

*These notes refer to the Mental Capacity Act (Northern Ireland)
2016 (c.18) which received Royal Assent on 9 May 2016*

Mental Capacity Act (Northern Ireland) 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5 – Lasting Powers of Attorney

Chapter 1 - Lasting Powers of Attorney

Section 108 – Protection of attorney and others if no power created or power revoked

This section sets out the legal consequences when a registered LPA turns out to be invalid for any reason. Both the person acting as attorney and any third party dealing with him or her or dealing subsequent to his or her involvement are given protection from liability if they were unaware that the LPA was defective.

Any transactions between the person acting as an attorney and another person (“Y”) are valid unless at the time of the transaction Y knows that the LPA was not created or is aware of circumstances that have terminated the authority of the attorney under the LPA.

If the interest of a purchaser depends on whether a transaction between the person acting as attorney and Y was valid, it is conclusively presumed in favour of the purchaser that the transaction was valid if the transaction was completed within 12 months of the date on which the LPA instrument was registered; or if there is any statutory declaration by Y before or within 3 months of completion of the purchase stating that Y had no reason at the time of the transaction to doubt the authority of the person acting as attorney to dispose of the property which was the subject of the transaction.

Section 4 of the Powers of Attorney Act (NI) 1971 regarding protection where power is revoked, also applies where that power relates to matters in addition to the donor’s property and affairs; and references to revocation include the cessation of the power in relation to the donor’s property and affairs.