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*Changes to legislation:* There are currently no known outstanding effects for the Mental Capacity Act (Northern Ireland) 2016, SCHEDULE 3. (See end of Document for details)

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## SCHEDULES

### SCHEDULE 3

Section 40.

#### Extension by panel of period of authorisation

##### *Preliminary*

1. In this Schedule—

“authorisation” is defined by section 37;

“authorised measure” and “measure” are defined by section 41(1) and (2);

“the criteria for continuation” is defined by section 41(3) and (4);

“the current period” of an authorisation means the period of the authorisation at the time the application under this Schedule is made;

“the period” and “the initial period” of an authorisation are defined by section 37;

“the relevant trust” has the meaning given by paragraph 2(3).

#### **Commencement Information**

- II** [Sch. 3 para. 1](#) in operation at 2.12.2019 for specified purposes by [S.R. 2019/163, art. 2\(4\)](#), [Sch. Pt. 4](#) (with [art. 3](#)) (as amended by [S.R. 2019/190, art. 2](#))

##### *Applications for extension*

2.—(1) An application under this Schedule may be made where—

- (a) an authorisation in respect of a person (“P”) has been granted (and has not been revoked);
- (b) the period of the authorisation has not ended;
- (c) it has been proposed that the period of the authorisation should be extended under section 37 or 38; and
- (d) an extension under that section is not possible, because the person who is the responsible person for the purposes of section 39 is not of the opinion that the criteria for continuation are met in relation to each authorised measure that is proposed to be continued after the end of the current period.

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(2) An application under this Schedule is an application to the relevant trust for an extension of the period of the authorisation.

(3) In this Schedule “the relevant trust” means—

- (a) where the proposed extension would be wholly or partly for the purposes of continuing P's detention in a place, the HSC trust in whose area that place is situated;
- (b) where the proposed extension would be wholly or partly for the purposes of continuing the provision to P of treatment specified by the authorisation or a requirement to attend for such treatment, and head (a) does not apply, the HSC trust in whose area the treatment is provided;
- (c) where the proposed extension would be for the purposes of continuing a community residence requirement and head (b) does not apply, the HSC trust in whose area the place where P is required by the community residence requirement to live is situated.

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**Commencement Information**

- I2** Sch. 3 para. 2(1)(2)(3)(a) in operation at 2.12.2019 for specified purposes by S.R. 2019/163, art. 2(4), Sch. Pt. 4 (with art. 3) (as amended by S.R. 2019/190, art. 2)

*Who may make application*

**3.—**(1) Any application under this Schedule must be made by a person who—

- (a) is of a prescribed description; and
- (b) is unconnected with P (see section 304).

(2) Regulations under sub-paragraph (1)(a) may in particular prescribe, as a description of persons who may make an application under this Schedule—

- (a) an approved social worker;
- (b) a person of a prescribed description who is designated by the managing authority of a hospital or care home in which P is an in-patient or resident as a person who may make applications under this Schedule;
- (c) a person of a prescribed description who is designated by an appropriate person (as defined by the regulations) as a person who may make applications under this Schedule.

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**Commencement Information**

- I3** Sch. 3 para. 3 in operation at 2.12.2019 for specified purposes by S.R. 2019/163, art. 2(4), Sch. Pt. 4 (with art. 3) (as amended by S.R. 2019/190, art. 2)

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### *Contents of application*

- 4.—(1) An application under this Schedule must—
- (a) be in the prescribed form;
  - (b) specify the authorised measure (or, if more than one, each authorised measure) that is proposed to be continued after the end of the current period;
  - (c) include a medical report (see paragraph 5);
  - (d) include a care plan (see paragraph 6);
  - (e) include prescribed information about the views, on prescribed matters, of P's nominated person and any prescribed person; and
  - (f) include any other prescribed information.
- (2) If—
- (a) the application specifies a measure within section 41(2)(b) or (d) (deprivation of liberty or community residence requirement), and
  - (b) the person making the application is of the opinion that, if the period of the authorisation were extended, P would lack (or would probably lack) capacity in relation to whether an application under section 45 (applications to Tribunal) should be made,

the application must contain a statement of that opinion.

#### **Commencement Information**

- 14** Sch. 3 para. 4 in operation at 2.12.2019 for specified purposes by S.R. 2019/163, art. 2(4), Sch. Pt. 4 (with art. 3) (as amended by S.R. 2019/190, art. 2)

### *Medical report*

- 5.—(1) The medical report must be in the prescribed form and must—
- (a) be made by a medical practitioner who is unconnected with P and is permitted by regulations under section 300 to make the report;
  - (b) include a statement by the medical practitioner that, in his or her opinion, the criteria for continuation are met in respect of each measure specified under paragraph 4(1)(b); and
  - (c) include any prescribed information.
- (2) The medical practitioner must have examined P not more than two days before the date when the report is made.
- (3) See also sections 54 and 55 (involvement of nominated person and independent mental capacity advocate).

