

2001 No. 825

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

**The Court of Protection (Enduring Powers of Attorney)
Rules 2001**

<i>Made - - - - -</i>	<i>6th March 2001</i>
<i>Laid before Parliament</i>	<i>9th March 2001</i>
<i>Coming into force - -</i>	<i>1st April 2001</i>

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The Lord Chancellor, in exercise of the powers conferred on him by sections 106 and 108 of the Mental Health Act 1983^(a) and with the consent of the Treasury so far as is required by section 106(5) of that Act, hereby makes the following Rules—

PART I

Preliminary

Title and commencement

1. These Rules may be cited as the Court of Protection (Enduring Powers of Attorney) Rules 2001 and shall come into force on 1st April 2001.

(a) 1983 c. 20; section 106 was applied by section 10(1)(d) of the Enduring Powers of Attorney Act 1985 (c. 29).

Application

2. Subject to the provisions of these Rules, the Court of Protection Rules 2001(a) shall apply to the proceedings under the Enduring Powers of Attorney Act 1985(b).

Interpretation

- 3.—(1) In these Rules, unless the context otherwise requires—
- expressions used in the Supreme Court Act 1981(c) shall have the same meanings as they have in that Act;
 - “the Act” means the Enduring Powers of Attorney Act 1985;
 - “the 1983 Act” means the Mental Health Act 1983;
 - “the 2001 Rules” means the Court of Protection Rules 2001;
 - “applicant” includes an objector;
 - “application” includes an objection;
 - “attended hearing” means a hearing where one or more of the parties to the proceedings have been invited to attend the court for the determination of the application;
 - “the court” means the Court of Protection;
 - “direction” means a direction or authority given under the seal of the court;
 - “enduring power of attorney” shall be construed in accordance with section 2 of the Act;
 - “entered” means entered in the register of enduring powers of attorney kept by the court;
 - “filed” means filed in the court office;
 - “hearing” means an attended or unattended hearing;
 - “judge” means the Lord Chancellor or a judge nominated under section 93(1) of the 1983 Act;
 - “Master” means the Master of the Court of Protection;
 - “nominated officer” means an officer of the court nominated under section 93(4) of the 1983 Act;
 - “order” means an order of the court under seal and includes a certificate, direction or authority of the court under seal;
 - “relative” means one of the persons referred to as relatives and entitled to receive notice under the provisions of paragraphs 1 and 2 of Schedule 1 to the Act;
 - “seal” means an official seal of the court and “sealed” shall be construed accordingly.
- (2) In these Rules—
- (a) any reference to a numbered rule or to a numbered Schedule is a reference to the rule of, or the Schedule to, these Rules so numbered in these Rules;
 - (b) any reference in a rule to a numbered paragraph is a reference to the paragraph so numbered in the rule in which the reference occurs; and
 - (c) a form referred to by a letter alone means the form so designated in Schedule 1 or a form to the same effect with such variations as the circumstances may require and the court may approve and in both cases shall include a Welsh translation of the form.

Exercise of court’s functions

4. Where any discretion, power or function is (in whatever words) expressed by these Rules to be exercisable by the court then, subject to the provisions of the Act, that discretion, power or other function may be exercised—
- (a) by a judge;
 - (b) by the Master;
 - (c) to the extent to which he is authorised to exercise it under section 94 of the 1983 Act, by a nominated officer.

(a) S.I. 2001/824.
(b) 1985 c. 29.
(c) 1981 c. 54.

Computation of time

5.—(1) Where a period of time fixed by the Act or by these Rules or by a judgment, order or direction for doing any act expires on a day on which the court office is closed and for that reason cannot be done on that day, the act shall be done in time if done on the next day on which the office is open.

(2) Where the act is required to be done within a specified period after or from a specified date, the period begins immediately after that date.

(3) Where any period of time, fixed as mentioned in paragraph (1), is three days or less, any day on which the court office is closed shall not be included in the computation of that period.

