

THE ENDURING POWERS OF ATTORNEY (PRESCRIBED  
FORM) REGULATIONS 1987

Government Circular No. 355/87

THE POWERS OF ATTORNEY ACT 1987

In exercise of the powers conferred on the Clerk of the Rolls by section 2(2) of the Powers of Attorney Act 1987 (a), and of all other enabling powers, the following Regulations are hereby made:

**1 Citation, commencement and interpretation**

(1) These Regulations may be cited as the Enduring Powers of Attorney (Prescribed Form) Regulations 1987 and, subject to section 2(4) of the Act, shall come into operation on the 1st January 1988.

(2) In these Regulations 'the Act' means the Powers of Attorney Act 1987.

**2 Prescribed form of enduring power of attorney**

(1) Subject to paragraphs [(2) to (3A)], an enduring power of attorney must be in the form set out in the Schedule, and must include-

- (a) all the explanatory information headed 'About using this form' in Part A of the Schedule, and
- (b) all the relevant marginal notes to Parts B and C of the Schedule.

It may also include such additions or restrictions as the donor may decide, and, in the case of a power executed before 1<sup>st</sup> October 2007 may include such provisions as are necessary to render the power a valid enduring power of attorney for the purposes of the Enduring Powers of Attorney Act 1985 (b) (an Act of Parliament).

(2) In completing the form of enduring power of attorney, the donor shall exclude (either by omission or by deletion) one and only one of any pair of alternatives; and when one of a pair of alternatives is omitted or deleted, the corresponding marginal note may be omitted or deleted

(3) The form of execution by an attorney of an enduring power of attorney may be adapted to provide for sealing by a trust corporation with its common seal.

[(3A) An enduring power of attorney executed before the 1<sup>st</sup> October 2007 may, instead of complying with paragraphs (1) to (3), be in the appropriate form prescribed in England and Wales under the said Act of 1985, that is-

- (a) in the case of a power executed before the 1<sup>st</sup> November 1987, the form set out in the Enduring Powers of Attorney (Prescribed Form) Regulations 1986 (c);
- (b) in the case of a power executed on or after the 1<sup>st</sup> November 1987 but before the 31<sup>st</sup> July 1990 but before the 5<sup>th</sup> December 2005 the form set out in the Enduring Powers of Attorney (Prescribed Form) Regulations 1987 (d);

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- (C) in the case of a power executed on or after the 31<sup>st</sup> July 1990, the form set out in **the Enduring Powers of Attorney (Prescribed Form) Regulations 1990 (e)**;
- “(d) in the case of a power executed on or after the 5<sup>th</sup> December 2005 but before the 1<sup>st</sup> October 2007, the form set out in the Enduring Powers of Attorney (Prescribed Form) (Amendment) Regulations 2005;”

Executed in accordance with, and incorporating all the explanatory information and relevant marginal notes required by, the regulations in question.]

- (4) Subject to paragraphs (1), (2) and (3), an enduring power of attorney which seeks to exclude any provision of these Regulations is not a valid enduring power of attorney.

[**NOTE:** Regulation 2: paragraph (1) amended, and paragraph (3A) inserted, by the Enduring Powers of Attorney (Prescribed Form) (Amendment) Regulations 1995 (SD 166/95).]

### **3. Execution**

The following rules shall apply to the execution of an instrument creating an enduring power of attorney

- (a) The instrument 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 shall give his full name and address.
- (b) The donor and an attorney shall not witness the signature of each other nor one attorney the signature of another.
- (c) Where more than one attorney is appointed and they are to act jointly and severally, then at least one of the attorneys so appointed must execute the instrument for it to take effect as an enduring power of attorney, but only those attorneys who have executed the instrument shall be able to act under the enduring power of attorney in the event of the donor’s mental incapacity or of the registration of the power, whichever first occurs.

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**SCHEDULE**

**Part A: About using this form**

1. You may choose one attorney or more than one. If you choose more than one, you must decide whether they are to be 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 that can also act separately, if they wish).

