
STATUTORY INSTRUMENTS

2005 No. 3116

**POWERS OF ATTORNEY,
ENGLAND AND WALES
MENTAL HEALTH, ENGLAND AND WALES**

The Enduring Powers of Attorney (Prescribed
Form) (Amendment) Regulations 2005

<i>Made</i>	- - - -	<i>8th November 2005</i>
<i>Laid before Parliament</i>		<i>10th November 2005</i>
<i>Coming into force</i>	- -	<i>5th December 2005</i>

The Lord Chancellor makes the following Regulations in exercise of the powers conferred by section 2(2) of the Enduring Powers of Attorney Act 1985(1):

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Enduring Powers of Attorney (Prescribed Form) (Amendment) Regulations 2005 and shall come into force on 5th December 2005.

(2) In these Regulations, a reference to the Schedule is a reference to the Schedule to the Enduring Powers of Attorney (Prescribed Form) Regulations 1990(2).

Amendments to the Enduring Power of Attorney (Prescribed Form) Regulations 1990

2. For the Schedule substitute the Schedule to these Regulations.

Transitional provision

3. A power executed in the form prescribed in the Schedule as though it had not been substituted by these Regulations and executed by the donor before 1st April 2007 shall be capable (whether or not seals are affixed to it) of being a valid enduring power of attorney.

(1) 1985 c. 29.
(2) S.I. 1990/1376.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Signed by authority of the Lord Chancellor

8th November 2005

Cathy Ashton
Parliamentary Under Secretary of State,
Department for Constitutional Affairs

SCHEDULE

Regulation 2

ENDURING POWER OF ATTORNEY

Part A: About using this form

1. You may choose one attorney or more than one. If you choose one attorney then you must delete everything between the square brackets on the first page of the form. If you choose more than one, you must decide whether they are able to act:

- Jointly (that is, they must all act together and cannot act separately) or
- Jointly and severally (that is, they can all act together but they can also act separately if they wish).

On the first page of the form, show what you have decided by crossing out one of the alternatives.

2. If you give your attorney(s) general power in relation to all your property and affairs, it means that they will be able to deal with your money or property and may be able to sell your house.

3. If you don't want your attorney(s) to have such wide powers, you can include any restrictions you like. For example, you can include a restriction that your attorney(s) must not act on your behalf until they have reason to believe that you are becoming mentally incapable; or a restriction as to what your attorney(s) may do. Any restrictions you choose must be written or typed where indicated on the second page of the form.

4. If you are a trustee (and please remember that co-ownership of a home involves trusteeship), you should seek legal advice if you want your attorney(s) to act as a trustee on your behalf.

5. Unless you put in a restriction preventing it your attorney(s) will be able to use any of your money or property to make any provision which you yourself might expect to make for their own needs or the needs of other people. Your attorney(s) will also be able to use your money to make gifts, but only for reasonable amounts in relation to the value of your money and property.

6. Your attorney(s) can recover the out-of-pocket expenses of acting as your attorney(s). If your attorney(s) are professional people, for example solicitors or accountants, they may be able to charge for their professional services as well. You may wish to provide expressly for remuneration of your attorney(s) (although if they are trustees they may not be allowed to accept it).

7. If your attorney(s) have reason to believe that you have become or are becoming mentally incapable of managing your affairs, your attorney(s) will have to apply to the Court of Protection for registration of this power.

8. Before applying to the Court of Protection for registration of this power, your attorney(s) must give written notice, using a special form of notice, that that is what they are going to do, to you and your nearest relatives as defined in the Enduring Powers of Attorney Act 1985. You or your relatives will be able to object if you or they disagree with registration.

9. This is a simplified explanation of what the Enduring Powers of Attorney Act 1985 and the Rules and Regulations say. If you need more guidance, you or your advisers will need to look at the Act itself and the Rules and Regulations. You can obtain details of these from the Court of Protection.

10. Note to attorney(s)
After the power has been registered you should notify the Court of Protection if the donor dies or recovers.

11. Note to Donor
Some of these explanatory notes may not apply to the form you are using if it has been adapted to suit your particular requirements.

Please do not detach these notes. They are part of the Enduring Power of Attorney.

