

Status: Point in time view as at 18/09/2012.

Changes to legislation: Mental Capacity Act 2005, Part 3 is up to date with all changes known to be in force on or before 03 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)

SCHEDULES

SCHEDULE 4

PROVISIONS APPLYING TO EXISTING ENDURING POWERS OF ATTORNEY

PART 3

NOTIFICATION PRIOR TO REGISTRATION

Duty to give notice to relatives

- 5 Subject to paragraph 7, before making an application for registration the attorney must give notice of his intention to do so to all those persons (if any) who are entitled to receive notice by virtue of paragraph 6.
- 6 (1) Subject to sub-paragraphs (2) to (4), persons of the following classes (“relatives”) are entitled to receive notice under paragraph 5—
- (a) the donor's spouse or civil partner,
 - (b) the donor's children,
 - (c) the donor's parents,
 - (d) the donor's brothers and sisters, whether of the whole or half blood,
 - (e) the widow, widower or surviving civil partner of a child of the donor,
 - (f) the donor's grandchildren,
 - (g) the children of the donor's brothers and sisters of the whole blood,
 - (h) the children of the donor's brothers and sisters of the half blood,
 - (i) the donor's uncles and aunts of the whole blood,
 - (j) the children of the donor's uncles and aunts of the whole blood.
- (2) A person is not entitled to receive notice under paragraph 5 if—
- (a) his name or address is not known to the attorney and cannot be reasonably ascertained by him, or
 - (b) the attorney has reason to believe that he has not reached 18 or is mentally incapable.
- (3) Except where sub-paragraph (4) applies—
- (a) no more than 3 persons are entitled to receive notice under paragraph 5, and
 - (b) in determining the persons who are so entitled, persons falling within the class in sub-paragraph (1)(a) are to be preferred to persons falling within the class in sub-paragraph (1)(b), those falling within the class in sub-paragraph (1)(b) are to be preferred to those falling within the class in sub-paragraph (1)(c), and so on.
- (4) Despite the limit of 3 specified in sub-paragraph (3), where—
- (a) there is more than one person falling within any of classes (a) to (j) of sub-paragraph (1), and

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(b) at least one of those persons would be entitled to receive notice under paragraph 5,
then, subject to sub-paragraph (2), all the persons falling within that class are entitled to receive notice under paragraph 5.

- 7 (1) An attorney is not required to give notice under paragraph 5—
- (a) to himself, or
 - (b) to any other attorney under the power who is joining in making the application,
- even though he or, as the case may be, the other attorney is entitled to receive notice by virtue of paragraph 6.
- (2) In the case of any person who is entitled to receive notice by virtue of paragraph 6, the attorney, before applying for registration, may make an application to the court to be dispensed from the requirement to give him notice; and the court must grant the application if it is satisfied—
- (a) that it would be undesirable or impracticable for the attorney to give him notice, or
 - (b) that no useful purpose is likely to be served by giving him notice.

Duty to give notice to donor

- 8 (1) Subject to sub-paragraph (2), before making an application for registration the attorney must give notice of his intention to do so to the donor.
- (2) Paragraph 7(2) applies in relation to the donor as it applies in relation to a person who is entitled to receive notice under paragraph 5.

Contents of notices

- 9 A notice to relatives under this Part of this Schedule must—
- (a) be in the prescribed form,
 - (b) state that the attorney proposes to make an application to the Public Guardian for the registration of the instrument creating the enduring power in question,
 - (c) inform the person to whom it is given of his right to object to the registration under paragraph 13(4), and
 - (d) specify, as the grounds on which an objection to registration may be made, the grounds set out in paragraph 13(9).
- 10 A notice to the donor under this Part of this Schedule—
- (a) must be in the prescribed form,
 - (b) must contain the statement mentioned in paragraph 9(b), and
 - (c) must inform the donor that, while the instrument remains registered, any revocation of the power by him will be ineffective unless and until the revocation is confirmed by the court.

Duty to give notice to other attorneys

- 11 (1) Subject to sub-paragraph (2), before making an application for registration an attorney under a joint and several power must give notice of his intention to do so to any other attorney under the power who is not joining in making the application;

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and paragraphs 7(2) and 9 apply in relation to attorneys entitled to receive notice by virtue of this paragraph as they apply in relation to persons entitled to receive notice by virtue of paragraph 6.

- (2) An attorney is not entitled to receive notice by virtue of this paragraph if—
- (a) his address is not known to the applying attorney and cannot reasonably be ascertained by him, or
 - (b) the applying attorney has reason to believe that he has not reached 18 or is mentally incapable.

Supplementary

- 12 Despite section 7 of the Interpretation Act 1978 (c. 30) (construction of references to service by post), for the purposes of this Part of this Schedule a notice given by post is to be regarded as given on the date on which it was posted.

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