
DRAFT STATUTORY INSTRUMENTS

202X No. xxx

MENTAL CAPACITY

The Mental Capacity (Amendment) Act 2019 (Consequential Provisions) Regulations 202X

Made - - - - 202X

Coming into force in accordance with regulation 1(2) to (4)

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 5 of the Mental Capacity (Amendment) Act 2019^(a).

In accordance with section 5(4) of that Act, a draft of these Regulations was laid before and approved by a resolution of each House of Parliament.

PART 1

PRELIMINARY

Citation and commencement

1.—(1) These Regulations may be cited as the Mental Capacity (Amendment) Act 2019 (Consequential Provisions) Regulations 202X.

(2) This Part and Part 2 come into force on [].

(3) Parts 4, 6 and 8 come into force on [];

(4) The remainder of these Regulations comes into force on [].

Extent

2. Any amendment or revocation of an enactment made by these Regulations has the same extent as the enactment amended or revoked.

^(a) 2019 c.18.

PART 2

AMENDMENTS TO PRIMARY LEGISLATION COMING INTO FORCE ON []

Amendment of the Local Authority Social Services Act 1970

3. In the Local Authority Social Services Act 1970(a), in paragraph 1 of Schedule 1, in the entry relating to the Mental Capacity Act 2005, after the entry relating to Schedule A1 insert—

“Schedule AA1	Any functions.”
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Amendment of the Social Services and Well-being (Wales) Act 2014

4. In the Social Services and Well-being (Wales) Act 2014(b), in the table in Schedule 2, in the entry relating to the Mental Capacity Act 2005—

- (a) in column 1, for “Schedule A1” substitute “Schedules A1 and AA1”;
- (b) in column 2, for “residents.” substitute “residents; functions relating to deprivation of liberty by virtue of arrangements under Schedule AA1 to the Act.”.

PART 3

AMENDMENTS TO PRIMARY LEGISLATION COMING INTO FORCE ON []

Amendment of the Local Authority Social Services Act 1970

5. In the Local Authority Social Services Act 1970, in paragraph 1 of Schedule 1, in the entry relating to the Mental Capacity Act 2005, omit the entries relating to sections 39A, 39C and 39D and to Schedule A1.

Amendment of the Social Services and Well-being (Wales) Act 2014

6. In the Social Services and Well-being (Wales) Act 2014, in the table in Schedule 2, in the entry relating to the Mental Capacity Act 2005—

- (a) for the entry in column 1, for “Sections 39, 39A, 39C, 39D, 49 and Schedules A1 and AA1” substitute “Sections 39 and 49 and Schedule AA1”;
- (b) for the entry in column 2 substitute—
“Instructing independent mental capacity advocate before providing accommodation for person lacking capacity; reports in proceedings; functions relating to deprivation of liberty by virtue of arrangements under Schedule AA1 to the Act.”.

PART 4

AMENDMENTS TO SECONDARY LEGISLATION COMING INTO FORCE ON []: ENGLAND

(a) 1970 c.42. The entry relating to Schedule A1 was inserted by paragraph 13(2) of Schedule 9 to the Mental Health Act 2007 (c. 12).
(b) anaw 4.

Amendment of the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000

7. In regulation 5(c) of the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000(a), for “Schedule A1” substitute “Schedules A1 and AA1”.

Amendment of the National Health Service (Charges to Overseas Visitors) Regulations 2015

8. In regulation 18(b) of the National Health Service (Charges to Overseas Visitors) Regulations 2015(b)—

- (a) at the end of sub-paragraph (iii) omit “or”;
- (b) at the end of sub-paragraph (iv) insert “or” and after that sub-paragraph insert—
“(v) Schedule AA1 (deprivation of liberty: authorisation of arrangements enabling care and treatment);”.

Amendment of the Children’s Homes (England) Regulations 2015

9. In regulation 20(3) of the Children’s Homes (England) Regulations 2015(c), for “a court order” substitute—

“—

- (a) Schedule AA1 to the Mental Capacity Act 2005 (deprivation of liberty: authorisation of arrangements enabling care and treatment); or
- (b) a court order”.

PART 5

AMENDMENTS TO SECONDARY LEGISLATION COMING INTO FORCE ON []: ENGLAND

Amendment of the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000

10. In regulation 5(c) of the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000, for “Schedules A1 and AA1” substitute “Schedule AA1”.

Amendment of the Care Quality Commission (Registration) Regulations 2009

11. In regulation 18 of the Care Quality Commission (Registration) Regulations 2009(d), omit paragraphs (4A), (4B) and (5)(a), (e) and (f).

