

*Status: Point in time view as at 03/11/2008.*

*Changes to legislation: Mental Capacity Act 2005, Part 3 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)*

## SCHEDULES<sup>1</sup>

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

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

##### 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.

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*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.
- (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

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(b) in accordance with Part 1 of this Act.]

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