

Status: Point in time view as at 16/05/2019.

Changes to legislation: There are currently no known outstanding effects for the Mental Capacity Act 2005, Part 1. (See end of Document for details)

SCHEDULES

[^{F1}SCHEDULE AA1

DEPRIVATION OF LIBERTY: AUTHORISATION OF ARRANGEMENTS ENABLING CARE AND TREATMENT

Textual Amendments

- F1** Sch. AA1 inserted (16.5.2019 for specified purposes) by [Mental Capacity \(Amendment\) Act 2019 \(c. 18\)](#), s. 6(3), [Sch. 1](#)

PART 1

INTRODUCTORY AND INTERPRETATION

Contents of this Schedule

- 1 In this Schedule—
- Part 1 (this Part) describes the arrangements dealt with and gives definitions (including “the responsible body”)
 - Part 2 sets out the procedure for the responsible body to authorise arrangements
 - Part 3 is about the duration, renewal, variation and review of authorisations
 - Part 4 is about Approved Mental Capacity Professionals (involved under Part 2 in certain cases)
 - Part 5 is about appointing persons to give representation and support in connection with arrangements
 - Part 6 gives power to provide for monitoring and reporting
 - Part 7 excludes—
 - (a) mental health arrangements, and
 - (b) arrangements that are not in accordance with mental health requirements
 - Part 8 contains transitory provision.

Arrangements this Schedule applies to

- 2 (1) This Schedule applies to arrangements—
- (a) for enabling the care or treatment of a person (the “cared-for person”) described in sub-paragraph (2),
 - (b) that give rise to a deprivation of the cared-for person’s liberty, and
 - (c) that are not excluded by Part 7.
- (2) The cared-for person must be a person who—
- (a) is aged 16 or over,

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- (b) lacks capacity to consent to the arrangements, and
 - (c) has a mental disorder.
- (3) The arrangements may for example be—
- (a) for the cared-for person to reside in a particular place;
 - (b) for the cared-for person to receive care or treatment at a particular place;
 - (c) for the means and manner of transport for the cared-for person to, from or between particular places.
- (4) The arrangements may be ones that are proposed, or that are being carried out.
- (5) If they are proposed, references in this Schedule to where or how they are carried out are to whatever is proposed in the arrangements.
- (6) If provision to which sub-paragraph (1)(a) and (b) apply and other provision are combined, the “arrangements” for the purposes of this Schedule do not include that other provision.

Definitions

3 In this Schedule—

“Approved Mental Capacity Professional” means a person approved in accordance with Part 4 as an Approved Mental Capacity Professional for the purposes of this Schedule;

“arrangements” must be read in accordance with paragraph 2;

“authorisation” means authorisation of arrangements under this Schedule, and “authorise” and related words are to be read accordingly;

“authorisation conditions” has the meaning given by paragraph 13;

“authorisation record” has the meaning given by paragraph 27;

“care home” means—

(a) a place which is a care home within the meaning given by section 3 of the Care Standards Act 2000, or

(b) a place in Wales at which a care home service within the meaning of Part 1 of the [Regulation and Inspection of Social Care \(Wales\) Act 2016 \(anaw 2\)](#) is provided wholly or mainly to persons aged 18 or over;

“care home arrangements” means arrangements, in relation to a cared-for person aged 18 or over, carried out wholly or partly in a care home;

“care home manager”, in relation to a care home or care home arrangements, 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 Chapter 2 of Part 1 of the [Regulation and Inspection of Social Care \(Wales\) Act 2016 \(anaw 2\)](#) in respect of the provision of a care home service, in the care home;

“cared-for person” has the meaning given by paragraph 2(1);

“clinical commissioning group” means a body established under section 14D of the National Health Service Act 2006;

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- “Education, Health and Care plan” means a plan within the meaning of section 37(2) of the Children and Families Act 2014;
- “English responsible body” has the meaning given by paragraph 11;
- “hospital manager” has the meaning given by paragraph 7;
- “independent hospital” has the meaning given by paragraph 5;
- “local authority” has the meaning given by paragraph 4;
- “Local Health Board” means a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006;
- “mental disorder” has the meaning given by section 1(2) of the Mental Health Act;
- “mental health arrangements” has the meaning given by paragraph 46;
- “mental health requirements” has the meaning given by paragraph 57;
- “NHS hospital” has the meaning given by paragraph 5;
- “responsible body” has the meaning given by paragraph 6;
- “specified”, except in paragraph 57, means specified in an authorisation record;
- “Welsh responsible body” has the meaning given by paragraph 12.

