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SCHEDULES

VALID FROM 01/04/2008

[^{F1}SCHEDULE A1

HOSPITAL AND CARE HOME RESIDENTS: DEPRIVATION OF LIBERTY

Textual Amendments

- F1** Sch. A1 inserted (1.4.2008 for certain purposes and otherwise 1.4.2009) by [Mental Health Act 2007](#) (c. 12), ss. 50, 56, [Sch. 7](#); [S.I. 2008/745](#), [art. 4\(a\)](#); [S.I. 2009/139](#), [art. 2\(c\)](#) (with [art. 3](#), [Sch. paras. 3, 4](#))

SCHEDULE 1

Section 9

LASTING POWERS OF ATTORNEY: FORMALITIES

PART 1

MAKING INSTRUMENTS

General requirements as to making instruments

- 1 (1) An instrument is not made in accordance with this Schedule unless—
- (a) it is in the prescribed form,
 - (b) it complies with paragraph 2, and
 - (c) any prescribed requirements in connection with its execution are satisfied.
- (2) Regulations may make different provision according to whether—
- (a) the instrument relates to personal welfare or to property and affairs (or to both);
 - (b) only one or more than one donee is to be appointed (and if more than one, whether jointly or jointly and severally).
- (3) In this Schedule—
- (a) “prescribed” means prescribed by regulations, and
 - (b) “regulations” means regulations made for the purposes of this Schedule by the Lord Chancellor.

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Requirements as to content of instruments

- 2 (1) The instrument must include—
- (a) the prescribed information about the purpose of the instrument and the effect of a lasting power of attorney,
 - (b) a statement by the donor to the effect that he—
 - (i) has read the prescribed information or a prescribed part of it (or has had it read to him), and
 - (ii) intends the authority conferred under the instrument to include authority to make decisions on his behalf in circumstances where he no longer has capacity,
 - (c) a statement by the donor—
 - (i) naming a person or persons whom the donor wishes to be notified of any application for the registration of the instrument, or
 - (ii) stating that there are no persons whom he wishes to be notified of any such application,
 - (d) a statement by the donee (or, if more than one, each of them) to the effect that he—
 - (i) has read the prescribed information or a prescribed part of it (or has had it read to him), and
 - (ii) understands the duties imposed on a donee of a lasting power of attorney under sections 1 (the principles) and 4 (best interests), and
 - (e) a certificate by a person of a prescribed description that, in his opinion, at the time when the donor executes the instrument—
 - (i) the donor understands the purpose of the instrument and the scope of the authority conferred under it,
 - (ii) no fraud or undue pressure is being used to induce the donor to create a lasting power of attorney, and
 - (iii) there is nothing else which would prevent a lasting power of attorney from being created by the instrument.
- (2) Regulations may—
- (a) prescribe a maximum number of named persons;
 - (b) provide that, where the instrument includes a statement under sub-paragraph (1)(c)(ii), two persons of a prescribed description must each give a certificate under sub-paragraph (1)(e).
- (3) The persons who may be named persons do not include a person who is appointed as donee under the instrument.
- (4) In this Schedule, “named person” means a person named under sub-paragraph (1)(c).
- (5) A certificate under sub-paragraph (1)(e)—
- (a) must be made in the prescribed form, and
 - (b) must include any prescribed information.
- (6) The certificate may not be given by a person appointed as donee under the instrument.

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Failure to comply with prescribed form

- 3
- (1) If an instrument differs in an immaterial respect in form or mode of expression from the prescribed form, it is to be treated by the Public Guardian as sufficient in point of form and expression.
 - (2) The court may declare that an instrument which is not in the prescribed form is to be treated as if it were, if it is satisfied that the persons executing the instrument intended it to create a lasting power of attorney.

PART 2

REGISTRATION

Applications and procedure for registration

- 4
- (1) An application to the Public Guardian for the registration of an instrument intended to create a lasting power of attorney—
 - (a) must be made in the prescribed form, and
 - (b) must include any prescribed information.
 - (2) The application may be made—
 - (a) by the donor,
 - (b) by the donee or donees, or
 - (c) if the instrument appoints two or more donees to act jointly and severally in respect of any matter, by any of the donees.
 - (3) The application must be accompanied by—
 - (a) the instrument, and
 - (b) any fee provided for under section 58(4)(b).
 - (4) A person who, in an application for registration, makes a statement which he knows to be false in a material particular is guilty of an offence and is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine or both.
- 5
- Subject to paragraphs 11 to 14, the Public Guardian must register the instrument as a lasting power of attorney at the end of the prescribed period.

Notification requirements

- 6
- (1) A donor about to make an application under paragraph 4(2)(a) must notify any named persons that he is about to do so.
 - (2) The donee (or donees) about to make an application under paragraph 4(2)(b) or (c) must notify any named persons that he is (or they are) about to do so.
- 7
- As soon as is practicable after receiving an application by the donor under paragraph 4(2)(a), the Public Guardian must notify the donee (or donees) that the application has been received.

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- 8 (1) As soon as is practicable after receiving an application by a donee (or donees) under paragraph 4(2)(b), the Public Guardian must notify the donor that the application has been received.
- (2) As soon as is practicable after receiving an application by a donee under paragraph 4(2)(c), the Public Guardian must notify—
- (a) the donor, and
 - (b) the donee or donees who did not join in making the application,
- that the application has been received.
- 9 (1) A notice under paragraph 6 must be made in the prescribed form.
- (2) A notice under paragraph 6, 7 or 8 must include such information, if any, as may be prescribed.

Power to dispense with notification requirements

- 10 The court may—
- (a) on the application of the donor, dispense with the requirement to notify under paragraph 6(1), or
 - (b) on the application of the donee or donees concerned, dispense with the requirement to notify under paragraph 6(2),
- if satisfied that no useful purpose would be served by giving the notice.

Instrument not made properly or containing ineffective provision

- 11 (1) If it appears to the Public Guardian that an instrument accompanying an application under paragraph 4 is not made in accordance with this Schedule, he must not register the instrument unless the court directs him to do so.
- (2) Sub-paragraph (3) applies if it appears to the Public Guardian that the instrument contains a provision which—
- (a) would be ineffective as part of a lasting power of attorney, or
 - (b) would prevent the instrument from operating as a valid lasting power of attorney.
- (3) The Public Guardian—
- (a) must apply to the court for it to determine the matter under section 23(1), and
 - (b) pending the determination by the court, must not register the instrument.
- (4) Sub-paragraph (5) applies if the court determines under section 23(1) (whether or not on an application by the Public Guardian) that the instrument contains a provision which—
- (a) would be ineffective as part of a lasting power of attorney, or
 - (b) would prevent the instrument from operating as a valid lasting power of attorney.
- (5) The court must—
- (a) notify the Public Guardian that it has severed the provision, or
 - (b) direct him not to register the instrument.
- (6) Where the court notifies the Public Guardian that it has severed a provision, he must register the instrument with a note to that effect attached to it.

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Deputy already appointed

- 12 (1) Sub-paragraph (2) applies if it appears to the Public Guardian that—
- (a) there is a deputy appointed by the court for the donor, and
 - (b) the powers conferred on the deputy would, if the instrument were registered, to any extent conflict with the powers conferred on the attorney.
- (2) The Public Guardian must not register the instrument unless the court directs him to do so.

Objection by donee or named person

- 13 (1) Sub-paragraph (2) applies if a donee or a named person—
- (a) receives a notice under paragraph 6, 7 or 8 of an application for the registration of an instrument, and
 - (b) before the end of the prescribed period, gives notice to the Public Guardian of an objection to the registration on the ground that an event mentioned in section 13(3) or (6)(a) to (d) has occurred which has revoked the instrument.
- (2) If the Public Guardian is satisfied that the ground for making the objection is established, he must not register the instrument unless the court, on the application of the person applying for the registration—
- (a) is satisfied that the ground is not established, and
 - (b) directs the Public Guardian to register the instrument.
- (3) Sub-paragraph (4) applies if a donee or a named person—
- (a) receives a notice under paragraph 6, 7 or 8 of an application for the registration of an instrument, and
 - (b) before the end of the prescribed period—
 - (i) makes an application to the court objecting to the registration on a prescribed ground, and
 - (ii) notifies the Public Guardian of the application.
- (4) The Public Guardian must not register the instrument unless the court directs him to do so.

Objection by donor

- 14 (1) This paragraph applies if the donor—
- (a) receives a notice under paragraph 8 of an application for the registration of an instrument, and
 - (b) before the end of the prescribed period, gives notice to the Public Guardian of an objection to the registration.
- (2) The Public Guardian must not register the instrument unless the court, on the application of the donee or, if more than one, any of them—
- (a) is satisfied that the donor lacks capacity to object to the registration, and
 - (b) directs the Public Guardian to register the instrument.

Notification of registration

- 15 Where an instrument is registered under this Schedule, the Public Guardian must give notice of the fact in the prescribed form to—

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- (a) the donor, and
- (b) the donee or, if more than one, each of them.

Evidence of registration

- 16 (1) A document purporting to be an office copy of an instrument registered under this Schedule is, in any part of the United Kingdom, evidence of—
- (a) the contents of the instrument, and
 - (b) the fact that it has been registered.
- (2) Sub-paragraph (1) is without prejudice to—
- (a) section 3 of the Powers of Attorney Act 1971 (c. 27) (proof by certified copy), and
 - (b) any other method of proof authorised by law.

PART 3

CANCELLATION OF REGISTRATION AND NOTIFICATION OF SEVERANCE

- 17 (1) The Public Guardian must cancel the registration of an instrument as a lasting power of attorney on being satisfied that the power has been revoked—
- (a) as a result of the donor's bankruptcy, or
 - (b) on the occurrence of an event mentioned in section 13(6)(a) to (d).
- (2) If the Public Guardian cancels the registration of an instrument he must notify—
- (a) the donor, and
 - (b) the donee or, if more than one, each of them.
- 18 The court must direct the Public Guardian to cancel the registration of an instrument as a lasting power of attorney if it—
- (a) determines under section 22(2)(a) that a requirement for creating the power was not met,
 - (b) determines under section 22(2)(b) that the power has been revoked or has otherwise come to an end, or
 - (c) revokes the power under section 22(4)(b) (fraud etc.).
- 19 (1) Sub-paragraph (2) applies if the court determines under section 23(1) that a lasting power of attorney contains a provision which—
- (a) is ineffective as part of a lasting power of attorney, or
 - (b) prevents the instrument from operating as a valid lasting power of attorney.
- (2) The court must—
- (a) notify the Public Guardian that it has severed the provision, or
 - (b) direct him to cancel the registration of the instrument as a lasting power of attorney.
- 20 On the cancellation of the registration of an instrument, the instrument and any office copies of it must be delivered up to the Public Guardian to be cancelled.

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PART 4

RECORDS OF ALTERATIONS IN REGISTERED POWERS

Partial revocation or suspension of power as a result of bankruptcy

- 21 If in the case of a registered instrument it appears to the Public Guardian that under section 13 a lasting power of attorney is revoked, or suspended, in relation to the donor's property and affairs (but not in relation to other matters), the Public Guardian must attach to the instrument a note to that effect.

Termination of appointment of donee which does not revoke power

- 22 If in the case of a registered instrument it appears to the Public Guardian that an event has occurred—
- (a) which has terminated the appointment of the donee, but
 - (b) which has not revoked the instrument,
- the Public Guardian must attach to the instrument a note to that effect.

