

*Status: Point in time view as at 02/11/2020.*

*Changes to legislation: Mental Capacity Act 2005, Part 4 is up to date with all changes known to be in force on or before 20 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 3

#### INTERNATIONAL PROTECTION OF ADULTS

#### PART 4

#### RECOGNITION AND ENFORCEMENT

##### *Recognition*

- 19 (1) A protective measure taken in relation to an adult under the law of a country other than England and Wales is to be recognised in England and Wales if it was taken on the ground that the adult is habitually resident in the other country.
- (2) A protective measure taken in relation to an adult under the law of a Convention country other than England and Wales is to be recognised in England and Wales if it was taken on a ground mentioned in Chapter 2 (jurisdiction).
- (3) But the court may disapply this paragraph in relation to a measure if it thinks that—
- (a) the case in which the measure was taken was not urgent,
  - (b) the adult was not given an opportunity to be heard, and
  - (c) that omission amounted to a breach of natural justice.
- (4) It may also disapply this paragraph in relation to a measure if it thinks that—
- (a) recognition of the measure would be manifestly contrary to public policy,
  - (b) the measure would be inconsistent with a mandatory provision of the law of England and Wales, or
  - (c) the measure is inconsistent with one subsequently taken, or recognised, in England and Wales in relation to the adult.
- (5) And the court may disapply this paragraph in relation to a measure taken under the law of a Convention country in a matter to which Article 33 applies, if the court thinks that that Article has not been complied with in connection with that matter.
- 20 (1) An interested person may apply to the court for a declaration as to whether a protective measure taken under the law of a country other than England and Wales is to be recognised in England and Wales.
- (2) No permission is required for an application to the court under this paragraph.
- 21 For the purposes of paragraphs 19 and 20, any finding of fact relied on when the measure was taken is conclusive.

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### *Enforcement*

- 22 (1) An interested person may apply to the court for a declaration as to whether a protective measure taken under the law of, and enforceable in, a country other than England and Wales is enforceable, or to be registered, in England and Wales in accordance with Court of Protection Rules.
- (2) The court must make the declaration if—
- (a) the measure comes within sub-paragraph (1) or (2) of paragraph 19, and
  - (b) the paragraph is not disapplied in relation to it as a result of sub-paragraph (3), (4) or (5).
- (3) A measure to which a declaration under this paragraph relates is enforceable in England and Wales as if it were a measure of like effect taken by the court.

### *Measures taken in relation to those aged under 16*

- 23 (1) This paragraph applies where—
- (a) provision giving effect to, or otherwise deriving from, the Convention in a country other than England and Wales applies in relation to a person who has not reached 16, and
  - (b) a measure is taken in relation to that person in reliance on that provision.
- (2) This Part of this Schedule applies in relation to that measure as it applies in relation to a protective measure taken in relation to an adult under the law of a Convention country other than England and Wales.

### *Supplementary*

- 24 The court may not review the merits of a measure taken outside England and Wales except to establish whether the measure complies with this Schedule in so far as it is, as a result of this Schedule, required to do so.
- 25 Court of Protection Rules may make provision about an application under paragraph 20 or 22.

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