
STATUTORY INSTRUMENTS

2007 No. 1253

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

PART 4

FUNCTIONS OF THE PUBLIC GUARDIAN

The registers

Establishing and maintaining the registers

- 30.**—(1) In this Part “the registers” means—
- (a) the register of lasting powers of attorney,
 - (b) the register of enduring powers of attorney, and
 - (c) the register of court orders appointing deputies,
- which the Public Guardian must establish and maintain.
- (2) On each register the Public Guardian may include—
- (a) such descriptions of information about a registered instrument or a registered order as the Public Guardian considers appropriate; and
 - (b) entries which relate to an instrument or order for which registration has been cancelled.

Disclosure of information on a register: search by the Public Guardian

- 31.**—(1) Any person may, by an application made under paragraph (2), request the Public Guardian to carry out a search of one or more of the registers.
- (2) An application must—
- (a) state—
 - (i) the register or registers to be searched;
 - (ii) the name of the person to whom the application relates; and
 - (iii) such other details about that person as the Public Guardian may require for the purpose of carrying out the search; and
 - (b) be accompanied by any fee provided for under section 58(4)(b) of the Act.
- (3) The Public Guardian may require the applicant to provide such further information, or produce such documents, as the Public Guardian reasonably considers necessary to enable him to carry out the search.
- (4) As soon as reasonably practicable after receiving the application—
- (a) the Public Guardian must notify the applicant of the result of the search; and

- (b) in the event that it reveals one or more entries on the register, the Public Guardian must disclose to the applicant all the information appearing on the register in respect of each entry.

Disclosure of additional information held by the Public Guardian

32.—(1) This regulation applies in any case where, as a result of a search made under regulation 31, a person has obtained information relating to a registered instrument or a registered order which confers authority to make decisions about matters concerning a person (“P”).

(2) On receipt of an application made in accordance with paragraph (4), the Public Guardian may, if he considers that there is good reason to do so, disclose to the applicant such additional information as he considers appropriate.

(3) “Additional information” means any information relating to P—

- (a) which the Public Guardian has obtained in exercising the functions conferred on him under the Act; but
- (b) which does not appear on the register.

(4) An application must state—

- (a) the name of P;
- (b) the reasons for making the application; and
- (c) what steps, if any, the applicant has taken to obtain the information from P.

(5) The Public Guardian may require the applicant to provide such further information, or produce such documents, as the Public Guardian reasonably considers necessary to enable him to determine the application.

(6) In determining whether to disclose any additional information to P, the Public Guardian must, in particular, have regard to—

- (a) the connection between P and the applicant;
- (b) the reasons for requesting the information (in particular, why the information cannot or should not be obtained directly from P);
- (c) the benefit to P, or any detriment he may suffer, if a disclosure is made; and
- (d) any detriment that another person may suffer if a disclosure is made.

Security for discharge of functions

Persons required to give security for the discharge of their functions

33.—(1) This regulation applies in any case where the court orders a person (“S”) to give to the Public Guardian security for the discharge of his functions.

(2) The security must be given by S—

- (a) by means of a bond which is entered into in accordance with regulation 34; or
- (b) in such other manner as the court may direct.

(3) For the purposes of paragraph (2)(a), S complies with the requirement to give the security only if—

- (a) the endorsement required by regulation 34(2) has been provided; and
- (b) the person who provided it has notified the Public Guardian of that fact.

(4) For the purposes of paragraph (2)(b), S complies with the requirement to give the security—

- (a) in any case where the court directs that any other endorsement must be provided, only if—
 - (i) that endorsement has been provided; and
 - (ii) the person who provided it has notified the Public Guardian of that fact;
- (b) in any case where the court directs that any other requirements must be met in relation to the giving of the security, only if the Public Guardian is satisfied that those other requirements have been met.

