



# Mental Health Act 1983

## 1983 CHAPTER 20

### PART VII

#### MANAGEMENT OF PROPERTY AND AFFAIRS OF PATIENTS

#### **93 Judicial authorities and Court of Protection**

- (1) The Lord Chancellor shall from time to time nominate one or more judges of the Supreme Court (in this Act referred to as "nominated judges") to act for the purposes of this Part of this Act.
- (2) There shall continue to be an office of the Supreme Court, called the Court of Protection, for the protection and management, as provided by this Part of this Act, of the property and affairs of persons under disability ; and there shall continue to be a Master of the Court of Protection appointed by the Lord Chancellor under section 89 of the Supreme Court Act 1981.
- (3) The Master of the Court of Protection shall take the oath of allegiance and judicial oath in the presence of the Lord Chancellor; and the Promissory Oaths Act 1868 shall have effect as if the officers named in the Second Part of the Schedule to that Act included the Master of the Court of Protection.
- (4) The Lord Chancellor may nominate other officers of the Court of Protection (in this Part of this Act referred to as "nominated officers") to act for the purposes of this Part of this Act.

#### **94 Exercise of judge's functions: " the patient "**

- (1) The functions expressed to be conferred by this Part of this Act on the judge shall be exercisable by the Lord Chancellor or by any nominated judge, and shall also be exercisable by the Master of the Court of Protection or by any nominated officer, but—
  - (a) in the case of the Master or any nominated officer, subject to any express provision to the contrary in this Part of this Act or any rules made under this Part of this Act,

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(b) in the case of any nominated officer, subject to any directions of the Master and so far only as may be provided by the instrument by which he is nominated; and references in this Part of this Act to the judge shall be construed accordingly.

(2) The functions of the judge under this Part of this Act shall be exercisable where, after considering medical evidence, he is satisfied that a person is incapable, by reason of mental disorder, of managing and administering his property and affairs; and a person as to whom the judge is so satisfied is referred to in this Part of this Act as a patient.

## **95 General functions of the judge with respect to property and affairs of patient**

(1) The judge may, with respect to the property and affairs of a patient, do or secure the doing of all such things as appear necessary or expedient—

- (a) for the maintenance or other benefit of the patient,
- (b) for the maintenance or other benefit of members of the patient's family,
- (c) for making provision for other persons or purposes for whom or which the patient might be expected to provide if he were not mentally disordered, or
- (d) otherwise for administering the patient's affairs.

(2) In the exercise of the powers conferred by this section regard shall be had first of all to the requirements of the patient, and the rules of law which restricted the enforcement by a creditor of rights against property under the control of the judge in lunacy shall apply to property under the control of the judge ; but, subject to the foregoing provisions of this subsection, the judge shall, in administering a patient's affairs, have regard to the interests of creditors and also to the desirability of making provision for obligations of the patient notwithstanding that they may not be legally enforceable.

## **96 Powers of the judge as to patient's property and affairs**

(1) Without prejudice to the generality of section 95 above, the judge shall have power to make such orders and give such directions and authorities as he thinks fit for the purposes of that section and in particular may for those purposes make orders or give directions or authorities for—

- (a) the control (with or without the transfer or vesting of property or the payment into or lodgment in the Supreme Court of money or securities) and management of any property of the patient;
- (b) the sale, exchange, charging or other disposition of or dealing with any property of the patient;
- (c) the acquisition of any property in the name or on behalf of the patient;
- (d) the settlement of any property of the patient, or the gift of any property of the patient to any such persons or for any such purposes as are mentioned in paragraphs (b) and (c) of section 95(1) above ;
- (e) the execution for the patient of a will making any provision (whether by way of disposing of property or exercising a power or otherwise) which could be made by a will executed by the patient if he were not mentally disordered;
- (f) the carrying on by a suitable person of any profession, trade or business of the patient;
- (g) the dissolution of a partnership of which the patient is a member;
- (h) the carrying out of any contract entered into by the patient;
- (j) the conduct of legal proceedings in the name of the patient or on his behalf ;

