

1989 No. 79

SUPREME COURT, NORTHERN IRELAND

PROCEDURE

**The Rules of the Supreme Court
(Northern Ireland) (Amendment) 1989**

Made 13th March 1989

Coming into operation 10th April 1989

To be laid before Parliament

We, the Northern Ireland Supreme Court Rules Committee, being the authority having for the time being power under section 55 of the Judicature (Northern Ireland) Act 1978(a) to make, amend or revoke rules regulating the procedure of the Supreme Court of Judicature of Northern Ireland, hereby, with the concurrence of the Lord Chancellor, exercise those powers as follows:

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Rules of the Supreme Court (Northern Ireland) (Amendment) 1989 and shall come into operation on 10th April 1989.

(2) In these Rules an Order referred to by number means the Order so numbered in the Rules of the Supreme Court (Northern Ireland) 1980(b).

Enduring powers of attorney

2. The Rules of the Supreme Court (Northern Ireland) 1980 shall be amended by inserting the Order and Appendix set out in Schedules 1 and 2 respectively in the places appropriate to their number and letter.

Business of the Supreme Court

3. In Order 1, for rule 12(d) there shall be substituted—

“(d) all jurisdiction in relation to patients under the Mental Health (Northern Ireland) Order 1986 and proceedings under the Enduring Powers of Attorney (Northern Ireland) Order 1987.”.

(a) 1978 c. 23

(b) S.R. 1980 No. 346

Dated: 12th January 1989.

*Brian Hutton
John MacDermott
Donald Murray
J. P. Higgins
R. D. Carswell
Brian Kerr
Owen Catchpole
Aidan A. Canavan*

I concur,

MacKay of Clashfern, C.

Dated: 13th March 1989.

ORDER 109A

ENDURING POWERS OF ATTORNEY

PART I

PRELIMINARY

Application and interpretation

1.—(1) This Order applies to proceedings under the Enduring Powers of Attorney (Northern Ireland) Order 1987, and the other provisions of these Rules apply to such proceedings subject to the provisions of this Order.

(2) In this Order, unless the context otherwise requires—

“the Act” means the Judicature (Northern Ireland) Act 1978;

“the 1987 Order” means the Enduring Powers of Attorney (Northern Ireland) Order 1987(a);

“applicant” includes an objector;

“application” includes an objection;

“attorney” means an attorney appointed under an enduring power of attorney;

“donor” means a person who has created an enduring power of attorney;

“enduring power of attorney” means any power of attorney which complies with the provisions of Article 4 of the 1987 Order;

“judge” means the judge for the time being to whom the business of the Family Division is assigned under section 17 of the Act and any judge of the High Court exercising jurisdiction in relation to patients under Order 109;

“Master” means the Master (Care and Protection) or other statutory officer acting under section 74(3) of the Act;

“the Office” means the Office of Care and Protection;

“order” includes a certificate, direction or authority under seal;

“relative” means one of the persons referred to as relatives and entitled to receive notice under the provisions of paragraphs 1 and 2(1) of Schedule 1 to the 1987 Order;

“seal” means an official seal of the Office of Care and Protection and “sealed” shall be construed accordingly.

(3) Where any discretion, power or other function is (in whatever words) expressed by this Order to be exercisable by “the Court” then, subject to the provisions of the Order, that discretion, power or other function may be exercised—

(a) by a judge; or

(b) by the Master.

(4) In this Order a form referred to by number means the form so numbered in Appendix E or a form to the like effect with such variations as the circumstances may require or the Court may approve.

[Court of Protection (Enduring Powers of Attorney) Rules 1986 — r. 3].

PART II

APPLICATIONS

Notice of intention to register

2.—(1) Notice of the attorney's intention to apply to register an enduring power of attorney shall be given in Form EP1 to the donor and to those relatives entitled to receive such notice and to any co-attorney.

(2) An application to dispense with such notice shall be made in Form EP3 before any application for registration is made.

[E.r. 5]

Application for registration

3. An application to register an enduring power of attorney shall be made in Form EP2.

[E.r. 6]

Other applications

4. Subject to the provisions of rules 2 and 3, an application to the Court may be by letter unless the Court directs that the application should be formal, in which case it shall be made in Form EP3.

[E.r. 7]

Objections to registration

5.—(1) Any objection to registration shall be made in writing and shall set out:—

- (a) the name and address of the objector;
- (b) the name and address of the donor, if the objector is not the donor;
- (c) any relationship of the objector to the donor;
- (d) the name and address of the attorney; and
- (e) the grounds for objecting to registration of the enduring power.