Security given under regulation 33(2)(a): requirement for endorsement

- 34.**—(1) This regulation has effect for the purposes of regulation 33(2)(a).
- (2) A bond is entered into in accordance with this regulation only if it is endorsed by—
- (a) an authorised insurance company; or
 - (b) an authorised deposit-taker.
- (3) A person may enter into the bond under—
- (a) arrangements made by the Public Guardian; or
 - (b) other arrangements which are made by the person entering into the bond or on his behalf.
- (4) The Public Guardian may make arrangements with any person specified in paragraph (2) with a view to facilitating the provision by them of bonds which persons required to give security to the Public Guardian may enter into.
- (5) In this regulation—
- “authorised insurance company” means—
- (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000⁽¹⁾ to effect or carry out contracts of insurance;
 - (b) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule to effect or carry out contracts of insurance;
 - (c) a person who carries on insurance market activity (within the meaning given in section 316(3) of that Act); and
- “authorised deposit-taker” means—
- (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits;
 - (b) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule to accept deposits.
- (6) The definitions of “authorised insurance company” and “authorised deposit-taker” must be read with—
- (a) section 22 of the Financial Services and Markets Act 2000;
 - (b) any relevant order⁽²⁾ under that section; and
 - (c) Schedule 2 to that Act.

Security given under regulation 33(2)(a): maintenance or replacement

- 35.**—(1) This regulation applies to any security given under regulation 33(2)(a).

⁽¹⁾ 2000 c.8.

⁽²⁾ S.I. 2001/544, as amended by S.I. 2001/3544, 2002/682, 1310, 1776 and 1777, 2003/1475, 1476 and 2822, 2004/1610 and 2737, 2005/593, 1518 and 2967 and 2006/1969, 2383 and 3221.

(2) At such times or at such intervals as the Public Guardian may direct by notice in writing, any person (“S”) who has given the security must satisfy the Public Guardian that any premiums payable in respect of it have been paid.

(3) Where S proposes to replace a security already given by him, the new security is not to be regarded as having been given until the Public Guardian is satisfied that—

- (a) the requirements set out in sub-paragraphs (a) and (b) of regulation 33(3) have been met in relation to it; and
- (b) no payment is due from S in connection with the discharge of his functions.

Enforcement following court order of any endorsed security

36.—(1) This regulation applies to any security given to the Public Guardian in respect of which an endorsement has been provided.

(2) Where the court orders the enforcement of the security, the Public Guardian must—

- (a) notify any person who endorsed the security of the contents of the order; and
- (b) notify the court when payment has been made of the amount secured.

Discharge of any endorsed security

37.—(1) This regulation applies to any security given by a person (“S”) to the Public Guardian in respect of which an endorsement has been provided.

(2) The security may be discharged if the court makes an order discharging it.

(3) In any other case, the security may not be discharged until the end of the period of 7 years commencing with whichever of the following dates first occurs—

- (a) if the person on whose behalf S was appointed to act dies, the date of his death;
- (b) if S dies, the date of his death;
- (c) if the court makes an order which discharges S but which does not also discharge the security under paragraph (2), the date of the order;
- (d) the date when S otherwise ceases to be under a duty to discharge the functions in respect of which he was ordered to give security.

(4) For the purposes of paragraph (3), if a person takes any step with a view to discharging the security before the end of the period specified in that paragraph, the security is to be treated for all purposes as if it were still in place.

Deputies

Application for additional time to submit a report

38.—(1) This regulation applies where the court requires a deputy to submit a report to the Public Guardian and specifies a time or interval for it to be submitted.

(2) A deputy may apply to the Public Guardian requesting more time for submitting a particular report.

(3) An application must—

- (a) state the reason for requesting more time; and
- (b) contain or be accompanied by such information as the Public Guardian may reasonably require to determine the application.

(4) In response to an application, the Public Guardian may, if he considers it appropriate to do so, undertake that he will not take steps to secure performance of the deputy's duty to submit the report at the relevant time on the condition that the report is submitted on or before such later date as he may specify.

Content of reports

39.—(1) Any report which the court requires a deputy to submit to the Public Guardian must include such material as the court may direct.

