

MENTAL CAPACITY ACT 2005

EXPLANATORY NOTES

SCHEDULES

Schedule 3: International protection of adults

Part 3: Applicable law

175. *Part 3* of the Schedule makes provision as to which law is to apply in various situations. Although the Court of Protection will normally apply the law of England and Wales, and the conditions of implementation of any protective measure taken abroad will be governed by the law of England and Wales if implemented here, the court may apply the law of another country if it thinks that a matter has a substantial connection with that country (*paragraphs 11 and 12*).
176. In addition the donor of a foreign power akin to an LPA may specify that the law applicable to the existence, extent, modification or extinction of the power is to be the law of a country of which he is a national, in which he is habitually resident, or in which he has property. If the power is exercised in England and Wales the law of England and Wales shall, however, apply to the manner of the exercise of the power. Regulations may apply the provisions of *Schedule 1* (lasting powers of attorney: formalities) to such foreign powers (*paragraph 15*).
177. The court may disapply or modify a lasting power (including a foreign power) where the power is not exercised in a manner sufficient to guarantee the protection of the donor or his property. In these circumstances the court must, so far as possible, have regard to any foreign law applicable by virtue of this (*paragraph 14*).
178. This Part provides protection for a third party who enters into a transaction with a representative on behalf of a person, where that representative was actually not entitled so to act under the law of a country other than England and Wales applicable by virtue of this Part. Protection is provided if the third party neither knew nor ought to have known that such a law was applicable (*paragraph 16*); ensures that mandatory provisions of the law of England and Wales apply regardless of any other system of law that would apply (*paragraph 17*); and provides that nothing in this Part of the Schedule requires or enables the application in England and Wales of a provision of the law of another country that is manifestly contrary to public policy (*paragraph 18*).