



# Mental Health Act 1959

## 1959 CHAPTER 72

### PART VIII

#### MANAGEMENT OF PROPERTY AND AFFAIRS OF PATIENTS

#### **100 Judicial authorities and Court of Protection**

- (1) The Lord Chancellor shall from time to time nominate one or more judges of the Supreme Court (hereinafter referred to as "nominated judges") to act for the purposes of this Part of this Act.
- (2) There shall continue to be an office of the Supreme Court, called the Court of Protection, for the protection and management, as provided by this Part of this Act, of the property of persons under disability; and there shall be a Master and a Deputy Master of the Court of Protection appointed by the Lord Chancellor.
- (3) The Lord Chancellor may nominate other officers of the Court of Protection to act for the purposes of this Part of this Act.
- (4) The functions expressed to be conferred by this Part of this Act on the judge shall be exercisable by the Lord Chancellor or by any nominated judge, and shall also be exercisable by the Master or Deputy Master of the Court of Protection or by any officer nominated under the foregoing subsection, but—
  - (a) in the case of the Master, Deputy Master or any such nominated officer, subject to any express provision to the contrary in this Part of this Act or any rules thereunder,
  - (b) in the case of the Deputy Master or any such nominated officer, subject to any directions of the Master,
  - (c) in the case of any such nominated officer, so far only as may be provided by the instrument by which he is nominated;

and references in this Part of this Act to the judge shall be construed accordingly.

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### **101 Persons within the jurisdiction of the judge: "the patient"**

The functions of the judge under this Part of this Act shall be exercisable where, after considering medical evidence, he is satisfied that a person is incapable, by reason of mental disorder, of managing and administering his property and affairs ; and a person as to whom the judge is so satisfied is in this Part of this Act referred to as a patient.

### **102 General functions of the judge with respect to property and affairs of patient**

- (1) The judge may, with respect to the property and affairs of a patient, do or secure the doing of all such things as appear necessary or expedient—
  - (a) for the maintenance or other benefit of the patient,
  - (b) for the maintenance or other benefit of members of the patient's family,
  - (c) for making provision for other persons or purposes for whom or which the patient might be expected to provide if he were not mentally disordered, or
  - (d) otherwise for administering the patient's affairs.
- (2) In the exercise of the powers conferred by this section regard shall be had first of all to the requirements of the patient, and the rules of law which restricted the enforcement by a creditor of rights against property under the control of the judge in lunacy shall apply to property under the control of the judge; but subject to the foregoing provisions of this subsection the judge shall, in administering a patient's affairs, have regard to the interests of creditors and also to the desirability of making provision for obligations of the patient notwithstanding that they may not be legally enforceable.

### **103 Powers of the judge as to patient's property and affairs**

- (1) Without prejudice to the generality of the foregoing section, the judge shall have power to make such orders and give such directions and authorities as he thinks fit for the purposes of that section, and in particular may for those purposes make orders or give directions or authorities for—
  - (a) the control (with or without the transfer or vesting of property or the payment into or lodgment in court of money or securities) and management of any property of the patient;
  - (b) the sale, exchange, charging or other disposition of or dealing with any property of the patient;
  - (c) the acquisition of any property in the name or on behalf of the patient;
  - (d) the settlement of any property of the patient, or the gift of any property of the patient to any such persons or for any such purposes as are mentioned in paragraphs (b) and (c) of subsection (1) of the foregoing section, so however that in such cases as a nominated judge may direct the powers conferred by this paragraph shall not be exercisable except by the Lord Chancellor or a nominated judge;
  - (e) the carrying on by a suitable person of any profession, trade or business of the patient;
  - (f) the dissolution of a partnership of which the patient is a member;
  - (g) the carrying out of any contract entered into by the patient;
  - (h) the conduct of legal proceedings in the name of the patient or on his behalf, so however that an order, direction or authority to present a petition in the name or on behalf of the patient for divorce or nullity of marriage, for presumption

