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STATUTORY INSTRUMENTS

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**2007 No. 1253**

**The Lasting Powers of Attorney, Enduring Powers  
of Attorney and Public Guardian Regulations 2007**

**PART 2**

**LASTING POWERS OF ATTORNEY**

*Instruments intended to create a lasting power of attorney*

**Forms for lasting powers of attorney**

5. The forms set out in Parts 1 and 2 of Schedule 1 to these Regulations are the forms which, in the circumstances to which they apply, are to be used for instruments intended to create a lasting power of attorney.

**Maximum number of named persons**

6. The maximum number of named persons that the donor of a lasting power of attorney may specify in the instrument intended to create the power is 5.

**Requirement for two LPA certificates where instrument has no named persons**

7. Where an instrument intended to create a lasting power of attorney includes a statement by the donor that there are no persons whom he wishes to be notified of any application for the registration of the instrument—

- (a) the instrument must include two LPA certificates; and
- (b) each certificate must be completed and signed by a different person.

**Persons who may provide an LPA certificate**

8.—(1) Subject to paragraph (3), the following persons may give an LPA certificate—

- (a) a person chosen by the donor as being someone who has known him personally for the period of at least two years which ends immediately before the date on which that person signs the LPA certificate;
- (b) a person chosen by the donor who, on account of his professional skills and expertise, reasonably considers that he is competent to make the judgments necessary to certify the matters set out in paragraph (2)(1)(e) of Schedule 1 to the Act.

(2) The following are examples of persons within paragraph (1)(b)—

- (a) a registered health care professional;
- (b) a barrister, solicitor or advocate called or admitted in any part of the United Kingdom;
- (c) a registered social worker; or

- (d) an independent mental capacity advocate.
- (3) A person is disqualified from giving an LPA certificate in respect of any instrument intended to create a lasting power of attorney if that person is—
  - (a) a family member of the donor;
  - (b) a donee of that power;
  - (c) a donee of—
    - (i) any other lasting power of attorney, or
    - (ii) an enduring power of attorney,
 which has been executed by the donor (whether or not it has been revoked);
  - (d) a family member of a donee within sub-paragraph (b);
  - (e) a director or employee of a trust corporation acting as a donee within sub-paragraph (b);
  - (f) a business partner or employee of—
    - (i) the donor, or
    - (ii) a donee within sub-paragraph (b);
  - (g) an owner, director, manager or employee of any care home in which the donor is living when the instrument is executed; or
  - (h) a family member of a person within sub-paragraph (g).
- (4) In this regulation—
  - “care home” has the meaning given in section 3 of the Care Standards Act 2000<sup>(1)</sup>;
  - “registered health care professional” means a person who is a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002<sup>(2)</sup>; and
  - “registered social worker” means a person registered as a social worker in a register maintained by—
    - (a) the General Social Care Council;
    - (b) the Care Council for Wales;
    - (c) the Scottish Social Services Council; or
    - (d) the Northern Ireland Social Care Council.

### **Execution of instrument**

- 9.—(1) An instrument intended to create a lasting power of attorney must be executed in accordance with this regulation.
- (2) The donor must read (or have read to him) all the prescribed information.
- (3) As soon as reasonably practicable after the steps required by paragraph (2) have been taken, the donor must—
  - (a) complete the provisions of Part A of the instrument that apply to him (or direct another person to do so); and
  - (b) subject to paragraph (7), sign Part A of the instrument in the presence of a witness.
- (4) As soon as reasonably practicable after the steps required by paragraph (3) have been taken—
  - (a) the person giving an LPA certificate, or

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(1) 2000 c.14.

(2) 2002 c.17.

- (b) if regulation 7 applies (two LPA certificates required), each of the persons giving a certificate,  
must complete the LPA certificate at Part B of the instrument and sign it.
- (5) As soon as reasonably practicable after the steps required by paragraph (4) have been taken—
  - (a) the donee, or
  - (b) if more than one, each of the donees,must read (or have read to him) all the prescribed information.
- (6) As soon as reasonably practicable after the steps required by paragraph (5) have been taken, the donee or, if more than one, each of them—
  - (a) must complete the provisions of Part C of the instrument that apply to him (or direct another person to do so); and
  - (b) subject to paragraph (7), must sign Part C of the instrument in the presence of a witness.
- (7) If the instrument is to be signed by any person at the direction of the donor, or at the direction of any donee, the signature must be done in the presence of two witnesses.
- (8) For the purposes of this regulation—
  - (a) the donor may not witness any signature required for the power;
  - (b) a donee may not witness any signature required for the power apart from that of another donee.
- (9) A person witnessing a signature must—
  - (a) sign the instrument; and
  - (b) give his full name and address.
- (10) Any reference in this regulation to a person signing an instrument (however expressed) includes his signing it by means of a mark made on the instrument at the appropriate place.

