

*Status: Point in time view as at 01/10/2007.*

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## SCHEDULES

### SCHEDULE 6 **E+W**

Section 67(1)

#### MINOR AND CONSEQUENTIAL AMENDMENTS

##### *Fines and Recoveries Act 1833 (c. 74)*

- 1 (1) The Fines and Recoveries Act 1833 (c. 74) is amended as follows.
- (2) In section 33 (case where protector of settlement lacks capacity to act), for the words from “shall be incapable” to “is incapable as aforesaid” substitute “ lacks capacity (within the meaning of the Mental Capacity Act 2005) to manage his property and affairs, the Court of Protection is to take his place as protector of the settlement while he lacks capacity ”.
- (3) In sections 48 and 49 (mental health jurisdiction), for each reference to the judge having jurisdiction under Part 7 of the Mental Health Act substitute a reference to the Court of Protection.

##### *Improvement of Land Act 1864 (c. 114)*

- 2 In section 68 of the Improvement of Land Act 1864 (c. 114) (apportionment of rentcharges)—
  - (a) for “, curator, or receiver of” substitute “ or curator of, or a deputy with powers in relation to property and affairs appointed by the Court of Protection for, ”, and
  - (b) for “or patient within the meaning of Part VII of the Mental Health Act 1983” substitute “ person who lacks capacity (within the meaning of the Mental Capacity Act 2005) to receive the notice ”.

##### *Trustee Act 1925 (c. 19)*

- 3 (1) The Trustee Act 1925 (c. 19) is amended as follows.
- (2) In section 36 (appointment of new trustee)—
  - (a) in subsection (6C), for the words from “a power of attorney” to the end, substitute “ an enduring power of attorney or lasting power of attorney registered under the Mental Capacity Act 2005 ”, and
  - (b) in subsection (9)—
    - (i) for the words from “is incapable” to “exercising” substitute “ lacks capacity to exercise ”, and
    - (ii) for the words from “the authority” to the end substitute “ the Court of Protection ”.
- (3) In section 41(1) (power of court to appoint new trustee) for the words from “is incapable” to “exercising” substitute “ lacks capacity to exercise ”.

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- (4) In section 54 (mental health jurisdiction)—
- (a) for subsection (1) substitute—
- “(1) Subject to subsection (2), the Court of Protection may not make an order, or give a direction or authority, in relation to a person who lacks capacity to exercise his functions as trustee, if the High Court may make an order to that effect under this Act.”,
- (b) in subsection (2)—
- (i) for the words from the beginning to “of a receiver” substitute “Where a person lacks capacity to exercise his functions as a trustee and a deputy is appointed for him by the Court of Protection or an application for the appointment of a deputy”,
- (ii) for “the said authority”, in each place, substitute “the Court of Protection”, and
- (iii) for “the patient”, in each place, substitute “the person concerned”, and
- (c) omit subsection (3).
- (5) In section 55 (order made on particular allegation to be conclusive evidence of it)—
- (a) for the words from “Part VII” to “Northern Ireland” substitute “sections 15 to 20 of the Mental Capacity Act 2005 or any corresponding provisions having effect in Northern Ireland”, and
- (b) for paragraph (a) substitute—
- “(a) that a trustee or mortgagee lacks capacity in relation to the matter in question.”.
- (6) In section 68 (definitions), at the end add—
- “(3) Any reference in this Act to a person who lacks capacity in relation to a matter is to a person—
- (a) who lacks capacity within the meaning of the Mental Capacity Act 2005 in relation to that matter, or
- (b) in respect of whom the powers conferred by section 48 of that Act are exercisable and have been exercised in relation to that matter.”.

