



**Isle of Man**

*Ellan Vannin*

**AT 5 of 1987**

**POWERS OF ATTORNEY ACT 1987**





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## POWERS OF ATTORNEY ACT 1987

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**Isle of Man***Ellan Vannin*

## POWERS OF ATTORNEY ACT 1987

|                               |                        |
|-------------------------------|------------------------|
| <i>Received Royal Assent:</i> | <i>10 August 1987</i>  |
| <i>Passed:</i>                | <i>20 October 1987</i> |
| <i>Commenced</i>              | <i>1 January 1988</i>  |

**AN ACT** to enable powers of attorney to be created which will survive any subsequent mental incapacity of the donor and to make provision in connection with such powers.

### ENDURING POWERS OF ATTORNEY

#### **1 Enduring power of attorney to survive mental incapacity of donor**

[P1985/29/1]

- (1) Where an individual creates a power of attorney which is an enduring power within the meaning of this Act then —
  - (a) the power shall not be revoked by any subsequent mental incapacity of his; but
  - (b) upon such incapacity supervening the donee of the power may not do anything under the authority of the power except as provided by subsection (2) or as directed or authorised by the court under section 5, unless or, as the case may be, until the instrument creating the power is registered under section 6; and
  - (c) section 4 of the *Powers of Attorney Act 1983* (protection of donee and third persons) so far as applicable shall apply while paragraph (b) operates to suspend the donee's authority to act under the power as if the power had been revoked by the donor's mental incapacity.
- (2) Notwithstanding subsection (1)(b), where the attorney has made an application for registration of the instrument then, until the application has been initially determined, the attorney may take action under the power —
  - (a) to maintain the donor or prevent loss to his estate; or

- (b) to maintain himself or other persons in so far as section 3(4) permits him to do so.
- (3) Where the attorney purports to act as provided by subsection (2) then, in favour of a person who deals with him without knowledge that the attorney is acting otherwise than in accordance with subsection (2)(a) or (b), the transaction between them shall be as valid as if the attorney were acting in accordance with subsection (2)(a) or (b).

## 2 Characteristics of an enduring power

[P1985/29/2]

- (1) Subject to subsections (7) and (9) and section 11, a power of attorney is an enduring power within the meaning of this Act if the instrument which creates the power —
  - (a) is in the prescribed form; and
  - (b) was executed in the prescribed manner by the donor and the attorney; and
  - (c) incorporated at the time of execution by the donor the prescribed explanatory information.
- (2) The Clerk of the Rolls shall make regulations as to the form and execution of instruments creating enduring powers and the regulations shall contain such provisions as appear to him to be appropriate for securing —
  - (a) that no document is used to create an enduring power which does not incorporate such information explaining the general effect of creating or accepting the power as may be prescribed; and
  - (b) that such instruments include statements to the following effect —
    - (i) by the donor, that he intends the power to continue in spite of any supervening mental incapacity of his;
    - (ii) by the donor, that he read or had read to him the information explaining the effect of creating the power;
    - (iii) by the attorney, that he understands the duty of registration imposed by this Act.
- (3) Regulations under subsection (2) —
  - (a) may include different provision for cases where more than one attorney is to be appointed by the instrument than for cases where only one attorney is to be appointed; and
  - (b) may, if they amend or revoke any regulations previously made under that subsection, include saving and transitional provisions.
- (4) Regulations under subsection (2) shall not have effect unless they are approved by Tynwald.

- (5) An instrument in the prescribed form purporting to have been executed in the prescribed manner shall be taken, in the absence of evidence to the contrary, to be a document which incorporated at the time of execution by the donor the prescribed explanatory information.
- (6) Where an instrument differs in an immaterial respect in form or mode of expression from the prescribed form the instrument shall be treated as sufficient in point of form and expression.
- (7) A power of attorney cannot be an enduring power unless, when he executes the instrument creating it, the attorney is —
  - (a) an individual who has attained 18 years and is not bankrupt; or
  - (b) a trust corporation.
- (8) .....<sup>1</sup>
- (9) A power of attorney which gives the attorney a right to appoint a substitute or successor cannot be an enduring power.
- (10) An enduring power shall be revoked by the bankruptcy of the attorney whatever the circumstances of the bankruptcy.
- (11) An enduring power shall be revoked on the exercise by the judge of any of his powers under Part 7 of the *Mental Health Act 1998* if, but only if, the judge so directs.<sup>2</sup>
- (12) No disclaimer of an enduring power, whether by deed or otherwise, shall be valid unless and until the attorney gives notice of it to the donor or, where section 4(6) or 7(1) applies, to the Chief Registrar.
- (13) In this section “prescribed” means prescribed under subsection (2).

