
STATUTORY INSTRUMENTS

1987 No. 1627

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

Action on actual or impending incapacity of donor

Duties of attorney in event of actual or impending incapacity of donor

6.—(1) If the attorney under an enduring power has reason to believe that the donor is or is becoming mentally incapable paragraphs (2) to (6) shall apply.

(2) The attorney shall, as soon as practicable, make an application to the court for the registration of the instrument creating the power.

(3) Before making an application for registration the attorney shall comply with the provisions as to notice set out in Schedule 1.

(4) An application for registration shall be made in the prescribed form and shall contain such statements as may be prescribed.

(5) The attorney may, before making an application for the registration of the instrument, refer to the court for its determination any question as to the validity of the power and he shall comply with any direction given to him by the court on that determination.

(6) No disclaimer of the power shall be valid unless and until the attorney gives notice of it to the court.

(7) Any person who, in an application for registration, makes a statement which he knows to be false in a material particular shall be liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or both; and
- (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or both.

(8) In this Article and Schedule 1 “prescribed” means prescribed by rules of court.

Functions of court prior to registration

7. Where the court has reason to believe that the donor of an enduring power may be, or may be becoming, mentally incapable and the court is of the opinion that it is necessary, before the instrument creating the power is registered, to exercise any power with respect to the power of attorney or the attorney appointed to act under it which would become exercisable under Article 10(2) on its registration, the court may exercise that power under this Article and may do so whether the attorney has or has not made an application to the court for the registration of the instrument.

Functions of court on application for registration

8.—(1) In any case where—

- (a) an application for registration is made in accordance with Article 6(3) and (4), and

- (b) neither paragraph (2) nor paragraph (4) applies, the court shall register the instrument to which the application relates.
- (2) Where it appears to the court that there is in force under part VIII of the Mental Health (Northern Ireland) Order 1986 an order appointing a controller for the donor but the power has not also been revoked then, unless it directs otherwise, the court shall not exercise or further exercise its functions under this Article but shall refuse the application for registration.
- (3) Where it appears from an application for registration that notice of it has not been given under Schedule 1 to some person entitled to receive it (other than a person in respect of whom the attorney has been dispensed or is otherwise exempt from the requirement to give notice) the court shall direct that the application be treated for the purposes of this Order as having been made in accordance with Article 6(3), if the court is satisfied that, as regards each such person—
 - (a) it was undesirable or impracticable for the attorney to give him notice; or
 - (b) no useful purpose is likely to be served by giving him notice.
- (4) If, in the case of an application for registration—
 - (a) a valid notice of objection to the registration is received by the court before the expiry of the period of five weeks beginning with the date or, as the case may be, the latest date on which the attorney gave notice to any person under Schedule 1, or
 - (b) it appears from the application that there is no one to whom notice has been given under paragraph 1 of that Schedule, or
 - (c) the court has reason to believe that appropriate inquiries might bring to light evidence on which the court could be satisfied that one of the grounds of objection set out in paragraph (5) was established, the court shall neither register the instrument nor refuse the application until it has made or caused to be made such inquiries (if any) as it thinks appropriate in the circumstances of the case.
- (5) For the purposes of this Order a notice of objection to the registration of an instrument is valid if the objection is made on one or more of the following grounds, namely—
 - (a) that the power purported to have been created by the instrument was 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 create the power;
 - (e) that, 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.
- (6) If, in a case where paragraph (4) applies, any of the grounds of objection in paragraph (5) is established to the satisfaction of the court, the court shall refuse the application but if, in such a case, it is not so satisfied, the court shall register the instrument to which the application relates.
- (7) Where the court refuses an application for registration on ground (d) or (e) in paragraph (5) it shall by order revoke the power created by the instrument.
- (8) Where the court refuses an application for registration on any ground other than that specified in paragraph (5)(c) the instrument shall be delivered up to be cancelled, unless the court otherwise directs.