



Trustee Delegation Act 1999

1999 CHAPTER 15

An Act to amend the law relating to the delegation of trustee functions by power of attorney and the exercise of such functions by the donee of a power of attorney; and to make provision about the authority of the donee of a power of attorney to act in relation to land. [15th July 1999]

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:—

Attorney of trustee with beneficial interest in land

1 Exercise of trustee functions by attorney

- (1) The donee of a power of attorney is not prevented from doing an act in relation to—
 - (a) land,
 - (b) capital proceeds of a conveyance of land, or
 - (c) income from land,by reason only that the act involves the exercise of a trustee function of the donor if, at the time when the act is done, the donor has a beneficial interest in the land, proceeds or income.
- (2) In this section—
 - (a) “conveyance” has the same meaning as in the Law of Property Act 1925, and
 - (b) references to a trustee function of the donor are to a function which the donor has as trustee (either alone or jointly with any other person or persons).
- (3) Subsection (1) above—
 - (a) applies only if and so far as a contrary intention is not expressed in the instrument creating the power of attorney, and
 - (b) has effect subject to the terms of that instrument.

- (4) The donor of the power of attorney—
- (a) is liable for the acts or defaults of the donee in exercising any function by virtue of subsection (1) above in the same manner as if they were acts or defaults of the donor, but
 - (b) is not liable by reason only that a function is exercised by the donee by virtue of that subsection.
- (5) Subsections (1) and (4) above—
- (a) apply only if and so far as a contrary intention is not expressed in the instrument (if any) creating the trust, and
 - (b) have effect subject to the terms of such an instrument.
- (6) The fact that it appears that, in dealing with any shares or stock, the donee of the power of attorney is exercising a function by virtue of subsection (1) above does not affect with any notice of any trust a person in whose books the shares are, or stock is, registered or inscribed.
- (7) In any case where (by way of exception to section 3(1) of the Trusts of Land and Appointment of Trustees Act 1996) the doctrine of conversion continues to operate, any person who, by reason of the continuing operation of that doctrine, has a beneficial interest in the proceeds of sale of land shall be treated for the purposes of this section and section 2 below as having a beneficial interest in the land.
- (8) The donee of a power of attorney is not to be regarded as exercising a trustee function by virtue of subsection (1) above if he is acting under a trustee delegation power; and for this purpose a trustee delegation power is a power of attorney given under—
- (a) a statutory provision, or
 - (b) a provision of the instrument (if any) creating a trust,
- under which the donor of the power is expressly authorised to delegate the exercise of all or any of his trustee functions by power of attorney.
- (9) Subject to section 4(6) below, this section applies only to powers of attorney created after the commencement of this Act.

2 Evidence of beneficial interest

- (1) This section applies where the interest of a purchaser depends on the donee of a power of attorney having power to do an act in relation to any property by virtue of section 1(1) above.
- In this subsection “purchaser” has the same meaning as in Part I of the Law of Property Act 1925.
- (2) Where this section applies an appropriate statement is, in favour of the purchaser, conclusive evidence of the donor of the power having a beneficial interest in the property at the time of the doing of the act.
- (3) In this section “an appropriate statement” means a signed statement made by the donee—
- (a) when doing the act in question, or
 - (b) at any other time within the period of three months beginning with the day on which the act is done,

that the donor has a beneficial interest in the property at the time of the donee doing the act.

- (4) If an appropriate statement is false, the donee is liable in the same way as he would be if the statement were contained in a statutory declaration.

3 General powers in specified form

In section 10(2) of the Powers of Attorney Act 1971 (which provides that a general power of attorney in the form set out in Schedule 1 to that Act, or a similar form, does not confer on the donee of the power any authority to exercise functions of the donor as trustee etc.), for the words “This section” substitute “Subject to section 1 of the Trustee Delegation Act 1999, this section”.

