

# Mental Capacity Act 2005

## **CHAPTER 9**

# **MENTAL CAPACITY ACT 2005**

#### PART 1

## PERSONS WHO LACK CAPACITY

#### The principles

1 The principles

## Preliminary

- 2 People who lack capacity
- 3 Inability to make decisions
- 4 Best interests
- 5 Acts in connection with care or treatment
- 6 Section 5 acts: limitations
- 7 Payment for necessary goods and services
- 8 Expenditure

# Lasting powers of attorney

- 9 Lasting powers of attorney
- 10 Appointment of donees
- 11 Lasting powers of attorney: restrictions
- 12 Scope of lasting powers of attorney: gifts
- 13 Revocation of lasting powers of attorney etc.
- 14 Protection of donee and others if no power created or power revoked

General powers of the court and appointment of deputies

15 Power to make declarations

- 16 Powers to make decisions and appoint deputies: general
- 17 Section 16 powers: personal welfare
- 18 Section 16 powers: property and affairs
- 19 Appointment of deputies
- 20 Restrictions on deputies
- 21 Transfer of proceedings relating to people under 18

# Powers of the court in relation to lasting powers of attorney

- 22 Powers of court in relation to validity of lasting powers of attorney
- 23 Powers of court in relation to operation of lasting powers of attorney

#### Advance decisions to refuse treatment

- 24 Advance decisions to refuse treatment: general
- 25 Validity and applicability of advance decisions
- 26 Effect of advance decisions

#### Excluded decisions

- 27 Family relationships etc.
- 28 Mental Health Act matters
- 29 Voting rights

#### Research

- 30 Research
- 31 Requirements for approval
- 32 Consulting carers etc.
- 33 Additional safeguards
- 34 Loss of capacity during research project

## Independent mental capacity advocate service

- 35 Appointment of independent mental capacity advocates
- 36 Functions of independent mental capacity advocates
- 37 Provision of serious medical treatment by NHS body
- 38 Provision of accommodation by NHS body
- 39 Provision of accommodation by local authority
- 40 Exceptions
- 41 Power to adjust role of independent mental capacity advocate

# Miscellaneous and supplementary

- 42 Codes of practice
- 43 Codes of practice: procedure
- 44 Ill-treatment or neglect

#### PART 2

#### THE COURT OF PROTECTION AND THE PUBLIC GUARDIAN

### The Court of Protection

- 45 The Court of Protection
- 46 The judges of the Court of Protection

## Supplementary powers

- 47 General powers and effect of orders etc.
- 48 Interim orders and directions
- 49 Power to call for reports

#### Practice and procedure

- 50 Applications to the Court of Protection
- 51 Court of Protection Rules
- 52 Practice directions
- 53 Rights of appeal

#### Fees and costs

- 54 Fees
- 55 Costs
- 56 Fees and costs: supplementary

#### The Public Guardian

- 57 The Public Guardian
- 58 Functions of the Public Guardian
- 59 Public Guardian Board
- 60 Annual report

## Court of Protection Visitors

61 Court of Protection Visitors

#### PART 3

#### MISCELLANEOUS AND GENERAL

## Declaratory provision

62 Scope of the Act

#### Private international law

63 International protection of adults

## General

- 64 Interpretation
- 65 Rules, regulations and orders
- 66 Existing receivers and enduring powers of attorney etc.
- 67 Minor and consequential amendments and repeals
- 68 Commencement and extent
- 69 Short title

#### **SCHEDULES**

SCHEDULE 1 — Lasting powers of attorney: formalities

Part 1 — MAKING INSTRUMENTS

- 1 General requirements as to making instruments
- 2 Requirements as to content of instruments

- 3 Failure to comply with prescribed form
  - Part 2 REGISTRATION
- 4 Applications and procedure for registration
- 5 Subject to paragraphs 11 to 14, the Public Guardian must...
- 6 Notification requirements
- 7 As soon as is practicable after receiving an application by...
- 8 (1) As soon as is practicable after receiving an application...
- 9 (1) A notice under paragraph 6 must be made in...
- 10 Power to dispense with notification requirements
- 11 Instrument not made properly or containing ineffective provision
- 12 Deputy already appointed
- 13 Objection by donee or named person
- 14 Objection by donor
- 15 Notification of registration
- 16 Evidence of registration

