Mental Capacity Act 2005

2005 CHAPTER 9

PART 3

MISCELLANEOUS AND GENERAL

Declaratory provision

62 Scope of the Act

For the avoidance of doubt, it is hereby declared that nothing in this Act is to be taken to affect the law relating to murder or manslaughter or the operation of section 2 of the Suicide Act 1961 (c. 60) (assisting suicide).

Private international law

63 International protection of adults

Schedule 3—

(a) gives effect in England and Wales to the Convention on the International Protection of Adults signed at the Hague on 13th January 2000 (Cm. 5881) (in so far as this Act does not otherwise do so), and

(b) makes related provision as to the private international law of England and Wales.

General

64 Interpretation

(1) In this Act—

"the 1985 Act" means the Enduring Powers of Attorney Act 1985 (c. 29),

"advance decision" has the meaning given in section 24(1),

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"the court" means the Court of Protection established by section 45,

"Court of Protection Rules" has the meaning given in section 51(1),

"Court of Protection Visitor" has the meaning given in section 61,

"deputy" has the meaning given in section 16(2)(b),

"enactment" includes a provision of subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30)),

"health record" has the meaning given in section 68 of the Data Protection Act 1998 (c. 29) (as read with section 69 of that Act),

"the Human Rights Convention" has the same meaning as "the Convention" in the Human Rights Act 1998 (c. 42),

"independent mental capacity advocate" has the meaning given in section 35(1),

"lasting power of attorney" has the meaning given in section 9,

"life-sustaining treatment" has the meaning given in section 4(10),

"local authority" means—

(a) the council of a county in England in which there are no district councils,

(b) the council of a district in England,

(c) the council of a county or county borough in Wales,

(d) the council of a London borough,

(e) the Common Council of the City of London, or

(f) the Council of the Isles of Scilly,

"Mental Health Act" means the Mental Health Act 1983 (c. 20),

"prescribed", in relation to regulations made under this Act, means prescribed by those regulations,

"property" includes any thing in action and any interest in real or personal property,

"public authority" has the same meaning as in the Human Rights Act 1998,

"Public Guardian" has the meaning given in section 57,

"purchaser" and "purchase" have the meaning given in section 205(1) of the Law of Property Act 1925 (c. 20),

"social services function" has the meaning given in section 1A of the Local Authority Social Services Act 1970 (c. 42),

"treatment" includes a diagnostic or other procedure,

"trust corporation" has the meaning given in section 68(1) of the Trustee Act 1925 (c. 19), and

"will" includes codicil.

(2) In this Act, references to making decisions, in relation to a donee of a lasting power of attorney or a deputy appointed by the court, include, where appropriate, acting on decisions made.

(3) In this Act, references to the bankruptcy of an individual include a case where a bankruptcy restrictions order under the Insolvency Act 1986 (c. 45) has effect in respect of him.

(4) "Bankruptcy restrictions order" includes an interim bankruptcy restrictions order.

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Commencement Information

I1 S. 64 wholly in force at 1.10.2007; s. 64 not in force at Royal Assent see s. 68(1)-(3); s. 64 in force for certain purposes at 1.4.2007 by S.I. 2007/563, **art. 2(4)**; and s. 64 in force for all purposes at 1.10.2007 by S.I. 2007/1897, **art. 2(2)(f)**

65 Rules, regulations and orders

(1) Any power to make rules, regulations or orders under this Act **[**[F1], other than the power in section 21**]**[F1]—

(a) is exercisable by statutory instrument;

(b) includes power to make supplementary, incidental, consequential, transitional or saving provision;

(c) includes power to make different provision for different cases.

(2) Any statutory instrument containing rules, regulations or orders made by the Lord Chancellor or the Secretary of State under this Act, other than—

(a) regulations under section 34 (loss of capacity during research project),

(b) regulations under section 41 (adjusting role of independent mental capacity advocacy service),

(c) regulations under paragraph 32(1)(b) of Schedule 3 (private international law relating to the protection of adults),

(d) an order of the kind mentioned in section 67(6) (consequential amendments of primary legislation), or

(e) an order under section 68 (commencement),

is subject to annulment in pursuance of a resolution of either House of Parliament.

