



Mental Capacity Act 2005

CHAPTER 9

MENTAL CAPACITY ACT 2005

PART 1

PERSONS WHO LACK CAPACITY

The principles

- 1 The principles

Preliminary

- 2 People who lack capacity
- 3 Inability to make decisions
- 4 Best interests
- 4A Restriction on deprivation of liberty
- 4B Deprivation of liberty necessary for life-sustaining treatment etc
- 5 Acts in connection with care or treatment
- 6 Section 5 acts: limitations
- 7 Payment for necessary goods and services
- 8 Expenditure

Lasting powers of attorney

- 9 Lasting powers of attorney
- 10 Appointment of donees
- 11 Lasting powers of attorney: restrictions
- 12 Scope of lasting powers of attorney: gifts
- 13 Revocation of lasting powers of attorney etc.
- 14 Protection of donee and others if no power created or power revoked

*Status: Point in time view as at 03/11/2008.**Changes to legislation: Mental Capacity Act 2005 is up to date with all changes known to be in force on or before 04 January 2024.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)*

General powers of the court and appointment of deputies

- 15 Power to make declarations
- 16 Powers to make decisions and appoint deputies: general
- 16A Section 16 powers: Mental Health Act patients etc
- 17 Section 16 powers: personal welfare
- 18 Section 16 powers: property and affairs
- 19 Appointment of deputies
- 20 Restrictions on deputies
- 21 Transfer of proceedings relating to people under 18

Powers of the court in relation to Schedule A1

- 21A Powers of court in relation to Schedule A1

Powers of the court in relation to lasting powers of attorney

- 22 Powers of court in relation to validity of lasting powers of attorney
- 23 Powers of court in relation to operation of lasting powers of attorney

Advance decisions to refuse treatment

- 24 Advance decisions to refuse treatment: general
- 25 Validity and applicability of advance decisions
- 26 Effect of advance decisions

Excluded decisions

- 27 Family relationships etc.
- 28 Mental Health Act matters
- 29 Voting rights

Research

- 30 Research
- 31 Requirements for approval
- 32 Consulting carers etc.
- 33 Additional safeguards
- 34 Loss of capacity during research project

Independent mental capacity advocate service

- 35 Appointment of independent mental capacity advocates
- 36 Functions of independent mental capacity advocates
- 37 Provision of serious medical treatment by NHS body
- 38 Provision of accommodation by NHS body
- 39 Provision of accommodation by local authority
- 39A Person becomes subject to Schedule A1
- 39B Section 39A: supplementary provision
- 39C Person unrepresented whilst subject to Schedule A1
- 39D Person subject to Schedule A1 without paid representative
- 39E Limitation on duty to instruct advocate under section 39D
- 40 Exceptions
- 41 Power to adjust role of independent mental capacity advocate

Status: Point in time view as at 03/11/2008.

Changes to legislation: Mental Capacity Act 2005 is up to date with all changes known to be in force on or before 04 January 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)

Miscellaneous and supplementary

- 42 Codes of practice
- 43 Codes of practice: procedure
- 44 Ill-treatment or neglect

PART 2

THE COURT OF PROTECTION AND THE PUBLIC GUARDIAN

The Court of Protection

- 45 The Court of Protection
- 46 The judges of the Court of Protection

Supplementary powers

- 47 General powers and effect of orders etc.
- 48 Interim orders and directions
- 49 Power to call for reports

Practice and procedure

- 50 Applications to the Court of Protection
- 51 Court of Protection Rules
- 52 Practice directions
- 53 Rights of appeal

Fees and costs

- 54 Fees
- 55 Costs
- 56 Fees and costs: supplementary

The Public Guardian

- 57 The Public Guardian
- 58 Functions of the Public Guardian
- 59 Public Guardian Board
- 60 Annual report

Court of Protection Visitors

- 61 Court of Protection Visitors

PART 3

MISCELLANEOUS AND GENERAL

Declaratory provision

- 62 Scope of the Act

Private international law

- 63 International protection of adults

General

- 64 Interpretation

Status: Point in time view as at 03/11/2008.

Changes to legislation: Mental Capacity Act 2005 is up to date with all changes known to be in force on or before 04 January 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)

- 65 Rules, regulations and orders
- 66 Existing receivers and enduring powers of attorney etc.
- 67 Minor and consequential amendments and repeals
- 68 Commencement and extent
- 69 Short title

SCHEDULES

- SCHEDULE A1 — Hospital and care home residents: deprivation of liberty
Part 1 — AUTHORISATION TO DEPRIVE RESIDENTS OF LIBERTY ETC

Application of Part

- 1 (1) This Part applies if the following conditions are met....

Authorisation to deprive P of liberty

- 2 The managing authority of the hospital or care home may...

No liability for acts done for purpose of depriving P of liberty

- 3 (1) This paragraph applies to any act which a person...

