

**Changes to legislation:** Mental Capacity Act 2005, Part 2 is up to date with all changes known to be in force on or before 24 April 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) View outstanding changes

## SCHEDULES

### SCHEDULE 1A **E+W**

#### [<sup>F1</sup>PERSONS INELIGIBLE TO BE DEPRIVED OF LIBERTY BY THIS ACT]

##### Textual Amendments

- F1** Sch. 1A omitted (16.5.2019 for specified purposes) by virtue of [Mental Capacity \(Amendment\) Act 2019](#) (c. 18), s. 6(3), [Sch. 2 para. 2\(c\)](#)

#### [<sup>F1</sup>PART 2 **E+W**

##### INTERPRETATION

###### *Application*

- 6 This Part applies for the purposes of this Schedule.

###### *Mental health regimes*

- 7 The mental health regimes are—
- the hospital treatment regime,
  - the community treatment regime, and
  - the guardianship regime.

###### *Hospital treatment regime*

- 8 (1) P is subject to the hospital treatment regime if he is subject to—
- a hospital treatment obligation under the relevant enactment, or
  - an obligation under another England and Wales enactment which has the same effect as a hospital treatment obligation.
- (2) But where P is subject to any such obligation, he is to be regarded as not subject to the hospital treatment regime during any period when he is subject to the community treatment regime.
- (3) A hospital treatment obligation is an application, order or direction of a kind listed in the first column of the following table.
- (4) In relation to a hospital treatment obligation, the relevant enactment is the enactment in the Mental Health Act which is referred to in the corresponding entry in the second column of the following table.

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*Hospital treatment obligation*

*Relevant enactment*

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Application for admission for assessment	Section 2
Application for admission for assessment	Section 4
Application for admission for treatment	Section 3
Order for remand to hospital	Section 35
Order for remand to hospital	Section 36
Hospital order	Section 37
Interim hospital order	Section 38
Order for detention in hospital	Section 44
Hospital direction	Section 45A
Transfer direction	Section 47
Transfer direction	Section 48
Hospital order	Section 51

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*Community treatment regime*

- 9 P is subject to the community treatment regime if he is subject to—
- (a) a community treatment order under section 17A of the Mental Health Act, or
  - (b) an obligation under another England and Wales enactment which has the same effect as a community treatment order.

*Guardianship regime*

- 10 P is subject to the guardianship regime if he is subject to—
- (a) a guardianship application under section 7 of the Mental Health Act,
  - (b) a guardianship order under section 37 of the Mental Health Act, or
  - (c) an obligation under another England and Wales enactment which has the same effect as a guardianship application or guardianship order.

*England and Wales enactments*

- 11 (1) An England and Wales enactment is an enactment which extends to England and Wales (whether or not it also extends elsewhere).
- (2) It does not matter if the enactment is in the Mental Health Act or not.

*P within scope of Mental Health Act*

- 12 (1) P is within the scope of the Mental Health Act if—
- (a) an application in respect of P could be made under section 2 or 3 of the Mental Health Act, and
  - (b) P could be detained in a hospital in pursuance of such an application, were one made.

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- (2) The following provisions of this paragraph apply when determining whether an application in respect of P could be made under section 2 or 3 of the Mental Health Act.
- (3) If the grounds in section 2(2) of the Mental Health Act are met in P's case, it is to be assumed that the recommendations referred to in section 2(3) of that Act have been given.
- (4) If the grounds in section 3(2) of the Mental Health Act are met in P's case, it is to be assumed that the recommendations referred to in section 3(3) of that Act have been given.
- (5) In determining whether the ground in section 3(2)(c) of the Mental Health Act is met in P's case, it is to be assumed that the treatment referred to in section 3(2)(c) cannot be provided under this Act.

*Authorised course of action, relevant care or treatment & relevant instrument*

- 13 In a case where this Schedule applies for the purposes of section 16A—
  - “authorised course of action” means any course of action amounting to deprivation of liberty which the order under section 16(2)(a) authorises;
  - “relevant care or treatment” means any care or treatment which—
    - (a) comprises, or forms part of, the authorised course of action, or
    - (b) is to be given in connection with the authorised course of action;
  - “relevant instrument” means the order under section 16(2)(a).
- 14 In a case where this Schedule applies for the purposes of paragraph 17 of Schedule A1—
  - “authorised course of action” means the accommodation of the relevant person in the relevant hospital or care home for the purpose of being given the relevant care or treatment;
  - “relevant care or treatment” has the same meaning as in Schedule A1;
  - “relevant instrument” means the standard authorisation under Schedule A1.
- 15 (1) This paragraph applies where the question whether a person is ineligible to be deprived of liberty by this Act is relevant to either of these decisions—
  - (a) whether or not to include particular provision (“the proposed provision”) in an order under section 16(2)(a);
  - (b) whether or not to give a standard authorisation under Schedule A1.
  - (2) A reference in this Schedule to the authorised course of action or the relevant care or treatment is to be read as a reference to that thing as it would be if—
    - (a) the proposed provision were included in the order, or
    - (b) the standard authorisation were given.
  - (3) A reference in this Schedule to the relevant instrument is to be read as follows—
    - (a) where the relevant instrument is an order under section 16(2)(a): as a reference to the order as it would be if the proposed provision were included in it;
    - (b) where the relevant instrument is a standard authorisation: as a reference to the standard authorisation as it would be if it were given.

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*Expressions used in paragraph 5*

- 16 (1) These expressions have the meanings given—
- “donee” means a donee of a lasting power of attorney granted by P;
  - “mental health patient” means a person accommodated in a hospital for the purpose of being given medical treatment for mental disorder;
  - “mental health treatment” means the medical treatment for mental disorder referred to in the definition of “mental health patient”.
- (2) A decision of a donee or deputy is valid if it is made—
- (a) within the scope of his authority as donee or deputy, and
  - (b) in accordance with Part 1 of this Act.

*Expressions with same meaning as in Mental Health Act*

- 17 (1) “Hospital” has the same meaning as in Part 2 of the Mental Health Act.
- (2) “Medical treatment” has the same meaning as in the Mental Health Act.
- (3) “Mental disorder” has the same meaning as in Schedule A1 (see paragraph 14).]

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 58(4)(ca) inserted by [2023 c. 42 Sch. para. 10](#)
- Sch. 1 para. 4A inserted by [2023 c. 42 Sch. para. 3](#)
- Sch. 1 para. 10A and cross-heading inserted by [2023 c. 42 Sch. para. 6](#)
- Sch. 1 para. 13A inserted by [2023 c. 42 Sch. para. 7\(2\)](#)
- Sch. 1 para. 16(1A) inserted by [2023 c. 42 Sch. para. 8\(b\)](#)