

**Changes to legislation:** Mental Capacity Act 2005, Paragraph 39 is up to date with all changes known to be in force on or before 01 April 2024. 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

#### [<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 4

##### STANDARD AUTHORISATIONS

###### *Best interests assessment*

- 39 (1) In carrying out a best interests assessment, the assessor must comply with the duties in sub-paragraphs (2) and (3).
- (2) The assessor must consult the managing authority of the relevant hospital or care home.
- (3) The assessor must have regard to all of the following—
- (a) the conclusions which the mental health assessor has notified to the best interests assessor in accordance with paragraph 36(b);
  - (b) any relevant needs assessment;
  - (c) any relevant care plan.
- (4) A relevant needs assessment is an assessment of the relevant person's needs which—
- (a) was carried out in connection with the relevant person being accommodated in the relevant hospital or care home, and
  - (b) was carried out by or on behalf of—
    - (i) the managing authority of the relevant hospital or care home, or
    - (ii) the supervisory body.
- (5) A relevant care plan is a care plan which—
- (a) sets out how the relevant person's needs are to be met whilst he is accommodated in the relevant hospital or care home, and
  - (b) was drawn up by or on behalf of—
    - (i) the managing authority of the relevant hospital or care home, or
    - (ii) the supervisory body.
- (6) The managing authority must give the assessor a copy of—
- (a) any relevant needs assessment carried out by them or on their behalf, or

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- (b) any relevant care plan drawn up by them or on their behalf.
- (7) The supervisory body must give the assessor a copy of—
- (a) any relevant needs assessment carried out by them or on their behalf, or
  - (b) any relevant care plan drawn up by them or on their behalf.
- (8) The duties in sub-paragraphs (2) and (3) do not affect any other duty to consult or to take the views of others into account.]

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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\(b\)](#)