



AN BILLE UM CHUMHACHTAÍ ATURNAE, 1995
POWERS OF ATTORNEY BILL, 1995

Mar a ritheadh ag Dáil Éireann
As passed by Dáil Éireann

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY AND GENERAL

Section

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.

[No. 37c of 1995]

PART III

POWERS OF ATTORNEY GENERALLY

Section

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ENACTMENTS REPEALED

ACTS REFERRED TO

| | |
|---------------------------------------|--------------|
| Companies Act, 1990 | 1990, No. 33 |
| Conveyancing Act, 1881 | 1881, c. 41 |
| Conveyancing Act, 1882 | 1882, c. 39 |
| Health (Nursing Homes) Act, 1990 | 1990, No. 23 |
| Lunacy Regulation (Ireland) Act, 1871 | 1871, c. 22 |
| Settled Land Act, 1882 | 1882, c. 38 |
| Stock Exchange Act, 1995 | 1995, No. 9 |
| Stock Transfer Act, 1963 | 1963, No. 34 |
| Succession Act, 1965 | 1965, No. 27 |



AN BILLE UM CHUMHACHTAÍ ATURNAE, 1995
POWERS OF ATTORNEY BILL, 1995

BILL

entitled

5 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.

10 BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART I

PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as the Powers of Attorney Act, 1996. Short title and commencement.

15 (2) This Act shall come into force on such day or days as the Minister shall appoint by order or orders either generally or with reference to any particular provisions and different days may be so fixed for different provisions.

2.—(1) In this Act, unless the context otherwise requires—

Interpretation generally.

20 “convey” includes transfer, lease and assign, and “conveyance” shall be construed accordingly;

“power” means power of attorney;

25 “power of attorney” means an instrument signed by or by direction of a person (the donor), or a provision contained in such an instrument, giving the donee the power to act on behalf of the donor in accordance with the terms of the instrument;

“statutory declaration” includes a statutory declaration made in accordance with *section 3*.

30 (2) (a) In this Act a reference to a Part, section or Schedule is a reference to a Part, section or Schedule of this Act unless it is indicated that reference to some other enactment is intended.

(b) In this Act a reference to a subsection, paragraph or subparagraph is a reference to the subsection, paragraph or subparagraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended.

5

(3) In this Act a reference to an Act is to that Act as subsequently amended.

Statutory
declaration by
company.

3.—Where, for any purpose of this Act, a statutory declaration is to be made by a person being a corporation aggregate it may be made on behalf of the corporation by a person authorised by the corporation to act on its behalf.

10

PART II

ENDURING POWERS OF ATTORNEY

Interpretation.

4.—(1) In this Part—

“affairs”, in relation to a donor of an enduring power, means business or financial affairs of the donor;

15

“attorney” means the donee of an enduring power and includes a person acting in pursuance of *section 5(3)* and complying with the provisions of this Act and regulations made thereunder;

“the court” means the High Court;

20

“enduring power” shall be construed in accordance with *section 5(1)*;

“mental incapacity”, in relation to an individual, means incapacity by reason of a mental condition to manage and administer his or her own property and affairs and cognate expressions shall be construed accordingly;

25

“the Minister” means the Minister for Equality and Law Reform;

“notice” means notice in writing;

“personal care decision”, in relation to a donor of an enduring power, means a decision on any one or more of the following matters:

30

(a) where the donor should live,

(b) with whom the donor should live,

(c) whom the donor should see and not see,

(d) what training or rehabilitation the donor should get,

35

(e) the donor’s diet and dress,

(f) inspection of the donor’s personal papers,

(g) housing, social welfare and other benefits for the donor;

“registration”, in relation to an enduring power of attorney, means registration under *section 10*, and “registered” shall be construed accordingly.

5 (2) An application or reference to the court under this Part shall be made in a summary manner.

(3) If any question arises under this Part as to what the donor of the enduring power might at any time be expected to do it shall be assumed that the donor had the mental capacity to do so.

10 5.—(1) A power of attorney is an enduring power within the meaning of this Act if the instrument creating the power contains a statement by the donor to the effect that the donor intends the power to be effective during any subsequent mental incapacity of the donor and complies with the provisions of this section and regulations made thereunder. Characteristics of enduring power.

