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Changes to legislation: Mental Capacity Act (Northern Ireland) 2016, Cross Heading: Appointment of attorneys and replacements is up to date with all changes known to be in force on or before 04 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)



2016 CHAPTER 18

PART 5

LASTING POWERS OF ATTORNEY

PROSPECTIVE

Appointment of attorneys and replacements

Appointment of attorneys: requirements as respects attorneys

101.—(1) A person appointed as an attorney by an instrument executed with a view to creating a lasting power of attorney (a “relevant instrument”) must be—

- (a) an individual who is 18 or over at the time the instrument is executed; or
- (b) if the instrument relates only to the donor's property and affairs, either such an individual or a trust corporation.

(2) An individual who is bankrupt may not be appointed by a relevant instrument as an attorney in relation to the donor's property and affairs.

Appointment of two or more attorneys

102.—(1) This section applies in relation to an instrument executed with a view to creating a lasting power of attorney which appoints two or more persons to act as attorneys.

- (2) The instrument may appoint them to act—
 - (a) jointly;

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(b) jointly and severally; or

(c) jointly in respect of some matters and jointly and severally in respect of others.

(3) To the extent to which it does not specify whether they are to act jointly or jointly and severally, the instrument is to be treated as appointing them to act jointly.

(4) If they are to act jointly in respect of all matters, a failure, as respects one of the persons, to comply with a requirement of section 101 or Part 1 or 2 of Schedule 4 prevents a lasting power of attorney from being created.

(5) If they are to act jointly and severally in respect of some or all matters, a failure, as respects one of the persons, to comply with a requirement of section 101 or Part 1 or 2 of Schedule 4—

(a) prevents the appointment from taking effect in that person's case; but

(b) does not prevent a lasting power of attorney from being created in the case of the other or others (limited, where they are to act jointly and severally only in respect of some matters, to those matters).

Appointment of replacement attorneys

103.—(1) An instrument executed with a view to creating a lasting power of attorney—

(a) cannot give a person appointed as attorney power to appoint a substitute or successor (whether of that person or any other person appointed as attorney); but

(b) may itself appoint one or more persons (“replacement attorneys”) to replace any person appointed as attorney on the occurrence of a terminating event which has the effect of terminating that person's appointment.

(2) An instrument that appoints a person as a replacement attorney may not appoint a person to replace a replacement attorney (in the event that a terminating event terminates the appointment of the replacement attorney).

(3) Where an instrument executed with a view to creating a lasting power of attorney—

(a) appoints two or more persons as attorneys, and

(b) appoints two or more persons as replacement attorneys,

it may specify the order in which the appointments of the replacement attorneys are to take effect.

(4) Nothing in subsection (3) limits the power under subsection (1)(b) for an instrument to specify a particular person (or persons) as the person who is

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to replace a particular person appointed as attorney (“A”) on the occurrence of a terminating event that terminates A's appointment.

(5) Section 101 (requirements as respects attorneys) applies in relation to the appointment of a person as a replacement attorney as it applies in relation to the appointment of a person as an attorney.

(6) A failure, in relation to a person appointed as a replacement attorney, to comply with a requirement of section 101 or Part 1 or 2 of Schedule 4 does not prevent a lasting power of attorney from being created.

(7) In this section “a terminating event” means—

- (a) an event mentioned in section 107(2)(a) to (f);
- (b) a termination of an appointment under section 110(4)(b).

Appointment of two or more replacements for a single initial appointee

104.—(1) This section applies to an instrument executed with a view to creating a lasting power of attorney that—

- (a) appoints one person (“A”) as attorney; and
- (b) under section 103(1)(b) appoints two or more persons (“the replacement attorneys”) to replace A.

(2) The instrument may provide that the replacement attorneys, if they replace A, are to act—

- (a) jointly;
- (b) jointly and severally; or
- (c) jointly in respect of some matters and jointly and severally in respect of others.

(3) To the extent to which it does not specify whether they are to act jointly or jointly and severally, the instrument is to be treated as appointing them to act jointly.

(4) Subsections (5) and (6) apply where, in relation to some but not all of the replacement attorneys, there is a failure to comply with a requirement of section 101 or Part 1 or 2 of Schedule 4.

(5) To the extent that the replacement attorneys were appointed to act jointly, the appointment mentioned in subsection (1)(b) is of no effect.

(6) To the extent that they were appointed to act jointly and severally, that appointment is to be treated as being an appointment of such of the replacement attorneys as respects whom there is no failure to comply with a requirement of section 101 or Part 1 or 2 of Schedule 4.