PART II

Applications

Notice of intention to register

6.—(1) Notice of the attorney's intention to apply to register an enduring power of attorney shall be given in Form EP1 to the donor and to those relatives entitled to receive such notice and to any co-attorney, all such notices to be served within fourteen days of each other.

(2) An application to dispense with such notice shall be made in Form EP3 before any application for registration is made and shall be accompanied by the original power of attorney.

Time limits

7. An application to register an enduring power of attorney shall be made in Form EP2 and shall be lodged with the court office not later than 10 days after the date on which—

- (a) notice has been given to the donor and every relative entitled to receive notice and every co-attorney; or
- (b) leave has been given to dispense with notice

whichever may be the later.

Form of application

8.—(1) Subject to the provisions of rules 6 and 7 and to the following provisions of this rule, an application may be made by letter unless the court directs that it should be formal, in which case it shall be made in Form EP3.

(2) Any application made by letter to the court, other than an objection to registration, shall include the name and address of the applicant, the name of the donor if he is not the applicant, the form of relief or determination required and the grounds for the application.

Objections to registration

9.—(1) Any objection to registration shall be made in writing and shall set out—

- (a) the name and address of the objector;
- (b) the name and address of the donor if he is not the objector;
- (c) any relationship of the objector to the donor;
- (d) the name and address of the attorney; and
- (e) the grounds for objecting to registration of the enduring power of attorney.

(2) Any objection to registration received by the court on or after the date of registration shall be treated by the court as an application to cancel the registration.

Exercise of the court's powers and functions under the provisions of the 1985 Act

10.—(1) This rule shall apply to applications made to the court—

(a) for relief or for determination of any question under sections 1(1)(b), 4(5), 5, 6(3), 6(4), 8(2), 8(3), 8(4) or 11(5)(c) of the Act; or

(b) under paragraphs 2(1), 3(2), 4(2) or 7(1) of Schedule 1 to the Act,

which are not made simultaneously with an application for registration of an enduring power of attorney.

(2) On receipt of an application, the court may decide either that no hearing shall be held, in which case the application shall be dealt with by written representations, or it may fix an appointment for directions or for the application to be heard.

(3) The court may at any time, on application or of its own motion, give such direction as it thinks proper with regard to any matter arising in the course of an application.

(4) Notification of an appointment for directions or a hearing shall be given by the applicant to the attorney (if he is not the applicant), to any objector and to any other person directed by the court to be notified.

(5) The applicant, the attorney (if he is not the applicant) and any person given notice of the hearing may attend or be represented.

(6) If it appears to the court that any order for relief should be made or any question determined, the court may make such order or give such directions as it thinks fit, of its own motion.

(7) Where an attorney seeks to disclaim an enduring power of attorney pursuant to sections 4(6) or 7(1)(b) of the Act, the disclaimer shall not take effect earlier than the day on which the notice of disclaimer is received at the court.

Consolidation of proceedings

11. The court may consolidate any application for registration or relief or any objection to registration if it considers that the proceedings may be dealt with more conveniently together.

Registration of an enduring power of attorney

12.—(1) Where there is no objection to the registration of an enduring power of attorney or any objection has been withdrawn or dismissed, the enduring power of attorney shall be registered and sealed by the court.

(2) The court shall retain a copy of the registered enduring power of attorney and shall return the original instrument to the applicant attorney.

(3) Any alterations which appear on the face of the instrument when an application for registration is made shall be sealed.

(4) Any qualification to registration imposed by reason of section 11(6) or (7) of the Act shall be noted on the register and on the instrument and sealed.

(5) The date of registration shall be the date stamped by the court on the instrument at the time of its registration.

Searches of the register and copies of registered enduring powers of attorney

13.—(1) On payment of the appropriate fee, any person shall be entitled to request the court in Form EP4 to search the register and to state whether an enduring power of attorney has been registered and the court shall so state in Form EP5.

(2) The court may supply a person with an office copy of a registered enduring power of attorney if it is satisfied that he has a good reason for requesting a copy and that it is not reasonably practicable to obtain a copy from the attorney.