YOU CAN CANCEL THIS POWER AT ANY TIME BEFORE IT HAS TO BE REGISTERED

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Part B: To be completed by the 'donor' (the person appointing the attorney(s))

Don't sign this form unless you understand what it means

Please read the notes in the margin which follow and which are part of the form itself.

Donor's full name and address.

I _____

of _____

Donor's date of birth.

born on _____

Attorney's full name and address.

appoint _____

of _____

See note 1 on the front of this form. If you are appointing only one attorney you should cross out everything between the square brackets. If appointing more than two attorneys please give the additional name(s) on an attached sheet.

• [and _____

of _____

Cross out the one which does not apply (see note 1 on the front of this form).

- jointly
- jointly and severally]

to be my attorney(s) for the purpose of the Enduring Power of Attorney Act 1985

Cross out the one which does not apply (see note 2 on the front of this form). Add any additional powers.

- with general authority to act on my behalf
- with authority to do the following on my behalf:

If you don't want the attorney(s) to have general power, you must give details here of what authority you are giving the attorney(s).

in relation to

- all my property and affairs
- the following property and affairs:

Cross out the one which does not apply.

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Part B: continued

Please read the notes in the margin which follow and which are part of the form itself.

If there are restrictions or conditions, insert them here; if not, cross out these words if you wish (see note 3 on the front of this form).

If this form is being signed at your direction:-

- The person signing must not be an attorney or any witness (to Parts B or C);
- You must add a statement that this form has been signed at your direction;
- A second witness is necessary (please see below).

Your signature or mark.

Date.

Someone must witness your signature.

Signature of witness.

Your attorney(s) cannot be your witness.

• Subject to the following restrictions and conditions:

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

I have read or have had read to me the notes in Part A which are part of, and explain, this form.

I understand the purpose and effect of this document and the nature and extent of the powers I am granting my attorney(s).

Signed by me as a deed _____
and delivered

on _____

in the presence of _____

Full name of witness _____

Address of witness _____

A second witness is only necessary if this form is not being signed by you personally but at your direction (for example, if a physical disability prevents you from signing).
Signature of second witness.

in the presence of _____

Full name of witness _____

Address of witness _____

YOUR ATTORNEY MUST NOW COMPLETE PART C

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Part C: To be completed by the attorney(s)

Note: 1. This form may be adapted to provide for execution by a corporation.
2. If there is more than one attorney additional sheets in the form as shown below must be added to this Part C.

Please read the notes in the margin which follow and which are part of the form itself.

Don't sign this form before the donor has signed Part B or if, in your opinion, the donor was already mentally incapable at the time of signing Part B.

If this form is being signed at your direction:-
• The person signing must not be an attorney or any witness (to Parts B or C);
• You must add a statement that this form has been signed at your direction;
• A second witness is necessary (please see below).

Signature (or mark) of attorney.

Date.

Signature of witness.

The attorney must sign the form and his signature must be witnessed. The donor may not be the witness and one attorney may not witness the signature of another.

A second witness is only necessary if this form is not being signed by you personally but at your direction (for example, if a physical disability prevents you from signing).

Signature of second witness.

I understand that I have a duty to apply to the Court for the registration of this form under the Enduring Powers of Attorney Act 1985 when the donor is or is becoming mentally incapable.

I understand that I am able to use the donor's money to make gifts, but only on specified occasions and for reasonable amounts in relation to the donor's money and property.

I also understand that I have a duty to keep proper accounts and records and produce them to the Court when requested.

I am not a minor.

Signed by me as a deed _____
and delivered

on _____

in the presence of _____

Full name of witness _____

Address of witness _____

in the presence of _____

Full name of witness _____

Address of witness _____

EXPLANATORY NOTE

(This note is not part of the Regulations)

These regulations amend the Enduring Powers of Attorney (Prescribed Form) Regulations 1990 (S.I.1990/1376) so as to substitute a new prescribed form for an Enduring Power of Attorney. The prescribed form must be used in order to make an Enduring Power of Attorney. However regulation 3 permits the continued use, before 1st April 2007, of the form which is replaced by the new prescribed form.