



**Isle of Man**

*Ellan Vannin*

**AT 1 of 2023**

**CAPACITY ACT 2023**





## CAPACITY ACT 2023

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*Ellan Vannin*

## CAPACITY ACT 2023

*Signed in Tynwald:* 25 April 2023  
*Received Royal Assent:* 25 April 2023  
*Announced to Tynwald:* 25 April 2023

**AN ACT** to make provision relating to the property, financial affairs and health and welfare of persons who lack capacity and for establishing the principles to be applied for such purposes, for lasting powers of attorney, and for connected purposes.

**BE IT ENACTED** by the King's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

### **1 Short title**

The short title of this Act is the Capacity Act 2023.

### **2 Commencement**

- (1) This Act comes into operation on such day or days as the Department of Health and Social Care by order appoints.

*Tynwald procedure – Laying only.*

- (2) An order under subsection (1) may provide for a provision of this Act which comes into force before another provision of this Act has come into force to have effect, until the other provision has come into force, with specified modifications.
- (3) An order under subsection (1) may include such supplemental, incidental, consequential and transitional provisions as appear to the Department to be necessary or expedient.

## PART 2 - PERSONS WHO LACK CAPACITY

### DIVISION 1: PRINCIPLES AND PRELIMINARY

#### 3 The principles

[P2005/9/1]

- (1) The following principles apply for the purposes of this Act.
- (2) A person must be assumed to have capacity unless it is established that person lacks capacity.
- (3) A person is not to be assumed to lack capacity because of that person's, —
  - (a) age;
  - (b) appearance;
  - (c) condition (whether permanent or temporary);
  - (d) behaviour (or an aspect of that behaviour).
- (4) A person is not to be treated as unable to make a decision unless all practicable steps to help that person to do so have been taken without success.
- (5) A person is not to be treated as unable to make a decision merely because that person makes or may make an unwise decision.
- (6) An act done under this Act for or on behalf of a person who lacks capacity must be done in that person's best interests.
- (7) A decision made under this Act for or on behalf of a person who lacks capacity must be made in that person's best interests.
- (8) Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

#### 4 Lack of capacity

[P2005/9/2]

- (1) For the purposes of this Act, a person lacks capacity in relation to a matter if at the material time that person is unable to make a decision for themselves in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.
- (2) The impairment or disturbance may be permanent or temporary.
- (3) In proceedings under this Act or any other enactment, any question whether a person lacks capacity within the meaning of this Act must be decided on the balance of probabilities.



- (4) No power which a person may exercise under this Act in relation to any other person who lacks, or is reasonably thought to lack capacity, is exercisable in relation to such a person under the age of 16.
- (5) Subsection (4) is subject to section 25(3).

## 5 Inability to make decisions

[P2005/9/3]

- (1) For the purposes of section 4, a person is unable to make a decision for themselves if that person is unable to, —
  - (a) understand the information relevant to the decision,
  - (b) retain that information for an appropriate period,
  - (c) use or weigh that information as part of the process of making the decision, or
  - (d) communicate their decision (whether by talking, using sign language or any other means).
- (2) A person is not to be regarded as unable to understand the information relevant to a decision if they are able to understand an explanation of it given to them in a way that is appropriate to their circumstances (using simple language, visual aids or any other means).
- (3) The information relevant to a decision includes information about the reasonably foreseeable consequences of —
  - (a) deciding one way or another, or
  - (b) failing to make the decision.
- (4) A period of time is appropriate (regardless of its length) if it is —
  - (a) of sufficient duration to enable the person to make a decision,
  - (b) apt in the circumstances in which it is given, and
  - (c) apt for the purpose for which it is given having regard to whether that purpose is for a single event or state of affairs or a continuing event or state of affairs.
- (5) The Department may make regulations as to the steps to be taken to assist a person to make a decision for themselves.

## 6 Best interests

[P2005/9/4]

- (1) This section applies where a person (“D”) is determining, for the purposes of this Act, what is in a person’s (“P”) best interests.
- (2) In making the determination D must not make it merely on the basis of —
  - (a) P’s age or appearance, or
  - (b) a condition of P’s (whether permanent or temporary), or an aspect of P’s behaviour.

- (3) D must consider the circumstances of which D is aware and which it would be reasonable to regard as relevant.
- (4) D must, so far as reasonably practicable, permit and encourage P to participate, or to improve P's ability to participate, as fully as possible in any act done for P and any decision affecting P.
- (5) D must consider whether it is likely that P will at some time have capacity in relation to the matter in question, and if it appears likely that P will, when that is likely to be.
- (6) Where D considers that P is likely to have capacity in the future in relation to the matter in question D must, if D considers it in P's best interests to do so, postpone the making of the determination in relation to that matter.
- (7) In making a determination, D must if it is practicable and appropriate to do so, consult —
  - (a) anyone named by P as someone to be consulted on the matter or matters in question or on matters of that kind,
  - (b) anyone engaged in caring for P or interested in P's welfare,
  - (c) any donee of a power of attorney granted by P, and
  - (d) any delegate appointed for P by the court,as to what would be in P's best interests.
- (8) Where any person mentioned in subsection (7) has been consulted, D must take into account their views (if any) on —
  - (a) what would be in P's best interests, and
  - (b) the matters mentioned in subsection (9)(a) to (d).
- (9) D must consider, so far as is reasonably ascertainable —
  - (a) P's past and present wishes and feelings whether expressed orally, in writing or by behaviour,
  - (b) any relevant written statement made by P when P had capacity,
  - (c) the beliefs and values that would be likely to influence P's decision if P had capacity, and
  - (d) the other factors that P would be likely to consider if P were able to do so including those which were not present when P made an expression of P's wishes in relation to a particular matter.
- (10) Where ascertainable, the matters referred to in subsection (9) are to be the paramount consideration of D when determining what is in P's best interests.
- (11) Where the determination relates to life-sustaining treatment, D —
  - (a) must not, in considering whether the treatment is in the best interests of P, be motivated by a desire to bring about P's death;

- (b) is not under an obligation to provide, or continue to provide, life – sustaining treatment which D does not consider to be in P’s best interests.
- (12) The duties imposed by this section also apply in relation to the exercise of any powers which are exercisable under a lasting power of attorney or are exercisable by a person under this Act where that person reasonably believes that another person lacks capacity.
- (13) In the case of an act done, or a decision made, by a person other than the court, there is sufficient compliance with this section if (having complied with the requirements of this section) that person reasonably believes that what that person does or decides is in the best interests of the person concerned.

## 7 Meaning of “C” and “P”: sections 8 to 10

In sections 8 to 10, “C” means a person who does an act in connection with the care or treatment of another person (“P”) and C includes a person who instructs another person to act in connection with the care or treatment of P.

## 8 Acts in connection with care or treatment

[P2005/9/5]

- (1) If, —
  - (a) before doing such an act in connection with the care and treatment of P, C takes reasonable steps to establish whether P lacks capacity in relation to the matter in question, and
  - (b) when doing the act, C reasonably believes that P lacks capacity in relation to the matter and that it will be in P’s best interests for the act to be done,the act is one to which this section applies.
- (2) C does not incur any liability in relation to the act that C would not have incurred if P had had capacity to consent in relation to it and had done so.
- (3) Nothing in this section excludes C’s, —
  - (a) civil liability for loss or damage, or
  - (b) criminal liability,resulting from C’s negligence in doing the act.
- (4) Nothing in this section affects the operation of sections 35 to 37 or excuses C from any liability resulting from C’s failure to follow a valid and applicable advance decision to refuse treatment.

## 9 Section 8: limitations

[P2005/9/6]

- (1) If C does an act that is intended to restrain P, section 8 does not apply to that act unless, —
  - (a) C reasonably believes that it is necessary to do the act in order to prevent harm to P, and
  - (b) the act is a proportionate response to the likelihood of P suffering harm (whether physical, psychological, financial or other harm) and the seriousness of that harm.
- (2) For the purposes of this section, C restrains P if C, —
  - (a) uses, or threatens to use, force to secure the doing of an act which P resists, or
  - (b) restricts P's liberty of movement, whether or not P resists.
- (3) Section 8 does not authorise a person to do an act which conflicts with a decision made, within the scope of their authority and in accordance with this Part, by, —
  - (a) a donee of a power of attorney granted by P, or
  - (b) a delegate appointed for P by the court.
- (4) Subsection (5) applies where a decision is sought from the court as to whether a decision by a donee or delegate referred to in subsection (3) prevents the provision of life sustaining treatment or might cause a serious deterioration in P's condition.
- (5) Where this subsection applies, nothing in subsection (3) stops a person, —
  - (a) providing life-sustaining treatment, or
  - (b) doing any act which that person reasonably believes to be necessary to prevent a serious deterioration in P's condition.

## 10 Expenditure

[P2005/9/8]

- (1) If an act to which section 8 applies involves expenditure, it is lawful for C to do the following, —
  - (a) to pledge P's credit for the purpose of the expenditure;
  - (b) to apply money in P's possession for meeting the expenditure.
- (2) If the expenditure is borne for P by C, it is lawful for C to be reimbursed out of money in P's possession or to be otherwise indemnified by P.
- (3) Subsections (1) and (2) do not affect any power under which (apart from those subsections) a person, —
  - (a) has lawful control of P's money or other property, and
  - (b) has power to spend money for P's benefit.

**11 Payment for necessary goods and services**

[P2005/9/7]

- (1) If necessary goods or services are supplied to a person who lacks capacity to contract for the supply, that person must pay a reasonable price for them.
- (2) “Necessary” means suitable to a person’s condition in life and to that person’s actual requirements at the time when the goods or services are supplied.
- (3) “Services” includes the provision of accommodation.

## DIVISION 2: LASTING POWERS OF ATTORNEY

**12 Lasting powers of attorney**

[P2005/9/9]

- (1) A lasting power of attorney is a power of attorney under which an individual donor confers on one or more donees authority to make decisions about either or both of the following, —
  - (a) the donor’s health and welfare or specified matters concerning the donor’s health and welfare;
  - (b) the donor’s property and financial affairs or specified matters concerning the donor’s property and financial affairs,and which includes authority to make such decisions in circumstances where the donor no longer has capacity.
- (2) A lasting power of attorney is not created unless the following are satisfied —
  - (a) section 13 is complied with,
  - (b) an instrument conferring authority of the kind mentioned in subsection (1) is made and registered in accordance with Schedule 1, and
  - (c) at the time when the donor executes the instrument, the donor has reached the age of 18 and has capacity to execute it.
- (3) An instrument which purports to create a lasting power of attorney but which does not comply with this section, section 13 or Schedule 1 confers no authority.
- (4) The authority conferred by a lasting power of attorney is subject to —
  - (a) the provisions of this Act and, in particular, sections 3 and 6, and
  - (b) any conditions or restrictions specified in the instrument.

