

# Part XI – Mental Capacity Act

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## 45. [deleted]

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## 46. Documents to be filed

(1) The originating summons, application forms and supporting affidavits for mental capacity proceedings are to be filed in the Family Justice Courts.

(2) The Court may reject any document filed if there are errors or if the document does not comply with the Family Justice Rules, these Practice Directions, or any other directions made by the Court.

(3) Explanatory text in Form 217 in Appendix A to these Practice Directions should be excluded from the originating summons. Also, where a choice is set out in the form (e.g. Deputy / Deputies), the inapplicable choice should be deleted.

## 47. Where permission is not required to make an application

(1) The definition of "P" in rule 175 of the Family Justice Rules shall be applicable in these Practice Directions. "P" means a person who lacks or, so far as consistent with the context, is alleged to lack capacity (within the meaning of the Mental Capacity Act) and to whom any proceedings under the Mental Capacity Act (Cap. 177A) relate.

(2) If the plaintiff or applicant falls or believes himself to fall within the categories of persons who do not require permission to file an application, this shall be stated in the supporting affidavit. Relevant documents, such as copies of birth certificates or marriage certificates, of the lasting powers of attorney or of the court orders appointing

the deputies shall be exhibited to support the averment that no permission is required for an application under the Mental Capacity Act.

## 48. Where permission is required to make an application

(1) Apart from the categories listed in section 38 of the Mental Capacity Act (Cap. 177A), permission is required for an application to the Court under the Mental Capacity Act.

(2) Where permission is required, that prayer may be included in the main application itself. There is no requirement for a separate application for permission. The grounds upon which the plaintiff or applicant is relying to obtain such permission must be stated clearly in the supporting affidavit. The Court will decide whether to grant such permission based on the grounds relied upon by the plaintiff or applicant.

## 49. Service of application on named defendants and relevant persons

(1) Rule 179 of the Family Justice Rules requires the plaintiff to serve the application, together with each affidavit or other document filed in support of the application, on each person named as a defendant in the proceedings and on each relevant person.

(2) In a situation where there are no named defendants, the application shall still be served on relevant persons.

(3) Service on a named defendant shall be by way of personal service. Service on relevant persons may be by way of ordinary service pursuant to rule 902 of the Family Justice Rules, unless directed otherwise by the Court.

(4) Where a relevant person resides overseas and the plaintiff or applicant is able to show that an electronic mail account to which the document will be sent belongs to the relevant person to be served and that it is currently active, the Court may permit service on such a relevant person to be carried out by way of electronic email. The grounds upon which the plaintiff or applicant is relying to obtain such permission must be stated clearly in the supporting affidavit.

(5) Subject to the timelines specified under rule 179(2) of the Family Justice Rules, one affidavit of service may be filed in respect of service on all the named defendants and

relevant persons in any application. The dates, times and manner of service for each of the named defendants and relevant persons have to be stated clearly in the affidavit of service.

## 50. Relevant persons

(1) "Relevant persons" are persons who have an involvement in P's life and/or who are likely to have an interest in the application. Often, P's immediate family members, by virtue of their relationship to P, are likely to have an interest in being notified that an application has been made to the Court concerning P.

(2) 'Relevant persons' for the purposes of Rule 176A and 179 of the Family Justice Rules will therefore often include the following immediate family members:

- (a) P's spouse;
- (b) P's children (aged 21 and above);
- (c) P's parents or guardians; and
- (d) P's brothers or sisters (aged 21 and above).

(3) However, the presumption that immediate family members are likely to have an interest in an application concerning P may be rebutted where the plaintiff or applicant is aware of circumstances which reasonably indicate that P's immediate family should not be served. For example, where the family member in question has had little or no involvement in P's life and has shown no inclination to do so, that family member need not be served. In some cases, P may be closer to persons who are not immediate family members and if so, it will be appropriate to effect service on them instead of the immediate family members.

(4) The plaintiff or applicant should serve the application, the supporting affidavits and the Notice to Relevant Person in Form 222 in Appendix A to these Practice Directions on relevant persons.

