



A Guide to Enduring Powers of Attorney

Contents

Part A – Glossary	1
Part B – Introduction	2
Part C – Creating an Enduring Power of Attorney	4
Part D – Registering an Enduring Power of Attorney	5
Part E – After the Enduring Power of Attorney has been registered	9
Part F – The role of the Attorney	11
Part G – Contact us	13

Part A – Glossary

Attorney	Someone appointed under an Enduring Power of Attorney who has the legal right to make decisions within the scope of their authority on behalf of the person (the Donor) who made the Power of Attorney.
Capacity	A person’s capacity (or lack of capacity) refers specifically to their capacity to make a particular decision at the time it needs to be made. A person will lack capacity where: <ol style="list-style-type: none"> 1. Even with appropriate explanations they are unable to understand the information relevant to make the decision; 2. They are not able to retain the information for the time required to make the decision; 3. They are not able to appreciate the relevance of the information as part of the weighing up process of making the decision; or 4. They are unable to communicate their decision whether by talking, using sign language or by any other means.
Donor	The person appointing an Attorney and to whom the Enduring Power of Attorney relates.



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Enduring Power of Attorney (EPA)	A Power of Attorney created under the Powers of Attorney Act 1987 appointing an Attorney to deal with the Donor's property and financial affairs.
Mental Capacity	See 'Capacity'.

Part B – Introduction

About this booklet

This booklet can only provide you with general information about an Enduring Power of Attorney. It does not explain everything about court rules, costs and procedures. Court staff can provide you with information, tell you about court forms and processes but they cannot give you legal advice or answer questions like "What should I do?" or "What should I put in the form?".

This guidance is designed to assist those who:

- Wish to create an Enduring Power of Attorney (EPA); and
- Have either made an EPA or are acting as an Attorney under an EPA.

It explains what an EPA is for, who is involved in making an EPA, what is involved in registering an EPA and why it needs to be registered.

It also sets out the roles of the Attorney and the Donor.

The glossary at Part A explains the key words and phrases used throughout this guide and Part G sets out our contact details.

This document also explains what a General Power of Attorney is and what it can be used for. Administering General Powers of Attorney is **not** a Court process but is mentioned here for completeness as there can be confusion between a General Power of Attorney and an Enduring Power of Attorney.

Should I seek legal advice?

Whilst this is not essential, if you are in doubt as to the process or where the estate is substantial, Donors and Attorneys may wish to consider seeking legal advice. A list of Manx advocates is available through the Isle of Man Law Society at www.iomlawsociety.co.im.

It is advisable to seek legal advice if there is a need to make provision for the Donor's affairs to be looked after in another jurisdiction: i.e. not the Isle of Man.

A link to the **Powers of Attorney Act 1987** is on our website here <https://www.courts.im/court-procedures/enduring-power-of-attorney/>.

General Power of Attorney



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What is a General Power of Attorney?

If you wish to give someone authority to make decisions and take action about your finances whilst you still have mental capacity, you can set up a General Power of Attorney (PoA).

The Court cannot assist you with setting up a General Power of Attorney, so you may wish to seek legal advice in regards to drafting this.

Enduring Power of Attorney

What is an Enduring Power of Attorney?

An Enduring Power of Attorney (EPA) operates in the same way as a General Power of Attorney in that you (the Donor) appoint someone else (the Attorney) to make decisions and take action about your finances.

The distinguishing feature of an EPA to a General Power of Attorney is that it can continue to operate when you lose mental capacity. Following the drawing up of an EPA, if capacity is lost the EPA must be registered at the Isle of Man Courts of Justice. Such registration can only happen when there is proper medical evidence to show that the Donor has lost, or is losing, mental capacity and the Donor is no longer able to make their own decisions.

For the majority of persons using an EPA they wish it to only operate when they have lost or are losing capacity. For this reason, and if this is your purpose for executing the EPA, it is important that you consider entering a restriction in the appropriate box on the prescribed form [see paragraph 3 of Part A of the prescribed form] indicating that you only want the Attorney to act for you in the event that you become incapable e.g. "this authority shall not be effective until registration of this Power". **A failure to restrict the power in this way means that the Attorney can act for you from the date of execution of the EPA despite you having capacity.** Prior to registration the Donor can of course cancel or revoke the EPA. Once registered, the Donor cannot seek to revoke the EPA unless they regain capacity (see below).

