

## SCHEDULE 1

### MINOR AND CONSEQUENTIAL AMENDMENTS

#### ***Non-contentious Probate Rules 1987***

**13.**—(1) Rule 31 (grant to attorneys) and 35 (grants in case of mental incapacity) of the Non-contentious Probate Rules 1987(1) are amended in accordance with this paragraph.

(2) For rule 31(3) substitute—

“(3) Where the donor referred to in paragraph (1) above lacks capacity within the meaning of the Mental Capacity Act 2005 (c.9) and the attorney is acting under an enduring power of attorney or lasting power of attorney, the application shall be made in accordance with rule 35.”

(3) For rule 35, in the title, for the words “mental incapacity” substitute “lack of mental capacity”.

(4) In rule 35(1), for the words “incapable person” substitute “person who lacks capacity within the meaning of the Mental Capacity Act 2005”.

(5) In rule 35(2)—

(a) for the words “is by reason of mental incapacity incapable of managing”, substitute “lacks capacity within the meaning of the Mental Capacity Act 2005 to manage”;

(b) for each reference to an incapable person substitute a reference to a person who lacks capacity within the meaning of the Mental Capacity Act 2005; and

(c) at the end of sub-paragraph (b), insert “or lasting power of attorney”.

(6) In rule 35(4), for the words “incapable person”, substitute “person who lacks capacity within the meaning of the Mental Capacity Act 2005”.

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(1) S.I. 1987/2024, amended by S.I. 1991/1876, S.I. 1991/1876 and S.I. 1998/1903; there are other amending instruments but none are relevant.