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*Changes to legislation: There are currently no known outstanding effects for the Mental Capacity Act 2005, SCHEDULE 5. (See end of Document for details)*

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## SCHEDULES

### 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.

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*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
    - (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.

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#### *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.

#### *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.

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## 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.
- (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.

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*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).
- (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.

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