
STATUTORY INSTRUMENTS

1986 No. 127**POWERS OF ATTORNEY
MENTAL HEALTH****The Court of Protection
(Enduring Powers of Attorney)
Rules 1986**

Made - - - - - *27th January 1986*
Laid before Parliament *3rd February 1986*
Coming into Operation *10th March 1986*

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The Lord Chancellor, in exercise of the powers conferred on him by section 10(1)(d) of the Enduring Powers of Attorney Act 1985(a) and sections 106, 107 and 108 of the Mental Health Act 1983(b) and with the consent of the Treasury so far as is required by section 106(5) of the said Act of 1983, hereby makes the following Rules:—

PART I

PRELIMINARY

Citation and commencement

1. These Rules may be cited as the Court of Protection (Enduring Powers of Attorney) Rules 1986 and shall come into operation on 10th March 1986.

Application

2. The Court of Protection Rules 1984(c) and these Rules shall apply equally in proceedings under the Enduring Powers of Attorney Act 1985 save that in cases of inconsistency or ambiguity, the latter shall prevail.

Interpretation

3.— (1) In these Rules, unless the context otherwise requires—
expressions used in the Supreme Court Act 1981(d) have the same meaning as in that Act;

“the 1983 Act” means -the Mental Health Act 1983;

“the 1985 Act” means the Enduring Powers of Attorney Act 1985;

“the 1984 Rules” means the Court of Protection Rules 1984;

“applicant” includes an objector;

“application” includes an objection;

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

“the court” means the Court of Protection;

“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 section 2 of the 1985 Act;

“entered” means entered in the register of enduring powers of attorney kept by the Court of Protection;

“filed” means filed in the court office;

“judge” means the Lord Chancellor or a judge nominated under section 93(1) of the 1983 Act;

(a) 1985 c. 29.
(b) 1983 c. 20.
(c) S.I. 1984/2035.
(d) 1981 c. 54.

“Master” means the Master of the Court of Protection;

“nominated officer” means an officer of the Court of Protection nominated under section 93(4) of the 1983 Act;

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

“receiver” means a receiver appointed under section 99(1) of the 1983 Act;

“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 1985 Act;

“seal” means an official seal of the Court of Protection and “sealed” shall be construed accordingly; and

“Visitor” means one of the Lord Chancellor’s Visitors appointed under section 102 of the 1983 Act.

(2) Where any discretion, power or other function is (in whatever words) expressed by these Rules to be exercisable by “the court” then subject to the provisions of the 1985 Act, that discretion, power or other function may be exercised—

(a) by a judge;

(b) by the Master; or

(c) to the extent to which he is authorised to exercise it by and under section 94 of the 1983 Act, by a nominated officer.

(3) In these Rules a form referred to by letter means the form so designated in the Schedule 1 to these Rules or a form to the like effect with such variations as the circumstances may require and the court may approve.

Computation of time

4.— (1) Any period of time fixed by the 1985 Act or by these Rules or by a judgment, order or direction for doing any act shall be reckoned in accordance with the provisions of this rule.

(2) Where the act is required to be done not less than a specified period before a specified date, the period starts immediately after the date on which the act is done and ends immediately before the specified date.

(3) Where the act is required to be done within a specified period after or from a specified date, the period starts immediately after that date.

(4) Where, apart from this paragraph, the period in question being a period of 3 days or less would include a day on which the court office is closed, that day shall be excluded.

(5) Where the time so fixed for doing an act in the court office expires on a day on which the office is closed, and for that reason the act cannot be done on that day, the act shall be in time if it is done on the next day on which the office is open.

PART II

APPLICATIONS

Notice of intention to register

5.— (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.

Time limits

6.— An application to register an enduring power of attorney shall be made in form EP2 and shall be lodged with the court not later than three days after the date on which

(a) notice has been given to the donor and every relative (if any) entitled to receive notice and every co-attorney; or

(b) leave has been given to dispense with notice

whichever may be the later.

Form of application

7.— (1) Subject to the provisions of Rules 5 and 6 of these Rules and to the following provisions of this Rule, 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.

(2) An application relating to the committal of a person for contempt of court shall be made to a judge by motion.

Objections to registration

8.— (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.

Exercise of the court's powers and functions under the provisions of the 1985 Act

9.— (1) This Rule shall apply to applications to the court for relief or for

determination of any question under sections 1(1)(b), 4(4), 5, 6(3), 6(4), 8(2), 8(3), 8(4), 11(5)(c) of and to any application made under paragraph 3(2), 4(2) or 7(1) of Schedule 1 to the 1985 Act which is not made simultaneously with an application for registration of an enduring power.

(2) Any application made by letter under Rule 7(1) of these Rules other than an 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 directed by the court to be notified.

(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 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, of its own motion.

(8) Where an enduring power of attorney is sought to be disclaimed pursuant to section 4(6) or 7(1)(b) of the 1985 Act, 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.

