STATUTORY INSTRUMENTS

2015 No. 548 (L. 6)

MENTAL CAPACITY, ENGLAND AND WALES

The Court of Protection (Amendment) Rules 2015

Made - - - -	*4th March 2015*
Laid before Parliament	*9th March 2015*
Coming into force in accordance with rule 2	

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 sections 50(2), 51, 53(2) and (4), 55, 56 and 65(1) of the Mental Capacity Act 2005(**1**), and in accordance with Part 1 of Schedule 1 to the Constitutional Reform Act 2005(**2**):

Citation, commencement and interpretation

1. These Rules may be cited as the Court of Protection (Amendment) Rules 2015.

2. These Rules come into force as follows—

(a) rules 1 to 4 and 8(e), 41, 45, 54, 55, 57 to 64 and 66(2) of these Rules come into force on 6th April 2015;

(b) rules 5 to 7, 8(a) to (d), 9 to 40, 42 to 44, 46 to 53, 56, 65 and 66(1) and (3) to (7) of, and the Schedule to, these Rules come into force on 1st July 2015.

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(**3**).

Amendments to the Court of Protection Rules 2007

4. The Court of Protection Rules 2007 are amended in accordance with rules 5 to 65 of these Rules.

5. After rule 3, insert—

(**1**) 2005 c. 9. Section 51 was amended by S.I. 2006/1016, article 2, Schedule 1 paragraphs 30 and 34. Section 53 was amended by section 62 of the Criminal Justice and Courts Act 2015 (c. 2). Section 65(1) was amended by S.I. 2006/1016, article 2, Schedule 1 paragraphs 30 and 37(1) and (2).

(**2**) 2005 c. 4.

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

"**Participation of P**

3A.—(1) The court shall in each case, on its own initiative or on the application of any person, consider whether it should make one or more of the directions in paragraph (2), having regard to—

(a) the nature and extent of the information before the court;

(b) the issues raised in the case;

(c) whether a matter is contentious; and

(d) whether P has been notified in accordance with the provisions of Part 7 and what, if anything, P has said or done in response to such notification.

(2) The directions are that—

(a) P should be joined as a party;

(b) P's participation should be secured by the appointment of an accredited legal representative to represent P in the proceedings and to discharge such other functions as the court may direct;

(c) P's participation should be secured by the appointment of a representative whose function shall be to provide the court with information as to the matters set out in section 4(6) of the Act and to discharge such other functions as the court may direct;

(d) P should have the opportunity to address (directly or indirectly) the judge determining the application and, if so directed, the circumstances in which that should occur;

(e) P's interests and position can properly be secured without any direction under sub-paragraphs (a) to (d) being made or by the making of an alternative direction meeting the overriding objective.

(3) Any appointment or directions made pursuant to paragraph (2)(b) to (e) may be made for such period or periods as the court thinks fit.

(4) Unless P has capacity to conduct the proceedings, an order joining P as a party shall only take effect—

(a) on the appointment of a litigation friend on P's behalf; or

(b) if the court so directs, on or after the appointment of an accredited legal representative.

(5) If the court has directed that P should be joined as a party but such joinder does not occur because no litigation friend or accredited legal representative is appointed, the court shall record in a judgment or order—

(a) the fact that no such appointment was made; and

(b) the reasons given for that appointment not being made.

(6) A practice direction may make additional or supplementary provision in respect of any of the matters set out in this rule.

(The appointment of litigation friends, accredited legal representatives and representatives under paragraph (2)(c) is dealt with under Part 17.)

("Accredited legal representative" is defined in rule 6.)".

6. For rule 4 substitute—

"**The duty of the parties**

4.—(1) The parties are required to help the court to further the overriding objective.

(2) Without prejudice to the generality of paragraph (1), each party is required to—

(a) co-operate with the other parties and with the court in identifying and narrowing the issues that need to be determined by the court, and the timetable for that determination;

(b) adhere to the timetable set by these Rules and by the court;

(c) comply with all directions and orders of the court;

(d) be full and frank in the disclosure of information and evidence to the court (including any disclosure ordered under Part 16);

(e) co-operate with the other parties in all aspects of the conduct of the proceedings, including in the preparation of bundles.

(3) If the court determines that any party has failed without reasonable excuse to satisfy the requirements of this rule, it may under rule 159 depart from the general rules about costs in so far as they apply to that party.

(Rule 133(2) deals with the requirements of general disclosure.)".

7. In rule 5(2)—

(a) at the end of sub-paragraph (j), omit "and";

(b) at the end of sub-paragraph (k), substitute a semi-colon for the full stop;

(c) after sub-paragraph (k) insert—

"(l) considering whether any hearing should be held in public; and

(m) considering whether any document relating to proceedings should be a public document and, if so, whether and to what extent it should be redacted.

(Rules 91 to 93 make provision about the court's powers to authorise publication of information about proceedings and to order that a hearing be held in public.)".

