
STATUTORY INSTRUMENTS

2001 No. 825

The Court of Protection (Enduring Powers of Attorney) Rules 2001

PART I

Preliminary

Title and commencement

1. These Rules may be cited as the Court of Protection (Enduring Powers of Attorney) Rules 2001 and shall come into force on 1st April 2001.

Application

2. Subject to the provisions of these Rules, the Court of Protection Rules 2001(1) shall apply to the proceedings under the Enduring Powers of Attorney Act 1985(2).

Interpretation

- 3.—(1) In these Rules, unless the context otherwise requires—
- expressions used in the Supreme Court Act 1981(3) shall have the same meanings as they have in that Act;
 - “the Act” means the Enduring Powers of Attorney Act 1985;
 - “the 1983 Act” means the Mental Health Act 1983;
 - “the 2001 Rules” means the Court of Protection Rules 2001;
 - “applicant” includes an objector;
 - “application” includes an objection;
 - “attended hearing” means a hearing where one or more of the parties to the proceedings have been invited to attend the court for the determination of the application;
 - “the court” means the Court of Protection;
 - “direction” means a direction or authority given under the seal of the court;
 - “enduring power of attorney” shall be construed in accordance with section 2 of the Act;
 - “entered” means entered in the register of enduring powers of attorney kept by the court;
 - “filed” means filed in the court office;
 - “hearing” means an attended or unattended hearing;
 - “judge” means the Lord Chancellor or a judge nominated under section 93(1) of the 1983 Act;

(1) S.I.2001/824.

(2) 1985 c. 29.

(3) 1981 c. 54.

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

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

“order” means an order of the court under seal and includes a certificate, direction or authority of the court 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 of Schedule 1 to the Act;

“seal” means an official seal of the court and “sealed” shall be construed accordingly.

(2) In these Rules—

- (a) any reference to a numbered rule or to a numbered Schedule is a reference to the rule of, or the Schedule to, these Rules so numbered in these Rules;
- (b) any reference in a rule to a numbered paragraph is a reference to the paragraph so numbered in the rule in which the reference occurs; and
- (c) a form referred to by a letter alone means the form so designated in Schedule 1 or a form to the same effect with such variations as the circumstances may require and the court may approve and in both cases shall include a Welsh translation of the form.

Exercise of court’s functions

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

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

Computation of time

5.—(1) Where a period of time fixed by the Act or by these Rules or by a judgment, order or direction for doing any act expires on a day on which the court office is closed and for that reason cannot be done on that day, the act shall be done in time if done on the next day on which the office is open.

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

(3) Where any period of time, fixed as mentioned in paragraph (1), is three days or less, any day on which the court office is closed shall not be included in the computation of that period.

PART II

Applications

Notice of intention to register

6.—(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, all such notices to be served within fourteen days of each other.

(2) An application to dispense with such notice shall be made in Form EP3 before any application for registration is made and shall be accompanied by the original power of attorney.

Time limits

7. An application to register an enduring power of attorney shall be made in Form EP2 and shall be lodged with the court office not later than 10 days after the date on which—

- (a) notice has been given to the donor and every relative 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

8.—(1) Subject to the provisions of rules 6 and 7 and to the following provisions of this rule, an application may be made by letter unless the court directs that it should be formal, in which case it shall be made in Form EP3.

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

Objections to registration

9.—(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 he is not the objector;
- (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 of attorney.

(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

10.—(1) This rule shall apply to applications made to the court—

- (a) for relief or for determination of any question under sections 1(1)(b), 4(5), 5, 6(3), 6(4), 8(2), 8(3), 8(4) or 11(5)(c) of the Act; or
- (b) under paragraphs 2(1), 3(2), 4(2) or 7(1) of Schedule 1 to the Act,

which are not made simultaneously with an application for registration of an enduring power of attorney.

(2) On receipt of an application, the court may decide either that no hearing shall be held, in which case the application shall be dealt with by written representations, or it may fix an appointment for directions or for the application to be heard.

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

(4) 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.

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

(6) 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 directions as it thinks fit, of its own motion.

(7) Where an attorney seeks to disclaim an enduring power of attorney pursuant to sections 4(6) or 7(1)(b) of the Act, the disclaimer shall not take effect earlier than the day on which the notice of disclaimer is received at the court.

Consolidation of proceedings

11. The court may consolidate any application for registration or relief or any objection to registration if it considers that the proceedings may be dealt with more conveniently together.

Registration of an enduring power of attorney

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

(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 appear 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 section 11(6) or (7) of the 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 at the time of its registration.

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

13.—(1) On payment of the appropriate fee, any person shall be entitled to request the court in Form EP4 to search the register and to state whether an enduring power of attorney has been registered and the court shall so state in Form EP5.

(2) The court may supply a person with an office copy of a registered enduring power of attorney if it is satisfied that he has a 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 copy 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.