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Replacement attorneys: position where two or more initial appointees

105.—(1) This section applies where—

- (a) an instrument executed with a view to creating a lasting power of attorney appoints two or more persons as attorneys (the “initial appointees”);
- (b) an initial appointee is replaced under the instrument by virtue of section 103(1)(b); and
- (c) on that replacement, there are at least two relevant appointees under the instrument.

(2) A person is a “relevant appointee” under the instrument if—

- (a) the person was appointed as an attorney by the instrument (whether or not to act jointly with the initial appointee who has been replaced) and no terminating event has terminated the person's appointment; or
- (b) the person has replaced an initial appointee and no terminating event has terminated the person's appointment.

(3) The relevant appointees are—

- (a) if the initial appointees were appointed to act jointly, to be treated as appointed to act jointly;
- (b) if the initial appointees were appointed to act jointly and severally, to be treated as appointed to act jointly and severally;
- (c) if the initial appointees were appointed to act jointly in respect of some matters and jointly and severally in respect of others, to be treated as appointed to act in the same way.

(4) But where a terminating event has terminated a relevant appointee's appointment in relation to the donor's property and affairs (but not in relation to other matters), subsection (3) is subject to that termination.

(5) In this section “terminating event” has the same meaning as in section 103.

Revocation of lasting power etc by donor or on donor's bankruptcy

106.—(1) Where—

- (a) an instrument (“a relevant instrument”) is executed with a view to creating a lasting power of attorney, or
- (b) a lasting power of attorney is registered,

the donor may, at any time when the donor has capacity to do so, revoke the instrument or the lasting power of attorney.

(2) Where a relevant instrument has been executed (but not registered) and the donor is bankrupt, the bankruptcy revokes the instrument so far as it relates to the donor's property and affairs.

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- (3) Where the donor of a lasting power of attorney is bankrupt—
- (a) if the donor is bankrupt merely because an interim bankruptcy restrictions order has effect, the power is suspended, so far as it relates to the donor's property and affairs, for so long as the order has effect;
 - (b) otherwise, the bankruptcy revokes the power so far as it relates to the donor's property and affairs.

Revocation etc: events relating to the attorney

107.—(1) This section applies where an event mentioned in subsection (2) occurs in relation to a person (“A”) appointed as an attorney or replacement attorney by—

- (a) a lasting power of attorney; or
- (b) an instrument executed with a view to creating a lasting power of attorney.

(2) The events referred to in subsection (1) are—

- (a) the disclaimer of the appointment by A in accordance with any prescribed requirements;
- (b) the death of A;
- (c) the bankruptcy of A (but see subsections (5) to (8));
- (d) if A is a trust corporation, its winding-up or dissolution;
- (e) the dissolution, annulment or judicial separation of a marriage or civil partnership between the donor and A (but see subsections (5) and (9));
- (f) the lack of capacity of A.

(3) The event terminates A's appointment.

(4) If A is an attorney under the power or an intended attorney under the instrument, the event revokes the power or instrument unless—

- (a) A was appointed as an attorney by the power or instrument and is replaced under its terms; or
- (b) A is one of two or more persons who were to act jointly and severally in respect of any matter and, after the event, there is at least one remaining attorney or intended attorney (as the case may be).

(5) Subsections (3) and (4) are subject—

- (a) in the case of an event mentioned in subsection (2)(c), to subsections (6) and (7);
- (b) in the case of an event mentioned in subsection (2)(e), to subsection (9).

(6) The bankruptcy of A does not terminate A's appointment, or revoke the instrument or power, in so far as A's authority relates to the donor's care, treatment and personal welfare.

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(7) Where A is an attorney under a lasting power of attorney and is bankrupt merely because an interim bankruptcy restrictions order has effect, A's appointment and the power are suspended, so far as they relate to the donor's property and affairs, for so long as the order has effect.

(8) The reference in subsection (7) to the suspension of the power is to be read, where A is one of two or more attorneys who are to act jointly and severally in respect of any matter, as a reference to the suspension of the power so far as it relates to A.

(9) The dissolution, annulment or judicial separation of a marriage or civil partnership does not terminate A's appointment, or revoke the instrument or power, if the instrument or power provides that it is not to do so.

(10) In subsection (4) “intended attorney” means a person who, if the instrument were registered and a lasting power of attorney were created, would be an attorney under the lasting power.

(11) In this section references to the “judicial separation” of a marriage or civil partnership include—

- (a) the making of a decree of judicial separation in respect of a marriage, and
- (b) the making of a separation order in respect of a civil partnership.

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