(5) Where the plaintiff or applicant decides that a person listed in one of the categories in sub-paragraph (2) ought to be served, and there are other persons in that category (for example, P has three siblings), the plaintiff or applicant should serve on all persons falling within that category unless there is a good reason not to do so. For example, it

may be a good reason not to serve on every person in the category if one or more of them has had little or no involvement in P's life and has shown no inclination to do so.

(6) Apart from immediate family members, other relevant persons who are likely to have an interest in the application concerning P and who should be served the application, the supporting affidavits and the Notice to Relevant Person in Form 222 in Appendix A to these Practice Directions include:

- (a) any other relatives or friends who have a close relationship with P;
- (b) any person who has a legal duty to support P;
- (c) any person who will benefit from P's estate; and
- (d) any person who is responsible for P's care.

If there is no such person to the best of the plaintiff's or applicant's knowledge, he is to state this in his supporting affidavit.

(7) The details of all relevant persons who should be served are to be listed clearly in the supporting affidavit of the plaintiff or applicant. Where service would not be effected on relevant persons who should be served, the reason why this is so must be stated in the supporting affidavit.

(8) In cases where P has had severe intellectual disability since early childhood and where P's parents are P's sole caregivers and where P is now no longer a minor and P's parents need to be authorised to continue to look after P's affairs, P's parents would normally be the only relevant persons for the purposes of the application but the applicants must provide sufficient information to enable the Court to reach the conclusion that there are no other relevant persons.

(9) Organisations providing residential accommodation to P

(a) If P resides at an organisation providing residential accommodation (regardless of whether it also provides care or treatment to P), the plaintiff or applicant shall serve the application, the supporting affidavits and the Notice to Relevant Person in Form 222 in Appendix A to these Practice Directions on such an organisation as soon as possible and in any event, not more than 2 working days after the application has been filed. For the purposes of the application, the organisation providing residential accommodation to P shall be considered a relevant person. However, the plaintiff or applicant need not obtain the consent of such an organisation to the application.

- (b) If the organisation providing residential accommodation to P wishes to furnish any relevant information for the Court's consideration and determination of the application in the best interests of P, it shall notify the Court within 8 days after the date on which the organisation is served with the application. If such a notification is submitted, the Court may require and direct for the submission of a report and/or attendance of the maker of the report at the hearing of the application.
- (c) If an applicant has a strong reason for not serving an affidavit or any other document (other than the originating summons) on the organisation providing residential accommodation to P, the applicant may file a summons to seek dispensation of service of such documents on the organisation in question.

## 51. Consent of relevant persons

- (1) If any relevant person to be served has consented to the application and to dispensation of service, the plaintiff or applicant shall file the consent of the relevant person in Form 221 in Appendix A to these Practice Directions together with the application. The consent given by the relevant person to the application and to dispensation of service must be attested by a solicitor, a Commissioner for Oaths, a notary public or any person for the time being authorised by law in the place where the document is executed to administer oaths.
- (2) The Court may dispense with the service of the application on the relevant person on the application of the plaintiff or applicant. It should be stated clearly in the supporting affidavit that such relevant persons have given their consent to the application and to the dispensation of service.

## 52. Notification of P

- (1) In all cases of notification, the person effecting notification must provide P with the information required under rule 181 of Family Justice Rules in a way that is appropriate to P's circumstances (for example, using simple language, visual aids or any other appropriate means).
- (2) The certificate of notification filed under rule 181(5) of the Family Justice Rules shall be in Form 223 in Appendix A to these Practice Directions.

(3) Under the Mental Capacity Act, notification of P shall be the norm rather than the exception. However, in certain appropriate circumstances, the person required to notify P may apply to Court for an order to dispense with the requirement to notify P. Such an application would be appropriate where, for example, P is in a permanent vegetative state or a minimally conscious state, or where notification is likely to cause significant and disproportionate distress to P. The reasons for seeking dispensation of notification shall be stated in the supporting affidavit of the plaintiff or applicant.

## 53. Responding to an application

(1) If a relevant person served with an application wishes to object to the application or any part of it, he must apply to the Court to be joined as a party to the proceedings within 21 days after the date on which he was served with the application. The application to be joined as a party to the proceedings shall be in Form 4 in Appendix A to these Practice Directions and be supported by an affidavit stating his interest in the application and the grounds of his objection.

