

Changes to legislation: Mental Capacity Act 2005, Part 3 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

Time for which authorisation has effect

- 28 (1) An authorisation has effect from the time at which the responsible body gives the authorisation, unless at that time the responsible body specifies a later time.
- (2) The time specified must not be later than the end of the period of 28 days beginning with the day on which the responsible body gives the authorisation.
- 29 (1) An authorisation ceases to have effect (if not renewed)—
- (a) at the end of the period of 12 months beginning with the day it first has effect, or
- (b) at the end of any shorter period specified by the responsible body at the time it gives the authorisation.
- (2) If the authorisation is renewed in accordance with paragraph 32, it ceases to have effect at the end of the renewal period.
- (3) If the responsible body at any time determines that an authorisation is to cease to have effect from any earlier day, it ceases to have effect from that day.
- (4) An authorisation ceases to have effect if, at any time, the responsible body believes or ought reasonably to suspect that any of the authorisation conditions are not met.
- (5) An authorisation ceases to have effect in relation to arrangements so far as at any time they are not in accordance with mental health requirements.

Notification that arrangements have ceased to have effect

- 30 If an authorisation of arrangements ceases to have effect (in whole or in part) under paragraph 29(4) or (5), the responsible body must take reasonable steps to ensure any person likely to be carrying out the arrangements is notified.

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Authorisation coming to an end early: arrangements to be treated as authorised

- 31 (1) This paragraph applies if an authorisation ceases to have effect (in whole or in part) under paragraph 29(4) or (5).
- (2) For the purposes of section 4C (carrying out of authorised arrangements: restriction of liability) the arrangements are to be treated as authorised unless the person carrying out the arrangements knows or ought to know that—
- (a) the arrangements are no longer authorised,
 - (b) any of the authorisation conditions are not met, or
 - (c) the arrangements are not in accordance with mental health requirements.

Renewal

- 32 (1) The responsible body may, on one or more occasions, renew an authorisation in accordance with paragraph 34 or 35 for a specified period (“the renewal period”) of—
- (a) 12 months or less, on the first renewal, and
 - (b) 3 years or less, on any subsequent renewal.
- (2) An authorisation which has ceased to have effect cannot be renewed.
- 33 The responsible body may renew an authorisation—
- (a) under paragraph 34, if the conditions in that paragraph are met, or
 - (b) under paragraph 35 if—
 - (i) the authorisation relates to care home arrangements,
 - (ii) the responsible body decides that renewal should be determined under that paragraph instead of under paragraph 34, and
 - (iii) the conditions in paragraph 35 are met.
- 34 The conditions in this paragraph are that—
- (a) the responsible body is satisfied—
 - (i) that the authorisation conditions continue to be met, and
 - (ii) that it is unlikely that there will be any significant change in the cared-for person’s condition during the renewal period which would affect whether those conditions are met, and
 - (b) the responsible body has carried out consultation under paragraph 23.
- 35 The conditions in this paragraph are that—
- (a) the care home manager has provided the responsible body with a statement in accordance with paragraph 36, and
 - (b) having regard to the statement (and the accompanying material), the responsible body is satisfied—
 - (i) that the authorisation conditions continue to be met,
 - (ii) that it is unlikely that there will be any significant change in the cared-for person’s condition during the renewal period which would affect whether those conditions are met, and
 - (iii) that the care home manager has carried out consultation under paragraph 23.
- 36 (1) A statement for the purposes of paragraph 35(a) is a statement in writing by the care home manager—
- (a) that the authorisation conditions continue to be met,

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- (b) that it is unlikely that there will be any significant change in the cared-for person's condition during the renewal period which would affect whether those conditions are met, and
- (c) that the care home manager has carried out consultation under paragraph 23.

(2) The statement must be accompanied by evidence of the consultation.

Variation

- 37 The responsible body may vary an authorisation if the responsible body is satisfied—
- (a) that consultation under paragraph 23 has been carried out, and
 - (b) that it is reasonable to make the variation.

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
 - (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.

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- (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\(b\)](#)