

*These notes refer to the Mental Capacity Act 2005
(c.9) which received Royal Assent on 7 April 2005*

MENTAL CAPACITY ACT 2005

EXPLANATORY NOTES

SCHEDULES

Schedule 1: Lasting powers of attorney: formalities

Part 1: Making instruments

158. This Part sets out the requirements with regard to the form and execution of an LPA. A document which fails to comply with the provisions of this Schedule or regulations made under it will not generally create an LPA and consequently will not give any powers to the donee. An LPA must be in the form prescribed by regulations. The form must also contain statements by both the donor and the donee of the power to the effect that they have read, or have had read to them, such information as may be prescribed. The LPA must include names of any persons whom the donor wishes to be notified of any application to register the LPA (“named persons”) or a statement that there are no such persons.
159. The form must also include a certificate by a person of a prescribed description that, in his opinion, at the time when the donor executes the instrument he understands the purpose of the instrument and the scope of the authority conferred, that no fraud or undue pressure is being used to induce him to create an LPA, and that there is nothing else that would prevent an LPA from being created by the instrument. The Public Guardian may treat an LPA differing in an immaterial respect from the prescribed form as sufficient to create an LPA. The Court of Protection has the power to make a declaration that an instrument not in the prescribed form is to be treated as if it were, if satisfied that the persons executing the instrument intended to create an LPA.