Replacement of donee

- 23 If in the case of a registered instrument it appears to the Public Guardian that the donee has been replaced under the terms of the instrument the Public Guardian must attach to the instrument a note to that effect.

Severance of ineffective provisions

- 24 If in the case of a registered instrument the court notifies the Public Guardian under paragraph 19(2)(a) that it has severed a provision of the instrument, the Public Guardian must attach to it a note to that effect.

Notification of alterations

- 25 If the Public Guardian attaches a note to an instrument under paragraph 21, 22, 23 or 24 he must give notice of the note to the donee or donees of the power (or, as the case may be, to the other donee or donees of the power).

VALID FROM 01/04/2009

[F2]SCHEDULE 1A

PERSONS INELIGIBLE TO BE DEPRIVED OF LIBERTY BY THIS ACT

Textual Amendments

- F2** Sch. 1A inserted (1.4.2009) by Mental Health Act 2007 (c. 12), ss. 50, 56, Sch. 8 (with s. 50(8)-(13)); S.I. 2009/139, art. 2(d) (with art. 3)

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SCHEDULE 2

Section 18(4)

PROPERTY AND AFFAIRS: SUPPLEMENTARY PROVISIONS

Wills: general

- 1 Paragraphs 2 to 4 apply in relation to the execution of a will, by virtue of section 18, on behalf of P.

Provision that may be made in will

- 2 The will may make any provision (whether by disposing of property or exercising a power or otherwise) which could be made by a will executed by P if he had capacity to make it.

Wills: requirements relating to execution

- 3 (1) Sub-paragraph (2) applies if under section 16 the court makes an order or gives directions requiring or authorising a person (“the authorised person”) to execute a will on behalf of P.
- (2) Any will executed in pursuance of the order or direction—
- (a) must state that it is signed by P acting by the authorised person,
 - (b) must be signed by the authorised person with the name of P and his own name, in the presence of two or more witnesses present at the same time,
 - (c) must be attested and subscribed by those witnesses in the presence of the authorised person, and
 - (d) must be sealed with the official seal of the court.

Wills: effect of execution

- 4 (1) This paragraph applies where a will is executed in accordance with paragraph 3.
- (2) The Wills Act 1837 (c. 26) has effect in relation to the will as if it were signed by P by his own hand, except that—
- (a) section 9 of the 1837 Act (requirements as to signing and attestation) does not apply, and
 - (b) in the subsequent provisions of the 1837 Act any reference to execution in the manner required by the previous provisions is to be read as a reference to execution in accordance with paragraph 3.
- (3) The will has the same effect for all purposes as if—
- (a) P had had the capacity to make a valid will, and
 - (b) the will had been executed by him in the manner required by the 1837 Act.
- (4) But sub-paragraph (3) does not have effect in relation to the will—
- (a) in so far as it disposes of immovable property outside England and Wales, or
 - (b) in so far as it relates to any other property or matter if, when the will is executed—
 - (i) P is domiciled outside England and Wales, and
 - (ii) the condition in sub-paragraph (5) is met.

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- (5) The condition is that, under the law of P's domicile, any question of his testamentary capacity would fall to be determined in accordance with the law of a place outside England and Wales.

Vesting orders ancillary to settlement etc.

- 5 (1) If provision is made by virtue of section 18 for—
- (a) the settlement of any property of P, or
 - (b) the exercise of a power vested in him of appointing trustees or retiring from a trust,
- the court may also make as respects the property settled or the trust property such consequential vesting or other orders as the case may require.
- (2) The power under sub-paragraph (1) includes, in the case of the exercise of such a power, any order which could have been made in such a case under Part 4 of the Trustee Act 1925 (c. 19).

Variation of settlements

- 6 (1) If a settlement has been made by virtue of section 18, the court may by order vary or revoke the settlement if—
- (a) the settlement makes provision for its variation or revocation,
 - (b) the court is satisfied that a material fact was not disclosed when the settlement was made, or
 - (c) the court is satisfied that there has been a substantial change of circumstances.
- (2) Any such order may give such consequential directions as the court thinks fit.

Vesting of stock in curator appointed outside England and Wales

- 7 (1) Sub-paragraph (2) applies if the court is satisfied—
- (a) that under the law prevailing in a place outside England and Wales a person (“M”) has been appointed to exercise powers in respect of the property or affairs of P on the ground (however formulated) that P lacks capacity to make decisions with respect to the management and administration of his property and affairs, and
 - (b) that, having regard to the nature of the appointment and to the circumstances of the case, it is expedient that the court should exercise its powers under this paragraph.
- (2) The court may direct—
- (a) any stocks standing in the name of P, or
 - (b) the right to receive dividends from the stocks,
- to be transferred into M's name or otherwise dealt with as required by M, and may give such directions as the court thinks fit for dealing with accrued dividends from the stocks.
- (3) “Stocks” includes—
- (a) shares, and

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- (b) any funds, annuity or security transferable in the books kept by any body corporate or unincorporated company or society or by an instrument of transfer either alone or accompanied by other formalities, and “dividends” is to be construed accordingly.

Preservation of interests in property disposed of on behalf of person lacking capacity

- 8 (1) Sub-paragraphs (2) and (3) apply if—
- (a) P's property has been disposed of by virtue of section 18,
 - (b) under P's will or intestacy, or by a gift perfected or nomination taking effect on his death, any other person would have taken an interest in the property but for the disposal, and
 - (c) on P's death, any property belonging to P's estate represents the property disposed of.
- (2) The person takes the same interest, if and so far as circumstances allow, in the property representing the property disposed of.
- (3) If the property disposed of was real property, any property representing it is to be treated, so long as it remains part of P's estate, as if it were real property.
- (4) The court may direct that, on a disposal of P's property—
- (a) which is made by virtue of section 18, and
 - (b) which would apart from this paragraph result in the conversion of personal property into real property,
- property representing the property disposed of is to be treated, so long as it remains P's property or forms part of P's estate, as if it were personal property.
- (5) References in sub-paragraphs (1) to (4) to the disposal of property are to—
- (a) the sale, exchange, charging of or other dealing (otherwise than by will) with property other than money;
 - (b) the removal of property from one place to another;
 - (c) the application of money in acquiring property;
 - (d) the transfer of money from one account to another;
- and references to property representing property disposed of are to be construed accordingly and as including the result of successive disposals.
- (6) The court may give such directions as appear to it necessary or expedient for the purpose of facilitating the operation of sub-paragraphs (1) to (3), including the carrying of money to a separate account and the transfer of property other than money.
- 9 (1) Sub-paragraph (2) applies if the court has ordered or directed the expenditure of money—
- (a) for carrying out permanent improvements on any of P's property, or
 - (b) otherwise for the permanent benefit of any of P's property.
- (2) The court may order that—
- (a) the whole of the money expended or to be expended, or
 - (b) any part of it,
- is to be a charge on the property either without interest or with interest at a specified rate.

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- (3) An order under sub-paragraph (2) may provide for excluding or restricting the operation of paragraph 8(1) to (3).
- (4) A charge under sub-paragraph (2) may be made in favour of such person as may be just and, in particular, where the money charged is paid out of P's general estate, may be made in favour of a person as trustee for P.
- (5) No charge under sub-paragraph (2) may confer any right of sale or foreclosure during P's lifetime.

Powers as patron of benefice

- 10 (1) Any functions which P has as patron of a benefice may be discharged only by a person (“R”) appointed by the court.
- (2) R must be an individual capable of appointment under section 8(1)(b) of the 1986 Measure (which provides for an individual able to make a declaration of communicant status, a clerk in Holy Orders, etc. to be appointed to discharge a registered patron's functions).
- (3) The 1986 Measure applies to R as it applies to an individual appointed by the registered patron of the benefice under section 8(1)(b) or (3) of that Measure to discharge his functions as patron.
- (4) “The 1986 Measure” means the Patronage (Benefices) Measure 1986 (No. 3).

SCHEDULE 3

Section 63

INTERNATIONAL PROTECTION OF ADULTS

PART 1

PRELIMINARY

Introduction

- 1 This Part applies for the purposes of this Schedule.

The Convention

- 2 (1) “Convention” means the Convention referred to in section 63.
- (2) “Convention country” means a country in which the Convention is in force.
- (3) A reference to an Article or Chapter is to an Article or Chapter of the Convention.
- (4) An expression which appears in this Schedule and in the Convention is to be construed in accordance with the Convention.

Countries, territories and nationals

- 3 (1) “Country” includes a territory which has its own system of law.

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- (2) Where a country has more than one territory with its own system of law, a reference to the country, in relation to one of its nationals, is to the territory with which the national has the closer, or the closest, connection.

Adults with incapacity

- 4 “Adult” means a person who—
- (a) as a result of an impairment or insufficiency of his personal faculties, cannot protect his interests, and
 - (b) has reached 16.

Protective measures

- 5 (1) “Protective measure” means a measure directed to the protection of the person or property of an adult; and it may deal in particular with any of the following—
- (a) the determination of incapacity and the institution of a protective regime,
 - (b) placing the adult under the protection of an appropriate authority,
 - (c) guardianship, curatorship or any corresponding system,
 - (d) the designation and functions of a person having charge of the adult's person or property, or representing or otherwise helping him,
 - (e) placing the adult in a place where protection can be provided,
 - (f) administering, conserving or disposing of the adult's property,
 - (g) authorising a specific intervention for the protection of the person or property of the adult.
- (2) Where a measure of like effect to a protective measure has been taken in relation to a person before he reaches 16, this Schedule applies to the measure in so far as it has effect in relation to him once he has reached 16.

Central Authority

- 6 (1) Any function under the Convention of a Central Authority is exercisable in England and Wales by the Lord Chancellor.
- (2) A communication may be sent to the Central Authority in relation to England and Wales by sending it to the Lord Chancellor.

PART 2

JURISDICTION OF COMPETENT AUTHORITY

Scope of jurisdiction

- 7 (1) The court may exercise its functions under this Act (in so far as it cannot otherwise do so) in relation to—
- (a) an adult habitually resident in England and Wales,
 - (b) an adult's property in England and Wales,

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- (c) an adult present in England and Wales or who has property there, if the matter is urgent, or
 - (d) 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.
- (2) An adult present in England and Wales is to be treated for the purposes of this paragraph as habitually resident there if—
 - (a) his habitual residence cannot be ascertained,
 - (b) he is a refugee, or
 - (c) he has been displaced as a result of disturbance in the country of his habitual residence.
- 8 (1) The court may also exercise its functions under this Act (in so far as it cannot otherwise do so) in relation to an adult if sub-paragraph (2) or (3) applies in relation to him.
- (2) This sub-paragraph applies in relation to an adult if—
 - (a) he is a British citizen,
 - (b) he has a closer connection with England and Wales than with Scotland or Northern Ireland, and
 - (c) Article 7 has, in relation to the matter concerned, been complied with.
- (3) This sub-paragraph applies in relation to an adult if the Lord Chancellor, having consulted such persons as he considers appropriate, agrees to a request under Article 8 in relation to the adult.

