

*Status: Point in time view as at 06/04/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Mental Capacity Act 2005, Part 13. (See end of Document for details)*

## 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 13

#### INTERPRETATION

##### *Introduction*

174 This Part applies for the purposes of this Schedule.

##### *Hospitals and their managing authorities*

- 175 (1) “Hospital ” means—
- (a) an NHS hospital, or
  - (b) an independent hospital.
- (2) “NHS hospital ” means—
- (a) a health service hospital as defined by section 275 of the National Health Service Act 2006 or section 206 of the National Health Service (Wales) Act 2006, or
  - (b) a hospital as defined by section 206 of the National Health Service (Wales) Act 2006 vested in a Local Health Board.
- [<sup>F2</sup>(3) Independent hospital”—
- (a) in relation to England, means a hospital as defined by section 275 of the National Health Service Act 2006 that is not an NHS hospital; and
  - (b) in relation to Wales, means a hospital as defined by section 2 of the Care Standards Act 2000 that is not an NHS hospital.]<sup>F2</sup>

##### Textual Amendments

- F2** Sch. A1 para. 175(3) substituted (1.10.2010) by [The Health and Social Care Act 2008 \(Consequential Amendments No.2\) Order 2010 \(S.I. 2010/813\)](#), [art. 17\(7\)\(b\)\(i\)](#)

176 (1) “Managing authority ”, in relation to an NHS hospital, means—

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- (a) if the hospital—
- (i) is vested in the appropriate national authority for the purposes of its functions under the National Health Service Act 2006 or of the National Health Service (Wales) Act 2006, or
  - (ii) consists of any accommodation provided by a local authority and used as a hospital by or on behalf of the appropriate national authority under either of those Acts,
- the<sup>F3</sup> ... <sup>F4</sup> ... Local Health Board or Special Health Authority responsible for the administration of the hospital;
- [<sup>F5</sup>(aa) in relation to England, if the hospital falls within paragraph (a)(i) or (ii) and no Special Health Authority has responsibility for its administration, the Secretary of State;]
- (b) if the hospital is vested in a <sup>F6</sup> ... National Health Service trust or NHS foundation trust, that trust;
  - (c) if the hospital is vested in a Local Health Board, that Board.
- (2) For this purpose the appropriate national authority is—
- (a) in relation to England: the Secretary of State;
  - (b) in relation to Wales: the National Assembly for Wales;
  - (c) in relation to England and Wales: the Secretary of State and the National Assembly acting jointly.

#### Textual Amendments

- F3** Words in Sch. A1 para. 176(1)(a) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 5 para. 136\(2\)\(a\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F4** Words in Sch. A1 para. 176(1)(a) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 5 para. 136\(2\)\(b\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F5** Sch. A1 para. 176(1)(aa) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 5 para. 136\(2\)\(c\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F6** Words in Sch. A1 para. 176(1)(b) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 5 para. 136\(2\)\(d\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)

- [<sup>F7</sup>177 “Managing authority”, in relation to an independent hospital, means—
- (a) in relation to England, the person registered, or required to be registered, under Chapter 2 of Part 1 of the Health and Social Care Act 2008 in respect of regulated activities (within the meaning of that Part) carried on in the hospital, and
  - (b) in relation to Wales, the person registered, or required to be registered, under Part 2 of the Care Standards Act 2000 in respect of the hospital.]<sup>F7</sup>

#### Textual Amendments

- F7** Sch. A1 para. 177 substituted (1.10.2010) by [The Health and Social Care Act 2008 \(Consequential Amendments No.2\) Order 2010 \(S.I. 2010/813\)](#), art. 17(7)(b)(ii)

#### *Care homes and their managing authorities*

- 178 “Care home” has the meaning given by section 3 of the Care Standards Act 2000.