8. In rule 6—

(a) after the definition of "the Act" insert—

""accredited legal representative" means a legal representative authorised pursuant to a scheme of accreditation approved by the President to represent persons meeting the definition of "P" in this rule in proceedings before the court;";

(b) after the definition of "filing" insert—

""hearing" includes a hearing conducted by telephone, video link, or any other method permitted or directed by the court;";

(c) omit the definition of "permission form";

(d) after the definition of "protected party" insert—

""representative" means a person appointed under rule 3A(2)(c), except where the context otherwise requires;"; and

(e) after the definition of "Senior Judge" insert—

""Tier 1 Judge" means any judge nominated to act as a judge of the Court of Protection under section 46 of the Act who is neither a Tier 2 Judge nor a Tier 3 Judge;

"Tier 2 Judge" means—

(a) the Senior Judge; and

(b) such other judges nominated to act as a judge of the Court of Protection under section 46 of the Act as may be set out in the relevant practice direction;

"Tier 3 Judge" means—

(a) the President;

(b) the Vice-President; and

(c) such other judges nominated to act as a judge of the Court of Protection under section 46 of the Act as may be set out in the relevant practice direction;".

9. For rule 9 substitute—

"**Application of Civil Procedure Rules and Family Procedure Rules**

9.—(1) In any case not expressly provided for by these Rules or the practice directions made under them, the court may apply either the Civil Procedure Rules 1998(**4**) or the Family Procedure Rules 2010(**5**) (including in either case the practice directions made under them) with any necessary modifications, in so far as is necessary to further the overriding objective.

(2) A reference in these Rules to the Civil Procedure Rules 1998 or to the Family Procedure Rules 2010 is to the version of those rules in force at the date specified for the purpose of that reference in the relevant practice direction.

Pilot schemes

9A.—(1) Practice directions may make provision for the operation of pilot schemes for assessing the use of new practices and procedures in connection with proceedings—

(a) for specified periods; and

(b) in relation to proceedings—

(i) in specified parts of the country; or

(ii) relating to specified types of application.

(2) Practice directions may modify or disapply any provision of these Rules during the operation of such pilot schemes.".

10. In rule 10(1), omit sub-paragraph (a).

11. In rule 11—

(a) in paragraph (1)(a), for "a permission form, an application form or an application notice" substitute "an application form, an application notice, an appellant's notice or a respondent's notice";

(b) in paragraph (3)—

(i) omit sub-paragraph (a); and "or" at the end of sub-paragraph (b)

(ii) for the comma at the end of sub-paragraph (c) substitute ; or and

(iii) after sub-paragraph (c) insert—

"(d) an appellant's notice or a respondent's notice";

(**4**) S.I. 1998/3132 (as amended).
(**5**) S.I. 2010/2955 (as amended).

(c) in paragraph (4)(a), for "a permission form, an application form or an application notice" substitute "an application form, an application notice, an appellant's notice or a respondent's notice"; and

(d) in paragraph (6), for "a permission form, an application form or an application notice" substitute "an application form, an application notice, an appellant's notice or a respondent's notice".

12. After rule 11 insert—

"**Position statement not required to be verified by statement of truth**

11A. Nothing in these Rules requires a position statement to be verified by a statement of truth."

13. In rule 12—

(a) for "a permission form, application form or an application notice" substitute "an application form, an application notice, an appellant's notice or a respondent's notice"; and

(b) after "the applicant" insert "(or respondent as the case may be)".

14. Omit rule 25(7).

15. In rule 33—

(a) in paragraph (1), for "other person duly authorised to conduct proceedings" substitute "as directed by the court";

(b) in paragraph (5), for "147(2) (procedure where appointment of a litigation friend comes to an end – for P)" substitute "144(1)(b) (power of court to bring to an end the appointment of a litigation friend)"; and

(c) at the end of the rule insert—

"(Rule 41A requires P to be notified where a direction has been made under rule 3A, and of the appointment of a litigation friend, accredited legal representative or representative.)".

16. For rule 39 substitute—

"**Scope and interpretation**

39.—(1) This rule and rules 39A to 39H make provision about—

(a) service of application forms and other documents out of the jurisdiction; and

(b) the procedure for service.

(2) In this rule and rules 39A to 39H—

"application form" includes an application notice;

"Commonwealth State" means a State listed in Schedule 3 to the British Nationality Act 1981(**6**);

"jurisdiction" means, unless the context otherwise requires, England and Wales and any part of the territorial waters of the United Kingdom adjoining England and Wales;

"Member State" means a Member State of the European Union;

(**6**) 1981 c.61. There are relevant amendments in: S.I. 1983/882; S.I. 1983/1699; the Brunei and Maldives Act 1985 (c.3); section 1, Schedule; S.I. 1989/1331; S.I. 1998/3161; S.I. 1990/1502; S.I. 1994/1634; S.I. 2010/246.