

Status: Point in time view as at 01/04/2008.

Changes to legislation: Mental Capacity Act 2005, Cross Heading: Right of third party to require consideration of whether authorisation needed is up to date with all changes known to be in force on or before 22 May 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)

SCHEDULES¹

[¹SCHEDULE A1 E+W

HOSPITAL AND CARE HOME RESIDENTS: DEPRIVATION OF LIBERTY

PART 4 E+W

STANDARD AUTHORISATIONS

Right of third party to require consideration of whether authorisation needed

- 67 For the purposes of paragraphs 68 to 73 there is an unauthorised deprivation of liberty if—
- (a) a person is already a detained resident in a hospital or care home, and
 - (b) the detention of the person is not authorised as mentioned in section 4A.
- 68 (1) If the following conditions are met, an eligible person may request the supervisory body to decide whether or not there is an unauthorised deprivation of liberty.
- (2) The first condition is that the eligible person has notified the managing authority of the relevant hospital or care home that it appears to the eligible person that there is an unauthorised deprivation of liberty.
 - (3) The second condition is that the eligible person has asked the managing authority to request a standard authorisation in relation to the detention of the relevant person.
 - (4) The third condition is that the managing authority has not requested a standard authorisation within a reasonable period after the eligible person asks it to do so.
 - (5) In this paragraph “eligible person” means any person other than the managing authority of the relevant hospital or care home.
- 69 (1) This paragraph applies if an eligible person requests the supervisory body to decide whether or not there is an unauthorised deprivation of liberty.
- (2) The supervisory body must select and appoint a person to carry out an assessment of whether or not the relevant person is a detained resident.
 - (3) But the supervisory body need not select and appoint a person to carry out such an assessment in either of these cases.
 - (4) The first case is where it appears to the supervisory body that the request by the eligible person is frivolous or vexatious.
 - (5) The second case is where it appears to the supervisory body that—
 - (a) the question of whether or not there is an unauthorised deprivation of liberty has already been decided, and

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- (b) since that decision, there has been no change of circumstances which would merit the question being decided again.
- (6) The supervisory body must not select and appoint a person to carry out an assessment under this paragraph unless it appears to the supervisory body that the person would be—
 - (a) suitable to carry out a best interests assessment (if one were obtained in connection with a request for a standard authorisation relating to the relevant person), and
 - (b) eligible to carry out such a best interests assessment.
- (7) The supervisory body must notify the persons specified in sub-paragraph (8)—
 - (a) that the supervisory body have been requested to decide whether or not there is an unauthorised deprivation of liberty;
 - (b) of their decision whether or not to select and appoint a person to carry out an assessment under this paragraph;
 - (c) if their decision is to select and appoint a person, of the person appointed.
- (8) The persons referred to in sub-paragraph (7) are—
 - (a) the eligible person who made the request under paragraph 68;
 - (b) the person to whom the request relates;
 - (c) the managing authority of the relevant hospital or care home;
 - (d) any section 39A IMCA.
- 70 (1) Regulations may be made about the period within which an assessment under paragraph 69 must be carried out.
- (2) Regulations made under paragraph 129(3) apply in relation to the selection and appointment of a person under paragraph 69 as they apply to the selection of a person under paragraph 129 to carry out a best interests assessment.
- (3) The following provisions apply to an assessment under paragraph 69 as they apply to an assessment carried out in connection with a request for a standard authorisation—
 - (a) paragraph 131 (examination and copying of records);
 - (b) paragraph 132 (representations);
 - (c) paragraphs 134 and 135(1) and (2) (duty to keep records and give copies).
- (4) The copies of the assessment which the supervisory body are required to give under paragraph 135(2) must be given as soon as practicable after the supervisory body are themselves given a copy of the assessment.
- 71 (1) This paragraph applies if—
 - (a) the supervisory body obtain an assessment under paragraph 69,
 - (b) the assessment comes to the conclusion that the relevant person is a detained resident, and
 - (c) it appears to the supervisory body that the detention of the person is not authorised as mentioned in section 4A.
- (2) This Schedule (including Part 5) applies as if the managing authority of the relevant hospital or care home had, in accordance with Part 4, requested the supervisory body to give a standard authorisation in relation to the relevant person.
- (3) The managing authority of the relevant hospital or care home must supply the supervisory body with the information (if any) which the managing authority

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would, by virtue of paragraph 31, have had to include in a request for a standard authorisation.

- (4) The supervisory body must notify the persons specified in paragraph 69(8)—
- (a) of the outcome of the assessment obtained under paragraph 69, and
 - (b) that this Schedule applies as mentioned in sub-paragraph (2).
- 72 (1) This paragraph applies if—
- (a) the supervisory body obtain an assessment under paragraph 69, and
 - (b) the assessment comes to the conclusion that the relevant person is not a detained resident.
- (2) The supervisory body must notify the persons specified in paragraph 69(8) of the outcome of the assessment.
- 73 (1) This paragraph applies if—
- (a) the supervisory body obtain an assessment under paragraph 69,
 - (b) the assessment comes to the conclusion that the relevant person is a detained resident, and
 - (c) it appears to the supervisory body that the detention of the person is authorised as mentioned in section 4A.
- (2) The supervisory body must notify the persons specified in paragraph 69(8)—
- (a) of the outcome of the assessment, and
 - (b) that it appears to the supervisory body that the detention is authorised.]

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