

**HMRC Consultation: ‘Incapacitated person – a modern definition’  
Response from the Low Incomes Tax Reform Group**

**1 Executive summary**

1.1 This consultation presents an opportunity for a fundamental review of Section 72 of the Taxes Management Act 1970 (‘Section 72’) and the associated definition of ‘incapacitated persons’ in Section 118(1) of that Act.

1.2 We recommend that:

1.2.1 The necessity for Section 72 in the context of incapacitated persons should be reconsidered. Its current provisions – transferring the obligations and liabilities of the incapacitated person to their representative – are somewhat heavy-handed. General laws of incapacity and representation should be sufficient to allow someone to deal with HMRC on the incapacitated person’s behalf as long as HMRC’s systems are robust enough to recognise the various forms of legal ‘representative’.

1.2.2 But if Section 72 cannot be repealed altogether we outline a second option, to:

- update the language of Section 72 to reflect modern laws of incapacity and the various types of representative which may be appointed under general law;
- separate out the treatment of ‘infants’ from incapacitated persons and revise that terminology to ‘minor’;
- further amend Section 72 so that the transfer of obligations can be refused by the representative or alternatively, that it recognises a situation where a representative, eg an attorney, is not empowered to deal with the donor’s tax affairs; and

- update the Section 118(1) definition of incapacitated person to allow use of Section 72 in cases where there is a recognised representative in place or where (as in Tax Credits Regulations) HMRC appoint such a representative following receipt of a written application.

- 1.2.3 Formally-appointed representatives of those who are physically incapacitated should not have to rely on Statement of Practice A13. In those situations, whilst the taxpayer would themselves remain responsible for fulfilling their tax obligations, HMRC should recognise the authority to transact with their attorney or similar.
- 1.2.4 HMRC's Agent Strategy, the subject of separate consultation, must address how to deal with the 'shades of grey' – ie, those taxpayers who might be struggling with temporary incapacity, say, but where a formal appointment is not in place.
- 1.2.5 HMRC's interpretation of 'reasonable excuse' provisions does not accord with Parliament's intention, as upheld by the courts. HMRC's guidance must therefore be amended.

## **2 Introduction**

### **2.1 *About us***

- 2.1.1 The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes.
- 2.1.2 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

## **3 Question 1: Are these principles correct and fair?**

- 3.1.1 The first and third principles set out at para 3.2.3 of the consultation document are broadly correct and fair, but the second needlessly restricts the scope of the consultation. Whilst we agree that the first part is appropriate, ie 'to maintain the scope of the definition by ensuring that, as far as possible, incapacitated people covered by the existing provision are covered by the new definition', we question the second element, ie 'avoiding inadvertently extending it to other groups' particularly in the context that HMRC do not currently treat 'temporary incapacity' as falling within the definition.
- 3.1.2 Moreover, this review should revert to basics, asking:

1. Is it necessary for tax law to differ at all from the general law on incapacity and representation?

Then -

2. If so, how can HMRC update both the law of Section 72 and Section 118(1) TMA 1970 (the definition found in the latter, after all, being an adjunct to the former) and their practice to best support 'incapacitated people' in the context of modern thinking and general law, rather than being confined to past, restricted thinking.

3.1.3 To gain a better understanding of the issues, we need to review who in a modern context would replace the 'trustee, guardian, tutor, curator or committee' referred to in Section 72 – in other words, who today would have 'the direction, control or management of the property or concern' of an incapacitated person.

### 3.2 ***Incapacity and its 'forms'***

3.2.1 It would seem to us that, in terms of its timing/duration, mental incapacity can fall under one of the following four broad headings:

- (a) permanent,
- (b) temporary,
- (c) fluctuating,
- (d) progressive.

3.2.2 Throughout this response, we will use the term 'mental incapacity' as including those with learning, social or communication difficulties although these are not medical conditions.

### 3.3 ***Temporary incapacity or fluctuating capacity***

3.3.1 One area where our understanding differs from HMRC is that of temporary incapacity and fluctuating capacity. Whilst para 3.2.8 makes it clear that HMRC's current practice is not to invoke the incapacitated person rules in such circumstances (instead relying on reasonable excuse provisions), we see nothing in the current statutory definition – 'any infant, person of unsound mind, lunatic, idiot or insane person' limiting it to permanent or long term incapacity.

