

Status: Point in time view as at 16/05/2019.

Changes to legislation: There are currently no known outstanding effects for the Mental Health Act 2007, SCHEDULE 8. (See end of Document for details)

SCHEDULES

SCHEDULE 8

Section 50

MENTAL CAPACITY ACT 2005: NEW SCHEDULE 1A

After Schedule 1 to the Mental Capacity Act 2005 (c. 9) insert—

“SCHEDULE 1A

PERSONS INELIGIBLE TO BE DEPRIVED OF LIBERTY BY THIS ACT

PART 1

INELIGIBLE PERSONS

Application

- 1 This Schedule applies for the purposes of—
- (a) section 16A, and
 - (b) paragraph 17 of Schedule A1.

Determining ineligibility

- 2 A person (“P”) is ineligible to be deprived of liberty by this Act (“ineligible”) if—
- (a) P falls within one of the cases set out in the second column of the following table, and
 - (b) the corresponding entry in the third column of the table —or the provision, or one of the provisions, referred to in that entry — provides that he is ineligible.

	<i>Status of P</i>	<i>Determination of ineligibility</i>
<i>Case A</i>	P is— <ul style="list-style-type: none">(a) subject to the hospital treatment regime, and(b) detained in a hospital under that regime.	P is ineligible.
<i>Case B</i>	P is— <ul style="list-style-type: none">(a) subject to the hospital treatment regime, but(b) not detained in a hospital under that regime.	See paragraphs 3 and 4.

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<i>Case C</i>	P is subject to the community treatment regime.	See paragraphs 3 and 4.
<i>Case D</i>	P is subject to the guardianship regime.	See paragraphs 3 and 5.
<i>Case E</i>	P is— (a) within the scope of the Mental Health Act, but (b) not subject to any of the mental health regimes.	See paragraph 5.

Authorised course of action not in accordance with regime

- 3 (1) This paragraph applies in cases B, C and D in the table in paragraph 2.
- (2) P is ineligible if the authorised course of action is not in accordance with a requirement which the relevant regime imposes.
- (3) That includes any requirement as to where P is, or is not, to reside.
- (4) The relevant regime is the mental health regime to which P is subject.

Treatment for mental disorder in a hospital

- 4 (1) This paragraph applies in cases B and C in the table in paragraph 2.
- (2) P is ineligible if the relevant care or treatment consists in whole or in part of medical treatment for mental disorder in a hospital.

P objects to being a mental health patient etc

- 5 (1) This paragraph applies in cases D and E in the table in paragraph 2.
- (2) P is ineligible if the following conditions are met.
- (3) The first condition is that the relevant instrument authorises P to be a mental health patient.
- (4) The second condition is that P objects—
- (a) to being a mental health patient, or
 - (b) to being given some or all of the mental health treatment.
- (5) The third condition is that a donee or deputy has not made a valid decision to consent to each matter to which P objects.
- (6) In determining whether or not P objects to something, regard must be had to all the circumstances (so far as they are reasonably ascertainable), including the following—
- (a) P's behaviour;
 - (b) P's wishes and feelings;
 - (c) P's views, beliefs and values.

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- (7) But regard is to be had to circumstances from the past only so far as it is still appropriate to have regard to them.

PART 2

INTERPRETATION

Application

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

Mental health regimes

- 7 The mental health regimes are—
- (a) the hospital treatment regime,
 - (b) the community treatment regime, and
 - (c) the guardianship regime.

Hospital treatment regime

- 8 (1) P is subject to the hospital treatment regime if he is subject to—
- (a) a hospital treatment obligation under the relevant enactment, or
 - (b) 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.

<i>Hospital treatment obligation</i>	<i>Relevant enactment</i>
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

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Transfer direction	Section 47
Transfer direction	Section 48
Hospital order	Section 51

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.
- (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—

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“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.

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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