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SCHEDULES

[F1SCHEDULE A1

HOSPITAL AND CARE HOME RESIDENTS: DEPRIVATION OF LIBERTY

Textual Amendments

F1 Sch. A1 inserted (1.4.2008 for certain purposes and otherwise 1.4.2009) by Mental Health Act 2007 (c. 12) , ss. 50 , 56 , **Sch. 7** ; S.I. 2008/745 , **art. 4(a)** ; S.I. 2009/139 , **art. 2(c)** (with art. 3 , Sch. paras. 3 , 4)

PART 1

AUTHORISATION TO DEPRIVE RESIDENTS OF LIBERTY ETC

Application of Part

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

(2) The first condition is that a person ("P") is detained in a hospital or care home — for the purpose of being given care or treatment — in circumstances which amount to deprivation of the person's liberty.

(3) The second condition is that a standard or urgent authorisation is in force.

(4) The third condition is that the standard or urgent authorisation relates—

(a) to P, and

(b) to the hospital or care home in which P is detained.

Authorisation to deprive P of liberty

2 The managing authority of the hospital or care home may deprive P of his liberty by detaining him as mentioned in paragraph 1(2).

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

3 (1) This paragraph applies to any act which a person ("D") does for the purpose of detaining P as mentioned in paragraph 1(2).

(2) D does not incur any liability in relation to the act that he would not have incurred if P—

(a) had had capacity to consent in relation to D's doing the act, and

(b) had consented to D's doing the act.

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No protection for negligent acts etc

4 (1) Paragraphs 2 and 3 do not exclude a person's civil liability for loss or damage, or his criminal liability, resulting from his negligence in doing any thing.

(2) Paragraphs 2 and 3 do not authorise a person to do anything otherwise than for the purpose of the standard or urgent authorisation that is in force.

(3) In a case where a standard authorisation is in force, paragraphs 2 and 3 do not authorise a person to do anything which does not comply with the conditions (if any) included in the authorisation.

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 hospital or care home — for the purpose of being given care or treatment — in circumstances which amount to deprivation of the person's liberty.

Relevant person etc

7 In relation to a person who is, or is to be, a detained resident—

"relevant person" means the person in question;

"relevant hospital or care home" means the hospital or care home in question;

"relevant care or treatment" means the care or treatment in question.

Authorisations

8 "Standard authorisation" means an authorisation given under Part 4.

9 "Urgent authorisation" means an authorisation given under Part 5.

10 "Authorisation under this Schedule" means either of the following—

(a) a standard authorisation;

(b) an urgent authorisation.

11 (1) The purpose of a standard authorisation is the purpose which is stated in the authorisation in accordance with paragraph 55(1)(d).

(2) The purpose of an urgent authorisation is the purpose which is stated in the authorisation in accordance with paragraph 80(d).

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PART 3

THE QUALIFYING REQUIREMENTS

The qualifying requirements

12 (1) These are the qualifying requirements referred to in this Schedule—

(a) the age requirement;

(b) the mental health requirement;

(c) the mental capacity requirement;

(d) the best interests requirement;

(e) the eligibility requirement;

(f) the no refusals requirement.

(2) Any question of whether a person who is, or is to be, a detained resident meets the qualifying requirements is to be determined in accordance with this Part.

(3) In a case where—

(a) the question of whether a person meets a particular qualifying requirement arises in relation to the giving of a standard authorisation, and

(b) any circumstances relevant to determining that question are expected to change between the time when the determination is made and the time when the authorisation is expected to come into force,

those circumstances are to be taken into account as they are expected to be at the later time.

The age requirement

13 The relevant person meets the age requirement if he has reached 18.

The mental health requirement

14 (1) The relevant person meets the mental health requirement if he is suffering from mental disorder (within the meaning of the Mental Health Act, but disregarding any exclusion for persons with learning disability).

(2) An exclusion for persons with learning disability is any provision of the Mental Health Act which provides for a person with learning disability not to be regarded as suffering from mental disorder for one or more purposes of that Act.

The mental capacity requirement

15 The relevant person meets the mental capacity requirement if he lacks capacity in relation to the question whether or not he should be accommodated in the relevant hospital or care home for the purpose of being given the relevant care or treatment.

The best interests requirement

16 (1) The relevant person meets the best interests requirement if all of the following conditions are met.

(2) The first condition is that the relevant person is, or is to be, a detained resident.

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(3) The second condition is that it is in the best interests of the relevant person for him to be a detained resident.

(4) The third condition is that, in order to prevent harm to the relevant person, it is necessary for him to be a detained resident.

(5) The fourth condition is that it is a proportionate response to—
(a) the likelihood of the relevant person suffering harm, and
(b) the seriousness of that harm,
for him to be a detained resident.

The eligibility requirement

17 (1) The relevant person meets the eligibility requirement unless he is ineligible to be deprived of liberty by this Act.

(2) Schedule 1A applies for the purpose of determining whether or not P is ineligible to be deprived of liberty by this Act.

The no refusals requirement

18 The relevant person meets the no refusals requirement unless there is a refusal within the meaning of paragraph 19 or 20.

19 (1) There is a refusal if these conditions are met—
(a) the relevant person has made an advance decision;
(b) the advance decision is valid;
(c) the advance decision is applicable to some or all of the relevant treatment.

(2) Expressions used in this paragraph and any of sections 24, 25 or 26 have the same meaning in this paragraph as in that section.

20 (1) There is a refusal if it would be in conflict with a valid decision of a donee or deputy for the relevant person to be accommodated in the relevant hospital or care home for the purpose of receiving some or all of the relevant care or treatment—
(a) in circumstances which amount to deprivation of the person's liberty, or
(b) at all.

(2) A donee is a donee of a lasting power of attorney granted by the relevant person.

(3) A decision of a donee or deputy is valid if it is made—
(a) within the scope of his authority as donee or deputy, and
(b) in accordance with Part 1 of this Act.

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—

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(a) the managing authority of the relevant hospital or care home have requested it, or

(b) paragraph 71 applies (right of third party to require consideration of whether authorisation needed).

23 The managing authority may not make a request for a standard authorisation unless—

(a) they are required to do so by paragraph 24 (as read with paragraphs 27 to 29),

(b) they are required to do so by paragraph 25 (as read with paragraph 28), or

(c) they are permitted to do so by paragraph 30.

Duty to request authorisation: basic cases

24 (1) The managing authority must request a standard authorisation in any of the following cases.

(2) The first case is where it appears to the managing authority that the relevant person—

(a) is not yet accommodated in the relevant hospital or care home,

(b) is likely — at some time within the next 28 days — to be a detained resident in the relevant hospital or care home, and

(c) is likely—

(i) at that time, or

(ii) at some later time within the next 28 days,

to meet all of the qualifying requirements.

(3) The second case is where it appears to the managing authority that the relevant person—

(a) is already accommodated in the relevant hospital or care home,

(b) is likely — at some time within the next 28 days — to be a detained resident in the relevant hospital or care home, and

(c) is likely—

(i) at that time, or

(ii) at some later time within the next 28 days,

to meet all of the qualifying requirements.

(4) The third case is where it appears to the managing authority that the relevant person—

(a) is a detained resident in the relevant hospital or care home, and

(b) meets all of the qualifying requirements, or is likely to do so at some time within the next 28 days.

(5) This paragraph is subject to paragraphs 27 to 29.

Duty to request authorisation: change in place of detention

25 (1) The relevant managing authority must request a standard authorisation if it appears to them that these conditions are met.

(2) The first condition is that a standard authorisation—

(a) has been given, and

(b) has not ceased to be in force.

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(3) The second condition is that there is, or is to be, a change in the place of detention.

(4) This paragraph is subject to paragraph 28.

26 (1) This paragraph applies for the purposes of paragraph 25.

(2) There is a change in the place of detention if the relevant person—

(a) ceases to be a detained resident in the stated hospital or care home, and

(b) becomes a detained resident in a different hospital or care home ("the new hospital or care home").

(3) The stated hospital or care home is the hospital or care home to which the standard authorisation relates.

(4) The relevant managing authority are the managing authority of the new hospital or care home.

Other authority for detention: request for authorisation

27 (1) This paragraph applies if, by virtue of section 4A(3), a decision of the court authorises the relevant person to be a detained resident.

(2) Paragraph 24 does not require a request for a standard authorisation to be made in relation to that detention unless these conditions are met.

(3) The first condition is that the standard authorisation would be in force at a time immediately after the expiry of the other authority.

(4) The second condition is that the standard authorisation would not be in force at any time on or before the expiry of the other authority.

(5) The third condition is that it would, in the managing authority's view, be unreasonable to delay making the request until a time nearer the expiry of the other authority.

(6) In this paragraph—

(a) the other authority is—

(i) the decision mentioned in sub-paragraph (1), or

(ii) any further decision of the court which, by virtue of section 4A(3), authorises, or is expected to authorise, the relevant person to be a detained resident;

(b) the expiry of the other authority is the time when the other authority is expected to cease to authorise the relevant person to be a detained resident.

Request refused: no further request unless change of circumstances

28 (1) This paragraph applies if—

(a) a managing authority request a standard authorisation under paragraph 24 or 25, and

(b) the supervisory body are prohibited by paragraph 50(2) from giving the authorisation.

(2) Paragraph 24 or 25 does not require that managing authority to make a new request for a standard authorisation unless it appears to the managing authority that—

(a) there has been a change in the relevant person's case, and

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(b) because of that change, the supervisory body are likely to give a standard authorisation if requested.

Authorisation given: request for further authorisation

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

(a) has been given in relation to the detention of the relevant person, and

(b) that authorisation ("the existing authorisation") has not ceased to be in force.

(2) Paragraph 24 does not require a new request for a standard authorisation ("the new authorisation") to be made unless these conditions are met.

(3) The first condition is that the new authorisation would be in force at a time immediately after the expiry of the existing authorisation.

(4) The second condition is that the new authorisation would not be in force at any time on or before the expiry of the existing authorisation.

(5) The third condition is that it would, in the managing authority's view, be unreasonable to delay making the request until a time nearer the expiry of the existing authorisation.

(6) The expiry of the existing authorisation is the time when it is expected to cease to be in force.

Power to request authorisation

30 (1) This paragraph applies if—

(a) a standard authorisation has been given in relation to the detention of the relevant person,

(b) that authorisation ("the existing authorisation") has not ceased to be in force,

(c) the requirement under paragraph 24 to make a request for a new standard authorisation does not apply, because of paragraph 29, and

(d) a review of the existing authorisation has been requested, or is being carried out, in accordance with Part 8.

(2) The managing authority may request a new standard authorisation which would be in force on or before the expiry of the existing authorisation; but only if it would also be in force immediately after that expiry.

(3) The expiry of the existing authorisation is the time when it is expected to cease to be in force.

(4) Further provision relating to cases where a request is made under this paragraph can be found in—

(a) paragraph 62 (effect of decision about request), and

(b) paragraph 124 (effect of request on Part 8 review).

Information included in request

31 A request for a standard authorisation must include the information (if any) required by regulations.

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Records of requests

32 (1) The managing authority of a hospital or care home must keep a written record of—
(a) each request that they make for a standard authorisation, and
(b) the reasons for making each request.

(2) A supervisory body must keep a written record of each request for a standard authorisation that is made to them.

Relevant person must be assessed

33 (1) This paragraph applies if the supervisory body are requested to give a standard authorisation.

(2) The supervisory body must secure that all of these assessments are carried out in relation to the relevant person—
(a) an age assessment;
(b) a mental health assessment;
(c) a mental capacity assessment;
(d) a best interests assessment;
(e) an eligibility assessment;
(f) a no refusals assessment.

(3) The person who carries out any such assessment is referred to as the assessor.

(4) Regulations may be made about the period (or periods) within which assessors must carry out assessments.

(5) This paragraph is subject to paragraphs 49 and 133.

Age assessment

34 An age assessment is an assessment of whether the relevant person meets the age requirement.

Mental health assessment

35 A mental health assessment is an assessment of whether the relevant person meets the mental health requirement.

36 When carrying out a mental health assessment, the assessor must also—
(a) consider how (if at all) the relevant person's mental health is likely to be affected by his being a detained resident, and
(b) notify the best interests assessor of his conclusions.

Mental capacity assessment

37 A mental capacity assessment is an assessment of whether the relevant person meets the mental capacity requirement.

Best interests assessment

38 A best interests assessment is an assessment of whether the relevant person meets the best interests requirement.

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39 (1) In carrying out a best interests assessment, the assessor must comply with the duties in sub-paragraphs (2) and (3).

(2) The assessor must consult the managing authority of the relevant hospital or care home.

(3) The assessor must have regard to all of the following—

(a) the conclusions which the mental health assessor has notified to the best interests assessor in accordance with paragraph 36(b);

(b) any relevant needs assessment;

(c) any relevant care plan.

(4) A relevant needs assessment is an assessment of the relevant person's needs which—

(a) was carried out in connection with the relevant person being accommodated in the relevant hospital or care home, and

(b) was carried out by or on behalf of—

(i) the managing authority of the relevant hospital or care home, or

(ii) the supervisory body.

(5) A relevant care plan is a care plan which—

(a) sets out how the relevant person's needs are to be met whilst he is accommodated in the relevant hospital or care home, and

(b) was drawn up by or on behalf of—

(i) the managing authority of the relevant hospital or care home, or

(ii) the supervisory body.

(6) The managing authority must give the assessor a copy of—

(a) any relevant needs assessment carried out by them or on their behalf, or

(b) any relevant care plan drawn up by them or on their behalf.

(7) The supervisory body must give the assessor a copy of—

(a) any relevant needs assessment carried out by them or on their behalf, or

(b) any relevant care plan drawn up by them or on their behalf.

(8) The duties in sub-paragraphs (2) and (3) do not affect any other duty to consult or to take the views of others into account.

40 (1) This paragraph applies whatever conclusion the best interests assessment comes to.

(2) The assessor must state in the best interests assessment the name and address of every interested person whom he has consulted in carrying out the assessment.

41 Paragraphs 42 and 43 apply if the best interests assessment comes to the conclusion that the relevant person meets the best interests requirement.

42 (1) The assessor must state in the assessment the maximum authorisation period.

(2) The maximum authorisation period is the shorter of these periods—

(a) the period which, in the assessor's opinion, would be the appropriate maximum period for the relevant person to be a detained resident under the standard authorisation that has been requested;

(b) 1 year, or such shorter period as may be prescribed in regulations.

(3) Regulations under sub-paragraph (2)(b)—

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(a) need not provide for a shorter period to apply in relation to all standard authorisations;

(b) may provide for different periods to apply in relation to different kinds of standard authorisations.

(4) Before making regulations under sub-paragraph (2)(b) the Secretary of State must consult all of the following—

(a) each body required by regulations under paragraph 162 to monitor and report on the operation of this Schedule in relation to England;

(b) such other persons as the Secretary of State considers it appropriate to consult.

(5) Before making regulations under sub-paragraph (2)(b) the National Assembly for Wales must consult all of the following—

(a) each person or body directed under paragraph 163(2) to carry out any function of the Assembly of monitoring and reporting on the operation of this Schedule in relation to Wales;

(b) such other persons as the Assembly considers it appropriate to consult.

43 The assessor may include in the assessment recommendations about conditions to which the standard authorisation is, or is not, to be subject in accordance with paragraph 53.

44 (1) This paragraph applies if the best interests assessment comes to the conclusion that the relevant person does not meet the best interests requirement.

(2) If, on the basis of the information taken into account in carrying out the assessment, it appears to the assessor that there is an unauthorised deprivation of liberty, he must include a statement to that effect in the assessment.

(3) There is an unauthorised deprivation of liberty if the managing authority of the relevant hospital or care home are already depriving the relevant person of his liberty without authority of the kind mentioned in section 4A.

45 The duties with which the best interests assessor must comply are subject to the provision included in appointment regulations under Part 10 (in particular, provision made under paragraph 146).

Eligibility assessment

46 An eligibility assessment is an assessment of whether the relevant person meets the eligibility requirement.

47 (1) Regulations may—

(a) require an eligibility assessor to request a best interests assessor to provide relevant eligibility information, and

(b) require the best interests assessor, if such a request is made, to provide such relevant eligibility information as he may have.

(2) In this paragraph—

"best interests assessor" means any person who is carrying out, or has carried out, a best interests assessment in relation to the relevant person;

"eligibility assessor" means a person carrying out an eligibility assessment in relation to the relevant person;

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"relevant eligibility information" is information relevant to assessing whether or not the relevant person is ineligible by virtue of paragraph 5 of Schedule 1A.

No refusals assessment

48 A no refusals assessment is an assessment of whether the relevant person meets the no refusals requirement.

Equivalent assessment already carried out

49 (1) The supervisory body are not required by paragraph 33 to secure that a particular kind of assessment ("the required assessment") is carried out in relation to the relevant person if the following conditions are met.

(2) The first condition is that the supervisory body have a written copy of an assessment of the relevant person ("the existing assessment") that has already been carried out.

(3) The second condition is that the existing assessment complies with all requirements under this Schedule with which the required assessment would have to comply (if it were carried out).

(4) The third condition is that the existing assessment was carried out within the previous 12 months; but this condition need not be met if the required assessment is an age assessment.

(5) The fourth condition is that the supervisory body are satisfied that there is no reason why the existing assessment may no longer be accurate.

(6) If the required assessment is a best interests assessment, in satisfying themselves as mentioned in sub-paragraph (5), the supervisory body must take into account any information given, or submissions made, by—

(a) the relevant person's representative,

(b) any section 39C IMCA, or

(c) any section 39D IMCA.

(7) It does not matter whether the existing assessment was carried out in connection with a request for a standard authorisation or for some other purpose.

(8) If, because of this paragraph, the supervisory body are not required by paragraph 33 to secure that the required assessment is carried out, the existing assessment is to be treated for the purposes of this Schedule—

(a) as an assessment of the same kind as the required assessment, and

(b) as having been carried out under paragraph 33 in connection with the request for the standard authorisation.

Duty to give authorisation

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

(a) all assessments are positive, and

(b) the supervisory body have written copies of all those assessments.

(2) The supervisory body must not give a standard authorisation except in accordance with sub-paragraph (1).

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(3) All assessments are positive if each assessment carried out under paragraph 33 has come to the conclusion that the relevant person meets the qualifying requirement to which the assessment relates.

Terms of authorisation

51 (1) If the supervisory body are required to give a standard authorisation, they must decide the period during which the authorisation is to be in force.

(2) That period must not exceed the maximum authorisation period stated in the best interests assessment.

52 A standard authorisation may provide for the authorisation to come into force at a time after it is given.

53 (1) A standard authorisation may be given subject to conditions.

(2) Before deciding whether to give the authorisation subject to conditions, the supervisory body must have regard to any recommendations in the best interests assessment about such conditions.

(3) The managing authority of the relevant hospital or care home must ensure that any conditions are complied with.

Form of authorisation

54 A standard authorisation must be in writing.

55 (1) A standard authorisation must state the following things—

(a) the name of the relevant person;
(b) the name of the relevant hospital or care home;
(c) the period during which the authorisation is to be in force;
(d) the purpose for which the authorisation is given;
(e) any conditions subject to which the authorisation is given;
(f) the reason why each qualifying requirement is met.

(2) The statement of the reason why the eligibility requirement is met must be framed by reference to the cases in the table in paragraph 2 of Schedule 1A.

56 (1) If the name of the relevant hospital or care home changes, the standard authorisation is to be read as if it stated the current name of the hospital or care home.

(2) But sub-paragraph (1) is subject to any provision relating to the change of name which is made in any enactment or in any instrument made under an enactment.

Duty to give information about decision

57 (1) This paragraph applies if—

(a) a request is made for a standard authorisation, and
(b) the supervisory body are required by paragraph 50(1) to give the standard authorisation.