Exercise of jurisdiction

- 9 (1) This paragraph applies where jurisdiction is exercisable under this Schedule in connection with a matter which involves a Convention country other than England and Wales.
- (2) Any Article on which the jurisdiction is based applies in relation to the matter in so far as it involves the other country (and the court must, accordingly, comply with any duty conferred on it as a result).
- (3) Article 12 also applies, so far as its provisions allow, in relation to the matter in so far as it involves the other country.
- 10 A reference in this Schedule to the exercise of jurisdiction under this Schedule is to the exercise of functions under this Act as a result of this Part of this Schedule.

PART 3

APPLICABLE LAW

Applicable law

- 11 In exercising jurisdiction under this Schedule, the court may, if it thinks that the matter has a substantial connection with a country other than England and Wales, apply the law of that other country.

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- 12 Where a protective measure is taken in one country but implemented in another, the conditions of implementation are governed by the law of the other country.

Lasting powers of attorney, etc.

- 13 (1) If the donor of a lasting power is habitually resident in England and Wales at the time of granting the power, the law applicable to the existence, extent, modification or extinction of the power is—
- (a) the law of England and Wales, or
- (b) if he specifies in writing the law of a connected country for the purpose, that law.
- (2) If he is habitually resident in another country at that time, but England and Wales is a connected country, the law applicable in that respect is—
- (a) the law of the other country, or
- (b) if he specifies in writing the law of England and Wales for the purpose, that law.
- (3) A country is connected, in relation to the donor, if it is a country—
- (a) of which he is a national,
- (b) in which he was habitually resident, or
- (c) in which he has property.
- (4) Where this paragraph applies as a result of sub-paragraph (3)(c), it applies only in relation to the property which the donor has in the connected country.
- (5) The law applicable to the manner of the exercise of a lasting power is the law of the country where it is exercised.
- (6) In this Part of this Schedule, “lasting power” means—
- (a) a lasting power of attorney (see section 9),
- (b) an enduring power of attorney within the meaning of Schedule 4, or
- (c) any other power of like effect.
- 14 (1) Where a lasting power is not exercised in a manner sufficient to guarantee the protection of the person or property of the donor, the court, in exercising jurisdiction under this Schedule, may disapply or modify the power.
- (2) Where, in accordance with this Part of this Schedule, the law applicable to the power is, in one or more respects, that of a country other than England and Wales, the court must, so far as possible, have regard to the law of the other country in that respect (or those respects).
- 15 Regulations may provide for Schedule 1 (lasting powers of attorney: formalities) to apply with modifications in relation to a lasting power which comes within paragraph 13(6)(c) above.

Protection of third parties

- 16 (1) This paragraph applies where a person (a “representative”) in purported exercise of an authority to act on behalf of an adult enters into a transaction with a third party.
- (2) The validity of the transaction may not be questioned in proceedings, nor may the third party be held liable, merely because—

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- (a) where the representative and third party are in England and Wales when entering into the transaction, sub-paragraph (3) applies;
 - (b) where they are in another country at that time, sub-paragraph (4) applies.
- (3) This sub-paragraph applies if—
- (a) the law applicable to the authority in one or more respects is, as a result of this Schedule, the law of a country other than England and Wales, and
 - (b) the representative is not entitled to exercise the authority in that respect (or those respects) under the law of that other country.
- (4) This sub-paragraph applies if—
- (a) the law applicable to the authority in one or more respects is, as a result of this Part of this Schedule, the law of England and Wales, and
 - (b) the representative is not entitled to exercise the authority in that respect (or those respects) under that law.
- (5) This paragraph does not apply if the third party knew or ought to have known that the applicable law was—
- (a) in a case within sub-paragraph (3), the law of the other country;
 - (b) in a case within sub-paragraph (4), the law of England and Wales.

Mandatory rules

- 17 Where the court is entitled to exercise jurisdiction under this Schedule, the mandatory provisions of the law of England and Wales apply, regardless of any system of law which would otherwise apply in relation to the matter.

Public policy

- 18 Nothing in this Part of this Schedule requires or enables the application in England and Wales of a provision of the law of another country if its application would be manifestly contrary to public policy.

PART 4

RECOGNITION AND ENFORCEMENT

Recognition

- 19 (1) A protective measure taken in relation to an adult under the law of a country other than England and Wales 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.
- (2) A protective measure taken in relation to an adult under the law of a Convention country other than England and Wales is to be recognised in England and Wales if it was taken on a ground mentioned in Chapter 2 (jurisdiction).
- (3) But the court may disapply this paragraph in relation to a measure if it thinks that—
- (a) the case in which the measure was taken was not urgent,
 - (b) the adult was not given an opportunity to be heard, and
 - (c) that omission amounted to a breach of natural justice.

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- (4) It may also disapply this paragraph in relation to a measure if it thinks that—
- (a) recognition of the measure would be manifestly contrary to public policy,
 - (b) the measure would be inconsistent with a mandatory provision of the law of England and Wales, or
 - (c) the measure is inconsistent with one subsequently taken, or recognised, in England and Wales in relation to the adult.
- (5) And the court may disapply this paragraph in relation to a measure taken under the law of a Convention country in a matter to which Article 33 applies, if the court thinks that that Article has not been complied with in connection with that matter.
- 20 (1) An interested person may 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.
- (2) No permission is required for an application to the court under this paragraph.
- 21 For the purposes of paragraphs 19 and 20, any finding of fact relied on when the measure was taken is conclusive.

Enforcement

- 22 (1) An interested person may 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.
- (2) The court must make the declaration if—
- (a) the measure comes within sub-paragraph (1) or (2) of paragraph 19, and
 - (b) the paragraph is not disapplied in relation to it as a result of sub-paragraph (3), (4) or (5).
- (3) A measure to which a declaration under this paragraph relates is enforceable in England and Wales as if it were a measure of like effect taken by the court.

Measures taken in relation to those aged under 16

- 23 (1) This paragraph applies where—
- (a) provision giving effect to, or otherwise deriving from, the Convention in a country other than England and Wales applies in relation to a person who has not reached 16, and
 - (b) a measure is taken in relation to that person in reliance on that provision.
- (2) This Part of this Schedule applies in relation to that measure as it applies in relation to a protective measure taken in relation to an adult under the law of a Convention country other than England and Wales.

Supplementary

- 24 The court may not review the merits of a measure taken outside England and Wales except to establish whether the measure complies with this Schedule in so far as it is, as a result of this Schedule, required to do so.

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- 25 Court of Protection Rules may make provision about an application under paragraph 20 or 22.

PART 5

CO-OPERATION

Proposal for cross-border placement

- 26 (1) This paragraph applies where a public authority proposes to place an adult in an establishment in a Convention country other than England and Wales.
- (2) The public authority must consult an appropriate authority in that other country about the proposed placement and, for that purpose, must send it—
- (a) a report on the adult, and
 - (b) a statement of its reasons for the proposed placement.
- (3) If the appropriate authority in the other country opposes the proposed placement within a reasonable time, the public authority may not proceed with it.
- 27 A proposal received by a public authority under Article 33 in relation to an adult is to proceed unless the authority opposes it within a reasonable time.

Adult in danger etc.

- 28 (1) This paragraph applies if a public authority is told that an adult—
- (a) who is in serious danger, and
 - (b) in relation to whom the public authority has taken, or is considering taking, protective measures,
- is, or has become resident, in a Convention country other than England and Wales.
- (2) The public authority must tell an appropriate authority in that other country about—
- (a) the danger, and
 - (b) the measures taken or under consideration.
- 29 A public authority may not request from, or send to, an appropriate authority in a Convention country information in accordance with Chapter 5 (co-operation) in relation to an adult if it thinks that doing so—
- (a) would be likely to endanger the adult or his property, or
 - (b) would amount to a serious threat to the liberty or life of a member of the adult's family.

PART 6

GENERAL

Certificates

- 30 A certificate given under Article 38 by an authority in a Convention country other than England and Wales is, unless the contrary is shown, proof of the matters contained in it.

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Powers to make further provision as to private international law

- 31 Her Majesty may by Order in Council confer on the Lord Chancellor, the court or another public authority functions for enabling the Convention to be given effect in England and Wales.
- 32 (1) Regulations may make provision—
- (a) giving further effect to the Convention, or
 - (b) otherwise about the private international law of England and Wales in relation to the protection of adults.
- (2) The regulations may—
- (a) confer functions on the court or another public authority;
 - (b) amend this Schedule;
 - (c) provide for this Schedule to apply with specified modifications;
 - (d) make provision about countries other than Convention countries.

Exceptions

- 33 Nothing in this Schedule applies, and no provision made under paragraph 32 is to apply, to any matter to which the Convention, as a result of Article 4, does not apply.

Regulations and orders

- 34 A reference in this Schedule to regulations or an order (other than an Order in Council) is to regulations or an order made for the purposes of this Schedule by the Lord Chancellor.

Commencement

- 35 The following provisions of this Schedule have effect only if the Convention is in force in accordance with Article 57—
- (a) paragraph 8,
 - (b) paragraph 9,
 - (c) paragraph 19(2) and (5),
 - (d) Part 5,
 - (e) paragraph 30.

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SCHEDULE 4

Section 66(3)

PROVISIONS APPLYING TO EXISTING ENDURING POWERS OF ATTORNEY

PART 1

ENDURING POWERS OF ATTORNEY

Enduring power of attorney to survive mental incapacity of donor

- 1 (1) Where an individual has created a power of attorney which is an enduring power within the meaning of this Schedule—
- (a) the power is not revoked by any subsequent mental incapacity of his,
 - (b) upon such incapacity supervening, the donee of the power may not do anything under the authority of the power except as provided by sub-paragraph (2) unless or until the instrument creating the power is registered under paragraph 13, and
 - (c) if and so long as paragraph (b) operates to suspend the donee's authority to act under the power, section 5 of the Powers of Attorney Act 1971 (c. 27) (protection of donee and third persons), so far as applicable, applies as if the power had been revoked by the donor's mental incapacity,
- and, accordingly, section 1 of this Act does not apply.
- (2) Despite sub-paragraph (1)(b), where the attorney has made an application for registration of the instrument then, until it is registered, the attorney may take action under the power—
- (a) to maintain the donor or prevent loss to his estate, or
 - (b) to maintain himself or other persons in so far as paragraph 3(2) permits him to do so.
- (3) Where the attorney purports to act as provided by sub-paragraph (2) then, in favour of a person who deals with him without knowledge that the attorney is acting otherwise than in accordance with sub-paragraph (2)(a) or (b), the transaction between them is as valid as if the attorney were acting in accordance with sub-paragraph (2)(a) or (b).