15 (2) The Minister may make provision by regulations in relation to all of the following matters concerning enduring powers of attorney:

(a) their form,

(b) their execution,

20 (c) ensuring that any document purporting to create an enduring power incorporates adequate information as to the effect of creating or accepting the power,

(d) the inclusion in the document of all of the following statements—

25 (i) by the donor, that the donor has read the information as to the effect of creating the power or that such information has been read to the donor,

30 (ii) by a solicitor (or a member of some other specified class of persons), that, after interviewing the donor and making any necessary enquiries, the solicitor or such member—

(I) is satisfied that the donor understood the effect of creating the power, and

35 (II) has no reason to believe that the document is being executed by the donor as a result of fraud or undue pressure,

40 (iii) by a registered medical practitioner, that in his or her opinion at the time the document was executed the donor had the mental capacity, with the assistance of such explanations as may have been given to the donor, to understand the effect of creating the power,

(iv) by the attorney, that the attorney understands the duties and obligations of an attorney and the requirements of registration under *section 10*,

- (e) the keeping of accounts by the attorney in relation to the management and disposal of the donor's property,
 - (f) the remuneration, if any, to be paid to the attorney,
 - (g) the attestation of the signatures of the donor and the attorney, 5
 - (h) specific provision for cases where more than one attorney is appointed,
 - (i) the giving by the donor to specified persons of notice of the execution of the power, and
 - (j) if the regulations amend or revoke any regulations previously made under this subsection, saving and transitional provisions. 10
- (3) The donor of an enduring power may in the document creating the power appoint one or more specified persons, being persons who are not disqualified, to act as attorney if an attorney appointed by the power dies or is unable or declines to act or is disqualified from acting as attorney. 15
- (4) A power of attorney cannot be an enduring power unless, when executing the instrument creating it, the attorney is—
- (a) (i) an individual who has attained 18 years and has not been adjudicated bankrupt or convicted of an offence involving fraud or dishonesty or an offence against the person or property of the donor or is not— 20
 - (I) a person in respect of whom a declaration has been made under section 150 of the Companies Act, 1990, or 25
 - (II) a person who is or was subject or deemed subject to a disqualification order by virtue of Part VII of that Act, 30
 - or
 - (ii) a trust corporation (within the meaning of section 30 of the Succession Act, 1965),
- and
- (b) not the owner of a nursing home (whether or not it is a nursing home within the meaning of the Health (Nursing Homes) Act, 1990) in which the donor resides, or a person residing with or an employee or agent of the owner, unless the attorney is a spouse, parent, child or sibling of the donor. 35 40
- (5) A power of attorney which gives the attorney a right to appoint a substitute or successor cannot be an enduring power.
- (6) Subject to *subsection (8)* and *sections 14 (3)* and *14 (5)*, an enduring power shall be invalidated or, as the case may be, shall cease to be in force on the adjudication in bankruptcy of the attorney 45

or, if the attorney is a body corporate, by its winding up or dissolution or on the attorney being convicted of an offence referred to in subsection (4) (a) (i) or becoming—

5 (a) a person referred to in clause (I) or (II) of subsection (4) (a) (i), or

(b) an owner of a nursing home or other person referred to in subsection (4) (b),

unless the attorney is an attorney appointed by the power and subsection (3) applies.

10 (7) An enduring power in favour of a spouse shall, unless the power provides otherwise, be invalidated or, as the case may be, cease to be in force if subsequently—

15 (a) the marriage is either annulled under the law of the State or is annulled or dissolved under the law of another State and is, by reason of that annulment or divorce, not or no longer a subsisting valid marriage under the law of the State,

20 (b) either a decree of judicial separation is granted to either spouse by a court in the State or any decree is so granted by a court outside the State and is recognised in the State as having the like effect,

(c) a written agreement to separate is entered into between the spouses, or

25 (d) a protection order, interim barring order, barring order or safety order is made against the attorney on the application of the donor, or *vice versa*.

(8) Subsection (6) shall not apply to an enduring power which authorises, or to the extent that it authorises, an attorney to make personal care decisions on behalf of the donor unless the attorney 30 has been convicted of an offence against the person of the donor or has become a person who would be disqualified from acting as attorney by virtue of subsection (4) (b).

35 (9) An enduring power shall be invalidated or, as the case may be, shall cease to be in force on the exercise by the court of any of its powers under the Lunacy Regulation (Ireland) Act, 1871, if the court so directs.

(10) No disclaimer, whether by deed or otherwise, of an enduring power which has not been registered under section 10 shall be valid unless and until the attorney gives notice of it to the donor.

40 (11) In subsection (4) (b) "owner" includes a person managing a nursing home or a director (including a shadow director within the meaning of section 27 of the Companies Act, 1990) of, or a shareholder in, a company which owns or manages such a home.

45 6.—(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 the attorney authority to do specified things on the donor's behalf and the authority may, in either case, be conferred subject to conditions and restrictions.

Scope of authority of attorney under enduring power.