### 13 Appointment of donees

[P2005/9/10]

- (1) A donee of a lasting power of attorney which relates only to the donor's health and welfare must be a named individual who has reached the age of 18.
- (2) A donee of a lasting power of attorney which relates only to the donor's property and financial affairs, must be a named individual who has reached the age of 18 or a trust corporation.
- (3) An individual who is bankrupt may not be appointed a donee of a lasting power of attorney in relation to the donor's property and financial affairs.
- (4) Subsections (5) to (9) apply in relation to an instrument under which two or more persons are appointed to act as donees of a lasting power of attorney.
- (5) The instrument may appoint them to act —
  - (a) jointly,
  - (b) jointly and severally, or
  - (c) jointly in respect of some matters and jointly and severally in respect of others.
- (6) To the extent to which it does not specify whether they are to act jointly or jointly and severally, the instrument is to be assumed to appoint the donees to act jointly.
- (7) If they are to act jointly, a failure, as respects one of them, to comply with the requirements of subsections (1) to (3) or Part 1 or 2 of Schedule 1 prevents a lasting power of attorney from being created.
- (8) If they are to act jointly and severally, a failure, as respects one of them, to comply with the requirements of subsections (1) to (3) or Part 1 or 2 of Schedule 1 —
  - (a) prevents the appointment taking effect in that person's case, but
  - (b) does not prevent a lasting power of attorney from being created in the case of the other or others.
- (9) An instrument used to create a lasting power of attorney, —
  - (a) cannot give the donee (or, if more than one, any of them) power to appoint a substitute or successor, but
  - (b) may itself appoint a person to replace the donee (or, if more than one, any of them) on the occurrence of an event mentioned in section 16(4) which has the effect of terminating the donee's appointment.
- (10) The Department may by regulations specify who may not be appointed as a donee of a lasting power of attorney.

## 14 Lasting powers of attorney: restrictions

[P2005/9/11]

- (1) A lasting power of attorney does not authorise the donee (or, if more than one, any of them) to do an act that is intended to restrain the donor, unless three conditions are satisfied.
- (2) The first condition is that the donor lacks, or the donee reasonably believes that the donor lacks, capacity in relation to the matter in question.
- (3) The second condition is that the donee reasonably believes that it is necessary to do the act in order to prevent harm to the donor.
- (4) The third condition is that the act is a proportionate response to the likelihood of the donor suffering harm (whether physical, psychological, financial or other harm) and the seriousness of that harm.
- (5) For the purposes of this section, the donee restrains the donor if the donee, —
  - (a) uses, or threatens to use, force to secure the doing of an act which the donor resists, or
  - (b) restricts the donor's liberty of movement, whether or not the donor resists,or if the donee authorises another person to do any of those things.
- (6) Where a lasting power of attorney authorises the donee (or, if more than one, any of them) to make decisions about the donor's health and welfare, the authority, —
  - (a) does not extend to making such decisions in circumstances other than those where the donor lacks, or the donee reasonably believes that the donor lacks, capacity,
  - (b) is subject to sections 34 to 37, and
  - (c) extends to giving or refusing consent to the carrying out or continuation of a treatment by a person providing health care for the donor.
- (7) Subsection (6)(c)—
  - (a) does not authorise the giving or refusing of consent to the carrying out or continuation of life-sustaining treatment, unless the instrument contains express provision to that effect, and
  - (b) is subject to any conditions or restrictions in the instrument.

## 15 Gifts

[P2005/9/12]

- (1) Where a lasting power of attorney confers authority to make decisions about the donor's property and financial affairs, it does not authorise a

donee (or, if more than one, any of them) to dispose of the donor's property by making gifts except to the extent permitted by subsection (2).

- (2) The donee may, if satisfied that it is in the donor's best interests to do so, make gifts, —
- (a) on customary occasions to persons (including the donee) who are related to or connected with the donor, or
  - (b) to any charity to whom the donor made or might have been expected to make gifts,

if the value of each such gift is not unreasonable having regard to all the circumstances and, in particular, the size of the donor's estate.

- (3) "Customary occasion" means, —
- (a) the occasion or anniversary of a birth, a marriage or the formation of a civil partnership, or
  - (b) any other occasion on which presents are customarily given within families or among friends or associates (taking into account the donor's past and present wishes and feelings).
- (4) Subsection (2) is subject to any conditions or restrictions in the instrument.

## 16 Revocation of lasting powers of attorney etc.

[P2005/9/13]

- (1) This section applies if, —
- (a) the donor has executed an instrument ("the instrument") with a view to creating a lasting power of attorney but which has not yet been registered, or
  - (b) a lasting power of attorney ("the power") is registered as having been conferred by the donor.
- (2) The donor may, at any time when the donor has capacity to do so, revoke, —
- (a) the instrument;
  - (b) the power.
- (3) Where the instrument or the power relates to the donor's property and financial affairs, the donor's bankruptcy revokes that instrument or that power (as the case may be).
- (4) A donee's appointment is terminated upon the occurrence of any of the following events —
- (a) the disclaimer of the appointment by the donee in accordance with such requirements as may be prescribed for the purposes of this section in regulations made by the Department;
  - (b) the death of the donee;



- (c) the bankruptcy of the donee where the power is in respect of the donor's property and financial affairs;
  - (d) where the donee is a trust corporation, its winding-up or dissolution;
  - (e) subject to subsection (7), the dissolution or annulment of a marriage or civil partnership between the donor and the donee;
  - (f) the lack of capacity of the donee which is more than temporary.
- (5) Upon the occurrence of an event referred to in subsection (4) the instrument conferring the donee's power to act for the donor is revoked unless subsection (6) applies.
- (6) This subsection applies where —
- (a) the donee is replaced under the terms of the instrument;
  - (b) the donee is one of two or more persons appointed to act as donees jointly and severally in respect of any matter and, after the event, there is at least one remaining donee.
- (7) The dissolution or annulment of a marriage or civil partnership between the donor and the donee does not terminate the appointment of a donee, or revoke the power, if the instrument provides that it does not do so.

## **17 Protection of donee and others if no power created or power revoked**

[P2005/9/14]

- (1) Subsections (2) and (3) apply if, —
- (a) an instrument has been registered under Schedule 1 as a lasting power of attorney, but
  - (b) a lasting power of attorney was not created,
- whether or not the registration has been cancelled at the time of the act or transaction in question.
- (2) A donee who acts in purported exercise of the power does not incur any liability (to the donor or any other person) because of the non-existence of the power unless at the time of acting the donee, —
- (a) knows that a lasting power of attorney was not created, or
  - (b) is aware of circumstances which, if a lasting power of attorney had been created, would have terminated the donee's authority to act as a donee.
- (3) Any transaction between the donee and another person is, in favour of that person, as valid as if the power had been in existence, unless at the time of the transaction that person has knowledge of a matter referred to in subsection (2)(a) or (b).
- (4) If the interest of a purchaser depends on whether a transaction between the donee and the other person was valid by virtue of subsection (3), it is

conclusively presumed in favour of the purchaser that the transaction was valid if, —

- (a) the transaction was completed within 12 months of the date on which the instrument was registered, or
  - (b) the other person makes a statutory declaration, before or within 3 months after the completion of the purchase, that they had no reason at the time of the transaction to doubt that the donee had authority to dispose of the property which was the subject of the transaction.
- (5) Where two or more donees are appointed under a lasting power of attorney, this section applies as if references to the donee were to all or any of them.

## **18 Powers of court: validity of lasting powers of attorney**

[P2005/9/22]

- (1) This section and section 19 apply if, —
  - (a) a person (“P”) has executed or purported to execute (but not registered) an instrument with a view to creating a lasting power of attorney, or
  - (b) an instrument has been registered as a lasting power of attorney conferred by P.
- (2) The court may determine any question relating to, —
  - (a) whether one or more of the requirements for the creation of a lasting power of attorney have been met;
  - (b) whether the power has been revoked or has otherwise come to an end.
- (3) Where the court is satisfied of any of the matters referred to in subsection (4), it may, —
  - (a) direct that an instrument purporting to create the lasting power of attorney is not to be registered, or
  - (b) if P lacks capacity to do so, revoke the instrument or power in relation to a donee (or if there is more than one, so far as it relates to any of them).
- (4) Those matters are, —
  - (a) that fraud or undue pressure of any sort was used to induce P to execute an instrument for the purpose of creating a lasting power of attorney;
  - (b) that fraud or undue pressure of any sort was used to induce P to create such a lasting power of attorney;
  - (c) that the donee (or, if more than one, any of them) of a lasting power of attorney has behaved, is behaving, or proposes to behave in a

way that contravenes the donee's authority or is not in P's best interests.

- (5) "Donee" includes an intended donee.

## **19 Powers of court in relation to operation of lasting powers of attorney**

[P2005/9/23]

- (1) The court may determine any question as to the meaning or effect of a lasting power of attorney or an instrument purporting to create one.
- (2) The court may give directions with respect to the decisions which the donee has authority to make but which P lacks capacity to make.
- (3) The court may give any consent or authorisation to act which the donee would have to obtain from P if P had capacity to give it.
- (4) The court may, if P lacks capacity to do so, —
  - (a) give directions to the donee with respect to the rendering by the donee of reports or accounts and the production of records kept by the donee for that purpose;
  - (b) require the donee to supply information or produce documents or things in the donee's possession as donee;
  - (c) give directions with respect to the remuneration or expenses of the donee (whether or not the power makes provision for such matters);
  - (d) relieve the donee wholly or partly from any liability which the donee has or may have incurred on account of a breach of the donee's duties where the donee has acted honestly and reasonably.
- (5) The court may authorise the making of gifts which are not within section 15(2).
- (6) Where two or more donees are appointed under a lasting power of attorney, this section applies as if references to the donee were to all or any of them.

## **20 Register of lasting powers of attorney**

The Chief Registrar has the function of establishing and maintaining a register of lasting powers of attorney.

### **DIVISION 3: GENERAL POWERS OF THE COURT AND APPOINTMENT OF DELEGATES**

## **21 Meaning of "P"**

In this Division, "P" means a person who lacks capacity in relation to a matter or matters concerning their —

- (a) health and welfare;
- (b) property and financial affairs.

## 22 Power of the court to make declarations

[P2005/9/15]

- (1) The court may make declarations as to, —
  - (a) whether a person has or lacks capacity to make a decision specified in the declaration or to make a decision on a matter described in the declaration;
  - (b) the lawfulness or otherwise of any act done, or yet to be done, in relation to that person.
- (2) “Act” includes an omission and a course of conduct.