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- [<sup>F8</sup>179 “Managing authority”, in relation to a care home, means—
- (a) in relation to England, the person registered, or required to be registered, under Chapter 2 of Part 1 of the Health and Social Care Act 2008 in respect of the provision of residential accommodation, together with nursing or personal care, in the care home, and
  - (b) in relation to Wales, the person registered, or required to be registered, under Part 2 of the Care Standards Act 2000 in respect of the care home.]<sup>F8</sup>

#### Textual Amendments

- F8** Sch. A1 para. 179 substituted (1.10.2010) by [The Health and Social Care Act 2008 \(Consequential Amendments No.2\) Order 2010 \(S.I. 2010/813\)](#), [art. 17\(7\)\(b\)\(iii\)](#)

#### *Supervisory bodies: hospitals*

- 180 (1) The identity of the supervisory body is determined under this paragraph in cases where the relevant hospital is situated in England.
- [<sup>F9</sup>(2) If the relevant person is ordinarily resident in the area of a local authority in England, the supervisory body are that local authority.]
- (3) If [<sup>F10</sup>the relevant person is not ordinarily resident in England and] the National Assembly for Wales or a Local Health Board commission the relevant care or treatment, the National Assembly are the supervisory body.
- (4) In any other case, the supervisory body are [<sup>F11</sup>the local authority] for the area in which the relevant hospital is situated.
- [“Local authority” means—
- <sup>F12</sup>(4A) (a) the council of a county;
- (b) the council of a district for which there is no county council;
  - (c) the council of a London borough;
  - (d) the Common Council of the City of London;
  - (e) the Council of the Isles of Scilly.]
- (5) If a hospital is situated in the areas of two (or more) [<sup>F13</sup>local authorities], it is to be regarded for the purposes of sub-paragraph (4) as situated in whichever of the areas the greater (or greatest) part of the hospital is situated.

#### Textual Amendments

- F9** Sch. A1 para. 180(2) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 5 para. 136\(3\)\(a\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F10** Words in Sch. A1 para. 180(3) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 5 para. 136\(3\)\(b\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F11** Words in Sch. A1 para. 180(4) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 5 para. 136\(3\)\(c\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F12** Sch. A1 para. 180(4A) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 5 para. 136\(3\)\(d\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F13** Words in Sch. A1 para. 180(5) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 5 para. 136\(3\)\(e\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)

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- 181 (1) The identity of the supervisory body is determined under this paragraph in cases where the relevant hospital is situated in Wales.
- (2) The National Assembly for Wales are the supervisory body.
- [<sup>F14</sup>(3) But if the relevant person is ordinarily resident in the area of a local authority in England, the supervisory body are that local authority.
- (4) “ Local authority ” means—
- (a) the council of a county;
  - (b) the council of a district for which there is no county council;
  - (c) the council of a London borough;
  - (d) the Common Council of the City of London;
  - (e) the Council of the Isles of Scilly.]

#### **Textual Amendments**

**F14** Sch. A1 para. 181(3)(4) substituted for Sch. A1 para. 181(3) (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#) , s. 306(4) , [Sch. 5 para. 136\(4\)](#) ; S.I. 2013/160 , art. 2(2) (with arts. 7-9 )

#### *Supervisory bodies: care homes*

- 182 (1) The identity of the supervisory body is determined under this paragraph in cases where the relevant care home is situated in England or in Wales.
- (2) The supervisory body are the local authority for the area in which the relevant person is ordinarily resident.
- (3) But if the relevant person is not ordinarily resident in the area of a local authority, the supervisory body are the local authority for the area in which the care home is situated.
- (4) In relation to England “ local authority ” means—
- (a) the council of a county;
  - (b) the council of a district for which there is no county council;
  - (c) the council of a London borough;
  - (d) the Common Council of the City of London;
  - (e) the Council of the Isles of Scilly.
- (5) In relation to Wales “ local authority ” means the council of a county or county borough.
- (6) If a care home is situated in the areas of two (or more) local authorities, it is to be regarded for the purposes of sub-paragraph (3) as situated in whichever of the areas the greater (or greatest) part of the care home is situated.

