

Changes to legislation: There are currently no known outstanding effects for the Mental Capacity Act 2005, Part 9. (See end of Document for details)

SCHEDULES

[^{F1}SCHEDULE A1

HOSPITAL AND CARE HOME RESIDENTS: DEPRIVATION OF LIBERTY

Annotations:

Amendments (Textual)

- F1** Sch. A1 inserted (1.4.2008 for certain purposes and otherwise 1.4.2009) by [Mental Health Act 2007 \(c. 12\)](#), ss. 50, 56, [Sch. 7](#); [S.I. 2008/745](#), [art. 4\(a\)](#); [S.I. 2009/139](#), [art. 2\(c\)](#) (with [art. 3](#), [Sch. paras. 3, 4](#))

PART 9

ASSESSMENTS UNDER THIS SCHEDULE

Introduction

- 126 This Part contains provision about assessments under this Schedule.
- 127 An assessment under this Schedule is either of the following—
- (a) an assessment carried out in connection with a request for a standard authorisation under Part 4;
 - (b) a review assessment carried out in connection with a review of a standard authorisation under Part 8.
- 128 In this Part, in relation to an assessment under this Schedule—
- “assessor” means the person carrying out the assessment;
 - “relevant procedure” means—
 - (a) the request for the standard authorisation, or
 - (b) the review of the standard authorisation;
 - “supervisory body” means the supervisory body responsible for securing that the assessment is carried out.

Supervisory body to select assessor

- 129 (1) It is for the supervisory body to select a person to carry out an assessment under this Schedule.
- (2) The supervisory body must not select a person to carry out an assessment unless the person—
- (a) appears to the supervisory body to be suitable to carry out the assessment (having regard, in particular, to the type of assessment and the person to be assessed), and
 - (b) is eligible to carry out the assessment.

Changes to legislation: There are currently no known outstanding effects for the Mental Capacity Act 2005, Part 9. (See end of Document for details)

- (3) Regulations may make provision about the selection, and eligibility, of persons to carry out assessments under this Schedule.
 - (4) Sub-paragraphs (5) and (6) apply if two or more assessments are to be obtained for the purposes of the relevant procedure.
 - (5) In a case where the assessments to be obtained include a mental health assessment and a best interests assessment, the supervisory body must not select the same person to carry out both assessments.
 - (6) Except as prohibited by sub-paragraph (5), the supervisory body may select the same person to carry out any number of the assessments which the person appears to be suitable, and is eligible, to carry out.
- 130 (1) This paragraph applies to regulations under paragraph 129(3).
- (2) The regulations may make provision relating to a person's—
 - (a) qualifications,
 - (b) skills,
 - (c) training,
 - (d) experience,
 - (e) relationship to, or connection with, the relevant person or any other person,
 - (f) involvement in the care or treatment of the relevant person,
 - (g) connection with the supervisory body, or
 - (h) connection with the relevant hospital or care home, or with any other establishment or undertaking.
- [^{F2}(2A) In relation to England—
- (a) the provision that the regulations may make in relation to a person's training in connection with best interests assessments includes provision for particular training to be specified by Social Work England or the Secretary of State otherwise than in the regulations;
 - (b) the provision that the regulations may make in relation to a person's training in connection with other assessments includes provision for particular training to be specified by the Secretary of State otherwise than in the regulations.
- (2B) The regulations may give Social Work England power to charge fees for specifying any training as mentioned in sub-paragraph (2A)(a).
- (2C) If the regulations give Social Work England power to charge fees, section 50(2) to (7) of the Children and Social Work Act 2017 apply for the purposes of sub-paragraph (2B) as they apply for the purposes of that section.]
- (3) [^{F3}In relation to Wales] the provision that the regulations may make in relation to a person's training may provide for particular training to be specified by [^{F4}the Welsh Ministers] otherwise than in the regulations.
- ^{F5}(4)
- (5) The regulations may make provision requiring a person to be insured in respect of liabilities that may arise in connection with the carrying out of an assessment.

Changes to legislation: There are currently no known outstanding effects for the Mental Capacity Act 2005, Part 9. (See end of Document for details)

- (6) In relation to cases where two or more assessments are to be obtained for the purposes of the relevant procedure, the regulations may limit the number, kind or combination of assessments which a particular person is eligible to carry out.
- (7) Sub-paragraphs (2) to (6) do not limit the generality of the provision that may be made in the regulations.

