

Status: Point in time view as at 01/04/2008.

Changes to legislation: Mental Capacity Act 2005, Cross Heading: Registration of instrument creating power is up to date with all changes known to be in force on or before 09 October 2023. 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)

SCHEDULES¹

SCHEDULE 4

PROVISIONS APPLYING TO EXISTING ENDURING POWERS OF ATTORNEY

PART 4

REGISTRATION

Registration of instrument creating power

- 13 (1) If an application is made in accordance with paragraph 4(3) and (4) the Public Guardian must, subject to the provisions of this paragraph, register the instrument to which the application relates.
- (2) If it appears to the Public Guardian that—
- (a) there is a deputy appointed for the donor of the power created by the instrument, and
 - (b) the powers conferred on the deputy would, if the instrument were registered, to any extent conflict with the powers conferred on the attorney,
- the Public Guardian must not register the instrument except in accordance with the court's directions.
- (3) The court may, on the application of the attorney, direct the Public Guardian to register an instrument even though notice has not been given as required by paragraph 4(3) and Part 3 of this Schedule to a person entitled to receive it, if the court is satisfied—
- (a) that it was undesirable or impracticable for the attorney to give notice to that person, or
 - (b) that no useful purpose is likely to be served by giving him notice.
- (4) Sub-paragraph (5) applies if, before the end of the period of 5 weeks beginning with the date (or the latest date) on which the attorney gave notice under paragraph 5 of an application for registration, the Public Guardian receives a valid notice of objection to the registration from a person entitled to notice of the application.
- (5) The Public Guardian must not register the instrument except in accordance with the court's directions.
- (6) Sub-paragraph (7) applies if, in the case of an application for registration—
- (a) it appears from the application that there is no one to whom notice has been given under paragraph 5, or
 - (b) the Public Guardian has reason to believe that appropriate inquiries might bring to light evidence on which he could be satisfied that one of the grounds of objection set out in sub-paragraph (9) was established.

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- (7) The Public Guardian—
- (a) must not register the instrument, and
 - (b) must undertake such inquiries as he thinks appropriate in all the circumstances.
- (8) If, having complied with sub-paragraph (7)(b), the Public Guardian is satisfied that one of the grounds of objection set out in sub-paragraph (9) is established—
- (a) the attorney may apply to the court for directions, and
 - (b) the Public Guardian must not register the instrument except in accordance with the court's directions.
- (9) A notice of objection under this paragraph is valid if made on one or more of the following grounds—
- (a) that the power purported to have been created by the instrument was not valid as an enduring power of attorney,
 - (b) that the power created by the instrument no longer subsists,
 - (c) that the application is premature because the donor is not yet becoming mentally incapable,
 - (d) that fraud or undue pressure was used to induce the donor to create the power,
 - (e) that, having regard to all the circumstances and in particular the attorney's relationship to or connection with the donor, the attorney is unsuitable to be the donor's attorney.
- (10) If any of those grounds is established to the satisfaction of the court it must direct the Public Guardian not to register the instrument, but if not so satisfied it must direct its registration.
- (11) If the court directs the Public Guardian not to register an instrument because it is satisfied that the ground in sub-paragraph (9)(d) or (e) is established, it must by order revoke the power created by the instrument.
- (12) If the court directs the Public Guardian not to register an instrument because it is satisfied that any ground in sub-paragraph (9) except that in paragraph (c) is established, the instrument must be delivered up to be cancelled unless the court otherwise directs.

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