

*Status: Point in time view as at 01/04/2009.*

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## SCHEDULES

### [<sup>F1</sup>SCHEDULE A1

#### HOSPITAL AND CARE HOME RESIDENTS: DEPRIVATION OF LIBERTY

##### Textual Amendments

- F1** Sch. A1 inserted (1.4.2008 for certain purposes and otherwise 1.4.2009) by [Mental Health Act 2007 \(c. 12\)](#), ss. 50, 56, [Sch. 7](#); [S.I. 2008/745](#), [art. 4\(a\)](#); [S.I. 2009/139](#), [art. 2\(c\)](#) (with [art. 3](#), [Sch. paras. 3, 4](#))

### PART 10

#### RELEVANT PERSON'S REPRESENTATIVE

##### *The representative*

- 137 In this Schedule the relevant person's representative is the person appointed as such in accordance with this Part.
- 138 (1) Regulations may make provision about the selection and appointment of representatives.
- (2) In this Part such regulations are referred to as “appointment regulations”.

##### *Supervisory body to appoint representative*

- 139 (1) The supervisory body must appoint a person to be the relevant person's representative as soon as practicable after a standard authorisation is given.
- (2) The supervisory body must appoint a person to be the relevant person's representative if a vacancy arises whilst a standard authorisation is in force.
- (3) Where a vacancy arises, the appointment under sub-paragraph (2) is to be made as soon as practicable after the supervisory body becomes aware of the vacancy.
- 140 (1) The selection of a person for appointment under paragraph 139 must not be made unless it appears to the person making the selection that the prospective representative would, if appointed—
- (a) maintain contact with the relevant person,
  - (b) represent the relevant person in matters relating to or connected with this Schedule, and
  - (c) support the relevant person in matters relating to or connected with this Schedule.
- 141 (1) Any appointment of a representative for a relevant person is in addition to, and does not affect, any appointment of a donee or deputy.

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- (2) The functions of any representative are in addition to, and do not affect—
- (a) the authority of any donee,
  - (b) the powers of any deputy, or
  - (c) any powers of the court.

*Appointment regulations*

- 142 Appointment regulations may provide that the procedure for appointing a representative may begin at any time after a request for a standard authorisation is made (including a time before the request has been disposed of).
- 143 (1) Appointment regulations may make provision about who is to select a person for appointment as a representative.
- (2) But regulations under this paragraph may only provide for the following to make a selection—
- (a) the relevant person, if he has capacity in relation to the question of which person should be his representative;
  - (b) a donee of a lasting power of attorney granted by the relevant person, if it is within the scope of his authority to select a person;
  - (c) a deputy, if it is within the scope of his authority to select a person;
  - (d) a best interests assessor;
  - (e) the supervisory body.
- (3) Regulations under this paragraph may provide that a selection by the relevant person, a donee or a deputy is subject to approval by a best interests assessor or the supervisory body.
- (4) Regulations under this paragraph may provide that, if more than one selection is necessary in connection with the appointment of a particular representative—
- (a) the same person may make more than one selection;
  - (b) different persons may make different selections.
- (5) For the purposes of this paragraph a best interests assessor is a person carrying out a best interests assessment in connection with the standard authorisation in question (including the giving of that authorisation).
- 144 (1) Appointment regulations may make provision about who may, or may not, be—
- (a) selected for appointment as a representative, or
  - (b) appointed as a representative.
- (2) Regulations under this paragraph may relate to any of the following matters—
- (a) a person's age;
  - (b) a person's suitability;
  - (c) a person's independence;
  - (d) a person's willingness;
  - (e) a person's qualifications.
- 145 Appointment regulations may make provision about the formalities of appointing a person as a representative.

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- 146 In a case where a best interests assessor is to select a person to be appointed as a representative, appointment regulations may provide for the variation of the assessor's duties in relation to the assessment which he is carrying out.

*Monitoring of representatives*

- 147 Regulations may make provision requiring the managing authority of the relevant hospital or care home to—
- (a) monitor, and
  - (b) report to the supervisory body on,
- the extent to which a representative is maintaining contact with the relevant person.

*Termination*

- 148 Regulations may make provision about the circumstances in which the appointment of a person as the relevant person's representative ends or may be ended.
- 149 Regulations may make provision about the formalities of ending the appointment of a person as a representative.

*Suspension of representative's functions*

- 150 (1) Regulations may make provision about the circumstances in which functions exercisable by, or in relation to, the relevant person's representative (whether under this Schedule or not) may be—
- (a) suspended, and
  - (b) if suspended, revived.
- (2) The regulations may make provision about the formalities for giving effect to the suspension or revival of a function.
- (3) The regulations may make provision about the effect of the suspension or revival of a function.

*Payment of representative*

- 151 Regulations may make provision for payments to be made to, or in relation to, persons exercising functions as the relevant person's representative.

*Regulations under this Part*

- 152 The provisions of this Part which specify provision that may be made in regulations under this Part do not affect the generality of the power to make such regulations.

*Effect of appointment of section 39C IMCA*

- 153 Paragraphs 159 and 160 make provision about the exercise of functions by, or towards, the relevant person's representative during periods when—
- (a) no person is appointed as the relevant person's representative, but
  - (b) a person is appointed as a section 39C IMCA.]

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