

STATUTORY INSTRUMENTS

1986 No. 126

POWERS OF ATTORNEY

**The Enduring Powers of Attorney (Prescribed Form) Regulations
1986**

<i>Made</i> - - - -	16th January 1986
<i>Laid before Parliament</i>	3rd February 1986
<i>Coming into Operation</i>	10th March 1986

The Lord Chancellor, in exercise of the powers conferred on him by section 2(2) of the Enduring Powers of Attorney Act 1985(a), hereby makes the following Regulations:—

Citation and Operation

1. These Regulations may be cited as the Enduring Powers of Attorney (Prescribed Form) Regulations 1986 and shall come into operation on 10th March 1986.

Interpretation

2. In these Regulations unless the context otherwise requires expressions used have the same meaning as in the Act (as herein defined):—

“the Act” means the Enduring Powers of Attorney Act 1985(a);

“attorney” means an attorney appointed under an enduring power of attorney;

“donor” means a person who has created an enduring power of attorney;

“enduring power of attorney” means a power of attorney which complies with these Regulations.

Prescribed Form

3.— (1) Subject to regulations 3(2) and 5 of these Regulations, an enduring power of attorney in the form set out in the Schedule to these Regulations, together with such additions, variations or restrictions as the donor may decide, shall operate to confer on the attorney authority to do on behalf of the donor anything which the attorney can lawfully do by virtue of the Act or the contents of the enduring power of attorney itself.

(2) An enduring power of attorney which seeks to exclude any provision contained in these Regulations, and in particular in the Schedule to these Regulations, is not a valid enduring power of attorney.

(a) 1985 c. 29.

Execution

4. An enduring power of attorney in the form set out in the Schedule to these Regulations shall be executed by both the donor and the attorney, although not necessarily at the same time, in the presence of a witness but not necessarily the same witness, who will state his full name, address and occupation. The donor and an attorney may not witness the signature of each other. Where more than one attorney is appointed to act jointly and severally, then at least one of the attorneys so appointed must execute the instrument for it to take effect, but only those attorneys who have executed the instrument shall be able to act under the enduring power of attorney if the donor becomes mentally incapable.

Explanatory Information

5. The prescribed Explanatory Information, set out in the Schedule, shall be endorsed on the enduring power of attorney when the donor executes the instrument.

Hailsham of St. Marylebone, C.

16th January 1986.

SCHEDULE

ENDURING POWER OF ATTORNEY
(PRESCRIBED FORM)

THIS ENDURING POWER OF ATTORNEY is made this day
of 19 by of
Date of birth
I appoint of
(and of
 jointly *or* jointly and severally) to be my
attorney(s) for the purposes of the Enduring Powers of Attorney Act 1985
with general authority to act on my behalf *or* with
authority to do the following on my behalf:

in relation to

(a) all my property and affairs *or*

(b)(c) the following property and affairs:

(subject to the following restrictions and conditions

I intend that this power shall continue even if I become mentally incapable.

I have read *or* had read to me the explanatory information which is endorsed on and explains this document.

IN WITNESS whereof I have hereunto set my hand
and seal this day of 19 in the
presence of:—

I/WE, the attorney(s) named in this power understand that under the
(d) Enduring Powers of Attorney Act 1985 I/we have a duty to make

- (e)(f)(g) application to the Court for the registration of the instrument and have a limited power (subject to any restrictions or conditions specified in this instrument) to make gifts of property or otherwise to benefit myself/ourselves and other persons and exercise the donor's trust functions. I am/We are not minors.
- (h) IN WITNESS whereof the attorney [name] has hereunto set his/her hand and seal this day of
19 in the presence of:—

IN WITNESS whereof the attorney [name] has hereunto set his/her hand and seal this day of
19 in the presence of:—

EXPLANATORY INFORMATION

- (a) If general authority is given, section 3 of the Enduring Powers of Attorney Act 1985 (the Act) will have the effect, subject to any restrictions or conditions specified in the instrument, of enabling the attorney to do anything the donor can do by an attorney including, for example, selling any house or other property belonging to the donor. He will be able to make gifts and use the donor's property to benefit himself or others, but only to the extent described in notes (e) and (f) below. He may also exercise the donor's trust powers.
- (b) If the alternative of giving only limited authority is adopted, the attorney will be able to do only the things specified. However, he will be able to make gifts and use the donor's property to benefit himself or others, but only to the extent described in notes (e) and (f) below or exercise the donor's trust powers, unless the enduring power of attorney restricts this authority.
- (c) These further provisions can include, for example, a provision for paying the attorney for his service as attorney.
- (d) The duty to apply for the registration of the instrument arises under section 4 of the Act as soon as the attorney has reason to believe the donor is becoming or has become mentally incapable of managing his affairs and is a duty to apply (or join with the other joint attorneys in applying) for the registration of the instrument with the Court of Protection. The Act contains requirements for the notification of the donor and certain of his relatives by the attorney before the instrument can be registered. Details of these requirements are contained in Part 1 of Schedule 1 to the Act.
- (e) The donor's property can be given away under an enduring power of attorney within the limits set out in section 3(4) of the Act but it includes power (within those limits) for the attorney to benefit himself by gifts and to exercise the donor's trust powers. The donor can attach conditions to these powers or restrict them further than those limits by inserting the conditions or restrictions in the instrument at the place indicated for any restrictions or conditions. This can include a restriction that the enduring power of attorney is not to come into operation until the attorney has reason to believe that the donor is becoming mentally incapable.

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- (f) The donor's property can be used to benefit other persons, including the attorney, within the limits set out in section 3(3) of the Act. See also note (e) above as to further restrictions or conditions.
 - (g) After an instrument has been registered the attorney should notify the Court of Protection of the death or recovery of the donor.
 - (h) It is inadvisable for a married person to witness the signature to the power of attorney of his or her spouse.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

This note prescribes the form of an enduring power of attorney, the explanatory information endorsed on it and the manner in which it is to be executed.

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