
STATUTORY INSTRUMENTS

1987 No. 1627

**The Enduring Powers of Attorney
(Northern Ireland) Order 1987**

Enduring powers of attorney

Enduring power of attorney to survive mental incapacity of donor

3.—(1) Where an individual creates a power of attorney which is an enduring power within the meaning of this Order then—

- (a) the power shall not be revoked by any subsequent mental incapacity of his; but
- (b) upon such incapacity supervening the donee of the power may not do anything under the authority of the power except as provided by paragraph (2) or as directed or authorised by the court under Article 7 unless or, as the case may be, until the instrument creating the power is registered by the court under Article 8; and
- (c) section 4 of the Powers of Attorney Act (Northern Ireland) 1971 (protection of donee and third persons) so far as applicable shall apply if and so long as sub-paragraph (b) operates to suspend the donee's authority to act under the power as if the power had been revoked by the donor's mental incapacity.

(2) Notwithstanding paragraph (1)(b), where the attorney has made an application for registration of the instrument then, until the application has been initially determined, the attorney may take action under the power—

- (a) to maintain the donor or prevent loss to his estate; or
- (b) to maintain himself or other persons in so far as Article 5(4) permits him to do so.

(3) Where the attorney purports to act as provided by paragraph (2) then, in favour of a person who deals with him without knowledge that the attorney is acting otherwise than in accordance with sub-paragraph (a) or (b) of that paragraph, the transaction between them shall be as valid as if the attorney were acting in accordance with sub-paragraph (a) or (b).

Characteristics of an enduring power

4.—(1) Subject to paragraphs (6) to (8) and Article 13, a power of attorney is an enduring power within the meaning of this Order if the instrument which creates the power—

- (a) is in the prescribed form; and
- (b) was executed in the prescribed manner by the donor and the attorney; and
- (c) incorporated at the time of execution by the donor the prescribed explanatory information.

(2) The Department of Finance and Personnel shall make regulations as to the form and execution of instruments creating enduring powers and the regulations shall contain such provisions as appear to that Department to be appropriate for securing—

- (a) that no document is used to create an enduring power which does not incorporate such information explaining the general effect of creating or accepting the power as may be prescribed; and

- (b) that such instruments include statements to the following effect—
 - (i) by the donor, that he intends the power to continue in spite of any supervening mental incapacity of his;
 - (ii) by the donor, that he read or had read to him the information explaining the effect of creating the power;
 - (iii) by the attorney, that he understands the duty of registration imposed by this Order.
- (3) Without prejudice to the generality of section 17(3) to (5) of the Interpretation Act (Northern Ireland) 1954, regulations under paragraph (2)—
 - (a) may include different provision for cases where more than one attorney is to be appointed by the instrument than for cases where only one attorney is to be appointed; and
 - (b) may, if they amend or revoke any regulations previously made under that paragraph, include saving and transitional provisions.
- (4) Regulations made under paragraph (2) shall be subject to negative resolution.
- (5) An instrument in the prescribed form purporting to have been executed in the prescribed manner shall be taken, in the absence of evidence to the contrary, to be a document which incorporated at the time of execution by the donor the prescribed explanatory information.
- (6) A power of attorney cannot be an enduring power unless, when he executes the instrument creating it, the attorney is—
 - (a) an individual who has attained eighteen years and is not bankrupt; or
 - (b) a trust corporation.
- (7) A power of attorney under section 26 of the Trustee Act (Northern Ireland) 1958 (power to delegate trusts etc. by power of attorney) cannot be an enduring power.
- (8) A power of attorney which gives the attorney a right to appoint a substitute or successor cannot be an enduring power.
- (9) An enduring power shall be revoked by the bankruptcy of the attorney whatever the circumstances of the bankruptcy.
- (10) An enduring power shall be revoked on the exercise by the court of any of its powers under part VIII of the Mental Health (Northern Ireland) Order 1986 if, but only if, the court so directs.
- (11) No disclaimer of an enduring power, whether by deed or otherwise, shall be valid unless and until the attorney gives notice of it to the donor or, where Article 6(6) or 9(1) applies, to the court.
- (12) In this Article “prescribed” means prescribed under paragraph (2).

Scope of authority etc. of attorney under enduring power

- 5.—**(1) An enduring power may confer general authority (as defined in paragraph (2)) on the attorney to act on the donor’s behalf in relation to all or a specified part of the property and affairs of the donor or may confer on him authority to do specified things on the donor’s behalf and the authority may, in either case, be conferred subject to conditions and restrictions.
- (2) Where an instrument is expressed to confer general authority on the attorney it operates to confer, subject to the restriction imposed by paragraph (5) and to any conditions or restrictions contained in the instrument, authority to do on behalf of the donor anything which the donor can lawfully do by an attorney.
- (3) Subject to any conditions or restrictions contained in the instrument, an attorney under an enduring power, whether general or limited, may exercise or exercise any of the powers or discretions vested in the donor as a tenant for life within the meaning of the Settled Land Act 1882.

(4) 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, that is to say—

- (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.

(5) Without prejudice to paragraph (4) 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, that is to say—

- (a) he may make gifts of a seasonal nature or at a time, or on an anniversary, of a birth or marriage, 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.