### 3 Scope of authority etc of attorney under enduring power

[P1985/29/3]

- (1) An enduring power may confer general authority (as defined in subsection (2)) on the attorney to act on the donor’s behalf in relation to all or a specified part of the property and affairs of the donor or may confer on him authority to do specified things on the donor’s behalf and the authority may, in either case, be conferred subject to conditions and restrictions.
- (2) Where an instrument is expressed to confer general authority on the attorney it operates to confer, subject to the restriction imposed by subsection (5) and to any conditions or restrictions contained in the instrument, authority to do on behalf of the donor anything which the donor can lawfully do by an attorney.
- (3) .....<sup>3</sup>
- (4) Subject to any conditions or restrictions contained in the instrument, an attorney under an enduring power, whether general or limited, may

(without obtaining any consent) act under the power so as to benefit himself or other persons than the donor to the following extent but no further, that is to say —

- (a) he may so act in relation to himself or in relation to any other person if the donor might be expected to provide for his or that person's needs respectively; and
  - (b) he may do whatever the donor might be expected to do to meet those needs.
- (5) Without prejudice to subsection (4) but subject to any conditions or restrictions contained in the instrument, an attorney under an enduring power, whether general or limited, may (without obtaining any consent) dispose of the property of the donor by way of gift to the following extent but no further, that is to say —
- (a) he may make gifts of a seasonal nature or at a time, or on an anniversary, of a birth, marriage or the formation of a civil partnership, to persons (including himself) who are related to or connected with the donor, and<sup>4</sup>

[Ed. note: Para 80 of the *Civil Partnership Act 2011* Sch 14 provides as follows: "Paragraphs 78 and 79 apply in relation to the exercise of powers under enduring powers of attorney created before the passing of this Act [15/3/2011] as well as in relation to those created on or after its passing.". The amendment to para (a) above was effected by para 78 of the *Civil Partnership Act 2011* Sch 14.]

- (b) he may make gifts to any charity to whom the donor made or might be expected to make gifts,  
provided that the value of each such gift is not unreasonable having regard to all the circumstances and in particular the size of the donor's estate.

## ACTION ON ACTUAL OR IMPENDING INCAPACITY OF DONOR

### 4 Duties of attorney in event of actual or impending incapacity of donor

[P1985/29/4]

- (1) If the attorney under an enduring power has reason to believe that the donor is or is becoming mentally incapable, subsections (2) to (6) shall apply.
- (2) The attorney shall, as soon as practicable, make an application to the judge for the registration of the instrument creating the power.
- (3) Before making an application for registration the attorney shall comply with the provisions as to notice set out in Schedule 1.

- (4) An application for registration shall be made in the prescribed form and shall contain such statements as may be prescribed.
- (5) The attorney may, before making an application for the registration of the instrument, refer to the judge for his determination any question as to the validity of the power, and he shall comply with any direction given to him by the judge on that determination.
- (6) No disclaimer of the power shall be valid unless and until the attorney gives notice of it to the Chief Registrar.
- (7) Any person who, in an application for registration, makes a statement which he knows to be false in a material particular shall be liable —
  - (a) on conviction on information, to imprisonment for a term not exceeding 2 years or to a fine, or both; and
  - (b) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding £5,000, or both.
- (8) In this section and Schedule 1 “**prescribed**” means prescribed by rules.

