



Mental Capacity Act 2005

2005 CHAPTER 9

PART 1

PERSONS WHO LACK CAPACITY

Powers of the court in relation to lasting powers of attorney

22 Powers of court in relation to validity of lasting powers of attorney

- (1) This section and section 23 apply if —
 - (a) a person (“P”) has executed or purported to execute an instrument with a view to creating a lasting power of attorney, or
 - (b) an instrument has been registered as a lasting power of attorney conferred by P.
- (2) The court may determine any question relating to—
 - (a) whether one or more of the requirements for the creation of a lasting power of attorney have been met;
 - (b) whether the power has been revoked or has otherwise come to an end.
- (3) Subsection (4) applies if the court is satisfied—
 - (a) that fraud or undue pressure was used to induce P—
 - (i) to execute an instrument for the purpose of creating a lasting power of attorney, or
 - (ii) to create a lasting power of attorney, or
 - (b) that the donee (or, if more than one, any of them) of a lasting power of attorney—
 - (i) has behaved, or is behaving, in a way that contravenes his authority or is not in P’s best interests, or
 - (ii) proposes to behave in a way that would contravene his authority or would not be in P’s best interests.
- (4) The court may—

Status: This is the original version (as it was originally enacted).

- (a) direct that an instrument purporting to create the lasting power of attorney is not to be registered, or
 - (b) if P lacks capacity to do so, revoke the instrument or the lasting power of attorney.
- (5) If there is more than one donee, the court may under subsection (4)(b) revoke the instrument or the lasting power of attorney so far as it relates to any of them.
- (6) “Donee” includes an intended donee.

23 Powers of court in relation to operation of lasting powers of attorney

- (1) The court may determine any question as to the meaning or effect of a lasting power of attorney or an instrument purporting to create one.
- (2) The court may—
- (a) give directions with respect to decisions—
 - (i) which the donee of a lasting power of attorney has authority to make, and
 - (ii) which P lacks capacity to make;
 - (b) give any consent or authorisation to act which the donee would have to obtain from P if P had capacity to give it.
- (3) The court may, if P lacks capacity to do so—
- (a) give directions to the donee with respect to the rendering by him of reports or accounts and the production of records kept by him for that purpose;
 - (b) require the donee to supply information or produce documents or things in his possession as donee;
 - (c) give directions with respect to the remuneration or expenses of the donee;
 - (d) relieve the donee wholly or partly from any liability which he has or may have incurred on account of a breach of his duties as donee.
- (4) The court may authorise the making of gifts which are not within section 12(2) (permitted gifts).
- (5) Where two or more donees are appointed under a lasting power of attorney, this section applies as if references to the donee were to all or any of them.