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*[<sup>F15</sup>Supervisory bodies: determination of place of ordinary residence]*

**Textual Amendments**

**F15** Sch. A1 para. 183 heading inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 5 para. 136(5)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

183<sup>F16</sup>( 1 ) .....

<sup>F16</sup>( 2 ) .....

[ Section 39(1), (2) and (4) to (6) of the Care Act 2014 and paragraphs 1(1), 2(1) <sup>F17</sup>(2A) and 8 of Schedule 1 to that Act apply to any determination of where a person is ordinarily resident for the purposes of paragraphs 180, 181 and 182 as they apply for the purposes of Part 1 of that Act.]

[ Section 194(1), (2), (4) and (5) of the Social Services and Well-being (Wales) Act <sup>F18</sup>(2B) 2014 apply to a determination of where a person is ordinarily resident for the purposes of paragraphs 180, 181 and 182 as it applies for the purposes of that Act.]

- (3) Any question arising as to the ordinary residence of a person is to be determined by the Secretary of State or by the National Assembly for Wales.
- (4) The Secretary of State and the National Assembly must make and publish arrangements for determining which cases are to be dealt with by the Secretary of State and which are to be dealt with by the National Assembly.
- (5) Those arrangements may include provision for the Secretary of State and the National Assembly to agree, in relation to any question that has arisen, which of them is to deal with the case.
- (6) Regulations may make provision about arrangements that are to have effect before, upon, or after the determination of any question as to the ordinary residence of a person.
- (7) The regulations may, in particular, authorise or require a local authority to do any or all of the following things—
  - (a) to act as supervisory body even though it may wish to dispute that it is the supervisory body;
  - (b) to become the supervisory body in place of another local authority;
  - (c) to recover from another local authority expenditure incurred in exercising functions as the supervisory body.

**Textual Amendments**

**F16** Sch. A1 para. 183(1)(2) omitted (6.4.2016) by virtue of The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **229(a)**

**F17** Sch. A1 para. 183(2A) inserted (1.4.2015) by The Care Act 2014 and Children and Families Act 2014 (Consequential Amendments) Order 2015 (S.I. 2015/914), art. 1(2), **Sch. para. 80** (with arts. 1(3), 3)

**F18** Sch. A1 para. 183(2B) inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **229(b)**

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*Same body managing authority and supervisory body*

- 184 (1) This paragraph applies if, in connection with a particular person's detention as a resident in a hospital or care home, the same body are both—
- (a) the managing authority of the relevant hospital or care home, and
  - (b) the supervisory body.
- (2) The fact that a single body are acting in both capacities does not prevent the body from carrying out functions under this Schedule in each capacity.
- (3) But, in such a case, this Schedule has effect subject to any modifications contained in regulations that may be made for this purpose.

*Interested persons*

- 185 Each of the following is an interested person—
- (a) the relevant person's spouse or civil partner;
  - [<sup>F19</sup>(b) where the relevant person and another person are not married to each other, nor in a civil partnership with each other, but are living together as if they were a married couple: that other person;]
  - (d) the relevant person's children and step-children;
  - (e) the relevant person's parents and step-parents;
  - (f) the relevant person's brothers and sisters, half-brothers and half-sisters, and stepbrothers and stepsisters;
  - (g) the relevant person's grandparents;
  - (h) a deputy appointed for the relevant person by the court;
  - (i) a donee of a lasting power of attorney granted by the relevant person.