(3) For the purposes of this rule, an office copy is a photocopy or a facsimile copy of an enduring power of attorney, marked as an office copy and sealed.

(4) An office copy of an enduring power of attorney need not contain the explanatory information endorsed on the original power.

PART III

Hearings

Notice of hearing

14.—(1) Except where these rules otherwise provide or the court otherwise directs, the following minimum periods of notice of a hearing shall be given by the applicant—

(a) ten clear days in the case of—

(i) an application to dispense with notice to the donor;

(ii) an application to dispose of the donor's property prior to registration; and

(iii) an objection to registration of an enduring power of attorney; and

(b) seven clear days in the case of any other application.

(2) Unless the court otherwise directs, notice of a hearing shall be given to the attorney, the donor, every relative, any co-attorney and to such other persons who appear to the court to be interested as the court may specify.

(3) The court may extend or abridge the time limited by these Rules or any order or direction for doing any act upon such terms and notwithstanding in the case of an extension that the time so limited has expired.

(4) For the purpose of this rule, notice of a hearing is given if the applicant sends a copy of the application, endorsed by the court with the hearing date, to the person concerned.

Mode of giving documents

15.—(1) Any document required by these Rules to be given to the donor shall be given to him personally.

(2) Except where these Rules otherwise provide, any document required by these Rules to be given to any person shall be given to him by—

(a) sending it to him by first class post or through a document exchange; or

(b) transmitting it to him by fax or other electronic means.

Giving documents to a solicitor

16. Where a solicitor acting for the person to be given any document, other than the donor, endorses on that document, or on a copy of it, a statement that he accepts the document on behalf of that person, the document shall be deemed to have been duly given to that person and to have been received on the date that the endorsement was made.

Alternative method of giving documents

17. Where it appears to the court that it is impracticable for any document to be given to a person in accordance with rule 15(2), the court may give such directions for the purpose of bringing the document to the notice of the person to whom it is addressed as it thinks fit.

Use of evidence in subsequent proceedings

18. Except where the court otherwise directs, evidence which has been used in any proceedings relating to a donor may be used at any subsequent stage of those proceedings or in any other proceedings before the court.

Copies of documents in court

19.—(1) Any person who has filed an affidavit or other document shall, unless the court otherwise directs, be entitled on request to be supplied with a copy of it.

(2) An attorney or his solicitor may have a search made for and may inspect and request a copy of any document filed in proceedings relating to the enduring power of attorney under which the attorney has been appointed.

(3) Subject to paragraphs (1) and (2), no documents filed in the court shall be open to inspection without the leave of the court and no copy of any such document or an extract from it shall be taken by or issued to any person without such leave.

Summoning of witnesses

20. Any witness summons required to be issued in any proceedings under these Rules shall be in Form EP6.

Leave to bring an application

21. Any person other than a person who has been served with a notice of intention to register an enduring power of attorney shall apply to the court for leave to make an application for relief specified in the Act.

Notification of decision

22. All persons to whom notice is to be given under rule 10(4) shall be notified by the applicant of the court's decision and shall also be sent by the applicant a copy of any order made or direction given.

PART IV

Reviews and Appeals

Review of decision not made on an attended hearing

23.—(1) Any person who is aggrieved by a decision of the court that was made without an attended hearing may apply to the court within fourteen days of the date on which the decision was given to have the decision reviewed by the court.

(2) On considering an application for review, the court may either confirm or revoke the previous decision or give any other order or decision which it thinks fit.

(3) Any person aggrieved by any order or decision of the court made on considering an application for review may apply to the court for an attended hearing.

Appeal from decision made on an attended hearing

24.—(1) Any person aggrieved by an order or decision of the court made on an attended hearing, may, within fourteen days from the date of entry of the order or as the case may be, from the date of the decision, appeal to a nominated judge.

(2) The appellant shall within fourteen days—

(a) serve notice of appeal in form EP7 on every person who is directly affected by the decision and on any other person whom the court may direct; and

(b) lodge a copy of the notice at the court.