### *Registering the instrument*

#### **Notice to be given by a person about to apply for registration of lasting power of attorney**

**10.** Schedule 2 to these Regulations sets out the form of notice (“LPA 001”) which must be given by a donor or donee who is about to make an application for the registration of an instrument intended to create a lasting power of attorney.

#### **Application for registration**

**11.—**(1) Schedule 3 to these Regulations sets out the form (“LPA 002”) which must be used for making an application to the Public Guardian for the registration of an instrument intended to create a lasting power of attorney.

- (2) Where the instrument to be registered which is sent with the application is neither—
  - (a) the original instrument intended to create the power, nor
  - (b) a certified copy of it,the Public Guardian must not register the instrument unless the court directs him to do so.
- (3) In paragraph (2) “a certified copy” means a photographic or other facsimile copy which is certified as an accurate copy by—
  - (a) the donor; or
  - (b) a solicitor or notary.

**Period to elapse before registration in cases not involving objection or defect**

**12.** The period at the end of which the Public Guardian must register an instrument in accordance with paragraph 5 of Schedule 1 to the Act is the period of 6 weeks beginning with—

- (a) the date on which the Public Guardian gave the notice or notices under paragraph 7 or 8 of Schedule 1 to the Act of receipt of an application for registration; or
- (b) if notices were given on more than one date, the latest of those dates.

**Notice of receipt of application for registration**

**13.—**(1) Part 1 of Schedule 4 to these Regulations sets out the form of notice (“LPA 003A”) which the Public Guardian must give to the donee (or donees) when the Public Guardian receives an application for the registration of a lasting power of attorney.

(2) Part 2 of Schedule 4 sets out the form of notice (“LPA 003B”) which the Public Guardian must give to the donor when the Public Guardian receives such an application.

(3) Where it appears to the Public Guardian that there is good reason to do so, the Public Guardian must also provide (or arrange for the provision of) an explanation to the donor of—

- (a) the notice referred to in paragraph (2) and what the effect of it is; and
- (b) why it is being brought to his attention.

(4) Any information provided under paragraph (3) must be provided—

- (a) to the donor personally; and
- (b) in a way that is appropriate to the donor’s circumstances (for example using simple language, visual aids or other appropriate means).

**Objection to registration: notice to Public Guardian**

**14.—**(1) This regulation deals with any objection to the registration of an instrument as a lasting power of attorney which is to be made to the Public Guardian.

(2) Where any person—

- (a) is entitled to receive notice under paragraph 6, 7 or 8 of Schedule 1 to the Act of an application for the registration of the instrument, and
- (b) wishes to object to registration on a ground set out in paragraph 13(1) of Schedule 1 to the Act,

he must do so before the end of the period of 5 weeks beginning with the date on which the notice is given.

(3) A notice of objection must be given in writing, setting out—

- (a) the name and address of the objector;
- (b) if different, the name and address of the donor of the power;
- (c) if known, the name and address of the donee (or donees); and
- (d) the ground for making the objection.

(4) The Public Guardian must notify the objector as to whether he is satisfied that the ground of the objection is established.

(5) At any time after receiving the notice of objection and before giving the notice required by paragraph (4), the Public Guardian may require the objector to provide such further information, or produce such documents, as the Public Guardian reasonably considers necessary to enable him to determine whether the ground for making the objection is established.

(6) Where—

- (a) the Public Guardian is satisfied that the ground of the objection is established, but
  - (b) by virtue of section 13(7) of the Act, the instrument is not revoked,
- the notice under paragraph (4) must contain a statement to that effect.
- (7) Nothing in this regulation prevents an objector from making a further objection under paragraph 13 of Schedule 1 to the Act where—
- (a) the notice under paragraph (4) indicates that the Public Guardian is not satisfied that the particular ground of objection to which that notice relates is established; and
  - (b) the period specified in paragraph (2) has not expired.

### **Objection to registration: application to the court**

**15.**—(1) This regulation deals with any objection to the registration of an instrument as a lasting power of attorney which is to be made to the court.

- (2) The grounds for making an application to the court are—
- (a) that one or more of the requirements for the creation of a lasting power of attorney have not been met;
  - (b) that the power has been revoked, or has otherwise come to an end, on a ground other than the grounds set out in paragraph 13(1) of Schedule 1 to the Act;
  - (c) any of the grounds set out in paragraph (a) or (b) of section 22(3) of the Act.
- (3) Where any person—
- (a) is entitled to receive notice under paragraph 6, 7 or 8 of Schedule 1 to the Act of an application for the registration of the instrument, and
  - (b) wishes to object to registration on one or more of the grounds set out in paragraph (2),

he must make an application to the court before the end of the period of 5 weeks beginning with the date on which the notice is given.