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- of death and dissolution of marriage, or for judicial separation shall be made or given only by the Lord Chancellor or a nominated judge;
- (i) the reimbursement out of the property of the patient, with or without interest, of money applied by any person either in payment of the patient's debts (whether legally enforceable or not) or for the maintenance or other benefit of the patient or members of his family or in making provision for other persons or purposes for whom or which he might be expected to provide if he were not mentally disordered ;
  - (j) the exercise of any power (including a power to consent) vested in the patient, whether beneficially, or as guardian or trustee, or otherwise, so however that the powers of a patient as patron of a benefice shall be exercisable by the Lord Chancellor only.
- (2) If under the foregoing subsection provision is made for the settlement of any property of a patient, or the exercise of a power vested in a patient of appointing trustees or retiring from a trust, the judge may also make as respects the property settled or trust property such consequential vesting or other orders as the case may require, including (in the case of the exercise of such a power as aforesaid) any order which could have been made in such a case under Part IV of the Trustee Act, 1925.
- (3) The power of the judge to provide for the settlement of the property of a patient shall not be exercisable at any time when the patient is an infant.
- (4) Where under this section a settlement has been made of any property of a patient, and the Lord Chancellor or a nominated judge is satisfied, at any time before the death of the patient, that any material fact was not disclosed when the settlement was made, or that there has been any substantial change in circumstances, he may by order vary the settlement in such manner as he thinks fit, and give any consequential directions.

#### **104 Judge's powers in cases of emergency**

Where it is represented to the judge, and he has reason to believe, that a person may be incapable, by reason of mental disorder, of managing and administering his property and affairs, and the judge is of opinion that it is necessary to make immediate provision for any of the matters referred to in section one hundred and two of this Act, then pending the determination of the question whether the said person is incapable as aforesaid the judge may exercise in relation to the property and affairs of that person any of the powers conferred on him in relation to the property and affairs of a patient by this Part of this Act so far as is requisite for enabling that provision to be made.

#### **105 Power to appoint receiver**

- (1) The judge may by order appoint as receiver for a patient a person specified in the order or the holder for the time being of an office so specified; and the receiver shall do all such things in relation to the property and affairs of the patient as the judge, in the exercise of the powers conferred on him by sections one hundred and two and one hundred and three of this Act, orders or directs him to do and may do any such thing in relation thereto as the judge, in the exercise of those powers, authorises him to do.
- (2) A receiver appointed for any person shall be discharged by order of the judge on the judge being satisfied that that person has become capable of managing and administering his property and affairs, and may be discharged by order of the judge at

any time if the judge considers it expedient to do so and a receiver shall be discharged (without any order) on the death of the patient.

### **106 Vesting of stock in curator appointed outside England and Wales**

- (1) Where the judge is satisfied—
- (a) that under the law prevailing in a place outside England and Wales a person has been appointed to exercise powers with respect to the property or affairs of any other person on the ground (however formulated) that that other person is incapable, by reason of mental disorder, of managing and administering 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 judge should exercise his powers under this section,

the judge may direct any stock standing in the name of the said other person or the right to receive the dividends thereof to be transferred into the name of the person so appointed or otherwise dealt with as requested by that person, and may give such directions as the judge thinks fit for dealing with accrued dividends thereof.

- (2) In this section " stock " includes shares and also any fund, 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 " shall be construed accordingly.

### **107 Preservation of interests in patient's property**

- (1) Where any property of a person has been disposed of under this Part of this Act, and under his will or any codicil thereto or his intestacy, or by any gift perfected or nomination taking effect on his death, any other person would have taken an interest in the property but for the disposal, he shall take the like interest, if and so far as circumstances allow, in any property belonging to the estate of the deceased which represents the property disposed of; and if the property disposed of was real property any property representing it shall so long as it remains part of his estate be treated as if it were real property.
- (2) The judge, in ordering, directing or authorising under this Part of this Act any disposal of property which apart from this section would result in the conversion of personal property into real property, may direct that the property representing the property disposed of shall, so long as it remains the property of the patient or forms part of his estate, be treated as if it were personal property.
- (3) In the foregoing subsections references to the disposal of property are references to the sale, exchange, charging or other dealing with property other than money, the removal of property from one place to another, the application of money in acquiring property or the transfer of money from one account to another, and references to property representing property disposed of shall be construed accordingly and as including the result of successive disposals.
- (4) The judge may give such directions as appear to him necessary or expedient for the purpose of facilitating the operation of subsection (1) of this section, including the carrying of money to a separate account and the transfer of property other than money.
- (5) Where the judge has ordered, directed or authorised the expenditure of money for the carrying out of permanent improvements on, or otherwise for the permanent benefit

of, any property of the patient, he may order that the whole or any part of the money expended or to be expended shall be a charge upon the property, whether without interest or with interest at a specified rate; and—

- (a) a charge under this subsection may be made in favour of such person as may be just, and in particular, where the money charged is paid out of the patient's general estate, may be made in favour of a person as trustee for the patient;
- (b) an order under this subsection may provide for excluding or restricting the operation of subsection (1) of this section:

Provided that a charge created under this subsection shall not confer any right of sale or foreclosure during the lifetime of the patient.

