

Status: Point in time view as at 01/10/2012.

Changes to legislation: Mental Capacity Act 2005, Part 5 is up to date with all changes known to be in force on or before 29 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 4

PROVISIONS APPLYING TO EXISTING ENDURING POWERS OF ATTORNEY

PART 5

LEGAL POSITION AFTER REGISTRATION

Effect and proof of registration

- 15 (1) The effect of the registration of an instrument under paragraph 13 is that—
- (a) no revocation of the power by the donor is valid unless and until the court confirms the revocation under paragraph 16(3);
 - (b) no disclaimer of the power is valid unless and until the attorney gives notice of it to the Public Guardian;
 - (c) the donor may not extend or restrict the scope of the authority conferred by the instrument and no instruction or consent given by him after registration, in the case of a consent, confers any right and, in the case of an instruction, imposes or confers any obligation or right on or creates any liability of the attorney or other persons having notice of the instruction or consent.
- (2) Sub-paragraph (1) applies for so long as the instrument is registered under paragraph 13 whether or not the donor is for the time being mentally incapable.
- (3) 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 so registered.
- (4) Sub-paragraph (3) is without prejudice to section 3 of the Powers of Attorney Act 1971 (c. 27) (proof by certified copies) and to any other method of proof authorised by law.

Functions of court with regard to registered power

- 16 (1) Where an instrument has been registered under paragraph 13, the court has the following functions with respect to the power and the donor of and the attorney appointed to act under the power.
- (2) The court may—
- (a) determine any question as to the meaning or effect of the instrument;
 - (b) give directions with respect to—
 - (i) the management or disposal by the attorney of the property and affairs of the donor;

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- (ii) the rendering of accounts by the attorney and the production of the records kept by him for the purpose;
 - (iii) the remuneration or expenses of the attorney whether or not in default of or in accordance with any provision made by the instrument, including directions for the repayment of excessive or the payment of additional remuneration;
 - (c) require the attorney to supply information or produce documents or things in his possession as attorney;
 - (d) give any consent or authorisation to act which the attorney would have to obtain from a mentally capable donor;
 - (e) authorise the attorney to act so as to benefit himself or other persons than the donor otherwise than in accordance with paragraph 3(2) and (3) (but subject to any conditions or restrictions contained in the instrument);
 - (f) relieve the attorney wholly or partly from any liability which he has or may have incurred on account of a breach of his duties as attorney.
- (3) On application made for the purpose by or on behalf of the donor, the court must confirm the revocation of the power if satisfied that the donor—
- (a) has done whatever is necessary in law to effect an express revocation of the power, and
 - (b) was mentally capable of revoking a power of attorney when he did so (whether or not he is so when the court considers the application).
- (4) The court must direct the Public Guardian to cancel the registration of an instrument registered under paragraph 13 in any of the following circumstances—
- (a) on confirming the revocation of the power under sub-paragraph (3),
 - (b) on directing under paragraph 2(9)(b) that the power is to be revoked,
 - (c) on being satisfied that the donor is and is likely to remain mentally capable,
 - (d) on being satisfied that the power has expired or has been revoked by the mental incapacity of the attorney,
 - (e) on being satisfied that the power was not a valid and subsisting enduring power when registration was effected,
 - (f) on being satisfied that fraud or undue pressure was used to induce the donor to create the power,
 - (g) on being satisfied that, having regard to all the circumstances and in particular the attorney's relationship to or connection with the donor, the attorney is unsuitable to be the donor's attorney.
- (5) If the court directs the Public Guardian to cancel the registration of an instrument on being satisfied of the matters specified in sub-paragraph (4)(f) or (g) it must by order revoke the power created by the instrument.
- (6) If the court directs the cancellation of the registration of an instrument under sub-paragraph (4) except paragraph (c) the instrument must be delivered up to the Public Guardian to be cancelled, unless the court otherwise directs.

Cancellation of registration by Public Guardian

- 17 The Public Guardian must cancel the registration of an instrument creating an enduring power of attorney—
- (a) on receipt of a disclaimer signed by the attorney;

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- (b) if satisfied that the power has been revoked by the death or bankruptcy of the donor or attorney^{F1} or the making of a debt relief order (under Part 7A of the Insolvency Act 1986) in respect of the donor or attorney] or, if the attorney is a body corporate, by its winding up or dissolution;
- (c) on receipt of notification from the court that the court has revoked the power;
- (d) on confirmation from the court that the donor has revoked the power.

Textual Amendments

- F1** Words in Sch. 4 para. 17(b) 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\(6\)\(d\)](#) (with art. 5)

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