

*Status: Point in time view as at 16/05/2019.*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 4. (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

###### *Supervisory body to give authorisation*

- 21 Only the supervisory body may give a standard authorisation.
- 22 The supervisory body may not give a standard authorisation unless—
- (a) the managing authority of the relevant hospital or care home have requested it, or
  - (b) paragraph 71 applies (right of third party to require consideration of whether authorisation needed).
- 23 The managing authority may not make a request for a standard authorisation unless—
- (a) they are required to do so by paragraph 24 (as read with paragraphs 27 to 29),
  - (b) they are required to do so by paragraph 25 (as read with paragraph 28), or
  - (c) they are permitted to do so by paragraph 30.

###### *Duty to request authorisation: basic cases*

- 24 (1) The managing authority must request a standard authorisation in any of the following cases.
- (2) The first case is where it appears to the managing authority that the relevant person—
- (a) is not yet accommodated in the relevant hospital or care home,
  - (b) is likely — at some time within the next 28 days — to be a detained resident in the relevant hospital or care home, and
  - (c) is likely—
    - (i) at that time, or
    - (ii) at some later time within the next 28 days,to meet all of the qualifying requirements.

*Status: Point in time view as at 16/05/2019.*

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- (3) The second case is where it appears to the managing authority that the relevant person—
- (a) is already accommodated in the relevant hospital or care home,
  - (b) is likely — at some time within the next 28 days — to be a detained resident in the relevant hospital or care home, and
  - (c) is likely—
    - (i) at that time, or
    - (ii) at some later time within the next 28 days,
 to meet all of the qualifying requirements.
- (4) The third case is where it appears to the managing authority that the relevant person—
- (a) is a detained resident in the relevant hospital or care home, and
  - (b) meets all of the qualifying requirements, or is likely to do so at some time within the next 28 days.
- (5) This paragraph is subject to paragraphs 27 to 29.

*Duty to request authorisation: change in place of detention*

- 25 (1) The relevant managing authority must request a standard authorisation if it appears to them that these conditions are met.
- (2) The first condition is that a standard authorisation—
- (a) has been given, and
  - (b) has not ceased to be in force.
- (3) The second condition is that there is, or is to be, a change in the place of detention.
- (4) This paragraph is subject to paragraph 28.
- 26 (1) This paragraph applies for the purposes of paragraph 25.
- (2) There is a change in the place of detention if the relevant person—
- (a) ceases to be a detained resident in the stated hospital or care home, and
  - (b) becomes a detained resident in a different hospital or care home (“the new hospital or care home”).
- (3) The stated hospital or care home is the hospital or care home to which the standard authorisation relates.
- (4) The relevant managing authority are the managing authority of the new hospital or care home.

*Other authority for detention: request for authorisation*

- 27 (1) This paragraph applies if, by virtue of section 4A(3), a decision of the court authorises the relevant person to be a detained resident.
- (2) Paragraph 24 does not require a request for a standard authorisation to be made in relation to that detention unless these conditions are met.
- (3) The first condition is that the standard authorisation would be in force at a time immediately after the expiry of the other authority.

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- (4) The second condition is that the standard authorisation would not be in force at any time on or before the expiry of the other authority.
- (5) The third condition is that it would, in the managing authority's view, be unreasonable to delay making the request until a time nearer the expiry of the other authority.
- (6) In this paragraph—
  - (a) the other authority is—
    - (i) the decision mentioned in sub-paragraph (1), or
    - (ii) any further decision of the court which, by virtue of section 4A(3), authorises, or is expected to authorise, the relevant person to be a detained resident;
  - (b) the expiry of the other authority is the time when the other authority is expected to cease to authorise the relevant person to be a detained resident.

