

Notes:

1. This is prepared by [Alex Ruck Keene](#) from the version of Schedule 1 to the Mental Capacity Act 2005 available at legislation.gov.uk, which is stated to be up to date as at 2 January 2023, as an entirely unofficial attempt to make it easier to understand the proposals included in the Powers of Attorney Bill published on 7 December 2022.
2. Whilst every effort has been made faithfully to transpose the proposals, I take no responsibility for any errors in transposition. It does not look very pretty, but it is hopefully functional.
3. This does not include the amendments proposed by the Powers of Attorney Bill to the Powers of Attorney Act 1971 or to s.58(4) or 65 of the Mental Capacity Act 2005.
4. References to clauses/Schedules are to clauses/Schedules in the Powers of Attorney Bill.
5. You are welcome to circulate and re-use this, but only on the basis that it remains unchanged – if you spot errors, please email me at alex.ruckkeene@39essex.com.



Mental Capacity Act 2005

2005 CHAPTER 9

SCHEDULE 1

PART 1

MAKING INSTRUMENTS

General requirements as to making instruments

- 1 (1) An instrument is not made in accordance with this Schedule unless—
 - (a) it is in the prescribed form,
 - (b) it complies with paragraph 2, and
 - (c) any prescribed requirements in connection with its execution are satisfied.
- (2) Regulations may make different provision according to whether—
 - (a) the instrument relates to personal welfare or to property and affairs (or to both);
 - (b) only one or more than one donee is to be appointed (and if more than one, whether jointly or jointly and severally).

- (3) In this Schedule—
- (a) “prescribed” means prescribed by regulations, and
 - (b) “regulations” means regulations made for the purposes of this Schedule by the Lord Chancellor.

Requirements as to content of instruments

- 2 (1) The instrument must include—
- (a) the prescribed information about the purpose of the instrument and the effect of a lasting power of attorney,
 - (b) a statement by the donor to the effect that he—
 - (i) has read the prescribed information or a prescribed part of it (or has had it read to him), and
 - (ii) intends the authority conferred under the instrument to include authority to make decisions on his behalf in circumstances where he no longer has capacity,
 - (c) a statement by the donor—
 - (i) naming a person or persons whom the donor wishes to be notified of any application for the registration of the instrument, or
 - (ii) stating that there are no persons whom he wishes to be notified of any such application,
 - (d) a statement by the donee (or, if more than one, each of them) to the effect that he—
 - (i) has read the prescribed information or a prescribed part of it (or has had it read to him), and
 - (ii) understands the duties imposed on a donee of a lasting power of attorney under sections 1 (the principles) and 4 (best interests), and
 - (e) a certificate by a person of a prescribed description that, in his opinion, at the time when the donor executes the instrument—
 - (i) the donor understands the purpose of the instrument and the scope of the authority conferred under it,
 - (ii) no fraud or undue pressure is being used to induce the donor to create a lasting power of attorney, and
 - (iii) there is nothing else which would prevent a lasting power of attorney from being created by the instrument.
- (2) Regulations may—
- (a) prescribe a maximum number of named persons;
 - (b) provide that, where the instrument includes a statement under sub-paragraph (1)(c)(ii), two persons of a prescribed description must each give a certificate under sub-paragraph (1)(e).
- (3) The persons who may be named persons do not include a person who is appointed as donee under the instrument.
- (4) In this Schedule, “named person” means a person named under sub-paragraph (1)(c).
- (5) A certificate under sub-paragraph (1)(e)—
- (a) must be made in the prescribed form, and
 - (b) must include any prescribed information.
- (6) The certificate may not be given by a person appointed as donee under the instrument.

Failure to comply with prescribed form

- 3 (1) If an instrument differs in an immaterial respect in form or mode of expression from the

prescribed form, it is to be treated by the Public Guardian as sufficient in point of form and expression.

- (2) The court may declare that an instrument which is not in the prescribed form is to be treated as if it were, if it is satisfied that the persons executing the instrument intended it to create a lasting power of attorney.

