

*Changes to legislation: There are currently no known outstanding effects for the Mental Capacity Act 2005, Paragraph 39. (See end of Document for details)*

## SCHEDULES

### SCHEDULE A1

#### [<sup>F1</sup>HOSPITAL AND CARE HOME RESIDENTS: DEPRIVATION OF LIBERTY]

##### Textual Amendments

- F1** Sch. A1 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 4

##### STANDARD AUTHORISATIONS

###### *Best interests assessment*

- 39 (1) In carrying out a best interests assessment, the assessor must comply with the duties in sub-paragraphs (2) and (3).
- (2) The assessor must consult the managing authority of the relevant hospital or care home.
- (3) The assessor must have regard to all of the following—
- (a) the conclusions which the mental health assessor has notified to the best interests assessor in accordance with paragraph 36(b);
  - (b) any relevant needs assessment;
  - (c) any relevant care plan.
- (4) A relevant needs assessment is an assessment of the relevant person's needs which—
- (a) was carried out in connection with the relevant person being accommodated in the relevant hospital or care home, and
  - (b) was carried out by or on behalf of—
    - (i) the managing authority of the relevant hospital or care home, or
    - (ii) the supervisory body.
- (5) A relevant care plan is a care plan which—
- (a) sets out how the relevant person's needs are to be met whilst he is accommodated in the relevant hospital or care home, and
  - (b) was drawn up by or on behalf of—
    - (i) the managing authority of the relevant hospital or care home, or
    - (ii) the supervisory body.
- (6) The managing authority must give the assessor a copy of—
- (a) any relevant needs assessment carried out by them or on their behalf, or

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- (b) any relevant care plan drawn up by them or on their behalf.
- (7) The supervisory body must give the assessor a copy of—
- (a) any relevant needs assessment carried out by them or on their behalf, or
  - (b) any relevant care plan drawn up by them or on their behalf.
- (8) The duties in sub-paragraphs (2) and (3) do not affect any other duty to consult or to take the views of others into account.]

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