Consolidation of proceedings

10. 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.

Registration

11.— (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 attorney.

(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 sections 11(6) or 11(7) of the 1985 Act 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.

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

12.— (1) Any person shall on payment of the appropriate fee be entitled to request the court in Form EP4 to search the register and to say 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, sealed and serially numbered.

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

PART III

HEARINGS

Notice of hearing

13. Except where these Rules otherwise provide or the court otherwise directs, the following periods of notice of a hearing shall be given by the applicant:—

(1) Ten clear days' notice shall be given:—

(i) in the case of an application to dispense with notice to the donor;

(ii) in the case of an application to dispose of the donor's property prior to registration; and

(iii) in the case of an objection to registration of an enduring power,—

unless the court otherwise directs, to the attorney, the donor, every relative as defined in these Rules, to any co-attorney and to such other persons who appear to the court to be interested, as the court may specify.

(2) Seven clear days' notice shall be given in the case of any other application and to any other person interested in the proceedings.

(3) The court may extend or abridge the time limited by these Rules or any order or directions of the court for doing any act or taking any steps, upon such terms as the court thinks fit and notwithstanding in the case of an extension that the time so limited has expired.

(4) 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.

Mode of service

14. (1) Any such document required by these Rules 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.

Service on a solicitor

15. 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.

Substituted service

16. Where it appears to the court that it is impracticable for any document to be sent in accordance with Rule 14, the court may give such directions for the purpose of bringing the document to the notice of the person to whom it is addressed as it thinks fit.

Use of evidence in subsequent proceedings

17. 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.

Copies of documents in court

18. (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 court 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 court 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.

Summoning of witnesses

19. In any proceedings under these Rules a witness summons shall be issued in Form EP6.

Leave to bring an application

20. Any person other than 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 1985 Act.

Notification of decision

21. All persons who receive notice under Rule 9(5) of these Rules shall be notified by the applicant of the court's decision and shall also be sent by the applicant a copy of any order made or directions given.

PART IV

REVIEWS AND APPEALS

Review of a decision by a nominated officer

22.— (1) Any person who is aggrieved by a decision of a nominated officer may apply to the court within eight days of the date on which the decision was given to have the decision reviewed by the Master.

(2) No application for review shall lie from any decision in relation to the exercise of the court's power under Rule 83 of the 1984 Rules.

(3) On reviewing the decision, the Master may confirm or revoke the decision or may make or give any other order or decision.

Appeal from the Master

23.— (1) Any person aggrieved by any order or decision of the Master may, within fourteen days from the date of entry of the order or, as the case may be, from the date of the decision, appeal therefrom to a judge.

(2) The appellant shall, within the said period of fourteen days—

(a) serve notice of appeal in Form EP7 on every person who is directly affected by the decision, and any other person whom the court may direct; and

(b) lodge a copy of the notice at the court office.

(3) The time and place at which the appeal is to be heard shall be fixed by the court, and an officer of the court shall cause notice of the time and place so fixed to be sent to the appellant who shall forthwith send notice thereof to every person who has been served with notice of appeal.

(4) No further evidence shall be filed in support of or opposition to the appeal without leave of the judge.

(5) No appeal shall lie from any order or decision which was not made or given on a hearing,

PART V

CANCELLATION OF REGISTRATION

Cancellation of a registered enduring power of attorney

24.— (1) Where the court is satisfied that one of the circumstances listed in section 8(4) of the 1985 Act 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 section 8(4)(c) of the 1985 Act, the court shall mark the power of attorney as cancelled.

(5) Any notices 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.

PART VI

FEEES

Schedule of fees

25.— (1) Fees shall be payable in accordance with the provisions of Schedule 2.

(2) The fee set out in column 2 of Schedule 2 shall be taken in respect of the event referred to in column 1.

(3) Unless the court otherwise directs, all fees shall be taken in cash.

(4) The person by whom any fee is payable shall, unless the fee is for a search of the register or unless the court otherwise directs, make the payment out of the assets of the donor.

Registration fee

26. A fee shall be payable on any application for registration of an enduring power of attorney.

Dated 16th January 1986

Hailsham of St. Marylebone, C.

We concur.

Dated 27th January 1986

*A. G. Hamilton,
T. Garel-Jones,*
Two of the Lord Commissioners
of Her Majesty's Treasury

SCHEDULE 1

FORM EP1

NOTICE OF INTENTION TO APPLY FOR REGISTRATION

Court of Protection

Enduring Powers of Attorney Act 1985

Rule 5

Notice of intention to apply for registration

TAKE NOTICE THAT

I (we) _____

of _____

the attorney(s) of _____

of _____

intend to apply to the Court of Protection 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 of Protection and should contain the following details:

- your name and address;
- any relationship to the donor;
- if you are not the donor, the name and address of the donor;
- the name and address of the attorney;
- the grounds for objecting to the registration of the enduring power.