Local authority

- 4 (1) “Local authority” means—
- (a) in England—
 - (i) the council of a county;
 - (ii) the council of a district for which there is no county council;
 - (iii) the council of a London borough;
 - (iv) the Common Council of the City of London;
 - (v) the Council of the Isles of Scilly;
 - (b) in Wales, the council of a county or county borough.
- (2) For the purposes of this Schedule the area of the Common Council of the City of London is to be treated as including the Inner Temple and the Middle Temple.

NHS hospital and independent hospital

- 5 (1) “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.
- (2) “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.

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Responsible body

- 6 (1) The responsible body, in relation to a cared-for person, means—
- (a) if the arrangements are carried out mainly in an NHS hospital, the hospital manager;
 - (b) if the arrangements are carried out mainly in an independent hospital in England, the responsible local authority determined in accordance with paragraph 9;
 - (c) if the arrangements are carried out mainly in an independent hospital in Wales, the Local Health Board for the area in which the hospital is situated;
 - (d) if none of paragraphs (a) to (c) applies and the arrangements are carried out mainly through—
 - (i) the provision of NHS continuing healthcare under arrangements made by a clinical commissioning group, or
 - (ii) in Wales, the provision of an equivalent to NHS continuing healthcare under arrangements made by a Local Health Board, that clinical commissioning group or Local Health Board;
 - (e) if none of paragraphs (a) to (d) applies, the responsible local authority determined in accordance with paragraph 10.
- (2) If an independent hospital is situated in the areas of two or more Local Health Boards, it is to be regarded for the purposes of sub-paragraph (1)(c) as situated in whichever of the areas the greater (or greatest) part of the hospital is situated.
- 7 (1) “Hospital manager”, in relation to an NHS hospital, means—
- (a) if the hospital—
 - (i) is vested in a relevant national authority for the purposes of its functions under the National Health Service Act 2006 or 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 a relevant national authority under either of those Acts,
 the Local Health Board or Special Health Authority responsible for the administration of the hospital;
 - (b) 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;
 - (c) if the hospital is vested in an NHS trust or an NHS foundation trust, that trust;
 - (d) if the hospital is vested in a Local Health Board, that Board.
- (2) In sub-paragraph (1) “relevant national authority” means—
- (a) the Secretary of State,
 - (b) the Welsh Ministers, or
 - (c) the Secretary of State and the Welsh Ministers acting jointly.
- 8 In paragraph 6(1)(d) “NHS continuing healthcare” is to be construed in accordance with standing rules under section 6E of the National Health Service Act 2006.
- 9 (1) In paragraph 6(1)(b), “responsible local authority”, in relation to a cared-for person aged 18 or over, means—

