

1990 No. 1376

POWERS OF ATTORNEY

**The Enduring Powers of Attorney (Prescribed Form)
Regulations 1990**

<i>Made -</i>	<i>5th July 1990</i>
<i>Laid before Parliament</i>	<i>9th July 1990</i>
<i>Coming into force</i>	<i>31st July 1990</i>

The Lord Chancellor, in exercise of the powers conferred on him by section 2(2) of the Enduring Powers of Attorney Act 1985 (a), hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Enduring Powers of Attorney (Prescribed Form) Regulations 1990 and shall come into force on 31st July 1990.

Prescribed form

2.— (1) Subject to paragraphs (2) and (3) of this regulation and to regulation 4, an enduring power of attorney must be in the form set out in the Schedule to these Regulations and must include all the explanatory information headed “About using this form” in Part A of the Schedule and all the relevant marginal notes to Parts B and C. It may also include such additions (including paragraph numbers) or restrictions as the donor may decide.

- (2) In completing the form of enduring power of attorney—
 - (a) there shall be excluded (either by omission or deletion)—
 - (i) where the donor appoints only one attorney, everything between the square brackets on the first page of Part B; and
 - (ii) one and only one of any pair of alternatives;
 - (b) there may also be so excluded—
 - (i) the words on the second page of Part B “subject to the following restrictions and conditions”, if those words do not apply;
 - (ii) the attestation details for a second witness in Parts B and C if a second witness is not required; and
 - (iii) any marginal notes which correspond with any words excluded under the provisions of this paragraph and the two notes numbered 1 and 2 which appear immediately under the heading to Part C.
- (3) The form of execution by the donor or by an attorney may be adapted to provide—
 - (a) for a case where the donor or an attorney signs by means of a mark; and
 - (b) for the case (dealt with in regulation 3) where the enduring power of attorney is executed at the direction of the donor or of an attorney;

and the form of execution by an attorney may be adapted to provide for execution by a trust corporation.

(a) 1985 c.29.

(4) Subject to paragraphs (1), (2) and (3) of this regulation and to regulation 4, an enduring power of attorney which seeks to exclude any provision contained in these Regulations is not a valid enduring power of attorney.

Execution

3.—(1) An enduring power of attorney in the form set out in the Schedule to these Regulations shall be executed by both the donor and the attorney, although not necessarily at the same time, in the presence of a witness, but not necessarily the same witness, who shall sign the form and give his full name and address.

(2) The donor and an attorney shall not witness the signature of each other nor one attorney the signature of another.

- (3) Where an enduring power of attorney is executed at the direction of the donor—
- (a) it must be signed in the presence of two witnesses who shall each sign the form and give their full names and addresses; and
 - (b) a statement that the enduring power of attorney has been executed at the direction of the donor must be inserted in Part B;
 - (c) it must not be signed by either an attorney or any of the witnesses to the signature of either the donor or an attorney.
- (4) Where an enduring power of attorney is executed at the direction of an attorney—
- (a) paragraph (3)(a) above applies; and
 - (b) a statement that the enduring power of attorney has been executed at the direction of the attorney must be inserted in Part C;
 - (c) it must not be signed by either the donor, an attorney or any of the witnesses to the signature of either the donor or an attorney.

4. Where more than one attorney is appointed and they are to act jointly and severally, then at least one of the attorneys so appointed must execute the instrument for it to take effect as an enduring power of attorney, and only those attorneys who have executed the instrument shall have the functions of an attorney under an enduring power of attorney in the event of the donor's mental incapacity or of the registration of the power, whichever first occurs.

Revocation

5. The Enduring Powers of Attorney (Prescribed Form) Regulations 1987(a) are hereby revoked, except that—

- (a) a power executed in the form prescribed by those Regulations and executed by the donor before 31st July 1991 shall be capable (whether or not seals are affixed to it) of being a valid enduring power of attorney;
- (b) regulation 3(3) shall apply to a power executed by the donor before 31st July 1991 under the provisions of those Regulations and the form of enduring power of attorney prescribed by those Regulations may be modified accordingly.

Dated 5th July 1990

Mackay of Clashfern, C.

(a) S.I. 1987/1612.