(3) The court shall fix a time and place at which the appeal is to be heard and shall cause notice of the time and place to be sent to the appellant, who shall immediately send notice of it to every person who has been served with notice of the appeal.

(4) No evidence further to that given at the hearing shall be filed in support of, or in opposition to, the appeal without leave of the court.

PART V

Cancellation of Registration

Cancellation of a registered power of attorney

25.—(1) Where the court is satisfied that one of the circumstances listed in section 8(4) of the Act applies, it shall cancel the registration of the enduring power of attorney in question and send a notice to the attorney requiring him to deliver the original instrument to the court.

(2) Where the court—

- (a) receives a notice of disclaimer under section 7(1)(b) of the Act;
- (b) is satisfied that the enduring power of attorney has been revoked by the death or bankruptcy of the donor; or
- (c) is satisfied that the enduring power of attorney has been revoked by the death or bankruptcy of the attorney or, if the attorney is a body corporate, its winding up or dissolution;

it shall cancel the registration of the enduring power of attorney and send notice to the attorney, or, (where appropriate) to his personal representative or to the liquidator or receiver of a body corporate, requiring him or them to deliver the original instrument to the court.

(3) Where the instrument creating an enduring power of attorney has been lost or destroyed, the attorney shall give to the court written details of that date of such loss or destruction and of the circumstances in which the loss or destruction occurred.

(4) Where registration has been cancelled for any reason other than that set out in section 8(4)(c) of the Act, the court shall mark the power of attorney as cancelled.

(5) Any notices issued by the court under this rule may contain a warning that failure to comply with the notice may lead to punishment for contempt of court.

PART VI

Fees

Schedule of fees

26.—(1) Fees shall be payable in accordance with the provisions of Schedule 2.

(2) The fees specified in column 2 of Schedule 2 shall apply in respect of the corresponding event referred to in column 1.

(3) The person liable to pay the fee for the registration of a power of attorney shall, unless the court otherwise directs, make the payment out of the assets of the donor.

PART VII

Transitional Provisions

27.—(1) Where any matter is pending before the Public Trustee before the coming into force of these Rules which by virtue of these Rules relates to a function to be exercised by the court, the court shall deal with the matter in accordance with these Rules.

(2) Where any review or appeal is pending before the Court or the Public Trustee before the coming into force of these Rules, it shall be dealt with in accordance with the provisions of these Rules.

PART VIII

Revocation

Revocation of previous Rules

28. The Court of Protection (Enduring Powers of Attorney) Rules 1994^(a) and the Court of Protection (Enduring Powers of Attorney) (Amendment) Rules 1999^(b) are hereby revoked.

Dated 1st March 2001

Irvine of Lairg, C

We consent,

Dated 6th March 2001

Jim Dowd
Greg Pope
Two of the Lord Commissioners of
Her Majesty's Treasury

(a) S.I. 1994/3047.
(b) S.I. 1999/2505.

SCHEDULE 1

Form EP1

**Court of Protection
Enduring Powers of Attorney Act**

Notice of intention to apply for registration

To.....

Of.....

This form may be adapted for use by three or more attorneys.

Give the name and address of the donor.

It will be necessary for you to produce evidence in support of your objection. If evidence is available please send it with your objection, the attorney(s) will be given an opportunity to respond to your objection.

The grounds upon which you can object are limited and are shown at 2 overleaf.

TAKE NOTICE THAT

I.....

of.....

and I.....

of.....

The attorney(s) of.....

.....

of.....

.....

intend to apply to the Court of Protection for registration of the enduring power of attorney appointing me (us) attorney(s) and made by the donor on the.....

1. If you wish to object to the proposed registration you have 4 weeks from the day on which this notice is given to you to do so in writing. Any objections should be sent to the Court of Protection and should contain the following details:

- Your name and address
- Any relationship to the donor
- If you are not the donor, the name and address of the donor
- The name and address of the attorney
- The grounds for objecting to the registration of the enduring power

Note. The instrument means the enduring power of attorney made by the donor which it is sought to register.