PART III

Hearings

Notice of hearing

14.—(1) Except where these rules otherwise provide or the court otherwise directs, the following minimum periods of notice of a hearing shall be given by the applicant—

- (a) ten clear days in the case of—

- (i) an application to dispense with notice to the donor;
 - (ii) an application to dispose of the donor's property prior to registration; and
 - (iii) an objection to registration of an enduring power of attorney; and
- (b) seven clear days in the case of any other application.

(2) Unless the court otherwise directs, notice of a hearing shall be given to the attorney, the donor, every relative, any co-attorney and to such other persons who appear to the court to be interested as the court may specify.

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

(4) For the purpose of this rule, notice of a hearing is given if the applicant sends a copy of the application, endorsed by the court with the hearing date, to the person concerned.

Mode of giving documents

15.—(1) Any 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 shall be given to him by—

- (a) sending it to him by first class post or through a document exchange; or
- (b) transmitting it to him by fax or other electronic means.

Giving documents to a solicitor

16. Where a solicitor acting for the person to be given any document, other than the donor, 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 given to that person and to have been received on the date that the endorsement was made.

Alternative method of giving documents

17. Where it appears to the court that it is impracticable for any document to be given to a person in accordance with rule 15(2), 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

18. 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

19.—(1) Any person who has filed an affidavit or other document shall, unless the court otherwise directs, be entitled on request to be supplied 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 paragraphs (1) and (2), no documents filed in the court shall be open to inspection without the leave of the court and no copy of any such document or an extract from it shall be taken by or issued to any person without such leave.

Summoning of witnesses

20. Any witness summons required to be issued in any proceedings under these Rules shall be in Form EP6.

Leave to bring an application

21. 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 an application for relief specified in the Act.

Notification of decision

22. All persons to whom notice is to be given under rule 10(4) 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 direction given.

PART IV

Reviews and Appeals

Review of decision not made on an attended hearing

23.—(1) Any person who is aggrieved by a decision of the court that was made without an attended hearing may apply to the court within fourteen days of the date on which the decision was given to have the decision reviewed by the court.

(2) On considering an application for review, the court may either confirm or revoke the previous decision or give any other order or decision which it thinks fit.

(3) Any person aggrieved by any order or decision of the court made on considering an application for review may apply to the court for an attended hearing.

Appeal from decision made on an attended hearing

24.—(1) Any person aggrieved by an order or decision of the court made on an attended hearing, 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 to a nominated judge.

(2) The appellant shall within fourteen days—

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

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

(3) The court shall fix a time and place at which the appeal is to be heard and shall cause notice of the time and place to be sent to the appellant, who shall immediately send notice of it to every person who has been served with notice of the appeal.

(4) No evidence further to that given at the hearing shall be filed in support of, or in opposition to, the appeal without leave of the court.

PART V

Cancellation of Registration

Cancellation of a registered power of attorney

25.—(1) Where the court is satisfied that one of the circumstances listed in section 8(4) of the Act applies, it shall cancel the registration of the enduring power of attorney in question and send a notice to the attorney requiring him to deliver the original instrument to the court.

(2) Where the court—

- (a) receives a notice of disclaimer under section 7(1)(b) of the Act;
- (b) is satisfied that the enduring power of attorney has been revoked by the death or bankruptcy of the donor; or
- (c) is satisfied that the enduring power of attorney has been revoked by the death or bankruptcy of the attorney or, if the attorney is a body corporate, its winding up or dissolution;

it shall cancel the registration of the enduring power of attorney and send notice to the attorney, or, (where appropriate) to his personal representative or to the liquidator or receiver of a body corporate, requiring him or them to deliver the original instrument to the court.

(3) Where the instrument creating an enduring power of attorney has been lost or destroyed, the attorney shall give to the court written details of that date of such loss or destruction and of the circumstances in which the loss or destruction occurred.

(4) Where registration has been cancelled for any reason other than that set out in section 8(4)(c) of the 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

Fees

Schedule of fees

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

(2) The fees specified in column 2 of Schedule 2 shall apply in respect of the corresponding event referred to in column 1.

(3) The person liable to pay the fee for the registration of a power of attorney shall, unless the court otherwise directs, make the payment out of the assets of the donor.

PART VII

Transitional Provisions

27.—(1) Where any matter is pending before the Public Trustee before the coming into force of these Rules which by virtue of these Rules relates to a function to be exercised by the court, the court shall deal with the matter in accordance with these Rules.

(2) Where any review or appeal is pending before the Court or the Public Trustee before the coming into force of these Rules, it shall be dealt with in accordance with the provisions of these Rules.

PART VIII

Revocation

Revocation of previous Rules

28. The Court of Protection (Enduring Powers of Attorney) Rules 1994⁽⁴⁾ and the Court of Protection (Enduring Powers of Attorney) (Amendment) Rules 1999⁽⁵⁾ are hereby revoked.

Dated 1st March 2001

Irvine of Lairg, C

We consent,

Jim Dowd

Greg Pope

Two of the Lord Commissioners of Her
Majesty's Treasury

Dated 6th March 2001

⁽⁴⁾ S.I. 1994/3047.

⁽⁵⁾ S.I. 1999/2505.