
Changes to legislation: Mental Capacity Act 2005, Part 2 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

SCHEDULES

SCHEDULE 4 **U.K.**

PROVISIONS APPLYING TO EXISTING ENDURING POWERS OF ATTORNEY

PART 2 **U.K.**

ACTION ON ACTUAL OR IMPENDING INCAPACITY OF DONOR

Duties of attorney in event of actual or impending incapacity of donor

- 4 (1) Sub-paragraphs (2) to (6) apply if the attorney under an enduring power has reason to believe that the donor is or is becoming mentally incapable.
- (2) The attorney must, as soon as practicable, make an application to the Public Guardian for the registration of the instrument creating the power.
- (3) Before making an application for registration the attorney must comply with the provisions as to notice set out in Part 3 of this Schedule.
- (4) An application for registration—
- (a) must be made in the prescribed form, and
 - (b) must contain such statements as may be prescribed.
- (5) The attorney—
- (a) may, before making an application for the registration of the instrument, refer to the court for its determination any question as to the validity of the power, and
 - (b) must comply with any direction given to him by the court on that determination.
- (6) No disclaimer of the power is valid unless and until the attorney gives notice of it to the Public Guardian; and the Public Guardian must notify the donor if he receives a notice under this sub-paragraph.
- (7) A person who, in an application for registration, makes a statement which he knows to be false in a material particular is guilty of an offence and is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine or both.
- (8) In this paragraph, “prescribed” means prescribed by regulations made for the purposes of this Schedule by the Lord Chancellor.

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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\(b\)](#)