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- (j) the reimbursement out of the property of the patient, with or without interest, of money applied by any person either in payment of the patient's debts (whether legally enforceable or not) or for the maintenance or other benefit of the patient or members of his family or in making provision for other persons or purposes for whom or which he might be expected to provide if he were not mentally disordered;
  - (k) the exercise of any power (including a power to consent) vested in the patient, whether beneficially, or as guardian or trustee, or otherwise.
- (2) If under subsection (1) above provision is made for the settlement of any property of a patient, or the exercise of a power vested in a patient of appointing trustees or retiring from a trust, the judge may also make as respects the property settled or trust property such consequential vesting or other orders as the case may require, including (in the case of the exercise of such a power) any order which could have been made in such a case under Part IV of the Trustee Act 1925.
- (3) Where under this section a settlement has been made of any property of a patient, and the Lord Chancellor or a nominated judge is satisfied, at any time before the death of the patient, that any material fact was not disclosed when the settlement was made, or that there has been any substantial change in circumstances, he may by order vary the settlement in such manner as he thinks fit, and give any consequential directions.
- (4) The power of the judge to make or give an order, direction or authority for the execution of a will for a patient—
- (a) shall not be exercisable at any time when the patient is a minor, and
  - (b) shall not be exercised unless the judge has reason to believe that the patient is incapable of making a valid will for himself.
- (5) The powers of a patient as patron of a benefice shall be exercisable by the Lord Chancellor only.

## **97 Supplementary provisions as to wills executed under s. 96**

- (1) Where under section 96(1) above the judge makes or gives an order, direction or authority requiring or authorising a person (in this section referred to as " the authorised person ") to execute a will for a patient, any will executed in pursuance of that order, direction or authority shall be expressed to be signed by the patient acting by the authorised person, and shall be—
- (a) signed by the authorised person with the name of the patient, and with his own name, in the presence of two or more witnesses present at the same time, and
  - (b) attested and subscribed by those witnesses in the presence of the authorised person, and
  - (c) sealed with the official seal of the Court of Protection.
- (2) The Wills Act 1837 shall have effect in relation to any such will as if it were signed by the patient by his own hand, except that in relation to any such will—
- (a) section 9 of that Act (which makes provision as to the signing and attestation of wills) shall not apply, and
  - (b) in the subsequent provisions of that Act any reference to execution in the manner required by the previous provisions of that Act shall be construed as a reference to execution in the manner required by subsection (1) above.

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- (3) Subject to the following provisions of this section, any such will executed in accordance with subsection (1) above shall have the same effect for all purposes as if the patient were capable of making a valid will and the will had been executed by him in the manner required by the Wills Act 1837.
- (4) So much of subsection (3) above as provides for such a will to have effect as if the patient were capable of making a valid will—
- (a) shall not have effect in relation to such a will in so far as it disposes of any immovable property, other than immovable property in England or Wales, and
  - (b) where at the time when such a will is executed the patient is domiciled in Scotland or Northern Ireland or in a country or territory outside the United Kingdom, shall not have effect in relation to that will in so far as it relates to any other property or matter, except any property or matter in respect of which, under the law of his domicile, any question of his testamentary capacity would fall to be determined in accordance with the law of England and Wales.

## **98 Judge's powers in cases of emergency**

Where it is represented to the judge, and he has reason to believe, that a person may be incapable, by reason of mental disorder, of managing and administering his property and affairs, and the judge is of the opinion that it is necessary to make immediate provision for any of the matters referred to in section 95 above, then pending the determination of the question whether that person is so incapable the judge may exercise in relation to the property and affairs of that person any of the powers conferred on him in relation to the property and affairs of a patient by this Part of this Act so far as is requisite for enabling that provision to be made.

## **99 Power to appoint receiver**

- (1) The judge may by order appoint as receiver for a patient a person specified in the order or the holder for the time being of an office so specified.
- (2) A person appointed as receiver for a patient shall do all such things in relation to the property and affairs of the patient as the judge, in the exercise of the powers conferred on him by sections 95 and 96 above, orders or directs him to do and may do any such thing in relation to the property and affairs of the patient as the judge, in the exercise of those powers, authorises him to do.
- (3) A receiver appointed for any person shall be discharged by order of the judge on the judge being satisfied that that person has become capable of managing and administering his property and affairs, and may be discharged by order of the judge at any time if the judge considers it expedient to do so; and a receiver shall be discharged (without any order) on the death of the patient.

## **100 Vesting of stock in curator appointed outside England and Wales**

- (1) Where the judge is satisfied—
- (a) that under the law prevailing in a place outside England and Wales a person has been appointed to exercise powers with respect to the property or affairs of any other person on the ground (however formulated) that that other person is incapable, by reason of mental disorder, of managing and administering his property and affairs, and

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- (b) that having regard to the nature of the appointment and to the circumstances of the case it is expedient that the judge should exercise his powers under this section,

the judge may direct any stock standing in the name of the said other person or the right to receive the dividends from the stock to be transferred into the name of the person so appointed or otherwise dealt with as requested by that person, and may give such directions as the judge thinks fit for dealing with accrued dividends from the stock.

