

SCHEDULES

SCHEDULE 1

Sections 19, 22, 25, 28 and 30.

Authorisation by panel of certain serious interventions

Part 1

Preliminary

1.—(1) In this Schedule—

“appropriate care or treatment”, in relation to a person, means care or treatment which is (or care and treatment which are) appropriate in that person’s case;

“community residence requirement”: see section 31;

“the criteria for authorisation”, in relation to a measure mentioned in paragraph 2(2), has the meaning given in relation to that measure by Part 3 of this Schedule;

“proposed”, in relation to a measure, includes proposed to be carried out if particular circumstances arise;

“the relevant trust” has the meaning given by paragraph 2(4).

(2) For the purposes of this Schedule a medical report is made when the completed report is signed by the person making it.

Part 2

Applications for authorisation

Applications for authorisation

2.—(1) An application under this Schedule may be made where one or more measures mentioned in sub-paragraph (2) are proposed in relation to a person who is 16 or over (“P”).

(2) Those measures are—

(a) the provision to P of particular treatment which is relevant treatment (as defined by paragraph 4);

(b) the detention of P in circumstances amounting to a deprivation of liberty in a particular place in which appropriate care or treatment is available for P;

- (c) the imposition on P of a requirement to attend at a particular place at particular times or intervals for the purpose of being given particular treatment that would or might be treatment with serious consequences (“an attendance requirement”);
 - (d) the imposition on P of a community residence requirement.
- (3) An application under this Schedule is an application to the relevant trust for authorisation of one or more measures mentioned in sub-paragraph (2) which are proposed.
- (4) In this Schedule “the relevant trust” means—
- (a) if the application requests authorisation of the detention of P in a particular place in circumstances amounting to a deprivation of liberty, the HSC trust in whose area the place is situated;
 - (b) if the application requests authorisation of the provision of particular treatment or authorisation of an attendance requirement, and head (a) does not apply, the HSC trust in whose area the treatment would be provided;
 - (c) if the application requests authorisation of a community residence requirement and head (b) does not apply, the HSC trust in whose area the place where P would be required by the community residence requirement to live is situated.

Applications: supplementary

- 3.—**(1) An application may not be made for authorisation of the detention of P in a hospital where the proposed detention could be authorised under Schedule 2 (short-term detention for examination etc).
- (2) But sub-paragraph (1) does not apply if the application also requests authorisation of another measure or measures mentioned in paragraph 2(2).
- (3) An application may be made in respect of a person who is under 16 but who will be 16 or over when the proposed measure would be carried out.
- (4) An application may be made in respect of a measure or measures mentioned in paragraph 2(2) where the measure, or any of the measures, has already begun (for example, because it was begun in an emergency) and is proposed to be continued.
- (5) For the purposes of paragraph 2(2)(b) it does not matter whether P is or is not already resident in the place (or, if the place is a hospital, an in-patient in the hospital) at the time when the detention is proposed.
- (6) Regulations may provide that an application for authorisation of the detention of P in circumstances amounting to a deprivation of liberty in a particular place—
- (a) may be made only if the place is of a prescribed description; or
 - (b) may not be made if the place is of a prescribed description.
- (7) In this paragraph “application” means an application under this Schedule.

Status: This is the original version (as it was originally enacted).

Paragraph 2: meaning of “relevant treatment”

4. For the purposes of paragraph 2 treatment which is proposed to be provided to P is “relevant treatment” if—
- (a) it would or might be treatment with serious consequences (see section 21);
 - (b) the applicant reasonably believes that P lacks capacity in relation to the treatment; and
 - (c) either of the following applies—
 - (i) P’s nominated person has reasonably objected to the proposal to provide the treatment and has not withdrawn that objection; or
 - (ii) the applicant reasonably believes that it is likely that the provision of the treatment would be such that authorisation is needed by reason of section 20 (resistance etc by P to provision of certain treatment).