*Request refused: no further request unless change of circumstances*

- 28
- (1) This paragraph applies if—
    - (a) a managing authority request a standard authorisation under paragraph 24 or 25, and
    - (b) the supervisory body are prohibited by paragraph 50(2) from giving the authorisation.
  - (2) Paragraph 24 or 25 does not require that managing authority to make a new request for a standard authorisation unless it appears to the managing authority that—
    - (a) there has been a change in the relevant person's case, and
    - (b) because of that change, the supervisory body are likely to give a standard authorisation if requested.

*Authorisation given: request for further authorisation*

- 29
- (1) This paragraph applies if a standard authorisation—
    - (a) has been given in relation to the detention of the relevant person, and
    - (b) that authorisation (“the existing authorisation”) has not ceased to be in force.
  - (2) Paragraph 24 does not require a new request for a standard authorisation (“the new authorisation”) to be made unless these conditions are met.
  - (3) The first condition is that the new authorisation would be in force at a time immediately after the expiry of the existing authorisation.
  - (4) The second condition is that the new authorisation would not be in force at any time on or before the expiry of the existing authorisation.
  - (5) The third condition is that it would, in the managing authority's view, be unreasonable to delay making the request until a time nearer the expiry of the existing authorisation.
  - (6) The expiry of the existing authorisation is the time when it is expected to cease to be in force.

*Power to request authorisation*

- 30
- (1) This paragraph applies if—

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- (a) a standard authorisation has been given in relation to the detention of the relevant person,
  - (b) that authorisation (“the existing authorisation”) has not ceased to be in force,
  - (c) the requirement under paragraph 24 to make a request for a new standard authorisation does not apply, because of paragraph 29, and
  - (d) a review of the existing authorisation has been requested, or is being carried out, in accordance with Part 8.
- (2) The managing authority may request a new standard authorisation which would be in force on or before the expiry of the existing authorisation; but only if it would also be in force immediately after that expiry.
- (3) The expiry of the existing authorisation is the time when it is expected to cease to be in force.
- (4) Further provision relating to cases where a request is made under this paragraph can be found in—
- (a) paragraph 62 (effect of decision about request), and
  - (b) paragraph 124 (effect of request on Part 8 review).

*Information included in request*

- 31 A request for a standard authorisation must include the information (if any) required by regulations.

*Records of requests*

- 32 (1) The managing authority of a hospital or care home must keep a written record of—
- (a) each request that they make for a standard authorisation, and
  - (b) the reasons for making each request.
- (2) A supervisory body must keep a written record of each request for a standard authorisation that is made to them.

*Relevant person must be assessed*

- 33 (1) This paragraph applies if the supervisory body are requested to give a standard authorisation.
- (2) The supervisory body must secure that all of these assessments are carried out in relation to the relevant person—
- (a) an age assessment;
  - (b) a mental health assessment;
  - (c) a mental capacity assessment;
  - (d) a best interests assessment;
  - (e) an eligibility assessment;
  - (f) a no refusals assessment.
- (3) The person who carries out any such assessment is referred to as the assessor.
- (4) Regulations may be made about the period (or periods) within which assessors must carry out assessments.

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(5) This paragraph is subject to paragraphs 49 and 133.

*Age assessment*

34 An age assessment is an assessment of whether the relevant person meets the age requirement.

*Mental health assessment*

35 A mental health assessment is an assessment of whether the relevant person meets the mental health requirement.

36 When carrying out a mental health assessment, the assessor must also—  
(a) consider how (if at all) the relevant person's mental health is likely to be affected by his being a detained resident, and  
(b) notify the best interests assessor of his conclusions.

*Mental capacity assessment*

37 A mental capacity assessment is an assessment of whether the relevant person meets the mental capacity requirement.

*Best interests assessment*

38 A best interests assessment is an assessment of whether the relevant person meets the best interests requirement.

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.

