

## SCHEDULES

### [<sup>F1</sup>SCHEDULE AA1

#### DEPRIVATION OF LIBERTY: AUTHORISATION OF ARRANGEMENTS ENABLING CARE AND TREATMENT

##### Textual Amendments

- F1** Sch. AA1 inserted (16.5.2019 for specified purposes) by [Mental Capacity \(Amendment\) Act 2019 \(c. 18\)](#), s. 6(3), [Sch. 1](#)

### PART 2

#### AUTHORISATION OF ARRANGEMENTS

##### *Determinations made on capacity and medical assessments*

- 21 (1) The determinations required by this paragraph are—
- (a) a determination made on an assessment in respect of the cared-for person, that the person lacks capacity to consent to the arrangements, and
  - (b) a determination made on an assessment in respect of the cared-for person, that the person has a mental disorder.
- (2) The person who makes the determination need not be the same as the person who carries out the assessment.
- (3) The appropriate authority may by regulations make provision for requirements which must be met by a person—
- (a) making a determination, or
  - (b) carrying out an assessment,
- under this paragraph.
- (4) Regulations under sub-paragraph (3) may make different provision—
- (a) for determinations and assessments, and
  - (b) for determinations and assessments required under sub-paragraph (1)(a) and determinations and assessments required under sub-paragraph (1)(b).
- (5) But if the arrangements are care home arrangements and authorisation is being determined under paragraph 19, an assessment may not be carried out by a person who has a connection, of a kind prescribed by regulations, with a care home.
- (6) Regulations made by the appropriate authority under sub-paragraph (5)—
- (a) may make provision about a connection of any kind (financial or otherwise), and

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*Changes to legislation: There are currently no known outstanding effects for the Mental Capacity Act 2005, Paragraph 21. (See end of Document for details)*

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- (b) may make different provision for assessments under sub-paragraph (1)(a) and sub-paragraph (1)(b).
- (7) The “appropriate authority” means—
  - (a) where the determination or assessment is in relation to an authorisation by an English responsible body, the Secretary of State, and
  - (b) where the determination or assessment is in relation to an authorisation by a Welsh responsible body, the Welsh Ministers.
- (8) An assessment may be one carried out for an earlier authorisation or for any other purpose, provided that it appears to the relevant person that it is reasonable to rely on the assessment.
- (9) The relevant person must have regard to—
  - (a) the length of time since the assessment was carried out;
  - (b) the purpose for which the assessment was carried out;
  - (c) whether there has been a change in the cared-for person’s condition that is likely to affect the determination made on the assessment.
- (10) In this paragraph “relevant person” means—
  - (a) the care home manager, if the arrangements are care home arrangements and authorisation is being determined under paragraph 19, or
  - (b) the responsible body, in any other case.]

**Changes to legislation:**

There are currently no known outstanding effects for the Mental Capacity Act 2005, Paragraph 21.