

S.I. 1994 No. 3047

POWERS OF ATTORNEY

MENTAL HEALTH

**The Court of Protection (Enduring Powers of Attorney)
Rules 1994**

Made.....29th November 1994

Laid before Parliament1st December 1994

Coming into force22nd December 1994

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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 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

Citation and Commencement

- 1. These Rules may be cited as the Court of Protection (Enduring Powers of Attorney) Rules 1994 and shall come into force on 22nd December 1994.

Application

2. Subject to the provisions of these Rules, the Court of Protection Rules 1994 shall apply to proceedings under the Enduring Powers of Attorney Act 1985.

Interpretation

3.—(1) In these Rules, unless the context otherwise requires—

expressions used in the Supreme Court Act 1981 shall have the same meaning 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 1994 Rules” means the Court of Protection Rules 1994;

“applicant” includes an objector;

“application” includes an objection;

“the court” means the Court of Protection;

“direction” means a direction or authority given under the seal of the Public Trustee;

“enduring power of attorney” shall be construed in accordance with section 2 of the 1985 Act;

“entered” means entered in the register of enduring powers of attorney kept by the Public Trust office;

“filed” means filed in the Public Trust office;

“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;

“receiver” means a receiver appointed under section 99(1) of the 1983 Act;

“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 or the Public Trustee as appropriate and “sealed” shall be construed accordingly.

(2) Where, in these Rules, there is a reference to something which may be done by the court or the Public Trustee, the reference shall be construed as meaning the court or the Public Trustee as appropriate.

(3) In these Rules, a form referred to by letter alone means the form so designated in Schedule 1 to these rules 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 other 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.

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 Public Trust Office is closed and for that reason the act cannot be done on that day, the act shall be done in time if done on the next day on which that 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 Public Trust office is closed shall not be included in the computation of that period.

PART II

FUNCTIONS OF THE PUBLIC TRUSTEE

Functions of the Public Trustee

6.—(1) The Public Trustee may exercise the following functions—

- (a) the registration of an enduring power of attorney under section 6(1) of the Act;
- (b) the refusal to register an enduring power of attorney under section 6(2) of the Act on the grounds that the conditions set out in section 2(1) of the Act are not satisfied or that it is not an enduring power of attorney by reason of sections 2(7), (8) or 11(1) of the Act;
- (c) cancelling the registration of an enduring power of attorney revoked under section 2(10) of the Act;
- (d) the giving of a direction under section 6(3) of the Act;
- (e) the qualification of the registration of an enduring power of attorney under section 11(6) or (7) of the Act;
- (f) dispensing with the requirement to give notice under paragraphs 3(2), 4(2) or 7(1) of Schedule 1 to the Act;
- (g) the receiving of a notice of disclaimer under sections 4(6) and 7(1)(b) of the Act.

(2) The Public Trustee may, if he thinks fit, refer any matter referred to in paragraph (1) above to the court for determination.

(3) If, in the case of an application for registration of an enduring power of attorney, the circumstances set out in section 6(4)(a) (notice of objection received) or (b) (no notice of application given) of the Act occur, or, in the opinion of the Public Trustee, the court should consider the application in the light of section 6(4)(c) (reason to believe that a ground of objection exists) of the Act, he shall refer the application to the court.

(4) Nothing in this rule shall prevent the court from exercising any of its functions in relation to any matter being dealt with by the Public Trustee under paragraph (1).

PART III

APPLICATIONS

Notice of intention to register

7.—(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 14 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 enduring power of attorney.

Time limits

8.—(1) An application to register an enduring power of attorney shall be made in Form EP2 and shall be lodged with the Public Trust 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

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

(2) Any application made by letter to the court or to the Public Trustee under rule 9(1), 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.

(3) An application relating to the committal of a person for contempt of court shall be made to a judge by motion.

Objections to registration

10.—(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

11.—(1) This rule shall apply to applications made to the court, or where appropriate, referred to the court by the Public Trustee;

- (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 way of 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 directions 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 appointment or 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 direction 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 Public Trust office.

Consolidation of proceedings

12. The court may consolidate any applications for registration or relief or any objections to registration if it considers that the proceedings may be dealt with more conveniently together.

Registration of an enduring power of attorney

13.—(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 by the Public Trustee and sealed by the court.

(2) The Public Trustee 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 Public Trustee on the instrument at the time of its registration.

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

14.—(1) On payment of the appropriate fee, any person shall be entitled to request the Public Trustee in Form EP4 to search the register and to state whether an enduring

power of attorney has been registered and the Public Trustee shall so state in Form EP5.

(2) The court or the Public Trustee may supply any person with an office copy of a registered enduring power of attorney if satisfied that he has 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 IV

HEARINGS

Notice of hearing

15.—(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 as the court thinks fit and notwithstanding in the case of an extension that the time so limited has expired.

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

Mode of giving documents

16.—(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 other person shall be given by sending it to him by first class post.