(2) The supervisory body must give a copy of the authorisation to each of the following—

(a) the relevant person's representative;

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(b) the managing authority of the relevant hospital or care home;
(c) the relevant person;
(d) any section 39A IMCA;
(e) every interested person consulted by the best interests assessor.

(3) The supervisory body must comply with this paragraph as soon as practicable after they give the standard authorisation.

58 (1) This paragraph applies if—
(a) a request is made for a standard authorisation, and
(b) the supervisory body are prohibited by paragraph 50(2) from giving the standard authorisation.

(2) The supervisory body must give notice, stating that they are prohibited from giving the authorisation, to each of the following—
(a) the managing authority of the relevant hospital or care home;
(b) the relevant person;
(c) any section 39A IMCA;
(d) every interested person consulted by the best interests assessor.

(3) The supervisory body must comply with this paragraph as soon as practicable after it becomes apparent to them that they are prohibited from giving the authorisation.

Duty to give information about effect of authorisation

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

(2) The managing authority of the relevant hospital or care home must take such steps as are practicable to ensure that the relevant person understands all of the following—
(a) the effect of the authorisation;
(b) the right to make an application to the court to exercise its jurisdiction under section 21A;
(c) the right under Part 8 to request a review;
(d) the right to have a section 39D IMCA appointed;
(e) how to have a section 39D IMCA appointed.

(3) Those steps must be taken as soon as is practicable after the authorisation is given.

(4) Those steps must include the giving of appropriate information both orally and in writing.

(5) Any written information given to the relevant person must also be given by the managing authority to the relevant person's representative.

(6) They must give the information to the representative as soon as is practicable after it is given to the relevant person.

(7) Sub-paragraph (8) applies if the managing authority is notified that a section 39D IMCA has been appointed.

(8) As soon as is practicable after being notified, the managing authority must give the section 39D IMCA a copy of the written information given in accordance with sub-paragraph (4).

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Records of authorisations

60 A supervisory body must keep a written record of all of the following information—

(a) the standard authorisations that they have given;

(b) the requests for standard authorisations in response to which they have not given an authorisation;

(c) in relation to each standard authorisation given: the matters stated in the authorisation in accordance with paragraph 55.

Variation of an authorisation

61 (1) A standard authorisation may not be varied except in accordance with Part 7 or 8.

(2) This paragraph does not affect the powers of the Court of Protection or of any other court.

Effect of decision about request made under paragraph 25 or 30

62 (1) This paragraph applies where the managing authority request a new standard authorisation under either of the following—

(a) paragraph 25 (change in place of detention);

(b) paragraph 30 (existing authorisation subject to review).

(2) If the supervisory body are required by paragraph 50(1) to give the new authorisation, the existing authorisation terminates at the time when the new authorisation comes into force.

(3) If the supervisory body are prohibited by paragraph 50(2) from giving the new authorisation, there is no effect on the existing authorisation's continuation in force.

When an authorisation is in force

63 (1) A standard authorisation comes into force when it is given.

(2) But if the authorisation provides for it to come into force at a later time, it comes into force at that time.

64 (1) A standard authorisation ceases to be in force at the end of the period stated in the authorisation in accordance with paragraph 55(1)(c).

(2) But if the authorisation terminates before then in accordance with paragraph 62(2) or any other provision of this Schedule, it ceases to be in force when the termination takes effect.

(3) This paragraph does not affect the powers of the Court of Protection or of any other court.

65 (1) This paragraph applies if a standard authorisation ceases to be in force.

(2) The supervisory body must give notice that the authorisation has ceased to be in force.

(3) The supervisory body must give that notice to all of the following—

(a) the managing authority of the relevant hospital or care home;

(b) the relevant person;

(c) the relevant person's representative;

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(d) every interested person consulted by the best interests assessor.

(4) The supervisory body must give that notice as soon as practicable after the authorisation ceases to be in force.

When a request for a standard authorisation is "disposed of"

66 A request for a standard authorisation is to be regarded for the purposes of this Schedule as disposed of if the supervisory body have given—

(a) a copy of the authorisation in accordance with paragraph 57, or

(b) notice in accordance with paragraph 58.

Right of third party to require consideration of whether authorisation needed

67 For the purposes of paragraphs 68 to 73 there is an unauthorised deprivation of liberty if—

(a) a person is already a detained resident in a hospital or care home, and

(b) the detention of the person is not authorised as mentioned in section 4A.

68 (1) If the following conditions are met, an eligible person may request the supervisory body to decide whether or not there is an unauthorised deprivation of liberty.

(2) The first condition is that the eligible person has notified the managing authority of the relevant hospital or care home that it appears to the eligible person that there is an unauthorised deprivation of liberty.

(3) The second condition is that the eligible person has asked the managing authority to request a standard authorisation in relation to the detention of the relevant person.

(4) The third condition is that the managing authority has not requested a standard authorisation within a reasonable period after the eligible person asks it to do so.

(5) In this paragraph "eligible person" means any person other than the managing authority of the relevant hospital or care home.

69 (1) This paragraph applies if an eligible person requests the supervisory body to decide whether or not there is an unauthorised deprivation of liberty.

(2) The supervisory body must select and appoint a person to carry out an assessment of whether or not the relevant person is a detained resident.

(3) But the supervisory body need not select and appoint a person to carry out such an assessment in either of these cases.

(4) The first case is where it appears to the supervisory body that the request by the eligible person is frivolous or vexatious.

(5) The second case is where it appears to the supervisory body that—

(a) the question of whether or not there is an unauthorised deprivation of liberty has already been decided, and

(b) since that decision, there has been no change of circumstances which would merit the question being decided again.

(6) The supervisory body must not select and appoint a person to carry out an assessment under this paragraph unless it appears to the supervisory body that the person would be—

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(a) suitable to carry out a best interests assessment (if one were obtained in connection with a request for a standard authorisation relating to the relevant person), and
(b) eligible to carry out such a best interests assessment.

(7) The supervisory body must notify the persons specified in sub-paragraph (8)—
(a) that the supervisory body have been requested to decide whether or not there is an unauthorised deprivation of liberty;
(b) of their decision whether or not to select and appoint a person to carry out an assessment under this paragraph;
(c) if their decision is to select and appoint a person, of the person appointed.

(8) The persons referred to in sub-paragraph (7) are—
(a) the eligible person who made the request under paragraph 68;
(b) the person to whom the request relates;
(c) the managing authority of the relevant hospital or care home;
(d) any section 39A IMCA.

70 (1) Regulations may be made about the period within which an assessment under paragraph 69 must be carried out.

(2) Regulations made under paragraph 129(3) apply in relation to the selection and appointment of a person under paragraph 69 as they apply to the selection of a person under paragraph 129 to carry out a best interests assessment.

(3) The following provisions apply to an assessment under paragraph 69 as they apply to an assessment carried out in connection with a request for a standard authorisation—
(a) paragraph 131 (examination and copying of records);
(b) paragraph 132 (representations);
(c) paragraphs 134 and 135(1) and (2) (duty to keep records and give copies).

(4) The copies of the assessment which the supervisory body are required to give under paragraph 135(2) must be given as soon as practicable after the supervisory body are themselves given a copy of the assessment.

71 (1) This paragraph applies if—
(a) the supervisory body obtain an assessment under paragraph 69,
(b) the assessment comes to the conclusion that the relevant person is a detained resident, and
(c) it appears to the supervisory body that the detention of the person is not authorised as mentioned in section 4A.

(2) This Schedule (including Part 5) applies as if the managing authority of the relevant hospital or care home had, in accordance with Part 4, requested the supervisory body to give a standard authorisation in relation to the relevant person.

(3) The managing authority of the relevant hospital or care home must supply the supervisory body with the information (if any) which the managing authority would, by virtue of paragraph 31, have had to include in a request for a standard authorisation.

(4) The supervisory body must notify the persons specified in paragraph 69(8)—
(a) of the outcome of the assessment obtained under paragraph 69, and
(b) that this Schedule applies as mentioned in sub-paragraph (2).

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72 (1) This paragraph applies if—
- (a) the supervisory body obtain an assessment under paragraph 69, and
- (b) the assessment comes to the conclusion that the relevant person is not a detained resident.

(2) The supervisory body must notify the persons specified in paragraph 69(8) of the outcome of the assessment.

73 (1) This paragraph applies if—
- (a) the supervisory body obtain an assessment under paragraph 69,
- (b) the assessment comes to the conclusion that the relevant person is a detained resident, and
- (c) it appears to the supervisory body that the detention of the person is authorised as mentioned in section 4A.

(2) The supervisory body must notify the persons specified in paragraph 69(8)—
- (a) of the outcome of the assessment, and
- (b) that it appears to the supervisory body that the detention is authorised.

PART 5

URGENT AUTHORISATIONS

Managing authority to give authorisation

74 Only the managing authority of the relevant hospital or care home may give an urgent authorisation.

75 The managing authority may give an urgent authorisation only if they are required to do so by paragraph 76 (as read with paragraph 77).

Duty to give authorisation

76 (1) The managing authority must give an urgent authorisation in either of the following cases.

(2) The first case is where—
- (a) the managing authority are required to make a request under paragraph 24 or 25 for a standard authorisation, and
- (b) they believe that the need for the relevant person to be a detained resident is so urgent that it is appropriate for the detention to begin before they make the request.

(3) The second case is where—
- (a) the managing authority have made a request under paragraph 24 or 25 for a standard authorisation, and
- (b) they believe that the need for the relevant person to be a detained resident is so urgent that it is appropriate for the detention to begin before the request is disposed of.

(4) References in this paragraph to the detention of the relevant person are references to the detention to which paragraph 24 or 25 relates.

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(5) This paragraph is subject to paragraph 77.

77 (1) This paragraph applies where the managing authority have given an urgent authorisation ("the original authorisation") in connection with a case where a person is, or is to be, a detained resident ("the existing detention").

(2) No new urgent authorisation is to be given under paragraph 76 in connection with the existing detention.

(3) But the managing authority may request the supervisory body to extend the duration of the original authorisation.

(4) Only one request under sub-paragraph (3) may be made in relation to the original authorisation.

(5) Paragraphs 84 to 86 apply to any request made under sub-paragraph (3).

Terms of authorisation

78 (1) If the managing authority decide to give an urgent authorisation, they must decide the period during which the authorisation is to be in force.

(2) That period must not exceed 7 days.

Form of authorisation

79 An urgent authorisation must be in writing.

80 An urgent authorisation must state the following things—

(a) the name of the relevant person;

(b) the name of the relevant hospital or care home;

(c) the period during which the authorisation is to be in force;

(d) the purpose for which the authorisation is given.

81 (1) If the name of the relevant hospital or care home changes, the urgent authorisation is to be read as if it stated the current name of the hospital or care home.

(2) But sub-paragraph (1) is subject to any provision relating to the change of name which is made in any enactment or in any instrument made under an enactment.

Duty to keep records and give copies

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

(2) The managing authority must keep a written record of why they have given the urgent authorisation.

(3) As soon as practicable after giving the authorisation, the managing authority must give a copy of the authorisation to all of the following—

(a) the relevant person;

(b) any section 39A IMCA.

Duty to give information about authorisation

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

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(2) The managing authority of the relevant hospital or care home must take such steps as are practicable to ensure that the relevant person understands all of the following—
  (a) the effect of the authorisation;
  (b) the right to make an application to the court to exercise its jurisdiction under section 21A.

(3) Those steps must be taken as soon as is practicable after the authorisation is given.

(4) Those steps must include the giving of appropriate information both orally and in writing.

Request for extension of duration

84 (1) This paragraph applies if the managing authority make a request under paragraph 77 for the supervisory body to extend the duration of the original authorisation.

(2) The managing authority must keep a written record of why they have made the request.

(3) The managing authority must give the relevant person notice that they have made the request.

(4) The supervisory body may extend the duration of the original authorisation if it appears to them that—
  (a) the managing authority have made the required request for a standard authorisation,
  (b) there are exceptional reasons why it has not yet been possible for that request to be disposed of, and
  (c) it is essential for the existing detention to continue until the request is disposed of.

(5) The supervisory body must keep a written record that the request has been made to them.

(6) In this paragraph and paragraphs 85 and 86—
  (a) "original authorisation" and "existing detention" have the same meaning as in paragraph 77;
  (b) the required request for a standard authorisation is the request that is referred to in paragraph 76(2) or (3).

85 (1) This paragraph applies if, under paragraph 84, the supervisory body decide to extend the duration of the original authorisation.

(2) The supervisory body must decide the period of the extension.

(3) That period must not exceed 7 days.

(4) The supervisory body must give the managing authority notice stating the period of the extension.

(5) The managing authority must then vary the original authorisation so that it states the extended duration.

(6) Paragraphs 82(3) and 83 apply (with the necessary modifications) to the variation of the original authorisation as they apply to the giving of an urgent authorisation.

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(7) The supervisory body must keep a written record of—
(a) the outcome of the request, and
(b) the period of the extension.

86 (1) This paragraph applies if, under paragraph 84, the supervisory body decide not to extend the duration of the original authorisation.

(2) The supervisory body must give the managing authority notice stating—
(a) the decision, and
(b) their reasons for making it.

(3) The managing authority must give a copy of that notice to all of the following—
(a) the relevant person;
(b) any section 39A IMCA.

(4) The supervisory body must keep a written record of the outcome of the request.

No variation

87 (1) An urgent authorisation may not be varied except in accordance with paragraph 85.

(2) This paragraph does not affect the powers of the Court of Protection or of any other court.

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 the end of the period stated in the authorisation in accordance with paragraph 80(c) (subject to any variation in accordance with paragraph 85).

(2) But if the required request is disposed of before the end of that period, the urgent authorisation ceases to be in force as follows.

(3) If the supervisory body are required by paragraph 50(1) to give the requested authorisation, the urgent authorisation ceases to be in force when the requested authorisation comes into force.

(4) If the supervisory body are prohibited by paragraph 50(2) from giving the requested authorisation, the urgent authorisation ceases to be in force when the managing authority receive notice under paragraph 58.

(5) In this paragraph—

"required request" means the request referred to in paragraph 76(2) or (3);

"requested authorisation" means the standard authorisation to which the required request relates.

(6) This paragraph does not affect the powers of the Court of Protection or of any other court.

90 (1) This paragraph applies if an urgent authorisation ceases to be in force.

(2) The supervisory body must give notice that the authorisation has ceased to be in force.

(3) The supervisory body must give that notice to all of the following—

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(a) the relevant person;
(b) any section 39A IMCA.

(4) The supervisory body must give that notice as soon as practicable after the authorisation ceases to be in force.

PART 6

ELIGIBILITY REQUIREMENT NOT MET: SUSPENSION OF STANDARD AUTHORISATION

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

(2) The first condition is that a standard authorisation—
(a) has been given, and
(b) has not ceased to be in force.

(3) The second condition is that the managing authority of the relevant hospital or care home are satisfied that the relevant person has ceased to meet the eligibility requirement.

(4) But this Part does not apply if the relevant person is ineligible by virtue of paragraph 5 of Schedule 1A (in which case see Part 8).

92 The managing authority of the relevant hospital or care home must give the supervisory body notice that the relevant person has ceased to meet the eligibility requirement.

93 (1) This paragraph applies if the managing authority give the supervisory body notice under paragraph 92.

(2) The standard authorisation is suspended from the time when the notice is given.

(3) The supervisory body must give notice that the standard authorisation has been suspended to the following persons—
(a) the relevant person;
(b) the relevant person's representative;
(c) the managing authority of the relevant hospital or care home.

94 (1) This paragraph applies if, whilst the standard authorisation is suspended, the managing authority are satisfied that the relevant person meets the eligibility requirement again.

(2) The managing authority must give the supervisory body notice that the relevant person meets the eligibility requirement again.

95 (1) This paragraph applies if the managing authority give the supervisory body notice under paragraph 94.

(2) The standard authorisation ceases to be suspended from the time when the notice is given.

(3) The supervisory body must give notice that the standard authorisation has ceased to be suspended to the following persons—
(a) the relevant person;
(b) the relevant person's representative;
(c) any section 39D IMCA;

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(d) the managing authority of the relevant hospital or care home.

(4) The supervisory body must give notice under this paragraph as soon as practicable after they are given notice under paragraph 94.

96 (1) This paragraph applies if no notice is given under paragraph 94 before the end of the relevant 28 day period.

(2) The standard authorisation ceases to have effect at the end of the relevant 28 day period.

(3) The relevant 28 day period is the period of 28 days beginning with the day on which the standard authorisation is suspended under paragraph 93.

97 The effect of suspending the standard authorisation is that Part 1 ceases to apply for as long as the authorisation is suspended.

PART 7

STANDARD AUTHORISATIONS: CHANGE IN SUPERVISORY RESPONSIBILITY

Application of this Part

98 (1) This Part applies if these conditions are met.

(2) The first condition is that a standard authorisation—

(a) has been given, and

(b) has not ceased to be in force.

(3) The second condition is that there is a change in supervisory responsibility.

(4) The third condition is that there is not a change in the place of detention (within the meaning of paragraph 25).

99 For the purposes of this Part there is a change in supervisory responsibility if—

(a) one body ("the old supervisory body") have ceased to be supervisory body in relation to the standard authorisation, and

(b) a different body ("the new supervisory body") have become supervisory body in relation to the standard authorisation.

Effect of change in supervisory responsibility

100 (1) The new supervisory body becomes the supervisory body in relation to the authorisation.

(2) Anything done by or in relation to the old supervisory body in connection with the authorisation has effect, so far as is necessary for continuing its effect after the change, as if done by or in relation to the new supervisory body.

(3) Anything which relates to the authorisation and which is in the process of being done by or in relation to the old supervisory body at the time of the change may be continued by or in relation to the new supervisory body.

(4) But—

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(a) the old supervisory body do not, by virtue of this paragraph, cease to be liable for anything done by them in connection with the authorisation before the change; and

(b) the new supervisory body do not, by virtue of this paragraph, become liable for any such thing.

PART 8

STANDARD AUTHORISATIONS: REVIEW

Application of this Part

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

(a) has been given, and

(b) has not ceased to be in force.

(2) Paragraphs 102 to 122 are subject to paragraphs 123 to 125.

Review by supervisory body

102 (1) The supervisory body may at any time carry out a review of the standard authorisation in accordance with this Part.

(2) The supervisory body must carry out such a review if they are requested to do so by an eligible person.

(3) Each of the following is an eligible person—

(a) the relevant person;

(b) the relevant person's representative;

(c) the managing authority of the relevant hospital or care home.

Request for review

103 (1) An eligible person may, at any time, request the supervisory body to carry out a review of the standard authorisation in accordance with this Part.

(2) The managing authority of the relevant hospital or care home must make such a request if one or more of the qualifying requirements appear to them to be reviewable.

Grounds for review

104 (1) Paragraphs 105 to 107 set out the grounds on which the qualifying requirements are reviewable.

(2) A qualifying requirement is not reviewable on any other ground.

Non-qualification ground

105 (1) Any of the following qualifying requirements is reviewable on the ground that the relevant person does not meet the requirement—

(a) the age requirement;

(b) the mental health requirement;

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(c) the mental capacity requirement;
(d) the best interests requirement;
(e) the no refusals requirement.

(2) The eligibility requirement is reviewable on the ground that the relevant person is ineligible by virtue of paragraph 5 of Schedule 1A.

(3) The ground in sub-paragraph (1) and the ground in sub-paragraph (2) are referred to as the non-qualification ground.

Change of reason ground

106 (1) Any of the following qualifying requirements is reviewable on the ground set out in sub-paragraph (2)—
(a) the mental health requirement;
(b) the mental capacity requirement;
(c) the best interests requirement;
(d) the eligibility requirement;
(e) the no refusals requirement.

(2) The ground is that the reason why the relevant person meets the requirement is not the reason stated in the standard authorisation.

(3) This ground is referred to as the change of reason ground.

