

Incapacitated Persons: A Modern Approach

Who is likely to be affected?

The legislation concerns people with mental health conditions and children, as well as people who represent or act for them. However there is no practical impact expected on any group.

General description of the measure

This measure will remove the current definition of “incapacitated person” from the Taxes Management Act (TMA) 1970 and in doing so remove the offensive terms within that definition from the statute book.

The measure will remove the current legal provisions that transfer certain rights and obligations under the TMA (and other similar legislation) to the person that represents an incapacitated person. Instead, those rights and obligations will apply to the person with mental health conditions or child with taxable income, these individuals' representatives will then continue to be able to act for them on their behalf (as the law allows).

Policy objective

This change supports the Government's objectives of a simpler and fairer tax system. The policy objective is that incapacitated persons should have the same rights and obligations under tax law as they currently would if they were not incapacitated, and that those rights and obligations can be exercised or met with the help of the incapacitated person's representative.

Background to the measure

In 2010 the Exchequer Secretary to the Treasury gave a commitment to consult with an intention to update the current definition. The consultation document was published on 24 May 2011 and invited comments by 16 August 2011 on:

- whether the way the existing definition currently works is satisfactory; and,
- how a new definition should be constructed.

An assessment of tax impacts, including equalities impacts, was published in part two of the consultation document. In addition to a number of meetings with interested parties, 18 formal written replies were received in response to the consultation document.

Having considered the responses to the consultation document it became clear that rather than just updating the definition of incapacitated person the Government should also consider the need for keeping the provisions that relied on that definition. The approach taken here both removes the offensive terminology of the definition and removes the superfluous provisions. Rather than creating a new tax-specific legal framework for incapacitated persons the changes will instead allow the general legal framework for assisting people who lack capacity to operate in its place.

Detailed proposal

Operative date

The intention for stamp duty land tax is that this measure will apply to all land transactions with an effective date on or after the date on which the Finance Bill receives Royal Assent. For income tax and all other purposes it is intended that this measure will have effect for the 2012-13 tax year and subsequent years.

Current law

The current definition is at section 118(1) TMA. It provides that an “incapacitated person” means any “infant, person of unsound mind, lunatic, idiot or insane person”.

The Taxes Management Act relies on this definition in a number of places for direct taxes.

Section 42 TMA 1970 allows an incapacitated person’s trustee, guardian, tutor or curator to make certain types of claim (e.g. for relief) on behalf of the incapacitated person.

Section 72 TMA 1970 provides that where an incapacitated person’s trustee, guardian, tutor, curator or committee directs controls or manages the person’s property the trustee, etc is personally assessable and chargeable to income tax in the same way as the person would be if they were not incapacitated. It also makes the trustee etc answerable for everything that has to be done under the Income Tax Acts for the purpose of assessment and payment of income tax.

Section 73 TMA 1970 provides that where a person chargeable to income tax is an infant and that infant fails to pay that tax then the parent or guardian of that infant is liable to pay that tax.

References are also made at section 13 and section 76 TMA.

Further legislation applies similar rules in relation to stamp duty land tax. See here sections 81B and 106 Finance Act (FA) 2003. Similarly section 72 TMA 1970 is applied with modifications in relation to stamp duty reserve tax by virtue of Paragraph 20 and Schedule 1 to SI 1986/1711 (The Stamp Duty Reserve Tax Regulations 1986).

A number of related provisions are listed below:

- Student Loan repayments; Regulation 38 of the Education (Student Loans) (Repayment) Regulations 2009 (SI 2009/470);
- Child Trust Funds; Reg 29(4) of the Child Trust Fund Regulations (SI 2004/1450);
- Pension Schemes: S267 and S268 Finance Act 2004 and SI 2005/3452; and,
- Social Security contributions; Paragraph 5(a) of Schedule 2 to the Social Security Contributions and Benefits Act 1992 (SSCBA).

Proposed revisions

Legislation will be introduced in Finance Bill 2012 to repeal those provisions in the TMA, the FA 2003 and the SSCBA 1992 which relate to incapacitated persons (or, where their scope is wider, to amend them so that they no longer make provision in relation to incapacitated persons). Further changes will also be needed to amend the related subordinate legislation.

The removal of these provisions concerning incapacitated persons will mean that those covered by the current definition will in future have the same rights and obligations under tax law as they would if they were not incapacitated. Rights and obligations will not in future be transferred to that person’s representative so the representatives will no longer be personally liable under tax law (although their duties under the wider law will of course remain). Those

rights and obligations will though be able to be exercised and met by the person's representative acting in a representative capacity (i.e. making decisions, signing documents etc on their behalf).

