

Status: Point in time view as at 01/04/2008.

Changes to legislation: Mental Capacity Act 2005, Part 3 is up to date with all changes known to be in force on or before 20 April 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)

SCHEDULE 3

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INTERNATIONAL PROTECTION OF ADULTS

PART 3

APPLICABLE LAW

Applicable law

- 11 In exercising jurisdiction under this Schedule, the court may, if it thinks that the matter has a substantial connection with a country other than England and Wales, apply the law of that other country.
- 12 Where a protective measure is taken in one country but implemented in another, the conditions of implementation are governed by the law of the other country.

Lasting powers of attorney, etc.

- 13 (1) If the donor of a lasting power is habitually resident in England and Wales at the time of granting the power, the law applicable to the existence, extent, modification or extinction of the power is—
- (a) the law of England and Wales, or
 - (b) if he specifies in writing the law of a connected country for the purpose, that law.
- (2) If he is habitually resident in another country at that time, but England and Wales is a connected country, the law applicable in that respect is—
- (a) the law of the other country, or
 - (b) if he specifies in writing the law of England and Wales for the purpose, that law.
- (3) A country is connected, in relation to the donor, if it is a country—
- (a) of which he is a national,
 - (b) in which he was habitually resident, or
 - (c) in which he has property.
- (4) Where this paragraph applies as a result of sub-paragraph (3)(c), it applies only in relation to the property which the donor has in the connected country.
- (5) The law applicable to the manner of the exercise of a lasting power is the law of the country where it is exercised.
- (6) In this Part of this Schedule, “lasting power” means—
- (a) a lasting power of attorney (see section 9),

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- (b) an enduring power of attorney within the meaning of Schedule 4, or
 - (c) any other power of like effect.
- 14 (1) Where a lasting power is not exercised in a manner sufficient to guarantee the protection of the person or property of the donor, the court, in exercising jurisdiction under this Schedule, may disapply or modify the power.
- (2) Where, in accordance with this Part of this Schedule, the law applicable to the power is, in one or more respects, that of a country other than England and Wales, the court must, so far as possible, have regard to the law of the other country in that respect (or those respects).
- 15 Regulations may provide for Schedule 1 (lasting powers of attorney: formalities) to apply with modifications in relation to a lasting power which comes within paragraph 13(6)(c) above.

Protection of third parties

- 16 (1) This paragraph applies where a person (a “representative”) in purported exercise of an authority to act on behalf of an adult enters into a transaction with a third party.
- (2) The validity of the transaction may not be questioned in proceedings, nor may the third party be held liable, merely because—
- (a) where the representative and third party are in England and Wales when entering into the transaction, sub-paragraph (3) applies;
 - (b) where they are in another country at that time, sub-paragraph (4) applies.
- (3) This sub-paragraph applies if—
- (a) the law applicable to the authority in one or more respects is, as a result of this Schedule, the law of a country other than England and Wales, and
 - (b) the representative is not entitled to exercise the authority in that respect (or those respects) under the law of that other country.
- (4) This sub-paragraph applies if—
- (a) the law applicable to the authority in one or more respects is, as a result of this Part of this Schedule, the law of England and Wales, and
 - (b) the representative is not entitled to exercise the authority in that respect (or those respects) under that law.
- (5) This paragraph does not apply if the third party knew or ought to have known that the applicable law was—
- (a) in a case within sub-paragraph (3), the law of the other country;
 - (b) in a case within sub-paragraph (4), the law of England and Wales.

Mandatory rules

- 17 Where the court is entitled to exercise jurisdiction under this Schedule, the mandatory provisions of the law of England and Wales apply, regardless of any system of law which would otherwise apply in relation to the matter.

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Public policy

- 18 Nothing in this Part of this Schedule requires or enables the application in England and Wales of a provision of the law of another country if its application would be manifestly contrary to public policy.

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