Characteristics of an enduring power of attorney

- 2 (1) Subject to sub-paragraphs (5) and (6) and paragraph 20, a power of attorney is an enduring power within the meaning of this Schedule if the instrument which creates the power—
- (a) is in the prescribed form,
 - (b) was executed in the prescribed manner by the donor and the attorney, and
 - (c) incorporated at the time of execution by the donor the prescribed explanatory information.
- (2) In this paragraph, “prescribed” means prescribed by such of the following regulations as applied when the instrument was executed—
- (a) the Enduring Powers of Attorney (Prescribed Form) Regulations 1986 (S.I. 1986/126),
 - (b) the Enduring Powers of Attorney (Prescribed Form) Regulations 1987 (S.I. 1987/1612),

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- (c) the Enduring Powers of Attorney (Prescribed Form) Regulations 1990 (S.I. 1990/1376),
 - (d) the Enduring Powers of Attorney (Welsh Language Prescribed Form) Regulations 2000 (S.I. 2000/289).
- (3) An instrument in the prescribed form purporting to have been executed in the prescribed manner is to be taken, in the absence of evidence to the contrary, to be a document which incorporated at the time of execution by the donor the prescribed explanatory information.
 - (4) If an instrument differs in an immaterial respect in form or mode of expression from the prescribed form it is to be treated as sufficient in point of form and expression.
 - (5) A power of attorney cannot be an enduring power unless, when he executes the instrument creating it, the attorney is—
 - (a) an individual who has reached 18 and is not bankrupt, or
 - (b) a trust corporation.
 - (6) A power of attorney which gives the attorney a right to appoint a substitute or successor cannot be an enduring power.
 - (7) An enduring power is revoked by the bankruptcy of the donor or attorney.
 - (8) But where the donor or attorney is bankrupt merely because an interim bankruptcy restrictions order has effect in respect of him, the power is suspended for so long as the order has effect.
 - (9) An enduring power is revoked if the court—
 - (a) exercises a power under sections 16 to 20 in relation to the donor, and
 - (b) directs that the enduring power is to be revoked.
 - (10) No disclaimer of an enduring power, whether by deed or otherwise, is valid unless and until the attorney gives notice of it to the donor or, where paragraph 4(6) or 15(1) applies, to the Public Guardian.

Scope of authority etc. of attorney under enduring power

- 3 (1) If the instrument which creates an enduring power of attorney is expressed to confer general authority on the attorney, the instrument operates to confer, subject to—
 - (a) the restriction imposed by sub-paragraph (3), and
 - (b) any conditions or restrictions contained in the instrument,
 authority to do on behalf of the donor anything which the donor could lawfully do by an attorney at the time when the donor executed the instrument.
- (2) Subject to any conditions or restrictions contained in the instrument, an attorney under an enduring power, whether general or limited, may (without obtaining any consent) act under the power so as to benefit himself or other persons than the donor to the following extent but no further—
 - (a) he may so act in relation to himself or in relation to any other person if the donor might be expected to provide for his or that person's needs respectively, and
 - (b) he may do whatever the donor might be expected to do to meet those needs.

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- (3) Without prejudice to sub-paragraph (2) but subject to any conditions or restrictions contained in the instrument, an attorney under an enduring power, whether general or limited, may (without obtaining any consent) dispose of the property of the donor by way of gift to the following extent but no further—
- (a) he may make gifts of a seasonal nature or at a time, or on an anniversary, of a birth, a marriage or the formation of a civil partnership, to persons (including himself) who are related to or connected with the donor, and
 - (b) he may make gifts to any charity to whom the donor made or might be expected to make gifts,
- provided that the value of each such gift is not unreasonable having regard to all the circumstances and in particular the size of the donor's estate.

PART 2

ACTION ON ACTUAL OR IMPENDING INCAPACITY OF DONOR

Duties of attorney in event of actual or impending incapacity of donor

- 4 (1) Sub-paragraphs (2) to (6) apply if the attorney under an enduring power has reason to believe that the donor is or is becoming mentally incapable.
- (2) The attorney must, as soon as practicable, make an application to the Public Guardian for the registration of the instrument creating the power.
- (3) Before making an application for registration the attorney must comply with the provisions as to notice set out in Part 3 of this Schedule.
- (4) An application for registration—
- (a) must be made in the prescribed form, and
 - (b) must contain such statements as may be prescribed.
- (5) The attorney—
- (a) may, before making an application for the registration of the instrument, refer to the court for its determination any question as to the validity of the power, and
 - (b) must comply with any direction given to him by the court on that determination.
- (6) No disclaimer of the power is valid unless and until the attorney gives notice of it to the Public Guardian; and the Public Guardian must notify the donor if he receives a notice under this sub-paragraph.
- (7) A person who, in an application for registration, makes a statement which he knows to be false in a material particular is guilty of an offence and is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine or both.
- (8) In this paragraph, “prescribed” means prescribed by regulations made for the purposes of this Schedule by the Lord Chancellor.

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PART 3

NOTIFICATION PRIOR TO REGISTRATION

Duty to give notice to relatives

- 5 Subject to paragraph 7, before making an application for registration the attorney must give notice of his intention to do so to all those persons (if any) who are entitled to receive notice by virtue of paragraph 6.
- 6 (1) Subject to sub-paragraphs (2) to (4), persons of the following classes (“relatives”) are entitled to receive notice under paragraph 5—
- (a) the donor's spouse or civil partner,
 - (b) the donor's children,
 - (c) the donor's parents,
 - (d) the donor's brothers and sisters, whether of the whole or half blood,
 - (e) the widow, widower or surviving civil partner of a child of the donor,
 - (f) the donor's grandchildren,
 - (g) the children of the donor's brothers and sisters of the whole blood,
 - (h) the children of the donor's brothers and sisters of the half blood,
 - (i) the donor's uncles and aunts of the whole blood,
 - (j) the children of the donor's uncles and aunts of the whole blood.
- (2) A person is not entitled to receive notice under paragraph 5 if—
- (a) his name or address is not known to the attorney and cannot be reasonably ascertained by him, or
 - (b) the attorney has reason to believe that he has not reached 18 or is mentally incapable.
- (3) Except where sub-paragraph (4) applies—
- (a) no more than 3 persons are entitled to receive notice under paragraph 5, and
 - (b) in determining the persons who are so entitled, persons falling within the class in sub-paragraph (1)(a) are to be preferred to persons falling within the class in sub-paragraph (1)(b), those falling within the class in sub-paragraph (1)(b) are to be preferred to those falling within the class in sub-paragraph (1)(c), and so on.
- (4) Despite the limit of 3 specified in sub-paragraph (3), where—
- (a) there is more than one person falling within any of classes (a) to (j) of sub-paragraph (1), and
 - (b) at least one of those persons would be entitled to receive notice under paragraph 5,
- then, subject to sub-paragraph (2), all the persons falling within that class are entitled to receive notice under paragraph 5.
- 7 (1) An attorney is not required to give notice under paragraph 5—
- (a) to himself, or
 - (b) to any other attorney under the power who is joining in making the application,
- even though he or, as the case may be, the other attorney is entitled to receive notice by virtue of paragraph 6.

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- (2) In the case of any person who is entitled to receive notice by virtue of paragraph 6, the attorney, before applying for registration, may make an application to the court to be dispensed from the requirement to give him notice; and the court must grant the application if it is satisfied—
- (a) that it would be undesirable or impracticable for the attorney to give him notice, or
 - (b) that no useful purpose is likely to be served by giving him notice.

Duty to give notice to donor

- 8 (1) Subject to sub-paragraph (2), before making an application for registration the attorney must give notice of his intention to do so to the donor.
- (2) Paragraph 7(2) applies in relation to the donor as it applies in relation to a person who is entitled to receive notice under paragraph 5.

Contents of notices

- 9 A notice to relatives under this Part of this Schedule must—
- (a) be in the prescribed form,
 - (b) state that the attorney proposes to make an application to the Public Guardian for the registration of the instrument creating the enduring power in question,
 - (c) inform the person to whom it is given of his right to object to the registration under paragraph 13(4), and
 - (d) specify, as the grounds on which an objection to registration may be made, the grounds set out in paragraph 13(9).
- 10 A notice to the donor under this Part of this Schedule—
- (a) must be in the prescribed form,
 - (b) must contain the statement mentioned in paragraph 9(b), and
 - (c) must inform the donor that, while the instrument remains registered, any revocation of the power by him will be ineffective unless and until the revocation is confirmed by the court.

Duty to give notice to other attorneys

- 11 (1) Subject to sub-paragraph (2), before making an application for registration an attorney under a joint and several power must give notice of his intention to do so to any other attorney under the power who is not joining in making the application; and paragraphs 7(2) and 9 apply in relation to attorneys entitled to receive notice by virtue of this paragraph as they apply in relation to persons entitled to receive notice by virtue of paragraph 6.
- (2) An attorney is not entitled to receive notice by virtue of this paragraph if—
- (a) his address is not known to the applying attorney and cannot reasonably be ascertained by him, or
 - (b) the applying attorney has reason to believe that he has not reached 18 or is mentally incapable.

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Supplementary

- 12 Despite section 7 of the Interpretation Act 1978 (c. 30) (construction of references to service by post), for the purposes of this Part of this Schedule a notice given by post is to be regarded as given on the date on which it was posted.

PART 4

REGISTRATION

Registration of instrument creating power

- 13 (1) If an application is made in accordance with paragraph 4(3) and (4) the Public Guardian must, subject to the provisions of this paragraph, register the instrument to which the application relates.
- (2) If it appears to the Public Guardian that—
- (a) there is a deputy appointed for the donor of the power created by the instrument, and
- (b) the powers conferred on the deputy would, if the instrument were registered, to any extent conflict with the powers conferred on the attorney,
- the Public Guardian must not register the instrument except in accordance with the court's directions.
- (3) The court may, on the application of the attorney, direct the Public Guardian to register an instrument even though notice has not been given as required by paragraph 4(3) and Part 3 of this Schedule to a person entitled to receive it, if the court is satisfied—
- (a) that it was undesirable or impracticable for the attorney to give notice to that person, or
- (b) that no useful purpose is likely to be served by giving him notice.
- (4) Sub-paragraph (5) applies if, before the end of the period of 5 weeks beginning with the date (or the latest date) on which the attorney gave notice under paragraph 5 of an application for registration, the Public Guardian receives a valid notice of objection to the registration from a person entitled to notice of the application.
- (5) The Public Guardian must not register the instrument except in accordance with the court's directions.
- (6) Sub-paragraph (7) applies if, in the case of an application for registration—
- (a) it appears from the application that there is no one to whom notice has been given under paragraph 5, or
- (b) the Public Guardian has reason to believe that appropriate inquiries might bring to light evidence on which he could be satisfied that one of the grounds of objection set out in sub-paragraph (9) was established.
- (7) The Public Guardian—
- (a) must not register the instrument, and
- (b) must undertake such inquiries as he thinks appropriate in all the circumstances.

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- (8) If, having complied with sub-paragraph (7)(b), the Public Guardian is satisfied that one of the grounds of objection set out in sub-paragraph (9) is established—
- (a) the attorney may apply to the court for directions, and
 - (b) the Public Guardian must not register the instrument except in accordance with the court's directions.
- (9) A notice of objection under this paragraph is valid if made on one or more of the following grounds—
- (a) that the power purported to have been created by the instrument was not valid as an enduring power of attorney,
 - (b) that the power created by the instrument no longer subsists,
 - (c) that the application is premature because the donor is not yet becoming mentally incapable,
 - (d) that fraud or undue pressure was used to induce the donor to create the power,
 - (e) that, having regard to all the circumstances and in particular the attorney's relationship to or connection with the donor, the attorney is unsuitable to be the donor's attorney.
- (10) If any of those grounds is established to the satisfaction of the court it must direct the Public Guardian not to register the instrument, but if not so satisfied it must direct its registration.
- (11) If the court directs the Public Guardian not to register an instrument because it is satisfied that the ground in sub-paragraph (9)(d) or (e) is established, it must by order revoke the power created by the instrument.
- (12) If the court directs the Public Guardian not to register an instrument because it is satisfied that any ground in sub-paragraph (9) except that in paragraph (c) is established, the instrument must be delivered up to be cancelled unless the court otherwise directs.

Register of enduring powers

- 14 The Public Guardian has the function of establishing and maintaining a register of enduring powers for the purposes of this Schedule.