## 23 Powers to make decisions and appoint delegates: general

- (1) The court may, by order, —
  - (a) make the decision or decisions on P’s behalf in relation to the matter or matters, or
  - (b) appoint a “delegate” to make decisions on P’s behalf in relation to the matter or matters.
- (2) When deciding whether it is in P’s best interests to appoint a delegate, the court must have regard (in addition to the matters mentioned in section 6) to the principles that, —
  - (a) a decision by the court is to be preferred to the appointment of a delegate to make a decision, and
  - (b) the powers conferred on a delegate should be as limited in scope and duration as is reasonably practicable in the circumstances.
- (3) The court may, —
  - (a) make such further orders,
  - (b) give such directions, or
  - (c) confer on a delegate such powers or impose on a delegate such duties,

as it thinks necessary or expedient for giving effect to, or otherwise in connection with, an order or appointment made by it under subsection (1).
- (4) Without limiting section 6, the court may make the order, give the directions or make the appointment on such terms as it considers are in P’s best interests, even though no application is before the court for an order, directions or an appointment on those terms.
- (5) An order of the court may be varied or discharged by a subsequent order.  
This is subject to paragraph 6 of Schedule 2.

- (6) The court may, in particular, revoke the appointment of a delegate or vary the powers conferred on a delegate if it is satisfied that the delegate has behaved, is behaving, or proposes to behave in a way that contravenes the authority conferred on the delegate by the court or is not in P's best interests.
- (7) The powers of the court under this section are subject to the provisions of this Act and, in particular, to sections 3 and 6.

## **24 Section 23 powers: health and welfare**

[P2005/9/17]

- (1) The powers of the court under section 23 as respects P's health and welfare extend in particular to, —
  - (a) deciding where P is to live;
  - (b) deciding what contact, if any, P is to have with any specified person or persons;
  - (c) making an order prohibiting a named person from having contact with P;
  - (d) making an order prohibiting the removal of P from the Island;
  - (e) giving or refusing consent to the carrying out or continuation of a treatment by a person providing health care for P where that is not inconsistent with a valid and applicable advance decision to refuse treatment made by P (see Division 5);
  - (f) giving a direction that a person responsible for P's health care allow a different person to take over that responsibility.
- (2) Subsection (1) is subject to section 27.

## **25 Section 23 powers: property and financial affairs**

[P2005/9/18]

- (1) The powers of the court under section 23 as respects P's property and financial affairs extend in particular to, —
  - (a) the control and management of P's property;
  - (b) the sale, exchange, charging, gift or other disposition of P's property;
  - (c) the acquisition of property in P's name or on P's behalf;
  - (d) the carrying on, on P's behalf, of any profession, trade or business;
  - (e) the taking of a decision which will have the effect of dissolving a partnership of which P is a member;
  - (f) the carrying out of any contract entered into by P;
  - (g) the discharge of P's debts and of any of P's obligations, whether legally enforceable or not;

- (h) the settlement of any of P's property, whether for P's benefit or for the benefit of others;
  - (i) the execution for P of a will but only if P has reached the age of 18;
  - (j) the exercise of any power (including a power to consent) vested in P whether beneficially or as trustee or otherwise;
  - (k) the conduct of legal proceedings in P's name or on P's behalf (whether or not they relate to either, or both, P's health and welfare or P's property and financial affairs).
- (2) Subject to any court rules, the powers referred to in subsection (1)(a) to (c) and (f) may be exercised by the Attorney General but not so as to authorise the sale, exchange, charging or other disposition or dealing with any land of P.
- (3) The powers under section 23 as respects any other matter relating to P's property and financial affairs may be exercised even if P has not reached the age of 16, if the court considers that P will still lack capacity to make decisions in respect of that matter when P reaches 18.
- (4) Subsection (1) is subject to section 27.
- (5) Schedule 2 supplements the provisions of this section.
- (6) The functions of the Attorney General under this Act may be transferred in accordance with the *Government Departments Act 1987* and, for that purpose, Schedule 2 to that Act shall apply as if the Attorney General were a Government Department.

*Tynwald procedure – approval required.*

## 26 Appointment of delegates

- (1) A delegate appointed by the court must be, —
- (a) as respects powers in relation to health and welfare, an individual who has reached the age of 18, or
  - (b) as respects powers in relation to property and financial affairs, an individual who has reached the age of 18 or a trust corporation.
- (2) “Individual” includes the holder for the time being of a specified office or position.
- (3) A person may not be appointed as a delegate without that person's consent.
- (4) The court may appoint two or more delegates to act, —
- (a) jointly,
  - (b) jointly and severally, or
  - (c) jointly in respect of some matters and jointly and severally in respect of others.

- (5) When appointing a delegate or delegates, the court may at the same time appoint one or more other persons to succeed the existing delegate or those delegates, —
  - (a) in such circumstances, or on the happening of such events, as may be specified by the court;
  - (b) for such period as may be so specified.
- (6) A delegate is to be treated as P's agent in relation to anything done or decided by the delegate within the scope of the delegate's appointment and in accordance with this Division.
- (7) The delegate is entitled, —
  - (a) to be reimbursed out of P's property for the delegate's reasonable expenses in discharging the delegate's functions, and
  - (b) if the court so directs when appointing the delegate, to remuneration out of P's property for discharging those functions.
- (8) The court may confer on a delegate powers to, —
  - (a) take possession or control of all or any specified part of P's property;
  - (b) exercise all or any specified powers in respect of that property, including such powers of investment as the court may determine.
- (9) The court may require a delegate to do either or both of the following, —
  - (a) to give the Department such security as the court thinks fit for the due discharge of the delegate's functions;
  - (b) to submit to the Department such reports at such times or at such intervals as the court may direct.

## 27 Restrictions on delegates

- (1) A delegate does not have power to make a decision on behalf of P in relation to a matter if the delegate knows or has reasonable grounds for believing that P has capacity in relation to the matter.
- (2) The authority conferred on a delegate is subject to the provisions of this Act and, in particular, sections 3 and 6.
- (3) Nothing in section 23(3) or 24 permits a delegate to be given power, —
  - (a) to prohibit a named person from having contact with P;
  - (b) to direct a person responsible for P's health care to allow a different person to take over that responsibility.
- (4) A delegate may not be given powers with respect to, —
  - (a) the settlement of any of P's property, whether for P's benefit or for the benefit of others,
  - (b) the execution for P of a will, or

- (c) the exercise of any power (including a power to consent) vested in P whether beneficially or as trustee or otherwise.
- (5) A delegate may not be given power to make a decision on behalf of P which is inconsistent with a decision made, within the scope of a donee's authority and in accordance with this Act, by the donee of a lasting power of attorney granted by P (or, if there is more than one donee, by any of them).
- (6) A delegate may not refuse consent to the carrying out or continuation of life-sustaining treatment in relation to P.
- (7) A delegate may not do an act that is intended to restrain P unless four conditions are satisfied.
- (8) The first condition is that, in doing the act, the delegate is acting within the scope of an authority expressly conferred on the delegate by the court.
- (9) The second condition is that P lacks, or the delegate reasonably believes that P lacks, capacity in relation to the matter in question.
- (10) The third condition is that the delegate reasonably believes that it is necessary to do the act in order to prevent harm to P.
- (11) The fourth condition is that the act is a proportionate response to the likelihood of P's suffering harm (whether physical, psychological, financial or other harm) and the seriousness of that harm.
- (12) For the purposes of this section, a delegate restrains P if —
  - (a) the delegate, —
    - (i) uses, or threatens to use, force to secure the doing of an act which P resists, or
    - (ii) restricts P's liberty of movement, whether or not P resists, or
  - (b) the delegate authorises another person to do any of the things referred to in paragraph (a).

## 28 Register of delegates

- (1) The Department must make regulations in respect of a register of delegates.
- (2) Such regulations must require such a register to be established and maintained by the Chief Registrar.
- (3) Without limiting subsection (1), such regulations may make provision about —
  - (a) searches of the register;
  - (b) applications and applicants for searches;
  - (c) fees in respect of searches;
  - (d) the disclosure of information contained on the register;



- (e) the issue of a certificate of the result of a search and the information which may be contained in such a certificate.
- (4) Before making regulations under this section the Department must consult the Chief Registrar.

#### DIVISION 4: SUPERVISORY FUNCTIONS OF THE DEPARTMENT

### **29 Supervisory functions of the Department**

The Department has the following functions, —

- (a) supervising delegates appointed by the court under this Act;
- (b) monitoring compliance by such delegates with the provisions of this Act and any court order;
- (c) dealing with representations (including complaints) about the way in which such a delegate is exercising their powers;
- (d) receiving reports from such a delegate;
- (e) dealing with representations (including complaints) about the way in which a donee of a lasting power of attorney in respect of a person's health and welfare and property and financial affairs (or both) is exercising their powers;
- (f) receiving reports from such donees;
- (g) receiving security which the court requires a person to give for the discharge of the person's functions;
- (h) reporting to the court on such matters relating to proceedings under this Act as the court requires;
- (i) publishing, in any manner the Department thinks appropriate, any information the Department thinks appropriate about the discharge of the Department's functions.

### **30 General power to institute inquiries**

- (1) The Department may institute an inquiry with regard to a matter or matters referred to in section 29.
- (2) The Department may from time to time institute inquiries with regard to the matters referred to in section 29, either generally or for particular purposes.
- (3) The Department may conduct an inquiry referred to in subsection (1) or (2) or appoint a person to conduct such an inquiry and make a report to it.

### **31 Obtaining evidence etc. for purposes of inquiry**

- (1) In this section "inquiry" means an inquiry under section 30.

- (2) For the purposes of an inquiry, the Department, or a person appointed by the Department to conduct it, may direct any person —
- (a) if a matter in question at the inquiry is one on which the person has or can reasonably obtain information, —
    - (i) to provide accounts and statements in writing with respect to the matter, or to return answers in writing to any questions or inquiries addressed to the person on the matter, and
    - (ii) to verify any such accounts, statements or answers by statutory declaration;
  - (b) to provide copies of documents which are in the custody or under the control of the person and which relate to any matter in question at the inquiry, and to verify any such copies by statutory declaration;
  - (c) to attend at a specified time and place and give evidence or produce any such documents;
  - (d) to attend at a specified time and place for an interview.
- (3) The Department may, at all reasonable times, examine and take copies of any of the following, —
- (a) any health record;
  - (b) any record of, or held by, Manx Care in connection with its functions under the *Manx Care Act 2021*;
  - (c) any record of, or held by, a local authority or Government Department;
  - (d) any record held by a person registered under Part 3 of the *Regulation of Care Act 2013*,

which relates to a person and which the Department considers may be relevant to the inquiry.