(2) The report must also contain or be accompanied by—

- (a) specified information or information of a specified description; or
- (b) specified documents or documents of a specified description.

(3) But paragraph (2)—

- (a) extends only to information or documents which are reasonably required in connection with the exercise by the Public Guardian of functions conferred on him under the Act; and
- (b) is subject to paragraph (1) and to any other directions given by the court.

(4) Where powers as respects a person's property and affairs are conferred on a deputy under section 16 of the Act, the information specified by the Public Guardian under paragraph (2) may include accounts which—

- (a) deal with specified matters; and
- (b) are provided in a specified form.

(5) The Public Guardian may require—

- (a) any information provided to be verified in such manner, or
- (b) any document produced to be authenticated in such manner,

as he may reasonably require.

(6) "Specified" means specified in a notice in writing given to the deputy by the Public Guardian.

Power to require final report on termination of appointment

40.—(1) This regulation applies where—

- (a) the person on whose behalf a deputy was appointed to act has died;
- (b) the deputy has died;
- (c) the court has made an order discharging the deputy; or
- (d) the deputy otherwise ceases to be under a duty to discharge the functions to which his appointment relates.

(2) The Public Guardian may require the deputy (or, in the case of the deputy's death, his personal representatives) to submit a final report on the discharge of his functions.

(3) A final report must be submitted—

- (a) before the end of such reasonable period as may be specified; and
- (b) at such place as may be specified.

(4) The Public Guardian must consider the final report, together with any other information that he may have relating to the discharge by the deputy of his functions.

(5) Where the Public Guardian is dissatisfied with any aspect of the final report he may apply to the court for an appropriate remedy (including enforcement of security given by the deputy).

(6) “Specified” means specified in a notice in writing given to the deputy or his personal representatives by the Public Guardian.

Power to require information from deputies

41.—(1) This regulation applies in any case where—

- (a) the Public Guardian has received representations (including complaints) about—
 - (i) the way in which a deputy is exercising his powers; or
 - (ii) any failure to exercise them; or
- (b) it appears to the Public Guardian that there are other circumstances which—
 - (i) give rise to concerns about, or dissatisfaction with, the conduct of the deputy (including any failure to act); or
 - (ii) otherwise constitute good reason to seek information about the deputy’s discharge of his functions.

(2) The Public Guardian may require the deputy—

- (a) to provide specified information or information of a specified description; or
- (b) to produce specified documents or documents of a specified description.

(3) The information or documents must be provided or produced—

- (a) before the end of such reasonable period as may be specified; and
- (b) at such place as may be specified.

(4) The Public Guardian may require—

- (a) any information provided to be verified in such manner, or
- (b) any document produced to be authenticated in such manner,

as he may reasonably require.

(5) “Specified” means specified in a notice in writing given to the deputy by the Public Guardian.

Right of deputy to require review of decisions made by the Public Guardian

42.—(1) A deputy may require the Public Guardian to reconsider any decision he has made in relation to the deputy.

(2) The right under paragraph (1) is exercisable by giving notice of exercise of the right to the Public Guardian before the end of the period of 14 days beginning with the date on which notice of the decision is given to the deputy.

(3) The notice of exercise of the right must—

- (a) state the grounds on which reconsideration is required; and
- (b) contain or be accompanied by any relevant information or documents.

(4) At any time after receiving the notice and before reconsidering the decision to which it relates, the Public Guardian may require the deputy to provide him with such further information, or to produce such documents, as he reasonably considers necessary to enable him to reconsider the matter.

(5) The Public Guardian must give to the deputy—

- (a) written notice of his decision on reconsideration, and
- (b) if he upholds the previous decision, a statement of his reasons.

Miscellaneous functions

Applications to the Court of Protection

43. The Public Guardian has the function of making applications to the court in connection with his functions under the Act in such circumstances as he considers it necessary or appropriate to do so.

Visits by the Public Guardian or by Court of Protection Visitors at his direction

44.—(1) This regulation applies where the Public Guardian visits, or directs a Court of Protection Visitor to visit, any person under any provision of the Act or these Regulations.

