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STATUTORY INSTRUMENTS

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**2007 No. 1899**

**MENTAL CAPACITY, ENGLAND AND WALES**

**The Mental Capacity Act 2005  
(Transfer Of Proceedings) Order 2007**

<i>Made</i>	- - - -	<i>25th June 2007</i>
<i>Laid before Parliament</i>		<i>4th July 2007</i>
<i>Coming into force</i>	- -	<i>1st October 2007</i>

The President of the Family Division of the High Court (the judicial office holder nominated by the Lord Chief Justice) with the agreement of the Lord Chancellor, makes the following Order in exercise of the powers conferred by sections 21 and 65(5) of the Mental Capacity Act 2005(1):

**Citation and commencement**

1.—(1) This Order may be cited as the Mental Capacity Act 2005 (Transfer of Proceedings) Order 2007.

(2) This Order shall come into force on 1st October 2007.

(3) In this Order “the Children Act” means the Children Act 1989(2).

**Transfers from the Court of Protection to a court having jurisdiction under the Children Act**

2.—(1) This article applies to any proceedings in the Court of Protection which relate to a person under 18.

(2) The Court of Protection may direct the transfer of the whole or part of the proceedings to a court having jurisdiction under the Children Act where it considers that in all the circumstances, it is just and convenient to transfer the proceedings.

(3) In making a determination, the Court of Protection must have regard to—

- (a) whether the proceedings should be heard together with other proceedings that are pending in a court having jurisdiction under the Children Act;
- (b) whether any order that may be made by a court having jurisdiction under that Act is likely to be a more appropriate way of dealing with the proceedings;

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(1) 2005 c.9, as amended by article 2 of, and paragraphs 30, 31(1), (3) and (4) and 37 of Schedule 1 to, the Lord Chancellor (Transfer of Functions and Supplementary Provisions) (No. 2) Order 2006 (S.I. 2006/1016).

(2) 1989 c.41.

- (c) the need to meet any requirements that would apply if the proceedings had been started in a court having jurisdiction under the Children Act; and
  - (d) any other matter that the court considers relevant.
- (4) The Court of Protection—
- (a) may exercise the power to make an order under paragraph (2) on an application or on its own initiative; and
  - (b) where it orders a transfer, must give reasons for its decision.
- (5) Any proceedings transferred under this article—
- (a) are to be treated for all purposes as if they were proceedings under the Children Act which had been started in a court having jurisdiction under that Act; and
  - (b) are to be dealt with after the transfer in accordance with directions given by a court having jurisdiction under that Act.

### **Transfers from a court having jurisdiction under the Children Act to the Court of Protection**

**3.—**(1) This article applies to any proceedings in a court having jurisdiction under the Children Act which relate to a person under 18.

(2) A court having jurisdiction under the Children Act may direct the transfer of the whole or part of the proceedings to the Court of Protection where it considers that in all circumstances, it is just and convenient to transfer the proceedings.

(3) In making a determination, the court having jurisdiction under the Children Act must have regard to—

- (a) whether the proceedings should be heard together with other proceedings that are pending in the Court of Protection;
  - (b) whether any order that may be made by the Court of Protection is likely to be a more appropriate way of dealing with the proceedings;
  - (c) the extent to which any order made as respects a person who lacks capacity is likely to continue to have effect when that person reaches 18; and
  - (d) any other matter that the court considers relevant.
- (4) A court having jurisdiction under the Children Act—
- (a) may exercise the power to make an order under paragraph (2) on an application or on its own initiative; and
  - (b) where it orders a transfer, must give reasons for its decision.
- (5) Any proceedings transferred under this article—
- (a) are to be treated for all purposes as if they were proceedings under the Mental Capacity Act 2005 which had been started in the Court of Protection; and
  - (b) are to be dealt with after the transfer in accordance with directions given by the Court of Protection.

### **Avoidance of double liability for fees**

**4.** Any fee paid for the purpose of starting any proceedings that are transferred under article 2 or 3 is to be treated as if it were the fee that would have been payable if the proceedings had started in the court to which the transfer is made.

25th June 2007  
25th June 2007

*Sir Mark Potter*  
President  
*Falconer of Thoroton, C*

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

This Order provides for transfers of proceedings between the Court of Protection and a court having jurisdiction under the Children Act 1989 (c. 41) (“the Children Act”).

Article 2 specifies the circumstances in which proceedings in the Court of Protection may be transferred to a court having jurisdiction under the Children Act and sets out how proceedings are to be dealt with when a transfer is made.

Article 3 specifies the circumstances in which proceedings in a court having jurisdiction under the Children Act may be transferred to the Court of Protection and sets out how proceedings are to be dealt with when a transfer is made.

Article 4 makes provision for treating any fee paid to start the proceedings which are transferred as if it had been the fee payable to start proceedings in the court to which the transfer is made.