

Changes to legislation: There are currently no known outstanding effects for the Powers of Attorney Act 2023. (See end of Document for details)

PROSPECTIVE

SCHEDULE

Section 1

LASTING POWERS OF ATTORNEY

PART 1

REGISTRATION OF LASTING POWERS OF ATTORNEY

Introduction

- 1 Schedule 1 to the Mental Capacity Act 2005 (lasting powers of attorney: formalities) is amended as follows.

Commencement Information

- I1** Sch. para. 1 not in force at Royal Assent, see [s. 3\(5\)](#)

Application for registration of lasting power of attorney

- 2 In paragraph 4—
- (a) in sub-paragraph (1)(a), after “made” insert “by the donor”;
 - (b) omit sub-paragraph (2);
 - (c) for sub-paragraph (3) substitute—
“(3) The application must be accompanied by the instrument (whether or not the instrument complies with paragraph 1(1)(c)).”

Commencement Information

- I2** Sch. para. 2 not in force at Royal Assent, see [s. 3\(5\)](#)

- 3 After that paragraph insert—
- “4A If it appears to the Public Guardian that the instrument as submitted under paragraph 4(3) fails in a prescribed respect to comply with paragraph 1(1)(c), the Public Guardian must take any steps that may be prescribed for ensuring that the instrument complies with paragraph 1(1)(c) in that respect.”

Commencement Information

- I3** Sch. para. 3 not in force at Royal Assent, see [s. 3\(5\)](#)

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Notifications

- 4 (1) Omit paragraph 6.
- (2) For paragraph 7 substitute—
- “7 (1) As soon as is practicable after both the conditions in sub-paragraph (2) are met, the Public Guardian must notify the donor, the donee (or, if more than one, each of them) and each named person that those conditions have been met.
- (2) The conditions are—
- (a) that the Public Guardian has received an application under paragraph 4 in relation to an instrument intended to create a lasting power of attorney, and
- (b) that it appears to the Public Guardian that the instrument has been made in accordance with this Schedule.”
- (3) Omit paragraph 8.

Commencement Information

I4 Sch. para. 4 not in force at Royal Assent, see [s. 3\(5\)](#)

Exclusion of notification requirements

- 5 For paragraph 10 and the italic heading before it substitute—
- “Exclusion of notification requirements*
- 10 The Public Guardian may, on an application made by the donor with respect to a named person, determine that paragraph 7 is not to apply in relation to that person if satisfied that there are special circumstances which justify the disapplication of that provision in relation to that person.”

Commencement Information

I5 Sch. para. 5 not in force at Royal Assent, see [s. 3\(5\)](#)

Identification requirements

- 6 After paragraph 10 insert—
- “Identification requirements*
- 10A (1) Regulations may impose, in respect of applications under paragraph 4 for the registration of an instrument, requirements for the purpose of establishing or verifying the identity of persons named in an instrument or taking part in the process of an application.
- (2) If it appears to the Public Guardian that a requirement imposed by regulations under sub-paragraph (1) is not met in the case of an

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instrument, the Public Guardian must not register the instrument unless directed to do so by the court.”

Commencement Information

I6 Sch. para. 6 not in force at Royal Assent, see [s. 3\(5\)](#)

Objections to registration

7 (1) In paragraph 13—

(a) for sub-paragraph (3)(b) substitute—

“(b) before the end of the prescribed period, gives notice to the Public Guardian of an objection to the registration on a prescribed ground.”;

(b) for sub-paragraph (4) substitute—

“(4) The Public Guardian must not register the instrument unless—

(a) the Public Guardian is satisfied that no evidence has been provided which reasonably supports the making of the objection on that ground, or

(b) the court, on the application of the donor or the donee (or, if more than one, any of them), directs the Public Guardian to register the instrument.”

(2) After that paragraph insert—

“Objection by third party

13A (1) This paragraph applies where—

(a) an application has been made under paragraph 4 for the registration of an instrument (and at the time when the notice mentioned in [paragraph \(b\)](#) is given that application has not been determined),

(b) a third party has given the Public Guardian notice of an objection on a relevant ground to the registration of the instrument (“the notice of objection”), and

(c) that notice was given after the Public Guardian was first notified in a prescribed manner by (or on behalf of) the donor of the donor’s intention to make the application mentioned in [paragraph \(a\)](#).

