



# Mental Capacity Act 2005

## 2005 CHAPTER 9

### PART 1 **E+W**

#### PERSONS WHO LACK CAPACITY

##### *Powers of the court in relation to lasting powers of attorney*

### 22 Powers of court in relation to validity of lasting powers of attorney **E+W**

- (1) This section and section 23 apply if —
  - (a) a person (“P”) has executed or purported to execute an instrument with a view to creating a lasting power of attorney, or
  - (b) an instrument has been registered as a lasting power of attorney conferred by P.
- (2) The court may determine any question relating to—
  - (a) whether one or more of the requirements for the creation of a lasting power of attorney have been met;
  - (b) whether the power has been revoked or has otherwise come to an end.
- (3) Subsection (4) applies if the court is satisfied—
  - (a) that fraud or undue pressure was used to induce P—
    - (i) to execute an instrument for the purpose of creating a lasting power of attorney, or
    - (ii) to create a lasting power of attorney, or
  - (b) that the donee (or, if more than one, any of them) of a lasting power of attorney—
    - (i) has behaved, or is behaving, in a way that contravenes his authority or is not in P’s best interests, or
    - (ii) proposes to behave in a way that would contravene his authority or would not be in P’s best interests.
- (4) The court may—

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*Changes to legislation: Mental Capacity Act 2005, Cross Heading: Powers of the court in relation to lasting powers of attorney is up to date with all changes known to be in force on or before 06 December 2023. 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*

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- (a) direct that an instrument purporting to create the lasting power of attorney is not to be registered, or
  - (b) if P lacks capacity to do so, revoke the instrument or the lasting power of attorney.
- (5) If there is more than one donee, the court may under subsection (4)(b) revoke the instrument or the lasting power of attorney so far as it relates to any of them.
- (6) “Donee” includes an intended donee.

### **23 Powers of court in relation to operation of lasting powers of attorney** E+W

- (1) The court may determine any question as to the meaning or effect of a lasting power of attorney or an instrument purporting to create one.
- (2) The court may—
- (a) give directions with respect to decisions—
    - (i) which the donee of a lasting power of attorney has authority to make, and
    - (ii) which P lacks capacity to make;
  - (b) give any consent or authorisation to act which the donee would have to obtain from P if P had capacity to give it.
- (3) The court may, if P lacks capacity to do so—
- (a) give directions to the donee with respect to the rendering by him of reports or accounts and the production of records kept by him for that purpose;
  - (b) require the donee to supply information or produce documents or things in his possession as donee;
  - (c) give directions with respect to the remuneration or expenses of the donee;
  - (d) relieve the donee wholly or partly from any liability which he has or may have incurred on account of a breach of his duties as donee.
- (4) The court may authorise the making of gifts which are not within section 12(2) (permitted gifts).
- (5) Where two or more donees are appointed under a lasting power of attorney, this section applies as if references to the donee were to all or any of them.

**Changes to legislation:**

Mental Capacity Act 2005, Cross Heading: Powers of the court in relation to lasting powers of attorney is up to date with all changes known to be in force on or before 06 December 2023.

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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\(b\)](#)