Amendment of the National Health Service (Charges to Overseas Visitors) Regulations 2015

12. In regulation 18(b) of the National Health Service (Charges to Overseas Visitors) Regulations 2015—

- (a) at the end of sub-paragraph (iii) insert “or”;
- (b) omit sub-paragraph (iv) and the “or” immediately following it.

(a) S.I. 2000/617. Paragraph (c) is substituted by S.I. 2009/278.
(b) S.I. 2015/238.
(c) S.I. 2015/541.
(d) S.I. 2009/3112. Paragraphs (4A) and (4B) are inserted by S.I. 2012/921.

PART 6

AMENDMENTS TO SECONDARY LEGISLATION COMING INTO FORCE ON []: ENGLAND AND WALES

Amendment of the Community Legal Service (Financial) Regulations 2000

13. In regulation 3(1) of the Community Legal Service (Financial) Regulations 2000^(a), for sub-paragraph (ea) substitute—

“(ea) Legal Representation—

- (i) of a person in respect of whom an application has been made under section 4B of the Mental Capacity Act 2005 by virtue of the application of subsection (7)(b) of that section to that person, or of an appropriate person who is representing and supporting that person in accordance with paragraph 42(5) of Schedule AA1 to that Act, in proceedings in the Court of Protection under that Act;
- (ii) of a person in respect of whom an authorisation is in force under Schedule AA1 to that Act or of an appropriate person who is representing and supporting that person in accordance with paragraph 42(5) of that Schedule, in proceedings in the Court of Protection under section 21ZA of that Act;
- (iii) of a person in respect of whom an authorisation has been made under paragraph 2 of Schedule A1 to that Act, or of a representative of that person appointed as such in accordance with Part 10 of that Schedule, in proceedings in the Court of Protection under section 21A of that Act;”.

Amendment of the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013

14. In regulation 5 of the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013^(b)—

(a) for sub-paragraph (1)(g) substitute—

“(g) legal representation in relation to a matter described in paragraph 5(1)(c) of Part 1 of Schedule 1 to the Act (mental capacity) to the extent that the legal representation is in proceedings in the Court of Protection to which paragraph (1A) applies;”;

(b) after paragraph (1) insert—

“(1A) This paragraph applies to proceedings—

- (a) in relation to the application of section 4B of the Mental Capacity Act 2005 (“the 2005 Act”) to an individual by virtue of subsection (7)(b) of that section where the individual to whom legal representation may be provided is—
 - (i) the individual in respect of whom an authorisation is sought under Schedule AA1 to the 2005 Act; or
 - (ii) an appropriate person who is representing and supporting that individual in accordance with paragraph 42(5) of that Schedule;
- (b) under section 21ZA of the 2005 Act where the individual to whom legal representation may be provided is—
 - (i) the individual in respect of whom an authorisation is in force under Schedule AA1 to the 2005 Act; or

^(a) S.I. 2000/ 516.

^(b) S.I. 2013/480.

- (ii) an appropriate person who is representing and supporting that individual in accordance with paragraph 42(5) of that Schedule;
- (c) under section 21A of the 2005 Act where the individual to whom legal representation may be provided is—
 - (i) the individual in respect of whom an authorisation is in force under paragraph 2 of Schedule A1 to the 2005 Act; or
 - (ii) a representative of that individual appointed as such in accordance with Part 10 of that Schedule.”.

Amendment of the Court of Protection Rules 2017

15. In the Court of Protection Rules 2017(a)—

- (a) in rule 2.1, in the definition of “P”, at the end of paragraph (b) insert “or a cared-for person for whom arrangements for care or treatment are made under Schedule AA1 to the Act”;
- (b) in rule 8.2(c), after “section” insert “21ZA or”.

PART 7

AMENDMENTS TO SECONDARY LEGISLATION COMING INTO FORCE ON []: ENGLAND AND WALES

Amendment of the Community Legal Service (Financial) Regulations 2000

16. In regulation 3(1)(ea) of the Community Legal Service (Financial) Regulations 2000, omit paragraph (iii).

Amendment of the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013

17. In regulation 5(1A) of the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013, omit sub-paragraph (c).

Amendment of the Court of Protection Rules 2017

18. In the Court of Protection Rules 2017—

- (a) in rule 2.1, in the definition of “P”, omit “as defined by Schedule A1 to the 2005 Act or”;
- (b) in rule 8.2(c), omit “or 21A”.

PART 8

AMENDMENTS TO SECONDARY LEGISLATION COMING INTO FORCE ON []: WALES

Amendment of the Mental Health (Care Co-ordination and Care and Treatment Planning) (Wales) Regulations 2011

19.—(1) The Mental Health (Care Co-ordination and Care and Treatment Planning) (Wales) Regulations 2011(b) are amended as follows.

(a) S.I. 2017/1935.

(b) Wales S.I. 2011/2942 (W. 318).

