

## **PRACTICE DIRECTION – TRANSITORY AND TRANSITIONAL PROVISIONS**

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

### **PRACTICE DIRECTION C – APPEALS AGAINST DECISIONS MADE UNDER PART 7 OF THE MENTAL HEALTH ACT 1983 OR UNDER THE ENDURING POWERS OF ATTORNEY ACT 1985 WHICH ARE BROUGHT ON OR AFTER COMMENCEMENT**

#### **General**

1. Rule 199 enables a practice direction to be made in relation to transitory and transitional matters.
2. This practice direction sets out the procedure to be followed in relation to appeals against decisions made under Part 7 of the Mental Health Act 1983 (“the 1983 Act”) or under the Enduring Powers of Attorney Act 1985 (“the 1985 Act”), which are brought on or after commencement of the Mental Capacity Act 2005 (“the 2005 Act”).
3. Appeals to which this practice direction applies are to be dealt with in accordance with Part 20 (appeals), unless this practice direction makes different provision<sup>1</sup>.

#### **Appeals against decisions made by nominated officers**

4. Where the appeal is from a first instance decision of an officer nominated by virtue of section 93(4) of the 1983 Act, the appeal will be heard by a district judge nominated to exercise the jurisdiction of the court under section 46(2)(e) of the 2005 Act.
5. Where the appeal is from a decision of a district judge made under paragraph 4 above, it will be heard by a circuit judge nominated to exercise the jurisdiction of the court under section 46(2)(d) of the 2005 Act.

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<sup>1</sup> See rule 169.

6. The Court of Appeal will hear an appeal against a decision of a circuit judge made under paragraph 5 above. Rule 182(2) and (3) apply to such an appeal.

#### **Appeals by decisions of the Master of the former Court of Protection**

7. An appeal from a decision of the Master of the Court of Protection<sup>2</sup> will be heard by a judge of the court nominated by virtue of section 46(2)(a) to (c) of the 2005 Act (i.e. the President, the Chancellor, or a puisne judge of the High Court).
8. Where the appeal is from a decision that was made under paragraph 7 above, it must be dealt with in accordance with rule 181 (appeals against decisions of a puisne judge of the High Court etc).

#### **Appeals made under Part 7 of the 1983 Act or under the 1985 Act pending at the time of commencement**

9. This practice direction does not apply to appeals made under Part 7 of the 1983 Act or under the 1985 Act which are pending on 1 October 2007.
10. Paragraph 4(1) of Schedule 5 to the 2005 Act provides that an appeal brought by virtue of section 105 of the 1983 Act and which has not been determined before the commencement day, shall be determined in accordance with Part 7 of the 1983 Act and the rules made under it.
11. Where an appeal has been brought by virtue of section 10(1)(c) of the 1985 Act and has not been determined before the commencement day, the provisions of the 1985 Act, Part 7 of the 1983 Act (so far as they are relevant) and the rules made under that Part as applied by section 10 of the 1985 Act, shall continue to apply to such an appeal<sup>3</sup>.
12. If the appeal has been brought under section 105(1) of the 1983 Act, or by virtue of section 10(1)(c) of the 1985 Act, and the judge nominated under section 93 of the 1983 Act has begun to hear the appeal, he will continue to do so; otherwise,

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<sup>2</sup> The judicial officer appointed by the Lord Chancellor under section 89 of the Supreme Court Act 1981.

<sup>3</sup> Paragraph 13(1) of Schedule 5 to the 2005 Act.

the appeal is to be heard by a puisne judge of the High Court nominated under section 46 of the 2005 Act<sup>4</sup>.

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<sup>4</sup> Paragraph 4(2) and paragraph 13(2) of Schedule 5 to the 2005 Act.