*Law of Property Act 1925 (c. 20)*

- 4 (1) The Law of Property Act 1925 (c. 20) is amended as follows.
- (2) In section 22 (conveyances on behalf of persons who lack capacity)—
- (a) in subsection (1)—
- (i) for the words from “in a person suffering” to “is acting” substitute “, either solely or jointly with any other person or persons, in a person lacking capacity (within the meaning of the Mental Capacity Act 2005) to convey or create a legal estate, a deputy appointed for him by the Court of Protection or (if no deputy is appointed”, and
- (ii) for “the authority having jurisdiction under Part VII of the Mental Health Act 1983” substitute “the Court of Protection”,
- (b) in subsection (2), for “is incapable, by reason of mental disorder, of exercising” substitute “lacks capacity (within the meaning of that Act) to exercise”, and

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- (c) in subsection (3), for the words from “an enduring power” to the end substitute “ an enduring power of attorney or lasting power of attorney (within the meaning of the 2005 Act) is entitled to act for the trustee who lacks capacity in relation to the dealing. ”.

- (3) In section 205(1) (interpretation), omit paragraph (xiii).

*Administration of Estates Act 1925 (c. 23)*

- 5 (1) The Administration of Estates Act 1925 (c. 23) is amended as follows.
- (2) In section 41(1) (powers of personal representatives to appropriate), in the proviso—
  - (a) in paragraph (ii)—
    - (i) for the words from “is incapable” to “the consent” substitute “ lacks capacity (within the meaning of the Mental Capacity Act 2005) to give the consent, it ”, and
    - (ii) for “or receiver” substitute “ or a person appointed as deputy for him by the Court of Protection ”, and
  - (b) in paragraph (iv), for “no receiver is acting for a person suffering from mental disorder” substitute “ no deputy is appointed for a person who lacks capacity to consent ”.
- (3) Omit section 55(1)(viii) (definitions of “person of unsound mind” and “defective”).

*National Assistance Act 1948 (c. 29)*

- 6 In section 49 of the National Assistance Act 1948 (c. 29) (expenses of council officers acting for persons who lack capacity)—
  - (a) for the words from “applies” to “affairs of a patient” substitute “ applies for appointment by the Court of Protection as a deputy ”, and
  - (b) for “such functions” substitute “ his functions as deputy ”.

*U.S.A. Veterans' Pensions (Administration) Act 1949 (c. 45)*

- 7 In section 1 of the U.S.A. Veterans' Pensions (Administration) Act 1949 (c. 45) (administration of pensions)—
  - (a) in subsection (4), omit the words from “or for whom” to “1983”, and
  - (b) after subsection (4), insert—
    - “(4A) An agreement under subsection (1) is not to be made in relation to a person who lacks capacity (within the meaning of the Mental Capacity Act 2005) for the purposes of this Act if—
      - (a) there is a donee of an enduring power of attorney or lasting power of attorney (within the meaning of the 2005 Act), or a deputy appointed for the person by the Court of Protection, and
      - (b) the donee or deputy has power in relation to the person for the purposes of this Act.
    - (4B) The proviso at the end of subsection (4) also applies in relation to subsection (4A).”.

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*Intestates' Estates Act 1952 (c. 64)*

- 8 In Schedule 2 to the Intestates' Estates Act 1952 (c. 64) (rights of surviving spouse or civil partner in relation to home), for paragraph 6(1) substitute—

“(1) Where the surviving spouse or civil partner lacks capacity (within the meaning of the Mental Capacity Act 2005) to make a requirement or give a consent under this Schedule, the requirement or consent may be made or given by a deputy appointed by the Court of Protection with power in that respect or, if no deputy has that power, by that court.”.

*Variation of Trusts Act 1958 (c. 53)*

- 9 In section 1 of the Variation of Trusts Act 1958 (c. 53) (jurisdiction of courts to vary trusts)—

- (a) in subsection (3), for the words from “shall be determined” to the end substitute “ who lacks capacity (within the meaning of the Mental Capacity Act 2005) to give his assent is to be determined by the Court of Protection ”, and
- (b) in subsection (6), for the words from “the powers” to the end substitute “ the powers of the Court of Protection ”.

*Administration of Justice Act 1960 (c. 65)*

- 10 In section 12(1)(b) of the Administration of Justice Act 1960 (c. 65) (contempt of court to publish information about proceedings in private relating to persons with incapacity) for the words from “under Part VIII” to “that Act” substitute “ under the Mental Capacity Act 2005, or under any provision of the Mental Health Act 1983 ”.