3.3.2 Surely, even in the historical context of the definition, a 'person of unsound mind' could have regained soundness of mind? And a person might have been judged 'insane' at a given time, perhaps because of a triggering life event, but later have regained their sanity? Because of advances in medicine, particularly psychiatry, since the definition was first framed, conditions which might once have been permanent are now curable or manageable.

3.3.3 This argues for a more thorough review than the consultation document suggests, including whether Section 72 in its existing form is the most appropriate vehicle to use for such cases, whether or not they are currently within its ambit.

### 3.4 ***Physical incapacity formerly having been regarded as mental incapacity***

3.4.1 There are also situations where, in the past, a person might have been regarded as within the Section 118(1) definition because of a physical condition which was poorly understood and therefore the individual was considered mentally incapacitated.

3.4.2 For example, would someone who is deaf mute or deaf blind, who may well need the same kind of support as is provided by a Section 72-type agent, be excluded from the Section

118(1) legislation as it stands?

- 3.4.3 Why have a statutory rule for mental incapacity and a non-statutory 'code' (Statement of Practice A13 currently) for physical incapacity? We comment on this further below, in answer to question 3.

### 3.5 ***Suggested solution***

- 3.5.1 The difficulty with this consultation is that its focus is on the definition of incapacitated person within Section 118(1) TMA 1970. It occurs to us that to do this without also looking at the provision to which it is ancillary (Section 72) is to look at the problem from the wrong end, or to ask ourselves the wrong question.
- 3.5.2 If looked at from the standpoint of Section 72, the question becomes not so much whether a person's incapacity is such as to fall within the definition, but the fact that a person such as is described in section 72 has the 'direction, control or management' of their property or income (as per Section 72). So the consultation becomes as much, if not more, about the identity of the people referred to in Section 72 as about the nature of a person's incapacity.

## 4 **Question 2: Who should be the recipient of the obligations and rights that are transferred from the incapacitated person?**

- 4.1.1 As above, this question involves a review of Section 72 TMA 1970.
- 4.1.2 Although different in the various jurisdictions within the UK, there are recognised processes for transferring the administration (that is 'direction, control or management') of a person's affairs to another in the event of incapacity. We think it could therefore be possible for HMRC to repeal Section 72 and rely on those, so long as the Department's systems are sufficiently robust to recognise the various types of appointment.
- 4.1.3 If, however, HMRC do think it necessary to retain specific provision, for clarity and practicality it seems appropriate to base an updated Section 72 TMA 1970 around the general law surrounding the various types of representative (and of course, but perhaps separately, maintaining the concept of a parent or other legal guardian being able to act for a 'minor').

### 4.2 ***Types of representative***

- 4.2.1 There does not seem to be any clear, comprehensive guidance available from government on the types of formal representative who might act for an incapacitated person. HMRC need to ensure that they recognise all such relevant appointments, whether if relying on general incapacity laws or via an updated version of Section 72. So far as we are aware, this would include:

- *England and Wales*  
The holder of an Enduring Power of Attorney (which may take immediate effect or only on registration, depending on its terms and the state of health of the individual) or a registered Lasting Power of Attorney, or deputy (formerly receiver) appointed by the Office of the Public Guardian.

- *Scotland*  
The holder of a registered Continuing Attorney, or a guardian or intervener with financial powers authorised by the Office of the Public Guardian (Scotland). We believe that, for incapacitated adults if not for minors, the terms tutor and curator effectively disappeared with the Adults with Incapacity (Scotland) Act 2000, on commencement of which holders of such status became 'guardians'.<sup>1</sup>
- *Northern Ireland*  
The holder of an Enduring Power of Attorney which has been registered with the Office of Care and Protection, or a Controller appointed by the court.

