

Status: Point in time view as at 01/04/2008.

Changes to legislation: Mental Capacity Act 2005, Part 10 is up to date with all changes known to be in force on or before 07 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES¹

[^{F1}SCHEDULE A1

HOSPITAL AND CARE HOME RESIDENTS: DEPRIVATION OF LIBERTY

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.

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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.
- (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—

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- (a) monitor, and
 - (b) report to the supervisory body on,
- the extent to which a representative is maintaining contact with the relevant person.

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.]

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