*Industrial and Provident Societies Act 1965 (c. 12)*

- 11 In section 26 of the Industrial and Provident Societies Act 1965 (c. 12) (payments for mentally incapable people), for subsection (2) substitute—

“(2) Subsection (1) does not apply where the member or person concerned lacks capacity (within the meaning of the Mental Capacity Act 2005) for the purposes of this Act and—

- (a) there is a donee of an enduring power of attorney or lasting power of attorney (within the meaning of the 2005 Act), or a deputy appointed for the member or person by the Court of Protection, and
- (b) the donee or deputy has power in relation to the member or person for the purposes of this Act.”.

*Compulsory Purchase Act 1965 (c. 56)*

- 12 In Schedule 1 to the Compulsory Purchase Act 1965 (c. 56) (persons without power to sell their interests), for paragraph 1(2)(b) substitute—

“(b) do not have effect in relation to a person who lacks capacity (within the meaning of the Mental Capacity Act 2005) for the purposes of this Act if—

- (i) there is a donee of an enduring power of attorney or lasting power of attorney (within the meaning of the 2005 Act), or a

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- deputy appointed for the person by the Court of Protection,  
and  
(ii) the donee or deputy has power in relation to the person for  
the purposes of this Act.”.

*Leasehold Reform Act 1967 (c. 88)*

- 13 (1) For section 26(2) of the Leasehold Reform Act 1967 (c. 88) (landlord lacking capacity) substitute—
- “(2) Where a landlord lacks capacity (within the meaning of the Mental Capacity Act 2005) to exercise his functions as a landlord, those functions are to be exercised—
- (a) by a donee of an enduring power of attorney or lasting power of attorney (within the meaning of the 2005 Act), or a deputy appointed for him by the Court of Protection, with power to exercise those functions, or
- (b) if no donee or deputy has that power, by a person authorised in that respect by that court.”.
- (2) That amendment does not affect any proceedings pending at the commencement of this paragraph in which a receiver or a person authorised under Part 7 of the Mental Health Act is acting on behalf of the landlord.

*Medicines Act 1968 (c. 67)*

- 14 In section 72 of the Medicines Act 1968 (c. 67) (pharmacist lacking capacity)—
- (a) in subsection (1)(c), for the words from “a receiver” to “1959” substitute “he becomes a person who lacks capacity (within the meaning of the Mental Capacity Act 2005) to carry on the business ”,
- (b) after subsection (1) insert—
- “(1A) In subsection (1)(c), the reference to a person who lacks capacity to carry on the business is to a person—
- (a) in respect of whom there is a donee of an enduring power of attorney or lasting power of attorney (within the meaning of the Mental Capacity Act 2005), or
- (b) for whom a deputy is appointed by the Court of Protection, and in relation to whom the donee or deputy has power for the purposes of this Act.”,
- (c) in subsection (3)(d)—
- (i) for “receiver” substitute “deputy ”, and
- (ii) after “guardian” insert “ or from the date of registration of the instrument appointing the donee ”, and
- (d) in subsection (4)(c), for “receiver” substitute “ donee, deputy ”.

*Family Law Reform Act 1969 (c. 46)*

- 15 For section 21(4) of the Family Law Reform Act 1969 (c. 46) (consent required for taking of bodily sample from person lacking capacity), substitute—

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- “(4) A bodily sample may be taken from a person who lacks capacity (within the meaning of the Mental Capacity Act 2005) to give his consent, if consent is given by the court giving the direction under section 20 or by—
- (a) a donee of an enduring power of attorney or lasting power of attorney (within the meaning of that Act), or
  - (b) a deputy appointed, or any other person authorised, by the Court of Protection,
- with power in that respect.”.