Summary of impacts

Exchequer impact (£m)	2011-12	2012-13	2013-14	2014-15	2015-16
	-	nil	nil	nil	nil
	This measure is not expected to have an Exchequer impact.				
Economic impact	This measure has no significant economic impacts.				
Impact on individuals and households	This measure will remove a separate tax framework applying to incapacitated people but will continue to allow their representatives to act on their behalf. This should impose negligible new burdens or costs other than the cost of reading and understanding the changes.				
Equalities impacts	In terms of law, this change technically imposes new obligations on people with mental health conditions and children with taxable income. However, people in these groups will not be affected financially and will still have the assistance of representatives who can act on their behalf. This assistance will be within the framework of the wider law providing for representatives to be appointed to assist people who lack capacity rather than under specialist tax provisions. There will be no detrimental impact on any group and there are small positive impacts from the removal of outdated language which is now widely held to be offensive and from bringing tax obligations within the framework of wider law.				
Impact on business including civil society organisations	The Government does not anticipate any specific impacts on businesses or civil organisations, since only individuals are directly impacted.				
Operational impact (£m) (HMRC or other)	The operational impacts will be negligible and will be delivered as part of our normal business processes.				
Other impacts	No significant impacts have been identified.				

Monitoring and evaluation

HM Revenue & Customs will monitor any impacts through ongoing monitoring of queries and correspondence on the issues these changes raise. HMRC also regularly bring together a number of interested representative bodies at the Individuals Stakeholders Forum which will provide a forum for any difficulties to be raised.

Further advice

If you have any questions about this change, please contact Tax Administration Policy on TAP@hmrc.gov.uk.

1 Removal of special provision for incapacitated persons and minors

- (1) In TMA 1970 omit—
 - (a) section 42(8) (procedure for making claims etc on behalf of incapacitated persons),
 - (b) section 72 (trustees, guardians, etc of incapacitated persons), and
 - (c) section 73 (further provision as to infants).
- (2) In Part 4 of FA 2003 (stamp duty land tax), omit section 106(1) and (2) (persons acting in a representative capacity on behalf of incapacitated persons and minors).
- (3) Accordingly, incapacitated persons are (and minors remain) assessable and chargeable to the taxes in question.
- (4) In consequence of the amendments made by subsections (1) and (2)—
 - (a) in section 118(1) of TMA 1970, omit the definitions of “incapacitated person” and “infant”,
 - (b) omit paragraphs 33 and 34 of Schedule 1 to the Age of Legal Capacity (Scotland) Act 1991,
 - (c) in paragraph 5 of Schedule 2 to the Social Security Contributions and Benefits Act 1992—
 - (i) omit paragraph (a) (together with the “or” after it), and
 - (ii) in paragraph (b), for “such” substitute “Class 4”,
 - (d) in paragraph 5 of Schedule 2 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992—
 - (i) omit paragraph (a) (together with the “or” after it), and
 - (ii) in paragraph (b), for “such” substitute “Class 4”, and
 - (e) in section 81B(4) of FA 2003, omit paragraph (b) (together with the “or” before it).
- (5) The amendments made by subsections (1) and (4)(a) to (d) have effect for the tax year 2012-13 and subsequent tax years.
- (6) The amendments made by subsections (2) and (4)(e) have effect in relation to land transactions with an effective date on or after the day on which this Act is passed.

EXPLANATORY NOTE

REMOVAL OF SPECIAL PROVISION FOR INCAPACITATED PERSONS AND MINORS

SUMMARY

1. This clause removes the current definition of “incapacitated person” from the Taxes Management Act 1970. This clause also removes linked provisions in the Taxes Management Act (and other similar legislation) that confer certain rights and obligations on the person that represents an incapacitated person. The general legal framework for appointing people to assist those who lack capacity will continue to operate in relation to tax.

DETAILS OF THE CLAUSE

2. Subsections (1) and (2) remove provisions of the Taxes Management Act 1970 and the Finance Act 2003 which relate to income tax and stamp duty land tax and confer different rights and obligations on the representatives of incapacitated persons (including minors), and on parents and guardians of minors generally.
3. Subsection (4)(a) removes the definitions of an “incapacitated person” and an “infant” from the Taxes Management Act 1970.
4. Paragraphs (b) to (e) of subsection (4) make further consequential amendments to other legislation.
5. Subsections (5) and (6) make provision as to when the changes have effect.

BACKGROUND NOTE

6. In 2010 the Exchequer Secretary to the Treasury gave a commitment to consult, with an intention to update the current definition for tax purposes of an incapacitated person. A consultation document was published on 24 May 2011, and a summary of responses has now been published.
7. The approach taken here removes both the terminology, which is seen as offensive, of the current definition and the linked provisions. As a result of the changes there will no longer be a tax-specific legal framework for incapacitated persons. The general legal framework

for appointing people to assist those who lack capacity will continue to operate in relation to tax.

8. The provisions that this clause removes from the Taxes Management Act 1970 are applied for different purposes, and with modifications, by three statutory instruments: the Stamp Duty Reserve Tax Regulations 1986 (S.I. 1986/1711); the Child Trust Fund Regulations 2004 (SI 2004/1450); the Education (Student Loans) (Repayment) Regulations 2009 (SI 2009/470). It is intended that secondary legislation will be made to remove from those instruments the provisions that are linked to the sections of the Taxes Management Act that are removed by this clause.
9. The Registered Pension Schemes (Discharge of Liabilities under Sections 267 and 268 of the Finance Act 2004) Regulations 2005 (S.I. 2005/3452), makes provision in regulation 4 for applications made on behalf of incapacitated persons. The intention is to revoke regulation 4 by statutory instrument.
10. If you have any questions about this change, or comments on the legislation, please email Tax Administration Policy at: TAP@hmrc.gsi.gov.uk.