

Changes to legislation: *Mental Capacity Act 2005, Paragraph 38 is up to date with all changes known to be in force on or before 18 January 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

[^{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 3

DURATION, RENEWAL, VARIATION AND REVIEW OF AUTHORISATION

Reviews

- 38 (1) In this paragraph “the reviewer” means the responsible body unless, in relation to care home arrangements, the responsible body decides the care home manager should be the reviewer for the purposes of this paragraph.
- (2) For any authorisation the responsible body must specify a programme of regular reviews that the reviewer must carry out.
- (3) The reviewer must also carry out a review—
- (a) on a variation under paragraph 37;
 - (b) if a reasonable request is made by a person with an interest in the arrangements;
 - (c) if the cared-for person becomes subject to mental health arrangements;
 - (d) if the cared-for person becomes subject to mental health requirements;
 - (e) if sub-paragraph (5) or (7) applies;
 - (f) if (in any other case) the reviewer becomes aware of a significant change in the cared-for person’s condition or circumstances.
- (4) A review under sub-paragraph (3)(a) must be carried out before the authorisation is varied or, if that is not practicable or appropriate, as soon as practicable afterwards.
- (5) This sub-paragraph applies where—
- (a) the arrangements provide for the cared-for person to reside in, or to receive care or treatment at, a specified place,
 - (b) the reviewer becomes aware that the cared-for person does not wish to reside in, or to receive care or treatment at, that place, and
 - (c) the pre-authorisation review under paragraph 24—
 - (i) was not by an Approved Mental Capacity Professional, or

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- (ii) was by an Approved Mental Capacity Professional solely because paragraph 24(2)(c) or (d) applied.
- (6) For the purposes of sub-paragraph (5)(b)—
- (a) the reviewer must consider all the circumstances so far as they are reasonably ascertainable, including the cared-for person’s behaviour, wishes, feelings, views, beliefs and values, but
 - (b) circumstances from the past are to be considered only so far as it is still appropriate to consider them.
- (7) This sub-paragraph applies where sub-paragraph (5) does not apply and—
- (a) the arrangements provide for the cared-for person to reside in, or to receive care or treatment at, a specified place,
 - (b) a relevant person informs the reviewer or (if the reviewer is not the responsible body) the responsible body that they believe that the cared-for person does not wish to reside in, or to receive care or treatment at, that place, and
 - (c) the relevant person makes a reasonable request to the person informed under paragraph (b) for a review to be carried out.
- (8) In sub-paragraph (7) “relevant person” means a person engaged in caring for the cared-for person or a person interested in the cared-for person’s welfare.
- (9) The care home manager must report to the responsible body on any review the manager carries out.
- (10) On any review where sub-paragraph (5) applies, the reviewer must refer the authorisation to an Approved Mental Capacity Professional for a determination as to whether the authorisation conditions are met.
- (11) On any review where sub-paragraph (7) applies, the reviewer or (if the reviewer is not the responsible body) the responsible body may refer the authorisation to an Approved Mental Capacity Professional and, if the Approved Mental Capacity Professional accepts the referral, the Approved Mental Capacity Professional must determine whether the authorisation conditions are met.
- (12) Before making the determination mentioned in sub-paragraph (10) or (11), the Approved Mental Capacity Professional must—
- (a) review the authorisation,
 - (b) meet with the cared-for person, if it appears to the Approved Mental Capacity Professional to be appropriate and practicable to do so, and
 - (c) consult any other person listed in paragraph 23(2), or take any other action, if it appears to the Approved Mental Capacity Professional to be appropriate and practicable to do so.]

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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\(b\)](#)