

# MENTAL CAPACITY ACT 2005

---

## EXPLANATORY NOTES

### SCHEDULES

#### *Schedule 3: International protection of adults*

##### **Part 4: Recognition and enforcement**

179. *Part 4* of the Schedule provides for the recognition and enforcement of protective measures taken in other countries. It provides that a protective measure is to be recognised in England and Wales if it was taken on the ground that the adult is habitually resident in the other country. It also provides that a protective measure taken in another Convention country is to be recognised provided that it was taken on a ground provided for in the Convention (the same grounds on which the Court of Protection will exercise jurisdiction under Part 2) (*paragraph 19(1)* and *(2)*).
180. However the court may refuse to recognise a protective measure where it thinks that the case in which the measure was taken was not urgent, the adult was not given an opportunity to be heard, and that omission amounted to a breach of natural justice. The court may also refuse to recognise a protective measure if recognition of the measure would be manifestly contrary to public policy, the measure would be inconsistent with a mandatory provision of the law of England and Wales, or the measure is inconsistent with one subsequently taken or recognised in relation to the adult (*paragraph 19(3)* and *(4)*).
181. *Paragraph 20* provides for any interested person to apply to the court for a declaration as to whether a protective measure taken under the law of a country other than England and Wales is to be recognised in England and Wales.
182. *Paragraph 22* provides for an interested person to apply to the court for a declaration as to whether a protective measure taken under the law of, and enforceable in, a country other than England and Wales is enforceable, or to be registered, in England and Wales in accordance with Court of Protection Rules.