The attorney(s) does not have to be a relative. Relatives are not entitled to know of the existence of the enduring power of attorney prior to being given this notice.

Note. This is addressed only to the donor

Note. This notice should be signed by every one of the attorneys who are applying to register the enduring power of attorney

2. The grounds on which you may object are:
- That the power purported to have been created by the instrument is not valid as an enduring power of attorney.
 - That the power created by the instrument no longer subsists.
 - That the application is premature because the donor is not yet becoming mentally incapable.
 - That fraud or undue pressure was used to induce the donor to make the power.
 - That the attorney is unsuitable to be the donor's attorney (having regard to all the circumstances and in particular the attorney's relationship to or connection with the donor).

3. You are informed that while the enduring power of attorney remains registered, you will not be able to revoke it until the Court of Protection confirms the revocation.

Signed.....Dated.....
Signed.....Dated.....

**Court of Protection
Enduring Powers of Attorney Act 1985**

Application for registration

Note. Give the full name and present address of the donor. If the donor's address on the enduring power of attorney is different give that one too.

The donor
Name.....
Address.....
.....
Address on the Enduring Power of Attorney (if different).....
.....

Note. Give the full name(s) and details of the attorney(s)

The attorney(s)
Name.....
Address.....
Age..... Occupation.....
Relationship to donor (if any).....
Name.....
Address.....
Age..... Occupation.....
Relationship to donor (if any).....

This form may be adapted for use by three or more attorneys

The date is the date upon which the donor signed the enduring power of attorney

I (we) the attorney(s) apply to register the enduring power of attorney made by the donor under the above Act on the.....
.....20..... the original of which accompanies this application.
I (we) have reason to believe that the donor is or is becoming mentally incapable.

Notice must be personally given. It should be made clear if someone other than the attorney(s) gives the notice.

I (we) have given notice in the prescribed form to the following:
▪ The donor personally at.....
.....
on the.....20.....

If there are no relatives entitled to notice please say so

▪ The following relatives of the donor at the addresses below on the dates given:

<u>Names</u>	<u>Relationship</u>	<u>Addresses</u>	<u>Date</u>

Note. Cross out this section if it does not apply

▪ The Co-Attorney(s).....
 At.....
 On.....

A remittance for the registration fee accompanies this application.

Note. The application should be signed by all the attorneys who are making the application.

I (we) certify that the above information is correct and that to the best of my (our) knowledge and belief I (we) have complied with the provisions of the Enduring Powers of Attorney Act 1985 and of all the Rules and Regulations under it.

Signed.....Dated.....

Signed.....Dated.....

This must not pre-date the date(s) when the notices were given

Address to which correspondence relating to the application is to be sent if different to that of the first-named attorney making this application.....
.....

**Court of Protection
Enduring Powers of Attorney Act 1985**

In the matter of a power given by

If this application is being made prior to an application for registration the original enduring power of attorney should accompany this application.

.....(a donor)
to.....(attorney)
and.....(attorney)

General Form of Application

Note. Give details of the order or directions that you are seeking

I.....
of.....
and I.....

State under which subsection of the Enduring Powers of Attorney Act 1985 or which rule of the Court of Protection (Enduring Powers of Attorney) Rules 2001 this application is made

Apply for an order or directions that.....
.....
.....
.....
.....

Note. Give details of the grounds on which you are seeking the order or directions

And for any other directions which are necessary as a result of my/our application.

Evidence in support should accompany this application.

The grounds on which I/we make this application are:
.....
.....
.....

Note. The application should be signed by all the applicants or their solicitors

Signed.....Dated.....
Signed.....Dated.....
Address where notices should be sent.....
.....

**Court of Protection
Enduring Powers of Attorney Act 1985**

Application for search/office copy

Note. Give the full name (if known) of the person who is the subject of your enquiry

I (we).....
of.....
.....
apply to be informed by the Court of Protection whether an enduring power of attorney has been registered (or whether registration of an enduring power of attorney is pending) in the
Name of.....
Alternative name.....
Address (if known).....
.....
Alternative address.....
.....