No protection for negligent acts etc

- 4 (1) Paragraphs 2 and 3 do not exclude a person's...
Part 2 — INTERPRETATION: MAIN TERMS

Introduction

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

Detained resident

- 6 “Detained resident” means a person detained in a...

Relevant person etc

- 7 In relation to a person who is, or is to...

Authorisations

- 8 “Standard authorisation” means an authorisation given under Part...
- 9 “Urgent authorisation” means an authorisation given under Part...
- 10 “Authorisation under this Schedule” means either of the...
- 11 (1) The purpose of a standard authorisation is the purpose...

Part 3 — THE QUALIFYING REQUIREMENTS

The qualifying requirements

- 12 (1) These are the qualifying requirements referred to in this...

The age requirement

- 13 The relevant person meets the age requirement if he has...

Status: Point in time view as at 03/11/2008.

Changes to legislation: *Mental Capacity Act 2005 is up to date with all changes known to be in force on or before 04 January 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)*

The mental health requirement

- 14 (1) The relevant person meets the mental health requirement if...

The mental capacity requirement

- 15 The relevant person meets the mental capacity requirement if he...

The best interests requirement

- 16 (1) The relevant person meets the best interests requirement if...

The eligibility requirement

- 17 (1) The relevant person meets the eligibility requirement unless he...

The no refusals requirement

- 18 The relevant person meets the no refusals requirement unless there...
19 (1) There is a refusal if these conditions are met—...
20 (1) There is a refusal if it would be in...

Part 4 — STANDARD AUTHORISATIONS

Supervisory body to give authorisation

- 21 Only the supervisory body may give a standard authorisation.
22 The supervisory body may not give a standard authorisation unless—...
23 The managing authority may not make a request for a...

Duty to request authorisation: basic cases

- 24 (1) The managing authority must request a standard authorisation in...

Duty to request authorisation: change in place of detention

- 25 (1) The relevant managing authority must request a standard authorisation...
26 (1) This paragraph applies for the purposes of paragraph 25....

Other authority for detention: request for authorisation

- 27 (1) This paragraph applies if, by virtue of section 4A(3),...

Request refused: no further request unless change of circumstances

- 28 (1) This paragraph applies if— (a) a managing authority request...

Authorisation given: request for further authorisation

- 29 (1) This paragraph applies if a standard authorisation—

Power to request authorisation

- 30 (1) This paragraph applies if— (a) a standard authorisation has...

Information included in request

- 31 A request for a standard authorisation must include the information...

Status: Point in time view as at 03/11/2008.

Changes to legislation: Mental Capacity Act 2005 is up to date with all changes known to be in force on or before 04 January 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)

Records of requests

- 32 (1) The managing authority of a hospital or care home...

Relevant person must be assessed

- 33 (1) This paragraph applies if the supervisory body are requested...

Age assessment

- 34 An age assessment is an assessment of whether the relevant...

Mental health assessment

- 35 A mental health assessment is an assessment of whether the...
36 When carrying out a mental health assessment, the assessor must...

Mental capacity assessment

- 37 A mental capacity assessment is an assessment of whether the...

Best interests assessment

- 38 A best interests assessment is an assessment of whether the...
39 (1) In carrying out a best interests assessment, the assessor...
40 (1) This paragraph applies whatever conclusion the best interests assessment...
41 Paragraphs 42 and 43 apply if the best interests assessment...
42 (1) The assessor must state in the assessment the maximum...
43 The assessor may include in the assessment recommendations about conditions...
44 (1) This paragraph applies if the best interests assessment comes...
45 The duties with which the best interests assessor must comply...

Eligibility assessment

- 46 An eligibility assessment is an assessment of whether the relevant...
47 (1) Regulations may— (a) require an eligibility assessor to request...

No refusals assessment

- 48 A no refusals assessment is an assessment of whether the...

Equivalent assessment already carried out

- 49 (1) The supervisory body are not required by paragraph 33...

Duty to give authorisation

- 50 (1) The supervisory body must give a standard authorisation if—...

Terms of authorisation

- 51 (1) If the supervisory body are required to give a...
52 A standard authorisation may provide for the authorisation to come...
53 (1) A standard authorisation may be given subject to conditions....

Status: Point in time view as at 03/11/2008.

Changes to legislation: Mental Capacity Act 2005 is up to date with all changes known to be in force on or before 04 January 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)

Form of authorisation

- 54 A standard authorisation must be in writing.
55 (1) A standard authorisation must state the following things—
56 (1) If the name of the relevant hospital or care...

Duty to give information about decision

- 57 (1) This paragraph applies if— (a) a request is made...
58 (1) This paragraph applies if— (a) a request is made...

Duty to give information about effect of authorisation

- 59 (1) This paragraph applies if a standard authorisation is given....

Records of authorisations

- 60 A supervisory body must keep a written record of all...

Variation of an authorisation

- 61 (1) A standard authorisation may not be varied except in...

Effect of decision about request made under paragraph 25 or 30

- 62 (1) This paragraph applies where the managing authority request a...