Who may make application

- 5.—(1) Any application under this Schedule must be made by a person who—
- (a) is of a prescribed description; and
 - (b) is unconnected with P (see section 304).
- (2) Regulations under sub-paragraph (1)(a) may in particular prescribe, as a description of persons who may make an application under this Schedule—
- (a) an approved social worker;
 - (b) a person of a prescribed description who is designated by the managing authority of a hospital or care home in which P is an in-patient or resident as a person who may make applications under this Schedule;
 - (c) a person of a prescribed description who is designated by an appropriate person (as defined by the regulations) as a person who may make applications under this Schedule.

Contents of application

- 6.—(1) An application under this Schedule must—
- (a) be in the prescribed form;
 - (b) include a medical report (see paragraph 7);
 - (c) include a care plan (see paragraph 8);
 - (d) include prescribed information about the views, on prescribed matters, of P’s nominated person and any prescribed person; and
 - (e) include any other prescribed information.
- (2) If—

- (a) the application requests authorisation of a measure within paragraph 2(2) (b) or (d) (deprivation of liberty or community residence requirement), and
- (b) in the opinion of the person making the application, if the measure were authorised under paragraph 15, P would lack (or would probably lack) capacity in relation to whether an application under section 45 in respect of the authorisation should be made,

the application must contain a statement of that opinion.

Medical report

- 7.—(1) The medical report must be in the prescribed form and must—
- (a) be made by a medical practitioner who is unconnected with P and is permitted by regulations under section 300 to make the report;
 - (b) include the required statement; and
 - (c) include any prescribed information.
- (2) The “required statement” is a statement by the person making the medical report that—
- (a) in that person’s opinion, the criteria for authorisation are met in relation to the measure for which the application requests authorisation; or
 - (b) if the application requests authorisation for more than one measure, in that person’s opinion the criteria for authorisation are met in relation to each such measure.
- (3) The criteria for authorisation are set out in Part 3 of this Schedule.
- (4) The maker of the medical report must have examined P not more than two days before the date when the report is made.
- (5) See also sections 54 and 55 (involvement of nominated person and independent mental capacity advocate).

Care plan

8. The care plan must be in the prescribed form and must include—
- (a) prescribed information about the measure or measures for which the application requests authorisation;
 - (b) such other information relating to what is proposed as may be prescribed.

Part 3

The criteria for authorisation

Criteria for treatment

9.—(1) In relation to the provision to P of particular treatment, the criteria for authorisation are—

- (a) that P lacks capacity in relation to the treatment;
- (b) that it would be in P's best interests to have the treatment; and
- (c) if P's nominated person has reasonably objected to the proposal to provide the treatment and has not withdrawn that objection, that the prevention of serious harm condition is met.

(2) The prevention of serious harm condition is—

- (a) that failure to provide the treatment to P would create a risk of serious harm to P or of serious physical harm to other persons; and
- (b) that carrying out the treatment would be a proportionate response to—
 - (i) the likelihood of harm to P, or of physical harm to other persons; and
 - (ii) the seriousness of the harm concerned.

(3) Subsections (2) and (3) of section 22 (situations where there is a choice of treatments) apply for the purposes of sub-paragraph (2).

Criteria for detention amounting to deprivation of liberty

10. In relation to detention of P in a place in circumstances amounting to a deprivation of liberty, the criteria for authorisation are that—

- (a) appropriate care or treatment is available for P in the place in question;
- (b) failure to detain P in circumstances amounting to a deprivation of liberty in a place in which appropriate care or treatment is available for P would create a risk of serious harm to P or of serious physical harm to other persons;
- (c) detaining P in the place in question in circumstances amounting to a deprivation of liberty would be a proportionate response to—
 - (i) the likelihood of harm to P, or of physical harm to other persons; and
 - (ii) the seriousness of the harm concerned;
- (d) P lacks capacity in relation to whether he or she should be detained in the place in question; and
- (e) it would be in P's best interests to be so detained.

Criteria for requirement to attend for treatment

11. In relation to the imposition on P of a requirement to attend at a particular place at particular times or intervals for the purpose of being given particular treatment that would or might be treatment with serious consequences, the criteria for authorisation are that—

- (a) failure to impose such a requirement would be more likely than not to result in P's not receiving the treatment;
- (b) P lacks capacity in relation to whether he or she should attend for the purpose of being given the treatment at the place and times or intervals concerned; and
- (c) a requirement to attend for that purpose at the place and times or intervals concerned would be in P's best interests.