PART 5

LEGAL POSITION AFTER REGISTRATION

Effect and proof of registration

- 15 (1) The effect of the registration of an instrument under paragraph 13 is that—
- (a) no revocation of the power by the donor is valid unless and until the court confirms the revocation under paragraph 16(3);
 - (b) no disclaimer of the power is valid unless and until the attorney gives notice of it to the Public Guardian;
 - (c) the donor may not extend or restrict the scope of the authority conferred by the instrument and no instruction or consent given by him after registration, in the case of a consent, confers any right and, in the case of an instruction,

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imposes or confers any obligation or right on or creates any liability of the attorney or other persons having notice of the instruction or consent.

- (2) Sub-paragraph (1) applies for so long as the instrument is registered under paragraph 13 whether or not the donor is for the time being mentally incapable.
- (3) A document purporting to be an office copy of an instrument registered under this Schedule is, in any part of the United Kingdom, evidence of—
 - (a) the contents of the instrument, and
 - (b) the fact that it has been so registered.
- (4) Sub-paragraph (3) is without prejudice to section 3 of the Powers of Attorney Act 1971 (c. 27) (proof by certified copies) and to any other method of proof authorised by law.

Functions of court with regard to registered power

- 16 (1) Where an instrument has been registered under paragraph 13, the court has the following functions with respect to the power and the donor of and the attorney appointed to act under the power.
- (2) The court may—
 - (a) determine any question as to the meaning or effect of the instrument;
 - (b) give directions with respect to—
 - (i) the management or disposal by the attorney of the property and affairs of the donor;
 - (ii) the rendering of accounts by the attorney and the production of the records kept by him for the purpose;
 - (iii) the remuneration or expenses of the attorney whether or not in default of or in accordance with any provision made by the instrument, including directions for the repayment of excessive or the payment of additional remuneration;
 - (c) require the attorney to supply information or produce documents or things in his possession as attorney;
 - (d) give any consent or authorisation to act which the attorney would have to obtain from a mentally capable donor;
 - (e) authorise the attorney to act so as to benefit himself or other persons than the donor otherwise than in accordance with paragraph 3(2) and (3) (but subject to any conditions or restrictions contained in the instrument);
 - (f) relieve the attorney wholly or partly from any liability which he has or may have incurred on account of a breach of his duties as attorney.
- (3) On application made for the purpose by or on behalf of the donor, the court must confirm the revocation of the power if satisfied that the donor—
 - (a) has done whatever is necessary in law to effect an express revocation of the power, and
 - (b) was mentally capable of revoking a power of attorney when he did so (whether or not he is so when the court considers the application).
- (4) The court must direct the Public Guardian to cancel the registration of an instrument registered under paragraph 13 in any of the following circumstances—
 - (a) on confirming the revocation of the power under sub-paragraph (3),

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- (b) on directing under paragraph 2(9)(b) that the power is to be revoked,
 - (c) on being satisfied that the donor is and is likely to remain mentally capable,
 - (d) on being satisfied that the power has expired or has been revoked by the mental incapacity of the attorney,
 - (e) on being satisfied that the power was not a valid and subsisting enduring power when registration was effected,
 - (f) on being satisfied that fraud or undue pressure was used to induce the donor to create the power,
 - (g) on being satisfied that, having regard to all the circumstances and in particular the attorney's relationship to or connection with the donor, the attorney is unsuitable to be the donor's attorney.
- (5) If the court directs the Public Guardian to cancel the registration of an instrument on being satisfied of the matters specified in sub-paragraph (4)(f) or (g) it must by order revoke the power created by the instrument.
- (6) If the court directs the cancellation of the registration of an instrument under sub-paragraph (4) except paragraph (c) the instrument must be delivered up to the Public Guardian to be cancelled, unless the court otherwise directs.

Cancellation of registration by Public Guardian

- 17 The Public Guardian must cancel the registration of an instrument creating an enduring power of attorney—
- (a) on receipt of a disclaimer signed by the attorney;
 - (b) if satisfied that the power has been revoked by the death or bankruptcy of the donor or attorney or, if the attorney is a body corporate, by its winding up or dissolution;
 - (c) on receipt of notification from the court that the court has revoked the power;
 - (d) on confirmation from the court that the donor has revoked the power.

PART 6

PROTECTION OF ATTORNEY AND THIRD PARTIES

Protection of attorney and third persons where power is invalid or revoked

- 18 (1) Sub-paragraphs (2) and (3) apply where an instrument which did not create a valid power of attorney has been registered under paragraph 13 (whether or not the registration has been cancelled at the time of the act or transaction in question).
- (2) An attorney who acts in pursuance of the power does not incur any liability (either to the donor or to any other person) because of the non-existence of the power unless at the time of acting he knows—
- (a) that the instrument did not create a valid enduring power,
 - (b) that an event has occurred which, if the instrument had created a valid enduring power, would have had the effect of revoking the power, or
 - (c) that, if the instrument had created a valid enduring power, the power would have expired before that time.

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- (3) Any transaction between the attorney and another person is, in favour of that person, as valid as if the power had then been in existence, unless at the time of the transaction that person has knowledge of any of the matters mentioned in sub-paragraph (2).
- (4) If the interest of a purchaser depends on whether a transaction between the attorney and another person was valid by virtue of sub-paragraph (3), it is conclusively presumed in favour of the purchaser that the transaction was valid if—
 - (a) the transaction between that person and the attorney was completed within 12 months of the date on which the instrument was registered, or
 - (b) that person makes a statutory declaration, before or within 3 months after the completion of the purchase, that he had no reason at the time of the transaction to doubt that the attorney had authority to dispose of the property which was the subject of the transaction.
- (5) For the purposes of section 5 of the Powers of Attorney Act 1971 (c. 27) (protection where power is revoked) in its application to an enduring power the revocation of which by the donor is by virtue of paragraph 15 invalid unless and until confirmed by the court under paragraph 16—
 - (a) knowledge of the confirmation of the revocation is knowledge of the revocation of the power, but
 - (b) knowledge of the unconfirmed revocation is not.

Further protection of attorney and third persons

- 19 (1) If—
- (a) an instrument framed in a form prescribed as mentioned in paragraph 2(2) creates a power which is not a valid enduring power, and
 - (b) the power is revoked by the mental incapacity of the donor,
- sub-paragraphs (2) and (3) apply, whether or not the instrument has been registered.
- (2) An attorney who acts in pursuance of the power does not, by reason of the revocation, incur any liability (either to the donor or to any other person) unless at the time of acting he knows—
 - (a) that the instrument did not create a valid enduring power, and
 - (b) that the donor has become mentally incapable.
 - (3) Any transaction between the attorney and another person is, in favour of that person, as valid as if the power had then been in existence, unless at the time of the transaction that person knows—
 - (a) that the instrument did not create a valid enduring power, and
 - (b) that the donor has become mentally incapable.
 - (4) Paragraph 18(4) applies for the purpose of determining whether a transaction was valid by virtue of sub-paragraph (3) as it applies for the purpose of determining whether a transaction was valid by virtue of paragraph 18(3).

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PART 7

JOINT AND JOINT AND SEVERAL ATTORNEYS

Application to joint and joint and several attorneys

- 20 (1) An instrument which appoints more than one person to be an attorney cannot create an enduring power unless the attorneys are appointed to act—
- (a) jointly, or
 - (b) jointly and severally.
- (2) This Schedule, in its application to joint attorneys, applies to them collectively as it applies to a single attorney but subject to the modifications specified in paragraph 21.
- (3) This Schedule, in its application to joint and several attorneys, applies with the modifications specified in sub-paragraphs (4) to (7) and in paragraph 22.
- (4) A failure, as respects any one attorney, to comply with the requirements for the creation of enduring powers—
- (a) prevents the instrument from creating such a power in his case, but
 - (b) does not affect its efficacy for that purpose as respects the other or others or its efficacy in his case for the purpose of creating a power of attorney which is not an enduring power.
- (5) If one or more but not both or all the attorneys makes or joins in making an application for registration of the instrument—
- (a) an attorney who is not an applicant as well as one who is may act pending the registration of the instrument as provided in paragraph 1(2),
 - (b) notice of the application must also be given under Part 3 of this Schedule to the other attorney or attorneys, and
 - (c) objection may validly be taken to the registration on a ground relating to an attorney or to the power of an attorney who is not an applicant as well as to one or the power of one who is an applicant.
- (6) The Public Guardian is not precluded by paragraph 13(5) or (8) from registering an instrument and the court must not direct him not to do so under paragraph 13(10) if an enduring power subsists as respects some attorney who is not affected by the ground or grounds of the objection in question; and where the Public Guardian registers an instrument in that case, he must make against the registration an entry in the prescribed form.
- (7) Sub-paragraph (6) does not preclude the court from revoking a power in so far as it confers a power on any other attorney in respect of whom the ground in paragraph 13(9)(d) or (e) is established; and where any ground in paragraph 13(9) affecting any other attorney is established the court must direct the Public Guardian to make against the registration an entry in the prescribed form.
- (8) In sub-paragraph (4), “the requirements for the creation of enduring powers” means the provisions of—
- (a) paragraph 2 other than sub-paragraphs (8) and (9), and
 - (b) the regulations mentioned in paragraph 2.

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Joint attorneys

- 21 (1) In paragraph 2(5), the reference to the time when the attorney executes the instrument is to be read as a reference to the time when the second or last attorney executes the instrument.
- (2) In paragraph 2(6) to (8), the reference to the attorney is to be read as a reference to any attorney under the power.
- (3) Paragraph 13 has effect as if the ground of objection to the registration of the instrument specified in sub-paragraph (9)(e) applied to any attorney under the power.
- (4) In paragraph 16(2), references to the attorney are to be read as including references to any attorney under the power.
- (5) In paragraph 16(4), references to the attorney are to be read as including references to any attorney under the power.
- (6) In paragraph 17, references to the attorney are to be read as including references to any attorney under the power.

Joint and several attorneys

- 22 (1) In paragraph 2(7), the reference to the bankruptcy of the attorney is to be read as a reference to the bankruptcy of the last remaining attorney under the power; and the bankruptcy of any other attorney under the power causes that person to cease to be an attorney under the power.
- (2) In paragraph 2(8), the reference to the suspension of the power is to be read as a reference to its suspension in so far as it relates to the attorney in respect of whom the interim bankruptcy restrictions order has effect.
- (3) The restriction upon disclaimer imposed by paragraph 4(6) applies only to those attorneys who have reason to believe that the donor is or is becoming mentally incapable.

PART 8

INTERPRETATION

- 23 (1) In this Schedule—
- “enduring power” is to be construed in accordance with paragraph 2,
- “mentally incapable” or “mental incapacity”, except where it refers to revocation at common law, means in relation to any person, that he is incapable by reason of mental disorder (within the meaning of the Mental Health Act) of managing and administering his property and affairs and “mentally capable” and “mental capacity” are to be construed accordingly,
- “notice” means notice in writing, and
- “prescribed”, except for the purposes of paragraph 2, means prescribed by regulations made for the purposes of this Schedule by the Lord Chancellor.
- (2) Any question arising under or for the purposes of this Schedule as to what the donor of the power might at any time be expected to do is to be determined by

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assuming that he had full mental capacity at the time but otherwise by reference to the circumstances existing at that time.

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.

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

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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.

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).

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- (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.