Variation of conditions ground

107 (1) The best interests requirement is reviewable on the ground that—
(a) there has been a change in the relevant person's case, and
(b) because of that change, it would be appropriate to vary the conditions to which the standard authorisation is subject.

(2) This ground is referred to as the variation of conditions ground.

(3) A reference to varying the conditions to which the standard authorisation is subject is a reference to—
(a) amendment of an existing condition,
(b) omission of an existing condition, or
(c) inclusion of a new condition (whether or not there are already any existing conditions).

Notice that review to be carried out

108 (1) If the supervisory body are to carry out a review of the standard authorisation, they must give notice of the review to the following persons—
(a) the relevant person;
(b) the relevant person's representative;
(c) the managing authority of the relevant hospital or care home.

(2) The supervisory body must give the notice—
(a) before they begin the review, or
(b) if that is not practicable, as soon as practicable after they have begun it.

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(3) This paragraph does not require the supervisory body to give notice to any person who has requested the review.

Starting a review

109 To start a review of the standard authorisation, the supervisory body must decide which, if any, of the qualifying requirements appear to be reviewable.

No reviewable qualifying requirements

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

(2) This Part does not require the supervisory body to take any action in respect of the standard authorisation.

One or more reviewable qualifying requirements

111 (1) This paragraph applies if one or more qualifying requirements appear to be reviewable.

(2) The supervisory body must secure that a separate review assessment is carried out in relation to each qualifying requirement which appears to be reviewable.

(3) But sub-paragraph (2) does not require the supervisory body to secure that a best interests review assessment is carried out in a case where the best interests requirement appears to the supervisory body to be non-assessable.

(4) The best interests requirement is non-assessable if—
- (a) the requirement is reviewable only on the variation of conditions ground, and
- (b) the change in the relevant person's case is not significant.

(5) In making any decision whether the change in the relevant person's case is significant, regard must be had to—
- (a) the nature of the change, and
- (b) the period that the change is likely to last for.

Review assessments

112 (1) A review assessment is an assessment of whether the relevant person meets a qualifying requirement.

(2) In relation to a review assessment—
- (a) a negative conclusion is a conclusion that the relevant person does not meet the qualifying requirement to which the assessment relates;
- (b) a positive conclusion is a conclusion that the relevant person meets the qualifying requirement to which the assessment relates.

(3) An age review assessment is a review assessment carried out in relation to the age requirement.

(4) A mental health review assessment is a review assessment carried out in relation to the mental health requirement.

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(5) A mental capacity review assessment is a review assessment carried out in relation to the mental capacity requirement.

(6) A best interests review assessment is a review assessment carried out in relation to the best interests requirement.

(7) An eligibility review assessment is a review assessment carried out in relation to the eligibility requirement.

(8) A no refusals review assessment is a review assessment carried out in relation to the no refusals requirement.

113 (1) In carrying out a review assessment, the assessor must comply with any duties which would be imposed upon him under Part 4 if the assessment were being carried out in connection with a request for a standard authorisation.

(2) But in the case of a best interests review assessment, paragraphs 43 and 44 do not apply.

(3) Instead of what is required by paragraph 43, the best interests review assessment must include recommendations about whether — and, if so, how — it would be appropriate to vary the conditions to which the standard authorisation is subject.

Best interests requirement reviewable but non-assessable

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

(a) the best interests requirement appears to be reviewable, but

(b) in accordance with paragraph 111(3), the supervisory body are not required to secure that a best interests review assessment is carried out.

(2) The supervisory body may vary the conditions to which the standard authorisation is subject in such ways (if any) as the supervisory body think are appropriate in the circumstances.

Best interests review assessment positive

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

(a) a best interests review assessment is carried out, and

(b) the assessment comes to a positive conclusion.

(2) The supervisory body must decide the following questions—

(a) whether or not the best interests requirement is reviewable on the change of reason ground;

(b) whether or not the best interests requirement is reviewable on the variation of conditions ground;

(c) if so, whether or not the change in the person's case is significant.

(3) If the supervisory body decide that the best interests requirement is reviewable on the change of reason ground, they must vary the standard authorisation so that it states the reason why the relevant person now meets that requirement.

(4) If the supervisory body decide that—

(a) the best interests requirement is reviewable on the variation of conditions ground, and

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(b) the change in the relevant person's case is not significant,

they may vary the conditions to which the standard authorisation is subject in such ways (if any) as they think are appropriate in the circumstances.

(5) If the supervisory body decide that—

(a) the best interests requirement is reviewable on the variation of conditions ground, and

(b) the change in the relevant person's case is significant,

they must vary the conditions to which the standard authorisation is subject in such ways as they think are appropriate in the circumstances.

(6) If the supervisory body decide that the best interests requirement is not reviewable on—

(a) the change of reason ground, or

(b) the variation of conditions ground,

this Part does not require the supervisory body to take any action in respect of the standard authorisation so far as the best interests requirement relates to it.

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

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

(2) The first condition is that one or more of the following are carried out—

(a) a mental health review assessment;

(b) a mental capacity review assessment;

(c) an eligibility review assessment;

(d) a no refusals review assessment.

(3) The second condition is that each assessment carried out comes to a positive conclusion.

(4) The supervisory body must decide whether or not each of the assessed qualifying requirements is reviewable on the change of reason ground.

(5) If the supervisory body decide that any of the assessed qualifying requirements is reviewable on the change of reason ground, they must vary the standard authorisation so that it states the reason why the relevant person now meets the requirement or requirements in question.

(6) If the supervisory body decide that none of the assessed qualifying requirements are reviewable on the change of reason ground, this Part does not require the supervisory body to take any action in respect of the standard authorisation so far as those requirements relate to it.

(7) An assessed qualifying requirement is a qualifying requirement in relation to which a review assessment is carried out.

One or more review assessments negative

117 (1) This paragraph applies if one or more of the review assessments carried out comes to a negative conclusion.

(2) The supervisory body must terminate the standard authorisation with immediate effect.

Status: *Point in time view as at 01/10/2015.*
Changes to legislation: *Mental Capacity Act 2005 is up to date with all changes known to be in force on or before 19 July 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 any of the following cases.

(2) The first case is where paragraph 110 applies.

(3) The second case is where—
- (a) paragraph 111 applies, and
- (b) paragraph 117 requires the supervisory body to terminate the standard authorisation.

(4) In such a case, the supervisory body need not comply with any of the other provisions of paragraphs 114 to 116 which would be applicable to the review (were it not for this sub-paragraph).

(5) The third case is where—
- (a) paragraph 111 applies,
- (b) paragraph 117 does not require the supervisory body to terminate the standard authorisation, and
- (c) the supervisory body comply with all of the provisions of paragraphs 114 to 116 (so far as they are applicable to the review).

Variations under this Part

119 Any variation of the standard authorisation made under this Part must be in writing.

Notice of outcome of review

120 (1) When the review of the standard authorisation is complete, the supervisory body must give notice to all of the following—
- (a) the managing authority of the relevant hospital or care home;
- (b) the relevant person;
- (c) the relevant person's representative;
- (d) any section 39D IMCA.

(2) That notice must state—
- (a) the outcome of the review, and
- (b) what variation (if any) has been made to the authorisation under this Part.

Records

121 A supervisory body must keep a written record of the following information—
- (a) each request for a review that is made to them;
- (b) the outcome of each request;
- (c) each review which they carry out;
- (d) the outcome of each review which they carry out;
- (e) any variation of an authorisation made in consequence of a review.

Relationship between review and suspension under Part 6

122 (1) This paragraph applies if a standard authorisation is suspended in accordance with Part 6.

Status: *Point in time view as at 01/10/2015.*
Changes to legislation: *Mental Capacity Act 2005 is up to date with all changes known to be in force on or before 19 July 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)*

(2) No review may be requested under this Part whilst the standard authorisation is suspended.

(3) If a review has already been requested, or is being carried out, when the standard authorisation is suspended, no steps are to be taken in connection with that review whilst the authorisation is suspended.

Relationship between review and request for new authorisation

123 (1) This paragraph applies if, in accordance with paragraph 24 (as read with paragraph 29), the managing authority of the relevant hospital or care home make a request for a new standard authorisation which would be in force after the expiry of the existing authorisation.

(2) No review may be requested under this Part until the request for the new standard authorisation has been disposed of.

(3) If a review has already been requested, or is being carried out, when the new standard authorisation is requested, no steps are to be taken in connection with that review until the request for the new standard authorisation has been disposed of.

124 (1) This paragraph applies if—

(a) a review under this Part has been requested, or is being carried out, and

(b) the managing authority of the relevant hospital or care home make a request under paragraph 30 for a new standard authorisation which would be in force on or before, and after, the expiry of the existing authorisation.

(2) No steps are to be taken in connection with the review under this Part until the request for the new standard authorisation has been disposed of.

125 In paragraphs 123 and 124—

(a) the existing authorisation is the authorisation referred to in paragraph 101;

(b) the expiry of the existing authorisation is the time when it is expected to cease to be in force.

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—

(a) an assessment carried out in connection with a request for a standard authorisation under Part 4;

(b) a review assessment carried out in connection with a review of a standard authorisation under Part 8.

128 In this Part, in relation to an assessment under this Schedule—

"assessor" means the person carrying out the assessment;

"relevant procedure" means—

(a) the request for the standard authorisation, or

Status: *Point in time view as at 01/10/2015.*
Changes to legislation: *Mental Capacity Act 2005 is up to date with all changes known to be in force on or before 19 July 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)*

(b) the review of the standard authorisation;

"supervisory body" means the supervisory body responsible for securing that the assessment is carried out.

Supervisory body to select assessor

129 (1) It is for the supervisory body to select a person to carry out an assessment under this Schedule.

(2) The supervisory body must not select a person to carry out an assessment unless the person—

(a) appears to the supervisory body to be suitable to carry out the assessment (having regard, in particular, to the type of assessment and the person to be assessed), and

(b) is eligible to carry out the assessment.

(3) Regulations may make provision about the selection, and eligibility, of persons to carry out assessments under this Schedule.

(4) Sub-paragraphs (5) and (6) apply if two or more assessments are to be obtained for the purposes of the relevant procedure.

(5) In a case where the assessments to be obtained include a mental health assessment and a best interests assessment, the supervisory body must not select the same person to carry out both assessments.

(6) Except as prohibited by sub-paragraph (5), the supervisory body may select the same person to carry out any number of the assessments which the person appears to be suitable, and is eligible, to carry out.

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

(2) The regulations may make provision relating to a person's—

(a) qualifications,

(b) skills,

(c) training,

(d) experience,

(e) relationship to, or connection with, the relevant person or any other person,

(f) involvement in the care or treatment of the relevant person,

(g) connection with the supervisory body, or

(h) connection with the relevant hospital or care home, or with any other establishment or undertaking.

(3) The provision that the regulations may make in relation to a person's training may provide for particular training to be specified by the appropriate authority otherwise than in the regulations.

(4) In sub-paragraph (3) the "appropriate authority" means—

(a) in relation to England: the Secretary of State;

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

(5) The regulations may make provision requiring a person to be insured in respect of liabilities that may arise in connection with the carrying out of an assessment.

Status: *Point in time view as at 01/10/2015.*
Changes to legislation: *Mental Capacity Act 2005 is up to date with all changes known to be in force on or before 19 July 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)*

(6) In relation to cases where two or more assessments are to be obtained for the purposes of the relevant procedure, the regulations may limit the number, kind or combination of assessments which a particular person is eligible to carry out.

(7) Sub-paragraphs (2) to (6) do not limit the generality of the provision that may be made in the regulations.

Examination and copying of records

131 An assessor may, at all reasonable times, examine and take copies of—

(a) any health record,

(b) any record of, or held by, a local authority and compiled in accordance with a social services function, and

(c) any record held by a person registered under Part 2 of the Care Standards Act 2000 **[**[F2]or Chapter 2 of Part 1 of the Health and Social Care Act 2008**]**[F2],

which the assessor considers may be relevant to the assessment which is being carried out.

Textual Amendments

F2 Words in Sch. A1 para. 131(c) inserted (1.10.2010) by The Health and Social Care Act 2008 (Consequential Amendments No.2) Order 2010 (S.I. 2010/813), **art. 17(7)(a)**

Representations

132 In carrying out an assessment under this Schedule, the assessor must take into account any information given, or submissions made, by any of the following—

(a) the relevant person's representative;

(b) any section 39A IMCA;

(c) any section 39C IMCA;

(d) any section 39D IMCA.

Assessments to stop if any comes to negative conclusion

133 (1) This paragraph applies if an assessment under this Schedule comes to the conclusion that the relevant person does not meet one of the qualifying requirements.

(2) This Schedule does not require the supervisory body to secure that any other assessments under this Schedule are carried out in relation to the relevant procedure.

(3) The supervisory body must give notice to any assessor who is carrying out another assessment in connection with the relevant procedure that they are to cease carrying out that assessment.

(4) If an assessor receives such notice, this Schedule does not require the assessor to continue carrying out that assessment.

Status: *Point in time view as at 01/10/2015.*
Changes to legislation: *Mental Capacity Act 2005 is up to date with all changes known to be in force on or before 19 July 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)*

Duty to keep records and give copies

134 (1) This paragraph applies if an assessor has carried out an assessment under this Schedule (whatever conclusions the assessment has come to).

(2) The assessor must keep a written record of the assessment.

(3) As soon as practicable after carrying out the assessment, the assessor must give copies of the assessment to the supervisory body.

135 (1) This paragraph applies to the supervisory body if they are given a copy of an assessment under this Schedule.

(2) The supervisory body must give copies of the assessment to all of the following—
- (a) the managing authority of the relevant hospital or care home;
- (b) the relevant person;
- (c) any section 39A IMCA;
- (d) the relevant person's representative.

(3) If—
- (a) the assessment is obtained in relation to a request for a standard authorisation, and
- (b) the supervisory body are required by paragraph 50(1) to give the standard authorisation,

the supervisory body must give the copies of the assessment when they give copies of the authorisation in accordance with paragraph 57.

(4) If—
- (a) the assessment is obtained in relation to a request for a standard authorisation, and
- (b) the supervisory body are prohibited by paragraph 50(2) from giving the standard authorisation,

the supervisory body must give the copies of the assessment when they give notice in accordance with paragraph 58.

(5) If the assessment is obtained in connection with the review of a standard authorisation, the supervisory body must give the copies of the assessment when they give notice in accordance with paragraph 120.

136 (1) This paragraph applies to the supervisory body if—
- (a) they are given a copy of a best interests assessment, and
- (b) the assessment includes, in accordance with paragraph 44(2), a statement that it appears to the assessor that there is an unauthorised deprivation of liberty.

(2) The supervisory body must notify all of the persons listed in sub-paragraph (3) that the assessment includes such a statement.

(3) Those persons are—
- (a) the managing authority of the relevant hospital or care home;
- (b) the relevant person;
- (c) any section 39A IMCA;
- (d) any interested person consulted by the best interests assessor.

Status: *Point in time view as at 01/10/2015.*
Changes to legislation: *Mental Capacity Act 2005 is up to date with all changes known to be in force on or before 19 July 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)*

(4) The supervisory body must comply with this paragraph when (or at some time before) they comply with paragraph 135.

PART 10

RELEVANT PERSON'S REPRESENTATIVE

The representative

137 In this Schedule the relevant person's representative is the person appointed as such in accordance with this Part.

138 (1) Regulations may make provision about the selection and appointment of representatives.

(2) In this Part such regulations are referred to as "appointment regulations".

Supervisory body to appoint representative

139 (1) The supervisory body must appoint a person to be the relevant person's representative as soon as practicable after a standard authorisation is given.

(2) The supervisory body must appoint a person to be the relevant person's representative if a vacancy arises whilst a standard authorisation is in force.

(3) Where a vacancy arises, the appointment under sub-paragraph (2) is to be made as soon as practicable after the supervisory body becomes aware of the vacancy.

140 (1) The selection of a person for appointment under paragraph 139 must not be made unless it appears to the person making the selection that the prospective representative would, if appointed—

(a) maintain contact with the relevant person,

(b) represent the relevant person in matters relating to or connected with this Schedule, and

(c) support the relevant person in matters relating to or connected with this Schedule.

141 (1) Any appointment of a representative for a relevant person is in addition to, and does not affect, any appointment of a donee or deputy.

(2) The functions of any representative are in addition to, and do not affect—

(a) the authority of any donee,

(b) the powers of any deputy, or

(c) any powers of the court.

Appointment regulations

142 Appointment regulations may provide that the procedure for appointing a representative may begin at any time after a request for a standard authorisation is made (including a time before the request has been disposed of).

143 (1) Appointment regulations may make provision about who is to select a person for appointment as a representative.

Status: *Point in time view as at 01/10/2015.*
Changes to legislation: *Mental Capacity Act 2005 is up to date with all changes known to be in force on or before 19 July 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)*

(2) But regulations under this paragraph may only provide for the following to make a selection—
  (a) the relevant person, if he has capacity in relation to the question of which person should be his representative;
  (b) a donee of a lasting power of attorney granted by the relevant person, if it is within the scope of his authority to select a person;
  (c) a deputy, if it is within the scope of his authority to select a person;
  (d) a best interests assessor;
  (e) the supervisory body.

(3) Regulations under this paragraph may provide that a selection by the relevant person, a donee or a deputy is subject to approval by a best interests assessor or the supervisory body.

(4) Regulations under this paragraph may provide that, if more than one selection is necessary in connection with the appointment of a particular representative—
  (a) the same person may make more than one selection;
  (b) different persons may make different selections.

(5) For the purposes of this paragraph a best interests assessor is a person carrying out a best interests assessment in connection with the standard authorisation in question (including the giving of that authorisation).

144 (1) Appointment regulations may make provision about who may, or may not, be—
  (a) selected for appointment as a representative, or
  (b) appointed as a representative.

(2) Regulations under this paragraph may relate to any of the following matters—
  (a) a person's age;
  (b) a person's suitability;
  (c) a person's independence;
  (d) a person's willingness;
  (e) a person's qualifications.

145 Appointment regulations may make provision about the formalities of appointing a person as a representative.

146 In a case where a best interests assessor is to select a person to be appointed as a representative, appointment regulations may provide for the variation of the assessor's duties in relation to the assessment which he is carrying out.

Monitoring of representatives

147 Regulations may make provision requiring the managing authority of the relevant hospital or care home to—
  (a) monitor, and
  (b) report to the supervisory body on,

the extent to which a representative is maintaining contact with the relevant person.

Status: *Point in time view as at 01/10/2015.*
Changes to legislation: *Mental Capacity Act 2005 is up to date with all changes known to be in force on or before 19 July 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)*

Termination

148 Regulations may make provision about the circumstances in which the appointment of a person as the relevant person's representative ends or may be ended.

149 Regulations may make provision about the formalities of ending the appointment of a person as a representative.

Suspension of representative's functions

150 (1) Regulations may make provision about the circumstances in which functions exercisable by, or in relation to, the relevant person's representative (whether under this Schedule or not) may be—
(a) suspended, and
(b) if suspended, revived.

(2) The regulations may make provision about the formalities for giving effect to the suspension or revival of a function.

(3) The regulations may make provision about the effect of the suspension or revival of a function.

Payment of representative

151 Regulations may make provision for payments to be made to, or in relation to, persons exercising functions as the relevant person's representative.

Regulations under this Part

152 The provisions of this Part which specify provision that may be made in regulations under this Part do not affect the generality of the power to make such regulations.

Effect of appointment of section 39C IMCA

153 Paragraphs 159 and 160 make provision about the exercise of functions by, or towards, the relevant person's representative during periods when—
(a) no person is appointed as the relevant person's representative, but
(b) a person is appointed as a section 39C IMCA.

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 appointed under section 39A.