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

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- (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
  - (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.
- 40 (1) This paragraph applies whatever conclusion the best interests assessment comes to.
- (2) The assessor must state in the best interests assessment the name and address of every interested person whom he has consulted in carrying out the assessment.
- 41 Paragraphs 42 and 43 apply if the best interests assessment comes to the conclusion that the relevant person meets the best interests requirement.
- 42 (1) The assessor must state in the assessment the maximum authorisation period.
- (2) The maximum authorisation period is the shorter of these periods—
- (a) the period which, in the assessor's opinion, would be the appropriate maximum period for the relevant person to be a detained resident under the standard authorisation that has been requested;
  - (b) 1 year, or such shorter period as may be prescribed in regulations.
- (3) Regulations under sub-paragraph (2)(b)—
- (a) need not provide for a shorter period to apply in relation to all standard authorisations;
  - (b) may provide for different periods to apply in relation to different kinds of standard authorisations.
- (4) Before making regulations under sub-paragraph (2)(b) the Secretary of State must consult all of the following—
- (a) each body required by regulations under paragraph 162 to monitor and report on the operation of this Schedule in relation to England;
  - (b) such other persons as the Secretary of State considers it appropriate to consult.
- (5) Before making regulations under sub-paragraph (2)(b) the National Assembly for Wales must consult all of the following—
- (a) each person or body directed under paragraph 163(2) to carry out any function of the Assembly of monitoring and reporting on the operation of this Schedule in relation to Wales;
  - (b) such other persons as the Assembly considers it appropriate to consult.
- 43 The assessor may include in the assessment recommendations about conditions to which the standard authorisation is, or is not, to be subject in accordance with paragraph 53.
- 44 (1) This paragraph applies if the best interests assessment comes to the conclusion that the relevant person does not meet the best interests requirement.

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- (2) If, on the basis of the information taken into account in carrying out the assessment, it appears to the assessor that there is an unauthorised deprivation of liberty, he must include a statement to that effect in the assessment.
- (3) There is an unauthorised deprivation of liberty if the managing authority of the relevant hospital or care home are already depriving the relevant person of his liberty without authority of the kind mentioned in section 4A.

45 The duties with which the best interests assessor must comply are subject to the provision included in appointment regulations under Part 10 (in particular, provision made under paragraph 146).

#### *Eligibility assessment*

46 An eligibility assessment is an assessment of whether the relevant person meets the eligibility requirement.

- 47 (1) Regulations may—
- (a) require an eligibility assessor to request a best interests assessor to provide relevant eligibility information, and
  - (b) require the best interests assessor, if such a request is made, to provide such relevant eligibility information as he may have.

- (2) In this paragraph—
- “best interests assessor” means any person who is carrying out, or has carried out, a best interests assessment in relation to the relevant person;
  - “eligibility assessor” means a person carrying out an eligibility assessment in relation to the relevant person;

#### *No refusals assessment*

48 A no refusals assessment is an assessment of whether the relevant person meets the no refusals requirement.

#### *Equivalent assessment already carried out*

- 49 (1) The supervisory body are not required by paragraph 33 to secure that a particular kind of assessment (“the required assessment”) is carried out in relation to the relevant person if the following conditions are met.
- (2) The first condition is that the supervisory body have a written copy of an assessment of the relevant person (“the existing assessment”) that has already been carried out.
- (3) The second condition is that the existing assessment complies with all requirements under this Schedule with which the required assessment would have to comply (if it were carried out).
- (4) The third condition is that the existing assessment was carried out within the previous 12 months; but this condition need not be met if the required assessment is an age assessment.
- (5) The fourth condition is that the supervisory body are satisfied that there is no reason why the existing assessment may no longer be accurate.

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- (6) If the required assessment is a best interests assessment, in satisfying themselves as mentioned in sub-paragraph (5), the supervisory body must take into account any information given, or submissions made, by—
- (a) the relevant person's representative,
  - (b) any section 39C IMCA, or
  - (c) any section 39D IMCA.
- (7) It does not matter whether the existing assessment was carried out in connection with a request for a standard authorisation or for some other purpose.
- (8) If, because of this paragraph, the supervisory body are not required by paragraph 33 to secure that the required assessment is carried out, the existing assessment is to be treated for the purposes of this Schedule—
- (a) as an assessment of the same kind as the required assessment, and
  - (b) as having been carried out under paragraph 33 in connection with the request for the standard authorisation.

