

*Status: Point in time view as at 01/04/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Mental Capacity Act 2005, SCHEDULE A1. (See end of Document for details)*

## SCHEDULES

### [<sup>F1</sup>SCHEDULE A1

#### HOSPITAL AND CARE HOME RESIDENTS: DEPRIVATION OF LIBERTY

##### Textual Amendments

- F1** Sch. A1 inserted (1.4.2008 for certain purposes and otherwise 1.4.2009) by [Mental Health Act 2007 \(c. 12\)](#), ss. 50, 56, [Sch. 7](#); [S.I. 2008/745](#), [art. 4\(a\)](#); [S.I. 2009/139](#), [art. 2\(c\)](#) (with [art. 3](#), [Sch. paras. 3, 4](#))

#### PART 1

##### AUTHORISATION TO DEPRIVE RESIDENTS OF LIBERTY ETC

###### *Application of Part*

- 1 (1) This Part applies if the following conditions are met.
- (2) The first condition is that a person (“P”) is detained in a hospital or care home — for the purpose of being given care or treatment — in circumstances which amount to deprivation of the person's liberty.
- (3) The second condition is that a standard or urgent authorisation is in force.
- (4) The third condition is that the standard or urgent authorisation relates—
- (a) to P, and
  - (b) to the hospital or care home in which P is detained.

###### *Authorisation to deprive P of liberty*

- 2 The managing authority of the hospital or care home may deprive P of his liberty by detaining him as mentioned in paragraph 1(2).

###### *No liability for acts done for purpose of depriving P of liberty*

- 3 (1) This paragraph applies to any act which a person (“D”) does for the purpose of detaining P as mentioned in paragraph 1(2).
- (2) D does not incur any liability in relation to the act that he would not have incurred if P—
- (a) had had capacity to consent in relation to D's doing the act, and
  - (b) had consented to D's doing the act.

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*No protection for negligent acts etc*

- 4 (1) Paragraphs 2 and 3 do not exclude a person's civil liability for loss or damage, or his criminal liability, resulting from his negligence in doing any thing.
- (2) Paragraphs 2 and 3 do not authorise a person to do anything otherwise than for the purpose of the standard or urgent authorisation that is in force.
- (3) In a case where a standard authorisation is in force, paragraphs 2 and 3 do not authorise a person to do anything which does not comply with the conditions (if any) included in the authorisation.

**PART 2**

INTERPRETATION: MAIN TERMS

*Introduction*

- 5 This Part applies for the purposes of this Schedule.

*Detained resident*

- 6 “Detained resident” means a person detained in a hospital or care home — for the purpose of being given care or treatment — in circumstances which amount to deprivation of the person's liberty.

*Relevant person etc*

- 7 In relation to a person who is, or is to be, a detained resident—  
“relevant person” means the person in question;  
“relevant hospital or care home” means the hospital or care home in question;  
“relevant care or treatment” means the care or treatment in question.

*Authorisations*

- 8 “Standard authorisation” means an authorisation given under Part 4.
- 9 “Urgent authorisation” means an authorisation given under Part 5.
- 10 “Authorisation under this Schedule” means either of the following—  
(a) a standard authorisation;  
(b) an urgent authorisation.
- 11 (1) The purpose of a standard authorisation is the purpose which is stated in the authorisation in accordance with paragraph 55(1)(d).
- (2) The purpose of an urgent authorisation is the purpose which is stated in the authorisation in accordance with paragraph 80(d).

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### PART 3

#### THE QUALIFYING REQUIREMENTS

##### *The qualifying requirements*

- 12 (1) These are the qualifying requirements referred to in this Schedule—
- (a) the age requirement;
  - (b) the mental health requirement;
  - (c) the mental capacity requirement;
  - (d) the best interests requirement;
  - (e) the eligibility requirement;
  - (f) the no refusals requirement.
- (2) Any question of whether a person who is, or is to be, a detained resident meets the qualifying requirements is to be determined in accordance with this Part.
- (3) In a case where—
- (a) the question of whether a person meets a particular qualifying requirement arises in relation to the giving of a standard authorisation, and
  - (b) any circumstances relevant to determining that question are expected to change between the time when the determination is made and the time when the authorisation is expected to come into force,
- those circumstances are to be taken into account as they are expected to be at the later time.

##### *The age requirement*

- 13 The relevant person meets the age requirement if he has reached 18.

##### *The mental health requirement*

- 14 (1) The relevant person meets the mental health requirement if he is suffering from mental disorder (within the meaning of the Mental Health Act, but disregarding any exclusion for persons with learning disability).
- (2) An exclusion for persons with learning disability is any provision of the Mental Health Act which provides for a person with learning disability not to be regarded as suffering from mental disorder for one or more purposes of that Act.

##### *The mental capacity requirement*

- 15 The relevant person meets the mental capacity requirement if he lacks capacity in relation to the question whether or not he should be accommodated in the relevant hospital or care home for the purpose of being given the relevant care or treatment.

##### *The best interests requirement*

- 16 (1) The relevant person meets the best interests requirement if all of the following conditions are met.
- (2) The first condition is that the relevant person is, or is to be, a detained resident.

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- (3) The second condition is that it is in the best interests of the relevant person for him to be a detained resident.
- (4) The third condition is that, in order to prevent harm to the relevant person, it is necessary for him to be a detained resident.
- (5) The fourth condition is that it is a proportionate response to—
  - (a) the likelihood of the relevant person suffering harm, and
  - (b) the seriousness of that harm,
 for him to be a detained resident.

*The eligibility requirement*

- 17 (1) The relevant person meets the eligibility requirement unless he is ineligible to be deprived of liberty by this Act.
- (2) Schedule 1A applies for the purpose of determining whether or not P is ineligible to be deprived of liberty by this Act.

*The no refusals requirement*

- 18 The relevant person meets the no refusals requirement unless there is a refusal within the meaning of paragraph 19 or 20.
- 19 (1) There is a refusal if these conditions are met—
  - (a) the relevant person has made an advance decision;
  - (b) the advance decision is valid;
  - (c) the advance decision is applicable to some or all of the relevant treatment.
- (2) Expressions used in this paragraph and any of sections 24, 25 or 26 have the same meaning in this paragraph as in that section.
- 20 (1) There is a refusal if it would be in conflict with a valid decision of a donee or deputy for the relevant person to be accommodated in the relevant hospital or care home for the purpose of receiving some or all of the relevant care or treatment—
  - (a) in circumstances which amount to deprivation of the person's liberty, or
  - (b) at all.
- (2) A donee is a donee of a lasting power of attorney granted by the relevant person.
- (3) A decision of a donee or deputy is valid if it is made—
  - (a) within the scope of his authority as donee or deputy, and
  - (b) in accordance with Part 1 of this Act.

**PART 4**

STANDARD AUTHORISATIONS

*Supervisory body to give authorisation*

- 21 Only the supervisory body may give a standard authorisation.
- 22 The supervisory body may not give a standard authorisation unless—

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- (a) the managing authority of the relevant hospital or care home have requested it, or
  - (b) paragraph 71 applies (right of third party to require consideration of whether authorisation needed).
- 23 The managing authority may not make a request for a standard authorisation unless—
- (a) they are required to do so by paragraph 24 (as read with paragraphs 27 to 29),
  - (b) they are required to do so by paragraph 25 (as read with paragraph 28), or
  - (c) they are permitted to do so by paragraph 30.

*Duty to request authorisation: basic cases*

- 24 (1) The managing authority must request a standard authorisation in any of the following cases.
- (2) The first case is where it appears to the managing authority that the relevant person—
- (a) is not yet accommodated in the relevant hospital or care home,
  - (b) is likely — at some time within the next 28 days — to be a detained resident in the relevant hospital or care home, and
  - (c) is likely—
    - (i) at that time, or
    - (ii) at some later time within the next 28 days,to meet all of the qualifying requirements.
- (3) The second case is where it appears to the managing authority that the relevant person—
- (a) is already accommodated in the relevant hospital or care home,
  - (b) is likely — at some time within the next 28 days — to be a detained resident in the relevant hospital or care home, and
  - (c) is likely—
    - (i) at that time, or
    - (ii) at some later time within the next 28 days,to meet all of the qualifying requirements.
- (4) The third case is where it appears to the managing authority that the relevant person—
- (a) is a detained resident in the relevant hospital or care home, and
  - (b) meets all of the qualifying requirements, or is likely to do so at some time within the next 28 days.
- (5) This paragraph is subject to paragraphs 27 to 29.

*Duty to request authorisation: change in place of detention*

- 25 (1) The relevant managing authority must request a standard authorisation if it appears to them that these conditions are met.
- (2) The first condition is that a standard authorisation—
- (a) has been given, and
  - (b) has not ceased to be in force.

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- (3) The second condition is that there is, or is to be, a change in the place of detention.
- (4) This paragraph is subject to paragraph 28.
- 26 (1) This paragraph applies for the purposes of paragraph 25.
- (2) There is a change in the place of detention if the relevant person—
- (a) ceases to be a detained resident in the stated hospital or care home, and
  - (b) becomes a detained resident in a different hospital or care home (“the new hospital or care home”).
- (3) The stated hospital or care home is the hospital or care home to which the standard authorisation relates.
- (4) The relevant managing authority are the managing authority of the new hospital or care home.

*Other authority for detention: request for authorisation*

- 27 (1) This paragraph applies if, by virtue of section 4A(3), a decision of the court authorises the relevant person to be a detained resident.
- (2) Paragraph 24 does not require a request for a standard authorisation to be made in relation to that detention unless these conditions are met.
- (3) The first condition is that the standard authorisation would be in force at a time immediately after the expiry of the other authority.
- (4) The second condition is that the standard authorisation would not be in force at any time on or before the expiry of the other authority.
- (5) The third condition is that it would, in the managing authority's view, be unreasonable to delay making the request until a time nearer the expiry of the other authority.
- (6) In this paragraph—
- (a) the other authority is—
    - (i) the decision mentioned in sub-paragraph (1), or
    - (ii) any further decision of the court which, by virtue of section 4A(3), authorises, or is expected to authorise, the relevant person to be a detained resident;
  - (b) the expiry of the other authority is the time when the other authority is expected to cease to authorise the relevant person to be a detained resident.

*Request refused: no further request unless change of circumstances*

- 28 (1) This paragraph applies if—
- (a) a managing authority request a standard authorisation under paragraph 24 or 25, and
  - (b) the supervisory body are prohibited by paragraph 50(2) from giving the authorisation.
- (2) Paragraph 24 or 25 does not require that managing authority to make a new request for a standard authorisation unless it appears to the managing authority that—
- (a) there has been a change in the relevant person's case, and

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- (b) because of that change, the supervisory body are likely to give a standard authorisation if requested.

