
Changes to legislation: Mental Capacity Act 2005, Paragraph 2 is up to date with all changes known to be in force on or before 15 June 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 1

LASTING POWERS OF ATTORNEY: FORMALITIES

PART 1

MAKING INSTRUMENTS

Requirements as to content of instruments

- 2 (1) The instrument must include—
- (a) the prescribed information about the purpose of the instrument and the effect of a lasting power of attorney,
 - (b) a statement by the donor to the effect that he—
 - (i) has read the prescribed information or a prescribed part of it (or has had it read to him), and
 - (ii) intends the authority conferred under the instrument to include authority to make decisions on his behalf in circumstances where he no longer has capacity,
 - (c) a statement by the donor—
 - (i) naming a person or persons whom the donor wishes to be notified of any application for the registration of the instrument, or
 - (ii) stating that there are no persons whom he wishes to be notified of any such application,
 - (d) a statement by the donee (or, if more than one, each of them) to the effect that he—
 - (i) has read the prescribed information or a prescribed part of it (or has had it read to him), and
 - (ii) understands the duties imposed on a donee of a lasting power of attorney under sections 1 (the principles) and 4 (best interests), and
 - (e) a certificate by a person of a prescribed description that, in his opinion, at the time when the donor executes the instrument—
 - (i) the donor understands the purpose of the instrument and the scope of the authority conferred under it,
 - (ii) no fraud or undue pressure is being used to induce the donor to create a lasting power of attorney, and
 - (iii) there is nothing else which would prevent a lasting power of attorney from being created by the instrument.
- (2) Regulations may—
- (a) prescribe a maximum number of named persons;

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- (b) provide that, where the instrument includes a statement under sub-paragraph (1)(c)(ii), two persons of a prescribed description must each give a certificate under sub-paragraph (1)(e).
- (3) The persons who may be named persons do not include a person who is appointed as donee under the instrument.
- (4) In this Schedule, “named person” means a person named under sub-paragraph (1)(c).
- (5) A certificate under sub-paragraph (1)(e)—
 - (a) must be made in the prescribed form, and
 - (b) must include any prescribed information.
- (6) The certificate may not be given by a person appointed as donee under the instrument.

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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\(b\)](#)