4.2.2 We also think that, for the purposes of tax compliance, HMRC should recognise appointees who have been authorised by the Department for Work and Pensions (or Department for Social Development in Northern Ireland) to claim benefits on someone else's behalf<sup>2</sup>. Indeed, the Tax Credit Office (TCO) of HMRC already recognises such appointments for tax credits claims. Moreover, in the absence of such DWP appointment and on receipt of a written application, the TCO is itself able to authorise the appointment of a person to claim on another's behalf.<sup>3</sup>

**5 Question 3: Do you agree that the current practice in relation to taxation obligations and mental incapacity is working satisfactorily? If not, please give examples to illustrate the difficulties you see. HMRC would also welcome respondents' views on any of its existing guidance and how it could be improved.**

5.1.1 No, we believe there are a good number of difficulties in this area and there are indeed linkages with the concurrent consultation on HMRC's working practices with agents – specifically friends and family and other 'informal' representatives where someone requires help with their affairs, but is not necessarily 'incapacitated' so as to require the formal appointment of an attorney or similar.

**5.2 *Temporary, fluctuating or progressive incapacity***

5.2.1 As noted above, where there is a formal 'representative' in place due to incapacity, HMRC should recognise them however long their appointment is for.

5.2.2 But there are many 'shades of grey' here which the reasonable excuse provisions do not cater for well at present, if one follows HMRC guidance.

5.2.3 In various decisions, Tribunal members have criticised HMRC's interpretation of what is a reasonable excuse in certain circumstances. HMRC's guidance must be clear that mental health difficulties should be accepted as a reasonable excuse, and not limited to a 'one off' application.

5.2.4 For example, in the case of *N A Dudley Electrical Contractors Limited v HMRC* [2011], it was

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<sup>1</sup> See Schedule 4 of that Act: <http://www.legislation.gov.uk/asp/2000/4/data.pdf>

<sup>2</sup> See <http://www.dwp.gov.uk/docs/part-05.pdf>

<sup>3</sup> See Regulations 17 and 18 of the Tax Credits (Claims and Notifications) Regulations 2002 [SI 2002/2014]

noted:

'HMRC argues that a "reasonable excuse" must be some exceptional circumstance which prevented timeous filing. That, as a matter of law, is wrong. Parliament has provided that the penalty will not be due if an appellant can show that it has a "reasonable excuse". If Parliament had intended to say that the penalty would not be due only in exceptional circumstances, it would have said so in those terms. The phrase "reasonable excuse" uses ordinary English words in everyday usage which must be given their plain and ordinary meaning.'<sup>1</sup>

5.2.5 It follows that if, as a matter of fact, a reasonable excuse is present at the time of a default, previous reliance on that same excuse is irrelevant. So, for those with a fluctuating condition, it may be necessary for them to claim reasonable excuse repeatedly.

5.2.6 We therefore recommend a thorough review of HMRC's reasonable excuse guidance, amending it to reflect the intention of Parliament, as interpreted by case law.

#### *Guidance for friends and family etc helpers*

5.2.7 For the 'shades of grey' situations, there is little guidance from HMRC on what friends and family, social workers etc, are supposed to do to help. If a tax return deadline is looming and a person is incapacitated, but that situation is expected to be temporary and not so severe as to require the registration of an attorney or formal appointment, what is a 'helper' supposed to do?

5.2.8 A helper will presumably try to review the incapacitated person's affairs and judge what needs to be dealt with and what can wait. There is, for example, a Mental Capacity Act 2005 Code of Practice which advises on decision-making (emphasis added):

#### *'Timing*

3.14 In terms of timing, consider the following: ....

- If the person's capacity is likely to improve in the foreseeable future, wait until it has done so – if practical and appropriate. For example, this might be the case after treatment for depression or a psychotic episode. Obviously, **this may not be practical and appropriate if the decision is urgent.**'

5.2.9 If a helper realises that a tax return deadline is looming, they might well take the view that the decision is urgent, being concerned about penalties for non-compliance. Clear guidance which provides reassurance that a reasonable excuse is likely to be accepted in such circumstances would reassure them. Are HMRC's helpline staff instructed to give such reassurance and are they able to provide clear guidance on how the incapacitated person can be helped to submit a reasonable excuse claim as soon as they are well?

5.2.10 The Code of Practice goes on to say:

- Take one decision at a time – be careful to avoid making the person tired or confused.
- Don't rush – allow the person time to think things over or ask for clarification, where that is possible and appropriate.

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<sup>1</sup> First Tier Tribunal TC 01124 <http://www.financeandtaxtribunals.gov.uk/Aspx/view.aspx?id=5492>

- **Avoid or challenge time limits that are unnecessary if the decision is not urgent.**

Delaying the decision may enable further steps to be taken to assist people to make the decision for themselves.'