*Local Authority Social Services Act 1970 (c. 42)*

- 16 (1) Schedule 1 to the Local Authority Social Services Act 1970 (c. 42) (enactments conferring functions assigned to social services committee) is amended as follows.
- (2) In the entry for section 49 of the National Assistance Act 1948 (expenses of local authority officer appointed for person who lacks capacity) for “receiver” substitute “deputy”.
- (3) At the end, insert—

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“Mental Capacity Act 2005

|            |  |
|------------|--|
| Section 39 | Instructing independent mental capacity advocate before providing accommodation for person lacking capacity. |
| Section 49 | Reports in proceedings.”.  |

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*Courts Act 1971 (c. 23)*

- 17 In Part 1A of Schedule 2 to the Courts Act 1971 (c. 23) (office-holders eligible for appointment as circuit judges), omit the reference to a Master of the Court of Protection.

*Local Government Act 1972 (c. 70)*

- 18 (1) Omit section 118 of the Local Government Act 1972 (c. 70) (payment of pension etc. where recipient lacks capacity).
- (2) Sub-paragraph (3) applies where, before the commencement of this paragraph, a local authority has, in respect of a person referred to in that section as “the patient”, made payments under that section—
- (a) to an institution or person having the care of the patient, or
  - (b) in accordance with subsection (1)(a) or (b) of that section.
- (3) The local authority may, in respect of the patient, continue to make payments under that section to that institution or person, or in accordance with subsection (1)(a) or (b) of that section, despite the repeal made by sub-paragraph (1).

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*Matrimonial Causes Act 1973 (c. 18)*

- 19 In section 40 of the Matrimonial Causes Act 1973 (c. 18) (payments to person who lacks capacity) (which becomes subsection (1))—
- (a) for the words from “is incapable” to “affairs” substitute “ (“P”) lacks capacity (within the meaning of the Mental Capacity Act 2005) in relation to the provisions of the order ”,
  - (b) for “that person under Part VIII of that Act” substitute “ P under that Act ”,
  - (c) for the words from “such persons” to the end substitute “ such person (“D”) as it may direct ”, and
  - (d) at the end insert—
    - “(2) In carrying out any functions of his in relation to an order made under subsection (1), D must act in P's best interests (within the meaning of that Act).”.

*Juries Act 1974 (c. 23)*

- 20 In Schedule 1 to the Juries Act 1974 (c. 23) (disqualification for jury service), for paragraph 3 substitute—
- “3 A person who lacks capacity, within the meaning of the Mental Capacity Act 2005, to serve as a juror.”.

*Consumer Credit Act 1974 (c. 39)*

- 21 For section 37(1)(c) of the Consumer Credit Act 1974 (c. 39) (termination of consumer credit licence if holder lacks capacity) substitute—
- “(c) becomes a person who lacks capacity (within the meaning of the Mental Capacity Act 2005) to carry on the activities covered by the licence.”.

*Solicitors Act 1974 (c. 47)*

- 22 (1) The Solicitors Act 1974 (c. 47) is amended as follows.
- (2) For section 12(1)(j) (application for practising certificate by solicitor lacking capacity) substitute—
- “(j) while he lacks capacity (within the meaning of the Mental Capacity Act 2005) to act as a solicitor and powers under sections 15 to 20 or section 48 of that Act are exercisable in relation to him;”.
- (3) In section 62(4) (contentious business agreements made by clients) for paragraphs (c) and (d) substitute—
- “(c) as a deputy for him appointed by the Court of Protection with powers in relation to his property and affairs, or
- (d) as another person authorised under that Act to act on his behalf.”.
- (4) In paragraph 1(1) of Schedule 1 (circumstances in which Law Society may intervene in solicitor's practice), for paragraph (f) substitute—

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- “(f) a solicitor lacks capacity (within the meaning of the Mental Capacity Act 2005) to act as a solicitor and powers under sections 15 to 20 or section 48 of that Act are exercisable in relation to him;”.

*Local Government (Miscellaneous Provisions) Act 1976 (c. 57)*

- 23 In section 31 of the Local Government (Miscellaneous Provisions) Act 1976 (c. 57) (the title to which becomes “Indemnities for local authority officers appointed as deputies or administrators”), for the words from “as a receiver” to “1959” substitute “ as a deputy for a person by the Court of Protection ”.

