

2017 No. 187 (L. 3)

MENTAL CAPACITY, ENGLAND AND WALES

The Court of Protection (Amendment) Rules 2017

Made - - - - - *20th February 2017*

Laid before Parliament *23rd February 2017*

Coming into force - - - *6th April 2017*

The President of the Family Division (the judicial office holder nominated by the Lord Chief Justice), being President of the Court of Protection, makes the following Rules in exercise of the powers conferred by section 51 of the Mental Capacity Act 2005(a), and in accordance with Part 1 of Schedule 1 to the Constitutional Reform Act 2005(b):

Citation, commencement and interpretation

1. These Rules may be cited as the Court of Protection (Amendment) Rules 2017.
2. These Rules come into force on 6th April 2017.
3. In these Rules, a reference to a Part or rule by number alone means the Part or rule so numbered in the Court of Protection Rules 2007(c).

Amendments to the Court of Protection Rules 2007

4. The Court of Protection Rules 2007 are amended in accordance with rules 5 to 7 of these Rules.

Amendment to rule 6

5. In rule 6 (interpretation), after the definition of “child” insert—
 ““civil restraint order” means an order restraining a party—
 (a) from making any further applications in current proceedings (a limited civil restraint order);
 (b) from making certain applications in the Court of Protection (an extended civil restraint order); or
 (c) from making any application in the Court of Protection (a general civil restraint order).”

(a) 2005 c. 9. Section 51 was amended by S.I. 2006/1016, article 2, Schedule 1 paragraphs 30 and 34.

(b) 2005 c. 4.

(c) S.I. 2007/1744, to which there are relevant amendments in S.I. 2009/582, S.I. 2009/3348, S.I. 2011/2753 and S.I. 2015/548.

New rule after rule 202

6. After rule 202, insert—

“Power of the court to make civil restraint orders

203.—(1) If the court, whether or not on its own initiative, dismisses an application (including an application for permission) and considers that the application is totally without merit—

- (a) the court’s order must record that fact; and
- (b) the court must at the same time consider whether it is appropriate to make a civil restraint order.

(2) Practice Direction 23C sets out—

- (a) the circumstances in which the court has the power to make a civil restraint order against a party to proceedings;
- (b) the procedure where a party applies for a civil restraint order against another party; and
- (c) the consequences of the court making a civil restraint order.”.

New Part after Part 23

7. After Part 23, insert Part 24 as set out in the Schedule to these Rules.

Sir James Munby, P
President of the Family Division

I allow these Rules
Signed by authority of the Lord Chancellor

Phillip Lee
Parliamentary Under Secretary of State
Ministry of Justice

20th February 2017

SCHEDULE

Rule 7

“PART 24

INTERNATIONAL PROTECTION OF ADULTS

Applications in connection with Schedule 3 to the Act – general

204.—(1) This Part applies to applications made in connection with Schedule 3 to the Act.

(2) A practice direction may make additional or supplementary provision in respect of any of the matters in this Part.

Interpretation

205.—(1) Unless otherwise provided in a practice direction made under rule 204(2), and subject to paragraph (2), an expression which appears both in this Part and in Schedule 3 to the Act is to be construed in accordance with Schedule 3 to the Act, including, where required by paragraph 2(4) of Schedule 3, construing it in accordance with the Convention.

(2) Notwithstanding the provisions of paragraph 13(6) of Schedule 3 to the Act, “lasting power” does not include—

- (a) a lasting power of attorney within the meaning of section 9 of the Act; or
- (b) an enduring power of attorney within the meaning of Schedule 4 to the Act.

(3) In this Part, “Schedule 3 application” means an application made under this Part (whether or not additional declarations or orders under sections 15 and 16 of the Act are sought as part of such application).

Application of these Rules in relation to Schedule 3 applications

206.—(1) These Rules and accompanying practice directions apply in relation to Schedule 3 applications as if for “P” there were substituted “the adult”.

(2) For the purposes of rule 3A(4) and Part 17, the question of whether the adult has capacity to conduct proceedings in relation to a Schedule 3 application is to be determined in accordance with Part 1 of the Act.

(3) The permission of the court is not required for a Schedule 3 application.

Applications for recognition and enforcement

207.—(1) An application for a declaration under paragraph 20 (recognition) or paragraph 22 (enforcement) of Schedule 3 to the Act is to be made in accordance with Part 9 and any practice direction made under rule 204(2).

(2) Without prejudice to its powers under Parts 6 (service) and 7 (notice), the court may dispense with service and notice where it thinks just to do so, having regard in particular to—

- (a) whether the adult or (as the case may be) any respondent to the application is within the jurisdiction; and
- (b) the need for applications for declarations of enforceability to be determined rapidly.

Applications in relation to lasting powers – disapplication or modification

208. An application under paragraph 14(1) of Schedule 3 to the Act for the court to disapply or modify a lasting power is to be made in accordance with Part 9 and any practice direction made under rule 204(2).

Applications in relation to lasting powers – declaration as to authority of donee of lasting power

209. An application for a declaration under section 15(1)(c) of the Act that a donee of a lasting power is acting lawfully when exercising authority under that lasting power is to be made in accordance with Part 9 and any practice direction made under rule 204(2).”

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Court of Protection Rules 2007 in two respects.

First, they insert provision for the making by the Court of Protection of civil restraint orders (a civil restraint order being an order against a person who has brought proceedings which are totally without merit from bringing further proceedings without the court's permission).

Second, they insert a new Part making provision for applications in relation to international protection of adults pursuant to Schedule 3 of the Mental Capacity Act 2005.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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