



# Powers of Attorney Act 1971

## 1971 CHAPTER 27

An Act to make new provision in relation to powers of attorney and the delegation by trustees of their trusts, powers and discretions. [12th May 1971]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

### **1 Execution of powers of attorney**

- (1) An instrument creating a power of attorney shall be signed and sealed by, or by direction and in the presence of, the donor of the power.
- (2) Where such an instrument is signed and sealed by a person by direction and in the presence of the donor of the power, two other persons shall be present as witnesses and shall attest the instrument.
- (3) This section is without prejudice to any requirement in, or having effect under, any other Act as to the witnessing of instruments creating powers of attorney and does not affect the rules relating to the execution of instruments by bodies corporate.

### **2 Abolition of deposit or filing of instruments creating powers of attorney**

- (1) As from the commencement of this Act no instrument creating a power of attorney, and no copy of any such instrument, shall be deposited or filed at the central office of the Supreme Court or at the Land Registry under section 25 of the Trustee Act 1925, section 125 of the Law of Property Act 1925 or section 219 of the Supreme Court of Judicature (Consolidation) Act 1925.
- (2) This section does not affect any right to search for, inspect or copy, or to obtain an office copy of, any such document which has been deposited or filed as aforesaid before the commencement of this Act

### **3 Proof of instruments creating powers of attorney**

- (1) The contents of an instrument creating a power of attorney may be proved by means of a copy which—
  - (a) is a reproduction of the original made with a photographic or other device for reproducing documents in facsimile; and
  - (b) contains the following certificate or certificates signed by the donor of the power or by a solicitor or stockbroker, that is to say—
    - (i) a certificate at the end to the effect that the copy is a true and complete copy of the original; and
    - (ii) if the original consists of two or more pages, a certificate at the end of each page of the copy to the effect that it is a true and complete copy of the corresponding page of the original.
- (2) Where a copy of an instrument creating a power of attorney has been made which complies with subsection (1) of this section, the contents of the instrument may also be proved by means of a copy of that copy if the further copy itself complies with that subsection, taking references in it to the original as references to the copy from which the further copy is made.
- (3) In this section " stockbroker " means a member of any stock exchange within the meaning of the Stock Transfer Act 1963 or the Stock Transfer Act (Northern Ireland) 1963.
- (4) This section is without prejudice to section 4 of the Evidence and Powers of Attorney Act 1940 (proof of deposited instruments by office copy) and to any other method of proof authorised by law.
- (5) For the avoidance of doubt, in relation to an instrument made in Scotland the references to a power of attorney in this section and in section 4 of the Evidence and Powers of Attorney Act 1940 include references to a factory and commission.

### **4 Powers of attorney given as security**

- (1) Where a power of attorney is expressed to be irrevocable and is given to secure—
  - (a) a proprietary interest of the donee of the power; or
  - (b) the performance of an obligation owed to the donee,then, so long as the donee has that interest or the obligation remains undischarged, the power shall not be revoked—
  - (i) by the donor without the consent of the donee ; or
  - (ii) by the death, incapacity or bankruptcy of the donor or, if the donor is a body corporate, by its winding up or dissolution.
- (2) A power of attorney given to secure a proprietary interest may be given to the person entitled to the interest and persons deriving title under him to that interest, and those persons shall be duly constituted donees of the power for all purposes of the power but without prejudice to any right to appoint substitutes given by the power.
- (3) This section applies to powers of attorney whenever created.

## **5 Protection of donee and third persons where power of attorney is revoked**

- (1) A donee of a power of attorney who acts in pursuance of the power at a time when it has been revoked shall not, by reason of the revocation, incur any liability (either to the donor or to any other person) if at that time he did not know that the power had been revoked.
- (2) Where a power of attorney has been revoked and a person, without knowledge of the revocation, deals with the donee of the power, the transaction between them shall, in favour of that person, be as valid as if the power had then been in existence.
- (3) Where the power is expressed in the instrument creating it to be irrevocable and to be given by way of security then, unless the person dealing with the donee knows that it was not in fact given by way of security, he shall be entitled to assume that the power is incapable of revocation except by the donor acting with the consent of the donee and shall accordingly be treated for the purposes of subsection (2) of this section as having knowledge of the revocation only if he knows that it has been revoked in that manner.
- (4) Where the interest of a purchaser depends on whether a transaction between the donee of a power of attorney and another person was valid by virtue of subsection (2) of this section, it shall be conclusively presumed in favour of the purchaser that that person did not at the material time know of the revocation of the power if—
  - (a) the transaction between that person and the donee was completed within twelve months of the date on which the power came into operation; or
  - (b) that person makes a statutory declaration, before or within three months after the completion of the purchase, that he did not at the material time know of the revocation of the power.
- (5) Without prejudice to subsection (3) of this section, for the purposes of this section knowledge of the revocation of a power of attorney includes knowledge of the occurrence of any event (such as the death of the donor) which has the effect of revoking the power.
- (6) In this section " purchaser " and " purchase " have the meanings specified in section 205(1) of the Law of Property Act 1925.
- (7) This section applies whenever the power of attorney was created but only to acts and transactions after the commencement of this Act.