*Authorisation given: request for further authorisation*

- 29 (1) This paragraph applies if a standard authorisation—
- (a) has been given in relation to the detention of the relevant person, and
  - (b) that authorisation (“the existing authorisation”) has not ceased to be in force.
- (2) Paragraph 24 does not require a new request for a standard authorisation (“the new authorisation”) to be made unless these conditions are met.
- (3) The first condition is that the new authorisation would be in force at a time immediately after the expiry of the existing authorisation.
- (4) The second condition is that the new authorisation would not be in force at any time on or before the expiry of the existing authorisation.
- (5) The third condition is that it would, in the managing authority's view, be unreasonable to delay making the request until a time nearer the expiry of the existing authorisation.
- (6) The expiry of the existing authorisation is the time when it is expected to cease to be in force.

*Power to request authorisation*

- 30 (1) This paragraph applies if—
- (a) a standard authorisation has been given in relation to the detention of the relevant person,
  - (b) that authorisation (“the existing authorisation”) has not ceased to be in force,
  - (c) the requirement under paragraph 24 to make a request for a new standard authorisation does not apply, because of paragraph 29, and
  - (d) a review of the existing authorisation has been requested, or is being carried out, in accordance with Part 8.
- (2) The managing authority may request a new standard authorisation which would be in force on or before the expiry of the existing authorisation; but only if it would also be in force immediately after that expiry.
- (3) The expiry of the existing authorisation is the time when it is expected to cease to be in force.
- (4) Further provision relating to cases where a request is made under this paragraph can be found in—
- (a) paragraph 62 (effect of decision about request), and
  - (b) paragraph 124 (effect of request on Part 8 review).

*Information included in request*

- 31 A request for a standard authorisation must include the information (if any) required by regulations.

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### *Records of requests*

- 32 (1) The managing authority of a hospital or care home must keep a written record of—
- (a) each request that they make for a standard authorisation, and
  - (b) the reasons for making each request.
- (2) A supervisory body must keep a written record of each request for a standard authorisation that is made to them.

### *Relevant person must be assessed*

- 33 (1) This paragraph applies if the supervisory body are requested to give a standard authorisation.
- (2) The supervisory body must secure that all of these assessments are carried out in relation to the relevant person—
- (a) an age assessment;
  - (b) a mental health assessment;
  - (c) a mental capacity assessment;
  - (d) a best interests assessment;
  - (e) an eligibility assessment;
  - (f) a no refusals assessment.
- (3) The person who carries out any such assessment is referred to as the assessor.
- (4) Regulations may be made about the period (or periods) within which assessors must carry out assessments.
- (5) This paragraph is subject to paragraphs 49 and 133.

### *Age assessment*

- 34 An age assessment is an assessment of whether the relevant person meets the age requirement.

### *Mental health assessment*

- 35 A mental health assessment is an assessment of whether the relevant person meets the mental health requirement.
- 36 When carrying out a mental health assessment, the assessor must also—
- (a) consider how (if at all) the relevant person's mental health is likely to be affected by his being a detained resident, and
  - (b) notify the best interests assessor of his conclusions.

### *Mental capacity assessment*

- 37 A mental capacity assessment is an assessment of whether the relevant person meets the mental capacity requirement.

### *Best interests assessment*

- 38 A best interests assessment is an assessment of whether the relevant person meets the best interests requirement.



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- 39 (1) In carrying out a best interests assessment, the assessor must comply with the duties in sub-paragraphs (2) and (3).
- (2) The assessor must consult the managing authority of the relevant hospital or care home.
- (3) The assessor must have regard to all of the following—
- (a) the conclusions which the mental health assessor has notified to the best interests assessor in accordance with paragraph 36(b);
  - (b) any relevant needs assessment;
  - (c) any relevant care plan.
- (4) A relevant needs assessment is an assessment of the relevant person's needs which—
- (a) was carried out in connection with the relevant person being accommodated in the relevant hospital or care home, and
  - (b) was carried out by or on behalf of—
    - (i) the managing authority of the relevant hospital or care home, or
    - (ii) the supervisory body.
- (5) A relevant care plan is a care plan which—
- (a) sets out how the relevant person's needs are to be met whilst he is accommodated in the relevant hospital or care home, and
  - (b) was drawn up by or on behalf of—
    - (i) the managing authority of the relevant hospital or care home, or
    - (ii) the supervisory body.
- (6) The managing authority must give the assessor a copy of—
- (a) any relevant needs assessment carried out by them or on their behalf, or
  - (b) any relevant care plan drawn up by them or on their behalf.
- (7) The supervisory body must give the assessor a copy of—
- (a) any relevant needs assessment carried out by them or on their behalf, or
  - (b) any relevant care plan drawn up by them or on their behalf.
- (8) The duties in sub-paragraphs (2) and (3) do not affect any other duty to consult or to take the views of others into account.
- 40 (1) This paragraph applies whatever conclusion the best interests assessment comes to.
- (2) The assessor must state in the best interests assessment the name and address of every interested person whom he has consulted in carrying out the assessment.
- 41 Paragraphs 42 and 43 apply if the best interests assessment comes to the conclusion that the relevant person meets the best interests requirement.
- 42 (1) The assessor must state in the assessment the maximum authorisation period.
- (2) The maximum authorisation period is the shorter of these periods—
- (a) the period which, in the assessor's opinion, would be the appropriate maximum period for the relevant person to be a detained resident under the standard authorisation that has been requested;
  - (b) 1 year, or such shorter period as may be prescribed in regulations.
- (3) Regulations under sub-paragraph (2)(b)—

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- (a) need not provide for a shorter period to apply in relation to all standard authorisations;
  - (b) may provide for different periods to apply in relation to different kinds of standard authorisations.
- (4) Before making regulations under sub-paragraph (2)(b) the Secretary of State must consult all of the following—
- (a) each body required by regulations under paragraph 162 to monitor and report on the operation of this Schedule in relation to England;
  - (b) such other persons as the Secretary of State considers it appropriate to consult.
- (5) Before making regulations under sub-paragraph (2)(b) the National Assembly for Wales must consult all of the following—
- (a) each person or body directed under paragraph 163(2) to carry out any function of the Assembly of monitoring and reporting on the operation of this Schedule in relation to Wales;
  - (b) such other persons as the Assembly considers it appropriate to consult.
- 43 The assessor may include in the assessment recommendations about conditions to which the standard authorisation is, or is not, to be subject in accordance with paragraph 53.
- 44 (1) This paragraph applies if the best interests assessment comes to the conclusion that the relevant person does not meet the best interests requirement.
- (2) If, on the basis of the information taken into account in carrying out the assessment, it appears to the assessor that there is an unauthorised deprivation of liberty, he must include a statement to that effect in the assessment.
- (3) There is an unauthorised deprivation of liberty if the managing authority of the relevant hospital or care home are already depriving the relevant person of his liberty without authority of the kind mentioned in section 4A.
- 45 The duties with which the best interests assessor must comply are subject to the provision included in appointment regulations under Part 10 (in particular, provision made under paragraph 146).

#### *Eligibility assessment*

- 46 An eligibility assessment is an assessment of whether the relevant person meets the eligibility requirement.
- 47 (1) Regulations may—
- (a) require an eligibility assessor to request a best interests assessor to provide relevant eligibility information, and
  - (b) require the best interests assessor, if such a request is made, to provide such relevant eligibility information as he may have.
- (2) In this paragraph—
- “best interests assessor” means any person who is carrying out, or has carried out, a best interests assessment in relation to the relevant person;
  - “eligibility assessor” means a person carrying out an eligibility assessment in relation to the relevant person;

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“relevant eligibility information” is information relevant to assessing whether or not the relevant person is ineligible by virtue of paragraph 5 of Schedule 1A.

*No refusals assessment*

- 48 A no refusals assessment is an assessment of whether the relevant person meets the no refusals requirement.

*Equivalent assessment already carried out*

- 49 (1) The supervisory body are not required by paragraph 33 to secure that a particular kind of assessment (“the required assessment”) is carried out in relation to the relevant person if the following conditions are met.
- (2) The first condition is that the supervisory body have a written copy of an assessment of the relevant person (“the existing assessment”) that has already been carried out.
- (3) The second condition is that the existing assessment complies with all requirements under this Schedule with which the required assessment would have to comply (if it were carried out).
- (4) The third condition is that the existing assessment was carried out within the previous 12 months; but this condition need not be met if the required assessment is an age assessment.
- (5) The fourth condition is that the supervisory body are satisfied that there is no reason why the existing assessment may no longer be accurate.
- (6) If the required assessment is a best interests assessment, in satisfying themselves as mentioned in sub-paragraph (5), the supervisory body must take into account any information given, or submissions made, by—
- (a) the relevant person's representative,
  - (b) any section 39C IMCA, or
  - (c) any section 39D IMCA.
- (7) It does not matter whether the existing assessment was carried out in connection with a request for a standard authorisation or for some other purpose.
- (8) If, because of this paragraph, the supervisory body are not required by paragraph 33 to secure that the required assessment is carried out, the existing assessment is to be treated for the purposes of this Schedule—
- (a) as an assessment of the same kind as the required assessment, and
  - (b) as having been carried out under paragraph 33 in connection with the request for the standard authorisation.

*Duty to give authorisation*

- 50 (1) The supervisory body must give a standard authorisation if—
- (a) all assessments are positive, and
  - (b) the supervisory body have written copies of all those assessments.
- (2) The supervisory body must not give a standard authorisation except in accordance with sub-paragraph (1).

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- (3) All assessments are positive if each assessment carried out under paragraph 33 has come to the conclusion that the relevant person meets the qualifying requirement to which the assessment relates.

*Terms of authorisation*

- 51 (1) If the supervisory body are required to give a standard authorisation, they must decide the period during which the authorisation is to be in force.
- (2) That period must not exceed the maximum authorisation period stated in the best interests assessment.
- 52 A standard authorisation may provide for the authorisation to come into force at a time after it is given.
- 53 (1) A standard authorisation may be given subject to conditions.
- (2) Before deciding whether to give the authorisation subject to conditions, the supervisory body must have regard to any recommendations in the best interests assessment about such conditions.
- (3) The managing authority of the relevant hospital or care home must ensure that any conditions are complied with.

*Form of authorisation*

- 54 A standard authorisation must be in writing.
- 55 (1) A standard authorisation must state the following things—
- (a) the name of the relevant person;
  - (b) the name of the relevant hospital or care home;
  - (c) the period during which the authorisation is to be in force;
  - (d) the purpose for which the authorisation is given;
  - (e) any conditions subject to which the authorisation is given;
  - (f) the reason why each qualifying requirement is met.
- (2) The statement of the reason why the eligibility requirement is met must be framed by reference to the cases in the table in paragraph 2 of Schedule 1A.
- 56 (1) If the name of the relevant hospital or care home changes, the standard authorisation is to be read as if it stated the current name of the hospital or care home.
- (2) But sub-paragraph (1) is subject to any provision relating to the change of name which is made in any enactment or in any instrument made under an enactment.

