

*Status: Point in time view as at 01/10/2007.*

*Changes to legislation: Mental Capacity Act 2005, Part 6 is up to date with all changes known to be in force on or before 19 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 6

##### PROTECTION OF ATTORNEY AND THIRD PARTIES

*Protection of attorney and third persons where power is invalid or revoked*

- 18 (1) Sub-paragraphs (2) and (3) apply where an instrument which did not create a valid power of attorney has been registered under paragraph 13 (whether or not the registration has been cancelled at the time of the act or transaction in question).
- (2) An attorney who acts in pursuance of the power does not incur any liability (either to the donor or to any other person) because of the non-existence of the power unless at the time of acting he knows—
- (a) that the instrument did not create a valid enduring power,
  - (b) that an event has occurred which, if the instrument had created a valid enduring power, would have had the effect of revoking the power, or
  - (c) that, if the instrument had created a valid enduring power, the power would have expired before that time.
- (3) Any transaction between the attorney and another person is, in favour of that person, as valid as if the power had then been in existence, unless at the time of the transaction that person has knowledge of any of the matters mentioned in sub-paragraph (2).
- (4) If the interest of a purchaser depends on whether a transaction between the attorney and another person was valid by virtue of sub-paragraph (3), it is conclusively presumed in favour of the purchaser that the transaction was valid if—
- (a) the transaction between that person and the attorney was completed within 12 months of the date on which the instrument was registered, or
  - (b) that person makes a statutory declaration, before or within 3 months after the completion of the purchase, that he had no reason at the time of the transaction to doubt that the attorney had authority to dispose of the property which was the subject of the transaction.
- (5) For the purposes of section 5 of the Powers of Attorney Act 1971 (c. 27) (protection where power is revoked) in its application to an enduring power the revocation of which by the donor is by virtue of paragraph 15 invalid unless and until confirmed by the court under paragraph 16—
- (a) knowledge of the confirmation of the revocation is knowledge of the revocation of the power, but
  - (b) knowledge of the unconfirmed revocation is not.

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*Further protection of attorney and third persons*

- 19 (1) If—
- (a) an instrument framed in a form prescribed as mentioned in paragraph 2(2) creates a power which is not a valid enduring power, and
  - (b) the power is revoked by the mental incapacity of the donor,
- sub-paragraphs (2) and (3) apply, whether or not the instrument has been registered.
- (2) An attorney who acts in pursuance of the power does not, by reason of the revocation, incur any liability (either to the donor or to any other person) unless at the time of acting he knows—
- (a) that the instrument did not create a valid enduring power, and
  - (b) that the donor has become mentally incapable.
- (3) Any transaction between the attorney and another person is, in favour of that person, as valid as if the power had then been in existence, unless at the time of the transaction that person knows—
- (a) that the instrument did not create a valid enduring power, and
  - (b) that the donor has become mentally incapable.
- (4) Paragraph 18(4) applies for the purpose of determining whether a transaction was valid by virtue of sub-paragraph (3) as it applies for the purpose or determining whether a transaction was valid by virtue of paragraph 18(3).

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