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STATUTORY INSTRUMENTS

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**1987 No. 1627**

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

*Action on actual or impending incapacity of donor*

**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Mental Health (Northern Ireland) Order 1986 an order appointing a controller for the donor but the power has not also been revoked then, unless it directs otherwise, the court shall not exercise or further exercise its functions under this Article but shall refuse the application for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.