

Status: Point in time view as at 03/11/2008.

Changes to legislation: Mental Capacity Act 2005, Part 1 is up to date with all changes known to be in force on or before 08 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)

SCHEDULES¹

SCHEDULE 1

LASTING POWERS OF ATTORNEY: FORMALITIES

PART 1

MAKING INSTRUMENTS

General requirements as to making instruments

- 1 (1) An instrument is not made in accordance with this Schedule unless—
 - (a) it is in the prescribed form,
 - (b) it complies with paragraph 2, and
 - (c) any prescribed requirements in connection with its execution are satisfied.
- (2) Regulations may make different provision according to whether—
 - (a) the instrument relates to personal welfare or to property and affairs (or to both);
 - (b) only one or more than one donee is to be appointed (and if more than one, whether jointly or jointly and severally).
- (3) In this Schedule—
 - (a) “prescribed” means prescribed by regulations, and
 - (b) “regulations” means regulations made for the purposes of this Schedule by the Lord Chancellor.

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,

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- (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;
 - (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.

Failure to comply with prescribed form

- 3
- (1) If an instrument differs in an immaterial respect in form or mode of expression from the prescribed form, it is to be treated by the Public Guardian as sufficient in point of form and expression.
 - (2) The court may declare that an instrument which is not in the prescribed form is to be treated as if it were, if it is satisfied that the persons executing the instrument intended it to create a lasting power of attorney.

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