(2) In regulation 2, insert in the appropriate place—

““responsible body” (“corff cyfrifol”) has the meaning given in paragraph 6 of Schedule AA1 to the 2005 Act;”.

(3) In regulation 6(2)—

- (a) omit “and” at the end of sub-paragraph (g);
- (b) insert “and” at the end of sub-paragraph (h);
- (c) after sub-paragraph (h) insert—

“(i) where that patient is subject to an authorisation given under Schedule AA1 to the 2005 Act, the responsible body and the appropriate person or IMCA who represents and supports that patient under paragraph 42 of Schedule AA1 to the 2005 Act.”.

(4) In regulation 8(2)—

- (a) omit “and” at the end of sub-paragraph (j);
- (b) insert “and” at the end of sub-paragraph (k);
- (c) after sub-paragraph (k) insert—

“(l) where that patient is subject to an authorisation given under Schedule AA1 to the 2005 Act, the responsible body and the appropriate person or IMCA who represents and supports that patient under paragraph 42 of Schedule AA1 to the 2005 Act.”.

PART 9

AMENDMENTS TO SECONDARY LEGISLATION COMING INTO FORCE ON []: WALES

Amendment of the Independent Health Care (Wales) Regulations 2011

20. In regulation 31 of the Independent Health Care (Wales) Regulations 2011(a), omit paragraphs (1)(e) and (2).

Amendment of the Mental Health (Care Co-ordination and Care and Treatment Planning) (Wales) Regulations 2011

21.—(1) The Mental Health (Care Co-ordination and Care and Treatment Planning) (Wales) Regulations 2011 are amended as follows.

(2) In regulation 2, omit the definitions of ““managing authority” (“awdurdod rheoli”)” and ““supervisory body” (“corff goruchwylio”)”.

(3) In regulation 6(2)—

- (a) in sub-paragraph (f)—
 - (i) for “NHS Body), 39” substitute “NHS Body) or 39”;
 - (ii) omit from “, 39A” to “representative”;
- (b) insert “and” at the end of sub-paragraph (f);
- (c) omit sub-paragraphs (g) and (h).

(4) In regulation 8(2)—

- (a) in sub-paragraph (i), for “37, 38, 39, 39A, 39C or 39D” substitute “37, 38 or 39”;
- (b) insert “and” at the end of sub-paragraph (i);

(a) Wales S.I. 2011/734 (W. 112).

(c) omit sub-paragraphs (j) and (k).

Amendment of the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017

22. Omit paragraph 22 of Schedule 3 to the Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017(a).

Amendment of the Adult Placement Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019

23. Omit paragraph 20 of Schedule 3 to the Adult Placement Services (Service Providers and Responsible Individuals) (Wales) Regulations 2019(b).

PART 10
REVOCATIONS

Revocations

24. The instruments specified in the Schedule are revoked.

Date

Name
Parliamentary Under Secretary of State
Department for Health and Social Care

SCHEDULE
REVOCATIONS

Regulation 24

<i>Statutory Instrument</i>	<i>S.I. Number</i>
The Mental Capacity (Deprivation of Liberty: Standard Authorisations, Assessments and Ordinary Residence) Regulations 2008	S.I. 2008/1858
The Mental Capacity (Deprivation of Liberty: Appointment of Relevant Person's Representative) Regulations 2008	S.I. 2008/1315
The Mental Capacity (Deprivation of Liberty: Appointment of Relevant Person's Representative) (Amendment) Regulations 2008	S.I. 2008/2368
The Mental Capacity (Deprivation of Liberty: Monitoring and Reporting; and Assessments-Amendment) Regulations 2009	S.I. 2009/827
The Mental Capacity (Deprivation of Liberty: Appointment of Relevant Person's Representative) (Wales) Regulations 2009	Wales S.I. 2009/266 (W. 29)

(a) Wales S.I. 2017/1264 (W.295).

(b) Wales S.I. 2019/163 (W.40).

The Mental Capacity (Deprivation of Liberty: Assessments, Standard Authorisations and Disputes about Residence) (Wales) Regulations 2009	Wales S.I. 2009/783 (W. 69)
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EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make consequential provision and revocations in connection with the coming into force of the Mental Capacity (Amendment) Act 2019 (c.18) (“the 2019 Act”).

That Act amends the Mental Capacity Act 2005 (c.9) to impose a new system of Liberty Protection Safeguards. The main provisions of that Act come into force on [] but because certain authorisations can continue in force under the old system of Deprivation of Liberty Safeguards by virtue of the Mental Capacity (Amendment) Act 2019 (Commencement, Transitional and Savings Provisions) Regulations X (S.I. X/), certain provisions in these Regulations and the revocations come into force on [].

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.