*Duty to give authorisation*

- 50 (1) The supervisory body must give a standard authorisation if—
- (a) all assessments are positive, and
  - (b) the supervisory body have written copies of all those assessments.
- (2) The supervisory body must not give a standard authorisation except in accordance with sub-paragraph (1).
- (3) All assessments are positive if each assessment carried out under paragraph 33 has come to the conclusion that the relevant person meets the qualifying requirement to which the assessment relates.

*Terms of authorisation*

- 51 (1) If the supervisory body are required to give a standard authorisation, they must decide the period during which the authorisation is to be in force.
- (2) That period must not exceed the maximum authorisation period stated in the best interests assessment.
- 52 A standard authorisation may provide for the authorisation to come into force at a time after it is given.
- 53 (1) A standard authorisation may be given subject to conditions.
- (2) Before deciding whether to give the authorisation subject to conditions, the supervisory body must have regard to any recommendations in the best interests assessment about such conditions.
- (3) The managing authority of the relevant hospital or care home must ensure that any conditions are complied with.

*Form of authorisation*

- 54 A standard authorisation must be in writing.
- 55 (1) A standard authorisation must state the following things—



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- (a) the name of the relevant person;
  - (b) the name of the relevant hospital or care home;
  - (c) the period during which the authorisation is to be in force;
  - (d) the purpose for which the authorisation is given;
  - (e) any conditions subject to which the authorisation is given;
  - (f) the reason why each qualifying requirement is met.
- (2) The statement of the reason why the eligibility requirement is met must be framed by reference to the cases in the table in paragraph 2 of Schedule 1A.
- 56 (1) If the name of the relevant hospital or care home changes, the standard authorisation is to be read as if it stated the current name of the hospital or care home.
- (2) But sub-paragraph (1) is subject to any provision relating to the change of name which is made in any enactment or in any instrument made under an enactment.

*Duty to give information about decision*

- 57 (1) This paragraph applies if—
- (a) a request is made for a standard authorisation, and
  - (b) the supervisory body are required by paragraph 50(1) to give the standard authorisation.
- (2) The supervisory body must give a copy of the authorisation to each of the following—
- (a) the relevant person's representative;
  - (b) the managing authority of the relevant hospital or care home;
  - (c) the relevant person;
  - (d) any section 39A IMCA;
  - (e) every interested person consulted by the best interests assessor.
- (3) The supervisory body must comply with this paragraph as soon as practicable after they give the standard authorisation.
- 58 (1) This paragraph applies if—
- (a) a request is made for a standard authorisation, and
  - (b) the supervisory body are prohibited by paragraph 50(2) from giving the standard authorisation.
- (2) The supervisory body must give notice, stating that they are prohibited from giving the authorisation, to each of the following—
- (a) the managing authority of the relevant hospital or care home;
  - (b) the relevant person;
  - (c) any section 39A IMCA;
  - (d) every interested person consulted by the best interests assessor.
- (3) The supervisory body must comply with this paragraph as soon as practicable after it becomes apparent to them that they are prohibited from giving the authorisation.

*Duty to give information about effect of authorisation*

- 59 (1) This paragraph applies if a standard authorisation is given.