I (we) enclose the prescribed fee of £.....

Note. Please fill in if applicable.

Please supply me (us) with an office copy of the power.

- My/our reasons for requesting a copy from the Court of Protection are.....
.....
.....
- It is not reasonably practicable to obtain a copy from the attorney because.....
.....
.....

Signed.....
Dated.....

**Court of Protection
Enduring Powers of Attorney Act 1985**

Certificate of result of search

Your reference.....

In reply to your enquiry made on.....

The following enduring power of attorney is registered against the donor's name you give:

Donor's name.....

Attorney's name.....

Power made by donor on.....

Registered on.....

There is an application pending for registration of the following enduring power of attorney:

Donor's name.....

Attorney's name.....

Power made by donor on.....

There was an enduring power of attorney registered against the donor's name you give but the registration has been cancelled:

Donor's name.....

Attorney's name.....

Power made by donor on.....

Registered on.....

Date cancelled.....

There is no enduring power of attorney registered against the donor's name (.....) you give.

Signed.....

Dated.....

**Court of Protection
Enduring Powers of Attorney Act 1985**

In the matter of a power given by

.....a donor

Witness summons

To.....
of.....
.....
you are ordered to attend before
.....
at.....
.....
on the.....day of.....20.....
at.....o'clock to:

- Give evidence in this matter
- Bring with you and produce at the hearing the documents listed below:
.....
.....
.....
.....
.....
.....

Dated.....

This summons was issued at the request of
.....
Solicitors for the.....
of.....
.....

**Court of Protection
Enduring Powers of Attorney Act 1985**

In the matter of.....
.....a donor

Notice of appeal

Note. If you are appealing against only part of the order/decision write down which part

I (we).....
of.....

Wish to appeal to a judge against the order/decision of the Court made in this matter on the.....20.....

Note. Tick the box that applies.

I (we) intend to ask that the order/decision may be

- discharged
- varied in the following way:

Note. Give details of the new order/decision you are asking to be made.

.....
.....
.....

Note. The form should be sent to the Court of Protection.

Signed.....

Dated.....

Solicitors for the appellant(s).....

of.....

To the appellant(s): You will be sent notice of the time, date and place of this appeal.

SCHEDULE 2

Rule 26

FEES

<i>Column 1</i>	<i>Column 2</i>
<i>Item</i>	<i>Fee</i>
<i>Registration Fee</i>	
1. On lodging an application for registration of an enduring power of attorney.	£75.00
<i>Search Fee</i>	
2. On application for a search of the register.	£25.00

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules replace the Court of Protection (Enduring Powers of Attorney) Rules 1994 (as amended).

The rules are supplemental to the Court of Protection Rules 2001 (S.I. 2001/824) and regulate the procedure in respect of applications under the Enduring Powers of Attorney Act 1985. The principal change made by these Rules is to provide that such applications are to be made to the Court of Protection (“the court”) whereas the previous rules provided for the division of functions between the court and the Public Trustee.

The rules continue to contain provisions which—

- (a) provide that any function under them expressed to be exercisable by the court may be exercised by a judge, the Master of the court or, in certain case, by an officer of the court (rule 4);
- (b) prescribe the form of notice to be given by an attorney of his intention to apply to the court to register an enduring power of attorney (rule 6) and the form of such application (rule 8);
- (c) specify the information to be set out in an objection to the registration of an enduring power of attorney (rule 9);
- (d) provide for searches to be made of the register of enduring powers of attorney (rule 13);
- (e) provide for reviews of, and appeals from, decisions of the court (rules 23 and 24);
- (f) provide for the cancellation by the court of the registration of an enduring power of attorney in certain circumstances (rule 25); and
- (g) specify the fees payable in connection with an application for the registration of an enduring power of attorney and an application for a search of the register and which remain unchanged at £75 and £25 respectively (Schedule 2).

£3.50

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