### 32 Access to records

The Department, for the purpose of exercising any of its functions under this Act, may at all reasonable times, examine and take copies of records (wherever held)—

- (a) relating to the appointment of receivers under section 103 of the *Mental Health Act 1998*,
- (b) accounts rendered by a receiver under section 109 of that Act, and
- (c) any other documents the Department considers necessary for the effective discharge of those functions.

**33 Regulations under section 29**

- (1) The Department may make regulations in connection with its functions under section 29.
- (2) The regulations may, in particular, provide, —
  - (a) for the giving of security by a delegate appointed by the court;
  - (b) for the enforcement and discharge of such a security;
  - (c) for the making of reports to the Department by, —
    - (i) a delegate appointed by the court;
    - (ii) persons exercising authority under a lasting or enduring power of attorney;
    - (iii) any other person directed by the court to act in, or carry out, a transaction on behalf of a person who lacks capacity;
  - (d) for the charging of fees in respect of the Department's functions under section 29.
- (3) Before making regulations under this section, the Department shall consult the Attorney General, the Deemsters and such other persons as it considers appropriate.

## DIVISION 5: ADVANCE DECISIONS TO REFUSE TREATMENT

**34 Meaning of “A”**

In this Division, “A” means a person who at the time of making an advance decision had capacity to do so and had reached the age of 16.

**35 Advance decisions to refuse treatment: general**

[P2005/9/24]

- (1) “Advance decision” means a decision made by A that if, —
  - (a) at a later time and in such circumstances as A may specify, a specified treatment is proposed to be carried out or continued by a person providing health care for A, and
  - (b) at that time A lacks capacity to consent to the carrying out or continuation of the treatment,the specified treatment is not to be carried out or continued.
- (2) For the purposes of subsection (1)(a), a decision may be regarded as specifying a treatment or circumstances even though expressed in layman's terms.
- (3) A may withdraw or alter an advance decision at any time when A has capacity to do so.

- (4) Any withdrawal (including a partial withdrawal) of an advance decision need not be in writing.
- (5) An alteration of an advance decision need not be in writing unless section 36(3) applies in relation to the decision resulting from that alteration.

### **36 Validity and applicability of advance decisions**

[P2005/9/25]

- (1) An advance decision does not affect the liability which a person may incur for carrying out or continuing a treatment in relation to A unless the decision is at the material time valid and applicable to the treatment.
- (2) An advance decision is not valid if A has —
  - (a) withdrawn the decision at a time when A had capacity to do so,
  - (b) conferred authority on the donee (or, if more than one, any of them) of a lasting power of attorney created after the advance decision was made, to give or refuse consent to the treatment to which the advance decision relates, or
  - (c) acted (whether by doing, saying or writing) in a way which is clearly inconsistent with —
    - (i) A's advance decision, and
    - (ii) that decision remaining A's fixed decision.
- (3) An advance decision is not applicable to life-sustaining treatment unless, —
  - (a) the decision is verified by a statement by A to the effect that it is to apply to that treatment even if life is at risk, and
  - (b) the decision and statement comply with subsection (4).
- (4) A decision or statement complies with this subsection only if, —
  - (a) it is in writing,
  - (b) it is signed by A or by another person in A's presence and by A's direction,
  - (c) the signature is made or acknowledged by A in the presence of a witness, and
  - (d) the witness signs it, or acknowledges their signature, in A's presence.
- (5) The existence of any lasting power of attorney other than one of a description mentioned in subsection (2)(b) does not prevent the advance decision from being regarded as valid and applicable.

**37 Effect of advance decisions**

[P2005/9/26]

- (1) If A has made an advance decision which is valid and applicable to a treatment, it has effect as if A had made it, and had had capacity to make it, at the time when the question arises whether the treatment should be carried out or continued.
- (2) A person does not incur liability for carrying out or continuing the treatment unless, at the time of doing so, that person is satisfied that a valid advance decision exists which is applicable to the treatment.
- (3) A person does not incur liability for the consequences of withholding or withdrawing a treatment from A if, at the time of doing so, that person reasonably believes that a valid advance decision exists which is applicable to the treatment.
- (4) The court may make a declaration as to whether an advance decision —
  - (a) exists;
  - (b) is valid;
  - (c) is applicable to a treatment.
- (5) While a decision as respects the validity or applicability of an advance decision is sought from the court, nothing in that decision stops a person, —
  - (a) providing life-sustaining treatment, or
  - (b) doing any act that person reasonably believes to be necessary to prevent a serious deterioration in A's condition.

## DIVISION 6: SUPPLEMENTAL

**38 Family matters**

[P2005/9/27]

- (1) Nothing in this Act permits a decision on any of the following matters to be made on behalf of a person, —
  - (a) consenting to marriage or a civil partnership;
  - (b) consenting to have sexual relations;
  - (c) consenting to a divorce order under the *Matrimonial Proceedings Act 2003*;
  - (d) consenting to a dissolution order being made in relation to a civil partnership on the basis of two years' separation;
  - (e) consenting to a child being placed for adoption by an adoption agency;
  - (f) consenting to the making of an adoption order;

- (g) discharging parental responsibilities in matters not relating to a child's property.
- (2) "Adoption order" means an adoption order within the meaning of the *Adoption Act 1984*.
- (3) The Department may by regulations modify the list of matters in subsection (1).

### 39 Mental Health Act matters

- (1) Nothing in this Act authorises anyone, —
  - (a) to give a patient medical treatment for mental disorder, or
  - (b) to consent to a patient being given medical treatment for mental disorder,if, at the time when it is proposed to treat the patient, that patient's treatment is regulated by Part 4 of the *Mental Health Act 1998*.
- (2) "Medical treatment", "mental disorder" and "patient" have the same meaning as in that Act.

### 40 Voting rights

[P2005/9/29]

- (1) Nothing in this Act permits a decision on voting at an election for any public office, or at a referendum, to be made on behalf of a person.
- (2) "Referendum" means a referendum to which the *Referendum Act 1979* applies.

### 41 Research

- (1) Intrusive research carried out on, or in relation to, a person ("P") who lacks capacity to consent to it may only be carried out as provided for in this section.
- (2) In all cases, the interests of P must be assumed to outweigh those of science and society.
- (3) Intrusive research must not be carried out unless the following conditions are satisfied.
- (4) The first condition is that the research —
  - (a) has the potential to produce a real benefit to P without imposing on P a burden that is disproportionate to that potential benefit to P, or
  - (b) has the aim of contributing, through significant improvement in the scientific understanding of P's condition, to results capable of conferring a benefit to P or others with the same or a similar condition as P.

- (5) The second condition is that the risk to P from taking part in the research is likely to be minimal and entails only a minimal burden for P, and that anything done to, or in relation to, P will not interfere with P's freedom of action or privacy in a significant way or be unduly invasive or restrictive.
- (6) Nothing may be done to, or in relation to, P in the course of the research —
- (a) to which P appears to object (whether by showing signs of resistance or otherwise) except where what is being done is intended to protect P from harm or to reduce or prevent pain or discomfort, or
  - (b) which would be contrary to —
    - (i) an advance decision of P's to refuse treatment which is valid and applicable, or
    - (ii) any other form of statement made by P and not subsequently withdrawn,of which the person conducting or responsible for the research is aware.
- (7) The Cabinet Office may, with the concurrence of the Director of Public Health, make regulations in respect of intrusive research and such regulations may, in particular, make provision about, —
- (a) what constitutes intrusive research whether generally or otherwise;
  - (b) the circumstances which may make research intrusive for the purposes of this section;
  - (c) the requirements to be met before the Cabinet Office will approve intrusive research;
  - (d) the consultation of P's carers or representatives including the circumstances in which it is to take place and the matters to be consulted on;
  - (e) the termination of research;
  - (f) the circumstances when P may be withdrawn from the research;
  - (g) the safeguards which must apply to, and during the course of, intrusive research;
  - (h) the circumstances where research in respect of P may be continued notwithstanding a loss of capacity on P's part;
  - (i) any —
    - (i) supplementary, incidental or consequential provision;
    - (ii) transitory, transitional or saving provision;which it considers necessary or expedient for the purposes of, in consequence of or for giving full effect to this section.

**42 Ill-treatment or neglect**

[P2005/9/44]

- (1) A person (“D”) who, —
  - (a) has the care of a person (“P”) who lacks, or whom D reasonably believes to lack, capacity to make decisions concerning their care,
  - (b) is the donee of a lasting power of attorney, or an enduring power of attorney, created by P, or
  - (c) is a delegate appointed by the court for P,and who ill-treats or who deliberately neglects P is guilty of an offence.
- (2) For the purposes of this section, “ill-treatment” —
  - (a) may consist of a single event or a course of conduct (whether by act or omission);
  - (b) does not have to result in damage or threaten damage to P’s health.
- (3) A person guilty of an offence under this section is liable, —
  - (a) on summary conviction, to custody for a term not exceeding 12 months or a fine not exceeding twice level 5 on the standard scale or both;
  - (b) on conviction on information, to custody for a term not exceeding 5 years or a fine or both.

## DIVISION 7: CODES OF PRACTICE

**43 Meaning of “Code”**

In this Division, “code” means a code of practice prepared, approved or revised under section 44.

**44 Codes of practice**

[P2005/9/42]

- (1) The Department must —
  - (a) prepare and issue a code of practice (and may issue more than one), or
  - (b) approve (with or without exceptions, adaptations and modifications) any such code issued under section 42 of the Mental Capacity Act 2005 (an Act of Parliament),for the guidance of —
  - (i) persons assessing whether another person has capacity in relation to any matter,
  - (ii) persons acting in connection with the care or treatment of another person,



- (iii) donees of lasting powers of attorney,
  - (iv) delegates appointed by the court,
  - (v) persons carrying out research in reliance on any provision made under this Act,
  - (vi) persons to whom the provisions of sections 35 to 37 apply or affect,
  - (vii) persons to whom Schedule 3 applies (persons appointed as receivers under Part 7 of the *Mental Health Act 1998*).
- (2) A code may also provide guidance in respect of such other matters concerned with this Act as the Department thinks fit.
- (3) The Department may from time to time revise a code.
- (4) The Department may delegate the preparation or revision of the whole or any part of a code.
- (5) It is the duty of a person to have regard to any relevant code if that person is acting in relation to a person who lacks capacity and is doing so in one or more of the following ways, —
- (a) as the donee of a lasting power of attorney;
  - (b) as a delegate appointed by the court;
  - (c) as a person carrying out research in reliance on any provision made under this Act;
  - (d) in a professional capacity;
  - (e) for remuneration.
- (6) If it appears to a court or tribunal conducting any criminal or civil proceedings that, —
- (a) a provision of a code, or
  - (b) a failure to comply with a code,
- is relevant to a question arising in the proceedings, the provision or failure must be taken into account in deciding the question.

