

EXPLANATORY MEMORANDUM TO
THE PUBLIC GUARDIAN (FEES, ETC.) (AMENDMENT) REGULATIONS 2010
2010 No. 1062

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

2.1 The instrument amends the Public Guardian (Fees, etc.) Regulations 2007 (SI 2007/2051) (“the 2007 Regulations”) by adding to regulation 10 (reductions and remissions in exceptional circumstances) new paragraph (2) setting a 6-month time limit for applications for the reduction or remission of a fee paid under regulation 8 (appointment of deputy: supervision fees) of the 2007 Regulations. The 6-month period will run from the date of the invoice for the fee of the Office of the Public Guardian (“OPG”). The amendment applies to applications for the reduction or remission of such a fee, the invoice for which is dated 1st May 2010 or later.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

4. **Legislative Context**

4.1 The Mental Capacity Act 2005 (“MCA 2005”) provides a statutory framework to empower and protect people who may lack capacity to make some decisions for themselves. The Act created the office of Public Guardian whose role is to ensure that those appointed to take decisions on behalf of people who lack capacity to take those decisions, discharge their duties properly, without abuse, and act in the best interests of the person lacking capacity. The Public Guardian does this through the OPG, by supervising deputies appointed by the Court of Protection (“the Court”) and investigating the ways Attorneys and Deputies exercise their powers.

4.2 The Court and the OPG started their new roles on 1st October 2007, the date when the MCA 2005 came into force, and thereby brought into practice the additional safeguards and protection afforded to vulnerable people by the MCA 2005. At that time the OPG announced its intention to review the implementation of the MCA 2005 after one year to ensure that the potential benefits of the new statutory regime are being fully realised.

4.3 An initial consultation paper resulted in major changes being made to forms, supervision and fees with effect from April 2009. These amending Regulations are part of the second stage of review: the other part comprises the recent consultation on possible amendments to the Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007 and the resulting amending Regulations to those regulations, which also come into force on 1st May 2010

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 There is currently no time limit after which an application for a fee reduction or remission can be made. This is not a problem with most of the fees under the 2007 Regulations, which are paid on the underlying application being made to the OPG (for example, for the registration of an enduring power of attorney). Nor is it a problem with the fixed appointment of deputy fee under regulation 7, which is payable within 30 days of an invoice being raised for it by OPG. However the annual supervision fees payable under regulation 8 by a deputy after his/her appointment are not only paid in response to an invoice raised by OPG, but the amount of the fee (which depends on the level of supervision determined by the Public Guardian to be required) cannot be known until the invoice is rendered. Applications for reduction or remission of such fees will therefore always be by way of response to the OPG invoice, and in some cases deputies have waited up to 2 years to apply. By this time the relevant information, which would support the reduction/remission application, may no longer be available; and OPG's account books for the fee year in question will have been closed. It is hoped that a 6-month maximum time limit for such fee reduction/remission applications, running from the date of the OPG invoice for the fee, will solve these problems.

8. Consultation outcome

8.1 There has been no consultation on the amendment.

9. Guidance

9.1 Guidance documents will not need to be amended.

10. Impact

10.1 As this is a minor amendment to secondary legislation, there will be no impact on business, charities or voluntary bodies.

10.2 As this is a minor amendment to secondary legislation, there will be no impact on the public sector.

10.3 Accordingly, an Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 This legislation does not apply to small businesses.

12. Monitoring & review

12.1 Monitoring and reviewing the effects of setting a time limit for applications for reduction or remission of supervision fees will be carried out by the OPG.

13. Contact

Any enquiries about the content of the memorandum should be addressed to:

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