

Land Law and Conveyancing Law: (2) Enduring Powers of Attorney

In September 1989, the Commission published its Report on [Land Law and Conveyancing Law: \(2\) Enduring Powers of Attorney \(LRC 31–1989\)](#) following a March 1987 request by the then Attorney General.

A Power of Attorney is a document which appoints a person, called the donee or attorney, and invests him with power to act either generally or in a manner specified on behalf of a person called the donor, who gives the power. Such a power is, however, automatically revoked under our law by, among other things, the insanity of the donor. The result is that a person who is concerned that he or she might become incapable of managing his or her affairs is unable to make provision for that possibility. In other jurisdictions this has been met by providing what are called “enduring powers of attorney”.

The Commission made a total of 19 recommendations as part of its report which are detailed as follows:

1. A system of Enduring Power of Attorney should be introduced in Ireland
2. An intention to create ad EPA should be evidenced in the instrument creating it.
3. The current restrictions on donors concerning ordinary powers of attorney should apply to EPAs.
4. There should be no limit on the number of attorneys that may be appointed.
5. It should be up to the donor to specify in the power itself whether the attorneys are appointed jointly or jointly and severally. Where the power is silent there would be a presumption that they are appointed jointly.
6. There should be a requirement that the instrument creating the power be witnessed.
7. The donor should be capable of acting as a witness but neither the attorney nor his solicitor should be capable or so acting.
8. There should be a statutory requirement that the instrument creating the EPA should evidence the fact that the donor has either received independent legal advice or having been advised of the wisdom of taking such advice has declined to do so.
9. There should be a standard form EPA which should contain explanatory notes in plain English. The use of this form should not be mandatory.
10. A donor should be allowed to limit the duration of the EPA, In the event, however, of the donor becoming incompetent before the expiration of the specified time the EPA should not be allowed to lapse.
11. No waiver of the statutory requirements should be allowed.
12. A system of registration similar to that in England should be established.
13. The protection given to attorneys in England should be given to attorneys here.
14. Where a general power is conferred on an attorney, the law should provide that the attorney may act so as to benefit himself or any other person to the extent that the donor might be expected to provide for his or that person’s needs.
15. A duty of good faith should be imposed on an attorney.
16. The court should be empowered to look for accounts where it appears reasonable to do so.

17. The donor sought to be entitled to appoint a substitute in the power itself and the court should be empowered to substitute an attorney in the event of there not being a full complement of attorneys.
18. The attorney should have an implied power to delegate any of his functions which were not such that the donor would have expected the attorney to attend to them personally.
19. Save where the donor is taken into wardship, where the court should have discretion as to the termination of the EIPA, the court should have power to terminate than EPA only where there is evidence that the power is not being operated properly.

Draft Legislation in Report

Draft legislative provisions are included in the Report.

Information on Implementation

Recommendations of the Commission were implemented by the *Assisted Decision-Making (Capacity) Act 2015, Part 7; replacing the Powers of Attorney Act 1996.*