## **6 Additional protection for transferees under stock exchange transactions**

- (1) Without prejudice to section 5 of this Act, where—
  - (a) the donee of a power of attorney executes, as transferor, an instrument transferring registered securities; and
  - (b) the instrument is executed for the purposes of a stock exchange transaction, it shall be conclusively presumed in favour of the transferee that the power had not been revoked at the date of the instrument if a statutory declaration to that effect is made by the donee of the power on or within three months after that date.
- (2) In this section " registered securities " and " stock exchange transaction " have the same meanings as in the Stock Transfer Act 1963.

## **7 Execution of instruments etc. by donee of power of attorney**

- (1) The donee of a power of attorney may, if he thinks fit—
  - (a) execute any instrument with his own signature and, where sealing is required, with his own seal, and
  - (b) do any other thing in his own name,by the authority of the donor of the power; and any document executed or thing done in that manner shall be as effective as if executed or done by the donee with the signature and seal, or, as the case may be, in the name, of the donor of the power.
- (2) For the avoidance of doubt it is hereby declared that an instrument to which subsection (3) or (4) of section 74 of the Law of Property Act 1925 applies may be executed either as provided in those subsections or as provided in this section.
- (3) This section is without prejudice to any statutory direction requiring an instrument to be executed in the name of an estate owner within the meaning of the said Act of 1925.
- (4) This section applies whenever the power of attorney was created.

## **8 Repeal of s. 129 of Law of Property Act 1925**

Section 129 of the Law of Property Act 1925 (which contains provisions, now unnecessary, in respect of powers of attorney granted by married women) shall cease to have effect.

## **9 Power to delegate trusts etc. by power of attorney**

- (1) Section 25 of the Trustee Act 1925 (power to delegate trusts etc., during absence abroad) shall be amended as follows.
- (2) For subsections (1) to (8) of that section there shall be substituted the following subsections—
  - “(1) Notwithstanding any rule of law or equity to the contrary, a trustee may, by power of attorney, delegate for a period not exceeding twelve months the execution or exercise of all or any of the trusts, powers and discretions vested in him as trustee either alone or jointly with any other person or persons.
  - (2) The persons who may be donees of a power of attorney under this section include a trust corporation but not (unless a trust corporation) the only other co-trustee of the donor of the power.
  - (3) An instrument creating a power of attorney under this section shall be attested by at least one witness.
  - (4) Before or within seven days after giving a power of attorney under this section the donor shall give written notice thereof (specifying the date on which the power comes into operation and its duration, the donee of the power, the reason why the power is given and, where some only are delegated, the trusts, powers and discretions delegated) to—
    - (a) each person (other than himself), if any, who under any instrument creating the trust has power (whether alone or jointly) to appoint a new trustee; and
    - (b) each of the other trustees, if any;

but failure to comply with this subsection shall not, in favour of a person dealing with the donee of the power, invalidate any act done or instrument executed by the donee.

- (5) The donor of a power of attorney given under this section shall be liable for the acts or defaults of the donee in the same manner as if they were the acts or defaults of the donor.”
- (3) Subsections (9) and (10) of the said section 25 shall stand as subsections (6) and (7) and for subsection (11) of that section there shall be substituted the following subsection—
- “(8) This section applies to a personal representative, tenant for life and statutory owner as it applies to a trustee except that subsection (4) shall apply as if it required the notice there mentioned to be given—
- (a) in the case of a personal representative, to each of the other personal representatives, if any, except any executor who has renounced probate;
  - (b) in the case of a tenant for life, to the trustees of the settlement and to each person, if any, who together with the person giving the notice constitutes the tenant for life;
  - (c) in the case of a statutory owner, to each of the persons, if any, who together with the person giving the notice constitute the statutory owner and, in the case of a statutory owner by virtue of section 23(1) (a) of the Settled Land Act 1925, to the trustees of the settlement.”
- (4) This section applies whenever the trusts, powers or discretions in question arose but does not invalidate anything done by virtue of the said section 25 as in force at the commencement of this Act.

## **10 Effect of general power of attorney in specified form**

- (1) Subject to subsection (2) of this section, a general power of attorney in the form set out in Schedule 1 to this Act, or in a form to the like effect but expressed to be made under this Act, shall operate to confer—
- (a) on the donee of the power; or
  - (b) if there is more than one donee, on the donees acting jointly or acting jointly or severally, as the case may be,
- authority to do on behalf of the donor anything which he can lawfully do by an attorney.
- (2) This section does not apply to functions which the donor has as a trustee or personal representative or as a tenant for life or statutory owner within the meaning of the Settled Land Act 1925.

## **11 Short title, repeals, consequential amendments, commencement and extent**

- (1) This Act may be cited as the Powers of Attorney Act 1971.
- (2) The enactments specified in Schedule 2 to this Act are hereby repealed to the extent specified in the third column of that Schedule.
- (3) In section 125(2) of the Law of Property Act 1925 for the words " as aforesaid " there shall be substituted the words " under the Land Registration Act 1925 " ; and in section 219(2) of the Supreme Court of Judicature (Consolidation) Act 1925 for

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*Status: This is the original version (as it was originally enacted).*

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the words " so deposited" there shall be substituted the words " deposited under this section before the commencement of the Powers of Attorney Act 1971. "

- (4) This Act shall come into force on 1st October 1971.
- (5) Section 3 of this Act extends to Scotland and Northern Ireland but, save as aforesaid, this Act extends to England and Wales only.