It is difficult to think about a time when you won't be able to make your own decisions, however setting up an EPA can give you peace of mind that someone you trust will be able to make decisions on your behalf should the need arise.

The EPA process has two distinct stages which **cannot** be carried out at the same time.

There are two EPA 'packs' which contain the relevant forms and guidance for each stage.

Pack A – EPA Creation

The forms in Pack A are for the **creation** of an Enduring Power of Attorney. This stage must be carried out whilst the Donor is mentally capable.



The Isle of Man Courts of Justice



Pack B – EPA Registration

These forms are for the **registration** of an Enduring Power of Attorney. This stage must be performed by the Attorney once the Donor is, or the Attorney has reason to believe that the Donor is becoming, mentally incapable.

Part C – Creating an Enduring Power of Attorney

How do I create an Enduring Power of Attorney?

Pack A is used to create an EPA and contains the following:

- These guidance notes; and
- Prescribed Form of Enduring Power of Attorney (GC355/87). This is the form used to create the Power.

The form consists of three parts:

- A. About using this form;
- B. To be completed by the Donor; and
- C. To be completed by the Attorney(s)

Part 'A' gives some basic information regarding the completion of the form itself and also where to find relevant legislation.

Part 'B' is completed by the Donor who is the person appointing the Attorney(s). There are helpful marginal notes on the left of the page which give guidance on the relevant text boxes on the right of the page.

Once Part 'B' is complete, it needs to be signed by the Donor and witnessed. The witness cannot be the Attorney.

Part 'C' has to be completed by the Attorney(s). If there are more than two Attorneys being appointed, an additional Part 'C' will need to be created and completed. There are helpful marginal notes on the left of the page which give guidance on the relevant text boxes on the right of the page.

Each Attorney must sign their entry in Part 'C' and this must be witnessed. Neither the Donor nor fellow Attorneys can witness the signature.

Once the form has been completed and signed by all parties, it should be kept in a safe place by the Attorney until such time as it needs to be registered.

When should an Enduring Power of Attorney be registered and by whom?

The Attorney is the person responsible for registering the EPA. This is because the EPA is only registered when the Attorney believes that the Donor is becoming or has become mentally incapable of handling his or her own affairs.



The Isle of Man Courts of Justice



What if Attorneys are appointed to act 'jointly and severally'?

Attorneys appointed jointly and severally can act and make decisions independently of any other Attorneys, as well as together with them. Therefore any one Attorney could apply to register the EPA alone. In this situation the Court would only accept the application if all the other Attorneys had been properly notified of the application and given the opportunity to object to it. Registration will be effective in favour of all the Attorneys.

Where the Attorneys have acted together in deciding to register the EPA, all their names should be listed on **Form 1: Notice of intention to apply for Registration**, when notifying the relatives of the Donor – see **Registration step 1** below.

What if Attorneys are appointed to act 'jointly'?

Attorneys appointed 'jointly' must always act together, which means they must always agree before doing anything on the Donor's behalf. If one Attorney does not agree with a proposed action, then that action cannot be taken.

If the Attorneys have been appointed in this way then all Attorneys must apply to register the EPA together. If this is not possible then the EPA cannot be registered.

Part D – Registering an Enduring Power of Attorney

NB – If you have a foreign Enduring Power of Attorney registered in the Court in which the Donor is domiciled, but there are funds held in an Isle of Man Bank account, you do not need to register that Enduring Power of Attorney in the Isle of Man. The rule in *In RE Isle of Man Bank (CLD) 1996-98 MLR 493* allows Isle of Man banks to deal with the foreign registered Enduring Power of Attorney as of right, without the same being confirmed by the Manx Courts.

How do I register an Enduring Power of Attorney?

Pack 'B' is used to register an EPA and contains:

- These guidance notes;
- **Form 1** – Notice of Intention to Apply for Registration of an Enduring Power of Attorney;
- **Form 2** – Application for Registration of an Enduring Power of Attorney; and
- **Form 3** – General Form of Application

Form 1 is used to inform the Donor, relatives of the Donor and co-Attorneys that you are going to apply for the EPA to be registered. You may therefore need additional copies of Form 1 depending how many people you must notify (see '**Who needs to be notified?**' below).

Form 2 is used to apply to the Court for the EPA to be registered.



The Isle of Man Courts of Justice



Form 3 is a form used for any other application you wish to make to the Court relating to the Enduring Power of Attorney. This form is required when applying to the Court for notification to the Donor to be dispensed with.