Status: *Point in time view as at 01/10/2015.*
Changes to legislation: *Mental Capacity Act 2005 is up to date with all changes known to be in force on or before 19 July 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)*

156 A section 39C IMCA is an independent mental capacity advocate appointed under section 39C.

157 A section 39D IMCA is an independent mental capacity advocate appointed under section 39D.

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

Section 39C IMCA: functions

159 (1) This paragraph applies if, and for as long as, there is a section 39C IMCA.

(2) In the application of the relevant provisions, references to the relevant person's representative are to be read as references to the section 39C IMCA.

(3) But sub-paragraph (2) does not apply to any function under the relevant provisions for as long as the function is suspended in accordance with provision made under Part 10.

(4) In this paragraph and paragraph 160 the relevant provisions are—
- (a) paragraph 102(3)(b) (request for review under Part 8);
- (b) paragraph 108(1)(b) (notice of review under Part 8);
- (c) paragraph 120(1)(c) (notice of outcome of review under Part 8).

160 (1) This paragraph applies if—
- (a) a person is appointed as the relevant person's representative, and
- (b) a person accordingly ceases to hold an appointment as a section 39C IMCA.

(2) Where a function under a relevant provision has been exercised by, or towards, the section 39C IMCA, there is no requirement for that function to be exercised again by, or towards, the relevant person's representative.

Section 39A IMCA: restriction of functions

161 (1) This paragraph applies if—
- (a) there is a section 39A IMCA, and
- (b) a person is appointed under Part 10 to be the relevant person's representative (whether or not that person, or any person subsequently appointed, is currently the relevant person's representative).

(2) The duties imposed on, and the powers exercisable by, the section 39A IMCA do not apply.

(3) The duties imposed on, and the powers exercisable by, any other person do not apply, so far as they fall to be performed or exercised towards the section 39A IMCA.

(4) But sub-paragraph (2) does not apply to any power of challenge exercisable by the section 39A IMCA.

(5) And sub-paragraph (3) does not apply to any duty or power of any other person so far as it relates to any power of challenge exercisable by the section 39A IMCA.

(6) Before exercising any power of challenge, the section 39A IMCA must take the views of the relevant person's representative into account.

Status: *Point in time view as at 01/10/2015.*
Changes to legislation: *Mental Capacity Act 2005 is up to date with all changes known to be in force on or before 19 July 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)*

(7) A power of challenge is a power to make an application to the court to exercise its jurisdiction under section 21A in connection with the giving of the standard authorisation.

PART 12

MISCELLANEOUS

Monitoring of operation of Schedule

162 (1) Regulations may make provision for, and in connection with, requiring one or more prescribed bodies to monitor, and report on, the operation of this Schedule in relation to England.

(2) The regulations may, in particular, give a prescribed body authority to do one or more of the following things—

(a) to visit hospitals and care homes;

(b) to visit and interview persons accommodated in hospitals and care homes;

(c) to require the production of, and to inspect, records relating to the care or treatment of persons.

(3) "Prescribed" means prescribed in regulations under this paragraph.

163 (1) Regulations may make provision for, and in connection with, enabling the National Assembly for Wales to monitor, and report on, the operation of this Schedule in relation to Wales.

(2) The National Assembly may direct one or more persons or bodies to carry out the Assembly's functions under regulations under this paragraph.

Disclosure of information

164 (1) Regulations may require either or both of the following to disclose prescribed information to prescribed bodies—

(a) supervisory bodies;

(b) managing authorities of hospitals or care homes.

(2) "Prescribed" means prescribed in regulations under this paragraph.

(3) Regulations under this paragraph may only prescribe information relating to matters with which this Schedule is concerned.

Directions by National Assembly in relation to supervisory functions

165 (1) The National Assembly for Wales may direct a Local Health Board to exercise in relation to its area any supervisory functions which are specified in the direction.

(2) Directions under this paragraph must not preclude the National Assembly from exercising the functions specified in the directions.

(3) In this paragraph "supervisory functions" means functions which the National Assembly have as supervisory body, so far as they are exercisable in relation to hospitals (whether NHS or independent hospitals, and whether in Wales or England).

Status: *Point in time view as at 01/10/2015.*
Changes to legislation: *Mental Capacity Act 2005 is up to date with all changes known to be in force on or before 19 July 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)*

166 (1) This paragraph applies where, under paragraph 165, a Local Health Board ("the specified LHB") is directed to exercise supervisory functions ("delegated functions").

(2) The National Assembly for Wales may give directions to the specified LHB about the Board's exercise of delegated functions.

(3) The National Assembly may give directions for any delegated functions to be exercised, on behalf of the specified LHB, by a committee, sub-committee or officer of that Board.

(4) The National Assembly may give directions providing for any delegated functions to be exercised by the specified LHB jointly with one or more other Local Health Boards.

(5) Where, under sub-paragraph (4), delegated functions are exercisable jointly, the National Assembly may give directions providing for the functions to be exercised, on behalf of the Local Health Boards in question, by a joint committee or joint sub-committee.

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

(2) Directions under paragraph 166 may be given—
(a) in regulations, or
(b) by instrument in writing.

168 The power under paragraph 165 or paragraph 166 to give directions includes power to vary or revoke directions given under that paragraph.

Notices

169 Any notice under this Schedule must be in writing.

Regulations

170 (1) This paragraph applies to all regulations under this Schedule, except regulations under paragraph 162, 163, 167 or 183.

(2) It is for the Secretary of State to make such regulations in relation to authorisations under this Schedule which relate to hospitals and care homes situated in England.

(3) It is for the National Assembly for Wales to make such regulations in relation to authorisations under this Schedule which relate to hospitals and care homes situated in Wales.

171 It is for the Secretary of State to make regulations under paragraph 162.

172 It is for the National Assembly for Wales to make regulations under paragraph 163 or 167.

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

(2) It is for the Secretary of State to make such regulations in relation to cases where a question as to the ordinary residence of a person is to be determined by the Secretary of State.

Status: *Point in time view as at 01/10/2015.*
Changes to legislation: *Mental Capacity Act 2005 is up to date with all changes known to be in force on or before 19 July 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)*

(3) It is for the National Assembly for Wales to make such regulations in relation to cases where a question as to the ordinary residence of a person is to be determined by the National Assembly.

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

(b) an independent hospital.

(2) " NHS hospital " means—

(a) a health service hospital as defined by section 275 of the National Health Service Act 2006 or section 206 of the National Health Service (Wales) Act 2006, or

(b) a hospital as defined by section 206 of the National Health Service (Wales) Act 2006 vested in a Local Health Board.

[[F3](3) Independent hospital"—

(a) in relation to England, means a hospital as defined by section 275 of the National Health Service Act 2006 that is not an NHS hospital; and

(b) in relation to Wales, means a hospital as defined by section 2 of the Care Standards Act 2000 that is not an NHS hospital.**]**[F3]

Textual Amendments

F3 Sch. A1 para. 175(3) substituted (1.10.2010) by The Health and Social Care Act 2008 (Consequential Amendments No.2) Order 2010 (S.I. 2010/813), **art. 17(7)(b)(i)**

176 (1) " Managing authority ", in relation to an NHS hospital, means—

(a) if the hospital—

(i) is vested in the appropriate national authority for the purposes of its functions under the National Health Service Act 2006 or of the National Health Service (Wales) Act 2006, or

(ii) consists of any accommodation provided by a local authority and used as a hospital by or on behalf of the appropriate national authority under either of those Acts,

the[F4]... [F5]... Local Health Board or Special Health Authority responsible for the administration of the hospital;

[[F6](aa) in relation to England, if the hospital falls within paragraph (a)(i) or (ii) and no Special Health Authority has responsibility for its administration, the Secretary of State;**]**

Status: *Point in time view as at 01/10/2015.*
Changes to legislation: *Mental Capacity Act 2005 is up to date with all changes known to be in force on or before 19 July 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)*

(b) if the hospital is vested in a [F7] ... National Health Service trust or NHS foundation trust, that trust;

(c) if the hospital is vested in a Local Health Board, that Board.

(2) For this purpose the appropriate national authority is—

(a) in relation to England: the Secretary of State;

(b) in relation to Wales: the National Assembly for Wales;

(c) in relation to England and Wales: the Secretary of State and the National Assembly acting jointly.

Textual Amendments

F4 Words in Sch. A1 para. 176(1)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 5 para. 136(2)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F5 Words in Sch. A1 para. 176(1)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 5 para. 136(2)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F6 Sch. A1 para. 176(1)(aa) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 5 para. 136(2)(c)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F7 Words in Sch. A1 para. 176(1)(b) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 5 para. 136(2)(d)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

[F8 177 " Managing authority ", in relation to an independent hospital, means—

(a) in relation to England, the person registered, or required to be registered, under Chapter 2 of Part 1 of the Health and Social Care Act 2008 in respect of regulated activities (within the meaning of that Part) carried on in the hospital, and

(b) in relation to Wales, the person registered, or required to be registered, under Part 2 of the Care Standards Act 2000 in respect of the hospital.] [F8]

Textual Amendments

F8 Sch. A1 para. 177 substituted (1.10.2010) by The Health and Social Care Act 2008 (Consequential Amendments No.2) Order 2010 (S.I. 2010/813), **art. 17(7)(b)(ii)**

Care homes and their managing authorities

178 " Care home " has the meaning given by section 3 of the Care Standards Act 2000.

[F9 179 " Managing authority ", in relation to a care home, means—

(a) in relation to England, the person registered, or required to be registered, under Chapter 2 of Part 1 of the Health and Social Care Act 2008 in respect of the provision of residential accommodation, together with nursing or personal care, in the care home, and

(b) in relation to Wales, the person registered, or required to be registered, under Part 2 of the Care Standards Act 2000 in respect of the care home.] [F9]

Textual Amendments

F9 Sch. A1 para. 179 substituted (1.10.2010) by The Health and Social Care Act 2008 (Consequential Amendments No.2) Order 2010 (S.I. 2010/813), **art. 17(7)(b)(iii)**

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Supervisory bodies: hospitals

180 (1) The identity of the supervisory body is determined under this paragraph in cases where the relevant hospital is situated in England.

[[F10](2) If the relevant person is ordinarily resident in the area of a local authority in England, the supervisory body are that local authority.**]**

(3) If**[**[F11]the relevant person is not ordinarily resident in England and**]** the National Assembly for Wales or a Local Health Board commission the relevant care or treatment, the National Assembly are the supervisory body.

(4) In any other case, the supervisory body are **[**[F12]the local authority**]** for the area in which the relevant hospital is situated.

[Local authority" means—

[F13](4A) (a) the council of a county;
(b) the council of a district for which there is no county council;
(c) the council of a London borough;
(d) the Common Council of the City of London;
(e) the Council of the Isles of Scilly.**]**

(5) If a hospital is situated in the areas of two (or more) **[**[F14]local authorities**]**, it is to be regarded for the purposes of sub-paragraph (4) as situated in whichever of the areas the greater (or greatest) part of the hospital is situated.

Textual Amendments

F10 Sch. A1 para. 180(2) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 5 para. 136(3)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F11 Words in Sch. A1 para. 180(3) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 5 para. 136(3)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F12 Words in Sch. A1 para. 180(4) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 5 para. 136(3)(c)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F13 Sch. A1 para. 180(4A) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 5 para. 136(3)(d)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F14 Words in Sch. A1 para. 180(5) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 5 para. 136(3)(e)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

181 (1) The identity of the supervisory body is determined under this paragraph in cases where the relevant hospital is situated in Wales.

(2) The National Assembly for Wales are the supervisory body.

[[F15](3) But if the relevant person is ordinarily resident in the area of a local authority in England, the supervisory body are that local authority.

(4) " Local authority " means—
(a) the council of a county;
(b) the council of a district for which there is no county council;
(c) the council of a London borough;
(d) the Common Council of the City of London;
(e) the Council of the Isles of Scilly.**]**

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Textual Amendments

F15 Sch. A1 para. 181(3)(4) substituted for Sch. A1 para. 181(3) (1.4.2013) by Health and Social Care Act 2012 (c. 7) , s. 306(4) , **Sch. 5 para. 136(4)** ; S.I. 2013/160 , art. 2(2) (with arts. 7-9)

Supervisory bodies: care homes

182 (1) The identity of the supervisory body is determined under this paragraph in cases where the relevant care home is situated in England or in Wales.

(2) The supervisory body are the local authority for the area in which the relevant person is ordinarily resident.

(3) But if the relevant person is not ordinarily resident in the area of a local authority, the supervisory body are the local authority for the area in which the care home is situated.

(4) In relation to England " local authority " means—

(a) the council of a county;

(b) the council of a district for which there is no county council;

(c) the council of a London borough;

(d) the Common Council of the City of London;

(e) the Council of the Isles of Scilly.

(5) In relation to Wales " local authority " means the council of a county or county borough.

(6) If a care home is situated in the areas of two (or more) local authorities, it is to be regarded for the purposes of sub-paragraph (3) as situated in whichever of the areas the greater (or greatest) part of the care home is situated.

[F16Supervisory bodies: determination of place of ordinary residence]

Textual Amendments

F16 Sch. A1 para. 183 heading inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 5 para. 136(5)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

183 (1) Subsections (5) and (6) of section 24 of the National Assistance Act 1948 (deemed place of ordinary residence) apply to any determination of where a person is ordinarily resident for the purposes of **[F17**paragraphs 180, 181 and**]** 182 as those subsections apply to such a determination for the purposes specified in those subsections.

(2) In the application of section 24(6) of the 1948 Act by virtue of sub–paragraph (1)**[F18**to any determination of where a person is ordinarily resident for the purposes of paragraph 182**]**, section 24(6) is to be read as if it referred to a hospital vested in a Local Health Board as well as to hospitals vested in the Secretary of State and the other bodies mentioned in section 24(6).

[F19(2A) Section 39(1), (2) and (4) to (6) of the Care Act 2014 and paragraphs 1(1), 2(1) and 8 of Schedule 1 to that Act apply to any determination of where a person is

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ordinarily resident for the purposes of paragraphs 180, 181 and 182 as they apply for the purposes of Part 1 of that Act.**]**

(3) Any question arising as to the ordinary residence of a person is to be determined by the Secretary of State or by the National Assembly for Wales.

(4) The Secretary of State and the National Assembly must make and publish arrangements for determining which cases are to be dealt with by the Secretary of State and which are to be dealt with by the National Assembly.

(5) Those arrangements may include provision for the Secretary of State and the National Assembly to agree, in relation to any question that has arisen, which of them is to deal with the case.

(6) Regulations may make provision about arrangements that are to have effect before, upon, or after the determination of any question as to the ordinary residence of a person.

(7) The regulations may, in particular, authorise or require a local authority to do any or all of the following things—
   (a) to act as supervisory body even though it may wish to dispute that it is the supervisory body;
   (b) to become the supervisory body in place of another local authority;
   (c) to recover from another local authority expenditure incurred in exercising functions as the supervisory body.

Textual Amendments

F17 Words in Sch. A1 para. 183(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 5 para. 136(6)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F18 Words in Sch. A1 para. 183(2) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 5 para. 136(6)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

F19 Sch. A1 para. 183(2A) inserted (1.4.2015) by The Care Act 2014 and Children and Families Act 2014 (Consequential Amendments) Order 2015 (S.I. 2015/914), art. 1(2), **Sch. para. 80** (with arts. 1(3), 3)

Same body managing authority and supervisory body

184 (1) This paragraph applies if, in connection with a particular person's detention as a resident in a hospital or care home, the same body are both—
   (a) the managing authority of the relevant hospital or care home, and
   (b) the supervisory body.

(2) The fact that a single body are acting in both capacities does not prevent the body from carrying out functions under this Schedule in each capacity.

(3) But, in such a case, this Schedule has effect subject to any modifications contained in regulations that may be made for this purpose.

Interested persons

185 Each of the following is an interested person—
   (a) the relevant person's spouse or civil partner;

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[F20(b) where the relevant person and another person are not married to each other, nor in a civil partnership with each other, but are living together as if they were a married couple: that other person;]

(d) the relevant person's children and step-children;

(e) the relevant person's parents and step-parents;

(f) the relevant person's brothers and sisters, half-brothers and half-sisters, and stepbrothers and stepsisters;

(g) the relevant person's grandparents;

(h) a deputy appointed for the relevant person by the court;

(i) a donee of a lasting power of attorney granted by the relevant person.

Textual Amendments

F20 Sch. A1 paragraph 185(b) substituted for Sch. A1 paragraph 185(b)(c) (13.3.2014) by The Marriage (Same Sex Couples) Act 2013 (Consequential and Contrary Provisions and Scotland) Order 2014 (S.I. 2014/560), art. 1(2), **Sch. 1 para. 30**

186 (1) An interested person consulted by the best interests assessor is any person whose name is stated in the relevant best interests assessment in accordance with paragraph 40 (interested persons whom the assessor consulted in carrying out the assessment).

(2) The relevant best interests assessment is the most recent best interests assessment carried out in connection with the standard authorisation in question (whether the assessment was carried out under Part 4 or Part 8).

187 Where this Schedule imposes on a person a duty towards an interested person, the duty does not apply if the person on whom the duty is imposed—

(a) is not aware of the interested person's identity or of a way of contacting him, and

(b) cannot reasonably ascertain it.

188 The following table contains an index of provisions defining or otherwise explaining expressions used in this Schedule—

age assessment	paragraph 34
age requirement	paragraph 13
age review assessment	paragraph 112(3)
appointment regulations	paragraph 138
assessment under this Schedule	paragraph 127
assessor (except in Part 9)	paragraph 33
assessor (in Part 9)	paragraphs 33 and 128
authorisation under this Schedule	paragraph 10
best interests (determination of)	section 4
best interests assessment	paragraph 38
best interests requirement	paragraph 16
best interests review assessment	paragraph 112(6)

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care home	paragraph 178
change of reason ground	paragraph 106
complete (in relation to a review of a standard authorisation)	paragraph 118
deprivation of a person's liberty	section 64(5) and (6)
deputy	section 16(2)(b)
detained resident	paragraph 6
disposed of (in relation to a request for a standard authorisation)	paragraph 66
eligibility assessment	paragraph 46
eligibility requirement	paragraph 17
eligibility review assessment	paragraph 112(7)
eligible person (in relation to paragraphs 68 to 73)	paragraph 68
eligible person (in relation to Part 8)	paragraph 102(3)
expiry (in relation to an existing authorisation)	paragraph 125(b)
existing authorisation (in Part 8)	paragraph 125(a)
hospital	paragraph 175
IMCA	paragraph 158
in force (in relation to a standard authorisation)	paragraphs 63 and 64
in force (in relation to an urgent authorisation)	paragraphs 88 and 89
ineligible (in relation to the eligibility requirement)	Schedule 1A
interested person	paragraph 185
interested person consulted by the best interests assessor	paragraph 186
lack of capacity	section 2
lasting power of attorney	section 9
managing authority (in relation to a care home)	paragraph 179
managing authority (in relation to a hospital)	paragraph 176 or 177
maximum authorisation period	paragraph 42
mental capacity assessment	paragraph 37
mental capacity requirement	paragraph 15

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mental capacity review assessment	paragraph 112(5)
mental health assessment	paragraph 35
mental health requirement	paragraph 14
mental health review assessment	paragraph 112(4)
negative conclusion	paragraph 112(2)(a)
new supervisory body	paragraph 99(b)
no refusals assessment	paragraph 48
no refusals requirement	paragraph 18
no refusals review assessment	paragraph 112(8)
non-qualification ground	paragraph 105
old supervisory body	paragraph 99(a)
positive conclusion	paragraph 112(2)(b)
purpose of a standard authorisation	paragraph 11(1)
purpose of an urgent authorisation	paragraph 11(2)
qualifying requirements	paragraph 12
refusal (for the purposes of the no refusals requirement)	paragraphs 19 and 20
relevant care or treatment	paragraph 7
relevant hospital or care home	paragraph 7
relevant managing authority	paragraph 26(4)
relevant person	paragraph 7
relevant person's representative	paragraph 137
relevant procedure	paragraph 128
review assessment	paragraph 112(1)
reviewable	paragraph 104
section 39A IMCA	paragraph 155
section 39C IMCA	paragraph 156
section 39D IMCA	paragraph 157
standard authorisation	paragraph 8
supervisory body (except in Part 9)	paragraph 180, 181 or 182
supervisory body (in Part 9)	paragraph 128 and paragraph 180, 181 or 182
unauthorised deprivation of liberty (in relation to paragraphs 68 to 73)	paragraph 67
urgent authorisation	paragraph 9
variation of conditions ground	paragraph 107**]**

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SCHEDULE 1

Section 9

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 Schedule unless—
- (a) it is in the prescribed form,
- (b) it complies with paragraph 2, and
- (c) any prescribed requirements in connection with its execution are satisfied.