PART 2

REGISTRATION

Applications and procedure for registration

- 4 (1) An application to the Public Guardian for the registration of an instrument intended to create a lasting power of attorney—
- (a) must be made by the donor in the prescribed form, and
 - (b) must include any prescribed information.
- (2) ~~The application may be made—~~
- ~~(a) by the donor,~~
 - ~~(b) by the donee or donees, or~~
 - ~~(c) if the instrument appoints two or more donees to act jointly and severally in respect of any matter, by any of the donees.~~
- (3) ~~The application must be accompanied by—~~
- ~~(a) the instrument, and~~
 - ~~(b) any fee provided for under section 58(4)(b).~~
- (3) The application must be accompanied by the instrument (whether or not the instrument complies with paragraph 1(1)(c))
- (4) 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.
- (4A) If it appears to the Public Guardian that the instrument as submitted under paragraph 4(3) fails in a prescribed respect to comply with paragraph 1(1)(c), the Public Guardian must take any steps that may be prescribed for ensuring that the instrument complies with paragraph 1(1)(c) in that respect.
- 5 Subject to paragraphs ~~11 to 14~~ 10A to 13A, the Public Guardian must register the instrument as a lasting power of attorney at the end of the prescribed period.

Commented [ARK1]: All changes made by clause 1 and paragraph 2 of the Schedule

Commented [ARK2]: Change made by clause 1 and paragraph 3 of the Schedule

Commented [ARK3]: Change made by clause 1 and paragraph 12 of the Schedule

Notification requirements

- 6 (1) ~~A donor about to make an application under paragraph 4(2)(a) must notify any named persons that he is about to do so.~~
- (2) ~~The donee (or donees) about to make an application under paragraph 4(2)(b) or (c) must notify any named persons that he is (or they are) about to do so.~~
- 7 ~~As soon as is practicable after receiving an application by the donor under paragraph 4(2)(a), the Public Guardian must notify the donee (or donees) that the application has~~

been received.

7 (1) As soon as is practicable after both the conditions in sub-paragraph (2) are met, the Public Guardian must notify the (1) donor, the donee (or, if more than one, each of them) and each named person that those conditions have been met.

(2) The conditions are—

(a) that the Public Guardian has received an application under paragraph 4 in relation to an instrument intended to create a lasting power of attorney, and

(b) that it appears to the Public Guardian that the instrument has been made in accordance with this Schedule

8 (1) As soon as is practicable after receiving an application by a donee (or donees) under paragraph 4(2)(b), the Public Guardian must notify the donor that the application has been received.

(2) As soon as is practicable after receiving an application by a donee under paragraph 4(2)(c), the Public Guardian must notify—

(a) the donor, and

(b) the donee or donees who did not join in making the application, that the application has been received.

9 (1) A notice under paragraph 6 must be made in the prescribed form.

(2) A notice under paragraph 6, 7 or 8 7 must include such information, if any, as may be prescribed.

Power to dispense with notification requirements

10 The court may—

(a) on the application of the donor, dispense with the requirement to notify under paragraph 6(1), or

(b) on the application of the donee or donees concerned, dispense with the requirement to notify under paragraph 6(2),

if satisfied that no useful purpose would be served by giving the notice.

Identification requirements

10A (1) Regulations may impose, in respect of applications under paragraph 4 for the registration of an instrument, requirements for the purpose of establishing or verifying the identity of persons named in an instrument or taking part in the process of an application.

(2) If it appears to the Public Guardian that a requirement imposed by regulations under sub-paragraph (1) is not met in the case of an instrument, the Public Guardian must not register the instrument unless directed to do so by the court.

Instrument not made properly or containing ineffective provision

11 (1) If, at the end of the period mentioned in paragraph 5, it appears to the Public Guardian that an instrument accompanying an application under paragraph 4 the instrument to which an application under paragraph 4 relates is not made in accordance with this Schedule, he must not register the instrument unless the court directs him to do so.

(2) Sub-paragraph (3) applies if it appears to the Public Guardian that the instrument

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contains a provision which—

- (a) would be ineffective as part of a lasting power of attorney, or
 - (b) would prevent the instrument from operating as a valid lasting power of attorney.
- (3) The Public Guardian—
- (a) must apply to the court for it to determine the matter under section 23(1), and
 - (b) pending the determination by the court, must not register the instrument.
- (4) Sub-paragraph (5) applies if the court determines under section 23(1) (whether or not on an application by the Public Guardian) that the instrument contains a provision which—
- (a) would be ineffective as part of a lasting power of attorney, or
 - (b) would prevent the instrument from operating as a valid lasting power of attorney.
- (5) The court must—
- (a) notify the Public Guardian that it has severed the provision, or
 - (b) direct him not to register the instrument.
- (6) Where the court notifies the Public Guardian that it has severed a provision, he must register the instrument with a note to that effect attached to it.