Criteria for community residence requirement

12. In relation to the imposition on P of a community residence requirement, the criteria for authorisation are that—

- (a) failure to impose a community residence requirement would create a risk of harm to P;
- (b) imposing such a requirement would be a proportionate response to—
 - (i) the likelihood of harm to P; and
 - (ii) the seriousness of the harm concerned;
- (c) P lacks capacity in relation to the matters covered by the community residence requirement;
- (d) any services which, under regulations under section 33, are required to be available to people subject to community residence requirements are available in the area in which P would be required by the community residence requirement to live; and
- (e) the community residence requirement would be in P's best interests.

Measures proposed to be carried out only if particular circumstances arise

13. In applying the criteria in this Part of this Schedule in a case where a measure is proposed to be carried out only if particular circumstances arise, any question—

- (a) whether the measure would be in P's best interests,
- (b) whether failure to carry out the measure would create a particular risk, or
- (c) whether carrying out the measure would be a proportionate response,

is to be decided on the basis of what the situation would be if those circumstances arose.

Part 4

Decision on application

Panel to consider application

14.—(1) Where the relevant trust receives an application duly made under this Schedule, it must as soon as practicable—

- (a) give prescribed information to P and any prescribed person; and
- (b) constitute a panel to consider the application.

(2) See also section 297 (general provision about panels).

Decision on application

15.—(1) Having considered the application, the panel must—

- (a) authorise the measure mentioned in paragraph 2(2)(a) to (d) for which the application requests authorisation (or, if the application requests authorisation of more than one such measure, authorise each of those measures or such one or more of them as may be specified in the authorisation); or
- (b) refuse to grant an authorisation under this paragraph.

(2) If a measure authorised under sub-paragraph (1)(a) is the provision to P of particular treatment, the authorisation may also include authorisation of a measure mentioned in paragraph 2(2)(b) to (d) authorisation of which was not requested by the application.

(3) Sub-paragraph (2) applies whether or not the application requested authorisation of any other measure mentioned in paragraph 2(2)(b) to (d).

(4) Paragraphs 16 to 18 contain provision supplementing this paragraph.

(5) The panel may authorise a measure under this paragraph only if it considers that the criteria for authorisation are met in relation to that measure.

(6) An authorisation granted under this paragraph—

- (a) takes effect from the time when the authorisation is granted; and
- (b) expires (unless previously revoked) at the end of the period of 6 months beginning with the date when the authorisation is granted;

but this is subject to Chapter 6 of Part 2 of this Act (extension of period of authorisation).

(7) An authorisation under this paragraph may be expressed so as to authorise a measure to be carried out if circumstances specified in the authorisation arise.

Specifying detention amounting to deprivation of liberty

16.—(1) This paragraph applies where an authorisation under paragraph 15 authorises P’s detention in a place in circumstances amounting to a deprivation of liberty.

(2) The authorisation must specify—

- (a) the purposes for which P may be detained in circumstances amounting to a deprivation of liberty; and
- (b) the place in which P may be so detained.

(3) The authorisation may authorise P to be detained for a specified purpose in one place and for other specified purposes in another place.

(4) Any purpose specified under this paragraph must relate to the risk mentioned in paragraph 10(b) (for example, if that risk is of serious harm to P from a disorder, a purpose specified may be the purpose of ensuring that P receives treatment for the disorder).

Specifying requirement to attend for treatment

17. Where an authorisation under paragraph 15 authorises the imposition on P of a requirement to attend at a particular place at particular times or intervals for the purpose of being given specified treatment, the authorisation—

- (a) may either specify the place or authorise it to be such place as the medical practitioner in charge of the treatment may direct;
- (b) may either specify the times or intervals or authorise them to be such times or intervals as that medical practitioner may direct.

Specifying community residence requirement

18.—(1) This paragraph applies where an authorisation under paragraph 15 authorises the imposition on P of a community residence requirement.

(2) A community residence requirement which is in accordance with the authorisation may (subject to the provisions of this Act) be imposed on P by the HSC trust to which the application under this Schedule was made (“the trust”).