(2) Regulations may make different provision according to whether—
- (a) the instrument relates to personal welfare or to property and affairs (or to both);
- (b) only one or more than one donee is to be appointed (and if more than one, whether jointly or jointly and severally).

(3) In this Schedule—
- (a) "prescribed" means prescribed by regulations, and
- (b) "regulations" means regulations made for the purposes of this Schedule by the Lord Chancellor.

Requirements as to content of instruments

2 (1) The instrument must include—
- (a) the prescribed information about the purpose of the instrument and the effect of a lasting power of attorney,
- (b) a statement by the donor to the effect that he—
  - (i) has read the prescribed information or a prescribed part of it (or has had it read to him), and
  - (ii) intends the authority conferred under the instrument to include authority to make decisions on his behalf in circumstances where he no longer has capacity,
- (c) a statement by the donor—
  - (i) naming a person or persons whom the donor wishes to be notified of any application for the registration of the instrument, or
  - (ii) stating that there are no persons whom he wishes to be notified of any such application,
- (d) a statement by the donee (or, if more than one, each of them) to the effect that he—
  - (i) has read the prescribed information or a prescribed part of it (or has had it read to him), and
  - (ii) understands the duties imposed on a donee of a lasting power of attorney under sections 1 (the principles) and 4 (best interests), and

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(e) a certificate by a person of a prescribed description that, in his opinion, at the time when the donor executes the instrument—

(i) the donor understands the purpose of the instrument and the scope of the authority conferred under it,

(ii) no fraud or undue pressure is being used to induce the donor to create a lasting power of attorney, and

(iii) there is nothing else which would prevent a lasting power of attorney from being created by the instrument.

(2) Regulations may—

(a) prescribe a maximum number of named persons;

(b) provide that, where the instrument includes a statement under sub-paragraph (1)(c)(ii), two persons of a prescribed description must each give a certificate under sub-paragraph (1)(e).

(3) The persons who may be named persons do not include a person who is appointed as donee under the instrument.

(4) In this Schedule, "named person" means a person named under sub-paragraph (1)(c).

(5) A certificate under sub-paragraph (1)(e)—

(a) must be made in the prescribed form, and

(b) must include any prescribed information.

(6) The certificate may not be given by a person appointed as donee under the instrument.

Failure to comply with prescribed form

3 (1) If an instrument differs in an immaterial respect in form or mode of expression from the prescribed form, it is to be treated by the Public Guardian as sufficient in point of form and expression.

(2) The court may declare that an instrument which is not in the prescribed form is to be treated as if it were, if it is satisfied that the persons executing the instrument intended it to create a lasting power of attorney.

PART 2

REGISTRATION

Applications and procedure for registration

4 (1) An application to the Public Guardian for the registration of an instrument intended to create a lasting power of attorney—

(a) must be made in the prescribed form, and

(b) must include any prescribed information.

(2) The application may be made—

(a) by the donor,

(b) by the donee or donees, or

(c) if the instrument appoints two or more donees to act jointly and severally in respect of any matter, by any of the donees.

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(3) The application must be accompanied by—
  (a) the instrument, and
  (b) any fee provided for under section 58(4)(b).

(4) A person who, in an application for registration, makes a statement which he knows to be false in a material particular is guilty of an offence and is liable—
  (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both;
  (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine or both.

5 Subject to paragraphs 11 to 14, the Public Guardian must register the instrument as a lasting power of attorney at the end of the prescribed period.

Notification requirements

6 (1) A donor about to make an application under paragraph 4(2)(a) must notify any named persons that he is about to do so.

(2) The donee (or donees) about to make an application under paragraph 4(2)(b) or (c) must notify any named persons that he is (or they are) about to do so.

7 As soon as is practicable after receiving an application by the donor under paragraph 4(2)(a), the Public Guardian must notify the donee (or donees) that the application has been received.

8 (1) As soon as is practicable after receiving an application by a donee (or donees) under paragraph 4(2)(b), the Public Guardian must notify the donor that the application has been received.

(2) As soon as is practicable after receiving an application by a donee under paragraph 4(2)(c), the Public Guardian must notify—
  (a) the donor, and
  (b) the donee or donees who did not join in making the application,

that the application has been received.

9 (1) A notice under paragraph 6 must be made in the prescribed form.

(2) A notice under paragraph 6, 7 or 8 must include such information, if any, as may be prescribed.

Power to dispense with notification requirements

10 The court may—
  (a) on the application of the donor, dispense with the requirement to notify under paragraph 6(1), or
  (b) on the application of the donee or donees concerned, dispense with the requirement to notify under paragraph 6(2),

if satisfied that no useful purpose would be served by giving the notice.

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Instrument not made properly or containing ineffective provision

11 (1) If it appears to the Public Guardian that an instrument accompanying an application under paragraph 4 is not made in accordance with this Schedule, he must not register the instrument unless the court directs him to do so.

(2) Sub-paragraph (3) applies if it appears to the Public Guardian that the instrument contains a provision which—

(a) would be ineffective as part of a lasting power of attorney, or

(b) would prevent the instrument from operating as a valid lasting power of attorney.

(3) The Public Guardian—

(a) must apply to the court for it to determine the matter under section 23(1), and

(b) pending the determination by the court, must not register the instrument.

(4) Sub-paragraph (5) applies if the court determines under section 23(1) (whether or not on an application by the Public Guardian) that the instrument contains a provision which—

(a) would be ineffective as part of a lasting power of attorney, or

(b) would prevent the instrument from operating as a valid lasting power of attorney.

(5) The court must—

(a) notify the Public Guardian that it has severed the provision, or

(b) direct him not to register the instrument.

(6) Where the court notifies the Public Guardian that it has severed a provision, he must register the instrument with a note to that effect attached to it.

Deputy already appointed

12 (1) Sub-paragraph (2) applies if it appears to the Public Guardian that—

(a) there is a deputy appointed by the court for the donor, and

(b) the powers conferred on the deputy would, if the instrument were registered, to any extent conflict with the powers conferred on the attorney.

(2) The Public Guardian must not register the instrument unless the court directs him to do so.

Objection by donee or named person

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

(a) receives a notice under paragraph 6, 7 or 8 of an application for the registration of an instrument, and

(b) before the end of the prescribed period, gives notice to the Public Guardian of an objection to the registration on the ground that an event mentioned in section 13(3) or (6)(a) to (d) has occurred which has revoked the instrument.

(2) If the Public Guardian is satisfied that the ground for making the objection is established, he must not register the instrument unless the court, on the application of the person applying for the registration—

(a) is satisfied that the ground is not established, and

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(b) directs the Public Guardian to register the instrument.

(3) Sub-paragraph (4) applies if a donee or a named person—

(a) receives a notice under paragraph 6, 7 or 8 of an application for the registration of an instrument, and

(b) before the end of the prescribed period—

(i) makes an application to the court objecting to the registration on a prescribed ground, and

(ii) notifies the Public Guardian of the application.

(4) The Public Guardian must not register the instrument unless the court directs him to do so.

Objection by donor

14 (1) This paragraph applies if the donor—

(a) receives a notice under paragraph 8 of an application for the registration of an instrument, and

(b) before the end of the prescribed period, gives notice to the Public Guardian of an objection to the registration.

(2) The Public Guardian must not register the instrument unless the court, on the application of the donee or, if more than one, any of them—

(a) is satisfied that the donor lacks capacity to object to the registration, and

(b) directs the Public Guardian to register the instrument.

Notification of registration

15 Where an instrument is registered under this Schedule, the Public Guardian must give notice of the fact in the prescribed form to—

(a) the donor, and

(b) the donee or, if more than one, each of them.

Evidence of registration

16 (1) A document purporting to be an office copy of an instrument registered under this Schedule is, in any part of the United Kingdom, evidence of—

(a) the contents of the instrument, and

(b) the fact that it has been registered.

(2) Sub-paragraph (1) is without prejudice to—

(a) section 3 of the Powers of Attorney Act 1971 (c. 27) (proof by certified copy), and

(b) any other method of proof authorised by law.

PART 3

CANCELLATION OF REGISTRATION AND NOTIFICATION OF SEVERANCE

17 (1) The Public Guardian must cancel the registration of an instrument as a lasting power of attorney on being satisfied that the power has been revoked—

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(a) as a result of the donor's bankruptcy**[**[F21]or a debt relief order (under Part 7A of the Insolvency Act 1986) having been made in respect of the donor**]**, or

(b) on the occurrence of an event mentioned in section 13(6)(a) to (d).

(2) If the Public Guardian cancels the registration of an instrument he must notify—

(a) the donor, and

(b) the donee or, if more than one, each of them.

Textual Amendments

F21 Words in Sch. 1 para. 17(1)(a) inserted (1.10.2012) by The Tribunals, Courts and Enforcement Act 2007 (Consequential Amendments) Order 2012 (S.I. 2012/2404), art. 1, **Sch. 2 para. 53(5)** (with art. 5)

18 The court must direct the Public Guardian to cancel the registration of an instrument as a lasting power of attorney if it—

(a) determines under section 22(2)(a) that a requirement for creating the power was not met,

(b) determines under section 22(2)(b) that the power has been revoked or has otherwise come to an end, or

(c) revokes the power under section 22(4)(b) (fraud etc.).

19 (1) Sub-paragraph (2) applies if the court determines under section 23(1) that a lasting power of attorney contains a provision which—

(a) is ineffective as part of a lasting power of attorney, or

(b) prevents the instrument from operating as a valid lasting power of attorney.

(2) The court must—

(a) notify the Public Guardian that it has severed the provision, or

(b) direct him to cancel the registration of the instrument as a lasting power of attorney.

20 On the cancellation of the registration of an instrument, the instrument and any office copies of it must be delivered up to the Public Guardian to be cancelled.

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 to the Public Guardian that under section 13 a lasting power of attorney is revoked, or suspended, in relation to the donor's property and affairs (but not in relation to other matters), the Public Guardian must attach to the instrument a note to that effect.

Termination of appointment of donee which does not revoke power

22 If in the case of a registered instrument it appears to the Public Guardian that an event has occurred—

(a) which has terminated the appointment of the donee, but

(b) which has not revoked the instrument,

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the Public Guardian must attach to the instrument a note to that effect.

Replacement of donee

23 If in the case of a registered instrument it appears to the Public Guardian that the donee has been replaced under the terms of the instrument the Public Guardian must attach to the instrument a note to that effect.

Severance of ineffective provisions

24 If in the case of a registered instrument the court notifies the Public Guardian under paragraph 19(2)(a) that it has severed a provision of the instrument, the Public Guardian must attach to it a note to that effect.

Notification of alterations

25 If the Public Guardian attaches a note to an instrument under paragraph 21, 22, 23 or 24 he must give notice of the note to the donee or donees of the power (or, as the case may be, to the other donee or donees of the power).

[F22SCHEDULE 1A

PERSONS INELIGIBLE TO BE DEPRIVED OF LIBERTY BY THIS ACT

Textual Amendments

F22 Sch. 1A inserted (1.4.2009) by Mental Health Act 2007 (c. 12), ss. 50, 56, **Sch. 8** (with s. 50(8)-(13)); S.I. 2009/139, **art. 2(d)** (with art. 3)

PART 1

INELIGIBLE PERSONS

Application

1 This Schedule applies for the purposes of—
(a) section 16A, and
(b) paragraph 17 of Schedule A1.

Determining ineligibility

2 A person ("P") is ineligible to be deprived of liberty by this Act ("ineligible") if—
(a) P falls within one of the cases set out in the second column of the following table, and
(b) the corresponding entry in the third column of the table —or the provision, or one of the provisions, referred to in that entry — provides that he is ineligible.

Status: *Point in time view as at 01/10/2015.*
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	Status of P	***Determination of ineligibility***
Case A	P is— (a) subject to the hospital treatment regime, and (b) detained in a hospital under that regime.	P is ineligible.
Case B	P is— (a) subject to the hospital treatment regime, but (b) not detained in a hospital under that regime.	See paragraphs 3 and 4.
Case C	P is subject to the community treatment regime.	See paragraphs 3 and 4.
Case D	P is subject to the guardianship regime.	See paragraphs 3 and 5.
Case E	P is— (a) within the scope of the Mental Health Act, but (b) not subject to any of the mental health regimes.	See paragraph 5.

Authorised course of action not in accordance with regime

3 (1) This paragraph applies in cases B, C and D in the table in paragraph 2.

(2) P is ineligible if the authorised course of action is not in accordance with a requirement which the relevant regime imposes.

(3) That includes any requirement as to where P is, or is not, to reside.

(4) The relevant regime is the mental health regime to which P is subject.

Treatment for mental disorder in a hospital

4 (1) This paragraph applies in cases B and C in the table in paragraph 2.

(2) P is ineligible if the relevant care or treatment consists in whole or in part of medical treatment for mental disorder in a hospital.

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P objects to being a mental health patient etc

5 (1) This paragraph applies in cases D and E in the table in paragraph 2.

(2) P is ineligible if the following conditions are met.

(3) The first condition is that the relevant instrument authorises P to be a mental health patient.

(4) The second condition is that P objects—
- (a) to being a mental health patient, or
- (b) to being given some or all of the mental health treatment.

(5) The third condition is that a donee or deputy has not made a valid decision to consent to each matter to which P objects.

(6) In determining whether or not P objects to something, regard must be had to all the circumstances (so far as they are reasonably ascertainable), including the following—
- (a) P's behaviour;
- (b) P's wishes and feelings;
- (c) P's views, beliefs and values.

(7) But regard is to be had to circumstances from the past only so far as it is still appropriate to have regard to them.

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,
- (b) the community treatment regime, and
- (c) the guardianship regime.

Hospital treatment regime

8 (1) P is subject to the hospital treatment regime if he is subject to—
- (a) a hospital treatment obligation under the relevant enactment, or
- (b) an obligation under another England and Wales enactment which has the same effect as a hospital treatment obligation.

(2) But where P is subject to any such obligation, he is to be regarded as not subject to the hospital treatment regime during any period when he is subject to the community treatment regime.

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(3) A hospital treatment obligation is an application, order or direction of a kind listed in the first column of the following table.

(4) In relation to a hospital treatment obligation, the relevant enactment is the enactment in the Mental Health Act which is referred to in the corresponding entry in the second column of the following table.

Hospital treatment obligation	***Relevant enactment***
Application for admission for assessment	Section 2
Application for admission for assessment	Section 4
Application for admission for treatment	Section 3
Order for remand to hospital	Section 35
Order for remand to hospital	Section 36
Hospital order	Section 37
Interim hospital order	Section 38
Order for detention in hospital	Section 44
Hospital direction	Section 45A
Transfer direction	Section 47
Transfer direction	Section 48
Hospital order	Section 51

Community treatment regime

9 P is subject to the community treatment regime if he is subject to—

(a) a community treatment order under section 17A of the Mental Health Act, or

(b) an obligation under another England and Wales enactment which has the same effect as a community treatment order.

Guardianship regime

10 P is subject to the guardianship regime if he is subject to—

(a) a guardianship application under section 7 of the Mental Health Act,

(b) a guardianship order under section 37 of the Mental Health Act, or

(c) an obligation under another England and Wales enactment which has the same effect as a guardianship application or guardianship order.

England and Wales enactments

11 (1) An England and Wales enactment is an enactment which extends to England and Wales (whether or not it also extends elsewhere).

(2) It does not matter if the enactment is in the Mental Health Act or not.

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P within scope of Mental Health Act

12 (1) P is within the scope of the Mental Health Act if—

(a) an application in respect of P could be made under section 2 or 3 of the Mental Health Act, and

(b) P could be detained in a hospital in pursuance of such an application, were one made.

(2) The following provisions of this paragraph apply when determining whether an application in respect of P could be made under section 2 or 3 of the Mental Health Act.

(3) If the grounds in section 2(2) of the Mental Health Act are met in P's case, it is to be assumed that the recommendations referred to in section 2(3) of that Act have been given.

(4) If the grounds in section 3(2) of the Mental Health Act are met in P's case, it is to be assumed that the recommendations referred to in section 3(3) of that Act have been given.

(5) In determining whether the ground in section 3(2)(c) of the Mental Health Act is met in P's case, it is to be assumed that the treatment referred to in section 3(2)(c) cannot be provided under this Act.

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

13 In a case where this Schedule applies for the purposes of section 16A—

"authorised course of action" means any course of action amounting to deprivation of liberty which the order under section 16(2)(a) authorises;

"relevant care or treatment" means any care or treatment which—

(a) comprises, or forms part of, the authorised course of action, or

(b) is to be given in connection with the authorised course of action;

"relevant instrument" means the order under section 16(2)(a).

14 In a case where this Schedule applies for the purposes of paragraph 17 of Schedule A1—

"authorised course of action" means the accommodation of the relevant person in the relevant hospital or care home for the purpose of being given the relevant care or treatment;

"relevant care or treatment" has the same meaning as in Schedule A1;

"relevant instrument" means the standard authorisation under Schedule A1.

15 (1) This paragraph applies where the question whether a person is ineligible to be deprived of liberty by this Act is relevant to either of these decisions—

(a) whether or not to include particular provision ("the proposed provision") in an order under section 16(2)(a);

(b) whether or not to give a standard authorisation under Schedule A1.

(2) A reference in this Schedule to the authorised course of action or the relevant care or treatment is to be read as a reference to that thing as it would be if—

(a) the proposed provision were included in the order, or

(b) the standard authorisation were given.

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(3) A reference in this Schedule to the relevant instrument is to be read as follows—

(a) where the relevant instrument is an order under section 16(2)(a): as a reference to the order as it would be if the proposed provision were included in it;

(b) where the relevant instrument is a standard authorisation: as a reference to the standard authorisation as it would be if it were given.

Expressions used in paragraph 5

16 (1) These expressions have the meanings given—

"donee" means a donee of a lasting power of attorney granted by P;

"mental health patient" means a person accommodated in a hospital for the purpose of being given medical treatment for mental disorder;

"mental health treatment" means the medical treatment for mental disorder referred to in the definition of "mental health patient".

(2) A decision of a donee or deputy is valid if it is made—

(a) within the scope of his authority as donee or deputy, and

(b) in accordance with Part 1 of this Act.

Expressions with same meaning as in Mental Health Act

17 (1) "Hospital" has the same meaning as in Part 2 of the Mental Health Act.

(2) "Medical treatment" has the same meaning as in the Mental Health Act.

(3) "Mental disorder" has the same meaning as in Schedule A1 (see paragraph 14).**]**

SCHEDULE 2

Section 18(4)

PROPERTY AND AFFAIRS: SUPPLEMENTARY PROVISIONS

Wills: general

1 Paragraphs 2 to 4 apply in relation to the execution of a will, by virtue of section 18, on behalf of P.

Provision that may be made in will

2 The will may make any provision (whether by disposing of property or exercising a power or otherwise) which could be made by a will executed by P if he had capacity to make it.

Wills: requirements relating to execution

3 (1) Sub-paragraph (2) applies if under section 16 the court makes an order or gives directions requiring or authorising a person ("the authorised person") to execute a will on behalf of P.