#### 45 Codes of practice: procedure

- (1) Before preparing, revising or approving a code, the Department must consult such persons as it considers appropriate.
- (2) The Department may not issue or approve a code unless draft of the code has been laid by it before Tynwald.
- (3) The Department must arrange for any code that it has issued, revised or approved to be published in such a way as it considers appropriate for bringing it to the attention of persons likely to be concerned with its provisions.

## PART 3 – INTERIM ORDERS AND DIRECTIONS ETC.

### DIVISION 1: INTERIM ORDERS AND DIRECTIONS

#### 46 Interim orders and directions

The court may, pending the determination of an application to it in relation to a person (“P”), make an order or give directions in respect of any matter if, —

- (a) there is reason to believe that P lacks capacity in relation to the matter,
- (b) the matter is one to which its powers under this Act extend, and
- (c) it is in P’s best interests to make the order, or give the directions, without delay.

#### 47 Power to call for reports

- (1) This section applies where, in proceedings brought in respect of a person (“P”) under this Act, the court is considering a question relating to P.
- (2) The court may do any of the following, —
  - (a) require the Department to arrange for a report to be made to it by one of the Department’s officers or employees;
  - (b) require Manx Care to arrange for a report to be made to it by one of Manx Care’s officers or employees;
  - (c) require a report to be made to it by such other person as the court may direct.
- (3) The court may direct a person referred to in subsection (2) to carry out, in private, such medical, psychiatric or psychological examination of P as that person is appropriately qualified to perform by reason of that person’s training and experience.
- (4) Court rules may specify matters which, unless the court otherwise directs, must be dealt with in the report.
- (5) The report must deal with —
  - (a) those matters specified in court rules (subject to subsection (3)), and
  - (b) such other matters relating to P as the court may direct.
- (6) For the purpose of complying with subsection (5), the persons referred to in subsection (2) may, —
  - (a) interview P in private;
  - (b) at all reasonable times, take copies of the following records relating to P, —
    - (i) any health record,

- (ii) any record of, or held by, Manx Care (or any person Manx Care has entered into an agreement under section 17 of the *Manx Care Act 2021*) and compiled in connection with a social services function, and
- (iii) any record held by a person registered under Part 3 of the *Regulation of Care Act 2013*,

but a person referred to in subsection (2)(c), may only do so subject to any conditions in the court's direction.

- (7) The report referred to in subsection (2) may be made in writing or orally, as the court may direct.

## DIVISION 2: PRACTICE AND PROCEDURE

### 48 Applications to the Court

- (1) No permission is required for an application to the court for the exercise of any of its powers under this Act by, —
  - (a) a person who lacks, or is alleged to lack, capacity,
  - (b) if such a person has not reached 18, by anyone with parental responsibility for that person,
  - (c) the donor or a donee of a lasting power of attorney to which the application relates,
  - (d) a delegate appointed by the court for a person to whom the application relates,
  - (e) a person named in an existing order of the court, if the application relates to the order,
  - (f) the Attorney General, or
  - (g) the Department.
- (2) Subject to court rules, permission is required for any other application to the court.
- (3) In deciding whether to grant permission the court must, in particular, have regard to, —
  - (a) the applicant's connection with the person to whom the application relates,
  - (b) the reasons for the application,
  - (c) the benefit to the person to whom the application relates of a proposed order or directions, and
  - (d) whether the benefit can be achieved in any other way.
- (4) "Parental responsibility" has the same meaning as in the *Children and Young Persons Act 2001*.

## 49 High Court Rules

- (1) Proceedings with respect to a person who lacks, or is reasonably thought to lack, capacity shall be conducted in accordance with court rules.
- (2) Court rules may, in particular, make provision, —
  - (a) for the carrying out of preliminary or incidental inquiries;
  - (b) as to who can commence proceedings;
  - (c) as to the manner and form in which proceedings are to be commenced;
  - (d) as to the persons entitled to be notified of, and be made parties to, the proceedings;
  - (e) for enabling the court to appoint a suitable person to act in the name of, or on behalf of, or to represent the person to whom the proceedings relate;
  - (f) for enabling an application to the court to be disposed of without a hearing;
  - (g) for the attendance and examination of the person to whom the proceedings relate;
  - (h) for enabling the court to proceed with, or with any part of, a hearing in the absence of the person to whom the proceedings relate;
  - (i) for enabling or requiring the proceedings or any part of them to be conducted in private and for enabling the court to determine who is to be admitted when the court sits in private and to exclude specified persons when it sits in public;
  - (j) as to the administration of oaths;
  - (k) as to the furnishing of information and documents;
  - (l) as to what may be received as evidence (whether or not admissible apart from the rules) and the manner in which it is to be presented;
  - (m) for the enforcement of orders made and directions given in the proceedings;
  - (n) as to the termination of proceedings.
- (3) Court rules may also make provision for, —
  - (a) the giving of a security by any person and for its enforcement and discharge,
  - (b) the scale of costs, fees and percentages, and
  - (c) the rendering of accounts (form and frequency) by a person ordered, directed or authorised to do anything under this Act.
- (4) Court rules may, instead of providing for any matter, refer to provision made or to be made about that matter by directions.

**50 Rights of appeal**

- (1) Court rules must make provision about appeals from any decision of the court.
- (2) Without limiting subsection (1), Court rules may make provision, —
  - (a) that, in such cases as may be specified, an appeal from a decision of the court may not be made without permission;
  - (b) as to the person or persons entitled to grant permission to appeal;
  - (c) as to any requirements to be satisfied before permission is granted;
  - (d) as to any considerations to be taken into account in relation to granting or refusing permission to appeal.

**PART 4 - MISCELLANEOUS AND GENERAL****51 Application to the Island of Acts of Parliament etc.**

- (1) The Department may by order apply to the Island as part of the law of the Island, subject to such exceptions, adaptations and modifications as may be specified in the order, any legislation of the United Kingdom to which this section applies.
- (2) An order under subsection (1) may include provision repealing or amending any provision of an enactment (other than this Act) which is inconsistent with, or is unnecessary or requires modification in consequence of, the order or any legislation of the United Kingdom applied to the Island by the order.
- (3) An order under subsection (1) may do all or any of the following —
  - (a) specify the exceptions, adaptations and modifications subject to which the legislation of the United Kingdom applies to the Island;
  - (b) set out the legislation of the United Kingdom applied by the order, incorporating the exceptions, adaptations and modifications subject to which it applies to the Island;
  - (c) in the case of an order applying legislation of the United Kingdom which amends previous legislation of the United Kingdom applied to the Island, set out the previous legislation so applied as amended, incorporating the exceptions, adaptations and modifications subject to which that legislation applies to the Island.
- (4) This section applies to the following legislation —
  - (a) the Mental Capacity Act 2005 (of Parliament);
  - (b) any Act of Parliament in respect of mental capacity or legal capacity;

- (c) any provision of any Act of Parliament, or of any statutory instrument, amending, varying or modifying, directly or indirectly, any Act referred to in paragraph (a) or (b);
- (d) any statutory instrument made or having effect as if made under any Act referred to in paragraph (a) or (b).

*Tynwald procedure – approval required.*

- (5) In this section –
  - (a) “Act of Parliament” also includes an Act of the Scottish Parliament, the Welsh Parliament (Senedd Cymru) or the Northern Ireland Assembly, and
  - (b) “the United Kingdom” also includes a part of the United Kingdom.

## 52 Interpretation

- (1) In this Act –
  - “**advance decision**” has the meaning given in section 35(1);
  - “**the court**” means the High Court;
  - “**court officer**” means a member of staff of the court;
  - “**court rules**” means Rules of the High Court made under section 25 of the *High Court Act 1991*;
  - “**delegate**” has the meaning given in section 23(1)(b);
  - “**Department**” means the Department of Health and Social Care;
  - “**enactment**” includes a provision of subordinate legislation (within the meaning of the *Interpretation Act 2015*);
  - “**enduring power of attorney**” means a power of attorney for the purposes of the *Powers of Attorney Act 1987*;
  - “**health record**” has the same meaning as in the GDPR and LED Implementing Regulations 2018;
  - “**lasting power of attorney**” has the meaning given in section 12;
  - “**life-sustaining treatment**” means treatment which in the view of a person providing health care for the person concerned is necessary to sustain life;
  - “**notifiable person**” means, –
    - (a) the donor’s spouse or civil partner;
    - (b) any other person (whether of a different sex or the same sex) with whom the donor lives as partner in an enduring family relationship;
    - (c) the donor’s children;
    - (d) the donor’s siblings;
    - (e) the donor’s parents;

- (f) any other person named in a statement made by the donor as a notifiable person,  
and includes relationships of full blood or half blood;
- “**prescribed**”, in relation to regulations made under this Act, means prescribed by those regulations;
- “**property**” includes any thing in action and any interest in real or personal property;
- “**treatment**” includes a diagnostic or other procedure;
- “**trust corporation**” means a trust corporation referred to in section 65A of the *Trustee Act 1961*;
- “**will**” includes codicil.
- (2) In this Act, references to making decisions, in relation to a donee of a lasting power of attorney or a delegate appointed by the court, include, where appropriate, acting on decisions made.

### 53 Regulations

- (1) Regulations made under a provision of this Act may —
- (a) modify the provision under which they are made;
  - (b) make supplementary, incidental, consequential, transitional or saving provision;
  - (c) make different provision for different cases.
- (2) Regulations referred to in subsection (1) may modify any other enactment where that is necessary or expedient for the purposes of, in consequence of or for giving full effect to, those regulations.
- (3) Regulations referred to in subsections (1) and (2) are subject to section 30 of the *Legislation Act 2015* (approval required).

### 54 Existing receivers and enduring powers of attorney etc.

- (1) Part 7 of the *Mental Health Act 1998* shall cease to have effect.
- (2) No enduring power of attorney within the meaning of the *Powers of Attorney Act 1987* is to be created after the coming into operation of this Act.
- (3) Schedule 3 contains transitional provisions and savings in relation to Part 7 of the *Mental Health Act 1998*.

### 55 Minor and consequential amendments and repeals

- (1) Schedule 4 contains minor and consequential amendments.
- (2) Schedule 5 contains a table of repeals.





