



Enduring Powers of Attorney

Please note that this article is for information and guidance only, and is not to be construed as legal advice. Once you have reviewed this guidance and if you are considering drawing up an enduring power of attorney in the result, you are strongly advised to seek our formal legal assistance first.

What is it actually?

An enduring power of attorney is a particular legal document in which you appoint a particular person(s) to look after your affairs in the event that you should lose the mental capacity to manage your own affairs. Anyone over the age of 18 can have one. You should note that an ordinary power of attorney (such as an attorney authorising another to operate your bank account) is **no longer** valid when you as the donor of that attorney have lost the mental capacity to manage your own affairs. However, if you have a valid enduring power of attorney drawn up then it will be registered at the Isle of Man Courts of Justice in order that your attorney(s) may continue to act on your behalf and manage your affairs following any loss of mental capacity.

Where can I get more information?

We can let you have this, and also the regulations, some guidance and the application forms to register an enduring power of attorney are readily available at the Isle of Man Courts of Justice, Deemster's Walk, Bucks Road, Douglas.

Why would I need to make an enduring power of attorney?

There may come a time when you are incapable of managing your own financial affairs, and you will need someone to do this for you.

Should I seek legal advice?

You are strongly advised to consult us, particularly if your affairs are complicated or your estate is substantial. We recommend for the protection of all concerned that you as the donor of any power of attorney, as well as the person(s) you are minded to appoint to act as your attorney(s), should all seek legal advice.

Your attorney(s) must be at least 18 years of age and obviously you will only appoint people you can rely on, to act entirely in your best interests. To act as an attorney is by its nature an important and responsible role. For this reason any person chosen by you to act as your attorney has to agree to take on the responsibility. It is for this reason each attorney is expected to sign the form, and each attorney's signature must be independently witnessed.

For your protection you are not permitted to act as a witness to the power of attorney forms, and indeed one attorney may not witness the signature of a co-attorney. You will see that obtaining

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adequate legal advice from us first is very important.

We particularly recommend you seek our advice if you need to make provision for your affairs to be looked after in another jurisdiction as well.

Who can I appoint as my attorney?

You may consider appointing a friend, a relative, or a professional advisor, or even a combination of all three. You can consider appointing more than one person as your attorney, depending on your own circumstances. That way they can each ensure that each of them is acting in accordance with the powers given by you, and in your interests, and on the terms you set out in the enduring power of attorney. Remember that you may not be able in future to check up on the attorney(s) yourself, were you to become incapable. You will appreciate that having more than one attorney is thus a useful option.

The Powers you have given

If you give your attorney(s) general power in relation to **all** your property and affairs, this means that they will be able to deal with your money or property and could have the power to sell your house for example. You will understand it is imperative that the attorney(s) you choose you can trust absolutely to act in your best interests.

Can I restrict the attorney(s) powers?

If you don't want your attorney(s) to have very wide powers, you can include any restrictions on them you like. For example, you could include a restriction that they may not sell your house, or some other particular property or item of importance to you. You should be aware that your attorney(s) will be able to use any of your money or property to benefit themselves or others, by doing those things and incurring such expenditure you yourself under usual circumstances would be expected to do to meet a particular person's needs. You can of course put in a restriction preventing or limiting their actions. You must remember your attorney(s) will be acting on your behalf and incurring expenditure as nearly as possible in the same way you would be expected to act, if you were in a position to do so yourself. Your attorney(s) can also use your money to make gifts, but only for reasonable amounts in proportion to the whole value of your financial means.

Costs?

Your attorney(s) can recover any out-of-pocket expenses they incur while acting as your attorney(s). If they are professional people, such as Advocates or Accountants your attorney(s) are likely able to charge for their professional services as well, but the peace of mind gained from appointing such a person as attorney(s) should justify the expense.

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Joint and several?

If you appoint more than one attorney, you can also choose whether they are obliged to act only together (“jointly”), and cannot act separately or independently (“severally”). “Severally” means they have the power to all act together but can also act separately, if they choose.

More than one power of attorney?

You can make several powers of attorney appointing different person(s) as your attorney to do different things. In effect this means different aspects of your affairs are handled by a separate person or group of persons, under a distinct power of attorney dealing with that aspect of your affairs. You would likely appoint different attorneys to deal with for example a stock portfolio, or copyrights such as music royalties or foreign assets as you will have chosen a particular attorney according to their skills in that area.

What authority is granted under a general power of attorney?

A general power of attorney gives your attorney(s) the right and authority to deal with your financial affairs and your property. You cannot give an attorney the power to make decisions about your general welfare, such as where you should live or to make decisions on health matters.

What authority is granted under a specific power of attorney?

A specific power allows your attorney(s) to deal only with those aspects of your affairs which have been specified in the power of attorney.

What authority is granted under a limited general or specific power of attorney?

This is a general or specific power of attorney but with defined limits on the powers given. It allows your attorney to deal with all your property or affairs except the specified aspects limited by the power of attorney, such as any power to operate your bank account or to sell your home for instance. The power could also direct that your attorney has no power to act, until the power of attorney is registered in accordance with the procedure below, and following your mental incapacity.

When and where should an enduring power of attorney be registered?

Should your attorney appointed under an enduring power have reason to believe that you are or may be becoming mentally incapable, your attorney is obliged as soon as practical to make an application to court for the registration of the enduring power of attorney. Application is made at the Court Office for the enduring power of attorney to be registered.

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What documents are required at the time of registration?

- the original completed enduring power of attorney;
- Notice of intention to apply for registration;
- Application for registration;
- a letter from a medical practitioner supporting the belief of the applicant for registration that the person who gave the power of attorney is or is becoming mentally incapable.

Who is entitled to receive notice of the application?

For your protection notice of the application to register an enduring power of attorney must be given to you, and to all of your relatives entitled to receive notification, as well as to all the co-attorneys if these have been appointed by you. Before applying to the General Registry for registration of this power, your attorney(s) must give written notice to you and your nearest relatives that that is what they intend to do. You or your relatives have the right to object, should you or they disagree with registration of the power of attorney.

When is the enduring power of attorney registered?

There is usually a waiting period of 5 weeks from the date on which notice of the application to register an enduring power of attorney was given. Thereafter and provided no objections are received the enduring power of attorney will be registered and the powers afforded to your attorney(s) under it will be effective.

What documents are returned after registration?

- the original power of attorney which will have been signed by the Chief Registrar and stamped with the court seal; and
- a certified copy of the court order (with as many copies as requested) confirming registration of the enduring power of attorney.

For further information on these or any other personal law issues, please contact us on (01624) 676868

This publication is intended only to provide a brief guide. It does not purport to be comprehensive or to provide legal advice.

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