When an authorisation is in force

- 63 (1) A standard authorisation comes into force when it is...
64 (1) A standard authorisation ceases to be in force at...
65 (1) This paragraph applies if a standard authorisation ceases to...

When a request for a standard authorisation is “disposed of”

- 66 A request for a standard authorisation is to be regarded...

Right of third party to require consideration of whether authorisation needed

- 67 For the purposes of paragraphs 68 to 73 there is...
68 (1) If the following conditions are met, an eligible person...
69 (1) This paragraph applies if an eligible person requests the...
70 (1) Regulations may be made about the period within which...
71 (1) This paragraph applies if— (a) the supervisory body obtain...
72 (1) This paragraph applies if— (a) the supervisory body obtain...
73 (1) This paragraph applies if— (a) the supervisory body obtain...

Part 5 — URGENT AUTHORISATIONS

Managing authority to give authorisation

- 74 Only the managing authority of the relevant hospital or care...
75 The managing authority may give an urgent authorisation only if...

Duty to give authorisation

- 76 (1) The managing authority must give an urgent authorisation in...
77 (1) This paragraph applies where the managing authority have given...

Status: Point in time view as at 03/11/2008.

Changes to legislation: Mental Capacity Act 2005 is up to date with all changes known to be in force on or before 04 January 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)

Terms of authorisation

- 78 (1) If the managing authority decide to give an urgent...

Form of authorisation

- 79 An urgent authorisation must be in writing.
80 An urgent authorisation must state the following things—
81 (1) If the name of the relevant hospital or care...

Duty to keep records and give copies

- 82 (1) This paragraph applies if an urgent authorisation is given....

Duty to give information about authorisation

- 83 (1) This paragraph applies if an urgent authorisation is given....

Request for extension of duration

- 84 (1) This paragraph applies if the managing authority make a...
85 (1) This paragraph applies if, under paragraph 84, the supervisory...
86 (1) This paragraph applies if, under paragraph 84, the supervisory...

No variation

- 87 (1) An urgent authorisation may not be varied except in...

When an authorisation is in force

- 88 An urgent authorisation comes into force when it is given....
89 (1) An urgent authorisation ceases to be in force at...
90 (1) This paragraph applies if an urgent authorisation ceases to...
Part 6 — ELIGIBILITY REQUIREMENT NOT MET: SUSPENSION OF STANDARD
AUTHORISATION
91 (1) This Part applies if the following conditions are met....
92 The managing authority of the relevant hospital or care home...
93 (1) This paragraph applies if the managing authority give the...
94 (1) This paragraph applies if, whilst the standard authorisation is...
95 (1) This paragraph applies if the managing authority give the...
96 (1) This paragraph applies if no notice is given under...
97 The effect of suspending the standard authorisation is that Part...
Part 7 — STANDARD AUTHORISATIONS: CHANGE IN SUPERVISORY
RESPONSIBILITY

Application of this Part

- 98 (1) This Part applies if these conditions are met.
99 For the purposes of this Part there is a change...

Effect of change in supervisory responsibility

- 100 (1) The new supervisory body becomes the supervisory body in...
Part 8 — STANDARD AUTHORISATIONS: REVIEW

Application of this Part

- 101 (1) This Part applies if a standard authorisation—

Status: Point in time view as at 03/11/2008.

Changes to legislation: Mental Capacity Act 2005 is up to date with all changes known to be in force on or before 04 January 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)

Review by supervisory body

102 (1) The supervisory body may at any time carry out...

Request for review

103 (1) An eligible person may, at any time, request the...

Grounds for review

104 (1) Paragraphs 105 to 107 set out the grounds on...

Non-qualification ground

105 (1) Any of the following qualifying requirements is reviewable on...

Change of reason ground

106 (1) Any of the following qualifying requirements is reviewable on...

Variation of conditions ground

107 (1) The best interests requirement is reviewable on the ground...

Notice that review to be carried out

108 (1) If the supervisory body are to carry out a...

Starting a review

109 To start a review of the standard authorisation, the supervisory...

No reviewable qualifying requirements

110 (1) This paragraph applies if no qualifying requirements appear to...

One or more reviewable qualifying requirements

111 (1) This paragraph applies if one or more qualifying requirements...

Review assessments

112 (1) A review assessment is an assessment of whether the...

113 (1) In carrying out a review assessment, the assessor must...

Best interests requirement reviewable but non-assessable

114 (1) This paragraph applies in a case where—

Best interests review assessment positive

115 (1) This paragraph applies in a case where—

Mental health, mental capacity, eligibility or no refusals review assessment positive

116 (1) This paragraph applies if the following conditions are met....

One or more review assessments negative

117 (1) This paragraph applies if one or more of the...

*Status: Point in time view as at 03/11/2008.**Changes to legislation: Mental Capacity Act 2005 is up to date with all changes known to be in force on or before 04 January 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)*

Completion of a review

118 (1) The review of the standard authorisation is complete in...