### **108 Lord Chancellor's Visitors**

- (1) There shall continue to be Medical and Legal Visitors of patients, appointed by the Lord Chancellor, and the Visitors shall be known as the Lord Chancellor's Visitors.
- (2) As respects appointments of Lord Chancellor's Visitors made after the commencement of this Act, the concurrence of the Treasury shall be required as to numbers.
- (3) A person shall not be qualified to be appointed a Medical Visitor unless he is a medical practitioner who appears to the Lord Chancellor to have special knowledge and experience of cases of mental disorder.
- (4) Subsection (3) of section one hundred and sixteen of the Supreme Court of Judicature (Consolidation) Act, 1925 (which precludes the appointment as deputy in any office of the Supreme Court of a person who is not qualified for appointment to that office) shall not prevent a person who has previously held an appointment as Medical Visitor or as Legal Visitor being appointed as deputy for a Medical Visitor or, as the case may be, a Legal Visitor.
- (5) The Lord Chancellor may, with the concurrence of the Treasury as to numbers, appoint persons to be clerks and other officers of the Lord Chancellor's Visitors.

### **109 Functions of Visitors**

- (1) It shall be the duty of the Lord Chancellor's Visitors to visit patients in accordance with the directions of the judge for the purpose of investigating matters relating to the capacity of any patient to manage and administer his property and affairs or otherwise relating to the exercise, in relation to him, of the functions of the judge under this Part of this Act; and the Visitors shall make such reports on their visits as the judge may direct.
- (2) A Visitor making a visit under this section may interview the patient in private.
- (3) A Medical Visitor making a visit under this section may carry out in private a medical examination of the patient and may require the production of and inspect any medical records relating to the patient.
- (4) The Master or Deputy Master of the Court of Protection may visit any patient for the purpose mentioned in subsection (1) of this section, and subsection (2) thereof shall have effect accordingly.

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- (5) A report made by a Visitor under this section, and information contained in such a report, shall not be disclosed except to the judge and any person authorised by the judge to receive the disclosure.
- (6) If any person discloses any report or information in contravention of the last foregoing subsection, he shall be guilty of an offence and shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding one hundred pounds or both.
- (7) In this section references to patients include references to persons alleged to be incapable, by reason of mental disorder, of managing and administering their property and affairs.

## **110 General powers of the judge with respect to proceedings**

- (1) For the purposes of any proceedings before him with respect to persons suffering or alleged to be suffering from mental disorder, the judge shall have the like powers as are vested in the High Court in respect of securing the attendance of witnesses and the production of documents.
- (2) Subject to the provisions of this section, any act or omission in the course of such proceedings as aforesaid which, if occurring in the course of proceedings in the High Court would have been a contempt of the Court, shall be punishable by the judge in any manner in which it could have been punished by the High Court.
- (3) The foregoing subsection shall not authorise the Master or Deputy Master, or any other officer, of the Court of Protection to exercise any power of attachment or committal, but the Master, Deputy Master or officer may certify any such act or omission to the Lord Chancellor or a nominated judge, and the Lord Chancellor or judge may thereupon inquire into the alleged act or omission and take any such action in relation thereto as he could have taken if the proceedings had been before him.
- (4) Subsections (1) to (4) of section forty-nine of the Supreme Court of Judicature (Consolidation) Act, 1925 (which provides a special procedure for the issue of writs of subpoena ad testificandum and duces tecum so as to be enforceable throughout the United Kingdom) shall apply in relation to proceedings under this Part of this Act with the substitution for references to the High Court of references to the judge and for references to such writs as aforesaid of references to such document as may be prescribed by rules under this Part of this Act for issue by the judge for securing the attendance of witnesses or the production of documents.

