

PRACTICE DIRECTION 24B – WHERE P CEASES TO LACK CAPACITY OR DIES

This practice direction supplements Part 24 of the Court of Protection Rules 2017

General

1. An order of the Court of Protection will continue until it is discharged or, if made for a specified period, will cease to have effect when that period comes to an end.
2. 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

3. 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) P's litigation friend; or
 - (c) any other person who is a party to the proceedings.
4. An application under rule 24.5 should be made by filing a COP9 application notice in accordance with the Part 10 procedure, together with any evidence in support of the application. The application should in particular 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

5. 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 a security bond) by filing a COP9 application notice in accordance with the Part 10 procedure, together with any evidence in support of the application. The application notice should set out details of the order or orders the applicant seeks to have discharged, and should in particular 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.
6. If the Court Funds Office is holding funds or assets on behalf of P, it will require an order of the court to the effect that P no longer lacks capacity to make decisions with regard to the use and disposition of those funds or assets before any funds or assets can be transferred to P.

Procedure to be followed when P dies

7. An application for any final directions needed following P's death (including to discharge an order appointing a deputy or to discharge a security bond) should be made by filing a COP9 application notice in accordance with the Part 10 procedure. An application should attach the original or a certified copy of P's death certificate.

8. Any security bond taken out by the deputy will remain in force until the end of the period of 2 years commencing with the date of P's death, or until it is discharged by the court.¹

9. The Public Guardian may require a deputy to submit a final report upon P's death.² Before it will discharge a security bond, the court must be satisfied that the Public Guardian either—

(a) does not require a final report; or

(b) is satisfied with the final report provided by the deputy.

Personal representatives and administrators

10. Where there are solicitor's costs outstanding which would be due from P's estate, the personal representative or administrator may agree any of these costs without an order from the court. If these costs cannot be agreed, the personal representative, administrator or the solicitor may apply to the court for costs to be assessed,³ using a COP9 application notice in accordance with the Part 10 procedure.

11. If there are funds or other assets held in the Court Funds Office on behalf of P, P's personal representative or administrator will need to contact the Court Funds Office directly regarding those funds.

¹ Regulation 37 of the Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007.

² Regulation 40 of the Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007.

³ Rule 19.11 provides that an order or directions that costs incurred during P's lifetime be paid out of or charged on his estate may be made within 6 years after P's death.