ENDURING POWER OF ATTORNEY

Part A: About using this form

1. **You may choose one attorney or more than one.** If you choose one attorney then you must delete everything between the square brackets on the first page of the form. If you choose more than one, you must decide whether they are able to act:
 - Jointly (that is, they must all act together and cannot act separately) or
 - Jointly and severally (that is, they can all act together but they can also act separately if they wish).On the first page of the form, show what you have decided by crossing out one of the alternatives.
2. **If you give your attorney(s) general power** in relation to all your property and affairs, it means that they will be able to deal with your money or property and may be able to sell your house.
3. **If you don't want your attorney(s) to have such wide powers,** you can include any restrictions you like. For example, you can include a restriction that your attorney(s) must not act on your behalf until they have reason to believe that you are becoming mentally incapable; or a restriction as to what your attorney(s) may do. Any restrictions you choose must be written or typed where indicated on the second page of the form.
4. **If you are a trustee** (and please remember that co-ownership of a home involves trusteeship), you should seek legal advice if you want your attorney(s) to act as a trustee on your behalf.
5. **Unless you put in a restriction preventing it** your attorney(s) will be able to use any of your money or property to make any provision which you yourself might be expected to make for their own needs or the needs of other people. Your attorney(s) will also be able to use your money to make gifts, but only for reasonable amounts in relation to the value of your money and property.
6. **Your attorney(s) can recover the out-of-pocket expenses** of acting as your attorney(s). If your attorney(s) are professional people, for example solicitors or accountants, they may be able to charge for their professional services as well. You may wish to provide expressly for remuneration of your attorney(s) (although if they are trustees they may not be allowed to accept it).
7. **If your attorney(s) have reason to believe** that you have become or are becoming mentally incapable of managing your affairs, your attorney(s) will have to apply to the Court of Protection for registration of this power.
8. **Before applying to the Court of Protection for registration** of this power, your attorney(s) must give written notice that that is what they are going to do, to you and your nearest relatives as defined in the Enduring Powers of Attorney Act 1985. You or your relatives will be able to object if you or they disagree with registration.
9. **This is a simplified explanation** of what the Enduring Powers of Attorney Act 1985 and the Rules and Regulations say. If you need more guidance, you or your advisers will need to look at the Act itself and the Rules and Regulations. The Rules are the Court of Protection (Enduring Powers of Attorney) Rules 1986 (Statutory Instrument 1986 No. 127). The Regulations are the Enduring Powers of Attorney (Prescribed Form) Regulations 1990 (Statutory Instrument 1990 No. 1376).
10. **Note to Attorney(s)**
After the power has been registered you should notify the Court of Protection if the donor dies or recovers.
11. **Note to Donor**
Some of these explanatory notes may not apply to the form you are using if it has already been adapted to suit your particular requirements.

YOU CAN CANCEL THIS POWER AT ANY TIME BEFORE IT HAS TO BE REGISTERED

Part B: To be completed by the 'donor' (the person appointing the attorney(s))

Don't sign this form unless you understand what it means

Please read the notes in the margin which follow and which are part of the form itself.

Donor's name and address.

Donor's date of birth.

See note 1 on the front of this form. If you are appointing only one attorney you should cross out everything between the square brackets. If appointing more than two attorneys please give the additional name(s) on an attached sheet.

Cross out the one which does not apply (see note 1 on the front of this form).

Cross out the one which does not apply (see note 2 on the front of this form). Add any additional powers.

If you don't want the attorney(s) to have general power, you must give details here of what authority you are giving the attorney(s).

Cross out the one which does not apply.

I _____
of _____
born on _____
appoint _____
of _____
● [and _____
of _____

● jointly
● jointly and severally]

to be my attorney(s) for the purpose of the Enduring Powers of Attorney Act 1985

● with general authority to act on my behalf
● with authority to do the following on my behalf:

in relation to

● all my property and affairs:
● the following property and affairs:

Part B: continued

Please read the notes in the margin which follow and which are part of the form itself.

If there are restrictions or conditions, insert them here; if not, cross out these words if you wish (see note 3 on the front of this form).

If this form is being signed at your direction:-

- the person signing must not be an attorney or any witness (to Parts B or C).
- you must add a statement that this form has been signed at your direction.
- a second witness is necessary (please see below).

Your signature (or mark).

Date.

Someone must witness your signature.

Signature of witness.

Your attorney(s) cannot be your witness. It is not advisable for your husband or wife to be your witness.

A second witness is only necessary if this form is not being signed by you personally but at your direction (for example, if a physical disability prevents you from signing).

Signature of second witness.

- subject to the following restrictions and conditions:

I intend that this power shall continue even if I become mentally incapable

I have read or have had read to me the notes in Part A which are part of, and explain, this form.

Signed by me as a deed _____
and delivered

on _____

in the presence of _____

Full name of witness _____

Address of witness _____

in the presence of _____

Full name of witness _____

Address of witness _____

Part C: To be completed by the attorney(s)

Note: 1. This form may be adapted to provide for execution by a corporation

2. If there is more than one attorney additional sheets in the form as shown below must be added to this Part C

Please read the notes in the margin which follow and which are part of the form itself.

Don't sign this form before the donor has signed Part B or if, in your opinion, the donor was already mentally incapable at the time of signing Part B.

If this form is being signed at your direction:-

- the person signing must not be an attorney or any witness (to Parts B or C).
- you must add a statement that this form has been signed at your direction.
- a second witness is necessary (please see below).

Signature (or mark) of attorney.

Date.

Signature of witness.

The attorney must sign the form and his signature must be witnessed. The donor may not be the witness and one attorney may not witness the signature of the other.

A second witness is only necessary if this form is not being signed by you personally but at your direction (for example, if a physical disability prevents you from signing).

Signature of second witness.

I understand that I have a duty to apply to the Court for the registration of this form under the Enduring Powers of Attorney Act 1985 when the donor is becoming or has become mentally incapable.

I also understand my limited power to use the donor's property to benefit persons other than the donor.

I am not a minor

Signed by me as a deed _____
and delivered

on _____

in the presence of _____

Full name of witness _____

Address of witness _____

in the presence of _____

Full name of witness _____

Address of witness _____

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe a revised form of an enduring power of attorney, the explanatory information endorsed on it and the manner in which it is to be executed.

In particular these Regulations make amendments consequent upon the coming into force on 31st July 1990 of provisions in the Law of Property (Miscellaneous Provisions) Act 1989 (c.34) which change the law relating to deeds and their execution.