5.2.11 Taking account of this guidance, HMRC should interpret reasonable excuse flexibly, particularly when considering how long after their 'recovery' a person takes to bring their tax affairs up to date. There might not be a clear demarcation of when someone is well enough to undertake that task – even in the case of recovering from a physical incapacitation – and HMRC must not assume, for example that just because a person was capable of resuming management of more minor financial arrangements that they are similarly able to cope with tax.

5.2.12 Furthermore, HMRC's public guidance on reasonable excuse is poor in terms of fluctuating capacity. For example:

'Generally, a 'reasonable excuse' is when some unforeseeable and exceptional event beyond your control has prevented you from filing your return on time.'<sup>1</sup>

5.2.13 As highlighted above, the courts do not agree with this interpretation and it must be reviewed. For example, where someone knows they have a fluctuating mental condition, the above guidance would suggest they do not have a reasonable excuse for non-compliance. Whilst they might not know exactly when a bout of, say, mania or depression will strike, if they have been diagnosed with the condition, such an episode would not be an 'unforeseeable and exceptional event'.

5.2.14 All of the above interacts closely with HMRC's concurrent Agents consultation, to which we will also be responding.

### 5.3 ***Reasonable excuse/reasonable care provisions in cases where there is a 'Section 72' representative***

5.3.1 We have not been able to locate any HMRC guidance on the representative's position in terms of taking reasonable care. The representative assumes liability for the taxpayer's affairs (eg, see 3.2.1. of the consultation) but in some cases, despite their best efforts, the representative may unwittingly make an inaccurate return.

5.3.2 For example, the person for whom they are acting may have neglected to keep or destroyed records. Their representative should not be penalised for failure to keep records or for inaccuracies in a return as a result. HMRC's staff ought to be briefed about this through the Compliance Manual.<sup>2</sup>

5.3.3 Furthermore, bespoke guidance should be developed for representatives dealing with someone else's affairs. For example, if representatives are not regarded as having taken reasonable care unless they draw to HMRC's attention an area of doubt on a completed return, HMRC guidance should indicate that to them. Mistakes are more likely when dealing with someone else's affairs.

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<sup>1</sup> See <http://www.hmrc.gov.uk/online/excuse-missed-deadline.htm#1>

<sup>2</sup> For example at CH81131: <http://www.hmrc.gov.uk/manuals/chmanual/CH81131.htm>

*Example*

Jenny is dealing with Tom's tax return now that Tom has been diagnosed with a long term mental health condition. She has registered her Lasting Power of Attorney for him. Prior to his diagnosis, Tom kept very poor business records and Jenny suspects that he threw away various important documents. She does the best she can when filling in his tax return.

- 5.3.4 Does Jenny need to put a disclosure note in the 'white space' to draw HMRC's attention to her concerns? How would she know to do so? Do HMRC agree that although they can expect a representative to do their best, they must be more tolerant of mistakes in such circumstances?

5.4 ***Getting HMRC to accept a power of attorney***

- 5.4.1 It has been reported to us that experience of dealing with HMRC when a Power of Attorney is in place is difficult. There has been confusion about where to send the documentation, and then HMRC saying that they would not accept it by post and directing the customer to take it to an Enquiry Centre. We understand that photocopies are not sufficient, so as to prevent fraud and protect the donor of the power; but a certified copy should be acceptable by post, to be returned once HMRC have noted their records.
- 5.4.2 HMRC guidance has also not kept up with changes in the general law. For example, the current 'how to fill in your tax return guide'<sup>1</sup> says:

**'Box 23 to box 26 If you have signed on behalf of someone else**

These will be exceptional circumstances.

The law allows an executor to sign a return for the period from 6 April up to the date of the deceased's death.

The following persons are authorised to complete a return on behalf of someone who is not mentally capable of understanding it:

- a Receiver appointed by the Court of Protection (England and Wales)
- a Curator Bonis appointed by the Office of the Accountant of Court (Scotland)
- a Controller appointed by the Office of Care and Protection (Northern Ireland)
- an Attorney appointed under an Enduring Power, registered in the appropriate court, or
- any person so authorised by any of the above courts.