## 5 Functions of court prior to registration

[P1985/29/5]

Where the judge has reason to believe that the donor of an enduring power may be, or may be becoming, mentally incapable, and the judge is of the opinion that it is necessary, before the instrument creating the power is registered, to exercise any power with respect to the power of attorney appointed to act under it which would become exercisable under section 8(2) on its registration, the judge may exercise that power under this section and may do so whether the attorney has or has not made an application to the judge for the registration of the instrument.

## 6 Functions of court on application for registration

[P1985/29/6]

- (1) The Chief Registrar shall maintain in accordance with rules a register of enduring powers of attorney, in which there shall be entered such particulars as may be prescribed by rules of every instrument ordered by the judge to be registered under this section, and shall file in the General Registry a copy of every such instrument.
- (2) In any case where —
  - (a) an application for registration is made in accordance with section 4(3) and (4), and
  - (b) neither subsection (3) nor subsection (5) applies,the judge shall order that the instrument to which the application relates be registered.

- (3) Where it appears to the judge that there is in force under Part 7 of the *Mental Health Act 1998* an order appointing a receiver for the donor but the power has not also been revoked then, unless he directs otherwise, the judge shall not exercise or further exercise his functions under this section but shall refuse the application for registration.<sup>5</sup>
- (4) Where it appears from an application for registration that notice of it has not been given under Schedule 1 to some person entitled to receive it (other than a person in respect of whom the attorney has been dispensed or is otherwise exempt from the requirement to give notice) the judge shall direct that the application be treated for the purposes of this Act as having been made in accordance with section 4(3), if the judge is satisfied that, as regards each such person —
- (a) it was undesirable or impracticable for the attorney to give him notice; or
  - (b) no useful purpose is likely to be served by giving him notice.
- (5) If, in the case of an application for registration —
- (a) a valid notice of objection to the registration is received by the Chief Registrar before the expiry of the period of 5 weeks beginning with the date or, as the case may be, the latest date on which the attorney gave notice to any person under Schedule 1, or
  - (b) it appears from the application that there is no one to whom notice has been given under paragraph 1 of that Schedule, or
  - (c) the judge has reason to believe that appropriate inquiries might bring to light evidence on which he could be satisfied that one of the grounds of objection set out in subsection (6) was established, the judge shall neither order that the instrument be registered nor refuse the application until he has made or caused to be made such inquiries (if any) as he thinks appropriate in the circumstances of the case.
- (6) For the purposes of this Act a notice of objection to the registration of an instrument is valid if the objection is made on one or more of the following grounds, namely —
- (a) that the power purported to have been created by the instrument was not valid as an enduring power of attorney;
  - (b) that the power created by the instrument no longer subsists;
  - (c) that the application is premature because the donor is not yet becoming mentally incapable;
  - (d) that fraud or undue pressure was used to induce the donor to create the power;
  - (e) that, having regard to all the circumstances and in particular the attorney's relationship to or connection with the donor, the attorney is unsuitable to be the donor's attorney.

- (7) If, in a case where subsection (5) applies, any of the grounds of objection in subsection (6) is established to the satisfaction of the judge, he shall refuse the application but if, in such a case, he is not so satisfied, he shall order that the instrument to which the application relates be registered.
- (8) Where the judge refuses an application for registration on ground (d) or (e) in subsection (6), he shall by order revoke the power created by the instrument.
- (9) Where the judge refuses an application for registration on any ground other than that specified in subsection (6)(c), the instrument shall be delivered up to be cancelled, unless the judge otherwise directs.

## LEGAL POSITION AFTER REGISTRATION

### 7 Effect and proof of registration, etc

[P1985/29/7]

- (1) The effect of the registration of an instrument under section 6 is that —
  - (a) no revocation of the power by the donor shall be valid unless and until the judge confirms the revocation under section 8(3);
  - (b) no disclaimer of the power shall be valid unless and until the attorney gives notice of it to the Chief Registrar;
  - (c) the donor may not extend or restrict the scope of the authority conferred by the instrument and no instruction or consent given by him after registration shall, in the case of a consent, confer any right and, in the case of an instruction, impose or confer any obligation or right on or create any liability of the attorney or other persons having notice of the instruction or consent.
- (2) Subsection (1) applies for so long as the instrument is registered under section 6, whether or not the donor is for the time being mentally incapable.
- (3) A document purporting to be an office copy of an instrument registered under this Act shall be evidence of the contents of the instrument and of the fact that it has been so registered.
- (4) Subsection (3) is without prejudice to section 2 of the *Powers of Attorney Act 1983* (proof by certified copies) and to any other method of proof authorised by law.

