
Status: Point in time view as at 18/06/2012.

Changes to legislation: Mental Capacity Act 2005, Cross Heading: Scope of authority etc. of attorney under enduring power is up to date with all changes known to be in force on or before 10 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)

SCHEDULES

SCHEDULE 4

PROVISIONS APPLYING TO EXISTING ENDURING POWERS OF ATTORNEY

PART 1

ENDURING POWERS OF ATTORNEY

Scope of authority etc. of attorney under enduring power

- 3 (1) If the instrument which creates an enduring power of attorney is expressed to confer general authority on the attorney, the instrument operates to confer, subject to—
- (a) the restriction imposed by sub-paragraph (3), and
 - (b) any conditions or restrictions contained in the instrument,
- authority to do on behalf of the donor anything which the donor could lawfully do by an attorney at the time when the donor executed the instrument.
- (2) Subject to any conditions or restrictions contained in the instrument, an attorney under an enduring power, whether general or limited, may (without obtaining any consent) act under the power so as to benefit himself or other persons than the donor to the following extent but no further—
- (a) he may so act in relation to himself or in relation to any other person if the donor might be expected to provide for his or that person's needs respectively, and
 - (b) he may do whatever the donor might be expected to do to meet those needs.
- (3) Without prejudice to sub-paragraph (2) but subject to any conditions or restrictions contained in the instrument, an attorney under an enduring power, whether general or limited, may (without obtaining any consent) dispose of the property of the donor by way of gift to the following extent but no further—
- (a) he may make gifts of a seasonal nature or at a time, or on an anniversary, of a birth, a marriage or the formation of a civil partnership, to persons (including himself) who are related to or connected with the donor, and
 - (b) he may make gifts to any charity to whom the donor made or might be expected to make gifts,
- provided that the value of each such gift is not unreasonable having regard to all the circumstances and in particular the size of the donor's estate.

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