(3) The authorisation must specify, in accordance with the following provisions of this paragraph, the terms of the community residence requirement that may be imposed by the trust under the authorisation.

(4) The authorisation must provide either—

- (a) that the trust may require P to live at a place specified by the authorisation; or
- (b) that the trust may require P to live at such place as may be specified by the trust.

- (5) The authorisation may include either or both of the following provisions—
- (a) provision that if the trust imposes the requirement authorised under sub-paragraph (4), the trust may also require P to allow a healthcare professional specified by the trust access to P, at reasonable times required by that professional, at a place where P is living;
 - (b) provision that if the trust imposes the requirement authorised under sub-paragraph (4), the trust may also require P to attend at particular places and times or intervals for the purpose of training, education, occupation or treatment.
- (6) Where by virtue of sub-paragraph (5)(b) the authorisation includes provision authorising a requirement for P to attend at a particular place at particular times or intervals, the authorisation—
- (a) may either specify the place or authorise it to be such place as the trust may specify; and
 - (b) may either specify the times or intervals or authorise them to be such times or intervals as the trust may specify.
- (7) In this paragraph—
- “healthcare professional” means a person of a description prescribed under section 31(3);
 - “treatment” is to be read in accordance with section 31(4).

Time limit for panel’s decision, and duty to notify decision

- 19.—**(1) The panel must comply with paragraph 15(1) as soon as practicable and in any case no later than the end of the permitted period.
- (2) The “permitted period” is (subject to paragraph 20) the period of 7 working days beginning with the day on which the application is received by the trust (or, if that day is not a working day, beginning with the first working day after that).
- (3) As soon as practicable after granting or refusing an authorisation under paragraph 15, the panel must give to P and any prescribed person—
- (a) written notice of the grant or refusal; and
 - (b) any prescribed information.
- (4) Regulations under sub-paragraph (3) must ensure that the Attorney General is given notice in any case where—
- (a) the panel grants an authorisation that authorises a measure within paragraph 2(2)(b) or (d) (deprivation of liberty or community residence requirement); and

- (b) the application under this Schedule contained the statement mentioned in paragraph 6(2) (statement that P lacks, or probably lacks, capacity in relation to making of Tribunal application).

Interim authorisations

20.—(1) If at any time before the end of the period mentioned in paragraph 19(2) the panel considers—

- (a) that it will not be possible within that period to decide whether the criteria for authorisation are met in respect of a measure proposed in the application, but
- (b) that there is a good prospect of it being established that the criteria for authorisation are met in respect of the measure,

the panel may grant an interim authorisation.

(2) The power of the panel to grant an interim authorisation is power to grant an authorisation which—

- (a) does as mentioned in paragraph 15(1)(a); but
- (b) is expressed to have effect only until the end of the period of 28 days beginning with the date on which the interim authorisation is granted.

(3) Accordingly, an interim authorisation—

- (a) takes effect from the time when the authorisation is granted; and
- (b) expires (unless previously revoked) at the end of the period of 28 days beginning with the date on which it is granted.

(4) Paragraphs 15(2), (3) and (7) and 16 to 18 apply in relation to an interim authorisation as they apply in relation to an authorisation under paragraph 15.

(5) Where the panel grants an interim authorisation in relation to an application under this Schedule—

- (a) the period within which the panel must grant or refuse an authorisation under paragraph 15 in respect of the application is 28 days beginning with the date on which the interim authorisation is granted; and
- (b) the grant or refusal of an authorisation under paragraph 15 in respect of the application revokes the interim authorisation.

(6) As soon as practicable after granting an interim authorisation, the panel must give written notice of the grant, and any prescribed information, to P and any prescribed person.

(7) Regulations under sub-paragraph (6) must ensure that the Attorney General is given notice in any case where—

- (a) the panel grants an interim authorisation that authorises a measure within paragraph 2(2)(b) or (d) (deprivation of liberty or community residence requirement); and
- (b) the application under this Schedule contained the statement mentioned in paragraph 6(2) (statement that P lacks, or probably lacks, capacity in relation to making of Tribunal application).