- (2) In this section " stock " includes shares and also any fund, 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 " shall be construed accordingly.

### **101 Preservation of interests in patient's property**

- (1) Where any property of a person has been disposed of under this Part of this Act, and under his will or his intestacy, or by any gift perfected or nomination taking effect on his death, any other person would have taken an interest in the property but for the disposal—

- (a) he shall take the same interest, if and so far as circumstances allow, in any property belonging to the estate of the deceased which represents the property disposed of; and

- (b) if the property disposed of was real property any property representing it shall so long as it remains part of his estate be treated as if it were real property.

- (2) The judge, in ordering, directing or authorising under this Part of this Act any disposal of property which apart from this section would result in the conversion of personal property into real property, may direct that the property representing the property disposed of shall, so long as it remains the property of the patient or forms part of his estate, be treated as if it were personal property.

- (3) References in subsections (1) and (2) above to the disposal of property are references to—

- (a) the sale, exchange, charging 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, or
- (d) the transfer of money from one account to another;

and references to property representing property disposed of shall be construed accordingly and as including the result of successive disposals.

- (4) The judge may give such directions as appear to him necessary or expedient for the purpose of facilitating the operation of subsection (1) above, including the carrying of money to a separate account and the transfer of property other than money.

- (5) Where the judge has ordered, directed or authorised the expenditure of money for the carrying out of permanent improvements on, or otherwise for the permanent benefit of, any property of the patient, he may order that the whole or any part of the money expended or to be expended shall be a charge upon the property, whether without interest or with interest at a specified rate; and an order under this subsection may provide for excluding or restricting the operation of subsection (1) above.

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- (6) A charge under subsection (5) above may be made in favour of such person as may be just, and in particular, where the money charged is paid out of the patient's general estate, may be made in favour of a person as trustee for the patient; but no charge under that subsection shall confer any right of sale or foreclosure during the lifetime of the patient.

## **102 Lord Chancellor's Visitors**

- (1) There shall continue to be the following panels of Lord Chancellor's Visitors of patients constituted in accordance with this section, namely—
- (a) a panel of Medical Visitors ;
  - (b) a panel of Legal Visitors; and
  - (c) a panel of General Visitors (being Visitors who are not required by this section to possess either a medical or legal qualification for appointment).
- (2) Each panel shall consist of persons appointed to it by the Lord Chancellor, the appointment of each person being for such term and subject to such conditions as the Lord Chancellor may determine.
- (3) A person shall not be qualified to be appointed—
- (a) to the panel of Medical Visitors unless he is a registered medical practitioner who appears to the Lord Chancellor to have special knowledge and experience of cases of mental disorder;
  - (b) to the panel of Legal Visitors unless he is a barrister or solicitor of not less than 10 years' standing.
- (4) If the Lord Chancellor so determines in the case of any Visitor appointed under this section, he shall be paid out of money provided by Parliament such remuneration and allowances as the Lord Chancellor may, with the concurrence of the Treasury, determine.

## **103 Functions of Visitors**

- (1) Patients shall be visited by Lord Chancellor's Visitors in such circumstances, and in such manner, as may be prescribed by directions of a standing nature given by the Master of the Court of Protection with the concurrence of the Lord Chancellor.
- (2) Where it appears to the judge in the case of any patient that a visit by a Lord Chancellor's Visitor is necessary for the purpose of investigating any particular matter or matters relating to the capacity of the patient to manage and administer his property and affairs, or otherwise relating to the exercise in relation to him of the functions of the judge under this Part of this Act, the judge may order that the patient shall be visited for that purpose.
- (3) Every visit falling to be made under subsection (1) or (2) above shall be made by a General Visitor unless, in a case where it appears to the judge that it is in the circumstances essential for the visit to be made by a Visitor with medical or legal qualifications, the judge directs that the visit shall be made by a Medical or a Legal Visitor.
- (4) A Visitor making a visit under this section shall make such report on the visit as the judge may direct.

