



2016 CHAPTER 18

PART 5

LASTING POWERS OF ATTORNEY

Protection of attorney and others

Protection of attorney and others if no power created or power revoked

108.—(1) Subsections (2) to (4) apply if—

- (a) an instrument has been registered under Schedule 4 as a lasting power of attorney, but
- (b) a lasting power of attorney was not created,

whether or not the registration has been cancelled at the time of the act or transaction in question.

(2) A person (“X”) who acts (whether alone or with others) in purported exercise of the power does not incur any liability (to the donor or any other person) because of the non-existence of the power unless at the time of acting X—

- (a) knows that a lasting power of attorney was not created; or
- (b) is aware of circumstances which, if a lasting power of attorney had been created, would have terminated X’s authority to act as an attorney.

(3) Any transaction between—

- (a) one or more persons acting in purported exercise of the power, and
- (b) another person (“Y”),

is, in favour of Y, as valid as if the power had been in existence; but this is subject to subsection (4).

(4) Subsection (3) does not apply if, at the time of the transaction, Y—

- (a) knows that a lasting power of attorney was not created; or
- (b) is aware of circumstances which, if a lasting power of attorney had been created, would have terminated the authority of any person within subsection (3)(a) to act as an attorney.

(5) If the interest of a purchaser depends on whether a transaction was valid by virtue of subsection (3), it is to be conclusively presumed in favour of the purchaser that the transaction was valid if—

- (a) the transaction was completed within 12 months of the date on which the instrument was registered; or
- (b) Y makes a statutory declaration, before or within 3 months after the completion of the purchase, that Y had no reason at the time of the transaction to doubt that the person or persons mentioned in subsection (3) (a) had authority to dispose of the property which was the subject of the transaction.

(6) In its application to a lasting power of attorney which relates to matters in addition to the donor's property and affairs, section 4 of the Powers of Attorney Act (Northern Ireland) 1971 (protection where power is revoked) has effect as if references to revocation included the cessation of the power in relation to the donor's property and affairs.

Reliance on authority of attorney in relation to treatment etc

109.—(1) This section applies if—

- (a) an instrument has been registered under Schedule 4 as a lasting power of attorney granted by a person (“P”);
- (b) another person (“D”) does an act in connection with the care, treatment or personal welfare of P;
- (c) D does the act with the consent of a person (“A”) purporting to be an attorney under a lasting power of attorney granted by P; and
- (d) either A is not such an attorney, or it is not within the scope of A’s authority to consent in relation to the matter in question.

(2) If—

- (a) before doing the act, D takes reasonable steps to establish whether—
 - (i) A is an attorney under a lasting power of attorney granted by P, and
 - (ii) it is within the scope of A’s authority to consent in relation to the matter in question, and

Status: This is the original version (as it was originally enacted).

(b) when doing the act, D reasonably believes that A is such an attorney and has authority to consent in relation to the matter,

D does not incur any liability in relation to the act because A was not such an attorney or, as the case may be, did not have such authority.