***Changes to legislation:** Mental Capacity Act 2005, Cross Heading: Best interests assessment is up to date with all changes known to be in force on or before 07 July 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) View outstanding changes*

SCHEDULES

SCHEDULE A1 E+W

[F1 HOSPITAL AND CARE HOME RESIDENTS: DEPRIVATION OF LIBERTY]

Textual Amendments

F1 Sch. A1 omitted (16.5.2019 for specified purposes) by virtue of Mental Capacity (Amendment) Act 2019 (c. 18), s. 6(3), **Sch. 2 para. 2(c)**

[F1 PART 4 E+W

STANDARD AUTHORISATIONS

Best interests assessment

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

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.

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(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)—
  (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.

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(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).**]**

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:
Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 58(4)(ca) inserted by 2023 c. 42 Sch. para. 10
- Sch. 1 para. 4A inserted by 2023 c. 42 Sch. para. 3
- Sch. 1 para. 10A and cross-heading inserted by 2023 c. 42 Sch. para. 6
- Sch. 1 para. 13A inserted by 2023 c. 42 Sch. para. 7(2)
- Sch. 1 para. 16(1A) inserted by 2023 c. 42 Sch. para. 8(b)