



# Powers of Attorney Act (Northern Ireland) 1971

## 1971 CHAPTER 33

**N.I.**

An Act to make new provision in relation to powers of attorney and the delegation by trustees of their trusts, powers and discretions. [7th December 1971]

### **1 Execution of powers of attorney. N.I.**

- (1) An instrument creating a power of attorney shall be<sup>F1</sup> executed as a deed by<sup>F1</sup> the donor of the power.

*Subs. (2) rep. by 2005 NI 7*

- (3) This section is without prejudice to any requirement in, or having effect under, any other Act as to the witnessing of instruments creating powers of attorney and does not affect the rules relating to the execution of instruments by bodies corporate.

**F1** 2005 NI 7

### **2 Abolition of deposit or filing of instruments creating powers of attorney. N.I.**

- (1) As from the commencement of this Act no instrument creating a power of attorney shall be deposited or filed at the proper office of the<sup>F2</sup> Supreme Court under section 48 of the Conveyancing Act 1881 or section 26 of the Trustee Act (Northern Ireland) 1958 .

- (2) This section does not affect any right to search for, inspect or copy, or to obtain an office copy of, any such document which has been deposited or filed as aforesaid before the commencement of this Act.

**F2** prosp. subst. by 2005 c. 4

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### **3 Powers of attorney given as security. N.I.**

- (1) Where a power of attorney is expressed to be irrevocable and is given to secure—
  - (a) a proprietary interest of the donee of the power; or
  - (b) the performance of an obligation owed to the donee,then, so long as the donee has that interest or the obligation remains undischarged, the power shall not be revoked—
  - (i) by the donor without the consent of the donee; or
  - (ii) by the death, incapacity or bankruptcy of the donor or, if the donor is a body corporate, by its winding-up or dissolution.
- (2) A power of attorney given to secure a proprietary interest may be given, and shall be deemed to have been capable always of being given, to the person entitled to the interest and persons deriving title under him to that interest, and those persons shall be duly constituted donees of the power for all purposes of the power but without prejudice to any right to appoint substitutes given by the power.
- (3) This section applies to powers of attorney whenever created.

### **4<sup>F3</sup> Protection of donee and third persons where power of attorney is revoked. N.I.**

- (1) A donee of a power of attorney who acts in pursuance of the power at a time when it has been revoked shall not, by reason of the revocation, incur any liability (either to the donor or to any other person) if at that time he did not know that the power had been revoked.
- (2) Where a power of attorney has been revoked and a person, without knowledge of the revocation, deals with the donee of the power, the transaction between them shall, in favour of that person, be as valid as if the power had then been in existence.
- (3) Where the power is expressed in the instrument creating it to be irrevocable and to be given by way of security then, unless the person dealing with the donee knows that it was not in fact given by way of security, he shall be entitled to assume that the power is incapable of revocation except by the donor acting with the consent of the donee and shall accordingly be treated for the purposes of subsection (2) as having knowledge of the revocation only if he knows that it has been revoked in that manner.
- (4) Where the interest of a purchaser depends on whether a transaction between the donee of a power of attorney and another person was valid by virtue of subsection (2), it shall be conclusively presumed in favour of the purchaser that that person did not at the material time know of the revocation of the power if—
  - (a) the transaction between that person and the donee was completed within twelve months of the date on which the power came into operation; or
  - (b) that person makes a statutory declaration, before or within three months after the completion of the purchase, that he did not at the material time know of the revocation of the power.
- (5) Without prejudice to subsection (3), for the purposes of this section knowledge of the revocation of a power of attorney includes knowledge of the occurrence of any event (such as the death of the donor) which has the effect of revoking the power.
- (6) In this section “purchaser” means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who, for valuable consideration, acquires an interest in any property; and includes also an intending purchaser.

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- (7) This section applies whenever the power of attorney was created but only to acts and transactions after the commencement of this Act.

F3 mod. by 1987 NI 16

## 5 Additional protection for transferees under stock exchange transactions. **N.I.**

- (1) Without prejudice to section 4, where—
- (a) the donee of a power of attorney executes, as transferor, an instrument transferring registered securities; and
  - (b) the instrument is executed for the purposes of a stock exchange transaction, it shall be conclusively presumed in favour of the transferee that the power had not been revoked at the date of the instrument if a statutory declaration to that effect is made by the donee of the power on or within three months after that date.
- (2) In this section “registered securities” and “stock exchange transaction” have the same meanings as in the Stock Transfer Act (Northern Ireland) 1963 .