*Duty to give information about decision*

- 57 (1) This paragraph applies if—
- (a) a request is made for a standard authorisation, and
  - (b) the supervisory body are required by paragraph 50(1) to give the standard authorisation.
- (2) The supervisory body must give a copy of the authorisation to each of the following—
- (a) the relevant person's representative;

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- (b) the managing authority of the relevant hospital or care home;
  - (c) the relevant person;
  - (d) any section 39A IMCA;
  - (e) every interested person consulted by the best interests assessor.
- (3) The supervisory body must comply with this paragraph as soon as practicable after they give the standard authorisation.
- 58 (1) This paragraph applies if—
- (a) a request is made for a standard authorisation, and
  - (b) the supervisory body are prohibited by paragraph 50(2) from giving the standard authorisation.
- (2) The supervisory body must give notice, stating that they are prohibited from giving the authorisation, to each of the following—
- (a) the managing authority of the relevant hospital or care home;
  - (b) the relevant person;
  - (c) any section 39A IMCA;
  - (d) every interested person consulted by the best interests assessor.
- (3) The supervisory body must comply with this paragraph as soon as practicable after it becomes apparent to them that they are prohibited from giving the authorisation.

*Duty to give information about effect of authorisation*

- 59 (1) This paragraph applies if a standard authorisation is given.
- (2) The managing authority of the relevant hospital or care home must take such steps as are practicable to ensure that the relevant person understands all of the following—
- (a) the effect of the authorisation;
  - (b) the right to make an application to the court to exercise its jurisdiction under section 21A;
  - (c) the right under Part 8 to request a review;
  - (d) the right to have a section 39D IMCA appointed;
  - (e) how to have a section 39D IMCA appointed.
- (3) Those steps must be taken as soon as is practicable after the authorisation is given.
- (4) Those steps must include the giving of appropriate information both orally and in writing.
- (5) Any written information given to the relevant person must also be given by the managing authority to the relevant person's representative.
- (6) They must give the information to the representative as soon as is practicable after it is given to the relevant person.
- (7) Sub-paragraph (8) applies if the managing authority is notified that a section 39D IMCA has been appointed.
- (8) As soon as is practicable after being notified, the managing authority must give the section 39D IMCA a copy of the written information given in accordance with sub-paragraph (4).

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### *Records of authorisations*

- 60 A supervisory body must keep a written record of all of the following information—
- (a) the standard authorisations that they have given;
  - (b) the requests for standard authorisations in response to which they have not given an authorisation;
  - (c) in relation to each standard authorisation given: the matters stated in the authorisation in accordance with paragraph 55.

### *Variation of an authorisation*

- 61 (1) A standard authorisation may not be varied except in accordance with Part 7 or 8.
- (2) This paragraph does not affect the powers of the Court of Protection or of any other court.

### *Effect of decision about request made under paragraph 25 or 30*

- 62 (1) This paragraph applies where the managing authority request a new standard authorisation under either of the following—
- (a) paragraph 25 (change in place of detention);
  - (b) paragraph 30 (existing authorisation subject to review).
- (2) If the supervisory body are required by paragraph 50(1) to give the new authorisation, the existing authorisation terminates at the time when the new authorisation comes into force.
- (3) If the supervisory body are prohibited by paragraph 50(2) from giving the new authorisation, there is no effect on the existing authorisation's continuation in force.

### *When an authorisation is in force*

- 63 (1) A standard authorisation comes into force when it is given.
- (2) But if the authorisation provides for it to come into force at a later time, it comes into force at that time.
- 64 (1) A standard authorisation ceases to be in force at the end of the period stated in the authorisation in accordance with paragraph 55(1)(c).
- (2) But if the authorisation terminates before then in accordance with paragraph 62(2) or any other provision of this Schedule, it ceases to be in force when the termination takes effect.
- (3) This paragraph does not affect the powers of the Court of Protection or of any other court.
- 65 (1) This paragraph applies if a standard authorisation ceases to be in force.
- (2) The supervisory body must give notice that the authorisation has ceased to be in force.
- (3) The supervisory body must give that notice to all of the following—
- (a) the managing authority of the relevant hospital or care home;
  - (b) the relevant person;
  - (c) the relevant person's representative;

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(d) every interested person consulted by the best interests assessor.

- (4) The supervisory body must give that notice as soon as practicable after the authorisation ceases to be in force.

*When a request for a standard authorisation is “disposed of”*

66 A request for a standard authorisation is to be regarded for the purposes of this Schedule as disposed of if the supervisory body have given—

- (a) a copy of the authorisation in accordance with paragraph 57, or  
(b) notice in accordance with paragraph 58.

*Right of third party to require consideration of whether authorisation needed*

67 For the purposes of paragraphs 68 to 73 there is an unauthorised deprivation of liberty if—

- (a) a person is already a detained resident in a hospital or care home, and  
(b) the detention of the person is not authorised as mentioned in section 4A.

68 (1) If the following conditions are met, an eligible person may request the supervisory body to decide whether or not there is an unauthorised deprivation of liberty.

(2) The first condition is that the eligible person has notified the managing authority of the relevant hospital or care home that it appears to the eligible person that there is an unauthorised deprivation of liberty.

(3) The second condition is that the eligible person has asked the managing authority to request a standard authorisation in relation to the detention of the relevant person.

(4) The third condition is that the managing authority has not requested a standard authorisation within a reasonable period after the eligible person asks it to do so.

(5) In this paragraph “eligible person” means any person other than the managing authority of the relevant hospital or care home.

69 (1) This paragraph applies if an eligible person requests the supervisory body to decide whether or not there is an unauthorised deprivation of liberty.

(2) The supervisory body must select and appoint a person to carry out an assessment of whether or not the relevant person is a detained resident.

(3) But the supervisory body need not select and appoint a person to carry out such an assessment in either of these cases.

(4) The first case is where it appears to the supervisory body that the request by the eligible person is frivolous or vexatious.

(5) The second case is where it appears to the supervisory body that—

- (a) the question of whether or not there is an unauthorised deprivation of liberty has already been decided, and  
(b) since that decision, there has been no change of circumstances which would merit the question being decided again.

(6) The supervisory body must not select and appoint a person to carry out an assessment under this paragraph unless it appears to the supervisory body that the person would be—

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- (a) suitable to carry out a best interests assessment (if one were obtained in connection with a request for a standard authorisation relating to the relevant person), and
  - (b) eligible to carry out such a best interests assessment.
- (7) The supervisory body must notify the persons specified in sub-paragraph (8)—
- (a) that the supervisory body have been requested to decide whether or not there is an unauthorised deprivation of liberty;
  - (b) of their decision whether or not to select and appoint a person to carry out an assessment under this paragraph;
  - (c) if their decision is to select and appoint a person, of the person appointed.
- (8) The persons referred to in sub-paragraph (7) are—
- (a) the eligible person who made the request under paragraph 68;
  - (b) the person to whom the request relates;
  - (c) the managing authority of the relevant hospital or care home;
  - (d) any section 39A IMCA.
- 70 (1) Regulations may be made about the period within which an assessment under paragraph 69 must be carried out.
- (2) Regulations made under paragraph 129(3) apply in relation to the selection and appointment of a person under paragraph 69 as they apply to the selection of a person under paragraph 129 to carry out a best interests assessment.
- (3) The following provisions apply to an assessment under paragraph 69 as they apply to an assessment carried out in connection with a request for a standard authorisation—
- (a) paragraph 131 (examination and copying of records);
  - (b) paragraph 132 (representations);
  - (c) paragraphs 134 and 135(1) and (2) (duty to keep records and give copies).
- (4) The copies of the assessment which the supervisory body are required to give under paragraph 135(2) must be given as soon as practicable after the supervisory body are themselves given a copy of the assessment.
- 71 (1) This paragraph applies if—
- (a) the supervisory body obtain an assessment under paragraph 69,
  - (b) the assessment comes to the conclusion that the relevant person is a detained resident, and
  - (c) it appears to the supervisory body that the detention of the person is not authorised as mentioned in section 4A.
- (2) This Schedule (including Part 5) applies as if the managing authority of the relevant hospital or care home had, in accordance with Part 4, requested the supervisory body to give a standard authorisation in relation to the relevant person.
- (3) The managing authority of the relevant hospital or care home must supply the supervisory body with the information (if any) which the managing authority would, by virtue of paragraph 31, have had to include in a request for a standard authorisation.
- (4) The supervisory body must notify the persons specified in paragraph 69(8)—
- (a) of the outcome of the assessment obtained under paragraph 69, and
  - (b) that this Schedule applies as mentioned in sub-paragraph (2).



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- 72 (1) This paragraph applies if—
- (a) the supervisory body obtain an assessment under paragraph 69, and
  - (b) the assessment comes to the conclusion that the relevant person is not a detained resident.
- (2) The supervisory body must notify the persons specified in paragraph 69(8) of the outcome of the assessment.
- 73 (1) This paragraph applies if—
- (a) the supervisory body obtain an assessment under paragraph 69,
  - (b) the assessment comes to the conclusion that the relevant person is a detained resident, and
  - (c) it appears to the supervisory body that the detention of the person is authorised as mentioned in section 4A.
- (2) The supervisory body must notify the persons specified in paragraph 69(8)—
- (a) of the outcome of the assessment, and
  - (b) that it appears to the supervisory body that the detention is authorised.

## PART 5

### URGENT AUTHORISATIONS

#### *Managing authority to give authorisation*

- 74 Only the managing authority of the relevant hospital or care home may give an urgent authorisation.
- 75 The managing authority may give an urgent authorisation only if they are required to do so by paragraph 76 (as read with paragraph 77).

#### *Duty to give authorisation*

- 76 (1) The managing authority must give an urgent authorisation in either of the following cases.
- (2) The first case is where—
- (a) the managing authority are required to make a request under paragraph 24 or 25 for a standard authorisation, and
  - (b) they believe that the need for the relevant person to be a detained resident is so urgent that it is appropriate for the detention to begin before they make the request.
- (3) The second case is where—
- (a) the managing authority have made a request under paragraph 24 or 25 for a standard authorisation, and
  - (b) they believe that the need for the relevant person to be a detained resident is so urgent that it is appropriate for the detention to begin before the request is disposed of.
- (4) References in this paragraph to the detention of the relevant person are references to the detention to which paragraph 24 or 25 relates.

