
Changes to legislation: There are currently no known outstanding effects for the Mental Capacity Act 2005, Cross
Heading: Enduring power of attorney to survive mental incapacity of donor. (See end of Document for details)

SCHEDULES

SCHEDULE 4

PROVISIONS APPLYING TO EXISTING ENDURING POWERS OF ATTORNEY

PART 1

ENDURING POWERS OF ATTORNEY

Enduring power of attorney to survive mental incapacity of donor

- 1 (1) Where an individual has created a power of attorney which is an enduring power within the meaning of this Schedule—
- (a) the power is not revoked by any subsequent mental incapacity of his,
 - (b) upon such incapacity supervening, the donee of the power may not do anything under the authority of the power except as provided by sub-paragraph (2) unless or until the instrument creating the power is registered under paragraph 13, and
 - (c) if and so long as paragraph (b) operates to suspend the donee's authority to act under the power, section 5 of the Powers of Attorney Act 1971 (c. 27) (protection of donee and third persons), so far as applicable, applies as if the power had been revoked by the donor's mental incapacity,
- and, accordingly, section 1 of this Act does not apply.
- (2) Despite sub-paragraph (1)(b), where the attorney has made an application for registration of the instrument then, until it is registered, the attorney may take action under the power—
- (a) to maintain the donor or prevent loss to his estate, or
 - (b) to maintain himself or other persons in so far as paragraph 3(2) permits him to do so.
- (3) Where the attorney purports to act as provided by sub-paragraph (2) then, in favour of a person who deals with him without knowledge that the attorney is acting otherwise than in accordance with sub-paragraph (2)(a) or (b), the transaction between them is as valid as if the attorney were acting in accordance with sub-paragraph (2)(a) or (b).

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