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STATUTORY INSTRUMENTS

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**2017 No. 1035**

The Court of Protection Rules 2017

PART 2

INTERPRETATION AND GENERAL PROVISIONS

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**Interpretation**

**2.1.** In these Rules—

“the Act” means the Mental Capacity Act 2005;

“accredited legal representative” means a legal representative authorised pursuant to a scheme of accreditation approved by the President to represent persons meeting the definition of “P” in this rule in proceedings before the court;

“applicant” means a person who makes, or who seeks permission to make, an application to the court;

“application form” means the document that is to be used to begin proceedings in accordance with Part 9 of these Rules or any other provision of these Rules or the practice directions which requires the use of an application form;

“application notice” means the document that is to be used to make an application in accordance with Part 10 of these Rules or any other provision of these Rules or the practice directions which requires the use of an application notice;

“attorney” means the person appointed as such by an enduring power of attorney created, or purporting to have been created, in accordance with the regulations mentioned in paragraph 2 of Schedule 4 to the Act;

“business day” means a day other than—

- (a) a Saturday, Sunday, Christmas Day or Good Friday; or

(b) a bank holiday in England and Wales, under the Banking and Financial Dealings Act 1971<sup>(1)</sup>;

“child” means a person under 18;

“civil restraint order” means an order restraining a party—

(a) from making any further applications in current proceedings (a limited civil restraint order);

(b) from making certain applications in the Court of Protection (an extended civil restraint order); or

(c) from making any application in the Court of Protection (a general civil restraint order);

“court” means the Court of Protection;

“deputy” means a deputy appointed under the Act;

“donee” means the donee of a lasting power of attorney;

“donor” means the donor of a lasting power of attorney, except where the expression is used in rule 9.8 or 24.4(5) (where it means the donor of an enduring power of attorney);

“enduring power of attorney” means an instrument created in accordance with such of the regulations mentioned in paragraph 2 of Schedule 4 to the Act as applied when it was executed;

“filing” in relation to a document means delivering it, by post or otherwise, to the court office;

“hearing” includes a hearing conducted by telephone, video link, or any other method permitted or directed by the court;

“judge” means a judge nominated to be a judge of the court under the Act;

“lasting power of attorney” has the meaning given in section 9 of the Act;

“legal representative” means a—

(a) barrister;

(b) solicitor;

(c) solicitor’s employee;

(d) manager of a body recognised under section 9 of the Administration of Justice Act 1985<sup>(2)</sup>; or

(e) person who, for the purposes of the Legal Services Act 2007<sup>(3)</sup>, is an authorised person in relation to an activity which constitutes the conduct of litigation (within the meaning of that Act),

who has been instructed to act for a party in relation to any application;

“legally aided person” means a person to whom civil legal services (within the meaning of the Legal Aid, Sentencing and Punishment of Offenders Act 2012<sup>(4)</sup>) have been made available under arrangements made for the purposes of Part 1 of that Act;

“order” includes a declaration made by the court;

“P” means—

(a) any person (other than a protected party) who lacks or, so far as consistent with the context, is alleged to lack capacity to make a decision or decisions in relation to any matter that is the subject of an application to the court; and

(b) a relevant person as defined by paragraph 7 of Schedule A1 to the Act,

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(1) 1971 c. 80.

(2) 1985 c. 61.

(3) 2007 c. 29.

(4) 2012 c. 10.

and references to a person who lacks capacity are to be construed in accordance with the Act;

“party” is to be construed in accordance with rule 9.13;

“personal welfare” is to be construed in accordance with section 17 of the Act;

“President” and “Vice-President” refer to those judges appointed as such under section 46(3) (a) and (b) of the Act;

“property and affairs” is to be construed in accordance with section 18 of the Act;

“protected party” means a party or an intended party (other than P or a child) who lacks capacity to conduct the proceedings;

“representative” means a person appointed under rule 1.2(2)(c), except where the context otherwise requires;

“respondent” means a person who is named as a respondent in the application form or notice, as the case may be;

“rule 1.2 representative” means a representative or an accredited legal representative;

“Senior Judge” means the judge who has been nominated to be Senior Judge under section 46(4) of the Act, and references in these Rules to a circuit judge include the Senior Judge;

“Tier 1 Judge” means any judge nominated to act as a judge of the Court of Protection under section 46 of the Act who is neither a Tier 2 Judge nor a Tier 3 Judge;

“Tier 2 Judge” means—

- (a) the Senior Judge; and
- (b) such other judges nominated to act as a judge of the Court of Protection under section 46 of the Act as may be set out in the relevant practice direction;

“Tier 3 Judge” means—

- (a) the President;
- (b) the Vice-President; and
- (c) such other judges nominated to act as a judge of the Court of Protection under section 46 of the Act as may be set out in the relevant practice direction;

“Visitor” means a person appointed as such by the Lord Chancellor under section 61 of the Act.

### **Court officers**

**2.2.**—(1) Where these Rules permit or require the court to perform an act of a purely formal or administrative character, that act may be performed by a court officer.

(2) A requirement that a court officer carry out any act at the request of any person is subject to the payment of any fee required by a fees order for the carrying out of that act.

### **Court officers – authorisation**

**2.3.**—(1) The Senior Judge or the President or the Vice-President may authorise a court officer to exercise the jurisdiction of the court in such circumstances as may be set out in the relevant practice direction.

(2) A court officer who has been authorised under paragraph (1)—

- (a) must refer to a judge any application, proceedings or any question arising in any application or proceedings which ought, in the officer’s opinion, to be considered by a judge;

- (b) may not deal with any application or proceedings or any question arising in any application or proceedings by way of a hearing; and
- (c) may not deal with an application for the reconsideration of an order made by that court officer or another court officer.

### **Computation of time**

**2.4.**—(1) This rule shows how to calculate any period of time which is specified—

- (a) by these Rules;
- (b) by a practice direction; or
- (c) in an order or direction of the court.

(2) A period of time expressed as a number of days must be computed as clear days.

(3) In this rule, “clear days” means that in computing the number of days—

- (a) the day on which the period begins; and
- (b) if the end of the period is defined by reference to an event, the day on which that event occurs,

are not included.

(4) Where the specified period is 7 days or less, and would include a day which is not a business day, that day does not count.

(5) When the specified period for doing any act at the court office ends on a day on which the office is closed, that act will be done in time if done on the next day on which the court office is open.

### **Application of the Civil Procedure Rules and Family Procedure Rules**

**2.5.**—(1) In any case not expressly provided for by these Rules or the practice directions made under them, the court may apply either the Civil Procedure Rules 1998<sup>(5)</sup> or the Family Procedure Rules 2010<sup>(6)</sup> (including in either case the practice directions made under them) with any necessary modifications, in so far as is necessary to further the overriding objective.

(2) A reference in these Rules to the Civil Procedure Rules 1998 or to the Family Procedure Rules 2010 is to the version of those rules in force at the date specified for the purpose of that reference in the relevant practice direction.

### **Pilot schemes**

**2.6.**—(1) Practice directions may make provision for the operation of pilot schemes for assessing the use of new practices and procedures in connection with proceedings—

- (a) for specified periods; and
- (b) in relation to proceedings—
  - (i) in specified parts of the country; or
  - (ii) relating to specified types of application.

(2) Practice directions may modify or disapply any provision of these Rules during the operation of such pilot schemes.

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<sup>(5)</sup> S.I. 1998/3132 (as amended).

<sup>(6)</sup> S.I. 2010/2955 (as amended).