## SCHEDULE 1

[Section 12]

## LASTING POWERS OF ATTORNEY: FORMALITIES

## PART 1 - MAKING INSTRUMENTS

*General requirements as to making instruments*

- 1 (1) An instrument is not made in accordance with this Schedule unless, —
- (a) it is in the prescribed form,
  - (b) it complies with paragraph 2, and
  - (c) any prescribed requirements in connection with its execution are satisfied.
- (2) Regulations may make different provision according to whether, —
- (a) the instrument relates to health and welfare or to property and financial affairs (or to both);
  - (b) only one or more than one donee is to be appointed (and if more than one, whether jointly or jointly and severally).
- (3) In this Schedule, —
- “**prescribed**” means prescribed by regulations;
- “**regulations**” means regulations made for the purposes of this Schedule by the Department.

*Requirements as to content of instruments*

- 2 (1) The instrument must include, —
- (a) the prescribed information about the purpose of the instrument and the effect of a lasting power of attorney,
  - (b) a statement by the donor to the effect that the donor, —
    - (i) has read the prescribed information or a prescribed part of it (or has had it read to the donor), and
    - (ii) intends the authority conferred under the instrument to include authority to make decisions on the donor’s behalf in circumstances where the donor no longer has capacity,
  - (c) a statement by the donor naming a person or persons whom the donor wishes to be notified of any application for the registration of the instrument,
  - (d) a statement by the donee (or, if more than one, each of them) to the effect that the donee —

- (i) has read the prescribed information or a prescribed part of it (or has had it read to the donee), and
  - (ii) understands the duties imposed on a donee of a lasting power of attorney under sections 3 and 6, and
- (e) a certificate by a person of a prescribed description that, in that person's opinion, at the time when the donor executes the instrument, —
  - (i) the donor understands the purpose of the instrument and the scope of the authority conferred under it,
  - (ii) no fraud or undue pressure is being used to induce the donor to create a lasting power of attorney, and
  - (iii) there is nothing else which would prevent a lasting power of attorney from being created by the instrument.
- (2) Regulations may —
  - (a) prescribe a maximum number of notifiable persons;
  - (b) prescribe the order in which notifiable persons are to be notified of matters under this Schedule.
- (3) A certificate under sub-paragraph (1)(e) must be made in the prescribed form and must include any prescribed information.
- (4) The certificate may not be given by a person appointed as donee under the instrument.

*Failure to comply with prescribed form*

- 3 (1) If an instrument differs in an immaterial respect in form or mode of expression from the prescribed form, it is to be treated by the Chief Registrar as sufficient in point of form and expression.
- (2) If the court is satisfied that the persons executing the instrument intended it to create a lasting power of attorney, it may declare that an instrument which is not in the prescribed form is to be treated as if it were.

## PART 2 – REGISTRATION

*Applications and procedure for registration*

- 4 (1) An application to the Chief Registrar for the registration of an instrument intended to create a lasting power of attorney must be made in the prescribed form and must include any prescribed information.
- (2) The application may be made, —
  - (a) by the donor,
  - (b) by the donee or donees, or

- (c) if the instrument appoints two or more donees to act jointly and severally in respect of any matter, by any of those donees.
  - (3) The application must be accompanied by —
    - (a) the instrument, and
    - (b) any fee provided for under section 81 of the *Interpretation Act 2015*.
  - (4) A person who, in an application for registration, makes a statement which that person knows to be false in a material particular is guilty of an offence and is liable, —
    - (a) on summary conviction, to custody for a term not exceeding 12 months or a fine not exceeding twice the level 5 amount or both;
    - (b) on conviction on information, to custody for a term not exceeding 2 years or a fine or both.
- 5 Subject to paragraphs 11 to 14, the Chief Registrar must register the instrument as a lasting power of attorney at the end of the prescribed period.

*Notification requirements*

- 6 (1) A donor about to make an application under paragraph 4(2)(a) must notify each notifiable person that the donor is about to do so.
- (2) The donee (or donees) about to make an application under paragraph 4(2)(b) or (c) must notify each notifiable person that the donee is (or they are) about to do so.
- 7 As soon as is practicable after receiving an application by the donor under paragraph 4(2)(a), a court officer must notify —
  - (a) the donee (or donees), and
  - (b) each notifiable person,that the application has been received.
- 8 (1) As soon as is practicable after receiving an application by a donee (or donees) under paragraph 4(2)(b), a court officer must notify —
  - (a) the donor, and
  - (b) each notifiable person,that the application has been received.
- (2) As soon as is practicable after receiving an application by a donee under paragraph 4(2)(c), a court officer must notify, —
  - (a) the donor,
  - (b) the donee or donees who did not join in making the application, and
  - (c) each notifiable person,

that the application has been received.

- 9 (1) A notice under paragraph 6 must be made in the prescribed form.
- (2) A notice under paragraph 6, 7 or 8 must include such information, if any, as may be prescribed.

*Power to dispense with notification requirements*

- 10 The court may, —
- (a) on the application of the donor, dispense with the requirement to notify under paragraph 6(1), or
- (b) on the application of the donee or donees concerned, dispense with the requirement to notify under paragraph 6(2).

*Instrument not made properly or containing ineffective provision*

- 11 (1) If it appears to the Chief Registrar that an instrument accompanying an application under paragraph 4 is not made in accordance with this Schedule, the Chief Registrar must not register the instrument unless the court directs the Chief Registrar to do so.
- (2) Sub-paragraph (3) applies if it appears to the Chief Registrar that the instrument contains a provision which, —
- (a) would be ineffective as part of a lasting power of attorney, or
- (b) would prevent the instrument from operating as a valid lasting power of attorney.
- (3) The —
- (a) applicant for registration may apply to the court for it to determine the matter under section 19(1), and
- (b) the Chief Registrar pending the determination by the court, must not register the instrument.
- (4) Sub-paragraph (5) applies if the court determines under section 19(1) that the instrument contains a provision which —
- (a) would be ineffective as part of a lasting power of attorney, or
- (b) would prevent the instrument from operating as a valid lasting power of attorney.
- (5) The court must —
- (a) notify the Chief Registrar that it has severed the provision, or
- (b) direct the Chief Registrar not to register the instrument.
- (6) Where the court notifies the Chief Registrar that it has severed a provision, the Chief Registrar must register the instrument with a note to that effect attached to it.

*Delegate already appointed*

- 12 (1) Sub-paragraph (2) applies if it appears to the Chief Registrar that —
- (a) there is a delegate appointed by the court for the donor, and
  - (b) the powers conferred on the donee would, if the instrument were registered, to any extent conflict with the powers conferred on the delegate.
- (2) The Chief Registrar must not register the instrument unless directed by the court to do so.

*Objection by donee or notifiable person*

- 13 (1) Sub-paragraph (4) applies if a donee or a notifiable person —
- (a) receives a notice under paragraph 6, 7 or 8 of an application for the registration of an instrument, and
  - (b) before the end of the prescribed period, gives notice to the Chief Registrar of an objection to the registration on the ground that an event mentioned in section 16(3) or (4) has occurred which has revoked the instrument.
- (2) Sub-paragraph (4) also applies if, before the end of the prescribed period, a qualified person gives notice to the Chief Registrar of an objection to the registration of an instrument on the ground that —
- (a) an event mentioned in section 16(3) or (4) has occurred which has revoked the instrument;
  - (b) any matter mentioned in section 18(4) has occurred or is occurring.
- (3) A “qualified person” means —
- (a) a medical practitioner (within the meaning of the *Health Care Professionals Act 2014*);
  - (b) a constable (within the meaning of the *Police Act 1993*);
  - (c) a member of the legal profession;
  - (d) any other prescribed person.
- (4) If the Chief Registrar is satisfied that the ground for making the objection is established, the Chief Registrar must not register the instrument unless the court, on the application of the person applying for the registration, —
- (a) is satisfied that the ground is not established, and
  - (b) directs the Chief Registrar to register the instrument.
- (5) Sub-paragraph (6) applies if a donee or a notifiable person, —
- (a) receives a notice under paragraph 6, 7 or 8 of an application for the registration of an instrument, and
  - (b) before the end of the prescribed period —

- (i) makes an application to the court objecting to the registration on a prescribed ground, and
  - (ii) notifies the Chief Registrar of the application.
- (6) The Chief Registrar must not register the instrument unless directed by the court to do so.

*Objection by donor*

- 14 (1) This paragraph applies if the donor —
- (a) receives a notice under paragraph 8 of an application for the registration of an instrument, and
  - (b) before the end of the prescribed period, gives notice to the Chief Registrar of an objection to the registration.
- (2) The Chief Registrar must not register the instrument unless the court, on the application of the donee or, if more than one, any of them —
- (a) is satisfied that the donor lacks capacity to object to the registration, and
  - (b) directs the Chief Registrar to register the instrument.

*Notification of registration*

- 15 Where an instrument is registered under this Schedule, the Chief Registrar must give notice of the fact in the prescribed form to —
- (a) the donor,
  - (b) the donee or, if more than one, each of them, and
  - (c) each notifiable person.

*Evidence of registration*

- 16 (1) A document purporting to be an office copy of an instrument registered under this Schedule is evidence of —
- (a) the contents of the instrument, and
  - (b) the fact that it has been registered.
- (2) Sub-paragraph (1) is without prejudice to any other method of proof authorised by law.

### **PART 3 - CANCELLATION OF REGISTRATION AND NOTIFICATION OF SEVERANCE**

- 17 (1) The Chief Registrar must cancel the registration of an instrument as a lasting power of attorney on being satisfied that the power has been revoked —

- (a) as a result of the donor's bankruptcy, or
  - (b) on the occurrence of an event mentioned in section 16(4).
- (2) If the Chief Registrar cancels the registration of an instrument the Chief Registrar must notify –
  - (a) the donor,
  - (b) the donee or, if more than one, each of them, and
  - (c) each notifiable person.
- 18 The court must direct the Chief Registrar to cancel the registration of an instrument as a lasting power of attorney if it –
  - (a) determines under section 18(2)(a) that a requirement for creating the power was not met,
  - (b) determines under section 18(2)(b) that the power has been revoked or has otherwise come to an end, or
  - (c) revokes the power under section 18(3)(b).
- 19 (1) Sub-paragraph (2) applies if the court determines under section 19(1) that a lasting power of attorney contains a provision which –
  - (a) is ineffective as part of a lasting power of attorney, or
  - (b) prevents the instrument from operating as a valid lasting power of attorney.
- (2) The court must –
  - (a) notify the Chief Registrar that it has severed the provision, or
  - (b) direct the Chief Registrar to cancel the registration of the instrument as a lasting power of attorney.
- 20 On the cancellation of the registration of an instrument, the instrument and any office copies of it must be delivered up to the Chief Registrar to be cancelled.