Variations under this Part

119 Any variation of the standard authorisation made under this Part...

Notice of outcome of review

120 (1) When the review of the standard authorisation is complete,...

Records

121 A supervisory body must keep a written record of the...

Relationship between review and suspension under Part 6

122 (1) This paragraph applies if a standard authorisation is suspended...

Relationship between review and request for new authorisation

123 (1) This paragraph applies if, in accordance with paragraph 24...

124 (1) This paragraph applies if— (a) a review under this...

125 In paragraphs 123 and 124— (a) the existing authorisation is...

Part 9 — ASSESSMENTS UNDER THIS SCHEDULE

Introduction

126 This Part contains provision about assessments under this Schedule.

127 An assessment under this Schedule is either of the following—...

128 In this Part, in relation to an assessment under this...

Supervisory body to select assessor

129 (1) It is for the supervisory body to select a...

130 (1) This paragraph applies to regulations under paragraph 129(3).

Examination and copying of records

131 An assessor may, at all reasonable times, examine and take...

Representations

132 In carrying out an assessment under this Schedule, the assessor...

Assessments to stop if any comes to negative conclusion

133 (1) This paragraph applies if an assessment under this Schedule...

Duty to keep records and give copies

134 (1) This paragraph applies if an assessor has carried out...

135 (1) This paragraph applies to the supervisory body if they...

136 (1) This paragraph applies to the supervisory body if—

Part 10 — RELEVANT PERSON'S REPRESENTATIVE

Status: Point in time view as at 03/11/2008.

Changes to legislation: Mental Capacity Act 2005 is up to date with all changes known to be in force on or before 04 January 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)

The representative

- 137 In this Schedule the relevant person's representative is the person...
138 (1) Regulations may make provision about the selection and appointment...

Supervisory body to appoint representative

- 139 (1) The supervisory body must appoint a person to be...
140 (1) The selection of a person for appointment under paragraph...
141 (1) Any appointment of a representative for a relevant person...

Appointment regulations

- 142 Appointment regulations may provide that the procedure for appointing a...
143 (1) Appointment regulations may make provision about who is to...
144 (1) Appointment regulations may make provision about who may, or...
145 Appointment regulations may make provision about the formalities of appointing...
146 In a case where a best interests assessor is to...

Monitoring of representatives

- 147 Regulations may make provision requiring the managing authority of the...

Termination

- 148 Regulations may make provision about the circumstances in which the...
149 Regulations may make provision about the formalities of ending the...

Suspension of representative's functions

- 150 (1) Regulations may make provision about the circumstances in which...

Payment of representative

- 151 Regulations may make provision for payments to be made to,...

Regulations under this Part

- 152 The provisions of this Part which specify provision that may...

Effect of appointment of section 39C IMCA

- 153 Paragraphs 159 and 160 make provision about the exercise of...
Part 11 — IMCAs

Application of Part

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

The IMCAs

- 155 A section 39A IMCA is an independent mental capacity advocate...
156 A section 39C IMCA is an independent mental capacity advocate...
157 A section 39D IMCA is an independent mental capacity advocate...

Status: Point in time view as at 03/11/2008.

Changes to legislation: Mental Capacity Act 2005 is up to date with all changes known to be in force on or before 04 January 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)

158 An IMCA is a section 39A IMCA or a section...

Section 39C IMCA: functions

159 (1) This paragraph applies if, and for as long as,...

160 (1) This paragraph applies if— (a) a person is appointed...

Section 39A IMCA: restriction of functions

161 (1) This paragraph applies if— (a) there is a section...

Part 12 — MISCELLANEOUS

Monitoring of operation of Schedule

162 (1) Regulations may make provision for, and in connection with,...

163 (1) Regulations may make provision for, and in connection with,...

Disclosure of information

164 (1) Regulations may require either or both of the following...

Directions by National Assembly in relation to supervisory functions

165 (1) The National Assembly for Wales may direct a Local...

166 (1) This paragraph applies where, under paragraph 165, a Local...

167 (1) Directions under paragraph 165 must be given in regulations....

168 The power under paragraph 165 or paragraph 166 to give...

Notices

169 Any notice under this Schedule must be in writing.

Regulations

170 (1) This paragraph applies to all regulations under this Schedule,...

171 It is for the Secretary of State to make regulations...

172 It is for the National Assembly for Wales to make...

173 (1) This paragraph applies to regulations under paragraph 183.

Part 13 — INTERPRETATION

Introduction

174 This Part applies for the purposes of this Schedule.

Hospitals and their managing authorities

175 (1) “Hospital” means— (a) an NHS hospital, or

176 (1) “Managing authority”, in relation to an NHS...

177 “Managing authority”, in relation to an independent hospital, means the...

Care homes and their managing authorities

178 “Care home” has the meaning given by section...

179 “Managing authority”, in relation to a care home, means the...