(2) Any objection to registration received by the Court on or after the date of registration shall be treated by the Court as an application to cancel the registration.

[E.r. 8]

Exercise of the Court's powers and functions under the provisions of the 1987 Order

6.—(1) This rule shall apply to applications to the Court for relief or for determination of any question under the 1987 Order which is not made simultaneously with an application for registration of an enduring power.

(2) Any application made by letter under rule 4 other than objection to registration or disclaimer of attorneyship, shall include the name and address of the applicant, the name of the donor if the applicant is not the donor, the form of relief or determination required and the grounds for the application.

(3) On receipt of an application, the Court may decide either that no hearing shall be held or may fix an appointment for directions or for the application to be heard.

(4) The Court may at any time, on application or of its own motion, give such directions as it thinks proper with regard to any matter arising in the course of an application.

(5) Notification of an appointment for directions or a hearing shall be given by the applicant to the attorney (if he is not the applicant), to any objector and to any other person as directed by the Court.

(6) The applicant, the attorney (if he is not the applicant) and any person given notice of the appointment or hearing may attend or be represented.

(7) If it appears to the Court on application or of its own motion that any order for relief should be made or any question determined, the Court may make such order or give such direction as it thinks fit.

(8) Where an enduring power of attorney is sought to be disclaimed pursuant to Articles 6(6) or 9(1)(b) of the 1987 Order, notice of disclaimer by the attorney shall be given in form EP3 and the disclaimer shall take effect on the day on which the notice of disclaimer is received by the Court.

[E.r. 9]

Consolidation of proceedings

7. The Court may consolidate any applications for registration or relief or any objections to registration if it considers that the proceedings relating to them can more conveniently be dealt with together.

[E.r. 10]

Registration

8.—(1) Where there is no objection to registration or any objection has been withdrawn or dismissed, the enduring power of attorney shall be registered and sealed.

(2) The Court shall retain a copy of the registered enduring power of attorney and shall return the original instrument to the applicant.

(3) Any alterations which are on the face of the instrument when an application for registration is made shall be sealed.

(4) Any qualification to registration imposed by reason of Articles 13(6) or 13(7) of the 1987 Order shall be noted on the register, and on the instrument, and sealed.

(5) The date of registration shall be the date stamped by the Court on the instrument when it is registered.

[E.r. 11]

Searches of the register and copies of registered enduring powers of attorney

9.—(1) Any person may, on payment of the appropriate fee, request in Form EP4 a search in the register to determine whether an enduring power of attorney has been registered.

(2) The Court may supply any person with an office copy of a registered enduring power of attorney if the Court is satisfied that he has good reason for requesting a copy and that it is not reasonably practicable to obtain a copy from the attorney.

(3) For the purposes of this rule, an office copy is a photocopy or a facsimile of an enduring power of attorney, marked as an office copy and sealed.

(4) An office copy of an enduring power of attorney need not contain the explanatory information endorsed on the original power.

[E.r. 12]

PART III

HEARINGS

Notice of hearing

10.—(1) Except where the Court otherwise directs, an applicant shall give ten clear days' notice of a hearing to the attorney, the donor, every relative as defined in this Order, to any co-attorney and to such other persons who appear to the Court to be interested, as the Court may specify.

(2) For the purposes of this rule notice of a hearing is given if the applicant sends a copy of the application to the person concerned.

[E.r. 13]

Mode of service

11.—(1) Any document required by this Order to be given to the donor shall be given to him personally.

(2) Except where these Rules otherwise provide, any document required by these Rules to be given to any person other than the donor shall be served by sending it to him by first class post.

[E.r. 14]

Service on a solicitor

12. Where a solicitor for the person to be given any document endorses on that document or on a copy of it a statement that he accepts the document on behalf of that person, the document shall be deemed to have been duly sent to that person and to have been received on the date on which the endorsement was made.

[E.r. 15]

Use of evidence in subsequent proceedings

13. Except where the Court otherwise directs, evidence which has been used in any proceedings relating to a donor may be used at any subsequent stage of those proceedings or in any other proceedings before the Court.

[E.r. 17]

Copies of documents in Court

14.—(1) Any person who has filed an affidavit or other document shall, unless the Court otherwise directs, be entitled on request to be supplied by the Office with a copy of it.

(2) An attorney or his solicitor may have a search made for and may inspect and request a copy of any document filed in proceedings relating to the enduring power of attorney under which the attorney has been appointed.

