

Status: Point in time view as at 03/11/2008.

Changes to legislation: Mental Capacity Act 2005, Part 11 is up to date with all changes known to be in force on or before 15 November 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)

SCHEDULES¹

[¹SCHEDULE A1

HOSPITAL AND CARE HOME RESIDENTS: DEPRIVATION OF LIBERTY

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.
- 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.

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- (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.
- (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.]

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