



Enduring Powers of Attorney Act 1985

1985 CHAPTER 29

Supplementary

10 Application of Mental Health Act provisions relating to the court

- (1) The provisions of Part VII of the Mental Health Act 1983 (relating to the Court of Protection) specified below shall apply to persons within and proceedings under this Act in accordance with the following paragraphs of this subsection and subsection (2) below, that is to say—
 - (a) section 103 (functions of Visitors) shall apply to persons within this Act as it applies to the persons mentioned in that section;
 - (b) section 104 (powers of judge) shall apply to proceedings under this Act with respect to persons within this Act as it applies to the proceedings mentioned in subsection (1) of that section;
 - (c) section 105(1) (appeals to nominated judge) shall apply to any decision of the Master of the Court of Protection or any nominated officer in proceedings under this Act as it applies to any decision to which that subsection applies and an appeal shall lie to the Court of Appeal from any decision of a nominated judge whether given in the exercise of his original jurisdiction or on the hearing of an appeal under section 105(1) as extended by this paragraph;
 - (d) section 106 except subsection (4) (rules of procedure) shall apply to proceedings under this Act and persons within this Act as it applies to the proceedings and persons mentioned in that section.
- (2) Any functions conferred or imposed by the provisions of the said Part VII applied by subsection (1) above shall be exercisable also for the purposes of this Act and the persons who are "within this Act" are the donors of and attorneys under enduring powers of attorney whether or not they would be patients for the purposes of the said Part VII.
- (3) In this section "nominated judge" and "nominated officer" have the same meanings as in Part VII of the Mental Health Act 1983.

11 Application to joint and joint and several attorneys

- (1) An instrument which appoints more than one person to be an attorney cannot create an enduring power unless the attorneys are appointed to act jointly or jointly and severally.
- (2) This Act, in its application to joint attorneys, applies to them collectively as it applies to a single attorney but subject to the modifications specified in Part I of Schedule 3.
- (3) This Act, in its application to joint and several attorneys, applies with the modifications specified in subsections (4) to (7) below and in Part II of Schedule 3.
- (4) A failure, as respects any one attorney, to comply with the requirements for the creation of enduring powers, shall prevent the instrument from creating such a power in his case without however affecting its efficacy for that purpose as respects the other or others or its efficacy in his case for the purpose of creating a power of attorney which is, not an enduring power.
- (5) Where one or more but not both or all the attorneys makes or joins in making an application for registration of the instrument then—
 - (a) an attorney who is not an applicant as well as one who is may act pending the initial determination of the application as provided in section 1(2) (or under section 5);
 - (b) notice of the application shall also be given under Schedule 1 to the other attorney or attorneys; and
 - (c) objection may validly be taken to the registration on a ground relating to an attorney or to the power of an attorney who is not an applicant as well as to one or the power of one who is an applicant.
- (6) The court shall not refuse under section 6(6) to register an instrument because a ground of objection to an attorney or power is established if an enduring power subsists as respects some attorney who is not affected thereby but shall give effect to it by the prescribed qualification of the registration.
- (7) The court shall not cancel the registration of an instrument under section 8(4) for any of the causes vitiating registration specified in that subsection if an enduring power subsists as respects some attorney who is not affected thereby but shall give effect to it by the prescribed qualification of the registration.
- (8) In this section—
 - "prescribed" means prescribed by rules of the court; and
 - "the requirements for the creation of enduring powers" means the provisions of section 2 other than subsections (10) to (12) and of regulations under subsection (2) of that section.

12 Power of Lord Chancellor to modify pre-registration requirements in certain cases

- (1) The Lord Chancellor may by order exempt attorneys of such descriptions as he thinks fit from the requirements of this Act to give notice to relatives prior to registration.
- (2) Subject to subsection (3) below, where an order is made under this section with respect to attorneys of a specified description then, during the currency of the order, this Act shall have effect in relation to any attorney of that description with the omission of so

much of section 4(3) and Schedule 1 as requires notice of an application for registration to be given to relatives.

- (3) Notwithstanding that an attorney under a joint or joint and several power is of a description specified in a current order under this section, subsection (2) above shall not apply in relation to him if any of the other attorneys under the power is not of a description specified in that or another current order under this section.
- (4) The power to make an order under this section shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

13 Interpretation

- (1) In this Act—

" the court", in relation to any functions under this Act, means the authority having jurisdiction under Part VII of the Mental Health Act 1983 ;

" enduring power " is to be construed in accordance with section 2;

" mentally incapable " or " mental incapacity ", except where it refers to revocation at common law, means, in relation to any person, that he is incapable by reason of mental disorder of managing and administering his property and affairs and " mentally capable " and " mental capacity" shall be construed accordingly;

" mental disorder " has the same meaning as it has in the Mental Health Act 1983 ;

" notice " means notice in writing;

" rules of the court" means rules under Part VII of the Mental Health Act 1983 as applied by section 10 ;

" statutory maximum " has the meaning given by section 74(1) of the Criminal Justice Act 1982 ;

" trust corporation " means the Public Trustee or a corporation either appointed by the High Court or a county court (according to their respective jurisdictions) in any particular case to be a trustee or entitled by rules under section 4(3) of the Public Trustee Act 1906 to act as custodian trustee.

- (2) Any question arising under or for the purposes of this Act as to what the donor of the power might at any time be expected to do shall be determined by assuming that he had full mental capacity at the time but otherwise by reference to the circumstances existing at that time.

14 Short title, commencement and extent

- (1) This Act may be cited as the Enduring Powers of Attorney Act 1985.
- (2) This Act shall come into force on such day as the Lord Chancellor appoints by order made by statutory instrument.
- (3) This Act extends to England and Wales only except that section 7(3) and section 10(1)(b) so far as it applies section 104(4) of the Mental Health Act 1983 extend also to Scotland and Northern Ireland.