(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 attorney. 5

(3) Subject to any conditions or restrictions contained in the instrument, an attorney under an enduring power, whether general or limited, may execute or exercise any of the powers or discretions vested in the donor as a tenant for life within the meaning of the Settled Land Act, 1882. 10

(4) Subject to any conditions or restrictions contained in the instrument, an attorney under an enduring power, whether general or limited, may act under the power for the attorney's benefit or that of other persons to the following extent but no further, that is to say, the attorney— 15

(a) may so act in relation to himself or herself or in relation to any other person if the donor might be expected to provide for his or her or that person's needs respectively; and

(b) may do whatever the donor might be expected to do to meet those needs. 20

(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, if specific provision to that effect is made in the instrument, dispose of the property of the donor by way of gift to the following extent but no further, that is to say, by making— 25

(a) gifts of a seasonal nature or at a time, or on an anniversary, of a birth or marriage, to persons (including the attorney) who are related to or connected with the donor, and 30

(b) gifts to any charity to which 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 extent of the donor's assets. 35

(6) An enduring power may also confer authority on the attorney to make any specified personal care decision or decisions on the donor's behalf.

(7) (a) Any personal care decision made by an attorney on behalf of a donor shall be made in the donor's best interests. 40

(b) In deciding what is in a donor's best interests regard shall be had to the following:

(i) so far as ascertainable, the past and present wishes and feelings of the donor and the factors which the donor would consider if he or she were able to do so; 45

(ii) the need to permit and encourage the donor to participate, or to improve the donor's ability to participate, as fully as possible in any decision affecting the donor; 50

(iii) so far as it is practicable and appropriate to consult any of the persons mentioned below, their views as to the donor's wishes and feelings and as to what would be in the donor's best interests:

- 5 (I) any person named by the donor as someone to be consulted on those matters;
- (II) anyone (whether the donor's spouse, a relative, friend or other person) engaged in caring for the donor or interested in the donor's welfare;
- 10 (iv) whether the purpose for which any decision is required can be as effectively achieved in a manner less restrictive of the donor's freedom of action.
- (c) In the case of any personal care decision made by an attorney it shall be a sufficient compliance with *paragraph (a)* if the attorney reasonably believes that what he or she decides is in the best interests of the donor.
- 15

7.—(1) Where an individual creates an enduring power of attorney—

Coming into force and survival of enduring power.

(a) subject to *subsection (2)* and *section 9*, the power shall not come into force until it has been registered under *section 10*; and

20

(b) the power shall not be revoked by the donor's subsequent mental incapacity.

(2) Where the attorney has made an application for registration of the instrument then, until the application has been determined, the attorney may take action under the power—

25

(a) to maintain the donor or prevent loss to the donor's estate,

(b) to maintain the attorney or other persons in so far as that is permitted under *section 6 (4)*, or

(c) to make a personal care decision which cannot reasonably be deferred until the application has been determined.

30

(3) Where the attorney purports to act as provided by *subsection (2)* then, in favour of a person who deals with the attorney without knowledge that the attorney is acting otherwise than in accordance with that subsection, the transaction between them shall be as valid as if the attorney were acting in accordance therewith.

35

8.—Where the court has reason to believe that the donor of an enduring power may be, or may be becoming, mentally incapable and the court 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 or the attorney appointed to act under it which would become exercisable under *section 12* on its registration, the court may on application to it by any interested party exercise that power under this section and may do so whether the attorney has or has not made an application to the court for the registration of the instrument.

40

45

Functions of court prior to registration.

Application for registration.

9.—(1) If the attorney under an enduring power has reason to believe that the donor is or is becoming mentally incapable, the attorney shall, as soon as practicable, make an application to the court for the registration of the instrument creating the power.

(2) Before making the application the attorney shall comply with the provisions as to notice set out in the *First Schedule*. 5

(3) The attorney may, before making the application, refer to the court for its determination any question as to the validity of the power.

(4) A certificate to the effect that the donor is, or is becoming, incapable by reason of a mental condition of managing and administering his or her own property and affairs and purporting to be signed by a registered medical practitioner may be accepted as evidence of the matters contained therein. 10

(5) Any person who, in an application for registration, makes a statement which he or she knows to be false in a material particular shall be liable— 15

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine not exceeding £10,000, or both; and 20

(b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding £1,000, or both.

(6) Pending the making of other provision by rules of court an application under *subsection (1)* shall be addressed to the Registrar of Wards of Court. 25

Registration.