(3) A statutory instrument containing an Order in Council under paragraph 31 of Schedule 3 (provision to give further effect to Hague Convention) is subject to annulment in pursuance of a resolution of either House of Parliament.

(4) A statutory instrument containing regulations made by the Secretary of State under section 34 or 41 or by the Lord Chancellor under paragraph 32(1)(b) of Schedule 3 may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

[[F2](5) An order under section 21—

(a) may include supplementary, incidental, consequential, transitional or saving provision;

(b) may make different provision for different cases;

(c) is to be made in the form of a statutory instrument to which the Statutory Instruments Act 1946 applies as if the order were made by a Minister of the Crown; and

(d) is subject to annulment in pursuance of a resolution of either House of Parliament.[F2]**]**

Textual Amendments

F1 Words in s. 65(1) inserted (3.4.2006) by The Lord Chancellor (Transfer of Functions and Supplementary Provisions) (No.2) Order 2006 (S.I. 2006/1016), arts. 1, 2, **Sch. 1 para. 37(2)**

F2 S. 65(5) inserted (3.4.2006) by The Lord Chancellor (Transfer of Functions and Supplementary Provisions) (No.2) Order 2006 (S.I. 2006/1016), arts. 1, 2, **Sch. 1 para. 37(3)**

66 Existing receivers and enduring powers of attorney etc.

(1) The following provisions cease to have effect—

(a) Part 7 of the Mental Health Act,

(b) the Enduring Powers of Attorney Act 1985 (c. 29).

(2) No enduring power of attorney within the meaning of the 1985 Act is to be created after the commencement of subsection (1)(b).

(3) Schedule 4 has effect in place of the 1985 Act in relation to any enduring power of attorney created before the commencement of subsection (1)(b).

(4) Schedule 5 contains transitional provisions and savings in relation to Part 7 of the Mental Health Act and the 1985 Act.

67 Minor and consequential amendments and repeals

(1) Schedule 6 contains minor and consequential amendments.

(2) Schedule 7 contains repeals.

(3) The Lord Chancellor may by order make supplementary, incidental, consequential, transitional or saving provision for the purposes of, in consequence of, or for giving full effect to a provision of this Act.

(4) An order under subsection (3) may, in particular—

(a) provide for a provision of this Act which comes into force before another provision of this Act has come into force to have effect, until the other provision has come into force, with specified modifications;

(b) amend, repeal or revoke an enactment, other than one contained in an Act or Measure passed in a Session after the one in which this Act is passed.

(5) The amendments that may be made under subsection (4)(b) are in addition to those made by or under any other provision of this Act.

(6) An order under subsection (3) which amends or repeals a provision of an Act or Measure may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

68 Commencement and extent

(1) This Act, other than sections 30 to 41, comes into force in accordance with provision made by order by the Lord Chancellor.

(2) Sections 30 to 41 come into force in accordance with provision made by order by—

(a) the Secretary of State, in relation to England, and

(b) the National Assembly for Wales, in relation to Wales.

(3) An order under this section may appoint different days for different provisions and different purposes.

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(4) Subject to subsections (5) and (6), this Act extends to England and Wales only.

(5) The following provisions extend to the United Kingdom—

(a) paragraph 16(1) of Schedule 1 (evidence of instruments and of registration of lasting powers of attorney),

(b) paragraph 15(3) of Schedule 4 (evidence of instruments and of registration of enduring powers of attorney).

(6) Subject to any provision made in Schedule 6, the amendments and repeals made by Schedules 6 and 7 have the same extent as the enactments to which they relate.

Subordinate Legislation Made

P1 S. 68(1) power partly exercised: 1.4.2007 appointed for specified provisions and purposes by {S.I. 2007/563}, art. 2

P2 S. 68(1) power partly exercised: 1.10.2007 appointed for specified provisions and purposes by {S.I. 2007/1897}, art. 2

P3 S. 68(2) power partly exercised: different dates appointed for specified provisions and purposes by {S.I. 2007/856}, arts. 2-5

P4 S. 68(2)(a) power partly exercised: different dates appointed for specified provisions and purposes by {S.I. 2006/2814}, arts. 2-5 (as amended by S.I. 2006/3473, **art. 2**)

69 Short title

This Act may be cited as the Mental Capacity Act 2005.

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