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—

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- (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.

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

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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.

SCHEDULE 6

Section 67(1)

MINOR AND CONSEQUENTIAL AMENDMENTS

Fines and Recoveries Act 1833 (c. 74)

- 1 (1) The Fines and Recoveries Act 1833 (c. 74) is amended as follows.
- (2) In section 33 (case where protector of settlement lacks capacity to act), for the words from “shall be incapable” to “is incapable as aforesaid” substitute “ lacks capacity (within the meaning of the Mental Capacity Act 2005) to manage his property and affairs, the Court of Protection is to take his place as protector of the settlement while he lacks capacity ”.
 - (3) In sections 48 and 49 (mental health jurisdiction), for each reference to the judge having jurisdiction under Part 7 of the Mental Health Act substitute a reference to the Court of Protection.

Improvement of Land Act 1864 (c. 114)

- 2 In section 68 of the Improvement of Land Act 1864 (c. 114) (apportionment of rentcharges)—
- (a) for “, curator, or receiver of” substitute “ or curator of, or a deputy with powers in relation to property and affairs appointed by the Court of Protection for, ”, and
 - (b) for “or patient within the meaning of Part VII of the Mental Health Act 1983” substitute “ person who lacks capacity (within the meaning of the Mental Capacity Act 2005) to receive the notice ”.

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Trustee Act 1925 (c. 19)

- 3 (1) The Trustee Act 1925 (c. 19) is amended as follows.
- (2) In section 36 (appointment of new trustee)—
- (a) in subsection (6C), for the words from “a power of attorney” to the end, substitute “ an enduring power of attorney or lasting power of attorney registered under the Mental Capacity Act 2005 ”, and
 - (b) in subsection (9)—
 - (i) for the words from “is incapable” to “exercising” substitute “ lacks capacity to exercise ”, and
 - (ii) for the words from “the authority” to the end substitute “ the Court of Protection ”.
- (3) In section 41(1) (power of court to appoint new trustee) for the words from “is incapable” to “exercising” substitute “ lacks capacity to exercise ”.
- (4) In section 54 (mental health jurisdiction)—
- (a) for subsection (1) substitute—

“(1) Subject to subsection (2), the Court of Protection may not make an order, or give a direction or authority, in relation to a person who lacks capacity to exercise his functions as trustee, if the High Court may make an order to that effect under this Act.”,
 - (b) in subsection (2)—
 - (i) for the words from the beginning to “of a receiver” substitute “ Where a person lacks capacity to exercise his functions as a trustee and a deputy is appointed for him by the Court of Protection or an application for the appointment of a deputy ”,
 - (ii) for “the said authority”, in each place, substitute “ the Court of Protection ”, and
 - (iii) for “the patient”, in each place, substitute “ the person concerned ”, and
 - (c) omit subsection (3).
- (5) In section 55 (order made on particular allegation to be conclusive evidence of it)—
- (a) for the words from “Part VII” to “Northern Ireland” substitute “ sections 15 to 20 of the Mental Capacity Act 2005 or any corresponding provisions having effect in Northern Ireland ”, and
 - (b) for paragraph (a) substitute—

“(a) that a trustee or mortgagee lacks capacity in relation to the matter in question;”.
- (6) In section 68 (definitions), at the end add—
- “(3) Any reference in this Act to a person who lacks capacity in relation to a matter is to a person—
- (a) who lacks capacity within the meaning of the Mental Capacity Act 2005 in relation to that matter, or
 - (b) in respect of whom the powers conferred by section 48 of that Act are exercisable and have been exercised in relation to that matter.”.

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Law of Property Act 1925 (c. 20)

- 4 (1) The Law of Property Act 1925 (c. 20) is amended as follows.
- (2) In section 22 (conveyances on behalf of persons who lack capacity)—
 - (a) in subsection (1)—
 - (i) for the words from “in a person suffering” to “is acting” substitute “, either solely or jointly with any other person or persons, in a person lacking capacity (within the meaning of the Mental Capacity Act 2005) to convey or create a legal estate, a deputy appointed for him by the Court of Protection or (if no deputy is appointed”, and
 - (ii) for “the authority having jurisdiction under Part VII of the Mental Health Act 1983” substitute “ the Court of Protection ”,
 - (b) in subsection (2), for “is incapable, by reason of mental disorder, of exercising” substitute “ lacks capacity (within the meaning of that Act) to exercise ”, and
 - (c) in subsection (3), for the words from “an enduring power” to the end substitute “ an enduring power of attorney or lasting power of attorney (within the meaning of the 2005 Act) is entitled to act for the trustee who lacks capacity in relation to the dealing. ”.
- (3) In section 205(1) (interpretation), omit paragraph (xiii).

Administration of Estates Act 1925 (c. 23)

- 5 (1) The Administration of Estates Act 1925 (c. 23) is amended as follows.
- (2) In section 41(1) (powers of personal representatives to appropriate), in the proviso—
 - (a) in paragraph (ii)—
 - (i) for the words from “is incapable” to “the consent” substitute “ lacks capacity (within the meaning of the Mental Capacity Act 2005) to give the consent, it ”, and
 - (ii) for “or receiver” substitute “ or a person appointed as deputy for him by the Court of Protection ”, and
 - (b) in paragraph (iv), for “no receiver is acting for a person suffering from mental disorder” substitute “ no deputy is appointed for a person who lacks capacity to consent ”.
- (3) Omit section 55(1)(viii) (definitions of “person of unsound mind” and “defective”).

National Assistance Act 1948 (c. 29)

- 6 In section 49 of the National Assistance Act 1948 (c. 29) (expenses of council officers acting for persons who lack capacity)—
 - (a) for the words from “applies” to “affairs of a patient” substitute “ applies for appointment by the Court of Protection as a deputy ”, and
 - (b) for “such functions” substitute “ his functions as deputy ”.

U.S.A. Veterans' Pensions (Administration) Act 1949 (c. 45)

- 7 In section 1 of the U.S.A. Veterans' Pensions (Administration) Act 1949 (c. 45) (administration of pensions)—
 - (a) in subsection (4), omit the words from “or for whom” to “1983”, and

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(b) after subsection (4), insert—

“(4A) An agreement under subsection (1) is not to be made in relation to a person who lacks capacity (within the meaning of the Mental Capacity Act 2005) for the purposes of this Act if—

- (a) there is a donee of an enduring power of attorney or lasting power of attorney (within the meaning of the 2005 Act), or a deputy appointed for the person by the Court of Protection, and
- (b) the donee or deputy has power in relation to the person for the purposes of this Act.

(4B) The proviso at the end of subsection (4) also applies in relation to subsection (4A).”.

Intestates' Estates Act 1952 (c. 64)

8 In Schedule 2 to the Intestates' Estates Act 1952 (c. 64) (rights of surviving spouse or civil partner in relation to home), for paragraph 6(1) substitute—

“(1) Where the surviving spouse or civil partner lacks capacity (within the meaning of the Mental Capacity Act 2005) to make a requirement or give a consent under this Schedule, the requirement or consent may be made or given by a deputy appointed by the Court of Protection with power in that respect or, if no deputy has that power, by that court.”.

Variation of Trusts Act 1958 (c. 53)

9 In section 1 of the Variation of Trusts Act 1958 (c. 53) (jurisdiction of courts to vary trusts)—

- (a) in subsection (3), for the words from “shall be determined” to the end substitute “ who lacks capacity (within the meaning of the Mental Capacity Act 2005) to give his assent is to be determined by the Court of Protection ”, and
- (b) in subsection (6), for the words from “the powers” to the end substitute “ the powers of the Court of Protection ”.

Administration of Justice Act 1960 (c. 65)

10 In section 12(1)(b) of the Administration of Justice Act 1960 (c. 65) (contempt of court to publish information about proceedings in private relating to persons with incapacity) for the words from “under Part VIII” to “that Act” substitute “ under the Mental Capacity Act 2005, or under any provision of the Mental Health Act 1983 ”.

Industrial and Provident Societies Act 1965 (c. 12)

11 In section 26 of the Industrial and Provident Societies Act 1965 (c. 12) (payments for mentally incapable people), for subsection (2) substitute—

“(2) Subsection (1) does not apply where the member or person concerned lacks capacity (within the meaning of the Mental Capacity Act 2005) for the purposes of this Act and—

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- (a) there is a donee of an enduring power of attorney or lasting power of attorney (within the meaning of the 2005 Act), or a deputy appointed for the member or person by the Court of Protection, and
- (b) the donee or deputy has power in relation to the member or person for the purposes of this Act.”.

Compulsory Purchase Act 1965 (c. 56)

12 In Schedule 1 to the Compulsory Purchase Act 1965 (c. 56) (persons without power to sell their interests), for paragraph 1(2)(b) substitute—

- “(b) do not have effect in relation to a person who lacks capacity (within the meaning of the Mental Capacity Act 2005) for the purposes of this Act if—
 - (i) there is a donee of an enduring power of attorney or lasting power of attorney (within the meaning of the 2005 Act), or a deputy appointed for the person by the Court of Protection, and
 - (ii) the donee or deputy has power in relation to the person for the purposes of this Act.”.

Leasehold Reform Act 1967 (c. 88)

13 (1) For section 26(2) of the Leasehold Reform Act 1967 (c. 88) (landlord lacking capacity) substitute—

- “(2) Where a landlord lacks capacity (within the meaning of the Mental Capacity Act 2005) to exercise his functions as a landlord, those functions are to be exercised—
 - (a) by a donee of an enduring power of attorney or lasting power of attorney (within the meaning of the 2005 Act), or a deputy appointed for him by the Court of Protection, with power to exercise those functions, or
 - (b) if no donee or deputy has that power, by a person authorised in that respect by that court.”.

(2) That amendment does not affect any proceedings pending at the commencement of this paragraph in which a receiver or a person authorised under Part 7 of the Mental Health Act is acting on behalf of the landlord.

Medicines Act 1968 (c. 67)

14 In section 72 of the Medicines Act 1968 (c. 67) (pharmacist lacking capacity)—

- (a) in subsection (1)(c), for the words from “a receiver” to “1959” substitute “he becomes a person who lacks capacity (within the meaning of the Mental Capacity Act 2005) to carry on the business ”,
- (b) after subsection (1) insert—

“(1A) In subsection (1)(c), the reference to a person who lacks capacity to carry on the business is to a person—

- (a) in respect of whom there is a donee of an enduring power of attorney or lasting power of attorney (within the meaning of the Mental Capacity Act 2005), or

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- (b) for whom a deputy is appointed by the Court of Protection, and in relation to whom the donee or deputy has power for the purposes of this Act.”,
- (c) in subsection (3)(d)—
 - (i) for “receiver” substitute “ deputy ”, and
 - (ii) after “guardian” insert “ or from the date of registration of the instrument appointing the donee ”, and
- (d) in subsection (4)(c), for “receiver” substitute “ donee, deputy ”.

Family Law Reform Act 1969 (c. 46)

- 15 For section 21(4) of the Family Law Reform Act 1969 (c. 46) (consent required for taking of bodily sample from person lacking capacity), substitute—

“(4) A bodily sample may be taken from a person who lacks capacity (within the meaning of the Mental Capacity Act 2005) to give his consent, if consent is given by the court giving the direction under section 20 or by—

- (a) a donee of an enduring power of attorney or lasting power of attorney (within the meaning of that Act), or
- (b) a deputy appointed, or any other person authorised, by the Court of Protection,

with power in that respect.”.