4 Enduring powers

- (1) Section 3(3) of the Enduring Powers of Attorney Act 1985 (which entitles the donee of an enduring power to exercise any of the donor’s functions as trustee and to give receipt for capital money etc.) does not apply to enduring powers created after the commencement of this Act.
- (2) Section 3(3) of the Enduring Powers of Attorney Act 1985 ceases to apply to enduring powers created before the commencement of this Act—
- (a) where subsection (3) below applies, in accordance with that subsection, and
 - (b) otherwise, at the end of the period of one year from that commencement.
- (3) Where an application for the registration of the instrument creating such an enduring power is made before the commencement of this Act, or during the period of one year from that commencement, section 3(3) of the Enduring Powers of Attorney Act 1985 ceases to apply to the power—
- (a) if the instrument is registered pursuant to the application (whether before commencement or during or after that period), when the registration of the instrument is cancelled, and
 - (b) if the application is finally refused during or after that period, when the application is finally refused.
- (4) In subsection (3) above—
- (a) “registration” and “registered” mean registration and registered under section 6 of the Enduring Powers of Attorney Act 1985, and
 - (b) “cancelled” means cancelled under section 8(4) of that Act.
- (5) For the purposes of subsection (3)(b) above an application is finally refused—
- (a) if the application is withdrawn or any appeal is abandoned, when the application is withdrawn or the appeal is abandoned, and
 - (b) otherwise, when proceedings on the application (including any proceedings on, or in consequence of, an appeal) have been determined and any time for appealing or further appealing has expired.
- (6) Section 1 above applies to an enduring power created before the commencement of this Act from the time when (in accordance with subsections (2) to (5) above) section 3(3) of the Enduring Powers of Attorney Act 1985 ceases to apply to it.

*Trustee delegation under section 25 of the Trustee Act 1925***5 Delegation under section 25 of the Trustee Act 1925**

(1) For section 25 of the Trustee Act 1925 substitute—

“25 Delegation of trustee’s functions by power of attorney

- (1) Notwithstanding any rule of law or equity to the contrary, a trustee may, by power of attorney, delegate 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) A delegation under this section—
- (a) commences as provided by the instrument creating the power or, if the instrument makes no provision as to the commencement of the delegation, with the date of the execution of the instrument by the donor; and
 - (b) continues for a period of twelve months or any shorter period provided by the instrument creating the power.
- (3) The persons who may be donees of a power of attorney under this section include a trust corporation.
- (4) Before or within seven days after giving a power of attorney under this section the donor shall give written notice of it (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) A power of attorney given under this section by a single donor—
- (a) in the form set out in subsection (6) of this section; or
 - (b) in a form to the like effect but expressed to be made under this subsection,
- shall operate to delegate to the person identified in the form as the single donee of the power the execution and exercise of all the trusts, powers and discretions vested in the donor as trustee (either alone or jointly with any other person or persons) under the single trust so identified.
- (6) The form referred to in subsection (5) of this section is as follows—
- “THIS GENERAL TRUSTEE POWER OF ATTORNEY is made on [date] by [name of one donor] of [address of donor] as trustee of [name or details of one trust].

I appoint [*name of one donee*] of [*address of donee*] to be my attorney [*if desired, the date on which the delegation commences or the period for which it continues (or both)*] in accordance with section 25(5) of the Trustee Act 1925.

[*To be executed as a deed*]”.

- (7) 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.
 - (8) For the purpose of executing or exercising the trusts or powers delegated to him, the donee may exercise any of the powers conferred on the donor as trustee by statute or by the instrument creating the trust, including power, for the purpose of the transfer of any inscribed stock, himself to delegate to an attorney power to transfer, but not including the power of delegation conferred by this section.
 - (9) The fact that it appears from any power of attorney given under this section, or from any evidence required for the purposes of any such power of attorney or otherwise, that in dealing with any stock the donee of the power is acting in the execution of a trust shall not be deemed for any purpose to affect any person in whose books the stock is inscribed or registered with any notice of the trust.
 - (10) 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; and
 - (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.”
- (2) Subsection (1) above has effect in relation to powers of attorney created after the commencement of this Act.
 - (3) In section 34(2)(b) of the Pensions Act 1995 (delegation by trustees of trustee scheme under section 25 of the Trustee Act 1925), for “during absence abroad” substitute “for period not exceeding twelve months”.

6 Section 25 powers as enduring powers

Section 2(8) of the Enduring Powers of Attorney Act 1985 (which prevents a power of attorney under section 25 of the Trustee Act 1925 from being an enduring power) does not apply to powers of attorney created after the commencement of this Act.

*Miscellaneous provisions about attorney acting for trustee***7 Two-trustee rules**

- (1) A requirement imposed by an enactment—
- (a) that capital money be paid to, or dealt with as directed by, at least two trustees or that a valid receipt for capital money be given otherwise than by a sole trustee, or
 - (b) that, in order for an interest or power to be overreached, a conveyance or deed be executed by at least two trustees,
- is not satisfied by money being paid to or dealt with as directed by, or a receipt for money being given by, a relevant attorney or by a conveyance or deed being executed by such an attorney.
- (2) In this section “relevant attorney” means a person (other than a trust corporation within the meaning of the Trustee Act 1925) who is acting either—
- (a) both as a trustee and as attorney for one or more other trustees, or
 - (b) as attorney for two or more trustees,
- and who is not acting together with any other person or persons.
- (3) This section applies whether a relevant attorney is acting under a power created before or after the commencement of this Act (but in the case of such an attorney acting under an enduring power created before that commencement is without prejudice to any continuing application of section 3(3) of the Enduring Powers of Attorney Act 1985 to the enduring power after that commencement in accordance with section 4 above).