# Part 3 — CANCELLATION OF REGISTRATION AND NOTIFICATION OF SEVERANCE

- 17 (1) The Public Guardian must cancel the registration of an...
- 18 The court must direct the Public Guardian to cancel the...
- 19 (1) Sub-paragraph (2) applies if the court determines under section...
- 20 On the cancellation of the registration of an instrument, the...
  - Part 4 RECORDS OF ALTERATIONS IN REGISTERED POWERS
- 21 Partial revocation or suspension of power as a result of bankruptcy
- 22 Termination of appointment of donee which does not revoke power
- 23 Replacement of donee
- 24 Severance of ineffective provisions
- 25 Notification of alterations

# SCHEDULE 2 — Property and affairs: supplementary provisions

- 1 Wills: general
- 2 Provision that may be made in will
- 3 Wills: requirements relating to execution
- 4 Wills: effect of execution
- 5 Vesting orders ancillary to settlement etc.
- 6 Variation of settlements
- 7 Vesting of stock in curator appointed outside England and Wales
- 8 Preservation of interests in property disposed of on behalf of person lacking capacity
- 9 (1) Sub-paragraph (2) applies if the court has ordered or...
- 10 Powers as patron of benefice

# SCHEDULE 3 — International protection of adults

#### Part 1 — PRELIMINARY

- 1 Introduction
- 2 The Convention
- 3 Countries, territories and nationals
- 4 Adults with incapacity
- 5 Protective measures
- 6 Central Authority

# Part 2 — JURISDICTION OF COMPETENT AUTHORITY

- 7 Scope of jurisdiction
- 8 (1) The court may also exercise its functions under this...
- 9 Exercise of jurisdiction

- 10 A reference in this Schedule to the exercise of jurisdiction...
  - Part 3 APPLICABLE LAW
- 11 Applicable law
- Where a protective measure is taken in one country but...
- 13 Lasting powers of attorney, etc.
- 14 (1) Where a lasting power is not exercised in a...
- 15 Regulations may provide for Schedule 1 (lasting powers of attorney:...
- 16 Protection of third parties
- 17 Mandatory rules
- 18 Public policy

#### Part 4 — RECOGNITION AND ENFORCEMENT

- 19 Recognition
- 20 (1) An interested person may apply to the court for...
- 21 For the purposes of paragraphs 19 and 20, any finding...
- 22 Enforcement
- 23 Measures taken in relation to those aged under 16
- 24 Supplementary
- 25 Court of Protection Rules may make provision about an application...

#### Part 5 — CO-OPERATION

- 26 Proposal for cross-border placement
- 27 A proposal received by a public authority under Article 33...
- 28 Adult in danger etc.
- 29 A public authority may not request from, or send to,...

Part 6 — GENERAL

- 30 Certificates
- 31 Powers to make further provision as to private international law
- 32 (1) Regulations may make provision— (a) giving further effect to...
- 33 Exceptions
- 34 Regulations and orders
- 35 Commencement
  - SCHEDULE 4 Provisions applying to existing enduring powers of attorney

Part 1 — ENDURING POWERS OF ATTORNEY

- 1 Enduring power of attorney to survive mental incapacity of donor
- 2 Characteristics of an enduring power of attorney
- 3 Scope of authority etc. of attorney under enduring power

Part 2 — ACTION ON ACTUAL OR IMPENDING INCAPACITY OF DONOR

- 4 Duties of attorney in event of actual or impending incapacity of donor
  - Part 3 NOTIFICATION PRIOR TO REGISTRATION
- 5 Duty to give notice to relatives
- 6 (1) Subject to sub-paragraphs (2) to (4), persons of the...
- 7 (1) An attorney is not required to give notice under...
- 8 Duty to give notice to donor
- 9 Contents of notices
- 10 A notice to the donor under this Part of this...
- 11 Duty to give notice to other attorneys
- 12 Supplementary

Part 4 — REGISTRATION

- 13 Registration of instrument creating power
- 14 Register of enduring powers

Part 5 — LEGAL POSITION AFTER REGISTRATION

- 15 Effect and proof of registration
- 16 Functions of court with regard to registered power

- 17 Cancellation of registration by Public Guardian
  - Part 6 PROTECTION OF ATTORNEY AND THIRD PARTIES
- 18 Protection of attorney and third persons where power is invalid or revoked
- 19 Further protection of attorney and third persons

Part 7 — JOINT AND JOINT AND SEVERAL ATTORNEYS

- 20 Application to joint and joint and several attorneys
- 21 Joint attorneys
- 22 Joint and several attorneys

Part 8 — INTERPRETATION

23 (1) In this Schedule—"enduring power" is to be construed...