Annotations:

Amendments (Textual)

- F2** Sch. A1 para. 130(2A)-(2C) inserted (1.4.2018) by [Children and Social Work Act 2017 \(c. 16\)](#), [ss. 49\(2\)](#), [70\(2\)](#); [S.I. 2018/346](#), [reg. 4\(q\)](#)
- F3** Words in Sch. A1 para. 130(3) inserted (1.4.2018) by [Children and Social Work Act 2017 \(c. 16\)](#), [ss. 49\(3\)\(a\)](#), [70\(2\)](#); [S.I. 2018/346](#), [reg. 4\(q\)](#)
- F4** Words in Sch. A1 para. 130(3) substituted (1.4.2018) by [Children and Social Work Act 2017 \(c. 16\)](#), [ss. 49\(3\)\(b\)](#), [70\(2\)](#); [S.I. 2018/346](#), [reg. 4\(q\)](#)
- F5** Sch. A1 para. 130(4) omitted (1.4.2018) by virtue of [Children and Social Work Act 2017 \(c. 16\)](#), [ss. 49\(4\)](#), [70\(2\)](#); [S.I. 2018/346](#), [reg. 4\(q\)](#)

Examination and copying of records

- 131 An assessor may, at all reasonable times, examine and take copies of—
- (a) any health record,
 - (b) any record of, or held by, a local authority and compiled in accordance with a social services function, and
 - (c) any record held by a person registered under Part 2 of the Care Standards Act 2000 [^{F6}or Chapter 2 of Part 1 of the Health and Social Care Act 2008], which the assessor considers may be relevant to the assessment which is being carried out.

Annotations:

Amendments (Textual)

- F6** Words in Sch. A1 para. 131(c) inserted (1.10.2010) by [The Health and Social Care Act 2008 \(Consequential Amendments No.2\) Order 2010 \(S.I. 2010/813\)](#), [art. 17\(7\)\(a\)](#)

Representations

- 132 In carrying out an assessment under this Schedule, the assessor must take into account any information given, or submissions made, by any of the following—
- (a) the relevant person's representative;
 - (b) any section 39A IMCA;
 - (c) any section 39C IMCA;
 - (d) any section 39D IMCA.

Assessments to stop if any comes to negative conclusion

- 133 (1) This paragraph applies if an assessment under this Schedule comes to the conclusion that the relevant person does not meet one of the qualifying requirements.

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- (2) This Schedule does not require the supervisory body to secure that any other assessments under this Schedule are carried out in relation to the relevant procedure.
- (3) The supervisory body must give notice to any assessor who is carrying out another assessment in connection with the relevant procedure that they are to cease carrying out that assessment.
- (4) If an assessor receives such notice, this Schedule does not require the assessor to continue carrying out that assessment.

Duty to keep records and give copies

- 134 (1) This paragraph applies if an assessor has carried out an assessment under this Schedule (whatever conclusions the assessment has come to).
- (2) The assessor must keep a written record of the assessment.
- (3) As soon as practicable after carrying out the assessment, the assessor must give copies of the assessment to the supervisory body.
- 135 (1) This paragraph applies to the supervisory body if they are given a copy of an assessment under this Schedule.
- (2) The supervisory body must give copies of the assessment to all of the following—
 - (a) the managing authority of the relevant hospital or care home;
 - (b) the relevant person;
 - (c) any section 39A IMCA;
 - (d) the relevant person's representative.
- (3) If—
 - (a) the assessment is obtained in relation to a request for a standard authorisation, and
 - (b) the supervisory body are required by paragraph 50(1) to give the standard authorisation,

the supervisory body must give the copies of the assessment when they give copies of the authorisation in accordance with paragraph 57.
- (4) If—
 - (a) the assessment is obtained in relation to a request for a standard authorisation, and
 - (b) the supervisory body are prohibited by paragraph 50(2) from giving the standard authorisation,

the supervisory body must give the copies of the assessment when they give notice in accordance with paragraph 58.
- (5) If the assessment is obtained in connection with the review of a standard authorisation, the supervisory body must give the copies of the assessment when they give notice in accordance with paragraph 120.
- 136 (1) This paragraph applies to the supervisory body if—
 - (a) they are given a copy of a best interests assessment, and
 - (b) the assessment includes, in accordance with paragraph 44(2), a statement that it appears to the assessor that there is an unauthorised deprivation of liberty.

*Changes to legislation: There are currently no known outstanding effects
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- (2) The supervisory body must notify all of the persons listed in sub-paragraph (3) that the assessment includes such a statement.
- (3) Those persons are—
 - (a) the managing authority of the relevant hospital or care home;
 - (b) the relevant person;
 - (c) any section 39A IMCA;
 - (d) any interested person consulted by the best interests assessor.
- (4) The supervisory body must comply with this paragraph when (or at some time before) they comply with paragraph 135.]

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