10.—(1) On an application for registration being made in compliance with *section 9* the Registrar of Wards of Court shall, unless *subsection (2)* applies, register the instrument to which the application relates. 30

(2) If, in the case of an application for registration—

(a) a valid notice of objection to the registration pursuant to *subsection (3)* from a person to whom an attorney has given notice pursuant to *paragraph 2 (1)* of the *First Schedule* is received by the court before the expiry of the period of five weeks beginning with the date on which that notice was given, 35

(b) it appears from the application that there is no one to whom notice has been given under *paragraph 2* of that Schedule, or 40

(c) there is reason to believe that appropriate enquiries might bring to light evidence on which the court could be satisfied that one of the grounds of objection set out in *subsection (3)* was established,

the court shall neither register the instrument nor refuse the application until it has made or caused to be made such enquiries (if any) as it thinks appropriate in the circumstances of the case. 45

(3) 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—

- 5 (a) that the power purported to have been created by the instrument was not valid;
- (b) that the power created by the instrument is no longer a valid and subsisting power;
- (c) that the donor is not or is not becoming mentally incapable;
- 10 (d) that, having regard to all the circumstances, the attorney is unsuitable to be the donor's attorney;
- (e) that fraud or undue pressure was used to induce the donor to create the power.

(4) The court may refuse the application on any of the grounds of objection set out in *subsection (3)*.

15 (5) (a) Where an instrument differs in an immaterial respect in form or mode of expression from the form prescribed by regulations under *section 5 (2) (a)* the instrument shall be treated as sufficient in point of form and expression.

20 (b) The court may, notwithstanding that an instrument may not comply with the provisions of *section 5* or regulations made thereunder, register the instrument as an enduring power if it is satisfied—

- (i) that the donor intended the power to be effective during any mental incapacity of the donor,
- 25 (ii) that the power was not executed as a result of any fraud or undue pressure,
- (iii) that the attorney is suitable to be the donor's attorney, and
- 30 (iv) that it is desirable in the interests of justice so to register the instrument.

35 (6) Where at the time of the application for registration there is in force under the Lunacy Regulation (Ireland) Act, 1871, an order appointing a committee of the estate of the donor but the power created by the instrument has not also been revoked, the court shall make such order as seems to it proper in the circumstances including, if appropriate, an order revoking the order already made under the said Act.

11.—(1) The effect of the registration of an instrument is that—

Effect and proof of registration.

- 40 (a) no revocation of the power by the donor shall be valid unless and until the court confirms the revocation under *section 12 (3)*;
- (b) no disclaimer of the power shall be valid except on notice to the donor and with the consent of the court;
- 45 (c) the donor may not extend or restrict the scope of the authority conferred by the instrument and no consent or

instruction given by the donor 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 consent or instruction.

5

(2) *Subsection (1)* applies for so long as the instrument is registered whether or not the donor is for the time being mentally capable.

(3) On registration of an enduring power the Registrar of Wards of Court shall supply an attested copy of the enduring power to the donor and any persons who were given notice under *paragraph 2* of the *First Schedule* of the application for registration.

10

(4) Members of the public may inspect the register free of charge during normal office hours.

(5) A document purporting to be a copy, attested by an officer of the Office of Wards of Court, 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.

15

(6) *Subsection (5)* is without prejudice to *section 21* (proof by certified copies) and to any other method of proof authorised by law.

20

Functions of court with respect to registered power.

12.—(1) Where an instrument has been registered the court shall, on application to it by the donor, the attorney or any other interested party, as the case may be, have the functions set out in *subsections (2) to (6)*.

(2) The court may— 25

(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; 30

(ii) the rendering of accounts by the attorney and the production of the records kept by the attorney for that 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; 35

(iv) a personal care decision made or to be made by the attorney; 40

(c) require the attorney to furnish information or produce documents or things in his or her 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 for the attorney's own benefit or that of other persons than the donor otherwise than in 45

accordance with *section 6 (4) and (5)* (but subject to any conditions or restrictions contained in the instrument);

5 (f) where appropriate, relieve the attorney wholly or partly from any liability incurred or which may have been incurred on account of a breach of duty as attorney.

10 (3) On application on notice to the attorney made for the purpose by or on behalf of the donor, the court 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 at the time of the purported revocation.

(4) The court may cancel the registration of an instrument in any of the following circumstances, that is to say—

15 (a) on confirming the revocation of the power under *subsection (3)* or consenting to a disclaimer under *section 11 (1) (b)*;

(b) on giving a direction revoking the power on exercising any of its powers under the Lunacy Regulation (Ireland) Act, 1871;

20 (c) on being satisfied that the donor is and is likely to remain mentally capable;

25 (d) on being satisfied that the power has ceased to be in force by the death or adjudication in bankruptcy of the donor or by virtue of *subsection (7) or (9) of section 5* or by the death or mental incapacity of the attorney or by virtue of *section 5 (6)*;

(e) on being satisfied that the power was not a valid and subsisting enduring power when registration was effected;

30 (f) on being satisfied that, having regard to all the circumstances, the attorney is unsuitable to be the donor's attorney;

(g) on being satisfied that fraud or undue pressure was used to induce the donor to create the power; or

(h) for any other good and sufficient reason.

