes of paragraph (2)(b) are that—
- (a) either a donee of a lasting power of attorney granted by the cared-for person, or a deputy appointed for the cared-for person by the court, makes a valid decision that such a meeting is in the cared-for person's best interests, or
 - (b) where there is no donee of a lasting power of attorney or deputy appointed by the court, a person engaged in caring for the cared-for person or interested in the cared-for person's welfare decides that such a meeting is in the cared-for person's best interests.
- (4) For the purpose of paragraph (3)(a), a decision of a donee of a lasting power of attorney or of a deputy appointed by the court is valid if it is made—
- (a) within the scope of the donee's or deputy's authority, and
 - (b) in accordance with Part 1 of the 2005 Act.
- (5) A decision made by a person under paragraph (3)(b), must be made in accordance with Part I of the 2005 Act.

Responsible body: duty to co-operate

- 9.** A responsible body must co-operate with—
- (a) the Commission, in connection with the exercise of its powers under regulation 7, and
 - (b) the Chief Inspector, in connection with the exercise of their powers under regulation 8.

Conduct of meetings

- 10.**—(1) A meeting with a cared-for person pursuant to regulation 7(1)(b) or 8(1)(b) may be held at the place where the authorisation is being carried out or at any other place.
- (2) A meeting with a cared-for person pursuant to regulation 7(1)(b) or 8(1)(b) may be a meeting in person or a meeting that is conducted using audio or video conferencing facilities.
- (3) Where regulation 7(2)(a) or 8(2)(a) applies and the cared-for person requests that the meeting be conducted in private then the Commission, or the Chief Inspector, as the case may be, must have regard to that request.

Notification

- 11.**—(1) A responsible body must, at least once every 6 months, provide the relevant monitoring body with the information specified in paragraphs (2) to (6).

(2) Where the responsible body is carrying out its functions under Schedule AA1 with a view to determining whether to authorise arrangements in respect of a person (“P”), the information specified for the purposes of paragraph (1) is—

- (a) the date on which it started that process,
- (b) if authorised, the place at which arrangements will be carried out,
- (c) where known, P’s—
 - (i) date of birth,
 - (ii) sex,
 - (iii) ethnic origin, and
 - (iv) sexual orientation,
- (d) whether P has a disability and, if so, the nature of that disability,
- (e) whether P is represented and supported by an appropriate person^(a), and
- (f) whether an independent mental capacity advocate has been appointed to represent and support P or to support an appropriate person.

(3) Where a responsible body determines not to authorise arrangements, the information specified for the purposes of paragraph (1) is—

- (a) the date of the determination,
- (b) the reason for the determination,
- (c) where known, the information specified in paragraph (2)(c), and
- (d) the information specified in paragraph (2)(d).

(4) Where a responsible body determines to authorise arrangements, the information specified for the purposes of paragraph (1) is—

- (a) the date on which it gave the authorisation,
- (b) the date from which the authorisation has effect,
- (c) the date on which the authorisation will cease to have effect,
- (d) whether within 72 hours of arrangements being authorised the responsible body arranged for a copy of the authorisation record^(b) to be given or sent to the persons mentioned in paragraph 16(1) of Schedule AA1,
- (e) whether an application has been made to the court under section 21ZA of the 2005 Act and, if so, whether the court has made a determination in relation that application,
- (f) the information specified in paragraph (2)(b), (d), (e) and (f), and
- (g) where known, the information specified in paragraph (2)(c).

(5) Where a responsible body determines to renew an authorisation, the information specified for the purposes of paragraph (1) is—

- (a) the date on which it renewed the authorisation,
- (b) the date on which the authorisation will cease to have effect,
- (c) whether an application has been made to the court under section 21ZA of the 2005 Act and, if so, whether the court has made a determination in relation that application,
- (d) the information specified in paragraph (2)(b), (d), (e) and (f), and
- (e) where known, the information specified in paragraph (2)(c).

(6) Where an authorisation ceases to have effect, the information specified for the purposes of paragraph (1) is—

- (a) the date on which the authorisation ceased to have effect,
- (b) the reason for the authorisation ceasing to have effect,

(a) “Appropriate person” has the meaning given by paragraph 42(5) of Schedule AA1.

(b) “Authorisation record” has the meaning given by paragraph 27 of Schedule AA1.

- (c) where known, the information specified in paragraph (2)(c), and
 - (d) the information specified in paragraph (2)(d).
- (7) In this regulation “the relevant monitoring body” means—
- (a) the Chief Inspector, where the responsible body is exercising its functions under Schedule AA1 in respect of a person aged 16 or 17;
 - (b) the Commission, where the responsible body is exercising its functions under Schedule AA1 in respect of a person aged 18 or over.

	<i>Name</i>
	Minister of State
Date	Department of Health and Social Care

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 to enable 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 to the 2005 Act which contains the new administrative scheme for the authorisation of those arrangements (“Liberty Protection Safeguards”). The Liberty Protection Safeguards will replace the deprivation of liberty safeguards scheme set out in Schedule A1 to the 2005 Act.

These Regulations make provision about monitoring and reporting on the operation of Schedule AA1 to the 2005 Act in relation to England.

Regulation 2 provides definitions for the purposes of the Regulations.

Regulation 3 provides that the Care Quality Commission (“the Commission”) must monitor and report on the Liberty Protection Safeguards where those are operated in respect of persons aged 18 and over.

Regulation 4 provides that the Chief Inspector of Education, Children’s Services and Skills (“the Chief Inspector”) must monitor and report on the operation of the Liberty Protection Safeguards where those are operated in respect of persons aged 16 and 17.

Regulation 5 provides that, when requested to do so by the Secretary of State, the Commission and the Chief Inspector must produce a joint report to the Secretary of State on the operation of the Liberty Protection Safeguards.

Regulation 6 enables either the Commission or the Chief Inspector to request the assistance of the other in carrying out its duties under regulations 3 and 4 respectively.

Regulations 7 and 8 specify the Commission’s and the Chief Inspector’s powers in connection with their monitoring and reporting duties under regulation 3 and 4 respectively.

Regulation 9 provides that a responsible body must co-operate with the Commission or the Chief Inspector, as the case may be, in the exercise of their respective powers under regulation 7 and regulation 8.

Regulation 10 makes provision for the conduct of meetings between a cared-for person and the Commission or the Chief Inspector.

Regulation 11 requires a responsible body to provide either the Commission (in respect of a person aged 18 or over) or the Chief Inspector (in respect of a person aged 16 or 17) at least once every 6 months with specified information in relation to the authorisation of arrangements under Schedule AA1.

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