## **111 Appeals**

- (1) Subject to and in accordance with rules under this Part of this Act, an appeal shall lie to a nominated judge from any decision of the Master or Deputy Master of the Court of Protection or any officer of the Court of Protection nominated under subsection (3) of section one hundred of this Act.
- (2) The Court of Appeal shall have the like jurisdiction as to appeals from any decision of the Lord Chancellor or from any decision of a nominated judge, whether given in the exercise of his original jurisdiction or on the hearing of an appeal under the foregoing subsection, as they had immediately before the coming into operation of this Part of this Act as to appeals from orders in lunacy made by the Lord Chancellor or any other person having jurisdiction in lunacy, and the provisions of the Supreme

Court of Judicature (Consolidation) Act, 1925, relating to appeals shall have effect accordingly.

## **112 Rules of procedure**

- (1) Proceedings before the judge with respect to persons suffering or alleged to be suffering from mental disorder (in this section referred to as " proceedings ") shall be conducted in accordance with the provisions of rules made under this Part of this Act.
- (2) Rules under this Part of this Act may make provision as to the carrying out of preliminary or incidental inquiries, as to the persons by whom and manner in which proceedings may be instituted and carried on, as to the persons who are to be entitled to be notified of, to attend, or to take part in proceedings, as to the evidence which may be authorised or required to be given in proceedings and the manner (whether on oath or otherwise and whether orally or in writing) in which it is to be given, as to the administration of oaths and taking of affidavits for the purposes of proceedings, and as to the enforcement of orders made and directions given in proceedings.
- (3) Without prejudice to the provisions of subsection (1) of section one hundred and ten of this Act, rules under this Part of this Act may make provision for authorising or requiring the attendance and examination of persons suffering or alleged to be suffering from mental disorder, the furnishing of information and the production of documents.
- (4) Rules under this Part of this Act may make provision as to the termination of proceedings, whether on the death or recovery of the person to whom the proceedings relate or otherwise, and for the exercise, pending the termination of the proceedings, of powers exercisable under this Part of this Act in relation to the property or affairs of a patient.
- (5) Rules under this Part of this Act made with the consent of the Treasury may make provision as to the scale of costs, fees and percentages payable in relation to proceedings, and as to the manner in which and funds out of which such costs, fees and percentages are to be paid, may contain provision for charging any percentage upon the estate of the person to whom the proceedings relate and for the payment of costs, fees and percentages within such time after the death of the person to whom the proceedings relate or the termination of the proceedings as may be provided by the rules, and may provide for the remission of fees and percentages.
- (6) A charge upon the estate of a person created by virtue of the foregoing subsection shall not cause any interest of that person in any property to fail or determine or to be prevented from recommencing.
- (7) Rules under this Part of this Act may authorise the making of orders for the payment of costs to or by persons attending, as well as persons taking part in, proceedings.

## **113 Security and accounts**

- (1) Rules under this Part of this Act may make provision as to the giving of security by a receiver and as to the enforcement and discharge of the security.
- (2) It shall be the duty of a receiver to render accounts in accordance with the requirements Of rules under this Part of this Act, as well after his discharge as during his receivership; and rules under this Part of this Act may make provision for the rendering

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of accounts by persons, not being receivers, ordered, directed or authorised under this Part of this Act to carry out any transaction.

#### **114 General provisions as to rules under Part VIII**

- (1) Any power to make rules conferred by this Part of this Act shall be exercisable by the Lord Chancellor.
- (2) Rules under this Part of this Act may contain such incidental and supplemental provisions as appear requisite for the purposes of the rules.

#### **115 Supplementary provisions as to Court of Protection**

- (1) The Master of the Court of Protection shall take in the presence of the Lord Chancellor the oath of allegiance and judicial oath; and the Promissory Oaths Act, 1868, shall have effect as if the officers named in the Second Part of the Schedule to that Act included the Master of the Court of Protection.
- (2) A person shall not be qualified for appointment as Deputy Master of the Court of Protection unless at the time of his appointment he is a barrister or solicitor of not less than five years' standing or is an officer of the Court of Protection who for not less than five years (whether continuously or not) has been an officer nominated under subsection (3) of section one hundred of this Act.
- (3) The Lord Chancellor may, with the concurrence of the Treasury as to numbers, appoint persons to be clerks and other officers of the Court of Protection.