Local Authority Social Services Act 1970 (c. 42)

- 16 (1) Schedule 1 to the Local Authority Social Services Act 1970 (c. 42) (enactments conferring functions assigned to social services committee) is amended as follows.
- (2) In the entry for section 49 of the National Assistance Act 1948 (expenses of local authority officer appointed for person who lacks capacity) for “receiver” substitute “ deputy ”.
- (3) At the end, insert—

“Mental Capacity Act 2005

Section 39	Instructing independent mental capacity advocate before providing accommodation for person lacking capacity.
Section 49	Reports in proceedings.”.

Courts Act 1971 (c. 23)

- 17 In Part 1A of Schedule 2 to the Courts Act 1971 (c. 23) (office-holders eligible for appointment as circuit judges), omit the reference to a Master of the Court of Protection.

Local Government Act 1972 (c. 70)

- 18 (1) Omit section 118 of the Local Government Act 1972 (c. 70) (payment of pension etc. where recipient lacks capacity).

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- (2) Sub-paragraph (3) applies where, before the commencement of this paragraph, a local authority has, in respect of a person referred to in that section as “the patient”, made payments under that section—
- (a) to an institution or person having the care of the patient, or
 - (b) in accordance with subsection (1)(a) or (b) of that section.
- (3) The local authority may, in respect of the patient, continue to make payments under that section to that institution or person, or in accordance with subsection (1)(a) or (b) of that section, despite the repeal made by sub-paragraph (1).

Matrimonial Causes Act 1973 (c. 18)

- 19 In section 40 of the Matrimonial Causes Act 1973 (c. 18) (payments to person who lacks capacity) (which becomes subsection (1))—
- (a) for the words from “is incapable” to “affairs” substitute “ (“P”) lacks capacity (within the meaning of the Mental Capacity Act 2005) in relation to the provisions of the order ”,
 - (b) for “that person under Part VIII of that Act” substitute “ P under that Act ”,
 - (c) for the words from “such persons” to the end substitute “ such person (“D”) as it may direct ”, and
 - (d) at the end insert—

“(2) In carrying out any functions of his in relation to an order made under subsection (1), D must act in P's best interests (within the meaning of that Act).”.

Juries Act 1974 (c. 23)

- 20 In Schedule 1 to the Juries Act 1974 (c. 23) (disqualification for jury service), for paragraph 3 substitute—
- “3 A person who lacks capacity, within the meaning of the Mental Capacity Act 2005, to serve as a juror.”.

Consumer Credit Act 1974 (c. 39)

- 21 For section 37(1)(c) of the Consumer Credit Act 1974 (c. 39) (termination of consumer credit licence if holder lacks capacity) substitute—
- “(c) becomes a person who lacks capacity (within the meaning of the Mental Capacity Act 2005) to carry on the activities covered by the licence.”.

Solicitors Act 1974 (c. 47)

- 22 (1) The Solicitors Act 1974 (c. 47) is amended as follows.
- (2) For section 12(1)(j) (application for practising certificate by solicitor lacking capacity) substitute—
- “(j) while he lacks capacity (within the meaning of the Mental Capacity Act 2005) to act as a solicitor and powers under sections 15 to 20 or section 48 of that Act are exercisable in relation to him;”.

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- (3) In section 62(4) (contentious business agreements made by clients) for paragraphs (c) and (d) substitute—
- “(c) as a deputy for him appointed by the Court of Protection with powers in relation to his property and affairs, or
 - (d) as another person authorised under that Act to act on his behalf.”.
- (4) In paragraph 1(1) of Schedule 1 (circumstances in which Law Society may intervene in solicitor's practice), for paragraph (f) substitute—
- “(f) a solicitor lacks capacity (within the meaning of the Mental Capacity Act 2005) to act as a solicitor and powers under sections 15 to 20 or section 48 of that Act are exercisable in relation to him;”.

Local Government (Miscellaneous Provisions) Act 1976 (c. 57)

- 23 In section 31 of the Local Government (Miscellaneous Provisions) Act 1976 (c. 57) (the title to which becomes “Indemnities for local authority officers appointed as deputies or administrators”), for the words from “as a receiver” to “1959” substitute “ as a deputy for a person by the Court of Protection ”.

Sale of Goods Act 1979 (c. 54)

- 24 In section 3(2) of the Sale of Goods Act 1979 (c. 54) (capacity to buy and sell) the words “mental incapacity or” cease to have effect in England and Wales.

Limitation Act 1980 (c. 58)

- 25 In section 38 of the Limitation Act 1980 (c. 58) (interpretation) substitute—
- (a) in subsection (2) for “of unsound mind” substitute “ lacks capacity (within the meaning of the Mental Capacity Act 2005) to conduct legal proceedings ”, and
 - (b) omit subsections (3) and (4).

Public Passenger Vehicles Act 1981 (c. 14)

- 26 In section 57(2)(c) of the Public Passenger Vehicles Act 1981 (c. 14) (termination of public service vehicle licence if holder lacks capacity) for the words from “becomes a patient” to “or” substitute “ becomes a person who lacks capacity (within the meaning of the Mental Capacity Act 2005) to use a vehicle under the licence, or ”.

Judicial Pensions Act 1981 (c. 20)

- 27 In Schedule 1 to the Judicial Pensions Act 1981 (c. 20) (pensions of Supreme Court officers, etc.), in paragraph 1, omit the reference to a Master of the Court of Protection except in the case of a person holding that office immediately before the commencement of this paragraph or who had previously retired from that office or died.

Supreme Court Act 1981 (c. 54)

- 28 In Schedule 2 to the Supreme Court Act 1981 (c. 54) (qualifications for appointment to office in Supreme Court), omit paragraph 11 (Master of the Court of Protection).

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Mental Health Act 1983 (c. 20)

- 29 (1) The Mental Health Act is amended as follows.
- (2) In section 134(3) (cases where correspondence of detained patients may not be withheld) for paragraph (b) substitute—
- “(b) any judge or officer of the Court of Protection, any of the Court of Protection Visitors or any person asked by that Court for a report under section 49 of the Mental Capacity Act 2005 concerning the patient;”.
- (3) In section 139 (protection for acts done in pursuance of 1983 Act), in subsection (1), omit from “or in, or in pursuance” to “Part VII of this Act,”.
- (4) Section 142 (payment of pension etc. where recipient lacks capacity) ceases to have effect in England and Wales.
- (5) Sub-paragraph (6) applies where, before the commencement of sub-paragraph (4), an authority has, in respect of a person referred to in that section as “the patient”, made payments under that section—
- (a) to an institution or person having the care of the patient, or
- (b) in accordance with subsection (2)(a) or (b) of that section.
- (6) The authority may, in respect of the patient, continue to make payments under that section to that institution or person, or in accordance with subsection (2)(a) or (b) of that section, despite the amendment made by sub-paragraph (4).
- (7) In section 145(1) (interpretation), in the definition of “patient”, omit “(except in Part VII of this Act)”.
- (8) In section 146 (provisions having effect in Scotland), omit from “104(4)” to “section),”.
- (9) In section 147 (provisions having effect in Northern Ireland), omit from “104(4)” to “section),”.

Administration of Justice Act 1985 (c. 61)

- 30 In section 18(3) of the Administration of Justice Act 1985 (c. 61) (licensed conveyancer who lacks capacity), for the words from “that person” to the end substitute “ he becomes a person who lacks capacity (within the meaning of the Mental Capacity Act 2005) to practise as a licensed conveyancer. ”.

Insolvency Act 1986 (c. 45)

- 31 (1) The Insolvency Act 1986 (c. 45) is amended as follows.
- (2) In section 389A (people not authorised to act as nominee or supervisor in voluntary arrangement), in subsection (3)—
- (a) omit the “or” immediately after paragraph (b),
- (b) in paragraph (c), omit “Part VII of the Mental Health Act 1983 or”, and
- (c) after that paragraph, insert “, or
- (d) he lacks capacity (within the meaning of the Mental Capacity Act 2005) to act as nominee or supervisor”.

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(3) In section 390 (people not qualified to be insolvency practitioners), in subsection (4)

- (a) omit the “or” immediately after paragraph (b),
- (b) in paragraph (c), omit “Part VII of the Mental Health Act 1983 or”, and
- (c) after that paragraph, insert “, or
- (d) he lacks capacity (within the meaning of the Mental Capacity Act 2005) to act as an insolvency practitioner.”.

Building Societies Act 1986 (c. 53)

32 In section 102D(9) of the Building Societies Act 1986 (c. 53) (references to a person holding an account on trust for another)—

- (a) in paragraph (a), for “Part VII of the Mental Health Act 1983” substitute “the Mental Capacity Act 2005”, and
- (b) for paragraph (b) substitute—
 - “(b) to an attorney holding an account for another person under—
 - (i) an enduring power of attorney or lasting power of attorney registered under the Mental Capacity Act 2005, or
 - (ii) an enduring power registered under the Enduring Powers of Attorney (Northern Ireland) Order 1987;”.

Public Trustee and Administration of Funds Act 1986 (c. 57)

33 In section 3 of the Public Trustee and Administration of Funds Act 1986 (c. 57) (functions of the Public Trustee)—

- (a) for subsections (1) to (5) substitute—
 - “(1) The Public Trustee may exercise the functions of a deputy appointed by the Court of Protection.”,
- (b) in subsection (6), for “the 1906 Act” substitute “the Public Trustee Act 1906”, and
- (c) omit subsection (7).

Patronage (Benefices) Measure 1986 (No.3)

34 (1) The Patronage (Benefices) Measure 1986 (No. 3) is amended as follows.

(2) In section 5 (rights of patronage exercisable otherwise than by registered patron), after subsection (3) insert—

“(3A) The reference in subsection (3) to a power of attorney does not include an enduring power of attorney or lasting power of attorney (within the meaning of the Mental Capacity Act 2005).”

(3) In section 9 (information to be sent to designated officer when benefice becomes vacant), after subsection (5) insert—

“(5A) Subsections (5B) and (5C) apply where the functions of a registered patron are, as a result of paragraph 10 of Schedule 2 to the Mental Capacity Act

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2005 (patron's loss of capacity to discharge functions), to be discharged by an individual appointed by the Court of Protection.

(5B) If the individual is a clerk in Holy Orders, subsection (5) applies to him as it applies to the registered patron.

(5C) If the individual is not a clerk in Holy Orders, subsection (1) (other than paragraph (b)) applies to him as it applies to the registered patron.”

Courts and Legal Services Act 1990 (c. 41)

- 35 (1) The Courts and Legal Services Act 1990 (c. 41) is amended as follows.
- (2) In Schedule 11 (judges etc. barred from legal practice), for the reference to a Master of the Court of Protection substitute a reference to each of the following—
- (a) Senior Judge of the Court of Protection
 - (b) President of the Court of Protection
 - (c) Vice-President of the Court of Protection
- (3) In paragraph 5(3) of Schedule 14 (exercise of powers of intervention in registered foreign lawyer's practice), for paragraph (f) substitute—
- “(f) he lacks capacity (within the meaning of the Mental Capacity Act 2005) to act as a registered foreign lawyer and powers under sections 15 to 20 or section 48 are exercisable in relation to him;”

Child Support Act 1991 (c. 48)

- 36 In section 50 of the Child Support Act 1991 (c. 48) (unauthorised disclosure of information)—
- (a) in subsection (8)—
 - (i) immediately after paragraph (a), insert “ or ”,
 - (ii) omit paragraphs (b) and (d) and the “or” immediately after paragraph (c), and
 - (iii) for “, receiver, custodian or appointee” substitute “ or custodian ”, and
 - (b) after that subsection, insert—

“(9) Where the person to whom the information relates lacks capacity (within the meaning of the Mental Capacity Act 2005) to consent to its disclosure, the appropriate person is—

 - (a) a donee of an enduring power of attorney or lasting power of attorney (within the meaning of that Act), or
 - (b) a deputy appointed for him, or any other person authorised, by the Court of Protection,

with power in that respect.”

