

**EXPLANATORY MEMORANDUM TO**  
**THE COURT OF PROTECTION (AMENDMENT) RULES 2017**

**2017 No. 187 (L. 3)**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

- 2.1 This instrument amends the Court of Protection Rules 2007, which govern practice and procedure in the Court of Protection which has the jurisdiction to make decisions regarding individuals who lack mental capacity (commonly referred to as “P”). The changes encompass new rules for the use of Civil Restraint Orders to deal with claims that have no merit; and new rules and practice directions to reflect current practices and case law in cross-jurisdictional cases which are emerging more frequently.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

*Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

- 4.1 The power to make Court of Protection Rules is contained in section 51 of the Mental Capacity Act 2005 (“the 2005 Act”). The power is a broad one, similar to the powers to make Civil Procedure Rules and Family Procedure Rules, and as with those Rules, the Court of Protection Rules are supported by practice directions, made under section 52 of the 2005 Act.
- 4.2 Court of Protection Rules are made in accordance with the procedure in Part 1 of the Schedule 1 to the Constitutional Reform Act 2005, which provides for rules to be made by the Lord Chief Justice or a judicial office holder nominated by the Lord Chief Justice, and approved by the Lord Chancellor. The President of the Family Division (who is also the President of the Court of Protection), is the judicial office holder nominated for this purpose.
- 4.3 Unlike the position for Civil Procedure Rules and Family Procedure Rules, there is no standing rule committee for making Court of Protection Rules. The President nominated an *ad hoc* committee to advise on the detail of amendments to the rules, building on the work of a previous similar committee, and this instrument reflects the recommendations of that committee. The proposed amendments are a continuation of the committee work during 2015-16 to update the rules so that they are fit for purpose and reflect the Court of Protection’s present challenges.

## **5. Extent and Territorial Application**

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is England and Wales.

## **6. European Convention on Human Rights**

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

### *What is being done and why*

- 7.1 Amendments to the Court of Protection Rules are long overdue: no comprehensive update of rules has been done since they were first introduced in 2007, and there have been only very limited amendments in 2009 and 2011, and some more substantial amendments in 2015. The changes made by this instrument will strengthen the Court of Protection's powers to deal with current challenges particularly the increase in caseloads and complexity of cases.
- 7.2 The proposed rule changes will give the court greater powers, following the model of the Civil Procedure Rules providing for civil restraint orders, to deal with applications which are without merit and allow the court, for instance, to restrain litigants from submitting repeat applications. Further changes will also introduce a new framework for international applications that will reflect current practices and case law in cross-jurisdictional cases and bring clarity and consistency to the making of such applications which is now needed as these types of cases are emerging more frequently.

### *Consolidation*

- 7.3 It is not intended that this statutory instrument will consolidate any other legislation

## **8. Consultation outcome**

- 8.1 The proposed rule changes are considered to be straightforward and not to require a full public consultation, although they have been fully explored through the representation on the committee, and on the earlier committee whose work forms the basis of much of the changes, of a wide range of practitioners, judges and professional bodies with particular expertise in this area of work.

## **9. Guidance**

- 9.1 The rules will be supported by amendments to relevant practice directions and new and amended forms and guidance for use of the forms, which will be available via the Gov.uk website.

## **10. Impact**

- 10.1 There is no, or negligible, impact on business, charities or voluntary bodies.
- 10.2 There is no, or negligible, impact on the public sector.
- 10.3 An Impact Assessment has accordingly not been prepared for this instrument.

**11. Regulating small business**

- 11.1 The legislation applies to small businesses such as legal practices but impact would not be significant, being limited to familiarisation with the changes.

**12. Monitoring & review**

- 12.1 There is no standing Court of Protection Rules Committee (unlike the position for Civil Procedure Rules and Family Procedure Rules). Rules are made by the President of the Family Division with the approval of the Lord Chancellor. However, the *ad hoc* committee appointed to review the current Court of Protection Rules is likely to continue in that task and further changes may be recommended. As part of that process the possibility of consolidation of the rules will be considered.

**13. Contact**

- 13.1 Joan Goulbourn at the Ministry of Justice Tel: 020 3334 3019 or email: [Joan.Goulbourn@justice.gsi.gov.uk](mailto:Joan.Goulbourn@justice.gsi.gov.uk) can answer any queries regarding the instrument.