

Status: Point in time view as at 16/05/2019.

Changes to legislation: There are currently no known outstanding effects for the Mental Capacity Act 2005, Part 7. (See end of Document for details)

SCHEDULES

[^{F1}SCHEDULE AA1

DEPRIVATION OF LIBERTY: AUTHORISATION OF ARRANGEMENTS ENABLING CARE AND TREATMENT

Textual Amendments

- F1** Sch. AA1 inserted (16.5.2019 for specified purposes) by [Mental Capacity \(Amendment\) Act 2019 \(c. 18\)](#), s. 6(3), [Sch. 1](#)

PART 7

EXCLUDED ARRANGEMENTS: MENTAL HEALTH

Excluded arrangements

- 45 This Schedule does not apply to arrangements if—
- (a) they are mental health arrangements (see paragraphs [46](#) to [56](#)), or
 - (b) they are not in accordance with mental health requirements (see paragraph [57](#)).

Kinds of mental health arrangements

- 46 For the purposes of this Schedule arrangements in relation to a person (“P”) are “mental health arrangements” if paragraph [47](#), [48](#), [49](#), [50](#) or [51](#) applies.
- 47 This paragraph applies if—
- (a) P is subject to the hospital treatment regime, and
 - (b) P is detained in a hospital under that regime.
- 48 This paragraph applies if—
- (a) P is subject to the hospital treatment regime,
 - (b) P is not detained in a hospital under that regime, and
 - (c) the arrangements are for enabling medical treatment for mental disorder in a hospital.
- 49 This paragraph applies if P is subject to—
- (a) a community treatment order under section 17A of the Mental Health Act, or
 - (b) anything which has the same effect, under another England and Wales enactment,
- and the arrangements are for enabling medical treatment for mental disorder in a hospital.

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- 50 (1) This paragraph applies if the following conditions are met.
- (2) Condition 1 is that P is subject to—
- (a) a guardianship application under section 7 of the Mental Health Act,
 - (b) a guardianship order under section 37 of that Act, or
 - (c) anything which has the same effect as something within paragraph (a) or (b), under another England and Wales enactment.
- (3) Condition 2 is that the arrangements are or include arrangements for P to be accommodated in a hospital for the purpose of being given medical treatment for mental disorder.
- (4) Condition 3 is that P objects—
- (a) to being accommodated in a hospital for that purpose, or
 - (b) to being given some or all of that treatment.
- (5) Condition 4 is that a donee or deputy has not made a valid decision to consent to each matter to which P objects.
- (6) For provision about determining whether P objects see paragraph 52.
- 51 (1) This paragraph applies if the following conditions are met.
- (2) Condition 1 is that—
- (a) an application in respect of P could be made under section 2 or 3 of the Mental Health Act, and
 - (b) P could be detained in a hospital in pursuance of such an application, were one made.
- (3) Condition 2 is that P is not subject to any of these—
- (a) the hospital treatment regime;
 - (b) a community treatment order under section 17A of the Mental Health Act;
 - (c) a guardianship application under section 7 of the Mental Health Act;
 - (d) a guardianship order under section 37 of the Mental Health Act;
 - (e) anything which has the same effect as something within paragraph (b), (c) or (d), under another England and Wales enactment.
- (4) Condition 3 is that the arrangements are or include arrangements for P to be accommodated in a hospital for the purpose of being given medical treatment for mental disorder.
- (5) Condition 4 is that P objects—
- (a) to being accommodated in a hospital for that purpose, or
 - (b) to being given some or all of that treatment.
- (6) Condition 5 is that a donee or deputy has not made a valid decision to consent to each matter to which P objects.
- (7) For provision about determining whether P objects see paragraph 52.
- 52 (1) In determining whether P objects, regard must be had to all the circumstances (so far as they are reasonably ascertainable), including the following—
- (a) P's behaviour;
 - (b) P's wishes and feelings;
 - (c) P's views, beliefs and values.

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- (2) But regard is to be had to circumstances from the past only so far as it is still appropriate to have regard to them.

Mental health arrangements: the hospital treatment regime

- 53 (1) P is subject to the hospital treatment regime if P is subject to—
- (a) an application, order or direction listed in column 1 of the Table, under the section of the Mental Health Act listed in column 2, or
 - (b) anything that has the same effect as any of those, under another England and Wales enactment,
- subject to sub-paragraph (2).
- (2) P is not subject to the hospital treatment regime during any period for which P is subject to—
- (a) a community treatment order under section 17A of the Mental Health Act, or
 - (b) anything which has the same effect, under another England and Wales enactment.

<i>Obligation</i>	<i>Mental Health Act section</i>
Application for admission for assessment	Section 2
Application for admission for assessment	Section 4
Application for admission for treatment	Section 3
Order for remand to hospital	Section 35
Order for remand to hospital	Section 36
Hospital order	Section 37
Interim hospital order	Section 38
Order for detention in hospital	Section 44
Hospital direction	Section 45A
Transfer direction	Section 47
Transfer direction	Section 48
Hospital order	Section 51

Mental health arrangements: other definitions

- 54 In this Part—
- “donee” means a donee of a lasting power of attorney granted by P;
- “England and Wales enactment” means an enactment, in the Mental Health Act or elsewhere, which extends to England and Wales (whether or not it also extends elsewhere);
- “hospital” has the same meaning as in Part 2 of the Mental Health Act;
- “learning disability” has the meaning given by section 1(4) of the Mental Health Act;
- “medical treatment” is to be read in accordance with paragraph 55.

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- 55 In “medical treatment for mental disorder”—
- (a) “medical treatment” has the same meaning as in the Mental Health Act (see section 145(1) and (4)), but
 - (b) in the case of a person with learning disability, the medical treatment is not to be considered by reason of that disability to be for mental disorder unless the disability is associated with abnormally aggressive or seriously irresponsible conduct by that person.
- 56 A decision of a donee or deputy is valid if it is made—
- (a) within the scope of the person’s authority as donee or deputy, and
 - (b) in accordance with Part 1 of this Act.

Mental health requirements

- 57 (1) In this Schedule “mental health requirements” means any of the following—
- (a) a requirement imposed in respect of a person by a guardian exercising the power under section 8 of the Mental Health Act;
 - (b) a condition or direction imposed or given in respect of a person by a responsible clinician exercising the power under section 17 of the Mental Health Act (leave of absence from hospital);
 - (c) a condition specified by a responsible clinician in a community treatment order made in respect of a person under section 17A of the Mental Health Act (for the imposition of conditions, see section 17B of that Act);
 - (d) a requirement imposed by a guardian in respect of a person who is the subject of a guardianship order under section 37 of the Mental Health Act (see section 40 of and Part 1 of Schedule 1 to that Act);
 - (e) a condition imposed by the Secretary of State on the discharge from hospital of a person subject to a restriction order under section 42 of the Mental Health Act;
 - (f) a condition imposed by any of the persons or bodies listed in sub-paragraph (3) when a person is conditionally discharged under section 73 of the Mental Health Act;
 - (g) anything which has the same effect as something within any of paragraphs (a) to (f), under another England and Wales enactment.
- (2) And, for the purposes of this Schedule, arrangements which relate to a person are “not in accordance with mental health requirements” if the person is subject to mental health requirements and the arrangements are not in accordance with them.
- (3) The persons or bodies for the purpose of sub-paragraph (1)(f) are—
- (a) the First-tier Tribunal;
 - (b) the Mental Health Review Tribunal for Wales;
 - (c) the Secretary of State;
 - (d) the Welsh Ministers.]

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