**Textual Amendments**

**F19** Sch. A1 paragraph 185(b) substituted for Sch. A1 paragraph 185(b)(c) (13.3.2014) by [The Marriage \(Same Sex Couples\) Act 2013 \(Consequential and Contrary Provisions and Scotland\) Order 2014 \(S.I. 2014/560\)](#), art. 1(2), **Sch. 1 para. 30**

- 186 (1) An interested person consulted by the best interests assessor is any person whose name is stated in the relevant best interests assessment in accordance with paragraph 40 (interested persons whom the assessor consulted in carrying out the assessment).
- (2) The relevant best interests assessment is the most recent best interests assessment carried out in connection with the standard authorisation in question (whether the assessment was carried out under Part 4 or Part 8).
- 187 Where this Schedule imposes on a person a duty towards an interested person, the duty does not apply if the person on whom the duty is imposed—
- (a) is not aware of the interested person's identity or of a way of contacting him, and
  - (b) cannot reasonably ascertain it.
- 188 The following table contains an index of provisions defining or otherwise explaining expressions used in this Schedule—

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age requirement	paragraph 13
age review assessment	paragraph 112(3)
appointment regulations	paragraph 138
assessment under this Schedule	paragraph 127
assessor (except in Part 9)	paragraph 33
assessor (in Part 9)	paragraphs 33 and 128
authorisation under this Schedule	paragraph 10
best interests (determination of)	section 4
best interests assessment	paragraph 38
best interests requirement	paragraph 16
best interests review assessment	paragraph 112(6)
care home	paragraph 178
change of reason ground	paragraph 106
complete (in relation to a review of a standard authorisation)	paragraph 118
deprivation of a person's liberty	section 64(5) and (6)
deputy	section 16(2)(b)
detained resident	paragraph 6
disposed of (in relation to a request for a standard authorisation)	paragraph 66
eligibility assessment	paragraph 46
eligibility requirement	paragraph 17
eligibility review assessment	paragraph 112(7)
eligible person (in relation to paragraphs 68 to 73)	paragraph 68
eligible person (in relation to Part 8)	paragraph 102(3)
expiry (in relation to an existing authorisation)	paragraph 125(b)
existing authorisation (in Part 8)	paragraph 125(a)
hospital	paragraph 175
IMCA	paragraph 158
in force (in relation to a standard authorisation)	paragraphs 63 and 64
in force (in relation to an urgent authorisation)	paragraphs 88 and 89
ineligible (in relation to the eligibility requirement)	Schedule 1A

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interested person	paragraph 185
interested person consulted by the best interests assessor	paragraph 186
lack of capacity	section 2
lasting power of attorney	section 9
managing authority (in relation to a care home)	paragraph 179
managing authority (in relation to a hospital)	paragraph 176 or 177
maximum authorisation period	paragraph 42
mental capacity assessment	paragraph 37
mental capacity requirement	paragraph 15
mental capacity review assessment	paragraph 112(5)
mental health assessment	paragraph 35
mental health requirement	paragraph 14
mental health review assessment	paragraph 112(4)
negative conclusion	paragraph 112(2)(a)
new supervisory body	paragraph 99(b)
no refusals assessment	paragraph 48
no refusals requirement	paragraph 18
no refusals review assessment	paragraph 112(8)
non-qualification ground	paragraph 105
old supervisory body	paragraph 99(a)
positive conclusion	paragraph 112(2)(b)
purpose of a standard authorisation	paragraph 11(1)
purpose of an urgent authorisation	paragraph 11(2)
qualifying requirements	paragraph 12
refusal (for the purposes of the no refusals requirement)	paragraphs 19 and 20
relevant care or treatment	paragraph 7
relevant hospital or care home	paragraph 7
relevant managing authority	paragraph 26(4)
relevant person	paragraph 7
relevant person's representative	paragraph 137
relevant procedure	paragraph 128
review assessment	paragraph 112(1)



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reviewable	paragraph 104
section 39A IMCA	paragraph 155
section 39C IMCA	paragraph 156
section 39D IMCA	paragraph 157
standard authorisation	paragraph 8
supervisory body (except in Part 9)	paragraph 180, 181 or 182
supervisory body (in Part 9)	paragraph 128 and paragraph 180, 181 or 182
unauthorised deprivation of liberty (in relation to paragraphs 68 to 73)	paragraph 67
urgent authorisation	paragraph 9
variation of conditions ground	paragraph 107]

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