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**Commencement Information**

- I5** Sch. 3 para. 5 in operation at 2.12.2019 for specified purposes by S.R. 2019/163, art. 2(4), Sch. Pt. 4 (with art. 3) (as amended by S.R. 2019/190, art. 2)

*Care plan*

6. The care plan must be in the prescribed form and must include such information relating to what is proposed as may be prescribed.

**Commencement Information**

- I6** Sch. 3 para. 6 in operation at 2.12.2019 for specified purposes by S.R. 2019/163, art. 2(4), Sch. Pt. 4 (with art. 3) (as amended by S.R. 2019/190, art. 2)

*Panel to consider application*

7.—(1) Where the relevant trust receives an application duly made under this Schedule, it must as soon as practicable—

- (a) give prescribed information to P and any prescribed person; and
  - (b) constitute a panel to consider the application.
- (2) See also section 297 (general provision about panels).

**Commencement Information**

- I7** Sch. 3 para. 7 in operation at 2.12.2019 for specified purposes by S.R. 2019/163, art. 2(4), Sch. Pt. 4 (with art. 3) (as amended by S.R. 2019/190, art. 2)

*Decision on application*

8.—(1) Having considered the application, the panel must either—

- (a) extend the period of the authorisation in accordance with sub-paragraph (2); or
  - (b) refuse the application.
- (2) An extension under sub-paragraph (1)(a) must be—
- (a) if the period of the authorisation has not previously been extended, for the period of 6 months beginning immediately after the end of the initial period;

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- (b) if the period of the authorisation has previously been extended under section 37 or 38 or this Schedule, for the period of one year beginning immediately after the end of the current period.
- (3) The panel may extend the period of the authorisation only if—
- (a) where there is one specified measure, the panel considers that the criteria for continuation are met in respect of that measure;
- (b) where there are two or more specified measures, the panel considers that the criteria for continuation are met in respect of at least one of those measures.
- (4) Where the panel extends the period of the authorisation and either—
- (a) there is a specified measure as respects which the panel does not consider that the criteria for continuation are met, or
- (b) there is a measure authorised by the authorisation which is not specified, the panel must cancel the provision of the authorisation which authorises that measure.
- (5) A cancellation under sub-paragraph (4) takes effect from the end of the current period.
- (6) If the current period ends without the period of the authorisation having been extended, the period of the authorisation may not be extended.
- (7) In this paragraph references to a “specified” measure are to a measure specified under paragraph 4(1)(b).

#### Commencement Information

**I8** Sch. 3 para. 8 in operation at 2.12.2019 for specified purposes by S.R. 2019/163, art. 2(4), Sch. Pt. 4 (with art. 3) (as amended by S.R. 2019/190, art. 2)

#### *Time limit for panel's decision, and duty to notify decision*

- 9.—**(1) The panel must comply with paragraph 8(1) as soon as practicable and in any case no later than the end of the permitted period.
- (2) The “permitted period” is the period of [<sup>F1</sup>28 working days] beginning with the day on which the application is received by the trust (or, if that day is not a working day, beginning with the first working day after that).
- (3) As soon as practicable after granting or refusing an extension under paragraph 8, the panel must give to P and any prescribed person—
- (a) written notice of the grant or refusal; and
- (b) any prescribed information.

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(4) Regulations under sub-paragraph (3) must ensure that the Attorney General is given notice in any case where—

- (a) the panel extends the period of an authorisation;
- (b) the authorisation authorises a measure within section 41(2)(b) or (d) (deprivation of liberty or community residence requirement), and will do so after the end of the current period; and
- (c) the application under this Schedule contained the statement mentioned in paragraph 4(2) (statement that P lacks, or probably lacks, capacity in relation to making of Tribunal application).

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**Textual Amendments**

- F1** Words in Sch. 3 para. 9(2) substituted (temp.) (2.4.2020) by virtue of [Coronavirus Act 2020](#) (c. 7), s. 87(2), [Sch. 11 para. 9](#) (with ss. 88-90, [Sch. 11 paras. 2, 20](#)); [S.R. 2020/58](#), art. 2(e)
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**Commencement Information**

- I9** Sch. 3 para. 9 in operation at 2.12.2019 for specified purposes by [S.R. 2019/163](#), art. 2(4), [Sch. Pt. 4](#) (with [art. 3](#)) (as amended by [S.R. 2019/190](#), art. 2)

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