(2) If a relevant person served with an application consents to the application, his written consent must be attested by a solicitor, a Commissioner for Oaths, a notary public or any person for the time being authorised by law in the place where the document is executed to administer oaths and must be in Form 221 in Appendix A to these Practice Directions. The written consent should be filed by the plaintiff or applicant within 21 days after the date on which the relevant person was served with the application.

(3) Where a person who was not served with any application (whether listed as a relevant person or otherwise in the supporting affidavit of the plaintiff or applicant) wishes to be heard in the proceedings, he must apply to be joined as a party to the proceedings in Form 4 in Appendix A to these Practice Directions.

## 54. Applications involving the appointment of deputies

### The prayers

(1) The originating summons to be filed for the appointment of a deputy or deputies shall be in Form 217 in Appendix A to these Practice Directions.

(2) It must be stated clearly in the originating summons whether the declaration sought in respect of P's lack of capacity concerns either P's personal welfare or P's property and affairs or both.

(3) The plaintiff or applicant should ensure that the originating summons, the supporting affidavit and the doctor's affidavit exhibiting the medical report are consistent as to whether P lacks capacity in relation to his personal welfare or his property and affairs or both.

(4) If there is more than one deputy sought to be appointed, the originating summons must state whether the deputies are to act jointly or jointly and severally.

(5) The powers sought for the deputies are to be drafted appropriately to suit the purpose of each application.

(6) Any other specific orders or reliefs that are required on the particular facts of each case are to be included.

### **The supporting affidavit by the plaintiff or applicant and the deputies**

(7) The affidavit to be filed by the plaintiff or applicant and all proposed deputies in support of the application for the appointment of a deputy or deputies shall be in Form 218 in Appendix A to these Practice Directions.

(8) In the case of applications for direct payment of P's hospital and/or nursing home charges from P's funds or P's insurance and where no deputy is to be appointed, the affidavit to be filed by the plaintiff or applicant in support of the application shall be in Form 219 in Appendix A to these Practice Directions.

(8A) If there is more than one plaintiff or applicant or proposed deputy, a single affidavit should be made by all the plaintiffs, applicants or proposed deputies. The plaintiffs, applicants or proposed deputies should not file separate supporting affidavits.

(8B) The following search results must be exhibited in the supporting affidavit:

(a) Office of the Public Guardian search result showing if P has registered a Lasting Power of Attorney;

(b) Office of the Public Guardian search result showing if there is a past Mental Capacity Act or Mental Disorders And Treatment Act Order in respect of P; and

(c) Wills Registry search result showing if P has registered a Will.

### **The doctor's affidavit exhibiting the medical report**

(9) In order to assist the Court, the medical report shall —

- (a) distinguish clearly between observations or conclusions based on information given to the doctor and those that are based on the doctor's examination of P; ;
- (b) contain a clear opinion as to whether P lacks capacity in relation to the matters specified in the application;
- (c) be current and shall not be made more than 6 months before the date of the application;
- (d) contain a clear opinion on P's prognosis; and
- (e) the affidavit and medical report to be filed by P's doctor in support of the application for the appointment of a deputy or deputies shall be in Form 224 in Appendix A to these Practice Directions.

(9A) The medical report should be based on a recent examination of P by the doctor making the report and it should contain sufficient information to justify the doctor's opinions and conclusions.

### **The affidavit by the successor deputy or deputies**

(10) If the plaintiff or applicant seeks to apply for the appointment of a successor deputy or deputies, the application must also be accompanied by an affidavit of the proposed successor deputy or deputies in Form 220 in Appendix A to these Practice Directions.

## **55. Application subsequent to the appointment of deputy**

(1) An application to vary an order made in mental capacity proceedings shall be made by way of summons supported by affidavit and served on every party to the proceedings who had initially been served with the originating summons in accordance with Paragraph 49 of these Practice Directions.

(2) If an application under sub-paragraph (1) is filed more than 6 months from the date of the order, the application must be served personally on every party to the proceedings. If such an application is filed 6 months or less from the date of the order, the service on every party to the proceedings may be by way of ordinary service. Service of an application under sub-paragraph (1) on every relevant person shall be by way of ordinary service, unless directed by the Court. Proof of service on the defendant(s) and the relevant person(s) may be given in a manner provided for by Paragraph 49(5) of these Practice Directions.