35 (5) Where the court cancels the registration of an instrument on being satisfied of the matters specified in *paragraph (f) or (g) of subsection (4)* it shall by order revoke the power created by the instrument.

40 (6) On the cancellation of the registration of an instrument under *subsection (4)* (other than *paragraph (c)*) the instrument shall be delivered up to be cancelled, unless the court otherwise directs.

13.—(1) *Subsections (2) and (3)* apply where an instrument which did not create a valid enduring power has been registered, whether or not the registration has been cancelled at the time of the act or transaction in question.

Protection of attorney and third person where registered power invalid or not in force.

45 (2) An attorney who acts in pursuance of an enduring power which is not or no longer a valid power or which has ceased to be in

force shall not thereby incur any liability (either to the donor or to any other person) unless at the time of acting the attorney 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 invalidated the power or caused it to cease to be in force; or

(c) that the instrument has been cancelled.

(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 presumed in favour of the purchaser unless the contrary is shown that the transaction was valid if—

(a) the transaction between that person and the attorney was completed within twelve months of the date on which the instrument was registered; or

(b) that person makes a statutory declaration, before or within three months after the completion of the purchase, that he or she 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 18* (protection of attorney and third persons where action is taken under the power of attorney in ignorance of its having been revoked) in its application to an enduring power the revocation of which by the donor is by virtue of *section 11 (1) (a)* invalid unless and until confirmed by the court under *section 12 (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) In this section “purchaser” has the meaning assigned to it by *section 18 (6)* and “purchase” shall be construed accordingly.

Application to joint and joint and several attorneys.

14.—(1) An instrument which appoints more than one person to be an attorney may specify that the attorneys are appointed to act either jointly or jointly and severally. In default, the attorneys shall be deemed to have been appointed to act jointly.

(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 *subsection (3)* and *Part I of the Second Schedule*.

(3) Where two or more persons are appointed (or are deemed to have been appointed) to act jointly, then, in the case of the death, incapacity or disqualification of any one or more of them, the remaining attorney or attorneys may continue to act, whether solely or jointly as the case may be, unless the instrument creating the power expressly provides to the contrary.

(4) This Act, in its application to joint and several attorneys, applies with the modifications specified in *subsections (5) to (8)* and in *Part II* of the *Second Schedule*.

5 (5) A failure, as respects any other attorney, to comply with the provisions of *section 5* and regulations made thereunder shall prevent the instrument from applying in that attorney's case without however affecting its efficacy as respects the other or others.

10 (6) 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 determination of the application as provided in *section 7 (2)* (or under *section 8*);

15 (b) notice of the application shall also be given under the *First Schedule* 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.

20 (7) The court shall not refuse under *section 10 (4)* to register an instrument because a ground of objection to an attorney or a power is established if an enduring power subsists as respects an attorney who is not affected thereby but shall give effect to it by the prescribed qualification of the registration.

25 (8) The court shall not cancel the registration of an instrument under *section 12 (4)* in any of the circumstances specified in that subsection if an enduring power subsists as respects an attorney who is not affected thereby but shall give effect to it by the prescribed qualification of the registration.

30 (9) In this section—

“prescribed” means prescribed by rules of court; and

“the requirements for the creation of enduring powers” means the provisions of *section 5* other than *subsections (5) to (10)* and of regulations under *subsection (2)* of that section.

35 PART III

POWERS OF ATTORNEY GENERALLY

40 15.—(1) Where an instrument creating a power of attorney is signed by direction of the donor it shall be signed in the presence of the donor and of another person who shall attest the instrument as witness. Creation of power.

(2) A power of attorney is not required to be made under seal.

(3) This section is without prejudice to any requirement in or under any other enactment as to the witnessing of powers of attorney or as to the execution of instruments by bodies corporate.

Effect of general power in specified form.

16.—(1) A general power of attorney in the form set out in the *Third Schedule*, or in a form to the like effect expressed to be made under this Act, shall operate to confer on the donee or donees of the power acting in accordance with its terms authority to do on behalf of the donor anything which the donor can lawfully do by attorney. 5

(2) This section does not apply to functions which the donor has as a trustee or personal representative or as a tenant for life within the meaning of the Settled Land Act, 1882, or as a trustee or other person exercising the powers of a tenant for life under section 60 of that Act. 10

Execution of instruments, etc. by donee of power.