(2) Any will executed in pursuance of the order or direction—

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(a) must state that it is signed by P acting by the authorised person,
(b) must be signed by the authorised person with the name of P and his own name, in the presence of two or more witnesses present at the same time,
(c) must be attested and subscribed by those witnesses in the presence of the authorised person, and
(d) must be sealed with the official seal of the court.

Wills: effect of execution

4 (1) This paragraph applies where a will is executed in accordance with paragraph 3.

(2) The Wills Act 1837 (c. 26) has effect in relation to the will as if it were signed by P by his own hand, except that—
(a) section 9 of the 1837 Act (requirements as to signing and attestation) does not apply, and
(b) in the subsequent provisions of the 1837 Act any reference to execution in the manner required by the previous provisions is to be read as a reference to execution in accordance with paragraph 3.

(3) The will has the same effect for all purposes as if—
(a) P had had the capacity to make a valid will, and
(b) the will had been executed by him in the manner required by the 1837 Act.

(4) But sub-paragraph (3) does not have effect in relation to the will—
(a) in so far as it disposes of immovable property outside England and Wales, or
(b) in so far as it relates to any other property or matter if, when the will is executed—
(i) P is domiciled outside England and Wales, and
(ii) the condition in sub-paragraph (5) is met.

(5) The condition is that, under the law of P's domicile, any question of his testamentary capacity would fall to be determined in accordance with the law of a place outside England and Wales.

Vesting orders ancillary to settlement etc.

5 (1) If provision is made by virtue of section 18 for—
(a) the settlement of any property of P, or
(b) the exercise of a power vested in him of appointing trustees or retiring from a trust,

the court may also make as respects the property settled or the trust property such consequential vesting or other orders as the case may require.

(2) The power under sub-paragraph (1) includes, in the case of the exercise of such a power, any order which could have been made in such a case under Part 4 of the Trustee Act 1925 (c. 19).

Variation of settlements

6 (1) If a settlement has been made by virtue of section 18, the court may by order vary or revoke the settlement if—
(a) the settlement makes provision for its variation or revocation,

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(b) the court is satisfied that a material fact was not disclosed when the settlement was made, or

(c) the court is satisfied that there has been a substantial change of circumstances.

(2) Any such order may give such consequential directions as the court thinks fit.

Vesting of stock in curator appointed outside England and Wales

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

(a) that under the law prevailing in a place outside England and Wales a person ("M") has been appointed to exercise powers in respect of the property or affairs of P on the ground (however formulated) that P lacks capacity to make decisions with respect to the management and administration of his property and affairs, and

(b) that, having regard to the nature of the appointment and to the circumstances of the case, it is expedient that the court should exercise its powers under this paragraph.

(2) The court may direct—

(a) any stocks standing in the name of P, or

(b) the right to receive dividends from the stocks,

to be transferred into M's name or otherwise dealt with as required by M, and may give such directions as the court thinks fit for dealing with accrued dividends from the stocks.

(3) "Stocks" includes—

(a) shares, and

(b) any funds, annuity or security transferable in the books kept by any body corporate or unincorporated company or society or by an instrument of transfer either alone or accompanied by other formalities,

and "dividends" is to be construed accordingly.

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

8 (1) Sub-paragraphs (2) and (3) apply if—

(a) P's property has been disposed of by virtue of section 18,

(b) under P's will or intestacy, or by a gift perfected or nomination taking effect on his death, any other person would have taken an interest in the property but for the disposal, and

(c) on P's death, any property belonging to P's estate represents the property disposed of.

(2) The person takes the same interest, if and so far as circumstances allow, in the property representing the property disposed of.

(3) If the property disposed of was real property, any property representing it is to be treated, so long as it remains part of P's estate, as if it were real property.

(4) The court may direct that, on a disposal of P's property—

(a) which is made by virtue of section 18, and

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(b) which would apart from this paragraph result in the conversion of personal property into real property,

property representing the property disposed of is to be treated, so long as it remains P's property or forms part of P's estate, as if it were personal property.

(5) References in sub-paragraphs (1) to (4) to the disposal of property are to—

(a) the sale, exchange, charging of or other dealing (otherwise than by will) with property other than money;

(b) the removal of property from one place to another;

(c) the application of money in acquiring property;

(d) the transfer of money from one account to another;

and references to property representing property disposed of are to be construed accordingly and as including the result of successive disposals.

(6) The court may give such directions as appear to it necessary or expedient for the purpose of facilitating the operation of sub-paragraphs (1) to (3), including the carrying of money to a separate account and the transfer of property other than money.

9 (1) Sub-paragraph (2) applies if the court has ordered or directed the expenditure of money—

(a) for carrying out permanent improvements on any of P's property, or

(b) otherwise for the permanent benefit of any of P's property.

(2) The court may order that—

(a) the whole of the money expended or to be expended, or

(b) any part of it,

is to be a charge on the property either without interest or with interest at a specified rate.

(3) An order under sub-paragraph (2) may provide for excluding or restricting the operation of paragraph 8(1) to (3).

(4) A charge under sub-paragraph (2) may be made in favour of such person as may be just and, in particular, where the money charged is paid out of P's general estate, may be made in favour of a person as trustee for P.

(5) No charge under sub-paragraph (2) may confer any right of sale or foreclosure during P's lifetime.

Powers as patron of benefice

10 (1) Any functions which P has as patron of a benefice may be discharged only by a person (“R”) appointed by the court.

(2) R must be an individual capable of appointment under section 8(1)(b) of the 1986 Measure (which provides for an individual able to make a declaration of communicant status, a clerk in Holy Orders, etc. to be appointed to discharge a registered patron's functions).

(3) The 1986 Measure applies to R as it applies to an individual appointed by the registered patron of the benefice under section 8(1)(b) or (3) of that Measure to discharge his functions as patron.

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(4) "The 1986 Measure" means the Patronage (Benefices) Measure 1986 (No. 3).

SCHEDULE 3

Section 63

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.

(2) "Convention country" means a country in which the Convention is in force.

(3) A reference to an Article or Chapter is to an Article or Chapter of the Convention.

(4) An expression which appears in this Schedule and in the Convention is to be construed in accordance with the Convention.

Countries, territories and nationals

3 (1) "Country" includes a territory which has its own system of law.

(2) Where a country has more than one territory with its own system of law, a reference to the country, in relation to one of its nationals, is to the territory with which the national has the closer, or the closest, connection.

Adults with incapacity

4[F23](1F23] "Adult" means [F24subject to sub-paragraph (2)][F24] a person who—

(a) as a result of an impairment or insufficiency of his personal faculties, cannot protect his interests, and

(b) has reached 16.

[F25](2) But "adult" does not include a child to whom either of the following applies—

(a) the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation in respect of Parental Responsibility and Measures for the Protection of Children that was signed at The Hague on 19 October 1996;

(b) Council Regulation (EC) No. 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility.[F25]]

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Textual Amendments

F23 Sch. 3 para. 4 renumbered as Sch. 3 para. 4(1) (coming into force in accordance with reg. 1(2) of the amending S.I.) by virtue of The Parental Responsibility and Measures for the Protection of Children (International Obligations) (England and Wales and Northern Ireland) Regulations 2010 (S.I. 2010/1898), reg. 17, **Sch. para. 10(b)**

F24 Words in Sch. 3 para. 4 inserted (coming into force in accordance with reg. 1(2) of the amending S.I.) by The Parental Responsibility and Measures for the Protection of Children (International Obligations) (England and Wales and Northern Ireland) Regulations 2010 (S.I. 2010/1898), reg. 17, **Sch. para. 10(a)**

F25 Sch. 3 para. 4(2) inserted (coming into force in accordance with reg. 1(2) of the amending S.I.) by The Parental Responsibility and Measures for the Protection of Children (International Obligations) (England and Wales and Northern Ireland) Regulations 2010 (S.I. 2010/1898), reg. 17, **Sch. para. 10(b)**

Protective measures

5 (1) "Protective measure" means a measure directed to the protection of the person or property of an adult; and it may deal in particular with any of the following—

(a) the determination of incapacity and the institution of a protective regime,

(b) placing the adult under the protection of an appropriate authority,

(c) guardianship, curatorship or any corresponding system,

(d) the designation and functions of a person having charge of the adult's person or property, or representing or otherwise helping him,

(e) placing the adult in a place where protection can be provided,

(f) administering, conserving or disposing of the adult's property,

(g) authorising a specific intervention for the protection of the person or property of the adult.

(2) Where a measure of like effect to a protective measure has been taken in relation to a person before he reaches 16, this Schedule applies to the measure in so far as it has effect in relation to him once he has reached 16.

Central Authority

6 (1) Any function under the Convention of a Central Authority is exercisable in England and Wales by the Lord Chancellor.

(2) A communication may be sent to the Central Authority in relation to England and Wales by sending it to the Lord Chancellor.

PART 2

JURISDICTION OF COMPETENT AUTHORITY

Scope of jurisdiction

7 (1) The court may exercise its functions under this Act (in so far as it cannot otherwise do so) in relation to—

(a) an adult habitually resident in England and Wales,

(b) an adult's property in England and Wales,

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(c) an adult present in England and Wales or who has property there, if the matter is urgent, or

(d) an adult present in England and Wales, if a protective measure which is temporary and limited in its effect to England and Wales is proposed in relation to him.

(2) An adult present in England and Wales is to be treated for the purposes of this paragraph as habitually resident there if—

(a) his habitual residence cannot be ascertained,

(b) he is a refugee, or

(c) he has been displaced as a result of disturbance in the country of his habitual residence.

8 (1) The court may also exercise its functions under this Act (in so far as it cannot otherwise do so) in relation to an adult if sub-paragraph (2) or (3) applies in relation to him.

(2) This sub-paragraph applies in relation to an adult if—

(a) he is a British citizen,

(b) he has a closer connection with England and Wales than with Scotland or Northern Ireland, and

(c) Article 7 has, in relation to the matter concerned, been complied with.

(3) This sub-paragraph applies in relation to an adult if the Lord Chancellor, having consulted such persons as he considers appropriate, agrees to a request under Article 8 in relation to the adult.

Exercise of jurisdiction

9 (1) This paragraph applies where jurisdiction is exercisable under this Schedule in connection with a matter which involves a Convention country other than England and Wales.

(2) Any Article on which the jurisdiction is based applies in relation to the matter in so far as it involves the other country (and the court must, accordingly, comply with any duty conferred on it as a result).

(3) Article 12 also applies, so far as its provisions allow, in relation to the matter in so far as it involves the other country.

10 A reference in this Schedule to the exercise of jurisdiction under this Schedule is to the exercise of functions under this Act as a result of this Part of this Schedule.

PART 3

APPLICABLE LAW

Applicable law

11 In exercising jurisdiction under this Schedule, the court may, if it thinks that the matter has a substantial connection with a country other than England and Wales, apply the law of that other country.

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12 Where a protective measure is taken in one country but implemented in another, the conditions of implementation are governed by the law of the other country.

Lasting powers of attorney, etc.

13 (1) If the donor of a lasting power is habitually resident in England and Wales at the time of granting the power, the law applicable to the existence, extent, modification or extinction of the power is—
- (a) the law of England and Wales, or
- (b) if he specifies in writing the law of a connected country for the purpose, that law.

(2) If he is habitually resident in another country at that time, but England and Wales is a connected country, the law applicable in that respect is—
- (a) the law of the other country, or
- (b) if he specifies in writing the law of England and Wales for the purpose, that law.

(3) A country is connected, in relation to the donor, if it is a country—
- (a) of which he is a national,
- (b) in which he was habitually resident, or
- (c) in which he has property.

(4) Where this paragraph applies as a result of sub-paragraph (3)(c), it applies only in relation to the property which the donor has in the connected country.

(5) The law applicable to the manner of the exercise of a lasting power is the law of the country where it is exercised.

(6) In this Part of this Schedule, "lasting power" means—
- (a) a lasting power of attorney (see section 9),
- (b) an enduring power of attorney within the meaning of Schedule 4, or
- (c) any other power of like effect.

14 (1) Where a lasting power is not exercised in a manner sufficient to guarantee the protection of the person or property of the donor, the court, in exercising jurisdiction under this Schedule, may disapply or modify the power.

(2) Where, in accordance with this Part of this Schedule, the law applicable to the power is, in one or more respects, that of a country other than England and Wales, the court must, so far as possible, have regard to the law of the other country in that respect (or those respects).

15 Regulations may provide for Schedule 1 (lasting powers of attorney: formalities) to apply with modifications in relation to a lasting power which comes within paragraph 13(6)(c) above.

Protection of third parties

16 (1) This paragraph applies where a person (a "representative") in purported exercise of an authority to act on behalf of an adult enters into a transaction with a third party.

(2) The validity of the transaction may not be questioned in proceedings, nor may the third party be held liable, merely because—

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(a) where the representative and third party are in England and Wales when entering into the transaction, sub-paragraph (3) applies;
(b) where they are in another country at that time, sub-paragraph (4) applies.

(3) This sub-paragraph applies if—
(a) the law applicable to the authority in one or more respects is, as a result of this Schedule, the law of a country other than England and Wales, and
(b) the representative is not entitled to exercise the authority in that respect (or those respects) under the law of that other country.

(4) This sub-paragraph applies if—
(a) the law applicable to the authority in one or more respects is, as a result of this Part of this Schedule, the law of England and Wales, and
(b) the representative is not entitled to exercise the authority in that respect (or those respects) under that law.

(5) This paragraph does not apply if the third party knew or ought to have known that the applicable law was—
(a) in a case within sub-paragraph (3), the law of the other country;
(b) in a case within sub-paragraph (4), the law of England and Wales.

Mandatory rules

17 Where the court is entitled to exercise jurisdiction under this Schedule, the mandatory provisions of the law of England and Wales apply, regardless of any system of law which would otherwise apply in relation to the matter.

Public policy

18 Nothing in this Part of this Schedule requires or enables the application in England and Wales of a provision of the law of another country if its application would be manifestly contrary to public policy.

PART 4

RECOGNITION AND ENFORCEMENT

Recognition

19 (1) A protective measure taken in relation to an adult under the law of a country other than England and Wales is to be recognised in England and Wales if it was taken on the ground that the adult is habitually resident in the other country.

(2) A protective measure taken in relation to an adult under the law of a Convention country other than England and Wales is to be recognised in England and Wales if it was taken on a ground mentioned in Chapter 2 (jurisdiction).

(3) But the court may disapply this paragraph in relation to a measure if it thinks that—
(a) the case in which the measure was taken was not urgent,
(b) the adult was not given an opportunity to be heard, and
(c) that omission amounted to a breach of natural justice.

Status: *Point in time view as at 01/10/2015.*
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(4) It may also disapply this paragraph in relation to a measure if it thinks that—

(a) recognition of the measure would be manifestly contrary to public policy,

(b) the measure would be inconsistent with a mandatory provision of the law of England and Wales, or

(c) the measure is inconsistent with one subsequently taken, or recognised, in England and Wales in relation to the adult.

(5) And the court may disapply this paragraph in relation to a measure taken under the law of a Convention country in a matter to which Article 33 applies, if the court thinks that that Article has not been complied with in connection with that matter.

20 (1) An interested person may apply to the court for a declaration as to whether a protective measure taken under the law of a country other than England and Wales is to be recognised in England and Wales.

(2) No permission is required for an application to the court under this paragraph.

21 For the purposes of paragraphs 19 and 20, any finding of fact relied on when the measure was taken is conclusive.

Enforcement

22 (1) An interested person may apply to the court for a declaration as to whether a protective measure taken under the law of, and enforceable in, a country other than England and Wales is enforceable, or to be registered, in England and Wales in accordance with Court of Protection Rules.

(2) The court must make the declaration if—

(a) the measure comes within sub-paragraph (1) or (2) of paragraph 19, and

(b) the paragraph is not disapplied in relation to it as a result of sub-paragraph (3), (4) or (5).

(3) A measure to which a declaration under this paragraph relates is enforceable in England and Wales as if it were a measure of like effect taken by the court.

Measures taken in relation to those aged under 16

23 (1) This paragraph applies where—

(a) provision giving effect to, or otherwise deriving from, the Convention in a country other than England and Wales applies in relation to a person who has not reached 16, and

(b) a measure is taken in relation to that person in reliance on that provision.

(2) This Part of this Schedule applies in relation to that measure as it applies in relation to a protective measure taken in relation to an adult under the law of a Convention country other than England and Wales.

Supplementary

24 The court may not review the merits of a measure taken outside England and Wales except to establish whether the measure complies with this Schedule in so far as it is, as a result of this Schedule, required to do so.

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25 Court of Protection Rules may make provision about an application under paragraph 20 or 22.

PART 5

CO-OPERATION

Proposal for cross-border placement

26 (1) This paragraph applies where a public authority proposes to place an adult in an establishment in a Convention country other than England and Wales.

(2) The public authority must consult an appropriate authority in that other country about the proposed placement and, for that purpose, must send it—

(a) a report on the adult, and

(b) a statement of its reasons for the proposed placement.

(3) If the appropriate authority in the other country opposes the proposed placement within a reasonable time, the public authority may not proceed with it.

27 A proposal received by a public authority under Article 33 in relation to an adult is to proceed unless the authority opposes it within a reasonable time.

Adult in danger etc.

28 (1) This paragraph applies if a public authority is told that an adult—

(a) who is in serious danger, and

(b) in relation to whom the public authority has taken, or is considering taking, protective measures,

is, or has become resident, in a Convention country other than England and Wales.

(2) The public authority must tell an appropriate authority in that other country about—

(a) the danger, and

(b) the measures taken or under consideration.

29 A public authority may not request from, or send to, an appropriate authority in a Convention country information in accordance with Chapter 5 (co-operation) in relation to an adult if it thinks that doing so—

(a) would be likely to endanger the adult or his property, or

(b) would amount to a serious threat to the liberty or life of a member of the adult's family.

PART 6

GENERAL

Certificates

30 A certificate given under Article 38 by an authority in a Convention country other than England and Wales is, unless the contrary is shown, proof of the matters contained in it.

Status: *Point in time view as at 01/10/2015.*
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Powers to make further provision as to private international law

31 Her Majesty may by Order in Council confer on the Lord Chancellor, the court or another public authority functions for enabling the Convention to be given effect in England and Wales.

32 (1) Regulations may make provision—

(a) giving further effect to the Convention, or

(b) otherwise about the private international law of England and Wales in relation to the protection of adults.

(2) The regulations may—

(a) confer functions on the court or another public authority;

(b) amend this Schedule;

(c) provide for this Schedule to apply with specified modifications;

(d) make provision about countries other than Convention countries.

Exceptions

33 Nothing in this Schedule applies, and no provision made under paragraph 32 is to apply, to any matter to which the Convention, as a result of Article 4, does not apply.

Regulations and orders

34 A reference in this Schedule to regulations or an order (other than an Order in Council) is to regulations or an order made for the purposes of this Schedule by the Lord Chancellor.

Commencement

35 The following provisions of this Schedule have effect only if the Convention is in force in accordance with Article 57—

(a) paragraph 8,

(b) paragraph 9,

(c) paragraph 19(2) and (5),

(d) Part 5,

(e) paragraph 30.

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SCHEDULE 4

Section 66(3)

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 which is an enduring power within the meaning of this Schedule—

(a) the power is not revoked by any subsequent mental incapacity of his,

(b) upon such incapacity supervening, the donee of the power may not do anything under the authority of the power except as provided by sub-paragraph (2) unless or until the instrument creating the power is registered under paragraph 13, and

(c) if and so long as paragraph (b) operates to suspend the donee's authority to act under the power, section 5 of the Powers of Attorney Act 1971 (c. 27) (protection of donee and third persons), so far as applicable, applies as if the power had been revoked by the donor's mental incapacity,

and, accordingly, section 1 of this Act does not apply.

