

PRACTICE DIRECTION – TRANSITORY AND TRANSITIONAL PROVISIONS

This practice direction supplements Part 22 of the Court of Protection Rules 2007

PRACTICE DIRECTION B - TRANSITORY PROVISIONS

Applications to which this practice direction applies

1. Rules 195 and 196 make provision for an application by a person who becomes a deputy by virtue of paragraph 1(2) of Schedule 5 to the Act, i.e. a receiver appointed under the Mental Health Act 1983 at the time of commencement (referred to in this practice direction as “a deputy”).
2. Rules 195 and 196 and the provisions of this practice direction will cease to have effect on 30th June 2008. On and after 30th June 2008, a deputy who wishes to apply to the court for an order must use the procedure under either Part 9 or Part 10 of the Rules, as appropriate.

Applications which may be suitable for the procedure set out in this practice direction

3. Examples of applications that may be suitable for the procedure set out in this practice direction include, but are not limited to:
 - (a) applications for regular payments from P’s assets to the deputy in respect of remuneration;
 - (b) applications seeking minor variations only to the expenses that can be paid from P’s estate;
 - (c) applications for the receipt or discharge of a sum due to or by P as a result of an entitlement in or obligation to an estate;
 - (d) applications for release of funds to repair or improve P’s property;
 - (e) applications to sell P’s furniture and effects;
 - (f) applications for the release of capital to meet expenses required for the care of P;
 - (g) applications for authority to access P’s funds on P’s behalf;
 - (h) applications for directions with regard to the management of P’s investments (including any held at the Court Funds Office);

- (i) applications to approve the sale price of a property, where the sale has previously been authorised;
 - (j) applications to approve the purchase of a property, where the purchase has previously been authorised; and
 - (k) applications for authority to manage and let a property belonging to P.
4. Applications listed in paragraph 3 above may be heard by an officer nominated by the Senior Judge or the President pursuant to rule 196.

Applications which must be dealt with by a judge

5. Examples of applications which are not suitable for the procedure set out in this practice direction include, but are not limited to:
- (a) applications to appoint a new deputy, or to discharge an existing deputy;
 - (b) applications seeking authorisation to commence, continue or defend litigation on behalf of P;
 - (c) applications for the settlement of P's property, whether for P's benefit or the benefit of others;
 - (d) applications to vary the terms of a trust in which P has an interest;
 - (e) applications for a statutory will or codicil;
 - (f) applications to operate or to cease to operate a business belonging to P, or to dissolve a partnership of which P is a member;
 - (g) applications for authority to purchase or sell real property;
 - (h) applications to make a gift or loan from P's assets;
 - (i) applications to end proceedings or discharge court orders, where it is alleged that P has ceased to lack capacity;
 - (j) applications to set, vary or dispense with security in relation to a deputy;
 - (k) applications to change an accounting period;
 - (l) applications to set or change the time by which an annual account may be submitted;
 - (m) applications in relation to the sale of property owned by P;
 - (n) applications for authority to disclose information as to P's assets, state of health or other circumstances;
 - (o) applications to sell or otherwise deal with P's investments;
 - (p) applications for authority to apply for a grant of probate or representation, where P would be the person entitled to the grant but for his lack of capacity;

- (q) applications relating to the lease or grant of a tenancy in relation to a property owned by P;
 - (r) applications to arrange an overdraft on the bank account operated for the purpose of the deputyship; and
 - (s) applications to open a bank account on behalf of P or for the purpose of the deputyship at a private bank, a bank that is not located in England and Wales, or at a bank which has unusual conditions attached to the operation of the account.
6. An application which is likely to be contested, or which involves large sums of money (when compared with the size of P's estate as a whole) is not suitable for the procedure set out in this practice direction.

Procedure to be followed

7. Applications to which the procedure in this practice direction applies may be made by filing a COP9 application notice, together with any evidence in support of the application.
8. The application may be made without serving an application notice on anyone and without notifying anyone that the application has been made.

How applications will be dealt with under the transitory procedure

9. Subject to paragraph 10, the nominated officer will deal with an application made in accordance with this practice direction without a hearing.
10. The nominated officer may decide, upon considering the application, that other persons ought to be informed of the application and given the opportunity to respond. In such a case, the nominated officer will refer the application to a judge.
11. The nominated officer will give directions as to who is to be served with any order that he makes.

12. Following a nominated officer's decision, the nominated officer will refer the matter to a judge, who will consider what (if any) further orders may be required to ensure that the deputy is on the same footing as a person who became a deputy by virtue of section 19 of the Act.

Reconsideration of and appeals against decisions of nominated officers

13. Where the application is determined without a hearing or without notice having been given to anyone, P, any party to the proceedings or any person affected by the order may apply to the court, within 21 days of having been served with the court's order, to have the order reconsidered.¹ An application to have an order reconsidered must be made by filing a COP9 application notice in accordance with Part 10.

14. Rule 197 sets out the appeal route in relation to decisions of nominated officers.

¹ Rule 89.