

POWERS OF ATTORNEY ACT 1996

(1996 No. 12)

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY AND GENERAL

SECT.

1. Short title and commencement.
2. Interpretation generally.
3. Statutory declaration by company.

PART II

ENDURING POWERS OF ATTORNEY

4. Interpretation.
5. Characteristics of enduring power.
6. Scope of authority of attorney under enduring power.
7. Coming into force and survival of enduring power.
8. Functions of court prior to registration.
9. Application for registration.
10. Registration.
11. Effect and proof of registration.
12. Functions of court with respect to registered power.
13. Protection of attorney and third person where registered power invalid or not in force.
14. Application to joint and joint and several attorneys.

PART III

POWERS OF ATTORNEY GENERALLY

15. Creation of power.
16. Effect of general power in specified form.
17. Execution of instruments, etc. by donee of power.
18. Protection of donee and other persons where power revoked.
19. Protection of transferee under stock exchange transaction.
20. Power given as security.
21. Proof of instrument creating power.
22. Deposit of original instruments in Central Office.
23. Furnishing to purchaser of power relating to land.

PART IV

MISCELLANEOUS

24. Laying of orders and regulations before Houses of Oireachtas.
25. Repeals.

FIRST SCHEDULE

NOTIFICATION PRIOR TO REGISTRATION

SECOND SCHEDULE

JOINT AND JOINT AND SEVERAL ATTORNEYS

THIRD SCHEDULE

FORM OF GENERAL POWER OF ATTORNEY

FOURTH SCHEDULE

ENACTMENTS REPEALED

An Act to provide for powers of attorney to operate when the donor of the power is or is becoming mentally incapable and to amend in other respects the law relating to powers of attorney generally.
[5th June, 1996]

INTRODUCTION AND GENERAL NOTE

The object of this legislation was twofold: first, to provide for what was in 1996 in Ireland a new legal creature called “an enduring power”, a power of attorney which, with certain exceptions, comes into force when it has been registered under s.10 of the Act, and is not revoked by the donor’s subsequent mental incapacity; and secondly, to make certain amendments to the law relating to powers of attorney generally.

It was not possible to create an instrument with the characteristics of an enduring power prior to the commencement of the Act. The commonly understood power of attorney came (and still comes) into effect on execution, and lasts (and continues to last) until death, revocation or the onset of mental incapacity. The problem with the commonly known power of attorney was (and is) that it ceases to have effect when the donor becomes mentally incapable. Both the enduring power and the commonly known power of attorney cease on the death of a donor.

Enduring powers are a phenomenon of the late twentieth century. They were introduced in England and Wales by the Enduring Powers of Attorney Act 1995 (c. 29) and replaced by Lasting Powers of Attorney when the Mental Capacity Act 2005, came into operation on October 1, 2007, and are provided for in many other common law jurisdictions, for example, in the United States of America, Canada, Australia and New Zealand. For those interested in a detailed study of enduring powers, working papers or reports have been issued by the Law Reform Commissions of, for example, Ontario, British Columbia, Australia, Manitoba and Newfoundland, quite apart from the work which has been done by the UK Law Commission. For a detailed discussion on enduring powers, see the Law Reform Commission’s Consultation Paper on *Law and the Elderly* (CP23-2003) and its Consultation Paper and Report on *Vulnerable Adults and the Law* (CP33-2005 and LRC Report 83-2006). The Government