*Sale of Goods Act 1979 (c. 54)*

- 24 In section 3(2) of the Sale of Goods Act 1979 (c. 54) (capacity to buy and sell) the words “mental incapacity or” cease to have effect in England and Wales.

*Limitation Act 1980 (c. 58)*

- 25 In section 38 of the Limitation Act 1980 (c. 58) (interpretation) substitute—
- (a) in subsection (2) for “of unsound mind” substitute “ lacks capacity (within the meaning of the Mental Capacity Act 2005) to conduct legal proceedings ”, and
  - (b) omit subsections (3) and (4).

*Public Passenger Vehicles Act 1981 (c. 14)*

- 26 In section 57(2)(c) of the Public Passenger Vehicles Act 1981 (c. 14) (termination of public service vehicle licence if holder lacks capacity) for the words from “becomes a patient” to “or” substitute “ becomes a person who lacks capacity (within the meaning of the Mental Capacity Act 2005) to use a vehicle under the licence, or ”.

*Judicial Pensions Act 1981 (c. 20)*

- 27 In Schedule 1 to the Judicial Pensions Act 1981 (c. 20) (pensions of Supreme Court officers, etc.), in paragraph 1, omit the reference to a Master of the Court of Protection except in the case of a person holding that office immediately before the commencement of this paragraph or who had previously retired from that office or died.

*Supreme Court Act 1981 (c. 54)*

- 28 In Schedule 2 to the Supreme Court Act 1981 (c. 54) (qualifications for appointment to office in Supreme Court), omit paragraph 11 (Master of the Court of Protection).

*Mental Health Act 1983 (c. 20)*

- 29 (1) The Mental Health Act is amended as follows.
- (2) In section 134(3) (cases where correspondence of detained patients may not be withheld) for paragraph (b) substitute—
- “(b) any judge or officer of the Court of Protection, any of the Court of Protection Visitors or any person asked by that Court for a report

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under section 49 of the Mental Capacity Act 2005 concerning the patient;”.

- (3) In section 139 (protection for acts done in pursuance of 1983 Act), in subsection (1), omit from “or in, or in pursuance” to “Part VII of this Act,”.
- (4) Section 142 (payment of pension etc. where recipient lacks capacity) ceases to have effect in England and Wales.
- (5) Sub-paragraph (6) applies where, before the commencement of sub-paragraph (4), an authority has, in respect of a person referred to in that section as “the patient”, made payments under that section—
  - (a) to an institution or person having the care of the patient, or
  - (b) in accordance with subsection (2)(a) or (b) of that section.
- (6) The authority may, in respect of the patient, continue to make payments under that section to that institution or person, or in accordance with subsection (2)(a) or (b) of that section, despite the amendment made by sub-paragraph (4).
- (7) In section 145(1) (interpretation), in the definition of “patient”, omit “(except in Part VII of this Act)”.
- (8) In section 146 (provisions having effect in Scotland), omit from “104(4)” to “section),”.
- (9) In section 147 (provisions having effect in Northern Ireland), omit from “104(4)” to “section),”.

*Administration of Justice Act 1985 (c. 61)*

- 30 In section 18(3) of the Administration of Justice Act 1985 (c. 61) (licensed conveyancer who lacks capacity), for the words from “that person” to the end substitute “ he becomes a person who lacks capacity (within the meaning of the Mental Capacity Act 2005) to practise as a licensed conveyancer. ”.