Status: Point in time view as at 03/11/2008.

Changes to legislation: Mental Capacity Act 2005 is up to date with all changes known to be in force on or before 04 January 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)

Supervisory bodies: hospitals

- 180 (1) The identity of the supervisory body is determined under...
181 (1) The identity of the supervisory body is determined under...

Supervisory bodies: care homes

- 182 (1) The identity of the supervisory body is determined under...
183 (1) Subsections (5) and (6) of section 24 of the...

Same body managing authority and supervisory body

- 184 (1) This paragraph applies if, in connection with a particular...

Interested persons

- 185 Each of the following is an interested person—
186 (1) An interested person consulted by the best interests assessor...
187 Where this Schedule imposes on a person a duty towards...
188 The following table contains an index of provisions defining or...

SCHEDULE 1 — Lasting powers of attorney: formalities
Part 1 — MAKING INSTRUMENTS

General requirements as to making instruments

- 1 (1) An instrument is not made in accordance with this...

Requirements as to content of instruments

- 2 (1) The instrument must include— (a) the prescribed information about...

Failure to comply with prescribed form

- 3 (1) If an instrument differs in an immaterial respect in...
Part 2 — REGISTRATION

Applications and procedure for registration

- 4 (1) An application to the Public Guardian for the registration...
5 Subject to paragraphs 11 to 14, the Public Guardian must...

Notification requirements

- 6 (1) A donor about to make an application under paragraph...
7 As soon as is practicable after receiving an application by...
8 (1) As soon as is practicable after receiving an application...
9 (1) A notice under paragraph 6 must be made in...

Power to dispense with notification requirements

- 10 The court may— (a) on the application of the donor,...

Instrument not made properly or containing ineffective provision

- 11 (1) If it appears to the Public Guardian that an...

Status: Point in time view as at 03/11/2008.

Changes to legislation: Mental Capacity Act 2005 is up to date with all changes known to be in force on or before 04 January 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)

Deputy already appointed

- 12 (1) Sub-paragraph (2) applies if it appears to the Public...

Objection by donee or named person

- 13 (1) Sub-paragraph (2) applies if a donee or a named...

Objection by donor

- 14 (1) This paragraph applies if the donor—

Notification of registration

- 15 Where an instrument is registered under this Schedule, the Public...

Evidence of registration

- 16 (1) A document purporting to be an office copy of...
 Part 3 — CANCELLATION OF REGISTRATION AND NOTIFICATION OF SEVERANCE
 17 (1) The Public Guardian must cancel the registration of an...
 18 The court must direct the Public Guardian to cancel the...
 19 (1) Sub-paragraph (2) applies if the court determines under section...
 20 On the cancellation of the registration of an instrument, the...
 Part 4 — RECORDS OF ALTERATIONS IN REGISTERED POWERS

Partial revocation or suspension of power as a result of bankruptcy

- 21 If in the case of a registered instrument it appears...

Termination of appointment of donee which does not revoke power

- 22 If in the case of a registered instrument it appears...

Replacement of donee

- 23 If in the case of a registered instrument it appears...

Severance of ineffective provisions

- 24 If in the case of a registered instrument the court...

Notification of alterations

- 25 If the Public Guardian attaches a note to an instrument...

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—

Determining ineligibility

- 2 A person (“P”) is ineligible to be deprived of liberty...

Status: Point in time view as at 03/11/2008.

Changes to legislation: Mental Capacity Act 2005 is up to date with all changes known to be in force on or before 04 January 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)

Authorised course of action not in accordance with regime

- 3 (1) This paragraph applies in cases B, C and D...

Treatment for mental disorder in a hospital

- 4 (1) This paragraph applies in cases B and C in...

P objects to being a mental health patient etc

- 5 (1) This paragraph applies in cases D and E in...

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,...

Hospital treatment regime

- 8 (1) P is subject to the hospital treatment regime if...

Community treatment regime

- 9 P is subject to the community treatment regime if he...

Guardianship regime

- 10 P is subject to the guardianship regime if he is...

England and Wales enactments

- 11 (1) An England and Wales enactment is an enactment which...

P within scope of Mental Health Act

- 12 (1) P is within the scope of the Mental Health...

Authorised course of action, relevant care or treatment & relevant instrument

- 13 In a case where this Schedule applies for the purposes...

- 14 In a case where this Schedule applies for the purposes...

- 15 (1) This paragraph applies where the question whether a person...

Expressions used in paragraph 5

- 16 (1) These expressions have the meanings given— “ donee ”...

Expressions with same meaning as in Mental Health Act

- 17 (1) “ Hospital ” has the same meaning as in...

SCHEDULE 2 — Property and affairs: supplementary provisions

Wills: general

- 1 Paragraphs 2 to 4 apply in relation to the execution...

Status: Point in time view as at 03/11/2008.

Changes to legislation: Mental Capacity Act 2005 is up to date with all changes known to be in force on or before 04 January 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)

Provision that may be made in will

- 2 The will may make any provision (whether by disposing of...