NB – The Isle of Man Courts of Justice cannot register Lasting Powers of Attorney created and registered in the UK nor can they register Enduring Powers of Attorney created and registered in the UK after 01/10/2007.

Registration step 1: Notifying the relevant people

The Donor and **no more than three** of their relatives must be notified of the intention to register the EPA.

What if fewer than three relatives are alive?

If this is the case then this should be explained on the application form.

In addition, any other Attorney that has been appointed 'jointly and severally' but did not participate in the application to register must also be notified.

Who needs to be notified?

Each person must be provided with a completed **Form 1 (Notice of Intention to Apply for Registration of an Enduring Power of Attorney)**. There are guidance notes on the form about how to complete it.

The definitive list of persons entitled to receive notice of intention to register the Enduring Power of Attorney can be found at Schedule 1 of the Powers of Attorney Act 1987 but are reproduced here for convenience:

1. Donor's husband, wife or civil partner;
2. Donor's children (including adopted children but not stepchildren);
3. Donor's parents;
4. Donor's brothers and sisters (including half brothers and sisters);
5. Widow or widower or surviving civil partner of the Donor's child;
6. Donor's grandchildren;
7. Donor's nephews and nieces (children of the Donor's full brothers and sisters);
8. Donor's nephews and nieces (children of the Donor's half brothers and sisters);
9. Donor's aunts and uncles (who are full brothers or sisters of a parent of the Donor);
and
10. Donor's first cousins (children of the Donor's aunts and uncles who are full brothers and sisters of a parent of a Donor).



The Isle of Man Courts of Justice



You can find the Schedule 1 of the Powers of Attorney Act 1987 which can be accessed by our website <https://www.courts.im/court-procedures/enduring-power-of-attorney/>.

If one person in a particular category is notified of the application, then everyone in that category must be notified. For example if the Donor has no husband, wife or civil partner but has 10 children, then all 10 of the children must be notified (not just three of them).

If a relative is under the age of 18 or mentally incapable of understanding the notice, they **cannot** be counted as one of the three relatives who must be notified.

If an Attorney is also a relative, they do not have to notify themselves, but they still count as one of the three relatives entitled to receive notice. For example, if the Attorney is the son of the Donor who has no living husband, wife or civil partner but has three children, only the other two children need to receive notice.

However, if the Donor has no husband, wife, civil partner or parents alive, but has two children who are both Attorneys and also has five brothers, the Attorneys need to notify all the brothers.

If the last example is changed so that the Donor has three children who are all Attorneys, the Attorneys do not need to notify anybody. But, in cases where nobody has been notified, please indicate the reasons for this on Form 2 when completing the application.

What if a relative cannot be located?

All reasonable attempts must be made to locate the relatives who should be notified, in priority order. If this is not possible then the next most appropriate relative should be notified, to make up the requirement to notify no more than three.

What if telling people will upset the Donor?

The Attorney is required to give notice to the Donor, however the Attorney can apply to the Court for notice to be dispensed with per Schedule 1, paragraph 3(2) (see page 20 of the Powers of Attorney Act 1987 which can be found via our website <https://www.courts.im/court-procedures/enduring-power-of-attorney/>). The application to dispense with notice can be made to the Court using **Form 3 – General Form of Application**, the reason for the application can be outlined within the form.

If making an application for Notice to be Dispensed With (using **Form 3**), this would need to be done prior to sending **Form 1** to the Donor and their relatives.

What happens if someone objects to the registration?

Any person who receives a completed **Form 1** from the Attorney is entitled to object to the application for registration. If there are objections then it may not be possible to register the EPA until all matters are resolved.



The Isle of Man Courts of Justice



Only objections received within the timeframe set out on the **Form 1** and on the following grounds are valid:

- The document made was not a valid EPA: for example it was not properly signed and witnessed or the Donor lacked capacity when it was made;
- 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 create the power; or
- That the Attorney is unsuitable to act on behalf of the Donor (having regard to all the circumstances and in particular the Attorney's relation to or connection with the Donor).

If a valid objection is received, the applicant will be advised that the application has been suspended and the steps they should take next. Only the Court can decide whether to uphold or dismiss the objection.

The Attorney can usually continue to manage the Donor's affairs and prevent loss to their estate, but should act with caution. Attorneys should seek advice from an advocate or legal professional if they are unsure about what actions they can continue to take on the Donor's behalf.

