

*Status: This version of this cross heading contains provisions that are prospective.*  
**Changes to legislation:** *Mental Capacity Act (Northern Ireland) 2016, Cross Heading: Practice and procedure is up to date with all changes known to be in force on or before 29 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*



## 2016 CHAPTER 18

### PART 6

#### HIGH COURT POWERS: DECISIONS AND DEPUTIES

PROSPECTIVE

##### *Practice and procedure*

##### **Applications to the court**

**122.—**(1) No leave is required for an application to the court for the exercise of any of its powers under this Part—

- (a) by a person who lacks, or is alleged to lack, capacity;
- (b) if such a person is under 18, by anyone with parental responsibility for that person;
- (c) where the application relates to a lasting power of attorney or enduring power of attorney and the application is made by the donor or any person who is an attorney under the power;
- (d) by a deputy appointed by the court for a person to whom the application relates;
- (e) by a person named in an existing order of the court, if the application relates to the order; or
- (f) where the application is made by virtue of section 129 (proceedings following inquiry by Public Guardian).

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(2) But, subject to rules of court and to paragraph 21(2) of Schedule 9 (declarations relating to private international law), leave is required for any other application to the court for the exercise of any of its powers under this Act.

(3) In deciding whether to grant leave the court must (in particular) have regard to—

- (a) the applicant's connection with the person to whom the application relates;
- (b) the reasons for the application;
- (c) the benefit to the person to whom the application relates of a proposed order or directions; and
- (d) whether the benefit can be achieved in any other way.

#### **Duty to notify Attorney General**

**123.—**(1) A person who makes an application to the court under this Part must notify the Attorney General of that fact.

(2) The notification must be made in accordance with rules of court.

(3) The Attorney General may intervene in the proceedings on the application in such way as the Attorney General considers appropriate.

#### **Rules of court**

**124.—**(1) In this section “proceedings” means proceedings before the court with respect to a person who lacks, or is alleged to lack, capacity (“P”).

(2) Rules of court may make provision as to the conduct of such proceedings including provision—

- (a) as to the carrying out of preliminary or incidental inquiries;
- (b) as to the way and form in which proceedings are to be commenced and carried on;
- (c) as to the persons by whom proceedings may be commenced and carried on;
- (d) as to the persons who are to be entitled to be notified of, to attend, or to take part in proceedings;
- (e) as to the evidence which may be authorised or required to be given in proceedings and the way (whether on oath or otherwise and whether orally or in writing) in which it is to be given;
- (f) as to the administration of oaths and taking of affidavits for the purposes of proceedings;

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- (g) for the allocation, in specified circumstances, of any specified description of proceedings to a specified judge or to specified descriptions of judges;
- (h) for the exercise of the jurisdiction of the court, in specified circumstances, by its officers or other staff;
- (i) for enabling the court to appoint a suitable person (who may, with his or her consent, be the Official Solicitor) to act in the name of, or on behalf of, or to represent P;
- (j) for enabling an application to the court to be disposed of without a hearing;
- (k) as to authorising or requiring—
  - (i) the attendance and examination of persons who lack, or are alleged to lack capacity;
  - (ii) the provision of information; and
  - (iii) the production of documents;
- (l) for enabling the court to proceed with, or with any part of, a hearing in the absence of P;
- (m) for enabling or requiring the proceedings or any part of them to be conducted in private and for enabling the court to determine who is to be admitted when the court sits in private and to exclude specified persons when it sits in public;
- (n) as to what may be received as evidence (whether or not admissible apart from the rules) and the way in which it is to be presented;
- (o) for the enforcement of orders made and directions given in the proceedings;
- (p) as to—
  - (i) the making of orders for the payment of costs to or by persons attending, as well as persons taking part in, proceedings; and
  - (ii) the way in which and funds out of which any such costs are to be paid;
- (q) the way in which, and funds from which, fees are to be paid;
- (r) as to the termination of proceedings, whether on the death or recovery of P or otherwise, and the exercise, pending the termination of the proceedings, of powers exercisable under this Part in relation to P's—
  - (i) care, treatment or personal welfare; or
  - (ii) property or affairs;
- (s) for charging fees and costs upon P's estate;
- (t) for the payment of fees and costs within a specified time of P's death or the conclusion of the proceedings.

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(3) Rules of court may also make provision as to appeals from decisions of the court in such proceedings, including provision—

- (a) that where a decision of the court is made by a person exercising the jurisdiction of the court by virtue of rules made under subsection (2)(h), an appeal from that decision lies to a judge of the court of a specified description and not to the Court of Appeal;
- (b) that, in specified cases, an appeal from a decision of the court may not be made without leave;
- (c) as to the person or persons entitled to grant leave to appeal;
- (d) as to any requirements to be met before leave is granted;
- (e) that where a judge of the court makes a decision on an appeal, no appeal may be made to the Court of Appeal from that decision unless the Court of Appeal considers that—
  - (i) the appeal would raise an important point of principle or practice; or
  - (ii) there is some other compelling reason for the Court of Appeal to hear it;
- (f) as to any considerations to be taken into account in relation to granting or refusing leave to appeal.

(4) A charge, created by virtue of subsection (2)(s), upon the estate of a person is not to cause any interest of that person in any property to fail or determine or to be prevented from recommencing.

(5) In this section “specified” means specified by the rules.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 285(2)(a)-(c) substituted for s. 285(2)(a)(b) by [2022 c. 18 \(N.I.\) Sch. 3 para. 77\(b\)](#)