STATUTORY INSTRUMENTS

2025 No. 866 (L. 5)

MENTAL CAPACITY, ENGLAND AND WALES

The Court of Protection (Amendment) Rules 2025

Made - - - -	*10th July 2025*
Laid before Parliament	*15th July 2025*
Coming into force - -	*1st October 2025*

The President of the Family Division, as nominee of the Lady Chief Justice under paragraph 2(2)(b) of Schedule 1 to the Constitutional Reform Act 2005(**a**), being President of the Court of Protection, makes the following Rules in exercise of the powers conferred by section 51 of the Mental Capacity Act 2005(**b**).

The Lord Chancellor agrees these Rules in accordance with paragraph 3(1) of Schedule 1 to the Constitutional Reform Act 2005.

Citation, commencement, extent and interpretation

1.—(1) These Rules may be cited as the Court of Protection (Amendment) Rules 2025 and come into force on 1st October 2025.

(2) These Rules extend to England and Wales.

(3) A reference to a Part or rule by number alone means the Part or rule so numbered in the Court of Protection Rules 2017(**c**).

Amendment of the Court of Protection Rules 2017

2. The Court of Protection Rules 2017 are amended as set out in rules 3 to 6 of these Rules.

Amendment to Part 4 (hearings)

3. In rule 4.1(4) (exception to the general rule – hearing to be held in private), omit "or writ of sequestration (in respect of which rule 21.27 makes provision)".

Amendment to Part 21 (applications and proceedings in relation to contempt of court)

4. In rule 21.4 (requirements of a contempt application), in paragraph (2)(n) after "incriminate the defendant" insert ", but that the court may draw adverse inferences if this right is exercised".

(**a**) 2005 c. 4.
(**b**) 2005 c. 9. Section 51 was amended by S.I. 2006/1016 and by paragraph 38 of the Schedule to the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 (c. 33).
(**c**) S.I 2017/1035, amended by S.I 2022/1192; there are other amending instruments but none is relevant.

5. In rule 21.7 (directions for hearing of contempt proceedings), after paragraph (3) insert—

"(4) Before the first hearing of the contempt proceedings, the court must consider whether to make an order under rule 21.8(5) for the non-disclosure of the identity of the defendant in the court list. If it makes such an order the court must—

(a) before the first hearing, notify the national print and broadcast media, via the Press Association; and

(b) at the first hearing, consider any submissions from the parties or media organisations before deciding whether, and if so to what extent, the order should be continued or varied.".

6. In rule 21.8 (hearings and judgments in contempt proceedings)—

(a) in paragraph (5)—

(i) for "The court must" substitute "Subject to paragraph (11), the court may"; and

(ii) for "party or witness"—

(aa) in the first place it appears, substitute "person";

(bb) in the second place it appears, substitute "person or any other person";

(b) after paragraph (11) insert—

"(11A) If a committal order is made, it must name the defendant."; and

(c) for paragraph (13) substitute—

"(13) Where the court makes an order for committal, the court shall ensure that the judgment in the contempt proceedings is transcribed and published on the website of the judiciary of England and Wales.".

Sir Andrew McFarlane
7th July 2025 President of the Family Division

I agree these Rules
Signed by the authority of the Lord Chancellor

Sarah Sackman
Minister of State
10th July 2025 Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Court of Protection Rules 2017 (S.I. 2017/1035) ("the 2017 Rules").

Rule 3 amends rule 4.1(4) of the 2017 Rules to remove a defunct cross-reference.

Rule 4 amends rule 21.4(2) of the 2017 Rules, which requires a committal application to give information to a defendant about their rights including their right to silence, to incorporate a requirement to warn the defendant of the risk of a court drawing adverse inferences from that silence if that right is exercised. This follows the decision in Inplayer Ltd. and another v. Thoroughgood [2014] EWCA Civ 1511 and aligns with the position in criminal proceedings.

Rules 5 and 6 amend, respectively, rules 21.7 and 21.8 of the 2017 Rules, concerning hearings in contempt proceedings, in response to the decision in Esper v. NHS North West London ICB [2023] EWCOP 29.

Rule 21.7 of the 2017 Rules is amended to require the court to consider, before the first hearing of any contempt proceedings, whether to make an order under rule 21.8(5) for the non-disclosure of the identity of the defendant in the court list. This is to prevent the utility of any subsequent non-disclosure order being undermined by the prior public notice of the identity of the defendant.

Rule 21.8 is amended to provide that the court has a discretion to order the non-disclosure of the identity of any person during contempt proceedings, where certain criteria are satisfied. Currently, the rule mandates non-disclosure where those same criteria are satisfied, but only in respect of a party or witness to the contempt proceedings. Rule 21.8(11A) is inserted to clarify that the court's discretion does not extend to restricting the disclosure of the identity of a defendant who has been convicted and sentenced to a committal order. An amendment to rule 21.8(13) clarifies that the judgment is transcribed and published solely where the court has made an order for committal.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

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ISBN 978-0-34-827405-9

£5.78

http://www.legislation.gov.uk/id/uksi/2025/866