Wills: requirements relating to execution

- 3 (1) Sub-paragraph (2) applies if under section 16 the court...

Wills: effect of execution

- 4 (1) This paragraph applies where a will is executed in...

Vesting orders ancillary to settlement etc.

- 5 (1) If provision is made by virtue of section 18...

Variation of settlements

- 6 (1) If a settlement has been made by virtue of...

Vesting of stock in curator appointed outside England and Wales

- 7 (1) Sub-paragraph (2) applies if the court is satisfied—

Preservation of interests in property disposed of on behalf of person lacking capacity

- 8 (1) Sub-paragraphs (2) and (3) apply if—
9 (1) Sub-paragraph (2) applies if the court has ordered or...

Powers as patron of benefice

- 10 (1) Any functions which P has as patron of a...

SCHEDULE 3 — International protection of adults
Part 1 — PRELIMINARY

Introduction

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

The Convention

- 2 (1) “Convention” means the Convention referred to in section 63....

Countries, territories and nationals

- 3 (1) “Country” includes a territory which has its own system...

Adults with incapacity

- 4 “Adult” means a person who— (a) as a result of...

Protective measures

- 5 (1) “Protective measure” means a measure directed to the protection...

Central Authority

- 6 (1) Any function under the Convention of a Central Authority...
Part 2 — JURISDICTION OF COMPETENT AUTHORITY

Status: Point in time view as at 03/11/2008.

Changes to legislation: Mental Capacity Act 2005 is up to date with all changes known to be in force on or before 04 January 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)

Scope of jurisdiction

- 7 (1) The court may exercise its functions under this Act...
- 8 (1) The court may also exercise its functions under this...

Exercise of jurisdiction

- 9 (1) This paragraph applies where jurisdiction is exercisable under this...
 - 10 A reference in this Schedule to the exercise of jurisdiction...
- Part 3 — APPLICABLE LAW

Applicable law

- 11 In exercising jurisdiction under this Schedule, the court may, if...
- 12 Where a protective measure is taken in one country but...

Lasting powers of attorney, etc.

- 13 (1) If the donor of a lasting power is habitually...
- 14 (1) Where a lasting power is not exercised in a...
- 15 Regulations may provide for Schedule 1 (lasting powers of attorney:...

Protection of third parties

- 16 (1) This paragraph applies where a person (a “representative”) in...

Mandatory rules

- 17 Where the court is entitled to exercise jurisdiction under this...

Public policy

- 18 Nothing in this Part of this Schedule requires or enables...
- Part 4 — RECOGNITION AND ENFORCEMENT

Recognition

- 19 (1) A protective measure taken in relation to an adult...
- 20 (1) An interested person may apply to the court for...
- 21 For the purposes of paragraphs 19 and 20, any finding...

Enforcement

- 22 (1) An interested person may apply to the court for...

Measures taken in relation to those aged under 16

- 23 (1) This paragraph applies where— (a) provision giving effect to,...

Supplementary

- 24 The court may not review the merits of a measure...
 - 25 Court of Protection Rules may make provision about an application...
- Part 5 — CO-OPERATION

Proposal for cross-border placement

- 26 (1) This paragraph applies where a public authority proposes to...
- 27 A proposal received by a public authority under Article 33...

Status: Point in time view as at 03/11/2008.

Changes to legislation: *Mental Capacity Act 2005 is up to date with all changes known to be in force on or before 04 January 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)*

Adult in danger etc.

- 28 (1) This paragraph applies if a public authority is told...
 - 29 A public authority may not request from, or send to,...
- Part 6 — GENERAL

Certificates

- 30 A certificate given under Article 38 by an authority in...

Powers to make further provision as to private international law

- 31 Her Majesty may by Order in Council confer on the...
- 32 (1) Regulations may make provision— (a) giving further effect to...

Exceptions

- 33 Nothing in this Schedule applies, and no provision made under...

Regulations and orders

- 34 A reference in this Schedule to regulations or an order...

Commencement

- 35 The following provisions of this Schedule have effect only if...

SCHEDULE 4 — Provisions applying to existing enduring powers of attorney
Part 1 — ENDURING POWERS OF ATTORNEY

Enduring power of attorney to survive mental incapacity of donor

- 1 (1) Where an individual has created a power of attorney...

Characteristics of an enduring power of attorney

- 2 (1) Subject to sub-paragraphs (5) and (6) and paragraph 20,...

Scope of authority etc. of attorney under enduring power

- 3 (1) If the instrument which creates an enduring power of...
- Part 2 — ACTION ON ACTUAL OR IMPENDING INCAPACITY OF DONOR

Duties of attorney in event of actual or impending incapacity of donor

- 4 (1) Sub-paragraphs (2) to (6) apply if the attorney under...
- Part 3 — NOTIFICATION PRIOR TO REGISTRATION

Duty to give notice to relatives

- 5 Subject to paragraph 7, before making an application for registration...
- 6 (1) Subject to sub-paragraphs (2) to (4), persons of the...
- 7 (1) An attorney is not required to give notice under...