#### **116 Effect and proof of orders, etc.**

- (1) Section two hundred and four of the Law of Property Act, 1925 (by which orders of the High Court are made conclusive in favour of purchasers) shall apply in relation to orders made and directions and authorities given, by the judge as it applies in relation to orders of the High Court.
- (2) Office copies of orders made, directions or authorities given, or other instruments issued by the judge and sealed with the official seal of the Court of Protection shall be admissible in all legal proceedings as evidence of the originals without any further proof.

#### **117 Reciprocal arrangements in relation to Scotland and Northern Ireland as to exercise of powers**

- (1) This Part of this Act shall apply in relation to the property and affairs in Scotland or Northern Ireland of a patient in relation to whom powers have been exercised under this Part of this Act, or a person as to whom powers are exercisable and have been exercised under section one hundred and four of this Act, as it applies in relation to his property and affairs in England and Wales unless a curator bonis, tutor, judicial factor, committee, receiver or guardian has been appointed for him in Scotland or, as the case may be, Northern Ireland.
- (2) Where under the law in force in Scotland or Northern Ireland with respect to the property and affairs of persons suffering from mental disorder a curator bonis, tutor, judicial factor, committee, receiver or guardian has been appointed for any person, the provisions of that law shall apply in relation to that person's property and affairs



in England and Wales unless he is a patient in relation to whom powers have been exercised under this Part of this Act, or a person as to whom powers are exercisable and have been exercised under section one hundred and four of this Act.

- (3) In this section references to property do not include references to land or interests in land:

Provided that this subsection shall not prevent the receipt of rent or other income arising from land or interests in land.

### **118 Construction of references in other Acts to judge or authority having jurisdiction under Part VIII**

- (1) The functions expressed to be conferred by any enactment not contained in this Part of this Act on the judge having jurisdiction under this Part of this Act shall be exercisable by the Lord Chancellor or by a nominated judge.
- (2) The functions expressed to be conferred by any such enactment on the authority having jurisdiction under this Part of this Act shall, subject to any express provision to the contrary, be exercisable by the Lord Chancellor, a nominated judge, the Master or Deputy Master of the Court of Protection or any officer nominated under subsection (3) of section one hundred of this Act:

Provided that the exercise of those functions by the Deputy Master or any such nominated officer shall be subject to any directions of the Master, and the said functions shall be exercisable by any such nominated officer so far only as may be provided by the instrument by which he is nominated.

- (3) Subject to the provisions of the foregoing subsections,—
- (a) references in any enactment not contained in this Part of this Act to the judge having jurisdiction under this Part of this Act shall be construed as references to the Lord Chancellor or a nominated judge, and
  - (b) references in any such enactment to the authority having jurisdiction under this Part of this Act shall be construed as references to the Lord Chancellor, a nominated judge, the Master or Deputy Master of the Court of Protection or any officer nominated under subsection (3) of section one hundred of this Act.

### **119 Interpretation of Part VIII**

- (1) In this Part of this Act, unless the context otherwise requires,—
- " nominated judge " means a judge nominated in pursuance of subsection (1) of section one hundred of this Act;
  - " patient " has the meaning assigned to it by section one hundred and one of this Act;
  - " property " includes any thing in action, and any interest in real or personal property ;
  - " the judge " shall be construed in accordance with section one hundred of this Act.
- (2) Any power conferred by this Part of this Act to make an order shall be construed as including a power, exercisable in like manner and subject to the like conditions if any, to revoke or vary the order.

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**120    Modifications of Lunacy Regulation (Ireland) Act, 1871**

The provisions of the Lunacy Regulation (Ireland) Act, 1871, described in the Fourth Schedule to this Act (which relate to the management and protection of the property of mentally disordered persons and to the procedure on inquisitions) shall have effect subject to the modifications specified in that Schedule.

**121    Repeal of certain enactments in relation to persons within the jurisdiction of the judge**

The provisions of the Acts described in the Fifth Schedule to this Act which are specified in the third column of that Schedule, so far as they make special provision for persons suffering from mental disorder, shall cease to have effect in relation to patients and to persons as to whom powers are exercisable and have been exercised under section one hundred and four of this Act.