Registration step 2: Submitting an application to register an EPA

Form 2 – Application for Registration is used to apply to the Court to have an EPA registered. The form contains guidance about how to complete it. All information on the application form must be truthful and correct. It is an offence under the Powers of Attorney Act 1987 to make false statements on an application. Penalties include a prison term of up to two years or a fine of up to £5,000 or both.

How much does Registration cost?

The fee for submitting an application to register an EPA is detailed on the Isle of Man Courts of Justice web site on the Fees page: www.courts.im/fees.

Time Limit for Registration

The application to register should be submitted to the Courts of Justice **no later than** 3 days after the last of the Notice of Intention to Register Forms (**Form 1**) has been issued to the Donor and the Donor's relatives. If the application to register is lodged after the 3 days, the application should be accompanied by a written request that the time for lodging the application be extended, together with the grounds for such request – please note, a Form 3 is not required for this request. The application should include:

- The completed **Form 2 – Application for Registration**;
- The original Enduring Power of Attorney in its entirety including parts A, B and C;



The Isle of Man Courts of Justice



- A doctor's certificate/note supporting the belief of the applicant that the Donor is or is becoming mentally incapable; and
- The fee to register an application (cheques payable to the Isle of Man Government). See <https://www.courts.im/fees> for the current application fee.

What if the original Enduring Power of Attorney has been lost?

If the original EPA has been lost, destroyed or stolen a certified copy can be registered. If you submit a certified copy, you must confirm the loss of the original EPA in writing. An uncertified photocopy will only be registered on the Court's order.

What if the Donor cannot afford the application to register fee?

If the Donor cannot afford to pay the fee they may be eligible for a fee exemption or remission. Please see the Court's guidance on fees, remissions and exemptions for more information.

How long does registration take?

The Courts will check that the application is complete and if there are any problems will contact the applicant or their advocate, if applicable.

If there are objections or queries then all matters must be resolved before the EPA can be registered.

If the application is complete and there are no objections or queries, we endeavour to register the EPA 5 weeks from the date that the last **Form 1** notice was sent.

We will return the registered EPA within five days of the date it is registered.

Following registration, what documents will be returned to me?

The following will be returned:

- The original Enduring Power of Attorney which will have been signed by the Assistant Chief Registrar and stamped with the Court seal;
- 5 certified copies of the Court Order confirming the registration.

What if registration is refused?

If the Donor has lost capacity to manage their financial affairs but the application to register their EPA is refused then an application may have to be made for Mental Health Receivership.



Part E – After the Enduring Power of Attorney has been registered

How does registration change the status of the Enduring Power of Attorney?

The EPA must be registered when the Donor has become or is becoming mentally incapable. Registration does not change the powers granted to Attorneys under the EPA, but it does bring about three important changes:

- The Attorney(s) must now answer to the Court if anyone questions their actions;
- The Donor cannot end the EPA without confirmation from the Court; and
- The Attorney(s) cannot disclaim (retire) unless they give notice of this to the Court.

Can the Donor still manage his/her own affairs?

Once the EPA has been registered, the Attorney takes over full responsibility from the Donor for managing their property and affairs. This means the Donor will be considered as unable to manage their own affairs. Should the Donor feel they are capable of being involved in managing some aspects, it is for them and their Attorney(s) to decide how this should work.

Can the Donor make a will?

Yes, a Donor can make a will or codicil (an amendment to a will) in the same way that anyone can. However, if the will or codicil is made after the EPA has been registered it may encourage others to challenge it after the Donor's death on the basis that the Donor may have lacked the testamentary capacity to make it.

It can be complicated to resolve the question of capacity after the Donor has died, and therefore it is advisable to seek legal and medical advice if the Donor wishes to make amendments to an existing will or make a new will after the EPA is registered.

Can the Donor cancel their Enduring Power of Attorney?

If the Donor has the mental capacity to do so, they can cancel their EPA at any time, provided that it has not yet been registered. If the EPA has been registered, it cannot be revoked unless the Court confirms the revocation.

To revoke an EPA the Donor signs a formal document called a 'Deed of Revocation'. The Donor may wish to seek legal advice for assistance with this.

Can the Court appoint more Attorneys?

The Court has no power to appoint more Attorneys or transfer the power to another person.



The Isle of Man Courts of Justice



What happens if the Donor dies?

