
Status: Point in time view as at 01/10/2012.

Changes to legislation: There are currently no known outstanding effects for the Mental Capacity Act 2005, Cross Heading: Characteristics of an enduring power of attorney. (See end of Document for details)

SCHEDULES

SCHEDULE 4

PROVISIONS APPLYING TO EXISTING ENDURING POWERS OF ATTORNEY

PART 1

ENDURING POWERS OF ATTORNEY

Characteristics of an enduring power of attorney

- 2 (1) Subject to sub-paragraphs (5) and (6) and paragraph 20, a power of attorney is an enduring power within the meaning of this Schedule if the instrument which creates the power—
- (a) is in the prescribed form,
 - (b) was executed in the prescribed manner by the donor and the attorney, and
 - (c) incorporated at the time of execution by the donor the prescribed explanatory information.
- (2) In this paragraph, “prescribed” means prescribed by such of the following regulations as applied when the instrument was executed—
- (a) the Enduring Powers of Attorney (Prescribed Form) Regulations 1986 (S.I. 1986/126),
 - (b) the Enduring Powers of Attorney (Prescribed Form) Regulations 1987 (S.I. 1987/1612),
 - (c) the Enduring Powers of Attorney (Prescribed Form) Regulations 1990 (S.I. 1990/1376),
 - (d) the Enduring Powers of Attorney (Welsh Language Prescribed Form) Regulations 2000 (S.I. 2000/289).
- (3) An instrument in the prescribed form purporting to have been executed in the prescribed manner is to be taken, in the absence of evidence to the contrary, to be a document which incorporated at the time of execution by the donor the prescribed explanatory information.
- (4) If an instrument differs in an immaterial respect in form or mode of expression from the prescribed form it is to be treated as sufficient in point of form and expression.
- (5) A power of attorney cannot be an enduring power unless, when he executes the instrument creating it, the attorney is—
- (a) an individual who has reached 18 and is not bankrupt^{F1} or is not subject to a debt relief order (under Part 7A of the Insolvency Act 1986)], or
 - (b) a trust corporation.
- (6) A power of attorney which gives the attorney a right to appoint a substitute or successor cannot be an enduring power.

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- (7) An enduring power is revoked by the bankruptcy of the donor or attorney^{F2} or the making of a debt relief order (under Part 7A of the Insolvency Act 1986) in respect of the donor or attorney].
- (8) But where the donor or attorney is bankrupt merely because an interim bankruptcy restrictions order has effect in respect of him^{F3} or where the donor or attorney is subject to an interim debt relief restrictions order], the power is suspended for so long as the order has effect.
- (9) An enduring power is revoked if the court—
- (a) exercises a power under sections 16 to 20 in relation to the donor, and
 - (b) directs that the enduring power is to be revoked.
- (10) No disclaimer of an enduring power, whether by deed or otherwise, is valid unless and until the attorney gives notice of it to the donor or, where paragraph 4(6) or 15(1) applies, to the Public Guardian.

Textual Amendments

- F1** Words in Sch. 4 para. 2(5)(a) inserted (1.10.2012) by The Tribunals, Courts and Enforcement Act 2007 (Consequential Amendments) Order 2012 (S.I. 2012/2404), art. 1, **Sch. 2 para. 53(6)(a)** (with art. 5)
- F2** Words in Sch. 4 para. 2(7) inserted (1.10.2012) by The Tribunals, Courts and Enforcement Act 2007 (Consequential Amendments) Order 2012 (S.I. 2012/2404), art. 1, **Sch. 2 para. 53(6)(b)** (with art. 5)
- F3** Words in Sch. 4 para. 2(8) inserted (1.10.2012) by The Tribunals, Courts and Enforcement Act 2007 (Consequential Amendments) Order 2012 (S.I. 2012/2404), art. 1, **Sch. 2 para. 53(6)(c)** (with art. 5)

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