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SCHEDULES

PROSPECTIVE

SCHEDULE 4

Section 97.

Lasting powers of attorney: formalities

Part 1

Making instruments

General requirements as to making instruments

- 1.—(1) An instrument is made in accordance with this Schedule only if—
- (a) it is in a form specified by regulations or by the Public Guardian in accordance with regulations;
 - (b) it complies with paragraph 2; and
 - (c) any prescribed requirements in connection with its execution are met.
- (2) Regulations may make different provision according to whether the instrument relates to—
- (a) care, treatment and personal welfare (or any of those matters); or
 - (b) property and affairs; or
 - (c) matters within both head (a) and head (b).
- (3) Regulations may also make different provision according to whether only one or more than one attorney or replacement attorney is to be appointed (and if more than one, whether jointly or jointly and severally).
- (4) In this Schedule—
- (a) “intended attorney”, in relation to an instrument, means a person who if the instrument were registered and a lasting power of attorney were created would be an attorney under the lasting power;
 - (b) “replacement attorney” means a person appointed under section 103(1) (b) to replace a person appointed as an attorney.

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(5) In paragraphs 7, 14, 15, 17 and 26, references to a person appointed as an attorney or replacement attorney do not include a person whose appointment has terminated.

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 the donor—
 - (i) has read the prescribed information or a prescribed part of it (or has heard it read); and
 - (ii) intends the authority conferred by the instrument to include authority to make decisions on the donor's behalf in circumstances where the donor 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 the donor wishes to be notified of any such application;
- (d) a statement by each person appointed as attorney, and each person (if any) appointed as replacement attorney, to the effect that he or she—
 - (i) has read the prescribed information or a prescribed part of it (or has heard it read); and
 - (ii) understands the duties imposed by sections 1, 2, 5 and 7 (principles, best interests) on an attorney under a lasting power of attorney; and
- (e) a certificate by a person of a prescribed description that, in that person's 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 by 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 prescribe a maximum number of persons who may be named under sub-paragraph (1)(c).

(3) The persons who may be named under sub-paragraph (1)(c) do not include a person who is appointed as attorney or replacement attorney by the instrument.

(4) A certificate under sub-paragraph (1)(e)—

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(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.

(5) The certificate may not be given by a person appointed as attorney or replacement attorney by the instrument.

Failure to comply with required form

3.—(1) If an instrument differs in an immaterial respect in form or mode of expression from the form specified under paragraph 1(1)(a), 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 form specified under paragraph 1(1)(a) is to be treated as if it were in that form, if the court is satisfied that the persons executing the instrument intended it to create a lasting power of attorney.

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.

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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.

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.

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(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.

(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—

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- (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—
- (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.

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(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.

Part 3

Cancellation of registration and notification of severance

Cancellation of registration by Public Guardian following revocation

17. The Public Guardian must cancel the registration of an instrument as a lasting power of attorney on being satisfied that the power has been revoked or has otherwise come to an end.

Court to require Public Guardian to cancel registration in certain cases

18. The court must direct the Public Guardian to cancel the registration of an instrument as a lasting power of attorney if it—

- (a) determines under section 110(2)(a) that a requirement for creating the lasting power of attorney was not met;
- (b) determines under section 110(2)(b) that the lasting power of attorney has been revoked or has otherwise come to an end; or
- (c) revokes the lasting power of attorney under section 110(4)(b) (fraud etc).

Notification by court of ineffective provision etc in instrument

19.—(1) Sub-paragraph (2) applies if the court determines under section 111(1) that a lasting power of attorney contains a provision which—

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

(2) The court must—

- (a) notify the Public Guardian that it has severed the provision; or
- (b) direct the Public Guardian to cancel the registration of the instrument as a lasting power of attorney.

Notification on cancellation

20. If the Public Guardian cancels the registration of an instrument as a lasting power of attorney, the Public Guardian must notify—

- (a) the donor;

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- (b) each person appointed as attorney; and
- (c) each person (if any) appointed as replacement attorney.

Delivery up of instrument on cancellation

21. On the cancellation of the registration of an instrument, the instrument and any office copies of it must be delivered up to the Public Guardian to be cancelled.

Part 4

Records of alterations in registered powers

Partial revocation or suspension of power as a result of bankruptcy

22. If in the case of a registered instrument it appears to the Public Guardian that under section 106 or 107 a lasting power of attorney is revoked, or suspended, in relation to the donor's property and affairs (but not in relation to other matters), the Public Guardian must attach to the instrument a note to that effect.

Termination of appointment of attorney which does not revoke power

23. If in the case of a registered instrument it appears to the Public Guardian that an event has occurred which—

- (a) has terminated the appointment of the attorney, but
- (b) has not revoked the instrument,

the Public Guardian must attach to the instrument a note to that effect.

Replacement of attorney

24. If in the case of a registered instrument it appears to the Public Guardian that a person appointed as attorney has been replaced under the terms of the instrument, the Public Guardian must attach to the instrument a note to that effect.

Severance of ineffective provisions

25. If in the case of a registered instrument the court notifies the Public Guardian under paragraph 19(2)(a) that it has severed a provision of the instrument, the Public Guardian must attach to the instrument a note to that effect.

Notification of alterations

26. If the Public Guardian attaches a note to an instrument under any of paragraphs 22 to 25, the Public Guardian must give notice of the note to—

- (a) each person appointed as attorney; and

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(b) each person (if any) appointed as replacement attorney.

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