(2) Despite sub-paragraph (1)(b), where the attorney has made an application for registration of the instrument then, until it is registered, the attorney may take action under the power—

(a) to maintain the donor or prevent loss to his estate, or

(b) to maintain himself or other persons in so far as paragraph 3(2) permits him to do so.

(3) Where the attorney purports to act as provided by sub-paragraph (2) then, in favour of a person who deals with him without knowledge that the attorney is acting otherwise than in accordance with sub-paragraph (2)(a) or (b), the transaction between them is as valid as if the attorney were acting in accordance with sub-paragraph (2)(a) or (b).

Characteristics of an enduring power of attorney

2 (1) Subject to sub-paragraphs (5) and (6) and paragraph 20, a power of attorney is an enduring power within the meaning of this Schedule if the instrument which creates the power—

(a) is in the prescribed form,

(b) was executed in the prescribed manner by the donor and the attorney, and

(c) incorporated at the time of execution by the donor the prescribed explanatory information.

(2) In this paragraph, "prescribed" means prescribed by such of the following regulations as applied when the instrument was executed—

(a) the Enduring Powers of Attorney (Prescribed Form) Regulations 1986 (S.I. 1986/126),

(b) the Enduring Powers of Attorney (Prescribed Form) Regulations 1987 (S.I. 1987/1612),

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(c) the Enduring Powers of Attorney (Prescribed Form) Regulations 1990 (S.I. 1990/1376),

(d) the Enduring Powers of Attorney (Welsh Language Prescribed Form) Regulations 2000 (S.I. 2000/289).

(3) An instrument in the prescribed form purporting to have been executed in the prescribed manner is to be taken, in the absence of evidence to the contrary, to be a document which incorporated at the time of execution by the donor the prescribed explanatory information.

(4) If an instrument differs in an immaterial respect in form or mode of expression from the prescribed form it is to be treated as sufficient in point of form and expression.

(5) A power of attorney cannot be an enduring power unless, when he executes the instrument creating it, the attorney is—

(a) an individual who has reached 18 and is not bankrupt**[**[F26]or is not subject to a debt relief order (under Part 7A of the Insolvency Act 1986)**]**, or

(b) a trust corporation.

(6) A power of attorney which gives the attorney a right to appoint a substitute or successor cannot be an enduring power.

(7) An enduring power is revoked by the bankruptcy of the donor or attorney**[**[F27]or the making of a debt relief order (under Part 7A of the Insolvency Act 1986) in respect of the donor or attorney**]**.

(8) But where the donor or attorney is bankrupt merely because an interim bankruptcy restrictions order has effect in respect of him**[**[F28]or where the donor or attorney is subject to an interim debt relief restrictions order**]**, the power is suspended for so long as the order has effect.

(9) An enduring power is revoked if the court—

(a) exercises a power under sections 16 to 20 in relation to the donor, and

(b) directs that the enduring power is to be revoked.

(10) No disclaimer of an enduring power, whether by deed or otherwise, is valid unless and until the attorney gives notice of it to the donor or, where paragraph 4(6) or 15(1) applies, to the Public Guardian.

Textual Amendments

F26 Words in Sch. 4 para. 2(5)(a) inserted (1.10.2012) by The Tribunals, Courts and Enforcement Act 2007 (Consequential Amendments) Order 2012 (S.I. 2012/2404), art. 1, **Sch. 2 para. 53(6)(a)** (with art. 5)

F27 Words in Sch. 4 para. 2(7) inserted (1.10.2012) by The Tribunals, Courts and Enforcement Act 2007 (Consequential Amendments) Order 2012 (S.I. 2012/2404), art. 1, **Sch. 2 para. 53(6)(b)** (with art. 5)

F28 Words in Sch. 4 para. 2(8) inserted (1.10.2012) by The Tribunals, Courts and Enforcement Act 2007 (Consequential Amendments) Order 2012 (S.I. 2012/2404), art. 1, **Sch. 2 para. 53(6)(c)** (with art. 5)

Scope of authority etc. of attorney under enduring power

3 (1) If the instrument which creates an enduring power of attorney is expressed to confer general authority on the attorney, the instrument operates to confer, subject to—

(a) the restriction imposed by sub-paragraph (3), and

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(b) any conditions or restrictions contained in the instrument,

authority to do on behalf of the donor anything which the donor could lawfully do by an attorney at the time when the donor executed the instrument.

(2) Subject to any conditions or restrictions contained in the instrument, an attorney under an enduring power, whether general or limited, may (without obtaining any consent) act under the power so as to benefit himself or other persons than the donor to the following extent but no further—

(a) he may so act in relation to himself or in relation to any other person if the donor might be expected to provide for his or that person's needs respectively, and

(b) he may do whatever the donor might be expected to do to meet those needs.

(3) Without prejudice to sub-paragraph (2) but subject to any conditions or restrictions contained in the instrument, an attorney under an enduring power, whether general or limited, may (without obtaining any consent) dispose of the property of the donor by way of gift to the following extent but no further—

(a) he may make gifts of a seasonal nature or at a time, or on an anniversary, of a birth, a marriage or the formation of a civil partnership, to persons (including himself) who are related to or connected with the donor, and

(b) he may make gifts to any charity to whom the donor made or might be expected to make gifts,

provided that the value of each such gift is not unreasonable having regard to all the circumstances and in particular the size of the donor's estate.

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 an enduring power has reason to believe that the donor is or is becoming mentally incapable.

(2) The attorney must, as soon as practicable, make an application to the Public Guardian for the registration of the instrument creating the power.

(3) Before making an application for registration the attorney must comply with the provisions as to notice set out in Part 3 of this Schedule.

(4) An application for registration—

(a) must be made in the prescribed form, and

(b) must contain such statements as may be prescribed.

(5) The attorney—

(a) may, before making an application for the registration of the instrument, refer to the court for its determination any question as to the validity of the power, and

(b) must comply with any direction given to him by the court on that determination.

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(6) No disclaimer of the power is valid unless and until the attorney gives notice of it to the Public Guardian; and the Public Guardian must notify the donor if he receives a notice under this sub-paragraph.

(7) A person who, in an application for registration, makes a statement which he knows to be false in a material particular is guilty of an offence and is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine or both.

(8) In this paragraph, "prescribed" means prescribed by regulations made for the purposes of this Schedule by the Lord Chancellor.

PART 3

NOTIFICATION PRIOR TO REGISTRATION

Duty to give notice to relatives

5 Subject to paragraph 7, before making an application for registration the attorney must give notice of his intention to do so to all those persons (if any) who are entitled to receive notice by virtue of paragraph 6.

6 (1) Subject to sub-paragraphs (2) to (4), persons of the following classes ("relatives") are entitled to receive notice under paragraph 5—
- (a) the donor's spouse or civil partner,
- (b) the donor's children,
- (c) the donor's parents,
- (d) the donor's brothers and sisters, whether of the whole or half blood,
- (e) the widow, widower or surviving civil partner of a child of the donor,
- (f) the donor's grandchildren,
- (g) the children of the donor's brothers and sisters of the whole blood,
- (h) the children of the donor's brothers and sisters of the half blood,
- (i) the donor's uncles and aunts of the whole blood,
- (j) the children of the donor's uncles and aunts of the whole blood.

(2) A person is not entitled to receive notice under paragraph 5 if—
- (a) his name or address is not known to the attorney and cannot be reasonably ascertained by him, or
- (b) the attorney has reason to believe that he has not reached 18 or is mentally incapable.

(3) Except where sub-paragraph (4) applies—
- (a) no more than 3 persons are entitled to receive notice under paragraph 5, and
- (b) in determining the persons who are so entitled, persons falling within the class in sub-paragraph (1)(a) are to be preferred to persons falling within the class in sub-paragraph (1)(b), those falling within the class in sub-paragraph (1)(b) are to be preferred to those falling within the class in sub-paragraph (1)(c), and so on.

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(4) Despite the limit of 3 specified in sub-paragraph (3), where—

(a) there is more than one person falling within any of classes (a) to (j) of sub-paragraph (1), and

(b) at least one of those persons would be entitled to receive notice under paragraph 5,

then, subject to sub-paragraph (2), all the persons falling within that class are entitled to receive notice under paragraph 5.

7 (1) An attorney is not required to give notice under paragraph 5—

(a) to himself, or

(b) to any other attorney under the power who is joining in making the application,

even though he or, as the case may be, the other attorney is entitled to receive notice by virtue of paragraph 6.

(2) In the case of any person who is entitled to receive notice by virtue of paragraph 6, the attorney, before applying for registration, may make an application to the court to be dispensed from the requirement to give him notice; and the court must grant the application if it is satisfied—

(a) that it would be undesirable or impracticable for the attorney to give him notice, or

(b) that no useful purpose is likely to be served by giving him notice.

Duty to give notice to donor

8 (1) Subject to sub-paragraph (2), before making an application for registration the attorney must give notice of his intention to do so to the donor.

(2) Paragraph 7(2) applies in relation to the donor as it applies in relation to a person who is entitled to receive notice under paragraph 5.

Contents of notices

9 A notice to relatives under this Part of this Schedule must—

(a) be in the prescribed form,

(b) state that the attorney proposes to make an application to the Public Guardian for the registration of the instrument creating the enduring power in question,

(c) inform the person to whom it is given of his right to object to the registration under paragraph 13(4), and

(d) specify, as the grounds on which an objection to registration may be made, the grounds set out in paragraph 13(9).

10 A notice to the donor under this Part of this Schedule—

(a) must be in the prescribed form,

(b) must contain the statement mentioned in paragraph 9(b), and

(c) must inform the donor that, while the instrument remains registered, any revocation of the power by him will be ineffective unless and until the revocation is confirmed by the court.

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Duty to give notice to other attorneys

11 (1) Subject to sub-paragraph (2), before making an application for registration an attorney under a joint and several power must give notice of his intention to do so to any other attorney under the power who is not joining in making the application; and paragraphs 7(2) and 9 apply in relation to attorneys entitled to receive notice by virtue of this paragraph as they apply in relation to persons entitled to receive notice by virtue of paragraph 6.

(2) An attorney is not entitled to receive notice by virtue of this paragraph if—

(a) his address is not known to the applying attorney and cannot reasonably be ascertained by him, or

(b) the applying attorney has reason to believe that he has not reached 18 or is mentally incapable.

Supplementary

12 Despite section 7 of the Interpretation Act 1978 (c. 30) (construction of references to service by post), for the purposes of this Part of this Schedule a notice given by post is to be regarded as given on the date on which it was posted.

PART 4

REGISTRATION

Registration of instrument creating power

13 (1) If an application is made in accordance with paragraph 4(3) and (4) the Public Guardian must, subject to the provisions of this paragraph, register the instrument to which the application relates.

(2) If it appears to the Public Guardian that—

(a) there is a deputy appointed for the donor of the power created by the instrument, and

(b) the powers conferred on the deputy would, if the instrument were registered, to any extent conflict with the powers conferred on the attorney,

the Public Guardian must not register the instrument except in accordance with the court's directions.

(3) The court may, on the application of the attorney, direct the Public Guardian to register an instrument even though notice has not been given as required by paragraph 4(3) and Part 3 of this Schedule to a person entitled to receive it, if the court is satisfied—

(a) that it was undesirable or impracticable for the attorney to give notice to that person, or

(b) that no useful purpose is likely to be served by giving him notice.

(4) Sub-paragraph (5) applies if, before the end of the period of 5 weeks beginning with the date (or the latest date) on which the attorney gave notice under paragraph 5 of an application for registration, the Public Guardian receives a valid notice of objection to the registration from a person entitled to notice of the application.

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(5) The Public Guardian must not register the instrument except in accordance with the court's directions.

(6) Sub-paragraph (7) applies if, in the case of an application for registration—
- (a) it appears from the application that there is no one to whom notice has been given under paragraph 5, or
- (b) the Public Guardian has reason to believe that appropriate inquiries might bring to light evidence on which he could be satisfied that one of the grounds of objection set out in sub-paragraph (9) was established.

(7) The Public Guardian—
- (a) must not register the instrument, and
- (b) must undertake such inquiries as he thinks appropriate in all the circumstances.

(8) If, having complied with sub-paragraph (7)(b), the Public Guardian is satisfied that one of the grounds of objection set out in sub-paragraph (9) is established—
- (a) the attorney may apply to the court for directions, and
- (b) the Public Guardian must not register the instrument except in accordance with the court's directions.

(9) A notice of objection under this paragraph is valid if made on one or more of the following grounds—
- (a) that the power purported to have been created by the instrument was not valid as an enduring power of attorney,
- (b) that the power created by the instrument no longer subsists,
- (c) that the application is premature because the donor is not yet becoming mentally incapable,
- (d) that fraud or undue pressure was used to induce the donor to create the power,
- (e) that, having regard to all the circumstances and in particular the attorney's relationship to or connection with the donor, the attorney is unsuitable to be the donor's attorney.

(10) If any of those grounds is established to the satisfaction of the court it must direct the Public Guardian not to register the instrument, but if not so satisfied it must direct its registration.

(11) If the court directs the Public Guardian not to register an instrument because it is satisfied that the ground in sub-paragraph (9)(d) or (e) is established, it must by order revoke the power created by the instrument.

(12) If the court directs the Public Guardian not to register an instrument because it is satisfied that any ground in sub-paragraph (9) except that in paragraph (c) is established, the instrument must be delivered up to be cancelled unless the court otherwise directs.

Register of enduring powers

14 The Public Guardian has the function of establishing and maintaining a register of enduring powers for the purposes of this Schedule.

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PART 5

LEGAL POSITION AFTER REGISTRATION

Effect and proof of registration

15 (1) The effect of the registration of an instrument under paragraph 13 is that—

(a) no revocation of the power by the donor is valid unless and until the court confirms the revocation under paragraph 16(3);

(b) no disclaimer of the power is valid unless and until the attorney gives notice of it to the Public Guardian;

(c) the donor may not extend or restrict the scope of the authority conferred by the instrument and no instruction or consent given by him after registration, in the case of a consent, confers any right and, in the case of an instruction, imposes or confers any obligation or right on or creates any liability of the attorney or other persons having notice of the instruction or consent.

(2) Sub-paragraph (1) applies for so long as the instrument is registered under paragraph 13 whether or not the donor is for the time being mentally incapable.

(3) A document purporting to be an office copy of an instrument registered under this Schedule is, in any part of the United Kingdom, evidence of—

(a) the contents of the instrument, and

(b) the fact that it has been so registered.

(4) Sub-paragraph (3) is without prejudice to section 3 of the Powers of Attorney Act 1971 (c. 27) (proof by certified copies) and to any other method of proof authorised by law.

Functions of court with regard to registered power

16 (1) Where an instrument has been registered under paragraph 13, the court has the following functions with respect to the power and the donor of and the attorney appointed to act under the power.

(2) The court may—

(a) determine any question as to the meaning or effect of the instrument;

(b) give directions with respect to—

(i) the management or disposal by the attorney of the property and affairs of the donor;

(ii) the rendering of accounts by the attorney and the production of the records kept by him for the purpose;

(iii) the remuneration or expenses of the attorney whether or not in default of or in accordance with any provision made by the instrument, including directions for the repayment of excessive or the payment of additional remuneration;

(c) require the attorney to supply information or produce documents or things in his possession as attorney;

(d) give any consent or authorisation to act which the attorney would have to obtain from a mentally capable donor;

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(e) authorise the attorney to act so as to benefit himself or other persons than the donor otherwise than in accordance with paragraph 3(2) and (3) (but subject to any conditions or restrictions contained in the instrument);

(f) relieve the attorney wholly or partly from any liability which he has or may have incurred on account of a breach of his duties as attorney.

(3) On application made for the purpose by or on behalf of the donor, the court must confirm the revocation of the power if satisfied that the donor—

(a) has done whatever is necessary in law to effect an express revocation of the power, and

(b) was mentally capable of revoking a power of attorney when he did so (whether or not he is so when the court considers the application).

(4) The court must direct the Public Guardian to cancel the registration of an instrument registered under paragraph 13 in any of the following circumstances—

(a) on confirming the revocation of the power under sub-paragraph (3),

(b) on directing under paragraph 2(9)(b) that the power is to be revoked,

(c) on being satisfied that the donor is and is likely to remain mentally capable,

(d) on being satisfied that the power has expired or has been revoked by the mental incapacity of the attorney,

(e) on being satisfied that the power was not a valid and subsisting enduring power when registration was effected,

(f) on being satisfied that fraud or undue pressure was used to induce the donor to create the power,

(g) on being satisfied that, having regard to all the circumstances and in particular the attorney's relationship to or connection with the donor, the attorney is unsuitable to be the donor's attorney.

(5) If the court directs the Public Guardian to cancel the registration of an instrument on being satisfied of the matters specified in sub-paragraph (4)(f) or (g) it must by order revoke the power created by the instrument.

(6) If the court directs the cancellation of the registration of an instrument under sub-paragraph (4) except paragraph (c) the instrument must be delivered up to the Public Guardian to be cancelled, unless the court otherwise directs.

Cancellation of registration by Public Guardian

17 The Public Guardian must cancel the registration of an instrument creating an enduring power of attorney—

(a) on receipt of a disclaimer signed by the attorney;

(b) if satisfied that the power has been revoked by the death or bankruptcy of the donor or attorney**[**[F29]or the making of a debt relief order (under Part 7A of the Insolvency Act 1986) in respect of the donor or attorney**]** or, if the attorney is a body corporate, by its winding up or dissolution;

(c) on receipt of notification from the court that the court has revoked the power;

(d) on confirmation from the court that the donor has revoked the power.

Status: *Point in time view as at 01/10/2015.*
Changes to legislation: *Mental Capacity Act 2005 is up to date with all changes known to be in force on or before 19 July 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)*

Textual Amendments

F29 Words in Sch. 4 para. 17(b) inserted (1.10.2012) by The Tribunals, Courts and Enforcement Act 2007 (Consequential Amendments) Order 2012 (S.I. 2012/2404), art. 1, **Sch. 2 para. 53(6)(d)** (with art. 5)

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 did not create a valid power of attorney has been registered under paragraph 13 (whether or not the registration has been cancelled at the time of the act or transaction in question).

(2) An attorney who acts in pursuance of the power does not incur any liability (either to the donor or to any other person) because of the non-existence of the power unless at the time of acting he knows—

(a) that the instrument did not create a valid enduring power,

(b) that an event has occurred which, if the instrument had created a valid enduring power, would have had the effect of revoking the power, or

(c) that, if the instrument had created a valid enduring power, the power would have expired before that time.

(3) Any transaction between the attorney and another person is, in favour of that person, as valid as if the power had then been in existence, unless at the time of the transaction that person has knowledge of any of the matters mentioned in sub-paragraph (2).

(4) If the interest of a purchaser depends on whether a transaction between the attorney and another person was valid by virtue of sub-paragraph (3), it is conclusively presumed in favour of the purchaser that the transaction was valid if—

(a) the transaction between that person and the attorney was completed within 12 months of the date on which the instrument was registered, or

(b) that person makes a statutory declaration, before or within 3 months after the completion of the purchase, that he had no reason at the time of the transaction to doubt that the attorney had authority to dispose of the property which was the subject of the transaction.

(5) For the purposes of section 5 of the Powers of Attorney Act 1971 (c. 27) (protection where power is revoked) in its application to an enduring power the revocation of which by the donor is by virtue of paragraph 15 invalid unless and until confirmed by the court under paragraph 16—

(a) knowledge of the confirmation of the revocation is knowledge of the revocation of the power, but

(b) knowledge of the unconfirmed revocation is not.

Further protection of attorney and third persons

19 (1) If—

(a) an instrument framed in a form prescribed as mentioned in paragraph 2(2) creates a power which is not a valid enduring power, and

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(b) the power is revoked by the mental incapacity of the donor,

sub-paragraphs (2) and (3) apply, whether or not the instrument has been registered.