EP1

Note. The instrument means the enduring power of attorney made by the donor which it is sought to register.

2 The grounds on which you may object are:

- that the power purported to have been created by the instrument is not valid as an enduring power of attorney;
- that the power created by the instrument no longer subsists;
- that the application is premature because the donor is not yet becoming mentally incapable;
- that fraud or undue pressure was used to induce the donor to make the power;
- 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. Cross this part out if the notice is not addressed to the donor.

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

Note. The notice should be signed by all the attorneys who are applying to register the enduring power of attorney.

Signed _____

Signed _____

Dated _____

SCHEDULE 1

FORMEP2

APPLICATION FOR REGISTRATION

Court of Protection

No. _____

Enduring Powers of Attorney Act 1985

Rule 6

Application for registration

Note. Give the full name(s) of the attorney(s)

The attorney(s)

Name(s) _____

age _____ occupation _____

age _____ occupation _____

address(es) _____

Note. Give the full name and present address of the donor. If the donor's address on the enduring power of attorney is different give that one too.

The donor

Name _____

address _____

I (we) the attorney(s) apply to register the enduring power of attorney made by the donor under the above Act on the _____ 19 _____

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 following:

- the donor personally at _____

_____ on the _____ 19 _____

• The following relatives of the donor at the addresses below on the dates given:

Names	Relationship	address	date

• The Co-Attorney _____
 at _____
 on _____

Note. Cross out this section if it does not apply.

The Enduring Power of Attorney accompanies this application

Note. The application should be signed by all the attorneys who are making the 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 Act 1985 and of all the Rules and Regulations under it.

Signed _____

Signed _____

Dated _____

Address where notice should be sent _____

SCHEDULE 1

FORM EP3

GENERAL FORM OF APPLICATION

Court of Protection No _____

Enduring Powers of Attorney Act 1985

In the matter of a power given by

_____ a donor

to _____ attorney(s)

Rule 7(1)

General form of application

I(we) _____

of _____

apply for an order that

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 order that you are asking the court to make.

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 _____
Address where notice should be sent _____

SCHEDULE 1

FORMEP4

APPLICATION FOR SEARCH/OFFICE COPY

Court of Protection No _____

Enduring Powers of Attorney Act 1985

Rule 12

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:

_____ alternative name _____
_____ address (if known) _____
_____ alternative address _____

Note. Give the full name (if known) of the person who is the subject of your enquiry.

I (we) enclose the prescribed fee of £ _____

Note. Please fill in if applicable.

Please supply me with an office copy of the power.

- My(Our) reasons for requesting a copy from the Court are

- It is not reasonably practicable to obtain a copy from the attorney because: _____

Signed _____

Dated _____

SCHEDULE 1

FORM EP5

CERTIFICATE OF RESULT OF SEARCH

Court of Protection No _____

Enduring Powers of Attorney Act 1985

Certificate of result of search

In reply to your enquiry

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

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 _____

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

There is no enduring power of attorney registered against the donor's name you give.

Signed _____
 Dated _____

SCHEDULE 1

FORM EP6

Court of Protection No _____

Enduring Powers of Attorney Act 1985

In the matter of a power given by

_____ a donor

Rule 19

Witness summons

To _____
of _____

you are ordered to attend before

at _____

on the _____ day of _____ 19____
at _____ o'clock, to:

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

Dated _____

This summons was issued at the request of

Solicitors for the _____
of _____

SCHEDULE 1

FORM EP7

NOTICE OF APPEAL

Court of Protection No _____

Enduring Powers of Attorney Act 1985

In the matter of a power given by

_____ a donor

Rule 23

Notice of appeal

I(we) _____
of _____
_____ wish to appeal to a judge against the order/decision of the Court
made in this matter on the _____ 19 _____

Note. If you are appealing against only part of the order/decision write down which part.

I(We) intend to ask that the order/decision may be

- discharged
- varied in the following way

Note. Tick the box that applies.

Note. Give details of the new order/decision you are asking to be made.

Note. The form should be sent to the Court of Protection.

Signed _____ appellant
Dated _____
Solicitors for the appellant(s) _____
of _____

To the applicant(s): you will be sent notice of the time, date and place of this appeal.

SCHEDULE 2

FEES

Rule 42

Column 1	Column 2
Item	Fee
<i>Registration fee (rule 26)</i>	
1.— On lodging an application for registration of an enduring power of attorney	£30.00
<i>Search fee (rule 12)</i>	
2. On application for a search of the register	£5.00

EXPLANATORY NOTE

(This Note is not part of the Rules.)

These Rules supplement the Court of Protection Rules 1984 and provide for the registration and cancellation of enduring powers of attorney and for the exercise of the other powers and functions of the Court of Protection conferred by the Enduring Powers of Attorney Act 1985. They also fix the fees for registering an enduring power of attorney and for a search of the register.

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