Deputy already appointed

- 12 (1) Sub-paragraph (2) applies if it appears to the Public Guardian that—
- (a) there is a deputy appointed by the court for the donor, 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.
- (2) The Public Guardian must not register the instrument unless the court directs him to do so.

Objection by donee or named person

- 13 (1) Sub-paragraph (2) applies if a donee or a named person—
- (a) receives a notice under paragraph ~~6, 7 or 8~~ 7 of an application for the registration of an instrument, and
 - (b) before the end of the prescribed period, gives notice to the Public Guardian of an objection to the registration on the ground that an event mentioned in section 13(3) or (6)(a) to (d) has occurred which has revoked the instrument.
- (2) If the Public Guardian is satisfied that the ground for making the objection is established, he must not register the instrument unless the court, on the application of ~~the person applying for the registration~~ donor or the donee (or, if more than one, any of them)—
- (a) is satisfied that the ground is not established, and
 - (b) directs the Public Guardian to register the instrument.
- (3) Sub-paragraph (4) applies if a donee or a named person—
- (a) receives a notice under paragraph ~~6, 7 or 8~~ 7 of an application for the registration of an instrument, and
 - ~~(b) before the end of the prescribed period—~~
 - (i) makes an application to the court objecting to the registration on a prescribed ground, and
 - (ii) notifies the Public Guardian of the application.
 - (b) before the end of the prescribed period, gives notice to the Public Guardian of an

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objection to the registration on a prescribed ground.

~~(4) The Public Guardian must not register the instrument unless the court directs him to do so.~~

~~(4) The Public Guardian must not register the instrument unless—~~

- ~~(a) the Public Guardian is satisfied that no evidence has been provided which reasonably supports the making of the objection on that ground, or~~
- ~~(b) the court, on the application of the donor or the donee (or, if more than one, any of them), directs the Public Guardian to register the instrument.~~

Commented [ARK12]: All changes made by clause 1 and paragraph 7 of the Schedule

Objection by third party

~~13A (1) This paragraph applies where—~~

- ~~(a) an application has been made under paragraph 4 for the registration of an instrument (and at the time when the notice mentioned in paragraph (b) is given that application has not been determined),~~
- ~~(b) a third party has given the Public Guardian notice of an objection on a relevant ground to the registration of the instrument (“the notice of objection”), and~~
- ~~(c) that notice was given after the Public Guardian was first notified in a prescribed manner by (or on behalf of) the donor of the donor’s intention to make the application mentioned in paragraph (a).~~

~~(2) In sub-paragraph (1) “on a relevant ground” means—~~

- ~~(a) on the ground that an event mentioned in section 13(3) or (6)(a) to (d) has occurred which has revoked the instrument, or~~
- ~~(b) on a prescribed ground.~~

~~(3) Where the notice of objection is given on the ground within sub-paragraph (2)(a) and the Public Guardian is satisfied that the ground for making the objection is established, the Public Guardian must not register the instrument unless the court, on the application of the donor or the donee (or, if more than one, any of them)—~~

- ~~(a) is satisfied that the ground is not established, and~~
- ~~(b) directs the Public Guardian to register the instrument.~~

~~(4) Where the notice of objection is given on a ground within sub-paragraph (2)(b) the Public Guardian must not register the instrument unless—~~

- ~~(a) the Public Guardian is satisfied that no evidence has been provided which reasonably supports the making of the objection on that ground, or~~
- ~~(b) the court, on the application of the donor or the donee (or, if more than one, any of them) directs the Public Guardian to register the instrument.~~

~~(5) In this paragraph “third party” means a person who is not the donor, a donee or a named person.~~

Commented [ARK13]: All changes made by clause 1 and paragraph 7 of the Schedule

Objection by donor

~~14 (1) This paragraph applies if the donor—~~

- ~~(a) receives a notice under paragraph 8 of an application for the registration of an instrument, and~~
- ~~(b) before the end of the prescribed period, gives notice to the Public Guardian of an objection to the registration.~~

~~(2) The Public Guardian must not register the instrument unless the court, on the~~

- ~~application of the donee or, if more than one, any of them—~~
(a) ~~is satisfied that the donor lacks capacity to object to the registration, and~~
(b) ~~directs the Public Guardian to register the instrument.~~

Commented [ARK14]: Change made by clause 1 and paragraph 12 of the Schedule

Notification of registration

- 15 Where an instrument is registered under this Schedule, the Public Guardian must give notice of the fact in the prescribed form to—
- (a) the donor, and
 - (b) the donee or, if more than one, each of them.

