

*Status: Point in time view as at 01/04/2008.*

*Changes to legislation: Mental Capacity Act 2005, Part 2 is up to date with all changes known to be in force on or before 30 March 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<sup>1</sup>

### SCHEDULE 4

#### PROVISIONS APPLYING TO EXISTING ENDURING POWERS OF ATTORNEY

##### PART 2

##### ACTION ON ACTUAL OR IMPENDING INCAPACITY OF DONOR

##### *Duties of attorney in event of actual or impending incapacity of donor*

- 4 (1) Sub-paragraphs (2) to (6) apply if the attorney under an enduring power has reason to believe that the donor is or is becoming mentally incapable.
- (2) The attorney must, as soon as practicable, make an application to the Public Guardian for the registration of the instrument creating the power.
- (3) Before making an application for registration the attorney must comply with the provisions as to notice set out in Part 3 of this Schedule.
- (4) An application for registration—
- (a) must be made in the prescribed form, and
  - (b) must contain such statements as may be prescribed.
- (5) The attorney—
- (a) may, before making an application for the registration of the instrument, refer to the court for its determination any question as to the validity of the power, and
  - (b) must comply with any direction given to him by the court on that determination.
- (6) No disclaimer of the power is valid unless and until the attorney gives notice of it to the Public Guardian; and the Public Guardian must notify the donor if he receives a notice under this sub-paragraph.
- (7) A person who, in an application for registration, makes a statement which he knows to be false in a material particular is guilty of an offence and is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine or both.
- (8) In this paragraph, “prescribed” means prescribed by regulations made for the purposes of this Schedule by the Lord Chancellor.

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