

**Changes to legislation:** *Mental Capacity Act 2005, Part 12 is up to date with all changes known to be in force on or before 23 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 A1 **E+W**

#### [<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 12 **E+W**

#### MISCELLANEOUS

##### *Monitoring of operation of Schedule*

- 162 (1) Regulations may make provision for, and in connection with, requiring one or more prescribed bodies to monitor, and report on, the operation of this Schedule in relation to England.
- (2) The regulations may, in particular, give a prescribed body authority to do one or more of the following things—
- (a) to visit hospitals and care homes;
  - (b) to visit and interview persons accommodated in hospitals and care homes;
  - (c) to require the production of, and to inspect, records relating to the care or treatment of persons.
- (3) “Prescribed” means prescribed in regulations under this paragraph.
- 163 (1) Regulations may make provision for, and in connection with, enabling the National Assembly for Wales to monitor, and report on, the operation of this Schedule in relation to Wales.
- (2) The National Assembly may direct one or more persons or bodies to carry out the Assembly's functions under regulations under this paragraph.

##### *Disclosure of information*

- 164 (1) Regulations may require either or both of the following to disclose prescribed information to prescribed bodies—
- (a) supervisory bodies;
  - (b) managing authorities of hospitals or care homes.
- (2) “Prescribed” means prescribed in regulations under this paragraph.

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- (3) Regulations under this paragraph may only prescribe information relating to matters with which this Schedule is concerned.

*Directions by National Assembly in relation to supervisory functions*

- 165 (1) The National Assembly for Wales may direct a Local Health Board to exercise in relation to its area any supervisory functions which are specified in the direction.
- (2) Directions under this paragraph must not preclude the National Assembly from exercising the functions specified in the directions.
- (3) In this paragraph “supervisory functions” means functions which the National Assembly have as supervisory body, so far as they are exercisable in relation to hospitals (whether NHS or independent hospitals, and whether in Wales or England).
- 166 (1) This paragraph applies where, under paragraph 165, a Local Health Board (“the specified LHB”) is directed to exercise supervisory functions (“delegated functions”).
- (2) The National Assembly for Wales may give directions to the specified LHB about the Board's exercise of delegated functions.
- (3) The National Assembly may give directions for any delegated functions to be exercised, on behalf of the specified LHB, by a committee, sub-committee or officer of that Board.
- (4) The National Assembly may give directions providing for any delegated functions to be exercised by the specified LHB jointly with one or more other Local Health Boards.
- (5) Where, under sub-paragraph (4), delegated functions are exercisable jointly, the National Assembly may give directions providing for the functions to be exercised, on behalf of the Local Health Boards in question, by a joint committee or joint sub-committee.
- 167 (1) Directions under paragraph 165 must be given in regulations.
- (2) Directions under paragraph 166 may be given—
- (a) in regulations, or
- (b) by instrument in writing.
- 168 The power under paragraph 165 or paragraph 166 to give directions includes power to vary or revoke directions given under that paragraph.

*Notices*

- 169 Any notice under this Schedule must be in writing.

*Regulations*

- 170 (1) This paragraph applies to all regulations under this Schedule, except regulations under paragraph 162, 163, 167 or 183.
- (2) It is for the Secretary of State to make such regulations in relation to authorisations under this Schedule which relate to hospitals and care homes situated in England.

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- (3) It is for the National Assembly for Wales to make such regulations in relation to authorisations under this Schedule which relate to hospitals and care homes situated in Wales.
- 171 It is for the Secretary of State to make regulations under paragraph 162.
- 172 It is for the National Assembly for Wales to make regulations under paragraph 163 or 167.
- 173 (1) This paragraph applies to regulations under paragraph 183.
- (2) It is for the Secretary of State to make such regulations in relation to cases where a question as to the ordinary residence of a person is to be determined by the Secretary of State.
- (3) It is for the National Assembly for Wales to make such regulations in relation to cases where a question as to the ordinary residence of a person is to be determined by the National Assembly.]

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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\(b\)](#)