

Status: Point in time view as at 18/09/2012.

Changes to legislation: Mental Capacity Act 2005, Part 7 is up to date with all changes known to be in force on or before 30 May 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 7

JOINT AND JOINT AND SEVERAL ATTORNEYS

Application to joint and joint and several attorneys

- 20 (1) An instrument which appoints more than one person to be an attorney cannot create an enduring power unless the attorneys are appointed to act—
- (a) jointly, or
 - (b) jointly and severally.
- (2) This Schedule, in its application to joint attorneys, applies to them collectively as it applies to a single attorney but subject to the modifications specified in paragraph 21.
- (3) This Schedule, in its application to joint and several attorneys, applies with the modifications specified in sub-paragraphs (4) to (7) and in paragraph 22.
- (4) A failure, as respects any one attorney, to comply with the requirements for the creation of enduring powers—
- (a) prevents the instrument from creating such a power in his case, but
 - (b) does not affect its efficacy for that purpose as respects the other or others or its efficacy in his case for the purpose of creating a power of attorney which is not an enduring power.
- (5) If one or more but not both or all the attorneys makes or joins in making an application for registration of the instrument—
- (a) an attorney who is not an applicant as well as one who is may act pending the registration of the instrument as provided in paragraph 1(2),
 - (b) notice of the application must also be given under Part 3 of this Schedule to the other attorney or attorneys, and
 - (c) objection may validly be taken to the registration on a ground relating to an attorney or to the power of an attorney who is not an applicant as well as to one or the power of one who is an applicant.
- (6) The Public Guardian is not precluded by paragraph 13(5) or (8) from registering an instrument and the court must not direct him not to do so under paragraph 13(10) if an enduring power subsists as respects some attorney who is not affected by the ground or grounds of the objection in question; and where the Public Guardian registers an instrument in that case, he must make against the registration an entry in the prescribed form.

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- (7) Sub-paragraph (6) does not preclude the court from revoking a power in so far as it confers a power on any other attorney in respect of whom the ground in paragraph 13(9)(d) or (e) is established; and where any ground in paragraph 13(9) affecting any other attorney is established the court must direct the Public Guardian to make against the registration an entry in the prescribed form.
- (8) In sub-paragraph (4), “the requirements for the creation of enduring powers” means the provisions of—
- (a) paragraph 2 other than sub-paragraphs (8) and (9), and
 - (b) the regulations mentioned in paragraph 2.

Joint attorneys

- 21 (1) In paragraph 2(5), the reference to the time when the attorney executes the instrument is to be read as a reference to the time when the second or last attorney executes the instrument.
- (2) In paragraph 2(6) to (8), the reference to the attorney is to be read as a reference to any attorney under the power.
- (3) Paragraph 13 has effect as if the ground of objection to the registration of the instrument specified in sub-paragraph (9)(e) applied to any attorney under the power.
- (4) In paragraph 16(2), references to the attorney are to be read as including references to any attorney under the power.
- (5) In paragraph 16(4), references to the attorney are to be read as including references to any attorney under the power.
- (6) In paragraph 17, references to the attorney are to be read as including references to any attorney under the power.

Joint and several attorneys

- 22 (1) In paragraph 2(7), the reference to the bankruptcy of the attorney is to be read as a reference to the bankruptcy of the last remaining attorney under the power; and the bankruptcy of any other attorney under the power causes that person to cease to be an attorney under the power.
- (2) In paragraph 2(8), the reference to the suspension of the power is to be read as a reference to its suspension in so far as it relates to the attorney in respect of whom the interim bankruptcy restrictions order has effect.
- (3) The restriction upon disclaimer imposed by paragraph 4(6) applies only to those attorneys who have reason to believe that the donor is or is becoming mentally incapable.

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