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- (5) This paragraph is subject to paragraph 77.
- 77 (1) This paragraph applies where the managing authority have given an urgent authorisation (“the original authorisation”) in connection with a case where a person is, or is to be, a detained resident (“the existing detention”).
- (2) No new urgent authorisation is to be given under paragraph 76 in connection with the existing detention.
- (3) But the managing authority may request the supervisory body to extend the duration of the original authorisation.
- (4) Only one request under sub-paragraph (3) may be made in relation to the original authorisation.
- (5) Paragraphs 84 to 86 apply to any request made under sub-paragraph (3).

*Terms of authorisation*

- 78 (1) If the managing authority decide to give an urgent authorisation, they must decide the period during which the authorisation is to be in force.
- (2) That period must not exceed 7 days.

*Form of authorisation*

- 79 An urgent authorisation must be in writing.
- 80 An urgent authorisation must state the following things—
- (a) the name of the relevant person;
  - (b) the name of the relevant hospital or care home;
  - (c) the period during which the authorisation is to be in force;
  - (d) the purpose for which the authorisation is given.
- 81 (1) If the name of the relevant hospital or care home changes, the urgent authorisation is to be read as if it stated the current name of the hospital or care home.
- (2) But sub-paragraph (1) is subject to any provision relating to the change of name which is made in any enactment or in any instrument made under an enactment.

*Duty to keep records and give copies*

- 82 (1) This paragraph applies if an urgent authorisation is given.
- (2) The managing authority must keep a written record of why they have given the urgent authorisation.
- (3) As soon as practicable after giving the authorisation, the managing authority must give a copy of the authorisation to all of the following—
- (a) the relevant person;
  - (b) any section 39A IMCA.

*Duty to give information about authorisation*

- 83 (1) This paragraph applies if an urgent authorisation is given.

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- (2) The managing authority of the relevant hospital or care home must take such steps as are practicable to ensure that the relevant person understands all of the following—
  - (a) the effect of the authorisation;
  - (b) the right to make an application to the court to exercise its jurisdiction under section 21A.
- (3) Those steps must be taken as soon as is practicable after the authorisation is given.
- (4) Those steps must include the giving of appropriate information both orally and in writing.

*Request for extension of duration*

- 84
- (1) This paragraph applies if the managing authority make a request under paragraph 77 for the supervisory body to extend the duration of the original authorisation.
  - (2) The managing authority must keep a written record of why they have made the request.
  - (3) The managing authority must give the relevant person notice that they have made the request.
  - (4) The supervisory body may extend the duration of the original authorisation if it appears to them that—
    - (a) the managing authority have made the required request for a standard authorisation,
    - (b) there are exceptional reasons why it has not yet been possible for that request to be disposed of, and
    - (c) it is essential for the existing detention to continue until the request is disposed of.
  - (5) The supervisory body must keep a written record that the request has been made to them.
  - (6) In this paragraph and paragraphs 85 and 86—
    - (a) “original authorisation” and “existing detention” have the same meaning as in paragraph 77;
    - (b) the required request for a standard authorisation is the request that is referred to in paragraph 76(2) or (3).
- 85
- (1) This paragraph applies if, under paragraph 84, the supervisory body decide to extend the duration of the original authorisation.
  - (2) The supervisory body must decide the period of the extension.
  - (3) That period must not exceed 7 days.
  - (4) The supervisory body must give the managing authority notice stating the period of the extension.
  - (5) The managing authority must then vary the original authorisation so that it states the extended duration.
  - (6) Paragraphs 82(3) and 83 apply (with the necessary modifications) to the variation of the original authorisation as they apply to the giving of an urgent authorisation.

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- (7) The supervisory body must keep a written record of—
- (a) the outcome of the request, and
  - (b) the period of the extension.
- 86 (1) This paragraph applies if, under paragraph 84, the supervisory body decide not to extend the duration of the original authorisation.
- (2) The supervisory body must give the managing authority notice stating—
- (a) the decision, and
  - (b) their reasons for making it.
- (3) The managing authority must give a copy of that notice to all of the following—
- (a) the relevant person;
  - (b) any section 39A IMCA.
- (4) The supervisory body must keep a written record of the outcome of the request.

*No variation*

- 87 (1) An urgent authorisation may not be varied except in accordance with paragraph 85.
- (2) This paragraph does not affect the powers of the Court of Protection or of any other court.

*When an authorisation is in force*

- 88 An urgent authorisation comes into force when it is given.
- 89 (1) An urgent authorisation ceases to be in force at the end of the period stated in the authorisation in accordance with paragraph 80(c) (subject to any variation in accordance with paragraph 85).
- (2) But if the required request is disposed of before the end of that period, the urgent authorisation ceases to be in force as follows.
- (3) If the supervisory body are required by paragraph 50(1) to give the requested authorisation, the urgent authorisation ceases to be in force when the requested authorisation comes into force.
- (4) If the supervisory body are prohibited by paragraph 50(2) from giving the requested authorisation, the urgent authorisation ceases to be in force when the managing authority receive notice under paragraph 58.
- (5) In this paragraph—
- “required request” means the request referred to in paragraph 76(2) or (3);
- “requested authorisation” means the standard authorisation to which the required request relates.
- (6) This paragraph does not affect the powers of the Court of Protection or of any other court.
- 90 (1) This paragraph applies if an urgent authorisation ceases to be in force.
- (2) The supervisory body must give notice that the authorisation has ceased to be in force.
- (3) The supervisory body must give that notice to all of the following—

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- (a) the relevant person;
  - (b) any section 39A IMCA.
- (4) The supervisory body must give that notice as soon as practicable after the authorisation ceases to be in force.

## PART 6

### ELIGIBILITY REQUIREMENT NOT MET: SUSPENSION OF STANDARD AUTHORISATION

- 91 (1) This Part applies if the following conditions are met.
- (2) The first condition is that a standard authorisation—
    - (a) has been given, and
    - (b) has not ceased to be in force.
  - (3) The second condition is that the managing authority of the relevant hospital or care home are satisfied that the relevant person has ceased to meet the eligibility requirement.
  - (4) But this Part does not apply if the relevant person is ineligible by virtue of paragraph 5 of Schedule 1A (in which case see Part 8).
- 92 The managing authority of the relevant hospital or care home must give the supervisory body notice that the relevant person has ceased to meet the eligibility requirement.
- 93 (1) This paragraph applies if the managing authority give the supervisory body notice under paragraph 92.
- (2) The standard authorisation is suspended from the time when the notice is given.
  - (3) The supervisory body must give notice that the standard authorisation has been suspended to the following persons—
    - (a) the relevant person;
    - (b) the relevant person's representative;
    - (c) the managing authority of the relevant hospital or care home.
- 94 (1) This paragraph applies if, whilst the standard authorisation is suspended, the managing authority are satisfied that the relevant person meets the eligibility requirement again.
- (2) The managing authority must give the supervisory body notice that the relevant person meets the eligibility requirement again.
- 95 (1) This paragraph applies if the managing authority give the supervisory body notice under paragraph 94.
- (2) The standard authorisation ceases to be suspended from the time when the notice is given.
  - (3) The supervisory body must give notice that the standard authorisation has ceased to be suspended to the following persons—
    - (a) the relevant person;
    - (b) the relevant person's representative;
    - (c) any section 39D IMCA;

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- (d) the managing authority of the relevant hospital or care home.
- (4) The supervisory body must give notice under this paragraph as soon as practicable after they are given notice under paragraph 94.
- 96 (1) This paragraph applies if no notice is given under paragraph 94 before the end of the relevant 28 day period.
- (2) The standard authorisation ceases to have effect at the end of the relevant 28 day period.
- (3) The relevant 28 day period is the period of 28 days beginning with the day on which the standard authorisation is suspended under paragraph 93.
- 97 The effect of suspending the standard authorisation is that Part 1 ceases to apply for as long as the authorisation is suspended.

## PART 7

### STANDARD AUTHORISATIONS: CHANGE IN SUPERVISORY RESPONSIBILITY

#### *Application of this Part*

- 98 (1) This Part applies if these conditions are met.
- (2) The first condition is that a standard authorisation—
- (a) has been given, and
  - (b) has not ceased to be in force.
- (3) The second condition is that there is a change in supervisory responsibility.
- (4) The third condition is that there is not a change in the place of detention (within the meaning of paragraph 25).
- 99 For the purposes of this Part there is a change in supervisory responsibility if—
- (a) one body (“the old supervisory body”) have ceased to be supervisory body in relation to the standard authorisation, and
  - (b) a different body (“the new supervisory body”) have become supervisory body in relation to the standard authorisation.

#### *Effect of change in supervisory responsibility*

- 100 (1) The new supervisory body becomes the supervisory body in relation to the authorisation.
- (2) Anything done by or in relation to the old supervisory body in connection with the authorisation has effect, so far as is necessary for continuing its effect after the change, as if done by or in relation to the new supervisory body.
- (3) Anything which relates to the authorisation and which is in the process of being done by or in relation to the old supervisory body at the time of the change may be continued by or in relation to the new supervisory body.
- (4) But—

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- (a) the old supervisory body do not, by virtue of this paragraph, cease to be liable for anything done by them in connection with the authorisation before the change; and
- (b) the new supervisory body do not, by virtue of this paragraph, become liable for any such thing.

## **PART 8**

### STANDARD AUTHORISATIONS: REVIEW

#### *Application of this Part*

- 101 (1) This Part applies if a standard authorisation—
- (a) has been given, and
  - (b) has not ceased to be in force.
- (2) Paragraphs 102 to 122 are subject to paragraphs 123 to 125.

#### *Review by supervisory body*

- 102 (1) The supervisory body may at any time carry out a review of the standard authorisation in accordance with this Part.
- (2) The supervisory body must carry out such a review if they are requested to do so by an eligible person.
- (3) Each of the following is an eligible person—
- (a) the relevant person;
  - (b) the relevant person's representative;
  - (c) the managing authority of the relevant hospital or care home.

#### *Request for review*

- 103 (1) An eligible person may, at any time, request the supervisory body to carry out a review of the standard authorisation in accordance with this Part.
- (2) The managing authority of the relevant hospital or care home must make such a request if one or more of the qualifying requirements appear to them to be reviewable.

#### *Grounds for review*

- 104 (1) Paragraphs 105 to 107 set out the grounds on which the qualifying requirements are reviewable.
- (2) A qualifying requirement is not reviewable on any other ground.

#### *Non-qualification ground*

- 105 (1) Any of the following qualifying requirements is reviewable on the ground that the relevant person does not meet the requirement—
- (a) the age requirement;
  - (b) the mental health requirement;

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- (c) the mental capacity requirement;
  - (d) the best interests requirement;
  - (e) the no refusals requirement.
- (2) The eligibility requirement is reviewable on the ground that the relevant person is ineligible by virtue of paragraph 5 of Schedule 1A.
- (3) The ground in sub-paragraph (1) and the ground in sub-paragraph (2) are referred to as the non-qualification ground.