Giving documents to a solicitor

17. Where a solicitor 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

18. Where it appears to the court that it is impracticable for any document to be given to a person in accordance with rule 16(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

19. 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

20.—(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 or the Public Trust office shall be open to inspection without the leave of the court and no copy of any such document or an extract of it shall be taken by or issued to any person without such leave.

Summoning of witnesses

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

Leave to bring an application

22. 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 or the Public Trustee for leave to make an application for relief specified in the Act.

Notification of decision

23. All persons to whom notice is to be given under rule 11(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 V**REVIEWS AND APPEALS***Review of decision not made on a hearing*

24.—(1) Any person who is aggrieved by a decision of the court not made on a hearing or a decision of the Public Trustee may apply to the court within eight days of the date on which the decision was given to have the decision reviewed by the court.

(2) No application for review shall lie from any decision under rule 86 of the 1994 Rules.

(3) On the hearing of the application, the court may either confirm or revoke the previous decision or make or give any other order or decision which it thinks fit.

(4) Any person aggrieved by any order or decision made or given on the hearing of the application for review may appeal to a nominated judge in accordance with rule 25.

Appeal from decision made on a hearing

25.—(1) Any person aggrieved by any order or decision of the court made on a 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 the 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 the time and place at which the appeal is to be heard and shall cause notice of the time and place so fixed 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 opposition to the appeal without leave of the court.

PART VI

CANCELLATION OF REGISTRATION

Cancellation of a registered enduring power of attorney

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

(2) Where the Public Trustee—

- (a) receives notice of a 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;

he shall cancel the registration of the enduring power of attorney and the court shall send notice to the attorney, or his personal representatives or the liquidator or receiver of a body corporate where appropriate, requiring him or them to deliver the original instrument to the Public Trustee.

(3) Where the instrument creating an enduring power of attorney has been lost or destroyed, the attorney shall give to the Public Trustee written details of the date on which the instrument was lost or destroyed and the circumstances in which that 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 direct the Public Trustee to mark the power of attorney as cancelled or, where appropriate, the Public Trustee shall do so of his own motion.

(6) 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 VII

FEEs

Schedule of Fees

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

(2) The fee set out in column 2 of Schedule 2 shall be taken in respect of the corresponding event referred to in column 1.

(3) The person liable to pay any fee shall, unless the fee is for a search of the register or unless the Public Trustee otherwise directs, make the payment out of the assets of the donor.

PART VIII

TRANSITIONAL PROVISIONS

Transitional Provisions

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

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

PART IX

REVOCATION

Revocation

29. The Court of Protection (Enduring Powers of Attorney) Rules 1986 and the Court of Protection (Enduring Powers of Attorney) (Amendment) Rules 1990 are revoked.

Dated 28th November 1994

Mackay of Clashfern, C.

We consent.

Tim Wood
Timothy Kirkhope

Dated 29th November 1994

Two of the Lord Commissioners of
Her Majesty's Treasury

SCHEDULE 1

Rule 3

FORM EP1

**Court of Protection/Public Trust Office
Enduring Powers of Attorney Act 1985**

Notice of intention to apply for registration

To
of

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

TAKE NOTICE THAT

I
of
and I

Give the name and address of the donor.

of
the attorney(s) of
.....
of

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.

intend to apply to the Public Trustee for registration of the enduring power of attorney appointing me (us) attorney(s) and made by the donor on the 19

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 Public Trustee 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.

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

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.

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).

Note. This is addressed only to 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.

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

Signed Dated
Signed Dated

FORM EP2

Court of Protection/Public Trust Office No.
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 19
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 19

EP2

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:

Names	Relationship	addresses	date

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.

FORM EP3

**Court of Protection/Public Trust Office
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
of
Apply for an order or directions that
.....
.....
.....
.....
.....

State under which sub-section of the Enduring Powers of Attorney Act 1985 or which rule of the Court of Protection (Enduring Powers of Attorney) Rules 1994 this application is made

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

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

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

Evidence in support should accompany this application

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

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

FORM EP4
Court of Protection/Public Trust Office No.
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 Public Trustee 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/Public Trustee are
.....
.....
.....
.....
* It is not reasonably practicable to obtain a copy from the attorney because:.....
.....
.....
.....

Signed.....
Dated

FORM EP5
Court of Protection/Public Trust Office No.
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 onregistered 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 onregistered on

Date cancelled

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

Signed

Dated

EP5

Court of Protection

No.

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 19.....

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

.....

FORM EP7

Court of Protection

No.

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..... 19

.....

.....

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.

Signedappellant(s)

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.

B 224

S.I. 1994 No. 3047

SCHEDULE 2

FEEs

Rule 27

Column 1	Column 2
Item	Fee
<i>Registration fee.</i>	
1.— On lodging an application for registration of an enduring power of attorney	£50.00
<i>Search fee</i>	
2. On application for a search of the register	£10.00