

Government Circular No. 1987/0354



Mental Health Act 1974 and Powers of Attorney Act 1987

MENTAL HEALTH (POWERS OF ATTORNEY) RULES 1987¹

Approved by Tynwald: 16 December 1987
Coming into Operation: 1st January 1988

In exercise of the powers conferred on the Deemsters by sections 80 and 82 of the Mental Health Act 1974¹, as applied by section 10 of the Powers of Attorney Act 1987², the following Rules are hereby made: —

Editorial Note: This instrument, despite the repeal of the Mental Health Act 1974, is continued by virtue of section 16 of the Interpretation Act 1976.

PART I

GENERAL

1 Citation, commencement and interpretation

- (1) These Rules may be cited as the Mental Health (Powers of Attorney) Rules 1987 and, subject to section 82(1) of the Mental Health Act 1974, shall come into operation on the 1st January 1988.
- (2) In these Rules —
 - “**the Act**” means the Powers of Attorney Act 1987;
 - “**applicant**” includes an objector, and “**application**” includes an objection;
 - “**attorney**” means an attorney appointed under an enduring power of attorney;
 - “**donor**” means a person who has created an enduring power of attorney;
 - “**enduring power of attorney**” means any power of attorney which complies with section 2 of the Act;
 - “**entered**” means entered in the register of enduring powers of attorney maintained under section 6(1) of the Act;
 - “**filed**” means filed in the General Registry;

¹ 1974 c.34

² 1987 c.5

“**order**” includes a certificate, direction or authority under seal;

“**relative**” means persons of the classes specified in paragraph 2(1) of Schedule 1 to the Act;

“**seal**” means the seal of the High Court, and “sealed” shall be construed accordingly.

(3) In these Rules a reference to a form by number means the form so designated in the Schedule, or a form to the like effect with such variations as the circumstances may require and the Judge may approve.

2 Application

The Mental Health Rules 1998 and these Rules shall apply equally in proceedings under the Act, save that in case of inconsistency or ambiguity these Rules shall prevail.²

3 Time

(1) Any period of time fixed by the Act or by these Rules or by an order for doing any act shall be reckoned as follows: —

- (a) where the act is required to be done not less than a specified period before a specified date, the period starts immediately after the date on which the act is done and ends immediately before the specified date;
- (b) where the act is required to be done within a specified period after or from a specified date, the period starts immediately after that date;
- (c) where, apart from this paragraph, the period in question (being a period of 3 days or less) would include a day on which the General Registry is closed, that day shall be excluded;
- (d) where the time so fixed for doing an act in the General Registry expires on a day on which the Registry is closed, and for that reason the act cannot be done on that day, the act shall be in time if it is done on the next day on which the Registry is open.

(2) The Judge may extend or abridge the time limited by these Rules or any order or directions of the Judge for doing any act or taking any steps, upon such terms as the Judge thinks fit and notwithstanding in the case of an extension that the time so limited has expired.

PART II

APPLICATIONS

4 Notice of intention to register

- (1) Notice of the attorney's intention to apply to register an enduring power of attorney shall be given in form 1 to the donor, to those relatives entitled to receive such notice and to any co-attorney.
- (2) An application to dispense with such notice shall be made before any application for registration is made.

5 Time limits

An application to register an made in form 2 and shall be lodged days after the date on which —

- (a) notice has been given to the donor, to every relative (if any) entitled to receive notice and every co-attorney; or
 - (b) leave has been given to dispense with notice,
- whichever is the later.

6 Form of application

- (1) Subject to rules 3 and 4 and to paragraph (2), an application to the judge may be by letter, unless the judge directs that the application should be formal, in which case it shall be made in form 3.
- (2) An application relating to the committal of a person for contempt of court shall be made to the judge by petition.

7 Objections to registration

- (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 the objector is not the donor;
 - (c) any relationship of the objector to the donor;
 - (d) the name and address of the attorney; and
 - (e) the grounds for objecting to the registration of the power.
- (2) Any objection to registration received in the General Registry on or after the date of registration shall be treated as an application to cancel the registration.

8 Applications other than for registration

- (1) This Rule applies to applications to the judge for relief or for determination of any question under the following provisions of the Act which is not made simultaneously with an application for registration of an enduring power of attorney —
 - section 4(5) (reference of question of validity of power);
 - section 5 (exercise of powers before registration);
 - section 6(4) (direction where notice is not given);
 - section 8(2) (general powers after registration);
 - section 8(3) (confirmation of revocation of power);
 - section 8(4) (cancellation of registration);
 - section 11(5)(c) (objection in relation to attorney who is not an applicant);
 - Schedule 1 paragraph 3(2) (dispensation with notice).
- (2) An application made by letter under rule 6(1), other than an objection to registration or disclaimer of attorneyship, shall include —
 - (a) the name and address of the applicant,
 - (b) the name and address of the donor, if the applicant is not the donor,
 - (c) the form of relief or determination required, and
 - (d) the grounds for the application.
- (3) On receipt of an application, the judge may decide either that no hearing is required or may fix an appointment for directions or for the application to be heard.
- (4) The judge may at any time, on application or of his own motion, give such directions as he thinks proper with regard to any matter arising in the course of an application.
- (5) 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 judge to be notified.
- (6) 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.
- (7) If it appears to the judge that any order for relief should be made or any question determined, the judge may of his own motion make such order or give such direction as he thinks fit.
- (8) Where an enduring power of attorney is sought to be disclaimed pursuant to section 4(6) or 7(1)(b) of the Act, notice of disclaimer by the attorney shall be given in form 3, and the disclaimer shall take effect on the day on which notice of disclaimer is received at the General Registry.