(2) An attorney who acts in pursuance of the power does not, by reason of the revocation, incur any liability (either to the donor or to any other person) unless at the time of acting he knows—

(a) that the instrument did not create a valid enduring power, and

(b) that the donor has become mentally incapable.

(3) Any transaction between the attorney and another person is, in favour of that person, as valid as if the power had then been in existence, unless at the time of the transaction that person knows—

(a) that the instrument did not create a valid enduring power, and

(b) that the donor has become mentally incapable.

(4) Paragraph 18(4) applies for the purpose of determining whether a transaction was valid by virtue of sub-paragraph (3) as it applies for the purpose or determining whether a transaction was valid by virtue of paragraph 18(3).

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 be an attorney cannot create an enduring power unless the attorneys are appointed to act—

(a) jointly, or

(b) jointly and severally.

(2) This Schedule, in its application to joint attorneys, applies to them collectively as it applies to a single attorney but subject to the modifications specified in paragraph 21.

(3) This Schedule, in its application to joint and several attorneys, applies with the modifications specified in sub-paragraphs (4) to (7) and in paragraph 22.

(4) A failure, as respects any one attorney, to comply with the requirements for the creation of enduring powers—

(a) prevents the instrument from creating such a power in his case, but

(b) does not affect its efficacy for that purpose as respects the other or others or its efficacy in his case for the purpose of creating a power of attorney which is not an enduring power.

(5) If one or more but not both or all the attorneys makes or joins in making an application for registration of the instrument—

(a) an attorney who is not an applicant as well as one who is may act pending the registration of the instrument as provided in paragraph 1(2),

(b) notice of the application must also be given under Part 3 of this Schedule to the other attorney or attorneys, and

(c) objection may validly be taken to the registration on a ground relating to an attorney or to the power of an attorney who is not an applicant as well as to one or the power of one who is an applicant.

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(6) The Public Guardian is not precluded by paragraph 13(5) or (8) from registering an instrument and the court must not direct him not to do so under paragraph 13(10) if an enduring power subsists as respects some attorney who is not affected by the ground or grounds of the objection in question; and where the Public Guardian registers an instrument in that case, he must make against the registration an entry in the prescribed form.

(7) Sub-paragraph (6) does not preclude the court from revoking a power in so far as it confers a power on any other attorney in respect of whom the ground in paragraph 13(9)(d) or (e) is established; and where any ground in paragraph 13(9) affecting any other attorney is established the court must direct the Public Guardian to make against the registration an entry in the prescribed form.

(8) In sub-paragraph (4), "the requirements for the creation of enduring powers" means the provisions of—

(a) paragraph 2 other than sub-paragraphs (8) and (9), and

(b) the regulations mentioned in paragraph 2.

Joint attorneys

21 (1) In paragraph 2(5), the reference to the time when the attorney executes the instrument is to be read as a reference to the time when the second or last attorney executes the instrument.

(2) In paragraph 2(6) to (8), the reference to the attorney is to be read as a reference to any attorney under the power.

(3) Paragraph 13 has effect as if the ground of objection to the registration of the instrument specified in sub-paragraph (9)(e) applied to any attorney under the power.

(4) In paragraph 16(2), references to the attorney are to be read as including references to any attorney under the power.

(5) In paragraph 16(4), references to the attorney are to be read as including references to any attorney under the power.

(6) In paragraph 17, references to the attorney are to be read as including references to any attorney under the power.

Joint and several attorneys

22 (1) In paragraph 2(7), the reference to the bankruptcy of the attorney is to be read as a reference to the bankruptcy of the last remaining attorney under the power; and the bankruptcy of any other attorney under the power causes that person to cease to be an attorney under the power.

[[F30](1A) In paragraph 2(7), the reference to the making of a debt relief order (under Part 7A of the Insolvency Act 1986) in respect of the attorney is to be read as a reference to the making of a debt relief order in respect of the last remaining attorney under the power; and the making of a debt relief order in respect of any other attorney under the power causes that person to cease to be an attorney under the power.**]**

(2) In paragraph 2(8), the reference to the suspension of the power is to be read as a reference to its suspension in so far as it relates to the attorney in respect of whom the interim bankruptcy restrictions order has effect.

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[[F31](2A) In paragraph 2(8), the reference to the suspension of the power is to be read as a reference to its suspension in so far as it relates to the attorney in respect of whom the interim debt relief restrictions order has effect.**]**

(3) The restriction upon disclaimer imposed by paragraph 4(6) applies only to those attorneys who have reason to believe that the donor is or is becoming mentally incapable.

Textual Amendments

F30 Sch. 4 para. 22(1A) inserted (1.10.2012) by The Tribunals, Courts and Enforcement Act 2007 (Consequential Amendments) Order 2012 (S.I. 2012/2404), art. 1, **Sch. 2 para. 53(6)(e)(i)** (with art. 5)

F31 Sch. 4 para. 22(2A) inserted (1.10.2012) by The Tribunals, Courts and Enforcement Act 2007 (Consequential Amendments) Order 2012 (S.I. 2012/2404), art. 1, **Sch. 2 para. 53(6)(e)(ii)** (with art. 5)

PART 8

INTERPRETATION

23 (1) In this Schedule—

"enduring power" is to be construed in accordance with paragraph 2,

"mentally incapable" or "mental incapacity", except where it refers to revocation at common law, means in relation to any person, that he is incapable by reason of mental disorder [F32]... of managing and administering his property and affairs and "mentally capable" and "mental capacity" are to be construed accordingly,

"notice" means notice in writing, and

"prescribed", except for the purposes of paragraph 2, means prescribed by regulations made for the purposes of this Schedule by the Lord Chancellor.

[[F33](1A) In sub-paragraph (1), "mental disorder" has the same meaning as in the Mental Health Act but disregarding the amendments made to that Act by the Mental Health Act 2007.**]**

[F33](2) Any question arising under or for the purposes of this Schedule as to what the donor of the power might at any time be expected to do is to be determined by assuming that he had full mental capacity at the time but otherwise by reference to the circumstances existing at that time.

Textual Amendments

F32 Words in Sch. 4 para. 23(1) repealed (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 1, 55, 56, Sch. 1 para. 23(1)(2), **Sch. 11 Pt. 1**; S.I. 2008/1900, **art. 2(a)(p)** (with art. 3, Sch.)

F33 Sch. 4 para. 23(1A) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 1, 56, **Sch. 1 para. 23(1)(3)**; S.I. 2008/1900, **art. 2(a)** (with art. 3, Sch.)

Status: *Point in time view as at 01/10/2015.*
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SCHEDULE 5

Section 66(4)

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, there is a receiver ("R") for a person ("P") appointed under section 99 of the Mental Health Act.

(2) On and after that day—

(a) this Act applies as if R were a deputy appointed for P by the court, but with the functions that R had as receiver immediately before that day, and

(b) a reference in any other enactment to a deputy appointed by the court includes a person appointed as a deputy as a result of paragraph (a).

(3) On any application to it by R, the court may end R's appointment as P's deputy.

(4) Where, as a result of section 20(1), R may not make a decision on behalf of P in relation to a relevant matter, R must apply to the court.

(5) If, on the application, the court is satisfied that P is capable of managing his property and affairs in relation to the relevant matter—

(a) it must make an order ending R's appointment as P's deputy in relation to that matter, but

(b) it may, in relation to any other matter, exercise in relation to P any of the powers which it has under sections 15 to 19.

(6) If it is not satisfied, the court may exercise in relation to P any of the powers which it has under sections 15 to 19.

(7) R's appointment as P's deputy ceases to have effect if P dies.

(8) "Relevant matter" means a matter in relation to which, immediately before the commencement day, R was authorised to act as P's receiver.

(9) In sub-paragraph (1), the reference to a receiver appointed under section 99 of the Mental Health Act includes a reference to a person who by virtue of Schedule 5 to that Act was deemed to be a receiver appointed under that section.

Orders, appointments etc.

2 (1) Any order or appointment made, direction or authority given or other thing done which has, or by virtue of Schedule 5 to the Mental Health Act was deemed to have, effect under Part 7 of the Act immediately before the commencement day is to continue to have effect despite the repeal of Part 7.

(2) In so far as any such order, appointment, direction, authority or thing could have been made, given or done under sections 15 to 20 if those sections had then been in force—

(a) it is to be treated as made, given or done under those sections, and

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(b) the powers of variation and discharge conferred by section 16(7) apply accordingly.

(3) Sub-paragraph (1)—

(a) does not apply to nominations under section 93(1) or (4) of the Mental Health Act, and

(b) as respects receivers, has effect subject to paragraph 1.

(4) This Act does not affect the operation of section 109 of the Mental Health Act (effect and proof of orders etc.) in relation to orders made and directions given under Part 7 of that Act.

(5) This paragraph is without prejudice to section 16 of the Interpretation Act 1978 (c. 30) (general savings on repeal).

Pending proceedings

3 (1) Any application for the exercise of a power under Part 7 of the Mental Health Act which is pending immediately before the commencement day is to be treated, in so far as a corresponding power is exercisable under sections 16 to 20, as an application for the exercise of that power.

(2) For the purposes of sub-paragraph (1) an application for the appointment of a receiver is to be treated as an application for the appointment of a deputy.

Appeals

4 (1) Part 7 of the Mental Health Act and the rules made under it are to continue to apply to any appeal brought by virtue of section 105 of that Act which has not been determined before the commencement day.

(2) If in the case of an appeal brought by virtue of section 105(1) (appeal to nominated judge) the judge nominated under section 93 of the Mental Health Act has begun to hear the appeal, he is to continue to do so but otherwise it is to be heard by a puisne judge of the High Court nominated under section 46.

Fees

5 All fees and other payments which, having become due, have not been paid to the former Court of Protection before the commencement day, are to be paid to the new Court of Protection.

Court records

6 (1) The records of the former Court of Protection are to be treated, on and after the commencement day, as records of the new Court of Protection and are to be dealt with accordingly under the Public Records Act 1958 (c. 51).

(2) On and after the commencement day, the Public Guardian is, for the purpose of exercising any of his functions, to be given such access as he may require to such of the records mentioned in sub-paragraph (1) as relate to the appointment of receivers under section 99 of the Mental Health Act.

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Existing charges

7 This Act does not affect the operation in relation to a charge created before the commencement day of—

(a) so much of section 101(6) of the Mental Health Act as precludes a charge created under section 101(5) from conferring a right of sale or foreclosure during the lifetime of the patient, or

(b) section 106(6) of the Mental Health Act (charge created by virtue of section 106(5) not to cause interest to fail etc.).

Preservation of interests on disposal of property

8 Paragraph 8(1) of Schedule 2 applies in relation to any disposal of property (within the meaning of that provision) by a person living on 1st November 1960, being a disposal effected under the Lunacy Act 1890 (c. 5) as it applies in relation to the disposal of property effected under sections 16 to 20.

Accounts

9 Court of Protection Rules may provide that, in a case where paragraph 1 applies, R is to have a duty to render accounts—

(a) while he is receiver;

(b) after he is discharged.

Interpretation

10 In this Part of this Schedule—

(a) "the commencement day" means the day on which section 66(1)(a) (repeal of Part 7 of the Mental Health Act) comes into force,

(b) "the former Court of Protection" means the office abolished by section 45, and

(c) "the new Court of Protection" means the court established by that section.

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, under the 1985 Act which has effect immediately before the commencement day continues to have effect despite the repeal of that Act.

(2) In so far as any such order, determination or thing could have been made or done under Schedule 4 if it had then been in force—

(a) it is to be treated as made or done under that Schedule, and

(b) the powers of variation and discharge exercisable by the court apply accordingly.

(3) Any instrument registered under the 1985 Act is to be treated as having been registered by the Public Guardian under Schedule 4.

Status: *Point in time view as at 01/10/2015.*
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(4) This paragraph is without prejudice to section 16 of the Interpretation Act 1978 (c. 30) (general savings on repeal).

Pending proceedings

12 (1) An application for the exercise of a power under the 1985 Act which is pending immediately before the commencement day is to be treated, in so far as a corresponding power is exercisable under Schedule 4, as an application for the exercise of that power.

(2) For the purposes of sub-paragraph (1)—

(a) a pending application under section 4(2) of the 1985 Act for the registration of an instrument is to be treated as an application to the Public Guardian under paragraph 4 of Schedule 4 and any notice given in connection with that application under Schedule 1 to the 1985 Act is to be treated as given under Part 3 of Schedule 4,

(b) a notice of objection to the registration of an instrument is to be treated as a notice of objection under paragraph 13 of Schedule 4, and

(c) pending proceedings under section 5 of the 1985 Act are to be treated as proceedings on an application for the exercise by the court of a power which would become exercisable in relation to an instrument under paragraph 16(2) of Schedule 4 on its registration.

Appeals

13 (1) The 1985 Act and, so far as relevant, the provisions of Part 7 of the Mental Health Act and the rules made under it as applied by section 10 of the 1985 Act are to continue to have effect in relation to any appeal brought by virtue of section 10(1)(c) of the 1985 Act which has not been determined before the commencement day.

(2) If, in the case of an appeal brought by virtue of section 105(1) of the Mental Health Act as applied by section 10(1)(c) of the 1985 Act (appeal to nominated judge), the judge nominated under section 93 of the Mental Health Act has begun to hear the appeal, he is to continue to do so but otherwise the appeal is to be heard by a puisne judge of the High Court nominated under section 46.

Exercise of powers of donor as trustee

14 (1) Section 2(8) of the 1985 Act (which prevents a power of attorney under section 25 of the Trustee Act 1925 (c. 19) as enacted from being an enduring power) is to continue to apply to any enduring power—

(a) created before 1st March 2000, and

(b) having effect immediately before the commencement day.

(2) Section 3(3) of the 1985 Act (which entitles the donee of an enduring power to exercise the donor's powers as trustee) is to continue to apply to any enduring power to which, as a result of the provision mentioned in sub-paragraph (3), it applies immediately before the commencement day.

(3) The provision is section 4(3)(a) of the Trustee Delegation Act 1999 (c. 15) (which provides for section 3(3) of the 1985 Act to cease to apply to an enduring power when its registration is cancelled, if it was registered in response to an application made before 1st March 2001).

Status: *Point in time view as at 01/10/2015.*
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(4) Even though section 4 of the 1999 Act is repealed by this Act, that section is to continue to apply in relation to an enduring power—

(a) to which section 3(3) of the 1985 Act applies as a result of sub-paragraph (2), or

(b) to which, immediately before the repeal of section 4 of the 1999 Act, section 1 of that Act applies as a result of section 4 of it.

(5) The reference in section 1(9) of the 1999 Act to section 4(6) of that Act is to be read with sub-paragraphs (2) to (4).

Interpretation

15 In this Part of this Schedule, "the commencement day" means the day on which section 66(1)(b) (repeal of the 1985 Act) comes into force.

SCHEDULE 6

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)—

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(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 ".

(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)—

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(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

(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—

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"(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).".

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)

F34 11 . . . . . .

Textual Amendments

F34 Sch. 6 para. 11 repealed (1.8.2014) by Co-operative and Community Benefit Societies Act 2014 (c. 14), s. 154, **Sch. 7** (with Sch. 5)

Status: *Point in time view as at 01/10/2015.*
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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 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

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(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—

"(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—

"Mental Capacity Act 2005	
Section 39	Instructing independent mental capacity advocate before providing accommodation for person lacking capacity.
Section 49	Reports in proceedings.".

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

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(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).

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) [F35] . . . . . .

(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;".

Textual Amendments

F35 Sch. 6 para. 22(2) repealed (1.10.2010) by Legal Services Act 2007 (c. 29), ss. 210, 211, **Sch. 23** (with ss. 29, 192, 193) (as amended by 2009 c. 25, Sch. 21 para. 97, Sch. 23 Pt. 9); S.I. 2009/3250, **art. 2(i)(xii)** (with art. 9)

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).

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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 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.

[F36](2) . . . . . .

(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

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(d) he lacks capacity (within the meaning of the Mental Capacity Act 2005) to act as an insolvency practitioner.”.

Textual Amendments

F36 Sch. 6 para. 31(2) omitted (1.10.2015) by virtue of Deregulation Act 2015 (c. 20), s. 115(7), **Sch. 6 para. 20(4)**; S.I. 2015/1732, art. 2(e)(vi)

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

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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."

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—

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(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—

"(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.".

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(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.

(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

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(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—

"(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)

F37 44 . . . . . .

Textual Amendments

F37 Sch. 6 para. 44 repealed (1.4.2013) by Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), s. 151(1), **Sch. 5 Pt. 2**; S.I. 2013/453, art. 3(h) (with savings and transitional provisions in S.I. 2013/534, art. 6)

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)—

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(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.

SCHEDULE 7

Section 67(2)

REPEALS

Short title and chapter	***Extent of repeal***
Trustee Act 1925 (c. 19)	Section 54(3).
Law of Property Act 1925 (c. 20)	Section 205(1)(xiii).
Administration of Estates Act 1925 (c. 23)	Section 55(1)(viii)
U.S.A. Veterans' Pensions (Administration) Act 1949 (c. 45)	In section 1(4), the words from “or for whom” to “1983”.
Mental Health Act 1959 (c. 72)	In Schedule 7, in Part 1, the entries relating to— section 33 of the Fines and Recoveries Act 1833, section 68 of the Improvement of Land Act 1864, section 55 of the Trustee Act 1925, section 205(1) of the Law of Property Act 1925, section 49 of the National Assistance Act 1948, and section 1 of the Variation of Trusts Act 1958.
Courts Act 1971 (c. 23)	In Schedule 2, in Part 1A, the words “Master of the Court of Protection”.
Local Government Act 1972 (c. 70)	Section 118.
Limitation Act 1980 (c. 58)	Section 38(3) and (4).
Supreme Court Act 1981 (c. 54)	In Schedule 2, in Part 2, paragraph 11.
Mental Health Act 1983 (c. 20)	Part 7. In section 139(1) the words from “or in, or in pursuance” to “Part VII of this Act,”. In section 145(1), in the definition of “patient” the words “(except in Part VII of this Act)”. In sections 146 and 147 the words from “104(4)” to “section),”. Schedule 3. In Schedule 4, paragraphs 1, 2, 4, 5, 7, 9, 14, 20, 22, 25, 32, 38, 55 and 56.

Status: *Point in time view as at 01/10/2015.*
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	In Schedule 5, paragraphs 26, 43, 44 and 45.
Enduring Powers of Attorney Act 1985 (c. 29)	The whole Act.
Insolvency Act 1986 (c. 45)	In section 389A(3)— the "or" immediately after paragraph (b), and in paragraph (c), the words "Part VII of the Mental Health Act 1983 or". In section 390(4)— the "or" immediately after paragraph (b), and in paragraph (c), the words "Part VII of the Mental Health Act 1983 or".
Public Trustee and Administration of Funds Act 1986 (c. 57)	Section 2. Section 3(7).
Child Support Act 1991 (c. 48)	In section 50(8)— paragraphs (b) and (d), and the "or" immediately after paragraph (c).
Social Security Administration Act 1992 (c. 5)	In section 123(10)— in paragraph (b), "a receiver appointed under section 99 of the Mental Health Act 1983 or", in paragraph (d)(i), "sub-paragraph (a) of rule 41(1) of the Court of Protection Rules Act 1984 or", in paragraph (d)(ii), "a receiver ad interim appointed under sub-paragraph (b) of the said rule 41(1) or", and "receiver,".
Trustee Delegation Act 1999 (c. 15)	Section 4. Section 6. In section 7(3), the words "in accordance with section 4 above".
Care Standards Act 2000 (c. 14)	In Schedule 4, paragraph 8.
Licensing Act 2003 (c. 17)	In section 47(10), the definition of "mentally incapable".
Courts Act 2003 (c. 64)	In section 64(2), the words "Master of the Court of Protection".

Status:
Point in time view as at 01/10/2015.

Changes to legislation:
Mental Capacity Act 2005 is up to date with all changes known to be in force on or before 19 July 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.