(2) The Public Guardian must notify (or make arrangements to notify) the person to be visited of—

- (a) the date or dates on which it is proposed that the visit will take place;
- (b) to the extent that it is practicable to do so, any specific matters likely to be covered in the course of the visit; and
- (c) any proposal to inform any other person that the visit is to take place.

(3) Where the visit is to be carried out by a Court of Protection Visitor—

- (a) the Public Guardian may—
 - (i) give such directions to the Visitor, and
 - (ii) provide him with such information concerning the person to be visited, as the Public Guardian considers necessary for the purposes of enabling the visit to take place and the Visitor to prepare any report the Public Guardian may require; and
- (b) the Visitor must seek to carry out the visit and take all reasonable steps to obtain such other information as he considers necessary for the purpose of preparing a report.

(4) A Court of Protection Visitor must submit any report requested by the Public Guardian in accordance with any timetable specified by the Public Guardian.

(5) If he considers it appropriate to do so, the Public Guardian may, in relation to any person interviewed in the course of preparing a report—

- (a) disclose the report to him; and
- (b) invite him to comment on it.

Functions in relation to persons carrying out specific transactions

45.—(1) This regulation applies where, in accordance with an order made under section 16(2) (a) of the Act, a person (“T”) has been authorised to carry out any transaction for a person who lacks capacity.

(2) The Public Guardian has the functions of—

- (a) receiving any reports from T which the court may require;
- (b) dealing with representations (including complaints) about—
 - (i) the way in which the transaction has been or is being carried out; or
 - (ii) any failure to carry it out.

(3) Regulations 38 to 41 have effect in relation to T as they have effect in relation a deputy.

Power to require information from donees of lasting power of attorney

46.—(1) This regulation applies where it appears to the Public Guardian that there are circumstances suggesting that the donee of a lasting power of attorney may—

- (a) have behaved, or may be behaving, in a way that contravenes his authority or is not in the best interests of the donor of the power,
- (b) be proposing to behave in a way that would contravene that authority or would not be in the donor’s best interests, or
- (c) have failed to comply with the requirements of an order made, or directions given, by the court.

(2) The Public Guardian may require the donee—

- (a) to provide specified information or information of a specified description; or
- (b) to produce specified documents or documents of a specified description.

(3) The information or documents must be provided or produced—

- (a) before the end of such reasonable period as may be specified; and
- (b) at such place as may be specified.

(4) The Public Guardian may require—

- (a) any information provided to be verified in such manner, or
- (b) any document produced to be authenticated in such manner,

as he may reasonably require.

(5) “Specified” means specified in a notice in writing given to the donee by the Public Guardian.

Power to require information from attorneys under enduring power of attorney

47.—(1) This regulation applies where it appears to the Public Guardian that there are circumstances suggesting that, having regard to all the circumstances (and in particular the attorney’s relationship to or connection with the donor) the attorney under a registered enduring power of attorney may be unsuitable to be the donor’s attorney.

(2) The Public Guardian may require the attorney—

- (a) to provide specified information or information of a specified description; or
- (b) to produce specified documents or documents of a specified description.

(3) The information or documents must be provided or produced—

- (a) before the end of such reasonable period as may be specified; and
- (b) at such place as may be specified.

(4) The Public Guardian may require—

- (a) any information provided to be verified in such manner, or
- (b) any document produced to be authenticated in such manner,

as he may reasonably require.

(5) “Specified” means specified in a notice in writing given to the attorney by the Public Guardian.

Other functions in relation to enduring powers of attorney

48. The Public Guardian has the following functions—

(a) directing a Court of Protection Visitor—

- (i) to visit an attorney under a registered enduring power of attorney, or

- (ii) to visit the donor of a registered enduring power of attorney,
and to make a report to the Public Guardian on such matters as he may direct;
- (b) dealing with representations (including complaints) about the way in which an attorney under a registered enduring power of attorney is exercising his powers.