8 Appointment of additional trustee by attorney

- (1) In section 36 of the Trustee Act 1925 (appointment of trustees), after subsection (6) (additional trustees) insert—
- “(6A) A person who is either—
- (a) both a trustee and attorney for the other trustee (if one other), or for both of the other trustees (if two others), under a registered power; or
 - (b) attorney under a registered power for the trustee (if one) or for both or each of the trustees (if two or three),
- may, if subsection (6B) of this section is satisfied in relation to him, make an appointment under subsection (6)(b) of this section on behalf of the trustee or trustees.
- (6B) This subsection is satisfied in relation to an attorney under a registered power for one or more trustees if (as attorney under the power)—
- (a) he intends to exercise any function of the trustee or trustees by virtue of section 1(1) of the Trustee Delegation Act 1999; or
 - (b) he intends to exercise any function of the trustee or trustees in relation to any land, capital proceeds of a conveyance of land or income from land by virtue of its delegation to him under section 25 of this Act or the instrument (if any) creating the trust.
- (6C) In subsections (6A) and (6B) of this section “registered power” means a power of attorney created by an instrument which is for the time being registered under section 6 of the Enduring Powers of Attorney Act 1985.

(6D) Subsection (6A) of this section—

- (a) applies only if and so far as a contrary intention is not expressed in the instrument creating the power of attorney (or, where more than one, any of them) or the instrument (if any) creating the trust; and
 - (b) has effect subject to the terms of those instruments.”
- (2) The amendment made by subsection (1) above has effect only where the power, or (where more than one) each of them, is created after the commencement of this Act.

9 Attorney acting for incapable trustee

- (1) In section 22 of the Law of Property Act 1925 (requirement, before dealing with legal estate vested in trustee who is incapable by reason of mental disorder, to appoint new trustee or discharge incapable trustee), after subsection (2) insert—

“(3) Subsection (2) of this section does not prevent a legal estate being dealt with without the appointment of a new trustee, or the discharge of the incapable trustee, at a time when the donee of an enduring power (within the meaning of the Enduring Powers of Attorney Act 1985) is entitled to act for the incapable trustee in the dealing.”

- (2) The amendment made by subsection (1) above has effect whether the enduring power was created before or after the commencement of this Act.

Authority of attorney to act in relation to land

10 Extent of attorney’s authority to act in relation to land

- (1) Where the donee of a power of attorney is authorised by the power to do an act of any description in relation to any land, his authority to do an act of that description at any time includes authority to do it with respect to any estate or interest in the land which is held at that time by the donor (whether alone or jointly with any other person or persons).
- (2) Subsection (1) above—
- (a) applies only if and so far as a contrary intention is not expressed in the instrument creating the power of attorney, and
 - (b) has effect subject to the terms of that instrument.
- (3) This section applies only to powers of attorney created after the commencement of this Act.

Supplementary

11 Interpretation

- (1) In this Act—
- “land” has the same meaning as in the Trustee Act 1925, and
 - “enduring power” has the same meaning as in the Enduring Powers of Attorney Act 1985.

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

- (2) References in this Act to the creation of a power of attorney are to the execution by the donor of the instrument creating it.

12 Repeals

The enactments specified in the Schedule to this Act are repealed to the extent specified in the third column, but subject to the note at the end.

13 Commencement, extent and short title

- (1) The preceding provisions of this Act shall come into force on such day as the Lord Chancellor may by order made by statutory instrument appoint.
- (2) This Act extends to England and Wales only.
- (3) This Act may be cited as the Trustee Delegation Act 1999.

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

SCHEDULE

REPEALS

<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
1971 c. 27.	The Powers of Attorney Act 1971.	Section 9.
1985 c. 29.	The Enduring Powers of Attorney Act 1985.	Section 2(8). Section 3(3).

The repeal of section 3(3) of the Enduring Powers of Attorney Act 1985 has effect in accordance with section 4 of this Act and the remaining repeals have effect in relation to powers of attorney created after the commencement of this Act.
