

*These notes refer to the Mental Capacity Act 2005
(c.9) which received Royal Assent on 7 April 2005*

MENTAL CAPACITY ACT 2005

EXPLANATORY NOTES

SCHEDULES

Schedule 3: International protection of adults

Part 2: Jurisdiction of competent authority

172. *Part 2* of the Schedule provides the grounds, based on Articles 5 to 11 of the Hague Convention, on which the Court of Protection will exercise its jurisdiction under the Act when dealing with cases with an international element. *Paragraph 7(1)* provides that the court may exercise its jurisdiction in relation to: an adult habitually resident in England and Wales; an adult's property in England and Wales; an adult present in England or Wales or who has property there, if the matter is urgent; or 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.
173. *Paragraph 7(2)* provides that an adult present in England and Wales is to be treated as habitually resident if his habitual residence cannot be ascertained, he is a refugee or he has been displaced as a result of disturbance in the country of his habitual residence.
174. Once the provisions of the Convention are in force the court will also be able to exercise jurisdiction, in so far as it cannot otherwise do so under the provisions of *paragraph 7*, in relation to a British citizen with a closer connection with England and Wales than with Scotland or Northern Ireland. The jurisdiction may be exercised provided that the court considers that it is in a better position to assess the interests of the adult, that certain requirements as to notification of other Convention countries are complied with and that other Convention countries which may have jurisdiction on certain grounds have not dealt, or are not dealing with the matter (*paragraph 8(2)(c)* and Article 7 of the Hague Convention).