# SCHEDULE 5 — Transitional provisions and savings

Part 1 — Repeal of Part 7 of the Mental Health Act 1983

- 1 Existing receivers
- 2 Orders, appointments etc.
- 3 Pending proceedings
- 4 Appeals
- 5 Fees
- 6 Court records
- 7 Existing charges
- 8 Preservation of interests on disposal of property
- 9 Accounts
- 10 Interpretation

Part 2 — REPEAL OF THE ENDURING POWERS OF ATTORNEY ACT 1985

- 11 Orders, determinations, etc.
- 12 Pending proceedings
- 13 Appeals
- 14 Exercise of powers of donor as trustee
- 15 Interpretation

#### SCHEDULE 6 — Minor and consequential amendments

- 1 Fines and Recoveries Act 1833 (c. 74)
- 2 Improvement of Land Act 1864 (c. 114)
- 3 Trustee Act 1925 (c. 19)
- 4 Law of Property Act 1925 (c. 20)
- 5 Administration of Estates Act 1925 (c. 23)
- 6 National Assistance Act 1948 (c. 29)
- 7 U.S.A. Veterans' Pensions (Administration) Act 1949 (c. 45)
- 8 Intestates' Estates Act 1952 (c. 64)
- 9 Variation of Trusts Act 1958 (c. 53)
- 10 Administration of Justice Act 1960 (c. 65)
- 11 Industrial and Provident Societies Act 1965 (c. 12)
- 12 Compulsory Purchase Act 1965 (c. 56)
- 13 Leasehold Reform Act 1967 (c. 88)
- 14 Medicines Act 1968 (c. 67)
- 15 Family Law Reform Act 1969 (c. 46)
- 16 Local Authority Social Services Act 1970 (c. 42)
- 17 Courts Act 1971 (c. 23)
- 18 Local Government Act 1972 (c. 70)
- 19 Matrimonial Causes Act 1973 (c. 18)
- 20 Juries Act 1974 (c. 23)
- 21 Consumer Credit Act 1974 (c. 39)

- 22 Solicitors Act 1974 (c. 47)
- 23 Local Government (Miscellaneous Provisions) Act 1976 (c. 57)
- 24 Sale of Goods Act 1979 (c. 54)
- 25 Limitation Act 1980 (c. 58)
- 26 Public Passenger Vehicles Act 1981 (c. 14)
- 27 Judicial Pensions Act 1981 (c. 20)
- 28 Supreme Court Act 1981 (c. 54)
- 29 Mental Health Act 1983 (c. 20)
- 30 Administration of Justice Act 1985 (c. 61)
- 31 Insolvency Act 1986 (c. 45)
- 32 Building Societies Act 1986 (c. 53)
- 33 Public Trustee and Administration of Funds Act 1986 (c. 57)
- 34 Patronage (Benefices) Measure 1986 (No.3)
- 35 Courts and Legal Services Act 1990 (c. 41)
- 36 Child Support Act 1991 (c. 48)
- 37 Social Security Administration Act 1992 (c. 5)
- 38 Judicial Pensions and Retirement Act 1993 (c. 8)
- 39 Leasehold Reform, Housing and Urban Development Act 1993 (c. 28)
- 40 Goods Vehicles (Licensing of Operators) Act 1995 (c. 23)
- 41 Disability Discrimination Act 1995 (c. 50)
- 42 Trusts of Land and Appointment of Trustees Act 1996 (c. 47)
- 43 Human Rights Act 1998 (c. 42)
- 44 Access to Justice Act 1999 (c. 22)
- 45 Adoption and Children Act 2002 (c. 38)
- 46 Licensing Act 2003 (c. 17)
- 47 Courts Act 2003 (c. 39)

SCHEDULE 7 — Repeals