### 8 Functions of court with respect to registered power

[P1985/29/8]

- (1) Where an instrument has been registered under section 6, the judge shall have the following functions with respect to the power and the donor of and the attorney appointed to act under the power.

- (2) The judge may —
- (a) determine any question as to the meaning or effect of the instrument;
  - (b) give directions with respect to —
    - (i) the management or disposal by the attorney of the property and affairs of the donor;
    - (ii) the rendering of accounts by the attorney and the production of the records kept by him for the purpose;
    - (iii) the remuneration or expenses of the attorney, whether or not in default of or in accordance with any provision made by the instrument, including directions for the repayment of excessive or the payment of additional remuneration;
  - (c) require the attorney to furnish information or produce documents or things in his possession as attorney;
  - (d) give any consent or authorisation to act which the attorney would have to obtain from a mentally capable donor;
  - (e) authorise the attorney to act so as to benefit himself or other persons than the donor otherwise than in accordance with section 3(4) and (5) (but subject to any conditions or restrictions contained in the instrument);
  - (f) relieve the attorney wholly or partly from any liability which he has or may have incurred on account of a breach of his duties as attorney.
- (3) On application made for the purpose by or on behalf of the donor, the judge shall confirm the revocation of the power if satisfied that the donor has done whatever is necessary in law to effect an express revocation of the power and was mentally capable of revoking a power of attorney when he did so (whether or not he is so when the judge considers the application).
- (4) The judge shall order that the registration of an instrument registered under section 6 be cancelled in any of the following circumstances, that is to say —
- (a) on confirming the revocation of the power under subsection (3) or on receipt by the Chief Registrar of notice of disclaimer under section 7(1) (b);
  - (b) on giving a direction revoking the power on exercising any of his powers under Part VII of the *Mental Health Act 1974*;
  - (c) on being satisfied that the donor is and is likely to remain mentally capable;
  - (d) on being satisfied that the power has expired or has been revoked by the death or bankruptcy of the donor or the death, mental

- incapacity or bankruptcy of the attorney or, if the attorney is a body corporate, its winding up or dissolution;
- (e) on being satisfied that the power was not a valid and subsisting enduring power when registration was effected;
  - (f) on being satisfied that fraud or undue pressure was used to induce the donor to create the power; or
  - (g) on being satisfied that, having regard to all the circumstances and in particular the attorney's relationship to or connection with the donor, the attorney is unsuitable to be the donor's attorney.
- (5) Where the judge orders that the registration of an instrument be cancelled on being satisfied of the matters specified in subsection (4)(f) or (g), he shall by order revoke the power created by the instrument.
- (6) Where an order for the cancellation of the registration of an instrument is made under subsection (4) except paragraph (c), the instrument shall be delivered up to be cancelled, unless the judge otherwise directs.

## PROTECTION OF ATTORNEY AND THIRD PARTIES

### 9 Protection of attorney and third persons where power invalid or revoked

[P1985/29/9]

- (1) Subsections (2) and (3) apply where an instrument which did not create a valid power of attorney has been registered under section 6 (whether or not the registration has been cancelled at the time of the act or transaction in question).
- (2) An attorney who acts in pursuance of the power shall not incur any liability (either to the donor or to any other person) by reason of the non-existence of the power unless at the time of acting he knows —
  - (a) that the instrument did not create a valid enduring power; or
  - (b) that an event has occurred which, if the instrument had created a valid enduring power, would have had the effect of revoking the power; or
  - (c) that, if the instrument had created a valid enduring power, the power would have expired before that time.
- (3) Any transaction between the attorney and another person shall, in favour of that person, be as valid as if the power had then been in existence, unless at the time of the transaction that person has knowledge of any of the matters mentioned in subsection (2).
- (4) Where the interest of a purchaser depends on whether a transaction between the attorney and another person was valid by virtue of

subsection (3), it shall be conclusively presumed in favour of the purchaser that the transaction was valid if —

