



Mental Capacity Act 2005

2005 CHAPTER 9

PART 1 **E+W**

PERSONS WHO LACK CAPACITY

Lasting powers of attorney

10 Appointment of donees **E+W**

- (1) A donee of a lasting power of attorney must be—
 - (a) an individual who has reached 18, or
 - (b) if the power relates only to P's property and affairs, either such an individual or a trust corporation.
- (2) An individual who is bankrupt^{F1} or is a person in relation to whom a debt relief order is made] may not be appointed as donee of a lasting power of attorney in relation to P's property and affairs.
- (3) Subsections (4) to (7) apply in relation to an instrument under which two or more persons are to act as donees of a lasting power of attorney.
- (4) The instrument may appoint them to act—
 - (a) jointly,
 - (b) jointly and severally, or
 - (c) jointly in respect of some matters and jointly and severally in respect of others.
- (5) To the extent to which it does not specify whether they are to act jointly or jointly and severally, the instrument is to be assumed to appoint them to act jointly.
- (6) If they are to act jointly, a failure, as respects one of them, to comply with the requirements of subsection (1) or (2) or Part 1 or 2 of Schedule 1 prevents a lasting power of attorney from being created.
- (7) If they are to act jointly and severally, a failure, as respects one of them, to comply with the requirements of subsection (1) or (2) or Part 1 or 2 of Schedule 1—

Changes to legislation: *Mental Capacity Act 2005, Section 10 is up to date with all changes known to be in force on or before 18 February 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) View outstanding changes*

- (a) prevents the appointment taking effect in his case, but
 - (b) does not prevent a lasting power of attorney from being created in the case of the other or others.
- (8) An instrument used to create a lasting power of attorney—
- (a) cannot give the donee (or, if more than one, any of them) power to appoint a substitute or successor, but
 - (b) may itself appoint a person to replace the donee (or, if more than one, any of them) on the occurrence of an event mentioned in section 13(6)(a) to (d) which has the effect of terminating the donee's appointment.

Textual Amendments

- F1** Words in s. 10(2) 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(2)** (with art. 5)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 58(4)(ca) inserted by [2023 c. 42 Sch. para. 10](#)
- Sch. 1 para. 4A inserted by [2023 c. 42 Sch. para. 3](#)
- Sch. 1 para. 10A and cross-heading inserted by [2023 c. 42 Sch. para. 6](#)
- Sch. 1 para. 13A inserted by [2023 c. 42 Sch. para. 7\(2\)](#)
- Sch. 1 para. 16(1A) inserted by [2023 c. 42 Sch. para. 8\(b\)](#)