(3) Subject to the foregoing sub-paragraphs, no documents filed in the Office shall be open to inspection without the leave of the Court and no copy of any such document or an extract thereof shall be taken by or issued to any person without such leave.

[E.r. 18]

Summoning of witnesses

15. In any proceedings under this Order a witness summons shall be issued in Form EP6.

[E.r. 19]

Leave to bring an application

16. Any person other than an attorney or a person who has been served with a notice of intention to register an enduring power of attorney shall apply to the Court for leave to make application for relief specified in the 1987 Order.

[E.r. 20]

Notification of decision

17. The applicant shall notify all persons who receive notice under rule 6(5) of the Court's decision and shall send to each of them a copy of any order made or directions given.

[E.r. 21]

PART IV

CANCELLATION OF REGISTRATION

Cancellation of registered enduring power of attorney

18.—(1) Where the Court is satisfied that one of the circumstances listed in Article 10(4) of the 1987 Order applies, it shall cancel the registration of the enduring power of attorney in question and shall send a notice to the attorney requiring him to deliver to the Court the original instrument.

(2) Where the instrument creating an enduring power of attorney has been lost or destroyed, the person on whom notice under paragraph (1) of this rule has been served shall give to the Court written details of the date on which the instrument was lost or destroyed and the circumstances in which that occurred.

(3) Where the Court has cancelled the registration of an instrument because it is satisfied that:—

- (a) fraud or undue pressure was used to induce the donor to create the power, or
- (b) having regard to all the circumstances and in particular the attorney's relationship to or connection with the donor, the attorney is unsuitable to be the donor's attorney,

the Court shall revoke the power created by the instrument.

(4) Where registration has been cancelled for any reason other than one of those set out in paragraph 3(a) or (b) of this rule or Article 19(4)(c) of the 1987 Order, the Court shall mark the power of attorney as cancelled.

(5) Any notice issued by the Court under this rule may contain a warning that failure to comply with the notice may lead to punishment for contempt of court.

[E.r. 24]

Supreme Court
SCHEDULE 2
Appendix E

Form EP1
(Order 109 A. r. 2)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
FAMILY DIVISION
OFFICE OF CARE AND PROTECTION

ENDURING POWERS OF ATTORNEY (NORTHERN IRELAND) ORDER 1987

Notice of Intention to Apply for Registration

To _____
of _____

TAKE NOTICE that I (we) _____

of _____

the attorney(s) of _____
(hereinafter called "the donor") of _____

intend to apply to the court for registration of the enduring power of attorney appointing
me (us) attorney(s) and made by the donor

on the _____ 19 _____ .

1. You have 4 weeks from the day on which this notice is given to you to object in writing to the proposed registration of the power of attorney. Objections should be sent to the Court and should contain the following details:
- (a) your name and address;
 - (b) if you are not the donor, the name and address of the donor;
 - (c) any relationship to the donor;
 - (d) the name and address of the attorney; and
 - (e) the grounds for objecting to the registration of the enduring power.

2. The grounds on which you may object are:

- (a) that the power purported to have been created by the instrument is not valid as an enduring power of attorney;
- (b) that the power created by the instrument no longer subsists;
- (c) that the application is premature because the donor is not yet becoming mentally incapable;
- (d) that fraud or undue pressure was used to induce the donor to make the power; or
- (e) that the attorney is unsuitable to be the donor's attorney (having regard to all the circumstances and in particular the attorney's relationship to or connection with the donor).

(Note: "the instrument" means the enduring power of attorney made by the donor which it is sought to register)

3. You are informed that while the enduring power of attorney remains registered, you will not be able to revoke it until the Court confirms the revocation.

(Note: delete this part if the notice is addressed to a person other than the donor)

(Note: the notice should be signed by all the attorneys who are applying to register the enduring power of attorney)

Signed _____

Signed _____

Dated _____ 19 ____ .

Form EP2

(Order 109 A. r. 3)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
FAMILY DIVISION

OFFICE OF CARE AND PROTECTION

ENDURING POWERS OF ATTORNEY (NORTHERN IRELAND) ORDER 1987

Application for registration

THE ATTORNEY(S)

Full name _____
 Address _____

 Date of birth _____ 19 ____ Occupation _____

Full name _____
 Address _____

 Date of birth _____ 19 ____ Occupation _____

THE DONOR

Full name _____
 Address as shown on the enduring power of attorney _____

 Present address - if different from that shown above _____

I (We) the attorney(s) apply to register the enduring power of attorney made by the donor under the above Order on the _____ 19 ____ .

