



Enduring Powers of Attorney Act 1985

1985 CHAPTER 29

Enduring powers of attorney

2 Characteristics of an enduring power

- (1) Subject to subsections (7) to (9) below and section 11, a power of attorney is an enduring power within the meaning of this Act if the instrument which creates the power—
 - (a) is in the prescribed form; and
 - (b) was executed in the prescribed manner by the donor and the attorney; and
 - (c) incorporated at the time of execution by the donor the prescribed explanatory information.
- (2) The Lord Chancellor shall make regulations as to the form and execution of instruments creating enduring powers and the regulations shall contain such provisions as appear to him to be appropriate for securing—
 - (a) that no document is used to create an enduring power which does, not incorporate such information explaining the general effect of creating or accepting the power as may be prescribed; and
 - (b) that such instruments include statements to the following effect—
 - (i) by the donor, that he intends the power to continue in spite of any supervening mental incapacity of his;
 - (ii) by the donor, that he read or had read to him, the information explaining the effect of creating the power;
 - (iii) by the attorney, that he understands the duty of registration imposed by this Act.
- (3) Regulations under subsection. (2) above—
 - (a) may include different provision for cases where more than one attorney is to be appointed by the instrument than for cases where only one attorney is to be appointed ; and
 - (b) may, if they amend or revoke any regulations previously made under that subsection, include saving and transitional provisions.

- (4) Regulations under subsection (2) above shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) An instrument in the prescribed form purporting to have been executed in the prescribed manner shall be taken, in the absence of evidence to the contrary, to be a document which incorporated at the time of execution by the donor the prescribed explanatory information.
- (6) Where an instrument differs in an immaterial respect in form or mode of expression from the prescribed form the instrument shall be treated as sufficient in point of form and expression.
- (7) A power of attorney cannot be an enduring power unless, when he executes the instrument creating it, the attorney is—
 - (a) an individual who has attained eighteen years and is not bankrupt; or
 - (b) a trust corporation.
- (8) A power of attorney under section 25 of the Trustee Act 1925 (power to delegate trusts etc. by power of attorney) cannot be an enduring power.
- (9) A power of attorney which gives the attorney a right to appoint a substitute or successor cannot be an enduring power.
- (10) An enduring power shall be revoked by the bankruptcy of the attorney whatever the circumstances of the bankruptcy.
- (11) An enduring power shall be revoked on the exercise by the court of any of its powers under Part VII of the Mental Health Act 1983 if, but only if, the court so directs.
- (12) No disclaimer of an enduring power, whether by deed or otherwise, shall be valid unless and until the attorney gives notice of it to the donor or, where section 4(6) or 7(1) applies, to the court.
- (13) In this section "prescribed" means prescribed under subsection (2) above.