*Change of reason ground*

- 106 (1) Any of the following qualifying requirements is reviewable on the ground set out in sub-paragraph (2)—
- (a) the mental health requirement;
  - (b) the mental capacity requirement;
  - (c) the best interests requirement;
  - (d) the eligibility requirement;
  - (e) the no refusals requirement.
- (2) The ground is that the reason why the relevant person meets the requirement is not the reason stated in the standard authorisation.
- (3) This ground is referred to as the change of reason ground.

*Variation of conditions ground*

- 107 (1) The best interests requirement is reviewable on the ground that—
- (a) there has been a change in the relevant person's case, and
  - (b) because of that change, it would be appropriate to vary the conditions to which the standard authorisation is subject.
- (2) This ground is referred to as the variation of conditions ground.
- (3) A reference to varying the conditions to which the standard authorisation is subject is a reference to—
- (a) amendment of an existing condition,
  - (b) omission of an existing condition, or
  - (c) inclusion of a new condition (whether or not there are already any existing conditions).

*Notice that review to be carried out*

- 108 (1) If the supervisory body are to carry out a review of the standard authorisation, they must give notice of the review to the following persons—
- (a) the relevant person;
  - (b) the relevant person's representative;
  - (c) the managing authority of the relevant hospital or care home.
- (2) The supervisory body must give the notice—
- (a) before they begin the review, or
  - (b) if that is not practicable, as soon as practicable after they have begun it.



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- (3) This paragraph does not require the supervisory body to give notice to any person who has requested the review.

*Starting a review*

- 109 To start a review of the standard authorisation, the supervisory body must decide which, if any, of the qualifying requirements appear to be reviewable.

*No reviewable qualifying requirements*

- 110 (1) This paragraph applies if no qualifying requirements appear to be reviewable.  
(2) This Part does not require the supervisory body to take any action in respect of the standard authorisation.

*One or more reviewable qualifying requirements*

- 111 (1) This paragraph applies if one or more qualifying requirements appear to be reviewable.  
(2) The supervisory body must secure that a separate review assessment is carried out in relation to each qualifying requirement which appears to be reviewable.  
(3) But sub-paragraph (2) does not require the supervisory body to secure that a best interests review assessment is carried out in a case where the best interests requirement appears to the supervisory body to be non-assessable.  
(4) The best interests requirement is non-assessable if—  
(a) the requirement is reviewable only on the variation of conditions ground, and  
(b) the change in the relevant person's case is not significant.  
(5) In making any decision whether the change in the relevant person's case is significant, regard must be had to—  
(a) the nature of the change, and  
(b) the period that the change is likely to last for.

*Review assessments*

- 112 (1) A review assessment is an assessment of whether the relevant person meets a qualifying requirement.  
(2) In relation to a review assessment—  
(a) a negative conclusion is a conclusion that the relevant person does not meet the qualifying requirement to which the assessment relates;  
(b) a positive conclusion is a conclusion that the relevant person meets the qualifying requirement to which the assessment relates.  
(3) An age review assessment is a review assessment carried out in relation to the age requirement.  
(4) A mental health review assessment is a review assessment carried out in relation to the mental health requirement.

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- (5) A mental capacity review assessment is a review assessment carried out in relation to the mental capacity requirement.
  - (6) A best interests review assessment is a review assessment carried out in relation to the best interests requirement.
  - (7) An eligibility review assessment is a review assessment carried out in relation to the eligibility requirement.
  - (8) A no refusals review assessment is a review assessment carried out in relation to the no refusals requirement.
- 113 (1) In carrying out a review assessment, the assessor must comply with any duties which would be imposed upon him under Part 4 if the assessment were being carried out in connection with a request for a standard authorisation.
- (2) But in the case of a best interests review assessment, paragraphs 43 and 44 do not apply.
- (3) Instead of what is required by paragraph 43, the best interests review assessment must include recommendations about whether — and, if so, how — it would be appropriate to vary the conditions to which the standard authorisation is subject.

*Best interests requirement reviewable but non-assessable*

- 114 (1) This paragraph applies in a case where—
- (a) the best interests requirement appears to be reviewable, but
  - (b) in accordance with paragraph 111(3), the supervisory body are not required to secure that a best interests review assessment is carried out.
- (2) The supervisory body may vary the conditions to which the standard authorisation is subject in such ways (if any) as the supervisory body think are appropriate in the circumstances.

*Best interests review assessment positive*

- 115 (1) This paragraph applies in a case where—
- (a) a best interests review assessment is carried out, and
  - (b) the assessment comes to a positive conclusion.
- (2) The supervisory body must decide the following questions—
- (a) whether or not the best interests requirement is reviewable on the change of reason ground;
  - (b) whether or not the best interests requirement is reviewable on the variation of conditions ground;
  - (c) if so, whether or not the change in the person's case is significant.
- (3) If the supervisory body decide that the best interests requirement is reviewable on the change of reason ground, they must vary the standard authorisation so that it states the reason why the relevant person now meets that requirement.
- (4) If the supervisory body decide that—
- (a) the best interests requirement is reviewable on the variation of conditions ground, and

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- (b) the change in the relevant person's case is not significant, they may vary the conditions to which the standard authorisation is subject in such ways (if any) as they think are appropriate in the circumstances.
- (5) If the supervisory body decide that—
  - (a) the best interests requirement is reviewable on the variation of conditions ground, and
  - (b) the change in the relevant person's case is significant, they must vary the conditions to which the standard authorisation is subject in such ways as they think are appropriate in the circumstances.
- (6) If the supervisory body decide that the best interests requirement is not reviewable on—
  - (a) the change of reason ground, or
  - (b) the variation of conditions ground,this Part does not require the supervisory body to take any action in respect of the standard authorisation so far as the best interests requirement relates to it.

*Mental health, mental capacity, eligibility or no refusals review assessment positive*

- 116 (1) This paragraph applies if the following conditions are met.
- (2) The first condition is that one or more of the following are carried out—
    - (a) a mental health review assessment;
    - (b) a mental capacity review assessment;
    - (c) an eligibility review assessment;
    - (d) a no refusals review assessment.
  - (3) The second condition is that each assessment carried out comes to a positive conclusion.
  - (4) The supervisory body must decide whether or not each of the assessed qualifying requirements is reviewable on the change of reason ground.
  - (5) If the supervisory body decide that any of the assessed qualifying requirements is reviewable on the change of reason ground, they must vary the standard authorisation so that it states the reason why the relevant person now meets the requirement or requirements in question.
  - (6) If the supervisory body decide that none of the assessed qualifying requirements are reviewable on the change of reason ground, this Part does not require the supervisory body to take any action in respect of the standard authorisation so far as those requirements relate to it.
  - (7) An assessed qualifying requirement is a qualifying requirement in relation to which a review assessment is carried out.

*One or more review assessments negative*

- 117 (1) This paragraph applies if one or more of the review assessments carried out comes to a negative conclusion.
- (2) The supervisory body must terminate the standard authorisation with immediate effect.

*Status: Point in time view as at 01/04/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Mental Capacity Act 2005, SCHEDULE A1. (See end of Document for details)*

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*Completion of a review*

- 118 (1) The review of the standard authorisation is complete in any of the following cases.
- (2) The first case is where paragraph 110 applies.
- (3) The second case is where—
- (a) paragraph 111 applies, and
  - (b) paragraph 117 requires the supervisory body to terminate the standard authorisation.
- (4) In such a case, the supervisory body need not comply with any of the other provisions of paragraphs 114 to 116 which would be applicable to the review (were it not for this sub-paragraph).
- (5) The third case is where—
- (a) paragraph 111 applies,
  - (b) paragraph 117 does not require the supervisory body to terminate the standard authorisation, and
  - (c) the supervisory body comply with all of the provisions of paragraphs 114 to 116 (so far as they are applicable to the review).

*Variations under this Part*

- 119 Any variation of the standard authorisation made under this Part must be in writing.

*Notice of outcome of review*

- 120 (1) When the review of the standard authorisation is complete, the supervisory body must give notice to all of the following—
- (a) the managing authority of the relevant hospital or care home;
  - (b) the relevant person;
  - (c) the relevant person's representative;
  - (d) any section 39D IMCA.
- (2) That notice must state—
- (a) the outcome of the review, and
  - (b) what variation (if any) has been made to the authorisation under this Part.

*Records*

- 121 A supervisory body must keep a written record of the following information—
- (a) each request for a review that is made to them;
  - (b) the outcome of each request;
  - (c) each review which they carry out;
  - (d) the outcome of each review which they carry out;
  - (e) any variation of an authorisation made in consequence of a review.

*Relationship between review and suspension under Part 6*

- 122 (1) This paragraph applies if a standard authorisation is suspended in accordance with Part 6.

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*Status: Point in time view as at 01/04/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Mental Capacity Act 2005, SCHEDULE A1. (See end of Document for details)*

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- (2) No review may be requested under this Part whilst the standard authorisation is suspended.
- (3) If a review has already been requested, or is being carried out, when the standard authorisation is suspended, no steps are to be taken in connection with that review whilst the authorisation is suspended.

*Relationship between review and request for new authorisation*

- 123 (1) This paragraph applies if, in accordance with paragraph 24 (as read with paragraph 29), the managing authority of the relevant hospital or care home make a request for a new standard authorisation which would be in force after the expiry of the existing authorisation.
- (2) No review may be requested under this Part until the request for the new standard authorisation has been disposed of.
- (3) If a review has already been requested, or is being carried out, when the new standard authorisation is requested, no steps are to be taken in connection with that review until the request for the new standard authorisation has been disposed of.
- 124 (1) This paragraph applies if—
  - (a) a review under this Part has been requested, or is being carried out, and
  - (b) the managing authority of the relevant hospital or care home make a request under paragraph 30 for a new standard authorisation which would be in force on or before, and after, the expiry of the existing authorisation.
- (2) No steps are to be taken in connection with the review under this Part until the request for the new standard authorisation has been disposed of.
- 125 In paragraphs 123 and 124—
  - (a) the existing authorisation is the authorisation referred to in paragraph 101;
  - (b) the expiry of the existing authorisation is the time when it is expected to cease to be in force.

## PART 9

### ASSESSMENTS UNDER THIS SCHEDULE

#### *Introduction*

- 126 This Part contains provision about assessments under this Schedule.
- 127 An assessment under this Schedule is either of the following—
  - (a) an assessment carried out in connection with a request for a standard authorisation under Part 4;
  - (b) a review assessment carried out in connection with a review of a standard authorisation under Part 8.
- 128 In this Part, in relation to an assessment under this Schedule—
  - “assessor” means the person carrying out the assessment;
  - “relevant procedure” means—
    - (a) the request for the standard authorisation, or

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- (b) the review of the standard authorisation;  
 “supervisory body” means the supervisory body responsible for securing that the assessment is carried out.