If you have not previously supplied evidence of your appointment please enclose documentation with this return.'

- 5.4.3 There is no reference to Lasting Powers of Attorney which have been standard since 2007. Nor is there any reference to the Office of the Public Guardian. And at the same time that, in England and Wales, Enduring Powers of Attorney were succeeded by the Lasting Power of Attorney regime, 'receivers' became 'deputies' (although existing 'receiverships' continue).

*Delays in registering a Power of Attorney*

- 5.4.4 One of the 'shades of grey' in the current workings of the system arises from delays in registering powers of attorney or obtaining deputy status with the OPG. The Directgov website says:

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<sup>1</sup> See <http://www.hmrc.gov.uk/worksheets/sa150.pdf>



'It can take up to 13 weeks to register a Lasting Power of Attorney if there are no problems with your application'<sup>1</sup>

- 5.4.5 We understand that an interim order will only be made in urgent cases. HMRC's guidance should make it clear that a delay in registration is accepted as a reasonable excuse.

## 5.5 **Statement of Practice A13**

- 5.5.1 Para 3.2.11ff refers. Our reading is that SP A13 only applies in cases of *physical* incapacity – for example, some physical inability to hold a pen and sign a form.

- 5.5.2 The text is thus (emphasis added):

### **'A13. Completion of return forms by attorneys**

Section 8(2) TMA 1970 requires that every return should include 'a declaration by the person making the return to the effect that the return is to the best of his knowledge correct and complete'. For tax years before the introduction of income tax self assessment (1995/6 and earlier) Section 42(5) of that Act provided for a 'declaration' by the person making the claim.

The Commissioners for Her Majesty's Revenue and Customs consider that the obligation to make declarations under these Sections is within the class of statutory duties which the person making the return of income, or the claim, cannot delegate. Accordingly, it is the normal practice to insist that the return of income or claim should be signed by the taxpayer or claimant personally, and not by his attorney.

However, HM Revenue and Customs recognise that there may be difficulties where, owing to the **age or physical infirmity** of the taxpayer, he is unable to cope adequately with the management of his affairs or where **for the same reason** the taxpayer's general health might suffer if he were troubled for a personal signature. In such special circumstances the Revenue will be willing to consider the matter sympathetically and where possible accept the signature of an attorney who has full knowledge of the taxpayer's affairs.'

- 5.5.3 Inclusion of the words 'for the same reason' seems to rule out its use where, for example, signing of a return would cause mental distress – anxiety or such – unless coupled with old age, or physical incapacity.

- 5.5.4 We think there are a number of difficulties with this:

1. Why have a statutory rule for mentally incapacitated persons but non-statutory 'practice' covering physical incapacity?
2. In the context of the Governments 'Digital by Default' agenda and HMRC's moves to embrace online communications, how is it in fact to operate? An online 'signature' is not required – if someone delegates to another submission of their tax return by giving them their login details, how are HMRC to know?

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<sup>1</sup> See

[http://www.direct.gov.uk/en/Governmentcitizensandrights/Mentalcapacityandthelaw/Mentalcapacityandplanningahead/DG\\_186373](http://www.direct.gov.uk/en/Governmentcitizensandrights/Mentalcapacityandthelaw/Mentalcapacityandplanningahead/DG_186373)

3. The whole law and practice of powers of attorney has changed since A13 was first promulgated so again the policy needs to be adapted accordingly.

**6 Question 4: Are there any other legal considerations that need to be taken into account if the current definition is changed?**

- 6.1.1 In answer to question 2, we have suggested that either the tax-specific provisions should be repealed and HMRC should rely instead upon the general laws of incapacity and representation, or the law should be updated from the viewpoint of Section 72 TMA 1970 rather than focusing on Section 118. We have commented on the law as it is in the countries of the UK, but as a matter of general law, HMRC would also need to consider how they deal with equivalent overseas provisions insofar as, for example, a non-resident person has a UK tax obligation and a representative similar to the UK provisions is in place in their country of residence.

**7 Question 5: Do you agree that the current definition is no longer suitable or do you think there are reasons for leaving it as it is?**

- 7.1.1 Yes, we agree the current definition is no longer suitable and that action should be taken.
- 7.1.2 HMRC should also take the opportunity to address how minors are dealt with. At the very least, HMRC should update the term 'infant' (to which many just below the age of majority would no doubt object) – perhaps simply 'minor' would suffice?

