
STATUTORY INSTRUMENTS

2007 No. 1898

**The Mental Capacity Act 2005 (Transitional
and Consequential Provisions) Order 2007**

Citation and commencement

1. This Order may be cited as the Mental Capacity Act 2005 (Transitional and Consequential Provisions) Order 2007, and comes into force on 1 October 2007.

Interpretation

2. In this Order—

- (a) “the Act” means the Mental Capacity Act 2005; and
- (b) “Court of Protection” refers—
 - (i) the first time the expression appears in article 4, to the office of the Supreme Court called the Court of Protection mentioned in section 45(6) of the Act, and
 - (ii) where the expression appears in articles 3, 4(a) and (b), to the superior court of record established by section 45(1) of the Act.

Proceedings begun in the High Court before 1 October 2007

3.—(1) This article applies to any proceedings about P’s personal welfare begun in the High Court before 1 October 2007 in respect of which the Court of Protection would, but for this article, have jurisdiction on and after that date under section 16 of the Act.

(2) The proceedings may continue to be dealt with, until they are finally decided, in accordance with the arrangements existing immediately before 1 October 2007.

(3) For the purposes of paragraph (2), an application is finally decided when it is determined and there is no possibility of the determination being reversed or varied on an appeal.

(4) In dealing with proceedings under this article, the High Court retains all the powers and jurisdiction in relation to any matter that is the subject of the proceedings that it had immediately before the commencement of the Act.

(5) In this article—

- (a) “P” means any person (other than a protected party) who lacks, or so far as consistent with the context is alleged to lack, capacity to make a decision or decisions in relation to any matter that is the subject of an application to the court and references to a person who lacks capacity are to be construed in accordance with the Act;
- (b) “personal welfare” is to be construed in accordance with section 17 of the Act; and
- (c) “protected party” means a party, or an intended party (other than P or a child), who lacks capacity to conduct the proceedings.

Senior Judge of the Court of Protection

4. The person who, immediately before the commencement of Part 2 of the Act, holds the office of Master of the Court of Protection⁽¹⁾, shall be treated as—

- (a) being a circuit judge nominated under section 46(1) of the Act to exercise the jurisdiction of the Court of Protection; and
- (b) having been appointed the Senior Judge of the Court of Protection under section 46(4) of the Act.

Advance decisions to refuse life-sustaining treatment

5.—(1) An advance decision refusing life-sustaining treatment shall be treated as valid and applicable to a treatment and does not have to satisfy the requirements mentioned in paragraph (3) if the conditions in paragraph (2) are met.

(2) The conditions that must be met are that—

- (a) a person providing health care for a person (“P”) reasonably believes that –
 - (i) P has made the advance decision refusing life-sustaining treatment before 1 October 2007, and
 - (ii) P has lacked the capacity to comply with the provisions mentioned in paragraph (3) since 1 October 2007;
- (b) the advance decision is in writing;
- (c) P has not—
 - (i) withdrawn the decision at a time when he had capacity to do so, or
 - (ii) done anything else clearly inconsistent with the advance decision remaining his fixed decision;
- (d) P does not have the capacity to give or refuse consent to the treatment in question at the material time;
- (e) the treatment in question is the treatment specified in the advance decision;
- (f) any circumstances specified in the advance decision are present; and
- (g) there are no reasonable grounds for believing that circumstances exist which P did not anticipate at the time of the advance decision and which would have affected his decision had he anticipated them.

(3) The requirements that do not have to be satisfied are as follows—

- (a) the requirement for the decision to be verified by a statement by P to the effect that the advance decision is to apply to that treatment even if life is at risk (section 25(5)(a) of the Act); and
- (b) the requirement for a signed and witnessed advance decision (section 25(6)(b) to (d) of the Act).

(4) In this article, “advance decision” has the meaning given in section 24(1) of the Act.

Minor and consequential amendments

6. Schedule 1 contains minor and consequential amendments.

(1) Having been appointed to that office in accordance with section 89(1) of, and Schedule 2 to, the Supreme Court Act 1981 (c.54).

Signed by authority of the Lord Chancellor

22nd June 2007

Catherine Ashton
Parliamentary Under-Secretary of State
Ministry of Justice