Evidence of registration

- 16 (1) A document purporting to be an office copy of an instrument registered under this Schedule before the day on which paragraph 8(a) of the Schedule to the Powers of Attorney Act 2022 comes into force is, in any part of the United Kingdom, evidence of—
- (a) the contents of the instrument, and
 - (b) the fact that it has been registered.

~~(1A) In the case of any instrument registered under this Schedule in electronic form—~~

- (a) ~~the record in the register of that instrument is to be, in any part of the United Kingdom, sufficient proof of the contents of the instrument;~~
 - (b) ~~regulations may provide that a document provided by the Public Guardian in a prescribed manner is to be, in any part of the United Kingdom, evidence of the contents of the instrument and of the fact that it has been registered.~~
- (3) ~~Sub-paragraph (1) is~~ Sub-paragraphs (1) and (1A) are without prejudice to—
- (a) section 3 of the Powers of Attorney Act 1971 (c. 27) (proof by certified copy), and
 - (b) any other method of proof authorised by law.

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PART 3

CANCELLATION OF REGISTRATION AND NOTIFICATION OF SEVERANCE

- 17 (1) The Public Guardian must cancel the registration of an instrument as a lasting power of attorney on being satisfied that the power has been revoked—
- (a) as a result of the donor's bankruptcy or a debt relief order (under Part 7A of the Insolvency Act 1986) having been made in respect of the donor, or
 - (b) on the occurrence of an event mentioned in section 13(6)(a) to (d).
- (2) If the Public Guardian cancels the registration of an instrument he must notify—
- (a) the donor, and
 - (b) the donee or, if more than one, each of them.
- 18 The court must direct the Public Guardian to cancel the registration of an instrument as a lasting power of attorney if it—
- (a) determines under section 22(2)(a) that a requirement for creating the power was not met,
 - (b) determines under section 22(2)(b) that the power has been revoked or has otherwise come to an end, or
 - (c) revokes the power under section 22(4)(b) (fraud etc.).

- 19 (1) Sub-paragraph (2) applies if the court determines under section 23(1) that a lasting power of attorney contains a provision which—
- (a) is ineffective as part of a lasting power of attorney, or
 - (b) prevents the instrument from operating as a valid lasting power of attorney.
- (2) The court must—
- (a) notify the Public Guardian that it has severed the provision, or
 - (b) direct him to cancel the registration of the instrument as a lasting power of attorney.
- 20 On the cancellation of the registration of an instrument, the instrument and any office copies of it must be delivered up to the Public Guardian to be cancelled.

PART 4

RECORDS OF ALTERATIONS IN REGISTERED POWERS

Partial revocation or suspension of power as a result of bankruptcy

- 21 If in the case of a registered instrument it appears to the Public Guardian that under section 13 a lasting power of attorney is revoked, or suspended, in relation to the donor's property and affairs (but not in relation to other matters), the Public Guardian must attach to the instrument a note to that effect.

Termination of appointment of donee which does not revoke power

- 22 If in the case of a registered instrument it appears to the Public Guardian that an event has occurred—
- (a) which has terminated the appointment of the donee, but
 - (b) which has not revoked the instrument,
- the Public Guardian must attach to the instrument a note to that effect.

Replacement of donee

- 23 If in the case of a registered instrument it appears to the Public Guardian that the donee has been replaced under the terms of the instrument the Public Guardian must attach to the instrument a note to that effect.

Severance of ineffective provisions

- 24 If in the case of a registered instrument the court notifies the Public Guardian under paragraph 19(2)(a) that it has severed a provision of the instrument, the Public Guardian must attach to it a note to that effect.

Notification of alterations

- 25 If the Public Guardian attaches a note to an instrument under paragraph 21, 22, 23 or 24 he must give notice of the note to the donee or donees of the power (or, as the case may be, to the other donee or donees of the power).