(3) All applications together with the supporting affidavit shall be served on the Public Guardian within 7 days after the date on which the application is filed.

## 56. Application relating to lasting power of attorney

(1) Any application relating to a lasting power of attorney shall be filed by way of an originating summons and supported by an affidavit.

(2) If the plaintiff or applicant knows or has reason to believe that the donor lacks capacity, he shall notify the donor in accordance with rule 181 of the Family Justice Rules and Paragraph 52 of these Practice Directions.

## 57. Application for statutory wills

(1) The application for a statutory will under section 23(1)(i) of the Mental Capacity Act (Cap. 177A) shall be by way of an originating summons.

(2) The application shall be accompanied by a supporting affidavit which includes the following information and exhibits:

(a) a copy of the draft will;

(b) a copy of the existing will or codicil (if any);

(c) any consents to act by proposed executors;

(d) details of P's family, preferably in the form of a family tree, including details of the full name and date of birth of each person included in the family tree;

- (e) a schedule showing details of all of P's assets and properties, with up to date valuations;
- (f) an up to date report of P's medical condition, life expectancy, likelihood of requiring increased expenses in the foreseeable future, and testamentary capacity; and
- (g) an explanation as to why it is necessary or desirable for the Court to execute the will on behalf of P.

- (3) The Court may direct that any other material or information is to be filed by the plaintiff and if it does, the material or information is to be set out in a supplementary affidavit.
- (4) The application shall also be accompanied by a doctor's affidavit and medical report; both of which must comply with Paragraph 54(9) of these Practice Directions.
- (5) The plaintiff must name as a defendant —
  - (a) any beneficiary under an existing will or codicil who is likely to be materially or adversely affected by the application;
  - (b) any beneficiary under the proposed will or codicil who is likely to be materially or adversely affected by the application;
  - (c) any prospective beneficiary under P's intestacy where P has no existing will; and
  - (d) any donee under a lasting power of attorney executed by P or any Court-appointed deputy of P.
- (6) Once an order is made for a statutory will, the applicant must file a copy of the will for sealing by the Court. The statutory will is considered valid only with the seal of Court.

## 58. Litigation Representative in mental capacity proceedings

- (1) Where P is a party to any mental capacity proceedings with a litigation representative, P should be referred to in the proceedings as "P (by A.B., his litigation representative)".

(2) The application to be the litigation representative of P shall be in Form 4 in Appendix A to these Practice Directions. The supporting affidavit must satisfy the Court of the matters set out in rule 184(5)(a) of the Family Justice Rules.

(3) Under rule 184(2) of the Family Justice Rules, the Court may, on its own motion or on the application of any person (including P), permit P to conduct any mental capacity proceedings without a litigation representative. An application made to permit P to conduct mental capacity proceedings without a litigation representative must be supported by a medical report stating that P does not lack capacity to conduct proceedings himself.

(4) The Court may either on its own motion, or on the application of any person –

- (a) direct that a person may not act as litigation representative;
- (b) terminate a litigation representative's appointment, or
- (c) appoint a new litigation representative in place of an existing one.

(5) An application for any of the orders referred to in sub-paragraph (4) must be supported by affidavit. If the order sought is the substitution of a new litigation representative for an existing one, the evidence must satisfy the Court of the matters set out in rule 184(5)(a) of the Family Justice Rules.

## 59. Where P ceases to lack capacity or dies

(1) Where P ceases to lack capacity or dies, steps may need to be taken to finalise the court's involvement in P's affairs.

### **Application to end proceedings**

(2) Where P ceases to lack capacity in relation to the matter or matters to which the proceedings relate, an application may be made by any of the following people to the Court to end the proceedings and discharge any orders made in respect of that person:

- (a) P;
- (b) his litigation representative; or

(c) any other person who is a party to the proceedings.

(3) The application should be supported by evidence that P no longer lacks capacity to make decisions in relation to the matter or matters to which the proceedings relate.

### **Applications where proceedings have concluded**

(4) Where P ceases to lack capacity after proceedings have concluded, an application may be made to the Court to discharge any orders made (including an order appointing a deputy or an order in relation to security).