- (a) the transaction between that person and the attorney was completed within 12 months of the date on which the power came into operation; or
  - (b) that person makes a statutory declaration, before or within 3 months after the completion of the purchase, that he had no reason at the time of the transaction to doubt that the attorney had authority to dispose of the property which was the subject of the transaction.
- (5) For the purposes of section 4 of the *Powers of Attorney Act 1983* (protection of attorney and third persons where action is taken under the power of attorney in ignorance of its revocation) in its application to an enduring power the revocation of which by the donor is invalid by virtue of section 7(1)(a) unless and until confirmed by the judge under section 8(3), knowledge of the confirmation of the revocation is, but knowledge of the unconfirmed revocation is not, knowledge of the revocation of the power.
- (6) Schedule 2 shall have effect to confer protection in cases where the instrument failed to create a valid enduring power and the power has been revoked by the donor's mental incapacity.
- (7) In this section "purchaser" and "purchase" have the meanings specified in section 2 of the *Conveyancing Act 1908*.

## SUPPLEMENTARY

### 10 Application of Mental Health Act provisions relating to the judge

[P1985/29/10]

- (1) The following provisions of Part 7 of the *Mental Health Act 1998* shall apply to persons within and proceedings under this Act in accordance with this subsection and subsection (2), namely —
  - (a) section 98(1) (exercise of functions conferred on the judge) shall apply to proceedings under this Act as it applies to proceedings under the said Part VII;<sup>6</sup>
  - (b) section 106 (powers of judge) shall apply to proceedings under this Act with respect to persons within this Act as it applies to the proceedings mentioned in subsection (1) of that section;<sup>7</sup>
  - (c) section 107 (appeals) shall apply to any decision of the judge in proceedings under this Act as it applies to any decision to which that section applies;<sup>8</sup>

- (d) section 108 except subsection (4) (rules of procedure) shall apply to proceedings under this Act and persons within this Act as it applies to the proceedings and persons mentioned in that section.<sup>9</sup>
- (2) Any functions conferred or imposed by the provisions of the said Part 7 applied by subsection (1) shall be exercisable also for the purposes of this Act.<sup>10</sup>
- (3) In this section “persons within this Act” means the donors of and attorneys under enduring powers of attorney whether or not they would be patients for the purposes of the said Part 7.<sup>11</sup>

## 11 Application to joint and joint and several attorneys

[P1985/29/11]

- (1) An instrument which appoints more than one person to be an attorney cannot create an enduring power unless the attorneys are appointed to act jointly or jointly and severally.
- (2) This Act, in its application to joint attorneys, applies to them collectively as it applies to a single attorney but subject to the modifications specified in Part I of Schedule 3.
- (3) This Act, in its application to joint and several attorneys, applies with the modifications specified in subsections (4) to (7) below and in Part II of Schedule 3.
- (4) A failure, as respects any one attorney, to comply with the requirements of section 2(1) to (9) and of regulations under section 2(2) shall prevent the instrument from creating such a power in his case, without however affecting its efficacy for that purpose as respects the other or others, or its efficacy in his case for the purpose of creating a power of attorney which is not an enduring power.
- (5) Where one or more but not both or all the attorneys makes or joins in making an application for registration of the instrument then —
  - (a) an attorney who is not an applicant as well as one who is may act pending the initial determination of the application as provided in section 1(2) (or under section 5);
  - (b) notice of the application shall also be given under Schedule 1 to the other attorney or attorneys; and
  - (c) objection may validly be taken to the registration on a ground relating to an attorney or to the power of an attorney who is not an applicant as well as to one or the power of one who is an applicant.
- (6) The judge shall not refuse under section 6(7) to order that an instrument be registered because a ground of objection to an attorney or power is established if an enduring power subsists as respects some attorney who

is not affected thereby but shall order that such qualification as may be prescribed by rules shall be noted in the register.