On the form, at the place marked 1, 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 do not 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 that your attorney(s) may not sell your house. Any restrictions you choose must be written or typed on the form in the place marked 2.

4. Unless you put in a restriction preventing it your attorney(s) will be able to use any of your money or property to benefit themselves or other people by doing what you yourself might be expected to do to provide for their needs. 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.

5. 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 advocates or accountants, they may be able to charge for their professional services as well.

6. If your attorney(s) have reason in the future to believe that you have become or are becoming mentally incapable of managing your affairs, your attorney(s) will have to apply to the General Registry for the registration of the power.

7. Before applying to the General Registry for registration of this power, your attorney(s) must give written notice that that is what they are going to do, to you and your nearest relatives as defined in the Powers of Attorney Act 1987. You or your relatives will be able to object if you or they disagree with registration.

8. This is a simplified explanation of what the Powers of Attorney Act 1987 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. The Rules are the Mental Health (Powers of Attorney) Rules 1987 (GC 354/87). The Regulations are the Enduring Powers of Attorney (Prescribed Form) Regulations 1987 (GC355/87).

9. Note to Attorney(s): After the power has been registered the attorney(s) should notify the General Registry if the donor dies or recovers.

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))**

**Do not sign this form unless you understand what it means.**

Please read the notes in the margin	I  of
Donor's name and address	
Donor's date of birth	born on  appoint
Attorney(s) name(s) and address(es)  of	of
See note 1 on the front of the form. If you are appointing only one attorney you should cross out everything between the square brackets.	*[and of  1. *jointly  *jointly and severally]  to be my attorney for the purpose of the Powers of Attorney Act 1987
Cross out the one which does not apply (see note 2 on the front of this form)	*with general authority to act on my behalf  * with authority to do the following on my behalf:
If you do not want the attorney(s) to have general power, you must give details here of what authority you are giving the attorney.	In relation to

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<p>Cross out the one which does not apply</p>	<p>*all my property and affairs</p> <p>*the following property and affairs:</p>
<p>If there are restrictions or conditions, insert them here; if not, cross out these words (see note 3 of this form)</p>	<p>2. *subject to the following restrictions and conditions</p> <p><b>I intend that this power shall continue even if I become mentally incapable</b></p> <p>I have read or have had read to me the notes in Part A which are part of, and explain, this form.</p>
<p>Your signature</p>	<p>Signed and delivered by me</p>
<p>Date</p>	<p>on</p>
<p>Someone must witness your signature</p>	<p>In the presence of:</p>
<p>Signature of witness</p>	
<p>Your attorney(s) cannot be your witness. If you are married it is not advisable for your husband or wife to be your witness</p>	<p>Full name of witness</p> <p>Address of witness</p>

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

NOTE: This form may be adapted to provide for sealing by a corporation with its common seal.

**If there are more than two attorneys attach an additional Part C.**

Don's sign this form before the donor has signed Part B	<p>I understand that I have a duty to apply to the General Registry for the registration of this form under The Powers of Attorney Act 1987 when the donor is becoming or has become mentally incapable</p> <p>I also understand my limited power to use the donor's property to benefit persons other than the donor. I am not a minor.</p>
Signature of attorney	Signed and delivered by me
Date	on
Each attorney must sign the form and each signature must be witnessed	<p>In the presence of</p> <p>Full name of witness</p>
The donor may not be the witness and one attorney may not witness the signature of the other	Address of witness
To be completed only if there is a second attorney	<p>I understand that I have a duty to apply to the General Registry for the registration of this form under the Powers of Attorney Act 1987 when the donor is becoming or has become mentally incapable</p> <p>I also understand my limited power to use the donor's property to benefit persons other than the donor</p> <p>I am not a minor.</p>
Signature of attorney	Signed and delivered by me
Date	on

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Each attorney must sign the form and each signature must be witnessed	In the presence of:  Full name of witness
The donor may not be the witness and one attorney may not witness the signature of the other	Address of witness