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

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- (2) The managing authority of the relevant hospital or care home must take such steps as are practicable to ensure that the relevant person understands all of the following—
  - (a) the effect of the authorisation;
  - (b) the right to make an application to the court to exercise its jurisdiction under section 21A;
  - (c) the right under Part 8 to request a review;
  - (d) the right to have a section 39D IMCA appointed;
  - (e) how to have a section 39D IMCA appointed.
- (3) Those steps must be taken as soon as is practicable after the authorisation is given.
- (4) Those steps must include the giving of appropriate information both orally and in writing.
- (5) Any written information given to the relevant person must also be given by the managing authority to the relevant person's representative.
- (6) They must give the information to the representative as soon as is practicable after it is given to the relevant person.
- (7) Sub-paragraph (8) applies if the managing authority is notified that a section 39D IMCA has been appointed.
- (8) As soon as is practicable after being notified, the managing authority must give the section 39D IMCA a copy of the written information given in accordance with sub-paragraph (4).

#### *Records of authorisations*

- 60 A supervisory body must keep a written record of all of the following information—
- (a) the standard authorisations that they have given;
  - (b) the requests for standard authorisations in response to which they have not given an authorisation;
  - (c) in relation to each standard authorisation given: the matters stated in the authorisation in accordance with paragraph 55.

#### *Variation of an authorisation*

- 61 (1) A standard authorisation may not be varied except in accordance with Part 7 or 8.
- (2) This paragraph does not affect the powers of the Court of Protection or of any other court.

#### *Effect of decision about request made under paragraph 25 or 30*

- 62 (1) This paragraph applies where the managing authority request a new standard authorisation under either of the following—
- (a) paragraph 25 (change in place of detention);
  - (b) paragraph 30 (existing authorisation subject to review).
- (2) If the supervisory body are required by paragraph 50(1) to give the new authorisation, the existing authorisation terminates at the time when the new authorisation comes into force.

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---

- (3) If the supervisory body are prohibited by paragraph 50(2) from giving the new authorisation, there is no effect on the existing authorisation's continuation in force.

*When an authorisation is in force*

- 63 (1) A standard authorisation comes into force when it is given.
- (2) But if the authorisation provides for it to come into force at a later time, it comes into force at that time.
- 64 (1) A standard authorisation ceases to be in force at the end of the period stated in the authorisation in accordance with paragraph 55(1)(c).
- (2) But if the authorisation terminates before then in accordance with paragraph 62(2) or any other provision of this Schedule, it ceases to be in force when the termination takes effect.
- (3) This paragraph does not affect the powers of the Court of Protection or of any other court.
- 65 (1) This paragraph applies if a standard authorisation ceases to be in force.
- (2) The supervisory body must give notice that the authorisation has ceased to be in force.
- (3) The supervisory body must give that notice to all of the following—
- (a) the managing authority of the relevant hospital or care home;
  - (b) the relevant person;
  - (c) the relevant person's representative;
  - (d) every interested person consulted by the best interests assessor.
- (4) The supervisory body must give that notice as soon as practicable after the authorisation ceases to be in force.

*When a request for a standard authorisation is “disposed of”*

- 66 A request for a standard authorisation is to be regarded for the purposes of this Schedule as disposed of if the supervisory body have given—
- (a) a copy of the authorisation in accordance with paragraph 57, or
  - (b) notice in accordance with paragraph 58.

*Right of third party to require consideration of whether authorisation needed*

- 67 For the purposes of paragraphs 68 to 73 there is an unauthorised deprivation of liberty if—
- (a) a person is already a detained resident in a hospital or care home, and
  - (b) the detention of the person is not authorised as mentioned in section 4A.
- 68 (1) If the following conditions are met, an eligible person may request the supervisory body to decide whether or not there is an unauthorised deprivation of liberty.
- (2) The first condition is that the eligible person has notified the managing authority of the relevant hospital or care home that it appears to the eligible person that there is an unauthorised deprivation of liberty.