*Supervisory body to select assessor*

- 129 (1) It is for the supervisory body to select a person to carry out an assessment under this Schedule.
- (2) The supervisory body must not select a person to carry out an assessment unless the person—
- (a) appears to the supervisory body to be suitable to carry out the assessment (having regard, in particular, to the type of assessment and the person to be assessed), and
  - (b) is eligible to carry out the assessment.
- (3) Regulations may make provision about the selection, and eligibility, of persons to carry out assessments under this Schedule.
- (4) Sub-paragraphs (5) and (6) apply if two or more assessments are to be obtained for the purposes of the relevant procedure.
- (5) In a case where the assessments to be obtained include a mental health assessment and a best interests assessment, the supervisory body must not select the same person to carry out both assessments.
- (6) Except as prohibited by sub-paragraph (5), the supervisory body may select the same person to carry out any number of the assessments which the person appears to be suitable, and is eligible, to carry out.
- 130 (1) This paragraph applies to regulations under paragraph 129(3).
- (2) The regulations may make provision relating to a person's—
- (a) qualifications,
  - (b) skills,
  - (c) training,
  - (d) experience,
  - (e) relationship to, or connection with, the relevant person or any other person,
  - (f) involvement in the care or treatment of the relevant person,
  - (g) connection with the supervisory body, or
  - (h) connection with the relevant hospital or care home, or with any other establishment or undertaking.
- (3) The provision that the regulations may make in relation to a person's training may provide for particular training to be specified by the appropriate authority otherwise than in the regulations.
- (4) In sub-paragraph (3) the “appropriate authority” means—
- (a) in relation to England: the Secretary of State;
  - (b) in relation to Wales: the National Assembly for Wales.
- (5) The regulations may make provision requiring a person to be insured in respect of liabilities that may arise in connection with the carrying out of an assessment.

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*Changes to legislation: There are currently no known outstanding effects for the Mental Capacity Act 2005, SCHEDULE A1. (See end of Document for details)*

- (6) In relation to cases where two or more assessments are to be obtained for the purposes of the relevant procedure, the regulations may limit the number, kind or combination of assessments which a particular person is eligible to carry out.
- (7) Sub-paragraphs (2) to (6) do not limit the generality of the provision that may be made in the regulations.

*Examination and copying of records*

- 131 An assessor may, at all reasonable times, examine and take copies of—
- (a) any health record,
  - (b) any record of, or held by, a local authority and compiled in accordance with a social services function, and
  - (c) any record held by a person registered under Part 2 of the Care Standards Act 2000 [F2 or Chapter 2 of Part 1 of the Health and Social Care Act 2008]F2,
- which the assessor considers may be relevant to the assessment which is being carried out.

**Textual Amendments**

- F2** Words in Sch. A1 para. 131(c) inserted (1.10.2010) by [The Health and Social Care Act 2008 \(Consequential Amendments No.2\) Order 2010 \(S.I. 2010/813\)](#), [art. 17\(7\)\(a\)](#)

*Representations*

- 132 In carrying out an assessment under this Schedule, the assessor must take into account any information given, or submissions made, by any of the following—
- (a) the relevant person's representative;
  - (b) any section 39A IMCA;
  - (c) any section 39C IMCA;
  - (d) any section 39D IMCA.

*Assessments to stop if any comes to negative conclusion*

- 133 (1) This paragraph applies if an assessment under this Schedule comes to the conclusion that the relevant person does not meet one of the qualifying requirements.
- (2) This Schedule does not require the supervisory body to secure that any other assessments under this Schedule are carried out in relation to the relevant procedure.
- (3) The supervisory body must give notice to any assessor who is carrying out another assessment in connection with the relevant procedure that they are to cease carrying out that assessment.
- (4) If an assessor receives such notice, this Schedule does not require the assessor to continue carrying out that assessment.

*Status: Point in time view as at 01/04/2013.*

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*Duty to keep records and give copies*

- 134 (1) This paragraph applies if an assessor has carried out an assessment under this Schedule (whatever conclusions the assessment has come to).
- (2) The assessor must keep a written record of the assessment.
- (3) As soon as practicable after carrying out the assessment, the assessor must give copies of the assessment to the supervisory body.
- 135 (1) This paragraph applies to the supervisory body if they are given a copy of an assessment under this Schedule.
- (2) The supervisory body must give copies of the assessment to all of the following—
- (a) the managing authority of the relevant hospital or care home;
  - (b) the relevant person;
  - (c) any section 39A IMCA;
  - (d) the relevant person's representative.
- (3) If—
- (a) the assessment is obtained in relation to a request for a standard authorisation, and
  - (b) the supervisory body are required by paragraph 50(1) to give the standard authorisation,
- the supervisory body must give the copies of the assessment when they give copies of the authorisation in accordance with paragraph 57.
- (4) If—
- (a) the assessment is obtained in relation to a request for a standard authorisation, and
  - (b) the supervisory body are prohibited by paragraph 50(2) from giving the standard authorisation,
- the supervisory body must give the copies of the assessment when they give notice in accordance with paragraph 58.
- (5) If the assessment is obtained in connection with the review of a standard authorisation, the supervisory body must give the copies of the assessment when they give notice in accordance with paragraph 120.
- 136 (1) This paragraph applies to the supervisory body if—
- (a) they are given a copy of a best interests assessment, and
  - (b) the assessment includes, in accordance with paragraph 44(2), a statement that it appears to the assessor that there is an unauthorised deprivation of liberty.
- (2) The supervisory body must notify all of the persons listed in sub-paragraph (3) that the assessment includes such a statement.
- (3) Those persons are—
- (a) the managing authority of the relevant hospital or care home;
  - (b) the relevant person;
  - (c) any section 39A IMCA;
  - (d) any interested person consulted by the best interests assessor.



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- (4) The supervisory body must comply with this paragraph when (or at some time before) they comply with paragraph 135.

## PART 10

### RELEVANT PERSON'S REPRESENTATIVE

#### *The representative*

- 137 In this Schedule the relevant person's representative is the person appointed as such in accordance with this Part.
- 138 (1) Regulations may make provision about the selection and appointment of representatives.
- (2) In this Part such regulations are referred to as “appointment regulations”.

#### *Supervisory body to appoint representative*

- 139 (1) The supervisory body must appoint a person to be the relevant person's representative as soon as practicable after a standard authorisation is given.
- (2) The supervisory body must appoint a person to be the relevant person's representative if a vacancy arises whilst a standard authorisation is in force.
- (3) Where a vacancy arises, the appointment under sub-paragraph (2) is to be made as soon as practicable after the supervisory body becomes aware of the vacancy.
- 140 (1) The selection of a person for appointment under paragraph 139 must not be made unless it appears to the person making the selection that the prospective representative would, if appointed—
- (a) maintain contact with the relevant person,
  - (b) represent the relevant person in matters relating to or connected with this Schedule, and
  - (c) support the relevant person in matters relating to or connected with this Schedule.
- 141 (1) Any appointment of a representative for a relevant person is in addition to, and does not affect, any appointment of a donee or deputy.
- (2) The functions of any representative are in addition to, and do not affect—
- (a) the authority of any donee,
  - (b) the powers of any deputy, or
  - (c) any powers of the court.

#### *Appointment regulations*

- 142 Appointment regulations may provide that the procedure for appointing a representative may begin at any time after a request for a standard authorisation is made (including a time before the request has been disposed of).
- 143 (1) Appointment regulations may make provision about who is to select a person for appointment as a representative.

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- (2) But regulations under this paragraph may only provide for the following to make a selection—
- (a) the relevant person, if he has capacity in relation to the question of which person should be his representative;
  - (b) a donee of a lasting power of attorney granted by the relevant person, if it is within the scope of his authority to select a person;
  - (c) a deputy, if it is within the scope of his authority to select a person;
  - (d) a best interests assessor;
  - (e) the supervisory body.
- (3) Regulations under this paragraph may provide that a selection by the relevant person, a donee or a deputy is subject to approval by a best interests assessor or the supervisory body.
- (4) Regulations under this paragraph may provide that, if more than one selection is necessary in connection with the appointment of a particular representative—
- (a) the same person may make more than one selection;
  - (b) different persons may make different selections.
- (5) For the purposes of this paragraph a best interests assessor is a person carrying out a best interests assessment in connection with the standard authorisation in question (including the giving of that authorisation).
- 144 (1) Appointment regulations may make provision about who may, or may not, be—
- (a) selected for appointment as a representative, or
  - (b) appointed as a representative.
- (2) Regulations under this paragraph may relate to any of the following matters—
- (a) a person's age;
  - (b) a person's suitability;
  - (c) a person's independence;
  - (d) a person's willingness;
  - (e) a person's qualifications.
- 145 Appointment regulations may make provision about the formalities of appointing a person as a representative.
- 146 In a case where a best interests assessor is to select a person to be appointed as a representative, appointment regulations may provide for the variation of the assessor's duties in relation to the assessment which he is carrying out.

#### *Monitoring of representatives*

- 147 Regulations may make provision requiring the managing authority of the relevant hospital or care home to—
- (a) monitor, and
  - (b) report to the supervisory body on,
- the extent to which a representative is maintaining contact with the relevant person.

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### *Termination*

- 148 Regulations may make provision about the circumstances in which the appointment of a person as the relevant person's representative ends or may be ended.
- 149 Regulations may make provision about the formalities of ending the appointment of a person as a representative.

### *Suspension of representative's functions*

- 150 (1) Regulations may make provision about the circumstances in which functions exercisable by, or in relation to, the relevant person's representative (whether under this Schedule or not) may be—
- (a) suspended, and
  - (b) if suspended, revived.
- (2) The regulations may make provision about the formalities for giving effect to the suspension or revival of a function.
- (3) The regulations may make provision about the effect of the suspension or revival of a function.

### *Payment of representative*

- 151 Regulations may make provision for payments to be made to, or in relation to, persons exercising functions as the relevant person's representative.

### *Regulations under this Part*

- 152 The provisions of this Part which specify provision that may be made in regulations under this Part do not affect the generality of the power to make such regulations.

### *Effect of appointment of section 39C IMCA*

- 153 Paragraphs 159 and 160 make provision about the exercise of functions by, or towards, the relevant person's representative during periods when—
- (a) no person is appointed as the relevant person's representative, but
  - (b) a person is appointed as a section 39C IMCA.

## **PART 11**

### **IMCAs**

#### *Application of Part*

- 154 This Part applies for the purposes of this Schedule.

#### *The IMCAs*

- 155 A section 39A IMCA is an independent mental capacity advocate appointed under section 39A.