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- (a) if there is an Education, Health and Care plan for the cared-for person, the local authority responsible for maintaining that plan;
 - (b) if paragraph (a) does not apply and the cared-for person has needs for care and support which are being met under Part 1 of the Care Act 2014, the local authority meeting those needs;
 - (c) in any other case, the local authority determined in accordance with sub-paragraph (4).
 - (2) If more than one local authority is meeting the needs of a cared-for person for care and support under Part 1 of the Care Act 2014 the responsible local authority is the local authority for the area in which the cared-for person is ordinarily resident for the purposes of that Part of that Act.
 - (3) In paragraph 6(1)(b), “responsible local authority”, in relation to a cared-for person aged 16 or 17, means—
 - (a) if there is an Education, Health and Care plan for the cared-for person, the local authority responsible for maintaining that plan;
 - (b) if paragraph (a) does not apply and the cared-for person is being provided with accommodation under section 20 of the Children Act 1989, the local authority providing that accommodation;
 - (c) if neither paragraph (a) nor paragraph (b) applies and the cared-for person is subject to a care order under section 31 of the Children Act 1989 or an interim care order under section 38 of that Act, and a local authority in England is responsible under the order for the care of the cared-for person, that local authority;
 - (d) if none of paragraphs (a) to (c) applies, the local authority determined in accordance with sub-paragraph (4).
 - (4) In the cases mentioned in sub-paragraphs (1)(c) and (3)(d), the “responsible local authority” is the local authority for the area in which the independent hospital mentioned in paragraph 6(1)(b) is situated.
 - (5) If an independent hospital is situated in the areas of two or more 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.
 - 10 (1) In paragraph 6(1)(e), “responsible local authority”, in relation to a cared-for person aged 18 or over, means—
 - (a) if there is an Education, Health and Care plan for the cared-for person, the local authority responsible for maintaining that plan;
 - (b) if there is an individual development plan for the cared-for person—
 - (i) the local authority responsible for maintaining that plan, or
 - (ii) if the plan is not maintained by a local authority, the local authority whose area the cared-for person is in;
 - (c) if neither paragraph (a) nor paragraph (b) applies and the cared-for person has needs for care and support which are being met under Part 1 of the Care Act 2014 or under Part 4 of the [Social Services and Well-being \(Wales\) Act 2014 \(anaw 4\)](#), the local authority meeting those needs;
 - (d) in any other case, the local authority determined in accordance with sub-paragraph (6).
 - (2) If more than one local authority is meeting the needs of a cared-for person for care and support under Part 1 of the Care Act 2014 the responsible local authority is the

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local authority for the area in which the cared-for person is ordinarily resident for the purposes of that Part of that Act.

- (3) If more than one local authority is meeting the needs for care and support of a cared-for person under the [Social Services and Well-being \(Wales\) Act 2014 \(anaw 4\)](#), the responsible local authority is the local authority for the area in which the cared-for person is ordinarily resident for the purposes of that Act.
- (4) If the cared-for person is having needs for care and support met under both of the Acts mentioned in sub-paragraph (1)(c), the responsible local authority is the local authority determined in accordance with sub-paragraph (6).
- (5) In paragraph 6(1)(e), “responsible local authority”, in relation to a cared-for person aged 16 or 17, means—
 - (a) if there is an Education, Health and Care plan for the cared-for person, the local authority responsible for maintaining that plan;
 - (b) if there is an individual development plan for the cared-for person—
 - (i) the local authority responsible for maintaining that plan, or
 - (ii) if the plan is not maintained by a local authority, the local authority whose area the cared-for person is in;
 - (c) if neither paragraph (a) nor paragraph (b) applies and the cared-for person is being provided with accommodation—
 - (i) under section 20 of the Children Act 1989, or
 - (ii) under section 76 of the [Social Services and Well-being \(Wales\) Act 2014 \(anaw 4\)](#),
 the local authority providing that accommodation;
 - (d) if none of paragraphs (a) to (c) applies and the cared-for person is subject to a care order under section 31 of the Children Act 1989 or an interim care order under section 38 of that Act, the local authority that is responsible under the order for the care of the cared-for person;
 - (e) if none of paragraphs (a) to (d) applies, the local authority determined in accordance with sub-paragraph (6).
- (6) In the cases mentioned in sub-paragraphs (1)(d), (4) and (5)(e), the “responsible local authority” is—
 - (a) if the arrangements provide for the cared-for person to reside in one place, the local authority for the area in which that place is situated;
 - (b) if the arrangements provide for the cared-for person to reside in more than one place, the local authority for the area in which the main place of residence is situated;
 - (c) in any other case, the local authority for the area in which the arrangements are mainly carried out.
- (7) If a building is situated in the areas of two or more local authorities, it is to be regarded for the purposes of sub-paragraph (6) as situated in whichever of the areas the greater (or greatest) part of the building is situated.
- (8) In this paragraph—

“individual development plan” means a plan within the meaning of section 10 of the [Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(anaw 2\)](#).

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- (a) a hospital manager of a hospital in England;
 - (b) a clinical commissioning group;
 - (c) a local authority in England.
- 12 “Welsh responsible body” means—
- (a) a hospital manager of a hospital in Wales;
 - (b) a Local Health Board;
 - (c) a local authority in Wales.]

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