- (7) The judge shall not order that the registration of an instrument under section 8(4) be cancelled for any of the causes there specified if an enduring power subsists as respects some attorney who is not affected thereby but shall order that such qualification as may be prescribed by rules shall be noted in the register.

## 12 Power to modify pre-registration requirements in certain cases

[P1985/29/12]

- (1) The Clerk of the Rolls may by order exempt attorneys of such descriptions as he thinks fit from the requirements of this Act to give notice to relatives prior to registration.
- (2) Subject to subsection (3), where an order is made under this section with respect to attorneys of a specified description then, during the currency of the order, this Act shall have effect in relation to any attorney of that description with the omission of so much of section 4(3) and Schedule 1 as requires notice of an application for registration to be given to relatives.
- (3) Notwithstanding that an attorney under a joint or joint and several power is of a description specified in a current order under this section, subsection (2) shall not apply in relation to him if any of the other attorneys under the power is not of a description specified in that or another current order under this section.
- (4) An order under this section shall not have effect unless it is approved by Tynwald.

## 13 Interpretation

[P1985/29/13]

- (1) In this Act —

“**enduring power**” is to be construed in accordance with section 2;

“**the judge**” is to be construed in accordance with section 98(1) of the *Mental Health Act 1998* as applied by section 10;<sup>12</sup>

“**mentally incapable**” or “**mental incapacity**”, except where it refers to revocation at common law, means, in relation to any person, that he is incapable by reason of mental disorder of managing and administering his property and affairs, and “**mentally capable**” and “**mental capacity**” shall be construed accordingly;

“**mental disorder**” has the same meaning as it has in the *Mental Health Act 1998*;<sup>13</sup>

“**notice**” means notice in writing;

“**rules**” means rules under Part 7 of the *Mental Health Act 1998* as applied by section 10;<sup>14</sup>

“**trust corporation**” .....<sup>15</sup>

- (2) Any question arising under or for the purposes of this Act as to what the donor of the power might at any time be expected to do shall be determined by assuming that he had full mental capacity at the time but otherwise by reference to the circumstances existing at that time.

#### **14 Short title and commencement**

- (1) This Act may be cited as the Powers of Attorney Act 1987.
- (2) This Act shall come into force on such day as the Governor in Council may by order appoint.<sup>16</sup>



## Schedule 1

## NOTIFICATION PRIOR TO REGISTRATION

## Section 4(3)

**PART I – DUTY TO GIVE NOTICE TO RELATIVES AND DONOR**

## DUTY TO GIVE NOTICE TO RELATIVES

1. Subject to paragraph 3, before making an application for registration the attorney shall give notice of his intention to do so to all those persons (if any) who are entitled to receive notice by virtue of paragraph 2.

2. (1) Subject to the limitations contained in sub-paragraphs (2) to (4), persons of the following classes (referred to in this Act as “**relatives**”) are entitled to receive notice under paragraph 1 –

- (a) the donor’s spouse or civil partner;<sup>17</sup>
- (b) the donor’s children;
- (c) the donor’s parents;
- (d) the donor’s brothers and sisters, whether of the whole or half blood;
- (e) the surviving spouse or surviving civil partner of a child of the donor;<sup>18</sup>
- (f) the donor’s grandchildren;
- (g) the children of the donor’s brothers and sisters of the whole blood;
- (h) the children of the donor’s brothers and sisters of the half blood;
- (i) the donor’s uncles and aunts of the whole blood; and
- (j) the children of the donor’s uncles and aunts of the whole blood.<sup>19</sup>

(2) A person is not entitled to receive notice under paragraph 1 if –

- (a) his name or address is not known to the attorney and cannot be reasonably ascertained by him; or
- (b) the attorney has reason to believe that he has not attained 18 years or is mentally incapable.

(3) Except where sub-paragraph (4) applies, no more than 3 persons are entitled to receive notice under paragraph 1 and, in determining the persons who are so entitled, persons falling within class (a) of sub-paragraph (1) are to be preferred to persons falling within class (b), persons falling within class (b) are to be preferred to persons falling within class (c); and so on.