- (5) A Visitor making a visit under this section may interview the patient in private.
- (6) A Medical Visitor making a visit under this section may carry out in private a medical examination of the patient and may require the production of and inspect any medical records relating to the patient.
- (7) The Master of the Court of Protection may visit any patient for the purpose mentioned in subsection (2) above and may interview the patient in private.
- (8) A report made by a Visitor under this section, and information contained in such a report, shall not be disclosed except to the judge and any person authorised by the judge to receive the disclosure.
- (9) If any person discloses any report or information in contravention of subsection (8) above, he shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 3 on the standard scale or both.
- (10) In this section references to patients include references to persons alleged to be incapable, by reason of mental disorder, of managing and administering their property and affairs.

#### **104 General powers of the judge with respect to proceedings**

- (1) For the purposes of any proceedings before him with respect to persons suffering or alleged to be suffering from mental disorder, the judge shall have the same powers as are vested in the High Court in respect of securing the attendance of witnesses and the production of documents.
- (2) Subject to the provisions of this section, any act or omission in the course of such proceedings which, if occurring in the course of proceedings in the High Court would have been a contempt of the Court, shall be punishable by the judge in any manner in which it could have been punished by the High Court.
- (3) Subsection (2) above shall not authorise the Master, or any other officer of the Court of Protection to exercise any power of attachment or committal, but the Master or officer may certify any such act or omission to the Lord Chancellor or a nominated judge, and the Lord Chancellor or judge may upon such certification inquire into the alleged act or omission and take any such action in relation to it as he could have taken if the proceedings had been before him.
- (4) Subsections (1) to (4) of section 36 of the Supreme Court Act 1981 (which provides a special procedure for the issue of writs of subpoena ad testificandum and duces tecum so as to be enforceable throughout the United Kingdom) shall apply in relation to proceedings under this Part of this Act with the substitution for references to the High Court of references to the judge and for references to such writs of references to such document as may be prescribed by rules under this Part of this Act for issue by the judge for securing the attendance of witnesses or the production of documents,

#### **105 Appeals**

- (1) Subject to and in accordance with rules under this Part of this Act, an appeal shall lie to a nominated judge from any decision of the Master of the Court of Protection or any nominated officer.

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- (2) The Court of Appeal shall continue to have the same jurisdiction as to appeals from any decision of the Lord Chancellor or from any decision of a nominated judge, whether given in the exercise of his original jurisdiction or on the hearing of an appeal under subsection (1) above, as they had immediately before the coming into operation of Part VIII of the Mental Health Act 1959 as to appeals from orders in lunacy made by the Lord Chancellor or any other person having jurisdiction in lunacy.

## **106 Rules of procedure**

- (1) Proceedings before the judge with respect to persons suffering or alleged to be suffering from mental disorder (in this section referred to as "proceedings") shall be conducted in accordance with the provisions of rules made under this Part of this Act.
- (2) Rules under this Part of this Act may make provision as to—
- (a) the carrying out of preliminary or incidental inquiries;
  - (b) the persons by whom and manner in which proceedings may be instituted and carried on;
  - (c) the persons who are to be entitled to be notified of, to attend, or to take part in proceedings;
  - (d) the evidence which may be authorised or required to be given in proceedings and the manner (whether on oath or otherwise and whether orally or in writing) in which it is to be given;
  - (e) the administration of oaths and taking of affidavits for the purposes of proceedings; and
  - (f) the enforcement of orders made and directions given in proceedings.
- (3) Without prejudice to the provisions of section 104(1) above, rules under this Part of this Act may make provision for authorising or requiring the attendance and examination of persons suffering or alleged to be suffering from mental disorder, the furnishing of information and the production of documents.
- (4) Rules under this Part of this Act may make provision as to the termination of proceedings, whether on the death or recovery of the person to whom the proceedings relate or otherwise, and for the exercise, pending the termination of the proceedings, of powers exercisable under this Part of this Act in relation to the property or affairs of a patient.
- (5) Rules under this Part of this Act made with the consent of the Treasury may—
- (a) make provision as to the scale of costs, fees and percentages payable in relation to proceedings, and as to the manner in which and funds out of which such costs, fees and percentages are to be paid;
  - (b) contain provision for charging any percentage upon the estate of the person to whom the proceedings relate and for the payment of costs, fees and percentages within such time after the death of the person to whom the proceedings relate or the termination of the proceedings as may be provided by the rules; and
  - (c) provide for the remission of fees and percentages.
- (6) A charge upon the estate of a person created by virtue of subsection (5) above shall not cause any interest of that person in any property to fail or determine or to be prevented from recommencing.



- (7) Rules under this Part of this Act may authorise the making of orders for the payment of costs to or by persons attending, as well as persons taking part in, proceedings.