*Insolvency Act 1986 (c. 45)*

- 31 (1) The Insolvency Act 1986 (c. 45) is amended as follows.
- (2) In section 389A (people not authorised to act as nominee or supervisor in voluntary arrangement), in subsection (3)—
    - (a) omit the “or” immediately after paragraph (b),
    - (b) in paragraph (c), omit “Part VII of the Mental Health Act 1983 or”, and
    - (c) after that paragraph, insert “, or
    - (d) he lacks capacity (within the meaning of the Mental Capacity Act 2005) to act as nominee or supervisor”.
  - (3) In section 390 (people not qualified to be insolvency practitioners), in subsection (4)—
    - (a) omit the “or” immediately after paragraph (b),
    - (b) in paragraph (c), omit “Part VII of the Mental Health Act 1983 or”, and
    - (c) after that paragraph, insert “, or
    - (d) he lacks capacity (within the meaning of the Mental Capacity Act 2005) to act as an insolvency practitioner.”.

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*Building Societies Act 1986 (c. 53)*

- 32 In section 102D(9) of the Building Societies Act 1986 (c. 53) (references to a person holding an account on trust for another)—
- (a) in paragraph (a), for “Part VII of the Mental Health Act 1983” substitute “the Mental Capacity Act 2005”, and
  - (b) for paragraph (b) substitute—
    - “(b) to an attorney holding an account for another person under—
      - (i) an enduring power of attorney or lasting power of attorney registered under the Mental Capacity Act 2005, or
      - (ii) an enduring power registered under the Enduring Powers of Attorney (Northern Ireland) Order 1987;”.

*Public Trustee and Administration of Funds Act 1986 (c. 57)*

- 33 In section 3 of the Public Trustee and Administration of Funds Act 1986 (c. 57) (functions of the Public Trustee)—
- (a) for subsections (1) to (5) substitute—
    - “(1) The Public Trustee may exercise the functions of a deputy appointed by the Court of Protection.”,
  - (b) in subsection (6), for “the 1906 Act” substitute “the Public Trustee Act 1906”, and
  - (c) omit subsection (7).

*Patronage (Benefices) Measure 1986 (No.3)*

- 34 (1) The Patronage (Benefices) Measure 1986 (No. 3) is amended as follows.
- (2) In section 5 (rights of patronage exercisable otherwise than by registered patron), after subsection (3) insert—
- “(3A) The reference in subsection (3) to a power of attorney does not include an enduring power of attorney or lasting power of attorney (within the meaning of the Mental Capacity Act 2005).”
- (3) In section 9 (information to be sent to designated officer when benefice becomes vacant), after subsection (5) insert—
- “(5A) Subsections (5B) and (5C) apply where the functions of a registered patron are, as a result of paragraph 10 of Schedule 2 to the Mental Capacity Act 2005 (patron’s loss of capacity to discharge functions), to be discharged by an individual appointed by the Court of Protection.
  - (5B) If the individual is a clerk in Holy Orders, subsection (5) applies to him as it applies to the registered patron.
  - (5C) If the individual is not a clerk in Holy Orders, subsection (1) (other than paragraph (b)) applies to him as it applies to the registered patron.”

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*Courts and Legal Services Act 1990 (c. 41)*

- 35 (1) The Courts and Legal Services Act 1990 (c. 41) is amended as follows.
- (2) In Schedule 11 (judges etc. barred from legal practice), for the reference to a Master of the Court of Protection substitute a reference to each of the following—
- (a) Senior Judge of the Court of Protection
  - (b) President of the Court of Protection
  - (c) Vice-President of the Court of Protection
- (3) In paragraph 5(3) of Schedule 14 (exercise of powers of intervention in registered foreign lawyer's practice), for paragraph (f) substitute—
- “(f) he lacks capacity (within the meaning of the Mental Capacity Act 2005) to act as a registered foreign lawyer and powers under sections 15 to 20 or section 48 are exercisable in relation to him;”.

*Child Support Act 1991 (c. 48)*

- 36 In section 50 of the Child Support Act 1991 (c. 48) (unauthorised disclosure of information)—
- (a) in subsection (8)—
    - (i) immediately after paragraph (a), insert “ or ”,
    - (ii) omit paragraphs (b) and (d) and the “or” immediately after paragraph (c), and
    - (iii) for “, receiver, custodian or appointee” substitute “ or custodian ”, and
  - (b) after that subsection, insert—

“(9) Where the person to whom the information relates lacks capacity (within the meaning of the Mental Capacity Act 2005) to consent to its disclosure, the appropriate person is—

    - (a) a donee of an enduring power of attorney or lasting power of attorney (within the meaning of that Act), or
    - (b) a deputy appointed for him, or any other person authorised, by the Court of Protection,

with power in that respect.”.