9 Consolidation of proceedings

The judge may consolidate any applications for registration or relief or any objections to registration if he considers that the proceedings relating to them can more conveniently be dealt with together.

10 Registration

- (1) Where there is no objection to registration or any objection has been withdrawn or dismissed, the enduring power of attorney shall be registered and sealed.
- (2) The Chief Registrar 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 are on the face of the instrument when an application for registration is made shall be sealed.
- (4) Any qualification to registration imposed under section 11(6) or (7) of the Act shall be noted on the register and on the instrument, and shall be sealed.
- (5) The date of registration shall be the date stamped by the Chief Registrar on the instrument when it is registered.

11 Searches and copies

- (1) Any person shall on payment of the appropriate fee be entitled to request the Chief Registrar in form 4 to search the register and to say whether an enduring power of attorney has been registered; and the Chief Registrar shall issue a certificate of the result of the search in form 5.
- (2) The Chief Registrar may supply any person with an office copy of a registered enduring power of attorney if he is 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 of an enduring power of attorney, marked as an office copy, sealed and serially numbered.
- (4) An office copy of an enduring power of attorney need not contain the explanatory information endorsed on the original power.

PART III

HEARINGS

12 Notice of hearing

- (1) Except where these Rules otherwise provide or the judge otherwise directs, the following periods of notice of a hearing shall be given by the applicant.
- (2) 10 clear days' notice shall be given —
 - (a) in the case of an application to dispense with notice to the donor;
 - (b) in the case of an application to dispose of the donor's property before registration; and
 - (c) in the case of an objection to registration of an enduring power, unless the court otherwise directs, to —
 - (i) the attorney,
 - (ii) the donor,
 - (iii) every relative,
 - (iv) any co-attorney; and
 - (v) such other persons appearing to the judge to be interested as the judge may specify.
- (3) 7 clear days' notice shall be given in the case of any other application and to any other person interested in the proceedings.
- (4) For the purposes of this rule notice of a hearing is given if the applicant sends a copy of the application, with a notification of the time and place appointed for the hearing, to the person concerned.

13 Mode of service

- (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 served by sending it to him by post.

14 Service on advocate

Where an advocate for the person to be given any document endorses on it or 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 sent to that person and to have been received on the date on which the endorsement was made.

15 Substituted service

Where it appears to the judge to be impracticable for any document to be sent in accordance with rule 13, he may give such directions for the purpose of bringing to document to the notice of the person to whom it is addressed as he thinks fit.

16 Use of evidence in subsequent proceedings

Except where the judge otherwise directs, evidence which has been used in any proceedings relating to the donor may be used at any subsequent stage of those proceedings or in any other proceedings before the judge.

17 Copies of documents in court

- (1) Any person who has filed an affidavit or other document shall, unless the judge otherwise directs, be entitled on request to be supplied by the Chief Registrar with a copy of it.
- (2) An attorney or his advocate 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 is appointed.
- (3) Subject to sub-paragraphs (1) and (2), no documents filed in the General Registry shall be open to inspection without the leave of the judge and no copy of any such document or an extract thereof shall be taken by or issued to any person without such leave.

18 Summoning of witnesses

In any proceedings under these Rules a witness summons shall be issued in form 6.

19 Leave to make application

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 Judge for leave before making any application for relief under the Act.

20 Notification of decision

The applicant shall notify all persons who receive notice under rule 8(5) of the Judge's decision, and shall also send to them a copy of any order made or directions given.

PART IV

CANCELLATION OF REGISTRATION

21 Cancellation of registered power

- (1) Where the Judge is satisfied that one of the circumstances listed in section 8(4) of the Act applies, he shall order the Chief Registrar to cancel the registration of the enduring power of attorney in question, and the Chief Registrar shall send a notice to the attorney requiring the attorney to deliver to him the original instrument.
- (2) Where the instrument creating an enduring power of attorney has been lost or destroyed, the person on whom a notice under paragraph 1 has been served shall give to the Chief Registrar written details of the date on which and the circumstances in which the instrument was lost or destroyed.
- (3) Where the Judge has ordered the cancellation of the registration of an enduring power of attorney because he is satisfied as mentioned in section 8(4)(f) or (g) of the Act, he shall revoke the power created by the instrument.
- (4) Where registration has been cancelled for any reason other than one of those set out in section 8(4)(c), (f) or (g) of the Act, the Chief Registrar shall mark the power of attorney as cancelled.
- (5) Any notices issued by the Chief Registrar under this rule may contain a warning that failure to comply with the notice may lead to punishment for contempt of court.

