

Status: Point in time view as at 01/04/2008.

Changes to legislation: There are currently no known outstanding effects for the Mental Capacity Act 2005, Part 5. (See end of Document for details)

SCHEDULES¹

[^{F1}SCHEDULE A1

HOSPITAL AND CARE HOME RESIDENTS: DEPRIVATION OF LIBERTY

PART 5

URGENT AUTHORISATIONS

Managing authority to give authorisation

- 74 Only the managing authority of the relevant hospital or care home may give an urgent authorisation.
- 75 The managing authority may give an urgent authorisation only if they are required to do so by paragraph 76 (as read with paragraph 77).

Duty to give authorisation

- 76 (1) The managing authority must give an urgent authorisation in either of the following cases.
- (2) The first case is where—
- (a) the managing authority are required to make a request under paragraph 24 or 25 for a standard authorisation, and
 - (b) they believe that the need for the relevant person to be a detained resident is so urgent that it is appropriate for the detention to begin before they make the request.
- (3) The second case is where—
- (a) the managing authority have made a request under paragraph 24 or 25 for a standard authorisation, and
 - (b) they believe that the need for the relevant person to be a detained resident is so urgent that it is appropriate for the detention to begin before the request is disposed of.
- (4) References in this paragraph to the detention of the relevant person are references to the detention to which paragraph 24 or 25 relates.
- (5) This paragraph is subject to paragraph 77.
- 77 (1) This paragraph applies where the managing authority have given an urgent authorisation (“the original authorisation”) in connection with a case where a person is, or is to be, a detained resident (“the existing detention”).
- (2) No new urgent authorisation is to be given under paragraph 76 in connection with the existing detention.

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- (3) But the managing authority may request the supervisory body to extend the duration of the original authorisation.
- (4) Only one request under sub-paragraph (3) may be made in relation to the original authorisation.
- (5) Paragraphs 84 to 86 apply to any request made under sub-paragraph (3).

Terms of authorisation

- 78 (1) If the managing authority decide to give an urgent authorisation, they must decide the period during which the authorisation is to be in force.
- (2) That period must not exceed 7 days.

Form of authorisation

- 79 An urgent authorisation must be in writing.
- 80 An urgent authorisation must state the following things—
 - (a) the name of the relevant person;
 - (b) the name of the relevant hospital or care home;
 - (c) the period during which the authorisation is to be in force;
 - (d) the purpose for which the authorisation is given.
- 81 (1) If the name of the relevant hospital or care home changes, the urgent authorisation is to be read as if it stated the current name of the hospital or care home.
- (2) But sub-paragraph (1) is subject to any provision relating to the change of name which is made in any enactment or in any instrument made under an enactment.

Duty to keep records and give copies

- 82 (1) This paragraph applies if an urgent authorisation is given.
- (2) The managing authority must keep a written record of why they have given the urgent authorisation.
- (3) As soon as practicable after giving the authorisation, the managing authority must give a copy of the authorisation to all of the following—
 - (a) the relevant person;
 - (b) any section 39A IMCA.

Duty to give information about authorisation

- 83 (1) This paragraph applies if an urgent authorisation is given.
- (2) The managing authority of the relevant hospital or care home must take such steps as are practicable to ensure that the relevant person understands all of the following—
 - (a) the effect of the authorisation;
 - (b) the right to make an application to the court to exercise its jurisdiction under section 21A.
- (3) Those steps must be taken as soon as is practicable after the authorisation is given.

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- (4) Those steps must include the giving of appropriate information both orally and in writing.

Request for extension of duration

- 84 (1) This paragraph applies if the managing authority make a request under paragraph 77 for the supervisory body to extend the duration of the original authorisation.
- (2) The managing authority must keep a written record of why they have made the request.
- (3) The managing authority must give the relevant person notice that they have made the request.
- (4) The supervisory body may extend the duration of the original authorisation if it appears to them that—
- (a) the managing authority have made the required request for a standard authorisation,
 - (b) there are exceptional reasons why it has not yet been possible for that request to be disposed of, and
 - (c) it is essential for the existing detention to continue until the request is disposed of.
- (5) The supervisory body must keep a written record that the request has been made to them.
- (6) In this paragraph and paragraphs 85 and 86—
- (a) “original authorisation” and “existing detention” have the same meaning as in paragraph 77;
 - (b) the required request for a standard authorisation is the request that is referred to in paragraph 76(2) or (3).
- 85 (1) This paragraph applies if, under paragraph 84, the supervisory body decide to extend the duration of the original authorisation.
- (2) The supervisory body must decide the period of the extension.
- (3) That period must not exceed 7 days.
- (4) The supervisory body must give the managing authority notice stating the period of the extension.
- (5) The managing authority must then vary the original authorisation so that it states the extended duration.
- (6) Paragraphs 82(3) and 83 apply (with the necessary modifications) to the variation of the original authorisation as they apply to the giving of an urgent authorisation.
- (7) The supervisory body must keep a written record of—
- (a) the outcome of the request, and
 - (b) the period of the extension.
- 86 (1) This paragraph applies if, under paragraph 84, the supervisory body decide not to extend the duration of the original authorisation.
- (2) The supervisory body must give the managing authority notice stating—

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- (a) the decision, and
 - (b) their reasons for making it.
- (3) The managing authority must give a copy of that notice to all of the following—
- (a) the relevant person;
 - (b) any section 39A IMCA.
- (4) The supervisory body must keep a written record of the outcome of the request.

No variation

- 87 (1) An urgent authorisation may not be varied except in accordance with paragraph 85.
- (2) This paragraph does not affect the powers of the Court of Protection or of any other court.

When an authorisation is in force

- 88 An urgent authorisation comes into force when it is given.
- 89 (1) An urgent authorisation ceases to be in force at the end of the period stated in the authorisation in accordance with paragraph 80(c) (subject to any variation in accordance with paragraph 85).
- (2) But if the required request is disposed of before the end of that period, the urgent authorisation ceases to be in force as follows.
- (3) If the supervisory body are required by paragraph 50(1) to give the requested authorisation, the urgent authorisation ceases to be in force when the requested authorisation comes into force.
- (4) If the supervisory body are prohibited by paragraph 50(2) from giving the requested authorisation, the urgent authorisation ceases to be in force when the managing authority receive notice under paragraph 58.
- (5) In this paragraph—
“required request” means the request referred to in paragraph 76(2) or (3);
“requested authorisation” means the standard authorisation to which the required request relates.
- (6) This paragraph does not affect the powers of the Court of Protection or of any other court.
- 90 (1) This paragraph applies if an urgent authorisation ceases to be in force.
- (2) The supervisory body must give notice that the authorisation has ceased to be in force.
- (3) The supervisory body must give that notice to all of the following—
- (a) the relevant person;
 - (b) any section 39A IMCA.
- (4) The supervisory body must give that notice as soon as practicable after the authorisation ceases to be in force.]

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