*Status: Point in time view as at 01/04/2013.*

*Changes to legislation: There are currently no known outstanding effects for the Mental Capacity Act 2005, SCHEDULE A1. (See end of Document for details)*

- 156 A section 39C IMCA is an independent mental capacity advocate appointed under section 39C.
- 157 A section 39D IMCA is an independent mental capacity advocate appointed under section 39D.
- 158 An IMCA is a section 39A IMCA or a section 39C IMCA or a section 39D IMCA.

*Section 39C IMCA: functions*

- 159 (1) This paragraph applies if, and for as long as, there is a section 39C IMCA.
- (2) In the application of the relevant provisions, references to the relevant person's representative are to be read as references to the section 39C IMCA.
- (3) But sub-paragraph (2) does not apply to any function under the relevant provisions for as long as the function is suspended in accordance with provision made under Part 10.
- (4) In this paragraph and paragraph 160 the relevant provisions are—
- (a) paragraph 102(3)(b) (request for review under Part 8);
  - (b) paragraph 108(1)(b) (notice of review under Part 8);
  - (c) paragraph 120(1)(c) (notice of outcome of review under Part 8).
- 160 (1) This paragraph applies if—
- (a) a person is appointed as the relevant person's representative, and
  - (b) a person accordingly ceases to hold an appointment as a section 39C IMCA.
- (2) Where a function under a relevant provision has been exercised by, or towards, the section 39C IMCA, there is no requirement for that function to be exercised again by, or towards, the relevant person's representative.

*Section 39A IMCA: restriction of functions*

- 161 (1) This paragraph applies if—
- (a) there is a section 39A IMCA, and
  - (b) a person is appointed under Part 10 to be the relevant person's representative (whether or not that person, or any person subsequently appointed, is currently the relevant person's representative).
- (2) The duties imposed on, and the powers exercisable by, the section 39A IMCA do not apply.
- (3) The duties imposed on, and the powers exercisable by, any other person do not apply, so far as they fall to be performed or exercised towards the section 39A IMCA.
- (4) But sub-paragraph (2) does not apply to any power of challenge exercisable by the section 39A IMCA.
- (5) And sub-paragraph (3) does not apply to any duty or power of any other person so far as it relates to any power of challenge exercisable by the section 39A IMCA.
- (6) Before exercising any power of challenge, the section 39A IMCA must take the views of the relevant person's representative into account.

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- (7) A power of challenge is a power to make an application to the court to exercise its jurisdiction under section 21A in connection with the giving of the standard authorisation.

## PART 12

### MISCELLANEOUS

#### *Monitoring of operation of Schedule*

- 162 (1) Regulations may make provision for, and in connection with, requiring one or more prescribed bodies to monitor, and report on, the operation of this Schedule in relation to England.
- (2) The regulations may, in particular, give a prescribed body authority to do one or more of the following things—
- (a) to visit hospitals and care homes;
  - (b) to visit and interview persons accommodated in hospitals and care homes;
  - (c) to require the production of, and to inspect, records relating to the care or treatment of persons.
- (3) “Prescribed” means prescribed in regulations under this paragraph.
- 163 (1) Regulations may make provision for, and in connection with, enabling the National Assembly for Wales to monitor, and report on, the operation of this Schedule in relation to Wales.
- (2) The National Assembly may direct one or more persons or bodies to carry out the Assembly's functions under regulations under this paragraph.

#### *Disclosure of information*

- 164 (1) Regulations may require either or both of the following to disclose prescribed information to prescribed bodies—
- (a) supervisory bodies;
  - (b) managing authorities of hospitals or care homes.
- (2) “Prescribed” means prescribed in regulations under this paragraph.
- (3) Regulations under this paragraph may only prescribe information relating to matters with which this Schedule is concerned.

#### *Directions by National Assembly in relation to supervisory functions*

- 165 (1) The National Assembly for Wales may direct a Local Health Board to exercise in relation to its area any supervisory functions which are specified in the direction.
- (2) Directions under this paragraph must not preclude the National Assembly from exercising the functions specified in the directions.
- (3) In this paragraph “supervisory functions” means functions which the National Assembly have as supervisory body, so far as they are exercisable in relation to hospitals (whether NHS or independent hospitals, and whether in Wales or England).

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*Changes to legislation: There are currently no known outstanding effects for the Mental Capacity Act 2005, SCHEDULE A1. (See end of Document for details)*

- 166 (1) This paragraph applies where, under paragraph 165, a Local Health Board (“the specified LHB”) is directed to exercise supervisory functions (“delegated functions”).
- (2) The National Assembly for Wales may give directions to the specified LHB about the Board's exercise of delegated functions.
- (3) The National Assembly may give directions for any delegated functions to be exercised, on behalf of the specified LHB, by a committee, sub-committee or officer of that Board.
- (4) The National Assembly may give directions providing for any delegated functions to be exercised by the specified LHB jointly with one or more other Local Health Boards.
- (5) Where, under sub-paragraph (4), delegated functions are exercisable jointly, the National Assembly may give directions providing for the functions to be exercised, on behalf of the Local Health Boards in question, by a joint committee or joint sub-committee.
- 167 (1) Directions under paragraph 165 must be given in regulations.
- (2) Directions under paragraph 166 may be given—
- (a) in regulations, or
- (b) by instrument in writing.
- 168 The power under paragraph 165 or paragraph 166 to give directions includes power to vary or revoke directions given under that paragraph.

#### *Notices*

- 169 Any notice under this Schedule must be in writing.

#### *Regulations*

- 170 (1) This paragraph applies to all regulations under this Schedule, except regulations under paragraph 162, 163, 167 or 183.
- (2) It is for the Secretary of State to make such regulations in relation to authorisations under this Schedule which relate to hospitals and care homes situated in England.
- (3) It is for the National Assembly for Wales to make such regulations in relation to authorisations under this Schedule which relate to hospitals and care homes situated in Wales.
- 171 It is for the Secretary of State to make regulations under paragraph 162.
- 172 It is for the National Assembly for Wales to make regulations under paragraph 163 or 167.
- 173 (1) This paragraph applies to regulations under paragraph 183.
- (2) It is for the Secretary of State to make such regulations in relation to cases where a question as to the ordinary residence of a person is to be determined by the Secretary of State.

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*Changes to legislation: There are currently no known outstanding effects for the Mental Capacity Act 2005, SCHEDULE A1. (See end of Document for details)*

- (3) It is for the National Assembly for Wales to make such regulations in relation to cases where a question as to the ordinary residence of a person is to be determined by the National Assembly.

## PART 13

### INTERPRETATION

#### *Introduction*

174 This Part applies for the purposes of this Schedule.

#### *Hospitals and their managing authorities*

- 175 (1) “Hospital ” means—
- (a) an NHS hospital, or
  - (b) an independent hospital.
- (2) “NHS hospital ” means—
- (a) a health service hospital as defined by section 275 of the National Health Service Act 2006 or section 206 of the National Health Service (Wales) Act 2006, or
  - (b) a hospital as defined by section 206 of the National Health Service (Wales) Act 2006 vested in a Local Health Board.
- [<sup>F3</sup>(3) Independent hospital”—
- (a) in relation to England, means a hospital as defined by section 275 of the National Health Service Act 2006 that is not an NHS hospital; and
  - (b) in relation to Wales, means a hospital as defined by section 2 of the Care Standards Act 2000 that is not an NHS hospital.]<sup>F3</sup>

#### **Textual Amendments**

**F3** Sch. A1 para. 175(3) substituted (1.10.2010) by [The Health and Social Care Act 2008 \(Consequential Amendments No.2\) Order 2010 \(S.I. 2010/813\)](#), [art. 17\(7\)\(b\)\(i\)](#)

- 176 (1) “Managing authority ”, in relation to an NHS hospital, means—
- (a) if the hospital—
    - (i) is vested in the appropriate national authority for the purposes of its functions under the National Health Service Act 2006 or of the National Health Service (Wales) Act 2006, or
    - (ii) consists of any accommodation provided by a local authority and used as a hospital by or on behalf of the appropriate national authority under either of those Acts,
- the<sup>F4</sup>...<sup>F5</sup>... Local Health Board or Special Health Authority responsible for the administration of the hospital;
- [ in relation to England, if the hospital falls within paragraph (a)(i) or (ii) and no Special Health Authority has responsibility for its administration, the Secretary of State;]
- <sup>F6</sup>(aa)

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*Changes to legislation: There are currently no known outstanding effects for the Mental Capacity Act 2005, SCHEDULE A1. (See end of Document for details)*

- (b) if the hospital is vested in a <sup>F7</sup> ... National Health Service trust or NHS foundation trust, that trust;
  - (c) if the hospital is vested in a Local Health Board, that Board.
- (2) For this purpose the appropriate national authority is—
- (a) in relation to England: the Secretary of State;
  - (b) in relation to Wales: the National Assembly for Wales;
  - (c) in relation to England and Wales: the Secretary of State and the National Assembly acting jointly.

#### Textual Amendments

- F4** Words in Sch. A1 para. 176(1)(a) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 5 para. 136\(2\)\(a\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F5** Words in Sch. A1 para. 176(1)(a) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 5 para. 136\(2\)\(b\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F6** Sch. A1 para. 176(1)(aa) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 5 para. 136\(2\)\(c\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F7** Words in Sch. A1 para. 176(1)(b) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 5 para. 136\(2\)\(d\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)

- <sup>F8</sup>177 “Managing authority”, in relation to an independent hospital, means—
- (a) in relation to England, the person registered, or required to be registered, under Chapter 2 of Part 1 of the Health and Social Care Act 2008 in respect of regulated activities (within the meaning of that Part) carried on in the hospital, and
  - (b) in relation to Wales, the person registered, or required to be registered, under Part 2 of the Care Standards Act 2000 in respect of the hospital.]<sup>F8</sup>

#### Textual Amendments

- F8** Sch. A1 para. 177 substituted (1.10.2010) by [The Health and Social Care Act 2008 \(Consequential Amendments No.2\) Order 2010 \(S.I. 2010/813\)](#), art. 17(7)(b)(ii)

#### *Care homes and their managing authorities*

- 178 “Care home” has the meaning given by section 3 of the Care Standards Act 2000.
- <sup>F9</sup>179 “Managing authority”, in relation to a care home, means—
- (a) in relation to England, the person registered, or required to be registered, under Chapter 2 of Part 1 of the Health and Social Care Act 2008 in respect of the provision of residential accommodation, together with nursing or personal care, in the care home, and
  - (b) in relation to Wales, the person registered, or required to be registered, under Part 2 of the Care Standards Act 2000 in respect of the care home.]<sup>F9</sup>

#### Textual Amendments

- F9** Sch. A1 para. 179 substituted (1.10.2010) by [The Health and Social Care Act 2008 \(Consequential Amendments No.2\) Order 2010 \(S.I. 2010/813\)](#), art. 17(7)(b)(iii)



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*Supervisory bodies: hospitals*

- 180 (1) The identity of the supervisory body is determined under this paragraph in cases where the relevant hospital is situated in England.
- [<sup>F10</sup>(2) If the relevant person is ordinarily resident in the area of a local authority in England, the supervisory body are that local authority.]
- (3) If [<sup>F11</sup>the relevant person is not ordinarily resident in England and] the National Assembly for Wales or a Local Health Board commission the relevant care or treatment, the National Assembly are the supervisory body.
- (4) In any other case, the supervisory body are [<sup>F12</sup>the local authority] for the area in which the relevant hospital is situated.
- [ Local authority” means—
- <sup>F13</sup>(4A) (a) the council of a county;  
(b) the council of a district for which there is no county council;  
(c) the council of a London borough;  
(d) the Common Council of the City of London;  
(e) the Council of the Isles of Scilly.]
- (5) If a hospital is situated in the areas of two (or more) [<sup>F14</sup>local authorities], it is to be regarded for the purposes of sub-paragraph (4) as situated in whichever of the areas the greater (or greatest) part of the hospital is situated.

