

SCHEDULES

1

Article 6(3).

NOTIFICATION PRIOR TO REGISTRATION

PART I

DUTY TO GIVE NOTICE TO RELATIVES AND DONOR

Duty to give notice to relatives

1. Subject to paragraph 3, before making an application for registration the attorney shall give notice of his intention to do so to all those persons (if any) who are entitled to receive notice by virtue of paragraph 2.

2.—(1) Subject to the limitations contained in sub-paragraphs (2) to (4), persons of the following classes (referred to in this Order as “relatives”) are entitled to receive notice under paragraph 1—

- (a) the donor’s husband or wife;
- (b) the donor’s children;
- (c) the donor’s parents;
- (d) the donor’s brothers and sisters, whether of the whole or half blood;
- (e) the widow or widower of a child of the donor;
- (f) the donor’s grandchildren;
- (g) the children of the donor’s brothers and sisters of the whole blood;
- (h) the children of the donor’s brothers and sisters of the half blood;
- (i) the donor’s uncles and aunts of the whole blood; and
- (j) the children of the donor’s uncles and aunts of the whole blood.

(2) A person is not entitled to receive notice under paragraph 1 if—

- (a) his name or address is not known to the attorney and cannot be reasonably ascertained by him; or
- (b) the attorney has reason to believe that he has not attained eighteen years or is mentally incapable.

(3) Except where sub-paragraph (4) applies, no more than three persons are entitled to receive notice under paragraph 1 and, in determining the persons who are so entitled, persons falling within class (a) of sub-paragraph (1) are to be preferred to persons falling within class (b) of that sub-paragraph, persons falling within class (b) are to be preferred to persons falling within class (c) of that sub-paragraph; and so on.

(4) Notwithstanding the limit of three specified in sub-paragraph (3), where—

- (a) there is more than one person falling within any of classes (a) to (j) of sub-paragraph (1), and

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- (b) at least one of those persons would be entitled to receive notice under paragraph 1, then, subject to sub-paragraph (2), all the persons falling within that class are entitled to receive notice under paragraph 1.

3.—(1) An attorney shall not be required to give notice under paragraph 1 to himself or to any other attorney under the power who is joining in making the application, notwithstanding that he or, as the case may be, the other attorney is entitled to receive notice by virtue of paragraph 2.

(2) In the case of any person who is entitled to receive notice under paragraph 1, the attorney, before applying for registration, may make an application to the court to be dispensed from the requirement to give him notice; and the court shall grant the application if it is satisfied—

- (a) that it would be undesirable or impracticable for the attorney to give him notice; or
- (b) that no useful purpose is likely to be served by giving him notice.

Duty to give notice to donor

4.—(1) Subject to sub-paragraph (2), before making an application for registration the attorney shall give notice of his intention to do so to the donor.

(2) Paragraph 3(2) shall apply in relation to the donor as it applies in relation to a person who is entitled to receive notice under paragraph 1.

PART II

CONTENTS OF NOTICES

- 5. A notice to relatives under this Schedule—
 - (a) shall be in the prescribed form;
 - (b) shall state that the attorney proposes to make an application to the court for the registration of the instrument creating the enduring power in question;
 - (c) shall inform the person to whom it is given that he may object to the proposed registration by notice in writing to the court before the expiry of the period of four weeks beginning with the day on which the notice under this Schedule was given to him;
 - (d) shall specify, as the grounds on which an objection to registration may be made, the grounds set out in Article 8(5).
- 6. A notice to the donor under this Schedule—
 - (a) shall be in the prescribed form;
 - (b) shall contain the statement mentioned in paragraph 5(b); and
 - (c) shall inform the donor that, whilst the instrument remains registered, any revocation of the power by him will be ineffective unless and until the revocation is confirmed by the court.

PART III

DUTY TO GIVE NOTICE TO OTHER ATTORNEYS

7.—(1) Subject to sub-paragraph (2), before making an application for registration an attorney under a joint and several power shall give notice of his intention to do so to any other attorney under the power who is not joining in making the application; and paragraphs 3(2) and 5 shall apply in

relation to attorneys entitled to receive notice by virtue of this paragraph as they apply in relation to persons entitled to receive notice by virtue of paragraph 2.

- (2) An attorney is not entitled to receive notice by virtue of this paragraph if—
 - (a) his address is not known to the applying attorney and cannot reasonably be ascertained by him; or
 - (b) the applying attorney has reason to believe that he has not attained eighteen years or is mentally incapable.

PART IV SUPPLEMENTARY

8.—(1) For the purposes of this Schedule an illegitimate child shall be treated as if he were the legitimate child of his mother and father.

(2) Notwithstanding anything in section 24(1) of the Interpretation Act (Northern Ireland) 1954 (construction of references to service by post), for the purposes of this Schedule a notice given by post shall be regarded as given on the date on which it was posted.

FURTHER PROTECTION OF ATTORNEY AND THIRD PERSONS

- 1.** Where—
 - (a) an instrument framed in a form prescribed under Article 4(2) creates a power which is not a valid enduring power; and
 - (b) the power is revoked by the mental incapacity of the donor, paragraphs 2 and 3 shall apply, whether or not the instrument has been registered.
- 2.** An attorney who acts in pursuance of the power shall not, by reason of the revocation, incur any liability (either to the donor or to any other person) unless at the time of acting he knows—
 - (a) that the instrument did not create a valid enduring power; and
 - (b) that the donor has become mentally incapable.
- 3.** Any transaction between the attorney and another person shall, in favour of that person, be as valid as if the power had then been in existence, unless at the time of the transaction that person knows—
 - (a) that the instrument did not create a valid enduring power; and
 - (b) that the donor has become mentally incapable.
- 4.** Article 11(4) shall apply for the purpose of determining whether a transaction was valid by virtue of paragraph 3 as it applies for the purpose of determining whether a transaction was valid by virtue of Article 11(3).

JOINT AND JOINT AND SEVERAL ATTORNEYS

PART I

JOINT ATTORNEYS

1. In Article 4(6), the reference to the time when the attorney executes the instrument shall be read as a reference to the time when the second or last attorney executes the instrument.
2. In Article 4(8) and (9), the reference to the attorney shall be read as a reference to any attorney under the power.
3. In Article 7, references to the attorney shall be read as including references to any attorney under the power.
4. Article 8 shall have effect as if the ground of objection to the registration of the instrument specified in paragraph (5)(e) applied to any attorney under the power.
5. In Article 10(2), references to the attorney shall be read as including references to any attorney under the power.
6. In Article 10(4), references to the attorney shall be read as including references to any attorney under the power.

PART II

JOINT AND SEVERAL ATTORNEYS

7. In Article 4(9), the reference to the bankruptcy of the attorney shall be construed as a reference to the bankruptcy of the last remaining attorney under the power; and the bankruptcy of any other attorney under the power shall cause that person to cease to be attorney, whatever the circumstances of the bankruptcy.
8. The restriction upon disclaimer imposed by Article 6(6) applies only to those attorneys who have reason to believe that the donor is or is becoming mentally incapable.