#### **PART 4 - RECORDS OF ALTERATIONS IN REGISTERED POWERS**

##### *Partial revocation or suspension of power as a result of bankruptcy*

- 21 If in the case of a registered instrument it appears to the Chief Registrar that under section 16 a lasting power of attorney is revoked in relation to the donor's property and financial affairs (but not in relation to other matters), the Chief Registrar must attach to the instrument a note to that effect.

*Termination of appointment of donee which does not revoke power*

- 22 If in the case of a registered instrument it appears to the Chief Registrar that an event has occurred —
- (a) which has terminated the appointment of the donee, but
  - (b) which has not revoked the instrument,
- the Chief Registrar must attach to the instrument a note to that effect.

*Replacement of donee*

- 23 If in the case of a registered instrument it appears to the Chief Registrar that the donee has been replaced under the terms of the instrument, the Chief Registrar must attach to the instrument a note to that effect.

*Severance of ineffective provisions*

- 24 If in the case of a registered instrument the court notifies the Chief Registrar under paragraph 19(2)(a) that it has severed a provision of the instrument, the Chief Registrar must attach to it a note to that effect.

*Notification of alterations*

- 25 If the Chief Registrar attaches a note to an instrument under paragraph 21, 22, 23 or 24 the Chief Registrar must give notice of the note to the donee or donees of the power (or, as the case may be, to the other donee or donees of the power).

**PART 5 – INSTRUMENTS IN OVERSEAS FORM***Power of attorney in overseas form*

- 26 (1) This paragraph applies to an instrument which is made in a prescribed form under the law of a prescribed overseas country and which has the effect of conferring on a person named in the instrument authority to do on behalf of the maker of the instrument —
- (a) anything specified in the instrument,
  - (b) anything which the maker can lawfully do by an agent or attorney, or
  - (c) anything (except a thing or things specified in the instrument).
- (2) The Department may by regulations provide that such an instrument shall have effect according to its tenor, as if it had been made in a form having effect for that purpose under the law of the Island.
- (3) Regulations under this paragraph may modify the provisions of this Part.



- (4) Nothing in regulations under this paragraph enables anything to be done which cannot lawfully be done by an agent or attorney.
- (5) “Overseas country” means a country or territory outside the Island.

## PART 6 – REGISTER OF LASTING POWERS

### *The Register of lasting powers*

- 27 The Chief Registrar’s function referred to in section 20 of establishing and maintaining a register of lasting powers applies for the purposes of this Schedule.

### *Disclosure of information on a register*

- 28 (1) Any person may, by an application made under sub-paragraph (2), request the Chief Registrar to carry out a search of the register.
- (2) An application must, —
- (a) state, —
    - (i) the name of the person to whom the application relates, and
    - (ii) such other details about that person as the Chief Registrar may require for the purpose of carrying out the search, and
  - (b) be accompanied by any prescribed fee.
- (3) The Chief Registrar may require the applicant to provide such further information, or produce such documents, as the Chief Registrar reasonably considers necessary to enable the Chief Registrar to carry out the search.
- (4) As soon as reasonably practicable after receiving the application, —
- (a) the Chief Registrar must by certificate notify the applicant of the result of the search, and
  - (b) in the event that it reveals one or more entries on the register, the Chief Registrar must disclose to the applicant all the information appearing on the register in respect of each entry.
- (5) The Chief Registrar may, upon a request in writing, supply any person with an office copy of a registered instrument if the Chief Registrar is satisfied that the person making the request has a good reason for doing so and it is not reasonably practicable to obtain a copy of the instrument from the donor or donee.
- (6) “Office copy” means a true copy of the original marked by the Chief Registrar as being an office copy.

**SCHEDULE 2**

[Section 25]

**PROPERTY AND FINANCIAL AFFAIRS: SUPPLEMENTARY PROVISIONS***Wills: general***1 Wills: general**

- (1) Paragraphs 2 to 4 apply in relation to the execution of a will, by virtue of section 25, on behalf of P.
- (2) “P” means P referred to in Division 3 of Part 2: General powers of the court and appointment of delegates.

**2 Provision that may be made in will**

The will may make any provision (whether by disposing of property or exercising a power or otherwise) which could be made by a will executed by P if P had capacity to make it.

**3 Wills: requirements relating to execution**

- (1) Sub-paragraph (2) applies if under section 23 the court makes an order or gives directions requiring or authorising a person (“the authorised person”) to execute a will on behalf of P.
- (2) Any will executed in pursuance of the order or direction —
  - (a) must state that it is signed by P acting by the authorised person,
  - (b) must be signed by the authorised person with the name of P and the authorised person’s own name, in the presence of two or more witnesses present at the same time,
  - (c) must be attested and subscribed by those witnesses in the presence of the authorised person, and
  - (d) must be sealed with the official seal of the court.

**4 Wills: effect of execution**

- (1) This paragraph applies where a will is executed in accordance with paragraph 3.
- (2) The *Wills Act 1985* has effect in relation to the will as if it were signed by P’s own hand, except that, —
  - (a) section 3 of that Act (requirements as to signing and attestation) does not apply, and

- (b) in the subsequent provisions of that Act any reference to execution in the manner required by the previous provisions is to be read as a reference to execution in accordance with paragraph 3.
- (3) The will has the same effect for all purposes as if, —
  - (a) P had had the capacity to make a valid will, and
  - (b) the will had been executed by P in the manner required by the *Wills Act 1985*.
- (4) But sub-paragraph (3) does not have effect in relation to the will, —
  - (a) in so far as it disposes of immovable property outside the Island, or
  - (b) in so far as it relates to any other property or matter if, when the will is executed P is domiciled outside the Island and the condition in sub-paragraph (5) is met.
- (5) The condition is that, under the law of P's domicile, any question of P's testamentary capacity would fall to be determined in accordance with the law of a place outside the Island.

## 5 Vesting orders ancillary to settlement etc.

- (1) If provision is made by virtue of section 25 for —
  - (a) the settlement of any property of P, or
  - (b) the exercise of a power vested in P of appointing trustees or retiring from a trust,

the court may also make, as respects the property settled or the trust property, such consequential vesting or other orders as the case may require.
- (2) The power under sub-paragraph (1) includes, in the case of the exercise of such a power, any order which could have been made in such a case under Part 4 of the *Trustee Act 1961*.

## 6 Variation of settlements

- (1) If a settlement has been made by virtue of section 25, the court may by order vary or revoke the settlement if —
  - (a) the settlement makes provision for its variation or revocation,
  - (b) the court is satisfied that a material fact was not disclosed when the settlement was made, or
  - (c) the court is satisfied that there has been a substantial change of circumstances.
- (2) Any such order may give such consequential directions as the court thinks fit.

## 7 Vesting of stock in curator appointed outside the Island

- (1) Sub-paragraph (2) applies if the court is satisfied —
  - (a) that under the law prevailing in a place outside the Island, a person (“M”) has been appointed to exercise powers in respect of the property or affairs of P on the ground (however formulated) that P lacks capacity to make decisions with respect to the management and administration of P’s property and financial affairs, and
  - (b) that, having regard to the nature of the appointment and to the circumstances of the case, it is expedient that the court should exercise its powers under this paragraph.
- (2) The court may direct —
  - (a) any stocks standing in the name of P, or
  - (b) the right to receive dividends from the stocks,to be transferred into M’s name or otherwise dealt with as required by M, and may give such directions as the court thinks fit for dealing with accrued dividends from the stocks.
- (3) “Stocks” includes —
  - (a) shares, and
  - (b) any funds, 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” is to be construed accordingly.

## 8 Preservation of interests in property disposed of on behalf of person lacking capacity

- (1) Sub-paragraphs (2) and (3) apply if —
  - (a) P’s property has been disposed of by virtue of section 25,
  - (b) under P’s will or intestacy, or by a gift perfected or nomination taking effect on P’s death, any other person would have taken an interest in the property but for the disposal, and
  - (c) on P’s death, any property belonging to P’s estate represents the property disposed of.
- (2) The person takes the same interest, if and so far as circumstances allow, in the property representing the property disposed of.
- (3) If the property disposed of was real property, any property representing it is to be treated, so long as it remains part of P’s estate, as if it were real property.
- (4) The court may direct that, on a disposal of P’s property —

- (a) which is made by virtue of section 25, and
  - (b) which would apart from this paragraph result in the conversion of personal property into real property,
- property representing the property disposed of is to be treated, so long as it remains P's property or forms part of P's estate, as if it were personal property.
- (5) References in sub-paragraphs (1) to (4) to the disposal of property are to —
    - (a) the sale, exchange, charging of or other dealing (otherwise than by will) with property other than money;
    - (b) the removal of property from one place to another;
    - (c) the application of money in acquiring property;
    - (d) the transfer of money from one account to another,
 and references to property representing property disposed of are to be construed accordingly and as including the result of successive disposals.
  - (6) The court may give such directions as appear to it necessary or expedient for the purpose of facilitating the operation of sub-paragraphs (1) to (3), including the transfer or deposit of money to a separate account and the transfer of property other than money.

## 9 Permanent improvements and benefits

- (1) Sub-paragraph (2) applies if the court has ordered or directed the expenditure of money —
  - (a) for carrying out permanent improvements on any of P's property, or
  - (b) otherwise for the permanent benefit of any of P's property.
- (2) The court may order that the whole or any part of the money expended or to be expended, is to be a charge on the property either without interest or with interest at a specified rate.
- (3) An order under sub-paragraph (2) may provide for excluding or restricting the operation of paragraph 8(1) to (3).
- (4) A charge under sub-paragraph (2) may be made in favour of such person as may be just and, in particular, where the money charged is paid out of P's general estate, may be made in favour of a person as trustee for P.
- (5) No charge under sub-paragraph (2) may confer any right of sale or foreclosure during P's lifetime.

## 10 Patronages

- (1) Any functions which P has as patron of a benefice may be discharged only by a person appointed by the court ("T").

- (2) T must be an individual who could be appointed under section 8(1)(b) of the Patronage (Beneficiaries) Measure 1986 (No.3) as applied to the Island by the *Patronage Measure (Isle of Man) 1997*.
- (3) The Patronage (Beneficiaries) Measure 1986 (No.3) (as applied to the Island) applies to T as it applies to an individual appointed by the registered patron of the benefice under section 8(1)(b) or (3) of that Measure (as applied to the Island).