*Social Security Administration Act 1992 (c. 5)*

- 37 In section 123 of the Social Security Administration Act 1992 (c. 5) (unauthorised disclosure of information)—
- (a) in subsection (10), omit—
    - (i) in paragraph (b), “a receiver appointed under section 99 of the Mental Health Act 1983 or”,
    - (ii) in paragraph (d)(i), “sub-paragraph (a) of rule 41(1) of the Court of Protection Rules 1984 or”,
    - (iii) in paragraph (d)(ii), “a receiver ad interim appointed under sub-paragraph (b) of the said rule 41(1) or”, and
    - (iv) “receiver,”, and
  - (b) after that subsection, insert—

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“(11) Where the person to whom the information relates lacks capacity (within the meaning of the Mental Capacity Act 2005) to consent to its disclosure, the appropriate person is—

(a) a donee of an enduring power of attorney or lasting power of attorney (within the meaning of that Act), or

(b) a deputy appointed for him, or any other person authorised, by the Court of Protection,

with power in that respect.”.

*Judicial Pensions and Retirement Act 1993 (c. 8)*

- 38 (1) The Judicial Pensions and Retirement Act 1993 (c. 8) is amended as follows.
- (2) In Schedule 1 (qualifying judicial offices), in Part 2, under the cross-heading “Court officers”, omit the reference to a Master of the Court of Protection except in the case of a person holding that office immediately before the commencement of this sub-paragraph or who had previously retired from that office or died.
- (3) In Schedule 5 (retirement: the relevant offices), omit the entries relating to the Master and Deputy or temporary Master of the Court of Protection, except in the case of a person holding any of those offices immediately before the commencement of this sub-paragraph.
- (4) In Schedule 7 (retirement: transitional provisions), omit paragraph 5(5)(i)(g) except in the case of a person holding office as a deputy or temporary Master of the Court of Protection immediately before the commencement of this sub-paragraph.

*Leasehold Reform, Housing and Urban Development Act 1993 (c. 28)*

- 39 (1) For paragraph 4 of Schedule 2 to the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28) (landlord under a disability), substitute—
- “4 (1) This paragraph applies where a Chapter I or Chapter II landlord lacks capacity (within the meaning of the Mental Capacity Act 2005) to exercise his functions as a landlord.
- (2) For the purposes of the Chapter concerned, the landlord's place is to be taken—
- (a) by a donee of an enduring power of attorney or lasting power of attorney (within the meaning of the 2005 Act), or a deputy appointed for him by the Court of Protection, with power to exercise those functions, or
- (b) if no deputy or donee has that power, by a person authorised in that respect by that court.”.
- (2) That amendment does not affect any proceedings pending at the commencement of this paragraph in which a receiver or a person authorised under Part 7 of the Mental Health Act 1983 (c. 20) is acting on behalf of the landlord.

*Goods Vehicles (Licensing of Operators) Act 1995 (c. 23)*

- 40 (1) The Goods Vehicles (Licensing of Operators) Act 1995 (c. 23) is amended as follows.

*Status: Point in time view as at 01/10/2007.*

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- (2) In section 16(5) (termination of licence), for “he becomes a patient within the meaning of Part VII of the Mental Health Act 1983” substitute “ he becomes a person who lacks capacity (within the meaning of the Mental Capacity Act 2005) to use a vehicle under the licence ”.
- (3) In section 48 (licence not to be transferable, etc.)—
  - (a) in subsection (2)—
    - (i) for “or become a patient within the meaning of Part VII of the Mental Health Act 1983” substitute “ , or become a person who lacks capacity (within the meaning of the Mental Capacity Act 2005) to use a vehicle under the licence, ”, and
    - (ii) in paragraph (a), for “became a patient” substitute “ became a person who lacked capacity in that respect ”, and
  - (b) in subsection (5), for “a patient within the meaning of Part VII of the Mental Health Act 1983” substitute “ a person lacking capacity ”.

