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*Changes to legislation: There are currently no known outstanding effects for the Mental Capacity Act 2005, Part 8. (See end of Document for details)*

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## SCHEDULES

### SCHEDULE 4

#### PROVISIONS APPLYING TO EXISTING ENDURING POWERS OF ATTORNEY

#### PART 8

#### INTERPRETATION

23 (1) In this Schedule—

“enduring power” is to be construed in accordance with paragraph 2, “mentally incapable” or “mental incapacity”, except where it refers to revocation at common law, means in relation to any person, that he is incapable by reason of mental disorder<sup>F1</sup>... of managing and administering his property and affairs and “mentally capable” and “mental capacity” are to be construed accordingly,

“notice” means notice in writing, and

“prescribed”, except for the purposes of paragraph 2, means prescribed by regulations made for the purposes of this Schedule by the Lord Chancellor.

[<sup>F2</sup>(1A) In sub-paragraph (1), “mental disorder” has the same meaning as in the Mental Health Act but disregarding the amendments made to that Act by the Mental Health Act 2007.]

<sup>F2</sup>(2) Any question arising under or for the purposes of this Schedule as to what the donor of the power might at any time be expected to do is to be determined by assuming that he had full mental capacity at the time but otherwise by reference to the circumstances existing at that time.

#### Textual Amendments

**F1** Words in Sch. 4 para. 23(1) repealed (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 1, 55, 56, [Sch. 1 para. 23\(1\)\(2\)](#), [Sch. 11 Pt. 1](#); S.I. 2008/1900, [art. 2\(a\)\(p\)](#) (with [art. 3](#), Sch.)

**F2** Sch. 4 para. 23(1A) inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 1, 56, [Sch. 1 para. 23\(1\)\(3\)](#); S.I. 2008/1900, [art. 2\(a\)](#) (with [art. 3](#), Sch.)

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