Duty to give notice to donor

- 8 (1) Subject to sub-paragraph (2), before making an application for...

Status: Point in time view as at 03/11/2008.

Changes to legislation: *Mental Capacity Act 2005 is up to date with all changes known to be in force on or before 04 January 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)*

Contents of notices

- 9 A notice to relatives under this Part of this Schedule...
- 10 A notice to the donor under this Part of this...

Duty to give notice to other attorneys

- 11 (1) Subject to sub-paragraph (2), before making an application for...

Supplementary

- 12 Despite section 7 of the Interpretation Act 1978 (c. 30)...
- Part 4 — REGISTRATION

Registration of instrument creating power

- 13 (1) If an application is made in accordance with paragraph...

Register of enduring powers

- 14 The Public Guardian has the function of establishing and maintaining...
- Part 5 — LEGAL POSITION AFTER REGISTRATION

Effect and proof of registration

- 15 (1) The effect of the registration of an instrument under...

Functions of court with regard to registered power

- 16 (1) Where an instrument has been registered under paragraph 13,...

Cancellation of registration by Public Guardian

- 17 The Public Guardian must cancel the registration of an instrument...
- Part 6 — PROTECTION OF ATTORNEY AND THIRD PARTIES

Protection of attorney and third persons where power is invalid or revoked

- 18 (1) Sub-paragraphs (2) and (3) apply where an instrument which...

Further protection of attorney and third persons

- 19 (1) If— (a) an instrument framed in a form prescribed...
- Part 7 — JOINT AND JOINT AND SEVERAL ATTORNEYS

Application to joint and joint and several attorneys

- 20 (1) An instrument which appoints more than one person to...

Joint attorneys

- 21 (1) In paragraph 2(5), the reference to the time when...

Joint and several attorneys

- 22 (1) In paragraph 2(7), the reference to the bankruptcy of...
- Part 8 — INTERPRETATION
- 23 (1) In this Schedule— “enduring power” is to be construed...

Status: Point in time view as at 03/11/2008.

Changes to legislation: Mental Capacity Act 2005 is up to date with all changes known to be in force on or before 04 January 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)

SCHEDULE 5 — Transitional provisions and savings

Part 1 — REPEAL OF PART 7 OF THE MENTAL HEALTH ACT 1983

Existing receivers

- 1 (1) This paragraph applies where, immediately before the commencement day,...

Orders, appointments etc.

- 2 (1) Any order or appointment made, direction or authority given...

Pending proceedings

- 3 (1) Any application for the exercise of a power under...

Appeals

- 4 (1) Part 7 of the Mental Health Act and the...

Fees

- 5 All fees and other payments which, having become due, have...

Court records

- 6 (1) The records of the former Court of Protection are...

Existing charges

- 7 This Act does not affect the operation in relation to...

Preservation of interests on disposal of property

- 8 Paragraph 8(1) of Schedule 2 applies in relation to any...

Accounts

- 9 Court of Protection Rules may provide that, in a case...

Interpretation

- 10 In this Part of this Schedule— (a) “the commencement day”...
Part 2 — REPEAL OF THE ENDURING POWERS OF ATTORNEY ACT 1985

Orders, determinations, etc.

- 11 (1) Any order or determination made, or other thing done,...

Pending proceedings

- 12 (1) An application for the exercise of a power under...

Appeals

- 13 (1) The 1985 Act and, so far as relevant, the...

Exercise of powers of donor as trustee

- 14 (1) Section 2(8) of the 1985 Act (which prevents a...

Status: Point in time view as at 03/11/2008.

Changes to legislation: Mental Capacity Act 2005 is up to date with all changes known to be in force on or before 04 January 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)

Interpretation

15 In this Part of this Schedule, “the commencement day” means...

SCHEDULE 6 — Minor and consequential amendments

Fines and Recoveries Act 1833 (c. 74)

1 (1) The Fines and Recoveries Act 1833 (c. 74) is...

Improvement of Land Act 1864 (c. 114)

2 In section 68 of the Improvement of Land Act 1864...

Trustee Act 1925 (c. 19)

3 (1) The Trustee Act 1925 (c. 19) is amended as...

Law of Property Act 1925 (c. 20)

4 (1) The Law of Property Act 1925 (c. 20) is...

Administration of Estates Act 1925 (c. 23)

5 (1) The Administration of Estates Act 1925 (c. 23) is...