17.—(1) The donee of a power of attorney may—

(a) execute any instrument with his or her own signature and, where sealing is required, with his or her own seal, and

(b) do any other thing in his or her own name,

by the authority of the donor of the power; and any instrument executed or thing done in that manner shall be as effective as if executed or done by the donee with the signature and seal, or, as the case may be, in the name, of the donor of the power. 15

(2) A person who is authorised under a power of attorney to convey any estate or interest in property in the name or on behalf of a corporation sole or aggregate may either execute the conveyance as provided in *subsection (1)* or, as donee of the power, execute the conveyance by signing his or her name as acting in the name or on behalf of the corporation in the presence of at least one witness and, in the case of a deed, by affixing his or her own seal, and such execution takes effect and is valid in like manner as if the corporation had executed the conveyance. 20 25

(3) Where a corporation aggregate is authorised under a power of attorney to convey any interest in property in the name or on behalf of any other person (including another body corporate), a person appointed for that purpose by the corporation may execute the deed or other instrument in the name of such other person; and where an instrument appears to be executed by a person so appointed then in favour of a purchaser the instrument is deemed to have been executed by that person, unless the contrary is shown. 30 35

(4) In this section “purchaser” has the meaning given to it by *section 18 (6)*.

(5) This section applies whenever the power of attorney was created.

Protection of donee and other persons where power revoked.

18.—(1) A donee of a power of attorney who acts in pursuance of the power at a time when it has been revoked shall not, by reason of the revocation, incur any liability (either to the donor or to any other person) if at that time the donee did not know that the power had been revoked. 40

(2) Where a power of attorney has been revoked and a person, without knowledge of the revocation, deals with the donee of the power, the transaction between them shall, in favour of that person, be as valid as if the power had then been in force. 45

5 (3) Where the power is expressed in the instrument creating it to be irrevocable and to be given by way of security then, unless the person dealing with the donee knows that it was not in fact given by way of security, that person shall be entitled to assume that the power is incapable of revocation except by the donor acting with the consent of the donee and shall accordingly be treated for the purposes of *subsection (2)* as having knowledge of the revocation only if that person knows that it has been revoked in that manner.

10 (4) Where the interest of a purchaser depends on whether a transaction between the donee of a power of attorney and another person was valid by virtue of *subsection (2)*, it shall be presumed in favour of the purchaser unless the contrary is shown that that person did not at the material time know of the revocation of the power if—

15 (a) the transaction between that person and the donee was completed within twelve months of the date on which the power came into operation, or

20 (b) that person makes a statutory declaration, before or within three months after the completion of the purchase, that that person did not at the material time know of the revocation of the power.

(5) Without prejudice to *subsection (3)*, for the purposes of this section knowledge of the revocation of a power of attorney includes knowledge of the occurrence of any event (such as the death of the donor) which has the effect of revoking the power.

25 (6) In this section “purchaser” means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who, for valuable consideration, acquires an interest in any property; and includes also an intending purchaser.

30 (7) This section applies to a power of attorney whenever created but only to acts and transactions after the commencement of this section.

19.—(1) Without prejudice to *section 18*, where—

Protection of transferee under stock exchange transaction.

(a) the donee of a power of attorney executes, as transferor, an instrument transferring registered securities, and

35 (b) the instrument is executed for the purposes of a stock exchange transaction,

40 it shall be presumed in favour of the transferee unless the contrary is shown that the power had not been revoked at the date of the instrument if a statutory declaration to that effect is made by the donee of the power on or within three months after that date.

(2) In this section “registered securities” and “stock exchange transaction” have the same meanings as in the Stock Transfer Act, 1963.

45 20.—(1) Where a power of attorney is expressed to be irrevocable and is given to secure—

Power given as security.

(a) a proprietary interest of the donee of the power, or

(b) the performance of an obligation owed to the donee,
then, so long as the donee has that interest or the obligation remains
undischarged, the power shall not be revoked—

- (i) by the donor without the consent of the donee, or
- (ii) by the death, incapacity or bankruptcy of the donor 5
or, if the donor is a body corporate, by its winding-
up or dissolution.

(2) A power of attorney given to secure a proprietary interest may
be given, and shall be deemed to have been capable always of being 10
given, to the person entitled to the interest and persons deriving title
under that person to that interest, and those persons shall be duly
constituted donees of the power for all purposes of the power but
without prejudice to any right to appoint substitutes given by the
power.

(3) This section applies to powers of attorney whenever created. 15

Proof of instrument
creating power.

21.—(1) A power of attorney may be proved by production of the
original instrument or of a copy which—

(a) is certified by the donor of the power or by a solicitor or
member firm (within the meaning of the Stock Exchange 20
Act, 1995), or in such other manner as the court
approves, to be a true copy of the original, or

(b) where the instrument has been deposited in the Central
Office of the High Court pursuant to *section 22* is attested
in accordance with that section.

(2) It is immaterial for the purposes of *subsection (1)* how many 25
removes there are between the copy and the original or by what
means (which may include facsimile transmission) the copy produced
or any intermediate copy was made.

(3) This section is without prejudice to any other method of proof
authorised by law. 30

Deposit of original
instruments in
Central Office.