PART V³

MADE 24 NOVEMBER 1987

SCHEDULE

Rule 1(3)

FORMS**FORM 1****NOTICE OF INTENTION TO APPLY FOR REGISTRATION**

IN HER MAJESTY'S HIGH COURT OF JUSTICE OF THE ISLE OF MAN

CHANCERY DIVISION

In the matter of the Powers of Attorney Act 1987 and

In the matter of a power given by

.....

to

TAKE NOTICE that I/We

of

the attorney[s] of("the donor")

of

intend to apply to the judge for registration of the enduring power of attorney appointing me/us attorney[s] and made by the donor on the

.....19.....

You have 4 weeks from the day on which this notice is given to you to object in writing to the proposed registration of the power of attorney. Objections should be sent to the Chief Registrar, General Registry, Douglas, Isle of Man, 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 power.

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).

You are informed that while the enduring power of attorney remains registered, you will not be able to revoke it until the judge confirms the revocation. *(Delete if the notice is not addressed to the donor,)*

Dated..... 19.....

Signed.....

(The notice should be signed by all the attorneys who are applying to register the enduring power of attorney,)

FORM 2

APPLICATION FOR REGISTRATION

[Heading as in form 1]

The attorney[s]:

[Full
name.....]

Address.....

Age..... Occupation.....]

The donor:

[Full name

Address

(If the donor's address on the enduring power of attorney is different, give that address too.)

I/We the attorney[s] apply to register the enduring power of attorney made by the donor under the above Act on the..... 19.....

I/We have reason to believe that the donor is or is becoming mentally incapable.

I/We have given notice in the prescribed form to the following: —

the donor personally at

on the19.....

the following relatives of the donor at the addresses and on the dates below:

Name	Relationship	Address	Date

the co-attorney at

on the 19..... *(Delete if this does not apply.)*

The enduring power of attorney accompanies this application.

I/We certify that the above information is correct and that the best of my/our knowledge and belief I/we have complied with the Powers of Attorney Act 1987 and all the rules and regulations made under it.

Dated19.....

Signed

Address to which notices should be sent.....

.....

(The application should be signed by all the attorneys who are applying to register the enduring power of attorney.)

FORM 3

GENERAL FORM OF APPLICATION

[Heading as in form 1]

I/We

of

apply for an order that.....

.....

(Details of order that the judge is asked to make)

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

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

.....

(Details of grounds on which the judge is asked to make the order)

Dated19.....

Signed

Address to which notices should be sent.....

.....

(The application should be signed by all the applicants or their advocates.)

FORM 4

APPLICATION FOR SEARCH OR OFFICE COPY

POWERS OF ATTORNEY ACT 1987

To the Chief Registrar

General Registry

Finch Road

Douglas

I/We

of

apply to be informed whether an enduring power of attorney has been registered, or
registration of an enduring power of attorney is pending, in the name of
.....

(Give full name (if known) of person the subject of the enquiry)

[alternative name]

address (if known)

.....

[alternative address]

I/We enclose the prescribed fee of £

Please supply me with an office copy of the power *(Complete if applicable)*

My/Our reasons for requesting a copy from the General Registry are

It is not reasonably practicable to obtain a copy from the attorney because

Dated 19.....

Signed

FORM 5

Certificate of result of search

GENERAL REGISTRY, ISLE OF MAN**POWERS OF ATTORNEY ACT 1987**In reply to your enquiry - *(Delete and complete as applicable)*

1. The following enduring power of attorney is registered against the donor's name you give:

Donor's name:

Attorney's name

Power made on19.....

registered on19.....

2. There is an application pending for registration of the following enduring power of attorney:

Donor's name:

Attorney's name

Power made on19.....

3. There was an enduring power of attorney registered against the donor's name you give but the registration has been cancelled [and revoked]

Donor's name:

Attorney's name

Power made on19

registered on19

Date cancelled [and revoked]19

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

Dated19.....

.....Chief Registrar

FORM 6**WITNESS SUMMONS**

[Heading as in form 1]

To:

of

You are ordered to attend before me at

onday the 19..... at..... am/pm

[to give evidence in this matter]

[to bring with you and produce at the hearing the documents listed below:

Dated19.....

.....Deemster

This summons was issued at the request of

advocates for the

of

ENDNOTES

Table of Endnote References

¹ The format of this legislation has been changed as provided for under section 75 of, and paragraph 2 of Schedule 1 to, the Legislation Act 2015. The changes have been approved by the Attorney General after consultation with the Clerk of Tynwald as required by section 76 of the Legislation Act 2015.

² Rule 2 amended by SD 389/98.

³ Part V revoked by SD2024/0079.