MENTAL CAPACITY ACT 2005

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EXPLANATORY NOTES

SCHEDULES

Schedule 4: Provisions applying to existing enduring powers of attorney

Part 4: Registration

189.   Where an application for registration is made in accordance with the provisions of Part 2, the Public Guardian must register the instrument unless a valid notice of objection has been made in accordance with the provisions of this part. A notice of objection is valid if made on one or more of the following grounds:

- that the power was not valid as an EPA;

- that the power created no longer exists;

- that the application is premature because the donor is not yet becoming mentally incapable;

- that fraud or undue pressure was used to induce the donor to create the power;

- that, having regard to all the circumstances, the donee is unsuitable to be the donor's attorney.

190.   It is for the court to decide whether any of those grounds is actually made out and if so it must direct the Public Guardian not to register the instrument. If the court is satisfied that fraud or undue pressure was used or that the donee is unsuitable, then it must also order the revocation of the power created by the instrument.

191.   Where it appears that there is no one to whom notice has been given or 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 valid grounds of objection was established, he must not register the instrument and must undertake such inquiries as he thinks appropriate. If, after those inquiries, he considers one of the grounds of objection to be made out, he must apply to the court for directions and must not register the instrument except in accordance with such directions. The Public Guardian must not register an EPA if a deputy has been appointed and the powers of the attorney would conflict. Again, the court may give directions.