(4) Notwithstanding the limit of 3 specified in sub-paragraph (3), where –

- (a) there is more than one person falling within any of classes (a) to (j) of sub-paragraph (1), and
- (b) at least one of those persons would be entitled to receive notice under paragraph 1,  
then, subject to sub-paragraph (2), all the persons falling within that class are entitled to receive notice under paragraph 1.

3. (1) An attorney shall not be required to give notice under paragraph 1 to himself or to any other attorney under the power who is joining in making the application, notwithstanding that he or, as the case may be, the other attorney is entitled to receive notice by virtue of paragraph 2.

(2) In the case of any person who is entitled to receive notice under paragraph 1, the attorney, before applying for registration, may make an application to the judge to be dispensed from the requirement to give notice to that person; and the judge shall grant the application if he is satisfied —

- (a) that it would be undesirable or impracticable for the attorney to give notice to that person; or
- (b) that no useful purpose is likely to be served by giving notice to that person.

#### DUTY TO GIVE NOTICE TO DONOR

4. (1) Subject to sub-paragraph (2), before making an application for registration the attorney shall give notice of his intention to do so to the donor.

(2) Paragraph 3(2) shall apply in relation to the donor as it applies in relation to a person who is entitled to receive notice under paragraph 1.

### PART II – CONTENTS OF NOTICES

5. A notice to relatives under this Schedule —

- (a) shall be in the prescribed form;
- (b) shall state that the attorney proposes to make an application to the judge for the registration of the instrument creating the enduring power in question;
- (c) shall inform the person to whom it is given that he may object to the proposed registration by notice in writing to the Chief Registrar before the expiry of the period of 4 weeks beginning with the day on which the notice under this Schedule was given to him;
- (d) shall specify, as the grounds on which an objection to registration may be made, the grounds set out in section 6(6).

6. A notice to the donor under this Schedule —

- (a) shall be in the prescribed form;
- (b) shall contain the statement mentioned in paragraph 5(b); and

- (c) shall inform the donor that, whilst the instrument remains registered, any revocation of the power by him will be ineffective unless and until the revocation is confirmed by the judge.

### **PART III – DUTY TO GIVE NOTICE TO OTHER ATTORNEYS**

7. (1) Subject to sub-paragraph (2), before making an application for registration an attorney under a joint and several power shall give notice of his intention to do so to any other attorney under the power who is not joining in making the application; and paragraphs 3(2) and 5 shall apply in relation to attorneys entitled to receive notice by virtue of this paragraph as they apply in relation to persons entitled to receive notice by virtue of paragraph 2.

(2) An attorney is not entitled to receive notice by virtue of this paragraph if –

- (a) his address is not known to the applying attorney and cannot reasonably be ascertained by him; or
- (b) the applying attorney has reason to believe that he has not attained 18 years or is mentally incapable.

### **PART IV – SUPPLEMENTARY**

8. (1) For the purposes of this Schedule an illegitimate child shall be treated as if he were the legitimate child of his mother and father.

(2) Notwithstanding anything in Part 4, Division 5 (service of documents) of the *Interpretation Act 2015*, for the purposes of this Schedule a notice given by post shall be regarded as given on the date on which it was posted.<sup>20</sup>

**Schedule 2****FURTHER PROTECTION OF ATTORNEY AND THIRD PERSONS**

## Section 9(6)

1. Where —
  - (a) an instrument framed in a form prescribed under section 2(2) creates a power which is not a valid enduring power; and
  - (b) the power is revoked by the mental incapacity of the donor, paragraphs 2 and 3 shall apply, whether or not the instrument has been registered.
2. An attorney who acts in pursuance of the power shall not, by reason of the revocation, incur any liability (either to the donor or to any other person) unless at the time of acting he knows —
  - (a) that the instrument did not create a valid enduring power; and
  - (b) that the donor has become mentally incapable.
3. Any transaction between the attorney and another person shall, in favour of that person, be as valid as if the power had then been in existence, unless at the time of the transaction that person knows —
  - (a) that the instrument did not create a valid enduring power; and
  - (b) that the donor has become mentally incapable.
4. Section 9(4) shall apply for the purpose of determining whether a transaction was valid by virtue of paragraph 3 as it applies for the purpose of determining whether a transaction was valid by virtue of section 9(3).