(Note: insert the date when the donor signed the enduring power of attorney)

I (We) have reason to believe that the donor is or is becoming mentally incapable.

I (We) have given notice in the prescribed form to the donor personally at _____

 on the _____ 19 ____ .
(Note: the donor must be given the notice personally. It is not sufficient to post it to the donor)

I (We) have given notice in the prescribed form to the following relatives of the donor at the addresses and on the dates given below:

(Note: the date on which each notice was given must be stated)

Name	Address	Relationship	Date

This section only applies if one of two (or more) co-attorneys is making a sole application

I (We) have given notice in the prescribed form to my (our) co-attorney _____

 at _____
 on the _____ 19 ____ .
 Relationship (if any) _____

The Enduring Power of Attorney accompanies this application.

A remittance for the registration fee accompanies this application.

I (We) certify that the above information is correct and that to the best of my (our) knowledge and belief I (we) have complied with the provisions of the Enduring Powers of Attorney (Northern Ireland) Order 1987 and of all the Rules and Regulations made under it.

(Note: the application should be signed by all the attorneys who are making the application)

(Note: this part must not pre-date the notices given)	Signed _____
	Signed _____
	Dated _____ 19 ____

Address for service of documents _____

Form EP3

(Order 109 A. r. 4)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

OFFICE OF CARE AND PROTECTION

ENDURING POWERS OF ATTORNEY (NORTHERN IRELAND) ORDER 1987

General Form of Application

In the matter of a power dated _____ 19____
given by _____ a donor
to _____ attorney(s)

I (We) _____
of _____

apply for an order that _____

(Note: give details of the order that you are asking the Court to make)

and for any directions which are necessary as a result of my (our) application.

The grounds on which I (we) make this application are: _____

(Note: give details of the grounds on which you are asking the Court to make the order)

(Note: the application should be signed by all the applicants or their solicitors)

Signed _____
Dated _____ 19 ____

Address for service of documents _____

Form EP4

(Order 109 A. r.9(1))

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

OFFICE OF CARE AND PROTECTION

ENDURING POWERS OF ATTORNEY (NORTHERN IRELAND) ORDER 1987

Application for Search/Office Copy

I (We) _____

 of _____

apply to be informed by the Court whether an enduring power of attorney has been registered (or whether registration of an enduring power of attorney is pending) in the name of:

Note: give the full name (if known) of the person who is the subject of your enquiry

or in the alternative name of:

Address (if known) _____
 Alternative address _____

I (We) enclose the prescribed fee of £ _____

Please supply me with an office copy of the power.
 My (Our) reasons for requesting a copy from the Court are: _____

It is not practical to obtain a copy from the attorney because: _____

Signed _____
 Dated _____ 19 _____

Form EP5

(Order 109 A. r. 9(1))

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

OFFICE OF CARE AND PROTECTION

ENDURING POWERS OF ATTORNEY (NORTHERN IRELAND) ORDER 1987

Certificate of Result of Search: 19__ No _____

To _____
of _____
Your reference _____

In reply to your enquiry dated _____ 19 ____

The following enduring power of attorney is registered against the donor's name given by you:	
Donor's name _____	
Attorney's name(s) _____	
Power made by donor on _____	19 ____
Registered on _____	19 ____

OR

There is an application pending for registration of the following enduring power of attorney:	
Donor's name _____	
Attorney's name(s) _____	
Power made by donor on _____	19 ____

OR

There was an enduring power of attorney registered against the donor's name given by you but the registration has been cancelled (and revoked):	
Donor's name _____	
Attorney's name(s) _____	
Power made by donor on _____	19 ____
Registered on _____	19 ____
Date cancelled (and revoked) _____	19 ____

OR

There is no enduring power of attorney registered against the donor's name _____ given by you.	
--	--

Signed _____
Dated _____ 19 ____

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

FAMILY DIVISION

OFFICE OF CARE AND PROTECTION

ENDURING POWERS OF ATTORNEY (NORTHERN IRELAND) ORDER 1987

Witness Summons

To _____
 of _____

You are ordered to attend before _____
 at _____

 on the _____ 19____ at _____ o'clock
 to:

- give evidence in this matter
- bring with you and produce at the hearing the documents listed below:

Dated _____ 19 ____

This summons was issued at the request of _____

 Solicitors for the _____
 of _____

EXPLANATORY NOTE

(This note is not part of the Rules.)

These Rules provide for the registration and cancellation of enduring powers of attorney and for the exercise of the other powers and functions of Court conferred by the Enduring Powers of Attorney (Northern Ireland) Order 1987.