Part 5

Matters covered by authorisation etc

Treatment: what is covered by authorisation

21.—(1) Sub-paragraph (2) applies where an authorisation under this Schedule authorises the provision to P of treatment specified by the authorisation.

(2) As well as authorising the provision of that treatment to P, the authorisation authorises the provision to P of—

- (a) any part of the treatment concerned;
- (b) the treatment concerned, or any part of it, with such modifications as the medical practitioner in charge of P’s treatment may reasonably consider to be in P’s best interests.

(3) Sub-paragraph (4) applies where an authorisation under this Schedule authorises the imposition on P of a requirement to attend at a particular place at particular times or intervals for the purpose of being given treatment specified by the authorisation.

(4) As well as authorising the imposition of such a requirement, the authorisation authorises the imposition on P of a requirement to attend at a particular place at particular times or intervals for the purpose of being given treatment mentioned in sub-paragraph (2)(a) or (b).

(5) Any reference in this Part of this Act to treatment “specified by” an authorisation is to be read as including treatment mentioned in sub-paragraph (2) (a) or (b).

Detention: what is covered by authorisation

22.—(1) This paragraph applies where an authorisation under this Schedule authorises the detention of P in a specified place for specified purposes.

(2) As well as authorising that detention, the authorisation authorises any related detention that may occur while the authorisation is in force.

(3) In sub-paragraph (2) “related detention” means—

- (a) any detention of P in the specified place at a time when the detention is partly for the purposes specified in the authorisation and partly for other purposes relating to P's care or treatment;
 - (b) any detention of P while P is being taken to the specified place; and
 - (c) any detention of P while P is absent from the specified place, if—
 - (i) the detention is in pursuance of a condition imposed on P that relates to permission given to P to be absent from the specified place for a particular period or a particular occasion;
 - (ii) the imposition of the condition is an act to which section 9(2) applies; and
 - (iii) the detention is for no longer than 7 days.
- (4) In this paragraph “detention” means detention in circumstances amounting to a deprivation of liberty.
- (5) Nothing in the authorisation or this paragraph affects the operation of this Part of this Act in relation to any detention of P in circumstances not amounting to a deprivation of liberty.

Effect of discharge from detention

23.—(1) Where—

- (a) an authorisation under this Schedule authorises the detention of P in circumstances amounting to a deprivation of liberty, and
- (b) P is discharged from detention,

the authorisation ceases to authorise any detention of P.

(2) For the purposes of this paragraph P is “discharged from detention” if a person with authority to discharge P from detention informs P in writing that he or she is discharged from detention.

Power to vary or revoke requirements etc imposed under authorisation

24. Any power conferred by virtue of an authorisation under this Schedule to impose a requirement or give a direction includes power to vary or revoke the requirement or direction (but not in such a way as to result in a requirement that is not permitted by the authorisation).

Effect of authorisation on previous authorisations

25.—(1) The grant of an interim authorisation under this Schedule revokes any authorisation under Schedule 2 in respect of P which is in force immediately before the grant of the interim authorisation; but this is subject to sub-paragraph (2).

Status: This is the original version (as it was originally enacted).

(2) The panel which grants the interim authorisation may, when it makes the grant, also decide that the authorisation under Schedule 2 is not revoked by the grant.

26.—(1) The grant of an authorisation under paragraph 15 (“the later authorisation”), as well as revoking any interim authorisation relating to the same application, revokes any relevant earlier authorisation; but this is subject to subparagraph (3).

(2) In this paragraph a “relevant earlier authorisation” means—

- (a) any authorisation under Schedule 2 in respect of P, or
- (b) any authorisation under paragraph 15 in respect of P,

which is in force immediately before the grant of the later authorisation.

(3) The panel which grants the later authorisation may, when it makes the grant, also decide that—

- (a) a relevant earlier authorisation specified by the panel, or
- (b) a specified provision of such an authorisation,

is not revoked by the grant.

Relationship with other conditions

27. For the avoidance of doubt, the fact that a particular measure is authorised by an authorisation under this Schedule does not affect the need for the other conditions of this Part of this Act that apply to be met in respect of any act that is, or is part of, that measure.