## SCHEDULE 3

[Section 54]

## TRANSITIONAL PROVISIONS AND SAVINGS

## REPEAL OF PART 7 OF THE MENTAL HEALTH ACT 1998

**1 Existing receivers**

- (1) This paragraph applies where, immediately before the commencement day, there is a receiver (“R”) for a person (“P”) appointed under section 103 of the *Mental Health Act 1998*.
- (2) On and after that day, —
  - (a) this Act applies as if R were a delegate appointed for P by the court, but with the functions R had as receiver immediately before that day, and
  - (b) a reference in any other enactment to a delegate appointed by the court includes a person appointed as a delegate as a result of paragraph (a).
- (3) On any application by R, the court may end R’s appointment as P’s delegate.
- (4) Where, as a result of section 27(1), R may not make a decision on behalf of P in relation to a relevant matter, R must apply to the court.
- (5) If, on the application, the court is satisfied that P is capable of managing P’s property and financial affairs in relation to the relevant matter, —
  - (a) it must make an order ending R’s appointment as P’s delegate in relation to that matter, but
  - (b) it may, in relation to any other matter, exercise in relation to P any of the powers it has under sections 22 to 26.
- (6) If, on the application, the court is not satisfied, the court may exercise in relation to P any of the powers which it has under sections 22 to 26.
- (7) R’s appointment as P’s delegate ceases to have effect if P dies.
- (8) “Relevant matter” means a matter in relation to which, immediately before the commencement day, R was authorised to act as P’s receiver.
- (9) In sub-paragraph (1), the reference to a receiver appointed under section 103 of the *Mental Health Act 1998* includes a reference to a person who by virtue of Schedule 6 to that Act was deemed to be a receiver appointed under that section.

## 2 Order, appointment etc.

- (1) Any order or appointment made, direction or authority given or other thing done which has, or by virtue of Schedule 6 to the *Mental Health Act 1998* was deemed to have, effect under Part 7 of that Act immediately before commencement day is to continue to have effect despite the repeal of Part 7.
- (2) In so far as any such order, appointment, direction, authority or thing could have been made, given or done under sections 22 to 27 if those sections had then been in force —
  - (a) it is to be treated as made, given or done under those sections, and
  - (b) the powers of variation and discharge conferred by section 23(5) apply accordingly.
- (3) This Act does not affect the operation of section 110 of the *Mental Health Act 1998* (effect and proof of orders) in relation to orders made and directions given under Part 7 of that Act.
- (4) This paragraph is without prejudice to Division 3 of Part 4 to the *Legislation Act 2015*.

## 3 Pending proceedings

- (1) Any application for the exercise of a power under Part 7 of the *Mental Health Act 1998* which is pending immediately before the commencement day is to be treated, in so far as the corresponding power is exercisable under section 23 to 27 as an application for the exercise of that power.
- (2) For the purposes of sub-paragraph (1) an application for the appointment of a receiver is to be treated as an application for the appointment of a delegate.

## 4 Appeals

Part 7 of the *Mental Health Act 1998* and the rules made under it are to continue to apply to any appeal brought by virtue of section 107 of that Act which has not been determined before the commencement day.

## 5 Existing charges

This Act does not affect the operation in relation to a charge created before the commencement day of —

- (a) so much of section 105(6) of the *Mental Health Act 1998* as preclude a charge created under section 105(5) from conferring a right of sale or foreclosure during the lifetime of a patient, or
- (b) section 108(7) of the *Mental Health Act 1998* (charge created by virtue of section 108(6) not to cause an interest to fail).



**6 Interpretation**

In this schedule, “the commencement day” means the day on which section 54(1) comes into operation.

## SCHEDULE 4

[Section (1)]

## MINOR AND CONSEQUENTIAL AMENDMENTS

**1 Trustee Act 1961**

- (1) The *Trustee Act 1961* is amended as follows.
- (2) In section 35 (power of appointing new or additional trustees) —
  - (a) in subsection (1)—
    - (i) for “is incapable of acting” there is substituted “lacks capacity (within the meaning of the *Capacity Act 2023*) to act”;
    - (ii) for “being incapable” there is substituted “lacking capacity”;
  - (b) for subsection (9)(a) there is substituted, —

“(a) lacks capacity (within the meaning of the <i>Capacity Act 2023</i> ) of exercising his functions as trustee,”.
---
- (3) In section 37(1) (evidence as to vacancy in a trust) for “is incapable of acting” there is substituted “lacks capacity (within the meaning of the *Capacity Act 2023*)”.
- (4) In section 41(1) (power of court to appoint new trustees) for paragraph (a) (but not “or” following it) substitute, —

“(a) lacks capacity (within the meaning of the <i>Capacity Act 2023</i> ) of exercising his functions as trustee,”.
---
- (5) In section 43B (appointment of substitute for incapable trustee)—
  - (a) in subsection (1) for paragraph (a) there is substituted, —

“(a) a trustee lacks capacity (within the meaning of the <i>Capacity Act 2023</i> ) to exercise his functions as trustee;”;
---
  - (b) in subsection (2) —
    - (i) in paragraph (b) for “section 6 of the *Powers of Attorney Act 1987*” there is substituted “Schedule 1 to the *Capacity Act 2023*”;
    - (ii) in the full-out words, for “incapable trustee” there is substituted “the trustee who lacks capacity”.

**2 Family Law Reform (Isle of Man) Act 1971**

For section 13(4) of the *Family Law Reform (Isle of Man) Act 1971* (consents, etc, required for taking of bodily samples) there is substituted, —

- “(4) A bodily sample may be taken from a person who lacks capacity (within the meaning of the *Capacity Act 2023*) to give his consent if consent is given by, —
- (a) the court giving the direction under section 12;
  - (b) a donee of an enduring power of attorney or a lasting power of attorney (within the meaning of that Act); or
  - (c) a delegate appointed in that respect.”.

### 3 Jury Act 1980

In Schedule 1, Group F (mentally disordered persons) to the *Jury Act 1980* for the last paragraph there is substituted “A person who lacks capacity (within the meaning of the *Capacity Act 2023*) to serve as a juror.”.

### 4 Sale of Goods Act 1983

In section 3(2) of the *Sale of Goods Act 1983* (capacity to buy and sell) omit “mental incapacity or”.

### 5 Limitation Act 1984

Section 36 of the *Limitation Act 1984* (interpretation) is amended as follows, —

- (a) for subsection (2) there is substituted, —
  - “(2) For the purposes of this Act a person shall be treated as under a disability while he is a minor, or lacks capacity (within the meaning of the *Capacity Act 2023*) to conduct legal proceedings.”;
- (b) omit subsection (3).

### 6 Administration of Estates Act 1990

Section 45 of the *Administration of Estates Act 1990* (consents to appropriation) is amended as follows —

- (a) in subsection (2) for “is incapable, by reason of mental disorder within the meaning of *Mental Health Act 1998*” there is substituted “lacks capacity (within the meaning of the *Capacity Act 2023*)”;
- (b) in subsection (4)(a) for “receiver” there is substituted “deputy”.

### 7 Patronage Measure (Isle of Man) 1997

After section 5(3) of the *Patronage Measure (Isle of Man) 1997* there is inserted, —

- (4) “The reference in subsection (3) to a power of attorney does not include an enduring power of attorney or a lasting power of attorney (within the meaning of the *Capacity Act 2023*).”.

## 8 Mental Health Act 1998

- (1) The *Mental Health Act 1998* is amended as follows.
- (2) In section 135(1) (protection for acts done in pursuance of this Act), there is omitted “or in, or in pursuance of anything done in, the discharge of functions conferred by any other enactment on the judge having jurisdiction under Part 7,”.
- (3) Section 136 (pay, pension etc of mentally disordered persons) is omitted.
- (4) Sub-paragraph (5) applies where, before the commencement of sub-paragraph (3), an authority has, in respect of a person referred to in that section as “the patient”, made payments under that section, —
  - (a) to an institution or person having care of the patient, or
  - (b) in accordance with subsection (2)(a) or (b) of that section.
- (5) The authority may, in respect of the patient, continue to make payments under that section to that institution or person, or in accordance with subsection (2)(a) or (b) of that section, despite the amendments made by sub-paragraph (3).
- (6) In section 138(1) (interpretation), in the definition of “patient” there is omitted “(except in Part 7)”.

## 9 Medicines Act 2003

- (1) Section 38 of the *Medicines Act 2003* is amended as follows.
- (2) In subsection (1), for paragraph (c) substitute —
 

<ol style="list-style-type: none"> <li>(c)</li> <li>(d)</li> <li>(e)</li> </ol>	<p>a receiver has been appointed for him under Part 7 of the <i>Mental Health Act 1998</i> in respect of his affairs (including that business) who is, by virtue of Schedule 3 to the <i>Capacity Act 2023</i>, to be treated as if he were a delegate for the purposes of that Act;</p> <p>a delegate is appointed for him under Part 2 of the <i>Capacity Act 2023</i> to make decisions for him in respect of the control and management of that business and the carrying on of any profession in respect thereto; or</p> <p>he has appointed a donee (or donees) under the <i>Powers of Attorney Act 1987</i> or Part 2 of the <i>Capacity Act 2023</i> to manage his property and financial affairs including those in respect of that business. <b>22</b>.</p>
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- (3) In subsection (3) —
  - (a) in paragraph (d) —
    - (i) after “(1)(c)”, insert **23** or (d) **22**;
    - (ii) after “receiver”, insert **23** or, as the case may be, the delegate **22**;

- (b) for paragraph (e), substitute —
- ☒ (e) in a case falling within subsection (1)(e), 3 years from the date of registration of the instrument appointing the donee (or, as the case may be, donees);
  - (f) in any case, such longer period as, on the application of the representative, the Department having regard to all the circumstances of the case, may direct. ☒.
- (4) In subsection (4) —
- (a) at the end of paragraph (b), omit “and”;
  - (b) at the end of paragraph (c), insert “(including a receiver who is, by virtue of Schedule 3 to the *Capacity Act 2023*, to be treated as if he were a delegate for the purposes of that Act)”;
  - (c) after paragraph (c), insert, —
    - ☒ (d) in a case within subsection (1)(d), means the delegate; and
    - (e) in a case within subsection (1)(e), means the donee (or any one or more of them where more than one has been appointed). ☒.

## 10 Safeguarding Act 2018

After section 5(12)(a) of the *Safeguarding Act 2018* insert —

- ☒ (aa) P lacks capacity for the purposes of the *Capacity Act 2023* and a lasting power of attorney in respect of P is registered in accordance with that Act or an application is made under that Act for the registration of such a power in respect of P;
- (ab) an order under section 23 of the *Capacity Act 2023* has been made by the High Court in relation to P’s health and welfare or P’s property or affairs (or both), or such an order has been applied for; ☒.

**SCHEDULE 5**

[Section (2)]

**REPEALS**

<b>Short title</b>	<b>Extent of repeal</b>
<i>Mental Health Act 1998</i>	Part 7

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