**Textual Amendments**

- F10** Sch. A1 para. 180(2) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\)](#), [Sch. 5 para. 136\(3\)\(a\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F11** Words in Sch. A1 para. 180(3) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\)](#), [Sch. 5 para. 136\(3\)\(b\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F12** Words in Sch. A1 para. 180(4) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\)](#), [Sch. 5 para. 136\(3\)\(c\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F13** Sch. A1 para. 180(4A) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\)](#), [Sch. 5 para. 136\(3\)\(d\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F14** Words in Sch. A1 para. 180(5) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\)](#), [Sch. 5 para. 136\(3\)\(e\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)

- 181 (1) The identity of the supervisory body is determined under this paragraph in cases where the relevant hospital is situated in Wales.
- (2) The National Assembly for Wales are the supervisory body.
- [<sup>F15</sup>(3) But if the relevant person is ordinarily resident in the area of a local authority in England, the supervisory body are that local authority.
- (4) “ Local authority ” means—
- (a) the council of a county;  
(b) the council of a district for which there is no county council;  
(c) the council of a London borough;  
(d) the Common Council of the City of London;  
(e) the Council of the Isles of Scilly.]

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#### Textual Amendments

**F15** Sch. A1 para. 181(3)(4) substituted for Sch. A1 para. 181(3) (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 5 para. 136\(4\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)

#### *Supervisory bodies: care homes*

- 182 (1) The identity of the supervisory body is determined under this paragraph in cases where the relevant care home is situated in England or in Wales.
- (2) The supervisory body are the local authority for the area in which the relevant person is ordinarily resident.
- (3) But if the relevant person is not ordinarily resident in the area of a local authority, the supervisory body are the local authority for the area in which the care home is situated.
- (4) In relation to England “local authority” means—
- the council of a county;
  - the council of a district for which there is no county council;
  - the council of a London borough;
  - the Common Council of the City of London;
  - the Council of the Isles of Scilly.
- (5) In relation to Wales “local authority” means the council of a county or county borough.
- (6) If a care home is situated in the areas of two (or more) local authorities, it is to be regarded for the purposes of sub-paragraph (3) as situated in whichever of the areas the greater (or greatest) part of the care home is situated.

#### *[<sup>F16</sup>Supervisory bodies: determination of place of ordinary residence]*

#### Textual Amendments

**F16** Sch. A1 para. 183 heading inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 5 para. 136\(5\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)

- 183 (1) Subsections (5) and (6) of section 24 of the National Assistance Act 1948 (deemed place of ordinary residence) apply to any determination of where a person is ordinarily resident for the purposes of [<sup>F17</sup>paragraphs 180, 181 and] 182 as those subsections apply to such a determination for the purposes specified in those subsections.
- (2) In the application of section 24(6) of the 1948 Act by virtue of sub-paragraph (1) [<sup>F18</sup>to any determination of where a person is ordinarily resident for the purposes of paragraph 182], section 24(6) is to be read as if it referred to a hospital vested in a Local Health Board as well as to hospitals vested in the Secretary of State and the other bodies mentioned in section 24(6).
- (3) Any question arising as to the ordinary residence of a person is to be determined by the Secretary of State or by the National Assembly for Wales.

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- (4) The Secretary of State and the National Assembly must make and publish arrangements for determining which cases are to be dealt with by the Secretary of State and which are to be dealt with by the National Assembly.
- (5) Those arrangements may include provision for the Secretary of State and the National Assembly to agree, in relation to any question that has arisen, which of them is to deal with the case.
- (6) Regulations may make provision about arrangements that are to have effect before, upon, or after the determination of any question as to the ordinary residence of a person.
- (7) The regulations may, in particular, authorise or require a local authority to do any or all of the following things—
  - (a) to act as supervisory body even though it may wish to dispute that it is the supervisory body;
  - (b) to become the supervisory body in place of another local authority;
  - (c) to recover from another local authority expenditure incurred in exercising functions as the supervisory body.

#### Textual Amendments

- F17** Words in Sch. A1 para. 183(1) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 5 para. 136\(6\)\(a\)](#); [S.I. 2013/160, art. 2\(2\)](#) (with [arts. 7-9](#))
- F18** Words in Sch. A1 para. 183(2) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 5 para. 136\(6\)\(b\)](#); [S.I. 2013/160, art. 2\(2\)](#) (with [arts. 7-9](#))

#### *Same body managing authority and supervisory body*

- 184 (1) This paragraph applies if, in connection with a particular person's detention as a resident in a hospital or care home, the same body are both—
  - (a) the managing authority of the relevant hospital or care home, and
  - (b) the supervisory body.
- (2) The fact that a single body are acting in both capacities does not prevent the body from carrying out functions under this Schedule in each capacity.
- (3) But, in such a case, this Schedule has effect subject to any modifications contained in regulations that may be made for this purpose.

#### *Interested persons*

- 185 Each of the following is an interested person—
  - (a) the relevant person's spouse or civil partner;
  - (b) where the relevant person and another person of the opposite sex are not married to each other but are living together as husband and wife: the other person;
  - (c) where the relevant person and another person of the same sex are not civil partners of each other but are living together as if they were civil partners: the other person;
  - (d) the relevant person's children and step-children;

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- (e) the relevant person's parents and step-parents;
  - (f) the relevant person's brothers and sisters, half-brothers and half-sisters, and stepbrothers and stepsisters;
  - (g) the relevant person's grandparents;
  - (h) a deputy appointed for the relevant person by the court;
  - (i) a donee of a lasting power of attorney granted by the relevant person.
- 186 (1) An interested person consulted by the best interests assessor is any person whose name is stated in the relevant best interests assessment in accordance with paragraph 40 (interested persons whom the assessor consulted in carrying out the assessment).
- (2) The relevant best interests assessment is the most recent best interests assessment carried out in connection with the standard authorisation in question (whether the assessment was carried out under Part 4 or Part 8).
- 187 Where this Schedule imposes on a person a duty towards an interested person, the duty does not apply if the person on whom the duty is imposed—
- (a) is not aware of the interested person's identity or of a way of contacting him, and
  - (b) cannot reasonably ascertain it.
- 188 The following table contains an index of provisions defining or otherwise explaining expressions used in this Schedule—

age assessment	paragraph 34
age requirement	paragraph 13
age review assessment	paragraph 112(3)
appointment regulations	paragraph 138
assessment under this Schedule	paragraph 127
assessor (except in Part 9)	paragraph 33
assessor (in Part 9)	paragraphs 33 and 128
authorisation under this Schedule	paragraph 10
best interests (determination of)	section 4
best interests assessment	paragraph 38
best interests requirement	paragraph 16
best interests review assessment	paragraph 112(6)
care home	paragraph 178
change of reason ground	paragraph 106
complete (in relation to a review of a standard authorisation)	paragraph 118
deprivation of a person's liberty	section 64(5) and (6)
deputy	section 16(2)(b)
detained resident	paragraph 6

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disposed of (in relation to a request for a standard authorisation)	paragraph 66
eligibility assessment	paragraph 46
eligibility requirement	paragraph 17
eligibility review assessment	paragraph 112(7)
eligible person (in relation to paragraphs 68 to 73)	paragraph 68
eligible person (in relation to Part 8)	paragraph 102(3)
expiry (in relation to an existing authorisation)	paragraph 125(b)
existing authorisation (in Part 8)	paragraph 125(a)
hospital	paragraph 175
IMCA	paragraph 158
in force (in relation to a standard authorisation)	paragraphs 63 and 64
in force (in relation to an urgent authorisation)	paragraphs 88 and 89
ineligible (in relation to the eligibility requirement)	Schedule 1A
interested person	paragraph 185
interested person consulted by the best interests assessor	paragraph 186
lack of capacity	section 2
lasting power of attorney	section 9
managing authority (in relation to a care home)	paragraph 179
managing authority (in relation to a hospital)	paragraph 176 or 177
maximum authorisation period	paragraph 42
mental capacity assessment	paragraph 37
mental capacity requirement	paragraph 15
mental capacity review assessment	paragraph 112(5)
mental health assessment	paragraph 35
mental health requirement	paragraph 14
mental health review assessment	paragraph 112(4)
negative conclusion	paragraph 112(2)(a)
new supervisory body	paragraph 99(b)
no refusals assessment	paragraph 48

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no refusals requirement	paragraph 18
no refusals review assessment	paragraph 112(8)
non-qualification ground	paragraph 105
old supervisory body	paragraph 99(a)
positive conclusion	paragraph 112(2)(b)
purpose of a standard authorisation	paragraph 11(1)
purpose of an urgent authorisation	paragraph 11(2)
qualifying requirements	paragraph 12
refusal (for the purposes of the no refusals requirement)	paragraphs 19 and 20
relevant care or treatment	paragraph 7
relevant hospital or care home	paragraph 7
relevant managing authority	paragraph 26(4)
relevant person	paragraph 7
relevant person's representative	paragraph 137
relevant procedure	paragraph 128
review assessment	paragraph 112(1)
reviewable	paragraph 104
section 39A IMCA	paragraph 155
section 39C IMCA	paragraph 156
section 39D IMCA	paragraph 157
standard authorisation	paragraph 8
supervisory body (except in Part 9)	paragraph 180, 181 or 182
supervisory body (in Part 9)	paragraph 128 and paragraph 180, 181 or 182
unauthorised deprivation of liberty (in relation to paragraphs 68 to 73)	paragraph 67
urgent authorisation	paragraph 9
variation of conditions ground	paragraph 107]

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**Changes to legislation:**

There are currently no known outstanding effects for the Mental Capacity Act 2005, SCHEDULE A1.