If the Donor dies the EPA automatically comes to an end. The Attorney should send the original EPA, a copy of the death certificate and the original/copy of a Grant of Probate to the Court as soon as possible. The Court cannot provide advice about how to deal with the Donor's estate; this is a matter for an advocate, the Isle of Man Probate Office or other professional advisor.

What happens if an Attorney dies?

If there is only one Attorney, the EPA ceases to be valid and the Court shall order that the registration is cancelled.

If there is more than one Attorney, and they are acting **jointly and severally**, the EPA is not cancelled and will continue to be valid with the remaining Attorney(s). A qualification is entered on the register and EPA noting the death of such Attorney.

If there is more than one Attorney and they act **jointly**, the EPA ceases to be valid and the judge shall order that the registration is cancelled.

Part F – The role of the Attorney

What are the powers, duties and responsibilities of an Attorney?

The authority the Attorney has will be set out in the Enduring Power of Attorney and an Attorney should check if there are any conditions or restrictions to the exercising of their powers.

A Donor may make several powers appointing different Attorneys to do different things.

Their duties and responsibilities include to:

- Always act in the best interests of the Donor and consider their needs and wishes as far as possible;
- Not take advantage of the Donor's position to gain any benefit for themselves;
- Keep the Donor's money and property separate from their own and other people's; and
- Consider the Power of Attorney Act 1987 when acting on behalf of the Donor.

What should the Attorney do with the EPA document?

The original EPA document should be kept in a safe place. The Attorney may wish to provide a certified copy of the EPA to relevant people and organisations to prove they have authority to make certain decisions on behalf of the person who lacks capacity.



The Isle of Man Courts of Justice



Should Attorneys keep accounts of their dealings?

Yes, Attorneys have a duty to keep accurate accounts of their dealings for the Donor. They should have a list of the Donor's bank and building society accounts and other investments, as well as proper records of all of the Donor's money and assets should remain in the Donor's name.

The Court can direct that Attorneys produce accounts at any time. If satisfactory accounts are not produced then the EPA may be cancelled.

After the Donor's death the Attorney may be required to account to the personal representatives of the Donor's estate in relation to their dealings.

Can the Attorney sell the Donor's property?

All actions taken on behalf of the Donor must be in the Donor's best interests. If the Attorney believes that selling the property is in the Donor's best interests **and** the Donor is the sole owner of the property **and** the EPA allows it, then the Attorney may decide to sell the property.

Attorneys do not need approval from the Court to sell the Donor's property. However they must apply to the Court for permission if for any reason the sale is below market value or the Attorney or a family member wants to buy the property.

If the Attorney does not seek the Court's approval under these circumstances then the sale may be challenged.

Are Attorneys remunerated for time and expenses?

Professional Attorneys such as advocates or accountants may charge for their services if the EPA provides for this. Attorneys are not normally paid for their work but can recover reasonable expenses such as postage, stationery and the cost of phone calls from the Donor's estate.

What is considered to be a reasonable expenses will vary according to the circumstances of each case. It depends on what the Attorney is required to do and also the value of the estate of the person who lacks capacity.

The Court can look into any complaints that Attorneys are claiming excessive expenses. If expenses are considered unreasonable they may have to be repaid and in extreme cases the Court may cancel the Attorney's appointment.

Contact an advocate for advice about expenses.

Can Attorneys retire from their duties?

Yes, Attorneys can cease to act in this role any time they wish. This is known as 'disclaiming the power' and it is done by completing **Form 3**, although a formal deed is not a legal



The Isle of Man Courts of Justice



requirement. If the EPA is not registered the Donor should be notified of the resignation. If the EPA is registered you must also notify the Court.

If the Attorney is appointed **jointly** with another Attorney (i.e. they must always act together) and one of them retires from the role, then the EPA can no longer be used.

If the Attorneys are appointed **jointly and severally** (i.e. can act independently of each other **or** together) and one of them wishes to retire, the remaining Attorney(s) can continue to act under the EPA. One of the remaining Attorneys should inform the Court that one of them has retired giving the details of the retiree.

Part G – Contact Us

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Disclaimer

Court staff can provide advice about Court processes only, and cannot provide legal advice or services. We recommend that you seek independent legal advice where appropriate.

The Isle of Man Law Society (www.iomlawsociety.co.im) can assist with obtaining the services on an advocate.

Information in this publication is believed to be correct at the time of printing, however we do not accept liability for any error it may contain.