*Disability Discrimination Act 1995 (c. 50)*

- 41 In section 20(7) of the Disability Discrimination Act 1995 (c. 50) (regulations to disapply provisions about incapacity), in paragraph (b), for “Part VII of the Mental Health Act 1983” substitute “ the Mental Capacity Act 2005 ”.

*Trusts of Land and Appointment of Trustees Act 1996 (c. 47)*

- 42 (1) The Trusts of Land and Appointment of Trustees Act 1996 (c. 47) is amended as follows.
- (2) In section 9 (delegation by trustees), in subsection (6), for the words from “an enduring power” to the end substitute “ an enduring power of attorney or lasting power of attorney within the meaning of the Mental Capacity Act 2005 ”.
  - (3) In section 20 (the title to which becomes “ Appointment of substitute for trustee who lacks capacity ”)—
    - (a) in subsection (1)(a), for “is incapable by reason of mental disorder of exercising” substitute “ lacks capacity (within the meaning of the Mental Capacity Act 2005) to exercise ”, and
    - (b) in subsection (2)—
      - (i) for paragraph (a) substitute—

“(a) a deputy appointed for the trustee by the Court of Protection,”,
      - (ii) in paragraph (b), for the words from “a power of attorney” to the end substitute “ an enduring power of attorney or lasting power of attorney registered under the Mental Capacity Act 2005 ”, and
      - (iii) in paragraph (c), for the words from “the authority” to the end substitute “ the Court of Protection ”.

*Human Rights Act 1998 (c. 42)*

- 43 In section 4(5) of the Human Rights Act 1998 (c. 42) (courts which may make declarations of incompatibility), after paragraph (e) insert—

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“(f) the Court of Protection, in any matter being dealt with by the President of the Family Division, the Vice-Chancellor or a puisne judge of the High Court.”

*Access to Justice Act 1999 (c. 22)*

44 In paragraph 1 of Schedule 2 to the Access to Justice Act 1999 (c. 22) (services excluded from the Community Legal Service), after paragraph (e) insert—

- “(ea) the creation of lasting powers of attorney under the Mental Capacity Act 2005,
- (eb) the making of advance decisions under that Act.”.

*Adoption and Children Act 2002 (c. 38)*

45 In section 52(1)(a) of the Adoption and Children Act 2002 (c. 38) (parental consent to adoption), for “is incapable of giving consent” substitute “lacks capacity (within the meaning of the Mental Capacity Act 2005) to give consent”.

*Licensing Act 2003 (c. 17)*

46 (1) The Licensing Act 2003 (c. 17) is amended as follows.

(2) In section 27(1) (lapse of premises licence), for paragraph (b) substitute—

“(b) becomes a person who lacks capacity (within the meaning of the Mental Capacity Act 2005) to hold the licence.”.

(3) In section 47 (interim authority notice in relation to premises licence)—

(a) in subsection (5), for paragraph (b) substitute—

“(b) the former holder lacks capacity (within the meaning of the Mental Capacity Act 2005) to hold the licence and that person acts for him under an enduring power of attorney or lasting power of attorney registered under that Act,” and

(b) in subsection (10), omit the definition of “mentally incapable”.

*Courts Act 2003 (c. 39)*

47 (1) The Courts Act 2003 (c. 39) is amended as follows.

(2) In section 1(1) (the courts in relation to which the Lord Chancellor must discharge his general duty), after paragraph (a) insert—

“(aa) the Court of Protection.”.

(3) In section 64(2) (judicial titles which the Lord Chancellor may by order alter)—

(a) omit the reference to a Master of the Court of Protection, and

(b) at the appropriate place insert a reference to each of the following—

- (i) Senior Judge of the Court of Protection,
- (ii) President of the Court of Protection,
- (iii) Vice-president of the Court of Protection.

**Status:**

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