## 6 Statutory declaration in the case of a company. **N.I.**

Where the person empowered under any provision of this Act to make a statutory declaration is a corporation aggregate the officer authorised or appointed to act for the corporation in the transaction concerned or in the execution of the power of attorney may make the statutory declaration in like manner as if that person had been the person so empowered.

## 7 Execution of instruments etc., by donee of power of attorney. **N.I.**

[<sup>F4</sup>(1) If the donee of a power of attorney is an individual, he may, if he thinks fit—

- (a) execute any instrument with his own signature, and
- (b) do any other thing in his own name,

by the authority of the donor of the power; and any instrument executed or thing done in that manner shall, subject to subsection (1A), be as effective as if executed by the donee in any manner which would constitute due execution of that instrument by the donor or, as the case may be, as if done by the donee in the name of the donor.]

[<sup>F4F4</sup>(1A) Where an instrument is executed by the donee as a deed, it shall be as effective as if executed by the donee in a manner which would constitute due execution of it as a deed by the donor only if it satisfies the requirements of paragraph (2) of Article 3 of the Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2005.]

<sup>F4</sup>(2) Where a person is authorised under a power of attorney to convey any interest in property in the name or on behalf of a corporation sole or aggregate, he may execute the conveyance as provided in subsection (1) or he may as donee of the power execute the conveyance by signing the name of the corporation in the presence of at least one witness,<sup>F4</sup> ... and such execution takes effect and is valid in like manner as if the corporation had executed the conveyance.

(3) Where a corporation aggregate is authorised under a power of attorney to convey any interest in property in the name or on behalf of any other person (including another body corporate), an officer appointed for that purpose by the board of directors, council

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or other governing body of the corporation by resolution or otherwise, may execute the deed or other instrument in the name of such other person; and where an instrument appears to be executed by an officer so appointed then, in favour of a purchaser the instrument is deemed to have been executed by an officer duly authorised.

(4) In this section “purchaser” has the meaning assigned to it by section 4(6).

(5) This section applies whenever the power of attorney was created.

F4 2005 NI 7

## 8 Delivery of power of attorney relating to unregistered land to purchaser. **N.I.**

Notwithstanding any stipulation to the contrary, a purchaser of any interest in or charge upon unregistered land is entitled to have any instrument creating a power of attorney which affects his title, or a copy thereof or of the material portions thereof, delivered to him free of expense.

## 9 Power to delegate trusts etc., by power of attorney. **N.I.**

*Subs.(1) substitutes s.26 of 1958 c.23 (NI)*

(2) The substitution effected by this section does not invalidate anything done by virtue of the said section 26 as in force at the commencement of this Act.

## 10 Effect of general power of attorney in specified form. **N.I.**

(1) Subject to subsection (2), a general power of attorney in the form set out in Schedule 1, or in a form to the like effect, but expressed to be made under this Act, shall operate to confer—

- (a) on the donee of the power; or
- (b) if there is more than one donee, on the donees acting jointly or acting jointly or severally, as the case may be,

authority to do on behalf of the donor anything which he can lawfully do by an attorney.

(2) This section does not apply to functions which the donor has as a trustee or personal representative or as a tenant for life within the meaning of the Settled Land Act 1882 or as a trustee or other person exercising the powers of a tenant for life under section 60 of the said Act.

## 11 Amendments, repeals and savings. **N.I.**

*Subs.(1) amends s.48 of 1881 c.41; subs.(2), with Schedule 2, effects repeals*

(3) Nothing in this Act shall affect the operation of sections 28 and 29 of the Interpretation Act (Northern Ireland) 1954 (which relate to the effect of repeals and of substituting provisions).

## 12 Short title and commencement. **N.I.**

(1) This Act may be cited as the Powers of Attorney Act (Northern Ireland) 1971.

(2) *Commencement*



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**Changes and effects yet to be applied to :**

- s. 4 applied (with modifications) by [2016 c. 18 \(N.I.\) s. 108\(6\)](#)