(5) The affidavit filed in support should exhibit the orders sought to be discharged and contain evidence that P no longer lacks capacity to make decisions in relation to the matter or matters to which the proceedings relate.

### **Procedure to be followed when P dies**

(6) An application for final directions (including discharging an order appointing a deputy or discharging the security) may be made following P's death. The application should be supported by an affidavit exhibiting a copy of P's death certificate.

### **Final report by deputy**

(7) The Public Guardian may require a deputy to submit a final report upon P ceasing to lack capacity or P's death. If security has been ordered by the Court, the Court must be satisfied that the Public Guardian either does not require a final report or is satisfied with the final report provided by the deputy before the said security can be discharged.

## **60. Applications subsequent to the filing of the originating summons in mental capacity proceedings**

All applications subsequent to the filing of the originating summons in any mental capacity proceedings shall be made by way of Form 4 in Appendix A to these Practice Directions.

## **61. Order of Court**

(1) Unless otherwise specified, an Order of Court shall be in Form 32 in Appendix A to these Practice Directions and shall be signed by the Registrar.

(2) Unless otherwise specified, an Order of Court shall be drawn up and filed in accordance with rule 678 of the Family Justice Rules within 7 days after the date on which the order was made.

(3) Pursuant to section 24(10) of the Mental Capacity Act (Cap. 177A), the Court may require a deputy to give security to the Public Guardian for the due discharge of his functions.

(4) An Order of Court made under Rule 176A of the Family Justice Rules shall be in the form made available in IFAMS and will be sent by the Court either by electronic mail or such other means as deemed appropriate by the Court.

## **61A. Uncontested applications for certain specified matters**

(1) A specified matter application under Rule 176A of the Family Justice Rules shall be made via the IFAMS portal under “Mental Capacity Act Application”.

(2) The specified matters to which Rule 176A of the Family Justice Rules apply are the appointment of a Deputy/Deputies to make decisions on P's behalf in relation to one or more of the following matters:

- (a) To consent to medical treatment for P;
- (b) To consent to dental treatment for P.
- (c) To decide where and with whom P is to live;
- (d) To decide on care services for P;
- (e) To decide on travelling arrangements for P;
- (f) To open a bank account for P;
- (g) To close P's bank account;
- (h) To place P's money in fixed deposit accounts in P's bank;

- (i) To terminate GIRO arrangements linked to P's bank account;
- (j) To cancel P's credit cards;
- (k) To pay P's debts;
- (l) To rent out P's property;
- (m) To decide on upgrading or renovation of P's property;
- (n) To lodge a Notice of Death in respect of P's property;
- (o) To apply for a replacement Certificate of Title in respect of P's property;
- (p) To purchase insurance policies for P;
- (q) To place P's monies in a trust for P;
- (r) To apply to and/or communicate with and/or make agreements with any Government agency or agency or entity designated by the Government to administer the matter in question on behalf of P to the extent to which P would have been able to if P had mental capacity, and to receive monies paid to P by any government agency or agency or entity designated by the government in relation to the aforesaid;
- (s) To obtain information relating to P;
- (t) To decide and act for P in relation to Central Provident Fund matters;
- (u) To receive monies paid to P on a regular basis by the Central Provident Fund Board;
- (v) To enter into contracts for P
- (w) To conduct legal proceedings in P's name or on P's behalf
- (x) Provided that the total amount received is no more than \$80,000, to do one or more of the following:
  - (i) To withdraw monies from P's bank account;
  - (ii) To surrender, claim, receive and/or administer P's insurance monies;
  - (iii) To sell P's shares;
  - (iv) To sell P's motor vehicle.

(y) To receive up to \$60,000 of P's monies from the Central Provident Fund Board in addition to monies paid to P on a regular basis by the Central Provident Fund Board.

(3) A medical report filed by P's doctor in support of a specified matter application under Rule 176A is to be filed through the IFAMS portal under "Mental Capacity Act Application". In order to assist the Court, the medical report must be current and shall not be made:-

- (a) more than 6 months before the date of the application; and
- (b) more than 3 months after P was last examined by P's doctor.

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