

# MENTAL CAPACITY ACT 2005

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## EXPLANATORY NOTES

### SCHEDULES

#### *Schedule 1: Lasting powers of attorney: formalities*

#### **Part 2: Registration**

160. The powers given in an LPA to the donee cannot be exercised until the document has been registered. In order to register an LPA an application must be made by the donor or donee(s) to the Public Guardian. When about to apply to register the LPA, the donor or donee(s) must notify the named persons to inform them of the pending registration. The Public Guardian is required to notify the donor or donee(s) (depending on who makes the application). The court will have the power to dispense with the notification requirement on the application of either the donor or donee.
161. If the instrument received by the Public Guardian is flawed in some way (that is, it is ineffective, or contains a provision that would make it inoperable as an LPA), the Public Guardian must refer it to the Court of Protection and must not register the instrument in the interim. The court can either remove (or “sever”) the offending provision from the instrument or direct the Public Guardian not to register the LPA instrument. If the court severs a provision, the Public Guardian can then register the instrument, but must attach a note to that effect to it.
162. Objections can be made to the registration of the LPA within a prescribed period. An objection by a donor to registration by the donee(s) must be made to the Public Guardian and the court will only direct him to register the LPA if satisfied that the donor lacks capacity to object. An objection by a donee or named person on the basis that the LPA has been revoked (for example, because of bankruptcy of the donee) must also be made to the Public Guardian who, if satisfied, will not register the LPA. If the person wishing to register the LPA disagrees with the Public Guardian’s decision not to register the instrument, he can apply to the court. If the court finds that the grounds for the Public Guardian objecting to registration are not established, the court can direct the Public Guardian to register the LPA. An objection by a donee or named person on such other grounds as may be prescribed must be made to the court. The Public Guardian must not register the instrument, unless told to do so by the court, where it appears to him that there is a deputy appointed for the donor and that the powers of the deputy would conflict with the powers to be conferred on the donee.