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- (3) The second condition is that the eligible person has asked the managing authority to request a standard authorisation in relation to the detention of the relevant person.
- (4) The third condition is that the managing authority has not requested a standard authorisation within a reasonable period after the eligible person asks it to do so.
- (5) In this paragraph “eligible person” means any person other than the managing authority of the relevant hospital or care home.
- 69 (1) This paragraph applies if an eligible person requests the supervisory body to decide whether or not there is an unauthorised deprivation of liberty.
- (2) The supervisory body must select and appoint a person to carry out an assessment of whether or not the relevant person is a detained resident.
- (3) But the supervisory body need not select and appoint a person to carry out such an assessment in either of these cases.
- (4) The first case is where it appears to the supervisory body that the request by the eligible person is frivolous or vexatious.
- (5) The second case is where it appears to the supervisory body that—
- (a) the question of whether or not there is an unauthorised deprivation of liberty has already been decided, and
  - (b) since that decision, there has been no change of circumstances which would merit the question being decided again.
- (6) The supervisory body must not select and appoint a person to carry out an assessment under this paragraph unless it appears to the supervisory body that the person would be—
- (a) suitable to carry out a best interests assessment (if one were obtained in connection with a request for a standard authorisation relating to the relevant person), and
  - (b) eligible to carry out such a best interests assessment.
- (7) The supervisory body must notify the persons specified in sub-paragraph (8)—
- (a) that the supervisory body have been requested to decide whether or not there is an unauthorised deprivation of liberty;
  - (b) of their decision whether or not to select and appoint a person to carry out an assessment under this paragraph;
  - (c) if their decision is to select and appoint a person, of the person appointed.
- (8) The persons referred to in sub-paragraph (7) are—
- (a) the eligible person who made the request under paragraph 68;
  - (b) the person to whom the request relates;
  - (c) the managing authority of the relevant hospital or care home;
  - (d) any section 39A IMCA.
- 70 (1) Regulations may be made about the period within which an assessment under paragraph 69 must be carried out.
- (2) Regulations made under paragraph 129(3) apply in relation to the selection and appointment of a person under paragraph 69 as they apply to the selection of a person under paragraph 129 to carry out a best interests assessment.

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- (3) The following provisions apply to an assessment under paragraph 69 as they apply to an assessment carried out in connection with a request for a standard authorisation—
- (a) paragraph 131 (examination and copying of records);
  - (b) paragraph 132 (representations);
  - (c) paragraphs 134 and 135(1) and (2) (duty to keep records and give copies).
- (4) The copies of the assessment which the supervisory body are required to give under paragraph 135(2) must be given as soon as practicable after the supervisory body are themselves given a copy of the assessment.
- 71 (1) This paragraph applies if—
- (a) the supervisory body obtain an assessment under paragraph 69,
  - (b) the assessment comes to the conclusion that the relevant person is a detained resident, and
  - (c) it appears to the supervisory body that the detention of the person is not authorised as mentioned in section 4A.
- (2) This Schedule (including Part 5) applies as if the managing authority of the relevant hospital or care home had, in accordance with Part 4, requested the supervisory body to give a standard authorisation in relation to the relevant person.
- (3) The managing authority of the relevant hospital or care home must supply the supervisory body with the information (if any) which the managing authority would, by virtue of paragraph 31, have had to include in a request for a standard authorisation.
- (4) The supervisory body must notify the persons specified in paragraph 69(8)—
- (a) of the outcome of the assessment obtained under paragraph 69, and
  - (b) that this Schedule applies as mentioned in sub-paragraph (2).
- 72 (1) This paragraph applies if—
- (a) the supervisory body obtain an assessment under paragraph 69, and
  - (b) the assessment comes to the conclusion that the relevant person is not a detained resident.
- (2) The supervisory body must notify the persons specified in paragraph 69(8) of the outcome of the assessment.
- 73 (1) This paragraph applies if—
- (a) the supervisory body obtain an assessment under paragraph 69,
  - (b) the assessment comes to the conclusion that the relevant person is a detained resident, and
  - (c) it appears to the supervisory body that the detention of the person is authorised as mentioned in section 4A.
- (2) The supervisory body must notify the persons specified in paragraph 69(8)—
- (a) of the outcome of the assessment, and
  - (b) that it appears to the supervisory body that the detention is authorised.]

**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 4.