

Status: Point in time view as at 07/02/2023.

Changes to legislation: There are currently no known outstanding effects for the Mental Capacity Act 2005, Part 2. (See end of Document for details)

SCHEDULES

SCHEDULE 1

LASTING POWERS OF ATTORNEY: FORMALITIES

PART 2

REGISTRATION

Applications and procedure for registration

- 4 (1) An application to the Public Guardian for the registration of an instrument intended to create a lasting power of attorney—
- (a) must be made in the prescribed form, and
 - (b) must include any prescribed information.
- (2) The application may be made—
- (a) by the donor,
 - (b) by the donee or donees, or
 - (c) if the instrument appoints two or more donees to act jointly and severally in respect of any matter, by any of the donees.
- (3) The application must be accompanied by—
- (a) the instrument, and
 - (b) any fee provided for under section 58(4)(b).
- (4) A person who, in an application for registration, makes a statement which he knows to be false in a material particular is guilty of an offence and is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding [^{F1}the general limit in a magistrates' court] or a fine not exceeding the statutory maximum or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine or both.

Textual Amendments

- F1** Words in [Sch. 1 para. 4\(4\)\(a\)](#) substituted (7.2.2023 at 12.00 p.m.) by [The Judicial Review and Courts Act 2022 \(Magistrates' Court Sentencing Powers\) Regulations 2023 \(S.I. 2023/149\)](#), regs. 1(2), 2(1), [Sch. Pt. 1](#) table

- 5 Subject to paragraphs 11 to 14, the Public Guardian must register the instrument as a lasting power of attorney at the end of the prescribed period.

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Notification requirements

- 6 (1) A donor about to make an application under paragraph 4(2)(a) must notify any named persons that he is about to do so.
- (2) The donee (or donees) about to make an application under paragraph 4(2)(b) or (c) must notify any named persons that he is (or they are) about to do so.
- 7 As soon as is practicable after receiving an application by the donor under paragraph 4(2)(a), the Public Guardian must notify the donee (or donees) that the application has been received.
- 8 (1) As soon as is practicable after receiving an application by a donee (or donees) under paragraph 4(2)(b), the Public Guardian must notify the donor that the application has been received.
- (2) As soon as is practicable after receiving an application by a donee under paragraph 4(2)(c), the Public Guardian must notify—
- (a) the donor, and
- (b) the donee or donees who did not join in making the application, that the application has been received.
- 9 (1) A notice under paragraph 6 must be made in the prescribed form.
- (2) A notice under paragraph 6, 7 or 8 must include such information, if any, as may be prescribed.

Power to dispense with notification requirements

- 10 The court may—
- (a) on the application of the donor, dispense with the requirement to notify under paragraph 6(1), or
- (b) on the application of the donee or donees concerned, dispense with the requirement to notify under paragraph 6(2),
- if satisfied that no useful purpose would be served by giving the notice.

Instrument not made properly or containing ineffective provision

- 11 (1) If it appears to the Public Guardian that an instrument accompanying an application under paragraph 4 is not made in accordance with this Schedule, he must not register the instrument unless the court directs him to do so.
- (2) Sub-paragraph (3) applies if it appears to the Public Guardian that the instrument contains a provision which—
- (a) would be ineffective as part of a lasting power of attorney, or
- (b) would prevent the instrument from operating as a valid lasting power of attorney.
- (3) The Public Guardian—
- (a) must apply to the court for it to determine the matter under section 23(1), and
- (b) pending the determination by the court, must not register the instrument.
- (4) Sub-paragraph (5) applies if the court determines under section 23(1) (whether or not on an application by the Public Guardian) that the instrument contains a provision which—

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- (a) would be ineffective as part of a lasting power of attorney, or
 - (b) would prevent the instrument from operating as a valid lasting power of attorney.
- (5) The court must—
- (a) notify the Public Guardian that it has severed the provision, or
 - (b) direct him not to register the instrument.
- (6) Where the court notifies the Public Guardian that it has severed a provision, he must register the instrument with a note to that effect attached to it.

Deputy already appointed

- 12 (1) Sub-paragraph (2) applies if it appears to the Public Guardian that—
- (a) there is a deputy appointed by the court for the donor, and
 - (b) the powers conferred on the deputy would, if the instrument were registered, to any extent conflict with the powers conferred on the attorney.
- (2) The Public Guardian must not register the instrument unless the court directs him to do so.

Objection by donee or named person

- 13 (1) Sub-paragraph (2) applies if a donee or a named person—
- (a) receives a notice under paragraph 6, 7 or 8 of an application for the registration of an instrument, and
 - (b) before the end of the prescribed period, gives notice to the Public Guardian of an objection to the registration on the ground that an event mentioned in section 13(3) or (6)(a) to (d) has occurred which has revoked the instrument.
- (2) If the Public Guardian is satisfied that the ground for making the objection is established, he must not register the instrument unless the court, on the application of the person applying for the registration—
- (a) is satisfied that the ground is not established, and
 - (b) directs the Public Guardian to register the instrument.
- (3) Sub-paragraph (4) applies if a donee or a named person—
- (a) receives a notice under paragraph 6, 7 or 8 of an application for the registration of an instrument, and
 - (b) before the end of the prescribed period—
 - (i) makes an application to the court objecting to the registration on a prescribed ground, and
 - (ii) notifies the Public Guardian of the application.
- (4) The Public Guardian must not register the instrument unless the court directs him to do so.

Objection by donor

- 14 (1) This paragraph applies if the donor—
- (a) receives a notice under paragraph 8 of an application for the registration of an instrument, and

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- (b) before the end of the prescribed period, gives notice to the Public Guardian of an objection to the registration.
- (2) The Public Guardian must not register the instrument unless the court, on the application of the donee or, if more than one, any of them—
- (a) is satisfied that the donor lacks capacity to object to the registration, and
 - (b) directs the Public Guardian to register the instrument.

Notification of registration

- 15 Where an instrument is registered under this Schedule, the Public Guardian must give notice of the fact in the prescribed form to—
- (a) the donor, and
 - (b) the donee or, if more than one, each of them.

Evidence of registration

- 16 (1) A document purporting to be an office copy of an instrument registered under this Schedule is, in any part of the United Kingdom, evidence of—
- (a) the contents of the instrument, and
 - (b) the fact that it has been registered.
- (2) Sub-paragraph (1) is without prejudice to—
- (a) section 3 of the Powers of Attorney Act 1971 (c. 27) (proof by certified copy), and
 - (b) any other method of proof authorised by law.

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