

*Status: This version of this part contains provisions that are prospective.*  
*Changes to legislation: There are currently no known outstanding effects for the Mental Capacity Act (Northern Ireland) 2016, Part 2 . (See end of Document for details)*

PROSPECTIVE

## SCHEDULES

### SCHEDULE 4

Lasting powers of attorney: formalities

#### **Part 2**

Registration

##### *Applications and procedure for registration*

4.—(1) An application to the Public Guardian for the registration of an instrument intended to create a lasting power of attorney—

- (a) must be made in a form specified by regulations or by the Public Guardian in accordance with regulations; and
- (b) must include any prescribed information.

(2) The application may be made—

- (a) by the donor;
- (b) by the intended attorney or intended attorneys; or
- (c) if there are two or more intended attorneys who are to act jointly and severally in respect of any matter, by any of them.

(3) The application must be accompanied by—

- (a) the instrument; and
- (b) any fee provided for under section 116 of the Judicature (Northern Ireland) Act 1978.

5. Subject to paragraphs 10 to 14, on an application under paragraph 4 the Public Guardian must register the instrument as a lasting power of attorney at the end of the prescribed period.

##### *Notification requirements*

6. A person (or persons) about to make an application under paragraph 4 must notify any persons named under paragraph 2(1)(c) that the application is about to be made.

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**7.—(1)** As soon as practicable after receiving an application under paragraph 4, the Public Guardian must notify the persons within sub-paragraph (2) that the application has been received.

(2) The persons to be notified are all of the following (except the person or persons who have made the application)—

- (a) the donor;
- (b) each person appointed as attorney;
- (c) each person (if any) appointed as replacement attorney.

**8.—(1)** A notice under paragraph 6 must be in a form specified by regulations or by the Public Guardian in accordance with regulations.

(2) A notice under paragraph 6 or 7 must include any prescribed information.

*Power to dispense with notification requirements*

**9.—(1)** A person proposing to make an application under paragraph 4 may apply to the court for an order dispensing with the requirement to notify under paragraph 6.

(2) The court may make such an order if satisfied that the notification would serve no useful purpose.

*Instrument not properly made*

**10.** If it appears to the Public Guardian that an instrument accompanying an application under paragraph 4 is not made in accordance with this Schedule, the Public Guardian must not register the instrument unless directed to do so by the court.

*Instrument containing ineffective provision*

**11.—(1)** Sub-paragraph (2) applies if it appears to the Public Guardian that an instrument accompanying an application under paragraph 4 contains a provision which—

- (a) would be ineffective as part of a lasting power of attorney; or
- (b) would prevent the instrument from operating as a valid lasting power of attorney.

(2) The Public Guardian—

- (a) must apply to the court for it to determine the matter under section 111(1); and
- (b) pending the determination by the court, must not register the instrument.

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(3) Sub-paragraph (4) applies if the court determines under section 111(1) (whether or not on an application by the Public Guardian) that an instrument executed with a view to creating a lasting power of attorney contains a provision which—

- (a) would be ineffective as part of a lasting power of attorney; or
- (b) would prevent the instrument from operating as a valid lasting power of attorney.

(4) The court must—

- (a) notify the Public Guardian that it has severed the provision; or
- (b) direct the Public Guardian not to register the instrument.

(5) Where the court notifies the Public Guardian that it has severed a provision, the Public Guardian must register the instrument with a note to that effect attached to it.

*Deputy already appointed*

**12.—**(1) Sub-paragraph (2) applies if it appears to the Public Guardian that—

- (a) there is a deputy appointed by the court for the donor; and
- (b) the powers conferred on the deputy would, if the instrument were registered, to any extent conflict with the powers conferred on the attorney.

(2) The Public Guardian must not register the instrument unless directed by the court to do so.

*Objection by attorney, replacement attorney or named person*

**13.—**(1) Sub-paragraph (2) applies if a person other than the donor—

- (a) is notified under paragraph 6 or 7 of an application for the registration of an instrument; and
- (b) before the end of the prescribed period, gives notice to the Public Guardian of an objection to the registration on the ground that the instrument has been revoked.

(2) If the Public Guardian is satisfied that the ground for making the objection is established, the Public Guardian must not register the instrument unless the court, on the application of the person applying for the registration—

- (a) is satisfied that the ground is not established; and
- (b) directs the Public Guardian to register the instrument.

(3) Sub-paragraph (4) applies if a person other than the donor—

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- (a) is notified under paragraph 6 or 7 of an application for the registration of an instrument; and
  - (b) before the end of the prescribed period—
    - (i) makes an application to the court objecting to the registration on a prescribed ground; and
    - (ii) notifies the Public Guardian of the application.
- (4) The Public Guardian must not register the instrument unless directed by the court to do so.

#### *Objection by donor*

- 14.—**(1) This paragraph applies if the donor—
- (a) is notified under paragraph 7 of an application for the registration of an instrument; and
  - (b) before the end of the prescribed period, gives notice to the Public Guardian of an objection to the registration.
- (2) The Public Guardian must not register the instrument unless the court, on the application of a person appointed as attorney or replacement attorney—
- (a) is satisfied that the donor lacks capacity to object to the registration; and
  - (b) directs the Public Guardian to register the instrument.

#### *Notification of registration*

- 15.** Where an instrument is registered under this Schedule, the Public Guardian must notify—
- (a) the donor;
  - (b) each person appointed as attorney; and
  - (c) each person (if any) appointed as replacement attorney.

#### *Evidence of registration*

- 16.—**(1) A document purporting to be an office copy of an instrument registered under this Schedule is evidence of—
- (a) the contents of the instrument; and
  - (b) the fact that it has been registered.
- (2) Sub-paragraph (1) is without prejudice to section 3 of the Powers of Attorney Act 1971 (proof by certified copy) and to any other method of proof authorised by law.

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