#### **107 Security and accounts**

- (1) Rules under this Part of this Act may make provision as to the giving of security by a receiver and as to the enforcement and discharge of the security.
- (2) It shall be the duty of a receiver to render accounts in accordance with the requirements of rules under this Part of this Act, as well after his discharge as during his receivership; and rules under this Part of this Act may make provision for the rendering of accounts by persons other than receivers who are ordered, directed or authorised under this Part of this Act to carry out any transaction.

#### **108 General provisions as to rules under Part VII**

- (1) Any power to make rules conferred by this Part of this Act shall be exercisable by the Lord Chancellor.
- (2) Rules under this Part of this Act may contain such incidental and supplemental provisions as appear requisite for the purposes of the rules.

#### **109 Effect and proof of orders, etc.**

- (1) Section 204 of the Law of Property Act 1925 (by which orders of the High Court are made conclusive in favour of purchasers) shall apply in relation to orders made and directions and authorities given by the judge as it applies in relation to orders of the High Court.
- (2) Office copies of orders made, directions or authorities given or other instruments issued by the judge and sealed with the official seal of the Court of Protection shall be admissible in all legal proceedings as evidence of the originals without any further proof.

#### **110 Reciprocal arrangements in relation to Scotland and Northern Ireland as to exercise of powers**

- (1) This Part of this Act shall apply in relation to the property and affairs in Scotland or Northern Ireland of a patient in relation to whom powers have been exercised under this Part of this Act, or a person as to whom powers are exercisable and have been exercised under section 98 above as it applies in relation to his property and affairs in England and Wales unless a curator bonis, tutor, judicial factor, committee, receiver or guardian has been appointed for him in Scotland or, as the case may be, Northern Ireland.
- (2) Where under the law in force in Scotland or Northern Ireland with respect to the property and affairs of persons suffering from mental disorder a curator bonis, tutor, judicial factor, committee, receiver or guardian has been appointed for any person, the provisions of that law shall apply in relation to that person's property and affairs in England and Wales unless he is a patient in relation to whom powers have been exercised under this Part of this Act, or a person as to whom powers are exercisable and have been exercised under section 98 above.

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- (3) Nothing in this section shall affect any power to execute a will under section 96(1)(e) above or the effect of any will executed in the exercise of such a power.
- (4) In this section references to property do not include references to land or interests in land but this subsection shall not prevent the receipt of rent or other income arising from land or interests in land.

### **111 Construction of references in other Acts to judge or authority having jurisdiction under Part VII**

- (1) The functions expressed to be conferred by any enactment not contained in this Part of this Act on the judge having jurisdiction under this Part of this Act shall be exercisable by the Lord Chancellor or by a nominated judge.
- (2) Subject to subsection (3) below, the functions expressed to be conferred by any such enactment on the authority having jurisdiction under this Part of this Act shall, subject to any express provision to the contrary, be exercisable by the Lord Chancellor, a nominated judge, the Master of the Court of Protection or a nominated officer.
- (3) The exercise of the functions referred to in subsection (2) above by a nominated officer shall be subject to any directions of the Master and they shall be exercisable so far only as may be provided by the instrument by which the officer is nominated.
- (4) Subject to the foregoing provisions of this section—
  - (a) references in any enactment not contained in this Part of this Act to the judge having jurisdiction under this Part of this Act shall be construed as references to the Lord Chancellor or a nominated judge, and
  - (b) references in any such enactment to the authority having jurisdiction under this Part of this Act shall be construed as references to the Lord Chancellor, a nominated judge, the Master of the Court of Protection or a nominated officer.

### **112 Interpretation of Part VII**

In this Part of this Act, unless the context otherwise requires—

- " nominated judge " means a judge nominated in pursuance of subsection (1) of section 93 above ;
- " nominated officer" means an officer nominated in pursuance of subsection (4) of that section ;
- " patient" has the meaning assigned to it by section 94 above;
- " property " includes any thing in action, and any interest in real or personal property ;
- " the judge " shall be construed in accordance with section 94 above;
- " will " includes a codicil.

### **113 Disapplication of certain enactments in relation to persons within the jurisdiction of the judge**

The provisions of the Acts described in Schedule 3 to this Act which are specified in the third column of that Schedule, so far as they make special provision for persons suffering from mental disorder, shall not have effect in relation to patients and to persons as to whom powers are exercisable and have been exercised under section 98 above.