22.—(1) An instrument creating a power of attorney, its execution
being verified by affidavit, statutory declaration or other sufficient
evidence, may, with the affidavit or declaration, if any, be deposited
in the Central Office of the High Court.

(2) A separate file of instruments so deposited shall be kept and 35
any person may, free of charge during normal office hours, search
that file and inspect any instrument so deposited, and an attested
copy thereof shall be delivered to that person on request.

(3) A copy of an instrument so deposited may be presented at the
Central Office, and may be stamped or marked as an attested copy, 40
and when so stamped or marked shall become and be an attested
copy.

(4) An attested copy of an instrument so deposited shall without
further proof be sufficient evidence of the contents of the instrument
and of the deposit thereof in the Central Office. 45

(5) *Subsections (2) to (4)* apply to instruments deposited in the Central Office before the commencement of this section.

(6) This section applies to instruments creating powers of attorney whenever executed.

5 23.—A purchaser of any estate or interest in land is entitled to have any instrument creating a power of attorney which affects title thereto, or a certified copy or attested copy thereof, furnished by the vendor to the purchaser free of expense. Furnishing to purchaser of power relating to land.

PART IV

10 MISCELLANEOUS

15 24.—Every order and regulation made under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order or regulation is passed by either such House within the next subsequent twenty-one days on which the House has sat after the order or regulation is laid before it, the order or regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder. Laying of orders and regulations before Houses of Oireachtas.

25.—Each enactment specified in the *Fourth Schedule* is hereby repealed to the extent specified in the *third column* of that Schedule. Repeals.

20 FIRST SCHEDULE Sections 9, 10, 14.

NOTIFICATION PRIOR TO REGISTRATION

PART I

Duty to give Notice to Donor and Other Persons

Duty to give Notice to Donor

25 1. (1) Subject to *subparagraph (2)*, before making an application for registration the attorney shall give notice of intention to do so to the donor.

30 (2) *Paragraph 4 (2)* shall apply in relation to the donor as it applies in relation to a person who is entitled to receive notice under this Schedule.

Duty to give Notice to Other Persons

2. (1) Subject to *paragraph 4*—

35 (a) if regulations under *section 5 (2)* have required notice of the execution of an enduring power of attorney to be brought to the attention of specified persons, the attorney shall, before making an application for registration, give notice of intention to do so to those persons;

40 (b) if any of those persons is dead or mentally incapable or his or her whereabouts cannot be reasonably ascertained, the attorney shall give notice of intention to make such an application to the other person or persons, and

(c) if all those persons are dead or mentally incapable or their whereabouts cannot be reasonably ascertained, the attorney shall, before making such an application, give notice of intention to do so to the persons (if any) who are entitled to receive notice by virtue of *paragraph 3*. 5

(2) When giving notice pursuant to *subparagraph (1)* the attorney shall also give notice to the Registrar of Wards of Court of intention to apply to the court for registration of the enduring power.

3. (1) Subject to the limitations contained in *subparagraphs (2) to (4)*, persons of the following classes are entitled to receive notice under *paragraph 2 (1) (c)*: 10

(a) the donor's husband or wife;

(b) the donor's children;

(c) the donor's parents;

(d) the donor's brothers and sisters, whether of the whole or half blood; 15

(e) the widow or widower of a child of the donor;

(f) the donor's grandchildren;

(g) the children of the donor's brothers and sisters of the whole blood; 20

(h) the children of the donor's brothers and sisters of the half blood.

(2) A person is not entitled to receive notice under this paragraph if the name or address of that person is not known to and cannot be reasonably ascertained by the attorney. 25

(3) Except where *subparagraph (4)* applies, no more than three persons are entitled to receive notice by virtue of this paragraph and, in determining the persons who are so entitled, persons falling within *class (a)* of *subparagraph (1)* are to be preferred to persons falling within *class (b)* of that subparagraph, persons falling within *class (b)* are to be preferred to persons falling within *class (c)* of that subparagraph; and so on. 30

(4) Notwithstanding the limit of three specified in *subparagraph (3)*, where—

(a) there is more than one person falling within any of *classes (a) to (h)* of *subparagraph (1)*, and 35

(b) at least one of those persons would be entitled to receive notice by virtue of this paragraph,

then, subject to *subparagraph (2)*, all the persons falling within that class are entitled to receive notice by virtue of this paragraph. 40

4. (1) An attorney shall not be required to give notice under *paragraph 2* to himself or herself or to any other attorney under the power who is joining in making the application, notwithstanding that he or she or, as the case may be, the other attorney is entitled to receive notice by virtue of *paragraph 3*. 45

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

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

PART II

10 Contents of Notices

5. A notice to the donor under this Schedule—

- (a) shall be in the prescribed form or a form to the like effect;
- (b) shall state that the attorney proposes to make an application to the court for the registration of the instrument creating the enduring power in question; and
- (c) shall inform the donor that, whilst the instrument remains registered, any revocation of the power by the donor will be ineffective unless and until the revocation is confirmed by the court.