**8 Question 6: Are there concepts in general mental health legislation such as the MCA or MHA that would be appropriate for use in a new definition?**

- 8.1.1 If we approach the problem from the viewpoint of either relying on general laws of incapacity and representation or ensuring that Section 72 contains a full definition of what types of representative HMRC will accept, the nature of the person's incapacity arguably becomes irrelevant.
- 8.1.2 If HMRC decides to retain Section 72, it should be made permissive so that the representative can decline the transfer of obligations. Or, at the very least, it should recognise situations where a representative, eg an attorney, is not empowered to deal with the donor's tax affairs. It could be amended to something like:

**'72 Trustees, guardians, etc. of incapacitated persons**

72(1) The trustee, guardian, attorney, deputy or receiver, intervener, or other appointee of a minor or of an incapacitated person for whom they have the direction, control or management of the property or concern, whether such person resides in the United Kingdom or not, may accept that they are assessable and chargeable to income tax in like manner and to the like amount as that person would be assessed and charged.

72(2) Any person who accepts that they are so chargeable in place of another shall be answerable for all matters required to be done under the Income Tax Acts for the purpose of assessment and payment of income tax.

72(3) Any person who has been charged under the Income Tax Acts in respect of any minor or incapacitated person as aforesaid may retain, out of money coming into his hands on behalf of any such person, so much thereof from time to time as is sufficient to pay the tax charged, and shall be indemnified for all such payments made in pursuance of the Income Tax Acts.'

- 8.1.3 The term 'minor' thus written into Section 72 itself, the definition in section 118(1) could be amended to read:

'Incapacitated person means a person in respect of whom an appointment has been made according to general laws of incapacity giving an appointee the direction, control or management of that person's financial affairs. Or where, in relation to a person, there is no such appointment but a person has been appointed under—

(i) regulation 33(1) of the Social Security (Claims and Payments) Regulations 1987;

(ii) regulation 33(1) of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987; or

(iii) subsection (x)

(x) Where there is no person mentioned above in relation to the person who is unable to act, the Board may appoint under this paragraph a person who—

(i) has applied in writing to the Board to be appointed to act on behalf of the person who is unable to act; and

(ii) if a natural person, is aged 18 years or more.'

- 8.1.4 Importing the latter elements above from the Tax Credits Regulations would allow HMRC the flexibility to agree to deal with an appointee on application, at their discretion, provided such a person is prepared to accept the obligations of another's tax affairs. For example, this could be helpful in cases such as where the taxpayer is abusing substances such as alcohol or drugs, where their capacity is likely to fluctuate. Indeed there are close links between substance abuse and mental ill-health, but often the cause and effect between the two is difficult to identify and separate. Substance abuse may therefore result in incapacity<sup>1</sup> in the context of the Mental Capacity Act but a person cannot be detained under the Mental Health Act by reason of drug or alcohol dependency alone.
- 8.1.5 As noted in our answer to question 3 above, we will be considering in our response to the concurrent Agents consultation document the position of 'in between' representatives (ie people who are helping others with their tax but are not Section 72-type 'representatives' nor are they professional or voluntary sector agents).

## 9 **Question 7: What terms or phrases might a new stand-alone definition include to achieve the policy aims outlined at para 3.2.3 above?**

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<sup>1</sup> See for example *Atkinson v Commissioners for HM Revenue & Customs* [2010], TC00909 <http://www.financeandtaxtribunals.gov.uk/Aspx/view.aspx?id=5277>

- 9.1.1 See above. We suggest that defining the nature of incapacity becomes largely irrelevant if HMRC clearly identify what types of appointment they will recognise, be it via the general law of incapacity and representation or by an updated Section 72 and corresponding Section 118(1) amendment, as outlined above.

**10 Question 8: Would deleting 'idiot' and 'lunatic' deliver a definition of incapacitated person that meets our policy objectives?**

- 10.1.1 No. Comments above refer.

**11 Question 9: Is there a hybrid solution which would better achieve the policy aims than a new stand-alone definition?**

- 11.1.1 Yes, as suggested above.

LITRG  
12 August 2011