National Assistance Act 1948 (c. 29)

6 In section 49 of the National Assistance Act 1948 (c....

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

7 In section 1 of the U.S.A. Veterans' Pensions (Administration) Act...

Intestates' Estates Act 1952 (c. 64)

8 In Schedule 2 to the Intestates' Estates Act 1952 (c....

Variation of Trusts Act 1958 (c. 53)

9 In section 1 of the Variation of Trusts Act 1958...

Administration of Justice Act 1960 (c. 65)

10 In section 12(1)(b) of the Administration of Justice Act 1960...

Industrial and Provident Societies Act 1965 (c. 12)

11 In section 26 of the Industrial and Provident Societies Act...

Compulsory Purchase Act 1965 (c. 56)

12 In Schedule 1 to the Compulsory Purchase Act 1965 (c....

Leasehold Reform Act 1967 (c. 88)

13 (1) For section 26(2) of the Leasehold Reform Act 1967...

Status: Point in time view as at 03/11/2008.

Changes to legislation: Mental Capacity Act 2005 is up to date with all changes known to be in force on or before 04 January 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)

Medicines Act 1968 (c. 67)

14 In section 72 of the Medicines Act 1968 (c. 67)...

Family Law Reform Act 1969 (c. 46)

15 For section 21(4) of the Family Law Reform Act 1969...

Local Authority Social Services Act 1970 (c. 42)

16 (1) Schedule 1 to the Local Authority Social Services Act...

Courts Act 1971 (c. 23)

17 In Part 1A of Schedule 2 to the Courts Act...

Local Government Act 1972 (c. 70)

18 (1) Omit section 118 of the Local Government Act 1972...

Matrimonial Causes Act 1973 (c. 18)

19 In section 40 of the Matrimonial Causes Act 1973 (c....

Juries Act 1974 (c. 23)

20 In Schedule 1 to the Juries Act 1974 (c. 23)...

Consumer Credit Act 1974 (c. 39)

21 For section 37(1)(c) of the Consumer Credit Act 1974 (c....

Solicitors Act 1974 (c. 47)

22 (1) The Solicitors Act 1974 (c. 47) is amended as...

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

23 In section 31 of the Local Government (Miscellaneous Provisions) Act...

Sale of Goods Act 1979 (c. 54)

24 In section 3(2) of the Sale of Goods Act 1979...

Limitation Act 1980 (c. 58)

25 In section 38 of the Limitation Act 1980 (c. 58)...

Public Passenger Vehicles Act 1981 (c. 14)

26 In section 57(2)(c) of the Public Passenger Vehicles Act 1981...

Judicial Pensions Act 1981 (c. 20)

27 In Schedule 1 to the Judicial Pensions Act 1981 (c....

Supreme Court Act 1981 (c. 54)

28 In Schedule 2 to the Supreme Court Act 1981 (c....

Status: Point in time view as at 03/11/2008.

Changes to legislation: *Mental Capacity Act 2005 is up to date with all changes known to be in force on or before 04 January 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)*

Mental Health Act 1983 (c. 20)

29 (1) The Mental Health Act is amended as follows.

Administration of Justice Act 1985 (c. 61)

30 In section 18(3) of the Administration of Justice Act 1985...

Insolvency Act 1986 (c. 45)

31 (1) The Insolvency Act 1986 (c. 45) is amended as...

Building Societies Act 1986 (c. 53)

32 In section 102D(9) of the Building Societies Act 1986 (c....

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

33 In section 3 of the Public Trustee and Administration of...

Patronage (Benefices) Measure 1986 (No.3)

34 (1) The Patronage (Benefices) Measure 1986 (No. 3) is amended...

Courts and Legal Services Act 1990 (c. 41)

35 (1) The Courts and Legal Services Act 1990 (c. 41)...

Child Support Act 1991 (c. 48)

36 In section 50 of the Child Support Act 1991 (c....

Social Security Administration Act 1992 (c. 5)

37 In section 123 of the Social Security Administration Act 1992...

Judicial Pensions and Retirement Act 1993 (c. 8)

38 (1) The Judicial Pensions and Retirement Act 1993 (c. 8)...

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

39 (1) For paragraph 4 of Schedule 2 to the Leasehold...

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

40 (1) The Goods Vehicles (Licensing of Operators) Act 1995 (c....

Disability Discrimination Act 1995 (c. 50)

41 In section 20(7) of the Disability Discrimination Act 1995 (c....

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

42 (1) The Trusts of Land and Appointment of Trustees Act...

Human Rights Act 1998 (c. 42)

43 In section 4(5) of the Human Rights Act 1998 (c....

Status: Point in time view as at 03/11/2008.

Changes to legislation: Mental Capacity Act 2005 is up to date with all changes known to be in force on or before 04 January 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)

Access to Justice Act 1999 (c. 22)

44 In paragraph 1 of Schedule 2 to the Access to...

Adoption and Children Act 2002 (c. 38)

45 In section 52(1)(a) of the Adoption and Children Act 2002...

Licensing Act 2003 (c. 17)

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

Courts Act 2003 (c. 39)

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

SCHEDULE 7 — Repeals

Status:

Point in time view as at 03/11/2008.

Changes to legislation:

Mental Capacity Act 2005 is up to date with all changes known to be in force on or before 04 January 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.