20 6. A notice to any other person under this Schedule—

- (a) shall be in the prescribed form or a form to the like effect;
- (b) shall contain the statement mentioned in *paragraph 5 (b)*;
- (c) shall inform the person to whom it is given that that person may object to the proposed registration by notice in writing to the Registrar of Wards of Court before the expiry of the period of five weeks beginning with the day on which the notice under this Schedule was so given; and
- (d) shall specify, as the grounds on which an objection to registration may be made, the grounds set out in *section 10 (3)*.

7. In this Part, “prescribed” means prescribed by regulations which may be made by the Minister.

PART III

Duty to give Notice to other Attorneys

35 8. (1) Subject to *subparagraph (2)*, before making an application for registration an attorney under a joint and several power shall give notice of intention to do so to any other attorney under the power who is not joining in making the application; and *paragraphs 4 (2) and 6* 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 under this Schedule.

(2) An attorney is not entitled to receive notice by virtue of this paragraph if his or her address is not known to and cannot be reasonably ascertained by the applying attorney.

PART IV

Supplementary

9. For the purposes of this Schedule a notice given by post may be sent by prepaid registered post to the usual or last known place of residence of the person to whom it is to be given and shall be regarded as given on the day on which it was posted. 5

Section 14.

SECOND SCHEDULE

JOINT AND JOINT AND SEVERAL ATTORNEYS

PART I

Joint Attorneys 10

1. In section 5 (4), 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 sections 5 (5), 8, 10 (3), 12 (2) and 12 (4), references to the attorney shall be read as including references to any attorney under the power and, in the case of section 12 (4) (d), subject to section 14 (3). 15

PART II

Joint and Several Attorneys

3. The expiry of an enduring power of attorney effected in the circumstances mentioned in section 5 (7) shall apply only so far as it relates to an attorney who is the spouse of the donor. 20

Section 16.

THIRD SCHEDULE

FORM OF GENERAL POWER OF ATTORNEY

This GENERAL POWER OF ATTORNEY IS MADE 25
THIS day of

19 by AB of

I appoint CD of

[or CD of and EF of

jointly (or jointly 30
and severally)] to be my attorney[s] in accordance with section 16 of the Powers of Attorney Act, 1996.

IN WITNESS etc.

FOURTH SCHEDULE

Section 25.

ENACTMENTS REPEALED

| Chapter | Short Title | Extent of Repeal |
|-----------------------|------------------------|-----------------------------------|
| 5 44 & 45 Vict. c. 41 | Conveyancing Act, 1881 | Part XI (sections 46, 47 and 48). |
| 45 & 46 Vict. c. 39 | Conveyancing Act, 1882 | Sections 8 and 9. |

AN BILLE UM CHUMHACHTAÍ
ATURNAE, 1995

BILLE

dá ngairtear

Acht do dhéanamh socrú go dtiocfaidh cumhachtaí aturnae i ngníomh nuair atá míchumas meabhrach ar, nó ag teacht ar, dheontóir na cumhachta agus do leasú ar bhealaí eile an dlí a bhaineann le cumhachtaí aturnae i gcoitinne.

*Ritheadh ag Dáil Éireann,
15 Bealtaine, 1996*

POWERS OF ATTORNEY BILL, 1995

BILL

entitled

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.

*Passed by Dáil Éireann,
15th May, 1996*

Le ceannach díreach ón
OIFIG DHÍOLTA FOILSEACHÁIN RIALTAIS, TEACH SUN ALLIANCE,
SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2.
nó tríd an bpost ó
FOILSEACHÁIN RIALTAIS, AN RANNÓG POST-TRÁCHTA,
4 - 5 BÓTHAR FHEARCHAIR, BAILE ÁTHA CLIATH 2,
(Teil: 01 - 6613111 — fo-líne 4040/4045; Fax: 01 - 4752760)
nó trí son díoltóir leabhar.

To be purchased directly from the
GOVERNMENT PUBLICATIONS SALE OFFICE, SUN ALLIANCE HOUSE,
MOLESWORTH STREET, DUBLIN 2,
or by mail order from
GOVERNMENT PUBLICATIONS, POSTAL TRADE SECTION,
4 - 5 HARCOURT ROAD, DUBLIN 2,
(Tel: 01 - 6613111 — ext. 4040/4045; Fax: 01 - 4752760)
or through any bookseller.

£2.40

ISBN 0-7076-2778-8



9 780707 627786