



Enduring Powers of Attorney Act 1985

1985 CHAPTER 29

Legal position after registration

7 Effect and proof of registration, etc.

- (1) The effect of the registration of an instrument under section 6 is that—
 - (a) no revocation of the power by the donor shall be valid unless and until the court confirms the revocation under section 8(3);
 - (b) no disclaimer of the power shall be valid unless and until the attorney gives notice of it to the court;
 - (c) the donor may not extend or restrict the scope of the authority conferred by the instrument and no instruction or consent given by him after registration shall, in the case of a consent, confer any right and, in the case of an instruction, impose or confer any obligation or right on or create any liability of the attorney or other persons having notice of the instruction or consent.
- (2) Subsection (1) above applies for so long as the instrument is registered under section 6 whether or not the donor is for the time being mentally incapable.
- (3) A document purporting to be an office copy of an instrument registered under this Act shall, in any part of the United Kingdom, be evidence of the contents of the instrument and of the fact that it has been so registered.
- (4) Subsection (3) above is without prejudice to section 3 of the Powers of Attorney Act 1971 (proof by certified copies) and to any other method of proof authorised by law.

8 Functions of court with respect to registered power

- (1) Where an instrument has been registered under section 6, the court shall have the following functions with respect to the power and the donor of and the attorney appointed to act under the power.
- (2) The court may—
 - (a) determine any question as to the meaning or effect of the instrument;
 - (b) give directions with respect to—

Status: This is the original version (as it was originally enacted).

- (i) the management or disposal by the attorney of the property and affairs of the donor ;
 - (ii) the rendering of accounts by the attorney and the production of the records kept by him for the purpose;
 - (iii) the remuneration or expenses of the attorney, whether or not in default of or in accordance with any provision made by the instrument, including directions for the repayment of excessive or the payment of additional remuneration;
 - (c) require the attorney to furnish information or produce documents or things in his possession as attorney ;
 - (d) give any consent or authorisation to act which the attorney would have to obtain from a mentally capable donor;
 - (e) authorise the attorney to act so as to benefit himself or other persons than the donor otherwise than in accordance with section 3(4) and (5) (but subject to any conditions or restrictions contained in the instrument);
 - (f) relieve the attorney wholly or partly from any liability which he has or may have incurred on account of a breach of his duties as attorney.
- (3) On application made for the purpose by or on behalf of the donor, the court shall confirm the revocation of the power if satisfied that the donor has done whatever is necessary in law to effect an express revocation of the power and was mentally capable of revoking a power of attorney when he did so (whether or not he is so when the court considers the application),
- (4) The court shall cancel the registration of an instrument registered under section 6 in any of the following circumstances, that is to say—
- (a) on confirming the revocation of the power under subsection (3) above or receiving notice of disclaimer under section 7(1)(b);
 - (b) on giving a direction revoking the power on exercising any of its powers under Part VII of the Mental Health Act 1983;
 - (c) on being satisfied that the donor is and is likely to remain mentally capable;
 - (d) on being satisfied that the power has expired or has been revoked by the death or bankruptcy of the donor or the death, mental incapacity or bankruptcy of the attorney or, if the attorney is a body corporate, its winding up or dissolution;
 - (e) on being satisfied that the power was not a valid and subsisting enduring power when registration was effected;
 - (f) on being satisfied that fraud or undue pressure was used to induce the donor to create the power; or
 - (g) on being satisfied 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.
- (5) Where the court cancels the registration of an instrument on being satisfied of the matters specified in paragraph (f) or (g) of subsection (4) above it shall by order revoke the power created by the instrument.
- (6) On the cancellation of the registration of an instrument under subsection (4) above except paragraph (c) the instrument shall be delivered up to be cancelled, unless the court otherwise directs.