(2) In [sub-paragraph \(1\)](#) “on a relevant ground” means—

(a) on the ground that an event mentioned in section 13(3) or (6)(a) to (d) has occurred which has revoked the instrument, or

(b) on a prescribed ground.

(3) Where the notice of objection is given on the ground within [sub-paragraph \(2\)\(a\)](#) and the Public Guardian is satisfied that the ground for making the objection is established, the Public Guardian must not register the instrument unless the court, on the application of the donor or the donee (or, if more than one, any of them)—

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- (a) is satisfied that the ground is not established, and
 - (b) directs the Public Guardian to register the instrument.
- (4) Where the notice of objection is given on a ground within [sub-paragraph \(2\)\(b\)](#) the Public Guardian must not register the instrument unless—
- (a) the Public Guardian is satisfied that no evidence has been provided which reasonably supports the making of the objection on that ground, or
 - (b) the court, on the application of the donor or the donee (or, if more than one, any of them) directs the Public Guardian to register the instrument.
- (5) In this paragraph “third party” means a person who is not the donor, a donee or a named person.”

Commencement Information

I7 Sch. para. 7 not in force at Royal Assent, see [s. 3\(5\)](#)

Evidence of registration

- 8 In paragraph 16—
- (a) in sub-paragraph (1), in the words before paragraph (a), after “Schedule” insert “before the day on which [paragraph 8\(a\)](#) of the Schedule to the Powers of Attorney Act 2022 comes into force”;
 - (b) after sub-paragraph (1) insert—
 - “(1A) In the case of any instrument registered under this Schedule in electronic form—
 - (a) the record in the register of that instrument is to be, in any part of the United Kingdom, sufficient proof of the contents of the instrument;
 - (b) regulations may provide that a document provided by the Public Guardian in a prescribed manner is to be, in any part of the United Kingdom, evidence of the contents of the instrument and of the fact that it has been registered.”;
 - (c) in sub-paragraph (2), for “Sub-paragraph (1) is” substitute “Sub-paragraphs (1) and (1A) are”.

Commencement Information

I8 Sch. para. 8 not in force at Royal Assent, see [s. 3\(5\)](#)

PART 2

MINOR AND CONSEQUENTIAL AMENDMENTS

- 9 The Mental Capacity Act 2005 is amended as follows.

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Commencement Information

I9 Sch. para. 9 not in force at Royal Assent, see [s. 3\(5\)](#)

- 10 In section 58(4) (functions of the Public Guardian), after paragraph (c) insert—
“(ca) the time at which such fees are to be paid;”.

Commencement Information

I10 Sch. para. 10 not in force at Royal Assent, see [s. 3\(5\)](#)

- 11 In section 65 (rules, regulations and orders), in subsection (1)(c), after “cases” insert “or purposes”.

Commencement Information

I11 Sch. para. 11 not in force at Royal Assent, see [s. 3\(5\)](#)

- 12 (1) Schedule 1 is amended as follows.
- (2) In paragraph 5, for “11 to 14” substitute “10A to 13A”.
- (3) In paragraph 9—
- (a) omit sub-paragraph (1);
 - (b) in sub-paragraph (2), for “6, 7 or 8” substitute “7”.
- (4) In paragraph 11(1)—
- (a) after “If” insert “, at the end of the period mentioned in paragraph 5,”;
 - (b) for “an instrument accompanying an application under paragraph 4” substitute “the instrument to which an application under paragraph 4 relates”.
- (5) In paragraph 13—
- (a) in sub-paragraph (1)(a), for “6, 7 or 8” substitute “7”;
 - (b) in sub-paragraph (2), in the words before paragraph (a), for “person applying for the registration” substitute “donor or the donee (or, if more than one, any of them)”;
 - (c) in sub-paragraph (3)(a), for “6, 7 or 8” substitute “7”.
- (6) Omit paragraph 14 and the italic heading before it.

Commencement Information

I12 Sch. para. 12 not in force at Royal Assent, see [s. 3\(5\)](#)

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