Social Security Administration Act 1992 (c. 5)

- 37 In section 123 of the Social Security Administration Act 1992 (c. 5) (unauthorised disclosure of information)—
- (a) in subsection (10), omit—

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- (i) in paragraph (b), “a receiver appointed under section 99 of the Mental Health Act 1983 or”,
 - (ii) in paragraph (d)(i), “sub-paragraph (a) of rule 41(1) of the Court of Protection Rules 1984 or”,
 - (iii) in paragraph (d)(ii), “a receiver ad interim appointed under sub-paragraph (b) of the said rule 41(1) or”, and
 - (iv) “receiver,”, and
- (b) after that subsection, insert—
- “(11) Where the person to whom the information relates lacks capacity (within the meaning of the Mental Capacity Act 2005) to consent to its disclosure, the appropriate person is—
- (a) a donee of an enduring power of attorney or lasting power of attorney (within the meaning of that Act), or
 - (b) a deputy appointed for him, or any other person authorised, by the Court of Protection,
- with power in that respect.”.

Judicial Pensions and Retirement Act 1993 (c. 8)

- 38 (1) The Judicial Pensions and Retirement Act 1993 (c. 8) is amended as follows.
- (2) In Schedule 1 (qualifying judicial offices), in Part 2, under the cross-heading “Court officers”, omit the reference to a Master of the Court of Protection except in the case of a person holding that office immediately before the commencement of this sub-paragraph or who had previously retired from that office or died.
- (3) In Schedule 5 (retirement: the relevant offices), omit the entries relating to the Master and Deputy or temporary Master of the Court of Protection, except in the case of a person holding any of those offices immediately before the commencement of this sub-paragraph.
- (4) In Schedule 7 (retirement: transitional provisions), omit paragraph 5(5)(i)(g) except in the case of a person holding office as a deputy or temporary Master of the Court of Protection immediately before the commencement of this sub-paragraph.

Leasehold Reform, Housing and Urban Development Act 1993 (c. 28)

- 39 (1) For paragraph 4 of Schedule 2 to the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28) (landlord under a disability), substitute—
- “4 (1) This paragraph applies where a Chapter I or Chapter II landlord lacks capacity (within the meaning of the Mental Capacity Act 2005) to exercise his functions as a landlord.
- (2) For the purposes of the Chapter concerned, the landlord's place is to be taken—
- (a) by a donee of an enduring power of attorney or lasting power of attorney (within the meaning of the 2005 Act), or a deputy appointed for him by the Court of Protection, with power to exercise those functions, or
 - (b) if no deputy or donee has that power, by a person authorised in that respect by that court.”.

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- (2) That amendment does not affect any proceedings pending at the commencement of this paragraph in which a receiver or a person authorised under Part 7 of the Mental Health Act 1983 (c. 20) is acting on behalf of the landlord.

Goods Vehicles (Licensing of Operators) Act 1995 (c. 23)

- 40 (1) The Goods Vehicles (Licensing of Operators) Act 1995 (c. 23) is amended as follows.
- (2) In section 16(5) (termination of licence), for “he becomes a patient within the meaning of Part VII of the Mental Health Act 1983” substitute “he becomes a person who lacks capacity (within the meaning of the Mental Capacity Act 2005) to use a vehicle under the licence”.
- (3) In section 48 (licence not to be transferable, etc.)—
- (a) in subsection (2)—
- (i) for “or become a patient within the meaning of Part VII of the Mental Health Act 1983” substitute “, or become a person who lacks capacity (within the meaning of the Mental Capacity Act 2005) to use a vehicle under the licence, ”, and
- (ii) in paragraph (a), for “became a patient” substitute “became a person who lacked capacity in that respect ”, and
- (b) in subsection (5), for “a patient within the meaning of Part VII of the Mental Health Act 1983” substitute “a person lacking capacity”.

Disability Discrimination Act 1995 (c. 50)

- 41 In section 20(7) of the Disability Discrimination Act 1995 (c. 50) (regulations to disapply provisions about incapacity), in paragraph (b), for “Part VII of the Mental Health Act 1983” substitute “the Mental Capacity Act 2005”.

Trusts of Land and Appointment of Trustees Act 1996 (c. 47)

- 42 (1) The Trusts of Land and Appointment of Trustees Act 1996 (c. 47) is amended as follows.
- (2) In section 9 (delegation by trustees), in subsection (6), for the words from “an enduring power” to the end substitute “an enduring power of attorney or lasting power of attorney within the meaning of the Mental Capacity Act 2005”.
- (3) In section 20 (the title to which becomes “Appointment of substitute for trustee who lacks capacity”)—
- (a) in subsection (1)(a), for “is incapable by reason of mental disorder of exercising” substitute “lacks capacity (within the meaning of the Mental Capacity Act 2005) to exercise”, and
- (b) in subsection (2)—
- (i) for paragraph (a) substitute—
- “(a) a deputy appointed for the trustee by the Court of Protection,”,
- (ii) in paragraph (b), for the words from “a power of attorney” to the end substitute “an enduring power of attorney or lasting power of attorney registered under the Mental Capacity Act 2005”, and

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(iii) in paragraph (c), for the words from “the authority” to the end substitute “ the Court of Protection ”.

Human Rights Act 1998 (c. 42)

43 In section 4(5) of the Human Rights Act 1998 (c. 42) (courts which may make declarations of incompatibility), after paragraph (e) insert—

“(f) the Court of Protection, in any matter being dealt with by the President of the Family Division, the Vice-Chancellor or a puisne judge of the High Court.”

Access to Justice Act 1999 (c. 22)

44 In paragraph 1 of Schedule 2 to the Access to Justice Act 1999 (c. 22) (services excluded from the Community Legal Service), after paragraph (e) insert—

“(ea) the creation of lasting powers of attorney under the Mental Capacity Act 2005,
 (eb) the making of advance decisions under that Act.”.

Adoption and Children Act 2002 (c. 38)

45 In section 52(1)(a) of the Adoption and Children Act 2002 (c. 38) (parental consent to adoption), for “is incapable of giving consent” substitute “ lacks capacity (within the meaning of the Mental Capacity Act 2005) to give consent ”.

Licensing Act 2003 (c. 17)

46 (1) The Licensing Act 2003 (c. 17) is amended as follows.

(2) In section 27(1) (lapse of premises licence), for paragraph (b) substitute—

“(b) becomes a person who lacks capacity (within the meaning of the Mental Capacity Act 2005) to hold the licence.”.

(3) In section 47 (interim authority notice in relation to premises licence)—

(a) in subsection (5), for paragraph (b) substitute—

“(b) the former holder lacks capacity (within the meaning of the Mental Capacity Act 2005) to hold the licence and that person acts for him under an enduring power of attorney or lasting power of attorney registered under that Act,” and

(b) in subsection (10), omit the definition of “mentally incapable”.

Courts Act 2003 (c. 39)

47 (1) The Courts Act 2003 (c. 39) is amended as follows.

(2) In section 1(1) (the courts in relation to which the Lord Chancellor must discharge his general duty), after paragraph (a) insert—

“(aa) the Court of Protection,”.

(3) In section 64(2) (judicial titles which the Lord Chancellor may by order alter)—

(a) omit the reference to a Master of the Court of Protection, and

(b) at the appropriate place insert a reference to each of the following—

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- (i) Senior Judge of the Court of Protection,
- (ii) President of the Court of Protection,
- (iii) Vice-president of the Court of Protection.

SCHEDULE 7

Section 67(2)

REPEALS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Trustee Act 1925 (c. 19)	Section 54(3).
Law of Property Act 1925 (c. 20)	Section 205(1)(xiii).
Administration of Estates Act 1925 (c. 23)	Section 55(1)(viii)
U.S.A. Veterans' Pensions (Administration) Act 1949 (c. 45)	In section 1(4), the words from “or for whom” to “1983”.
Mental Health Act 1959 (c. 72)	In Schedule 7, in Part 1, the entries relating to— section 33 of the Fines and Recoveries Act 1833, section 68 of the Improvement of Land Act 1864, section 55 of the Trustee Act 1925, section 205(1) of the Law of Property Act 1925, section 49 of the National Assistance Act 1948, and section 1 of the Variation of Trusts Act 1958.
Courts Act 1971 (c. 23)	In Schedule 2, in Part 1A, the words “Master of the Court of Protection”.
Local Government Act 1972 (c. 70)	Section 118.
Limitation Act 1980 (c. 58)	Section 38(3) and (4).
Supreme Court Act 1981 (c. 54)	In Schedule 2, in Part 2, paragraph 11.
Mental Health Act 1983 (c. 20)	Part 7. In section 139(1) the words from “or in, or in pursuance” to “Part VII of this Act.”. In section 145(1), in the definition of “patient” the words “(except in Part VII of this Act)”. In sections 146 and 147 the words from “104(4)” to “section),”. Schedule 3. In Schedule 4, paragraphs 1, 2, 4, 5, 7, 9, 14, 20, 22, 25, 32, 38, 55 and 56. In Schedule 5, paragraphs 26, 43, 44 and 45.

Status: Point in time view as at 01/10/2007.

Changes to legislation: *Mental Capacity Act 2005 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Enduring Powers of Attorney Act 1985 (c. 29)	The whole Act.
Insolvency Act 1986 (c. 45)	In section 389A(3)— the “or” immediately after paragraph (b), and in paragraph (c), the words “Part VII of the Mental Health Act 1983 or”. In section 390(4)— the “or” immediately after paragraph (b), and in paragraph (c), the words “Part VII of the Mental Health Act 1983 or”.
Public Trustee and Administration of Funds Act 1986 (c. 57)	Section 2. Section 3(7).
Child Support Act 1991 (c. 48)	In section 50(8)— paragraphs (b) and (d), and the “or” immediately after paragraph (c).
Social Security Administration Act 1992 (c. 5)	In section 123(10)— in paragraph (b), “a receiver appointed under section 99 of the Mental Health Act 1983 or”, in paragraph (d)(i), “sub-paragraph (a) of rule 41(1) of the Court of Protection Rules Act 1984 or”, in paragraph (d)(ii), “a receiver ad interim appointed under sub- paragraph (b) of the said rule 41(1) or”, and “receiver”.
Trustee Delegation Act 1999 (c. 15)	Section 4. Section 6. In section 7(3), the words “in accordance with section 4 above”.
Care Standards Act 2000 (c. 14)	In Schedule 4, paragraph 8.
Licensing Act 2003 (c. 17)	In section 47(10), the definition of “mentally incapable”.
Courts Act 2003 (c. 64)	In section 64(2), the words “Master of the Court of Protection”.

Status:

Point in time view as at 01/10/2007.

Changes to legislation:

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