**Schedule 3****JOINT AND JOINT AND SEVERAL ATTORNEYS**

## Section 11(2), (3)

**PART I – JOINT ATTORNEYS**

1. In section 2(7), the reference to the time when the attorney executes the instrument shall be read as a reference to the time when the second or last attorney executes the instrument.
2. In section 2(9) and (10), the reference to the attorney shall be read as a reference to any attorney under the power.
3. In section 5, references to the attorney shall be read as including references to any attorney under the power.
4. Section 6 shall have effect as if the ground of objection to the registration of the instrument specified in subsection (6)(e) applied to any attorney under the power.

5. In section 8(2), references to the attorney shall be read as including references to any attorney under the power.
6. In section 8(4), references to the attorney shall be read as including references to any attorney under the power.

## **PART II – JOINT AND SEVERAL ATTORNEYS**

7. In section 2(10), the reference to the bankruptcy of the attorney shall be construed as a reference to the bankruptcy of the last remaining attorney under the power; and the bankruptcy of any other attorney under the power shall cause that person to cease to be attorney, whatever the circumstances of the bankruptcy.
8. The restriction upon disclaimer imposed by section 4(6) applies only to those attorneys who have reason to believe that the donor is or is becoming mentally incapable.



## ENDNOTES

### Table of Legislation History

| Legislation | Year and No | Commencement |
|-------------|-------------|--------------|
|             |             |              |
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### Table of Renumbered Provisions

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### Table of Endnote References

<sup>1</sup> Subs (8) repealed by Law Reform (Miscellaneous Provisions) Act 1996 s 2(2) (and see also s 2(3)).

<sup>2</sup> Subs (11) amended by Mental Health Act 1998 Sch 5.

<sup>3</sup> Subs (3) repealed by Law Reform (Miscellaneous Provisions) Act 1996 s 2(2) (and see also s 2(3)).

<sup>4</sup> Para (a) amended by Civil Partnership Act 2011 Sch 14.

<sup>5</sup> Subs (3) amended by Mental Health Act 1998 Sch 5.

<sup>6</sup> Para (a) amended by Mental Health Act 1998 Sch 5.

<sup>7</sup> Para (b) amended by Mental Health Act 1998 Sch 5.

<sup>8</sup> Para (c) amended by Mental Health Act 1998 Sch 5.

<sup>9</sup> Subs (1) amended by Mental Health Act 1998 Sch 5. Para (d) amended by Mental Health Act 1998 Sch 5.

<sup>10</sup> Subs (2) amended by Mental Health Act 1998 Sch 5.

<sup>11</sup> Subs (3) amended by Mental Health Act 1998 Sch 5.

<sup>12</sup> Definition of “the judge” amended by Mental Health Act 1998 Sch 5.

<sup>13</sup> Definition of “mental disorder” amended by Mental Health Act 1998 Sch 5.

<sup>14</sup> Definition of “rules” amended by Mental Health Act 1998 Sch 5.

<sup>15</sup> Definition of “trust corporation” repealed by Administration of Estates Act 1990 Sch 5.

<sup>16</sup> ADO (whole Act) 1/1/1988 (GC375/87).

<sup>17</sup> Item (a) amended by Civil Partnership Act 2011 Sch 14.

<sup>18</sup> Item (e) amended by Civil Partnership Act 2011 Sch 14.

<sup>19</sup> Ed. note: Para 80 of the Civil Partnership Act 2011 Sch 14 provides as follows:  
“Paragraphs 78 and 79 apply in relation to the exercise of powers under enduring powers of attorney created before the passing of this Act [15/3/2011] as well as in relation to those created on or after its passing.”. The amendment to items (a) and (e) above was effected by para 79 of the Civil Partnership Act 2011 Sch 14.

<sup>20</sup> Subpara (2) amended by Interpretation Act 2015 s 107.