(4) The notice of an application to the court, which a person making an objection to the court is required to give to the Public Guardian under paragraph 13(3)(b)(ii) of Schedule 1 to the Act, must be in writing.

### **Notifying applicants of non-registration of lasting power of attorney**

**16.** Where the Public Guardian is prevented from registering an instrument as a lasting power of attorney by virtue of—

- (a) paragraph 11(1) of Schedule 1 to the Act (instrument not made in accordance with Schedule),
- (b) paragraph 12(2) of that Schedule (deputy already appointed),
- (c) paragraph 13(2) of that Schedule (objection by donee or named person on grounds of bankruptcy, disclaimer, death etc),
- (d) paragraph 14(2) of that Schedule (objection by donor), or
- (e) regulation 11(2) of these Regulations (application for registration not accompanied by original instrument or certified copy),

he must notify the person (or persons) who applied for registration of that fact.

**Notice to be given on registration of lasting power of attorney**

17.—(1) Where the Public Guardian registers an instrument as a lasting power of attorney, he must—

- (a) retain a copy of the instrument; and
- (b) return to the person (or persons) who applied for registration the original instrument, or the certified copy of it, which accompanied the application for registration.

(2) Schedule 5 to these Regulations sets out the form of notice (“LPA 004”) which the Public Guardian must give to the donor and donee (or donees) when the Public Guardian registers an instrument.

(3) Where it appears to the Public Guardian that there is good reason to do so, the Public Guardian must also provide (or arrange for the provision of) an explanation to the donor of—

- (a) the notice referred to in paragraph (2) and what the effect of it is; and
- (b) why it is being brought to his attention.

(4) Any information provided under paragraph (3) must be provided—

- (a) to the donor personally; and
- (b) in a way that is appropriate to the donor’s circumstances (for example using simple language, visual aids or other appropriate means).

(5) “Certified copy” is to be construed in accordance with regulation 11(3).

*Post-registration***Changes to instrument registered as lasting power of attorney**

18.—(1) This regulation applies in any case where any of paragraphs 21 to 24 of Schedule 1 to the Act requires the Public Guardian to attach a note to an instrument registered as a lasting power of attorney.

(2) The Public Guardian must give a notice to the donor and the donee (or, if more than one, each of them) requiring him to deliver to the Public Guardian—

- (a) the original of instrument which was sent to the Public Guardian for registration;
- (b) any office copy of that registered instrument; and
- (c) any certified copy of that registered instrument.

(3) On receipt of the document, the Public Guardian must—

- (a) attach the required note; and
- (b) return the document to the person from whom it was obtained.

**Loss or destruction of instrument registered as lasting power of attorney**

19.—(1) This regulation applies where—

- (a) a person is required by or under the Act to deliver up to the Public Guardian any of the following documents—
  - (i) an instrument registered as a lasting power of attorney;
  - (ii) an office copy of that registered instrument;
  - (iii) a certified copy of that registered instrument; and
- (b) the document has been lost or destroyed.

(2) The person required to deliver up the document must provide to the Public Guardian in writing—

- (a) if known, the date of the loss or destruction and the circumstances in which it occurred;
- (b) otherwise, a statement of when he last had the document in his possession.

#### **Disclaimer of appointment by a donee of lasting power of attorney**

**20.**—(1) Schedule 6 to these Regulations sets out the form (“LPA 005”) which a donee of an instrument registered as a lasting power of attorney must use to disclaim his appointment as donee.

(2) The donee must send—

- (a) the completed form to the donor; and
- (b) a copy of it to—
  - (i) the Public Guardian; and
  - (ii) any other donee who, for the time being, is appointed under the power.

#### **Revocation by donor of lasting power of attorney**

**21.**—(1) A donor who revokes a lasting power to attorney must—

- (a) notify the Public Guardian that he has done so; and
- (b) notify the donee (or, if more than one, each of them) of the revocation.

(2) Where the Public Guardian receives a notice under paragraph (1)(a), he must cancel the registration of the instrument creating the power if he is satisfied that the donor has taken such steps as are necessary in law to revoke it.

(3) The Public Guardian may require the donor to provide such further information, or produce such documents, as the Public Guardian reasonably considers necessary to enable him to determine whether the steps necessary for revocation have been taken.

(4) Where the Public Guardian cancels the registration of the instrument he must notify—

- (a) the donor; and
- (b) the donee or, if more than one, each of them.

#### **Revocation of a lasting power of attorney on death of donor**

**22.**—(1) The Public Guardian must cancel the registration of an instrument as a lasting power of attorney if he is satisfied that the power has been revoked as a result of the donor’s death.

(2) Where the Public Guardian cancels the registration of an instrument he must notify the donee or, if more than one, each of them.