

**Changes to legislation:** Mental Capacity Act 2005, Part 8 is up to date with all changes known to be in force on or before 10 October 2023. 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**

#### [<sup>F1</sup>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\(c\)](#)

### [<sup>F1</sup>PART 8 **E+W**

#### 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.

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*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;
  - (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).

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*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.
- (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—

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- (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.
- (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;

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- (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
  - (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

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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.

*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.

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### *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.
- (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.]

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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\(b\)](#)