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STATUTORY INSTRUMENTS

2010 No. 1063

MENTAL CAPACITY, ENGLAND AND WALES

**The Lasting Powers of Attorney, Enduring Powers of Attorney
and Public Guardian (Amendment) Regulations 2010**

<i>Made</i>	- - - -	<i>25th March 2010</i>
<i>Laid before Parliament</i>		<i>29th March 2010</i>
<i>Coming into force</i>	- -	<i>1st May 2010</i>

The Lord Chancellor, in exercise of the powers conferred by sections 58(3), 64(1) and 65(1)(b) and (c) of, and paragraphs 4(4) and 9(a) of Schedule 4 to, the Mental Capacity Act 2005⁽¹⁾, makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian (Amendment) Regulations 2010 and shall come into force on 1st May 2010.

Amendments to the Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007

2. The Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007⁽²⁾ are amended in accordance with regulations 3 to 7.

3. In regulation 24 (application for registration)—

(a) after paragraph (1) insert—

“(1A) The Public Guardian must not register an instrument where only a certified copy of the instrument is sent with the application, unless the applicant verifies that he cannot produce the original instrument because it has been lost or, as the case may be, destroyed.”; and

(1) 2005, c. 9. Section 64(1) was amended by the Mental Health Act 2007, section 50(7) and Schedule 9, Part 1, paragraphs 1 and 10. Section 65 was amended by the Mental Health Act 2007, section 50(7) and Schedule 9, Part 1, paragraphs 1 and 11, and by SI 2006/1016, article 2 and Schedule 1, paragraph 37.

(2) S.I. 2007/1253, amended by SI 2007/2051, 2007/2161 and 2009/1884.

- (b) at the end of paragraph (2)(b), insert “in relation to which paragraph (1A) has been complied with”.
4. For regulation 37(3) (discharge of any endorsed security), substitute—
- “ (3) Otherwise the security may not be discharged—
- (a) if the person on whose behalf S was appointed to act dies, until the end of the period of 2 years beginning on the date of his death; or
- (b) in any other case, until the end of the period of 7 years beginning on whichever of the following dates first occurs—
- (i) if S dies, the date of his death;
- (ii) 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;
- (iii) 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.”.
5. In regulation 48 (other functions in relation to enduring powers of attorney)—
- (a) before “The Public Guardian” insert (1); and
- (b) at the end, insert—
- “(2) The functions conferred by paragraph (1) may be discharged in co-operation with any other person who has functions in relation to the care or treatment of P.”.
6. For the form in Schedule 7 (notice of intention to apply for registration of an enduring power of attorney), substitute the form set out in Schedule 1 to these Regulations.
7. For the form in Schedule 8 (application to register an enduring power of attorney), substitute the form set out in Schedule 2 to these Regulations.

Transitional provisions

- 8.—(1) These Regulations apply to—
- (a) subject to paragraph (2), any application for the registration of an enduring power of attorney sent to the Office of the Public Guardian on or after 1st May 2010;
- (b) the discharge of any security given to the Public Guardian under regulation 37 (discharge of any endorsed security) in relation to which the person on whose behalf S was appointed to act dies on or after 1st May 2010;
- (c) any function undertaken by the Public Guardian under regulation 48 (other functions in relation to enduring powers of attorney) on or after 1st May 2010.
- (2) Any application for the registration of an enduring power of attorney sent to the Office of the Public Guardian before 1st November 2010, and any related notice of intention to apply for registration of the power, shall be treated as valid if made or, as the case may be, given in the form prescribed before the coming into force of these Regulations.

Signed on the authority of the Lord Chancellor

25th March 2010

Bridget Prentice
Parliamentary Under Secretary of State
Ministry of Justice

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SCHEDULE 1

Regulation 6

NOTICE OF INTENTION TO APPLY FOR REGISTRATION OF AN ENDURING POWER OF ATTORNEY

Form EPIPG

Mental Capacity Act 2005 Enduring Power of Attorney

Notice of intention to apply for registration of an Enduring Power of Attorney

To.....

Of.....

This form may be adapted for use by three or more attorneys. Any attorney who is appointed to act jointly and severally, but who does not join in the application, must also be named.

Give the name and address of the donor

The grounds upon which you can object are limited and are shown at 2 overleaf

TAKE NOTICE THAT

I

of

and I

of

The attorney(s) of

.....

of

.....

intend to apply to the Public Guardian for registration of the enduring power of attorney appointing me (us) attorney(s) and made by the donor on the

1. You have the right to object to the proposed registration on one or more of the grounds set out below. If you object, you must notify the Office of the Public Guardian and state which of the grounds you are relying on within five weeks from the day this notice was given to you. You may make an application to the Court of Protection under rule 68 of the Court of Protection Rules 2007 for a decision on the matter. No fee is payable for such an application. If you do not make such an application, the Public Guardian may ask for the court's directions about registration.

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Note: The instrument means the document used to make the enduring power of attorney made by the donor, which it is sought to register

The attorney(s) does not have to be a relative. Relatives are not entitled to know of the existence of the enduring power of attorney prior to being given this notice

Our staff will be able to assist you with any general questions about the possible objections. However, they cannot provide advice about your particular objection.

Note: Part 4 is addressed only to the donor

Note: This notice should be signed by every one of the attorneys who are applying to register the enduring power of attorney

Note:
The attorney(s) must keep a record of the date on which notice was given to the donor and to relatives. This information will be required from the attorney(s) when an application to register the EPA is made

2. The grounds on which you may object to the proposed registration are:

- That the power purported to be created by the instrument is not valid as an enduring power of attorney
- That the power created by the instrument no longer subsists
- That the application is premature because the donor is not yet becoming mentally incapable
- That fraud or undue pressure was used to induce the donor to make the power
- That the attorney is unsuitable to be the donor's attorney (having regard to all the circumstances and in particular the attorney's relationship to or connection with the donor).

3. You can obtain the necessary forms to object by.

- Writing to us at the address on the foot of this form
- Calling us on 0845 330 2900
- Downloading the forms from our website at www.publicguardian.gov.uk

4. You are informed that while the enduring power of attorney remains registered, you will not be able to revoke it until the Court of Protection confirms the revocation.

Signed: Dated:

Signed: Dated:

**Please write to:
Office of the Public Guardian
PO Box 15118
Birmingham
B16 6GX**

www.publicguardian.gov.uk

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SCHEDULE 2

Regulation 7

APPLICATION TO REGISTER AN ENDURING POWER OF ATTORNEY

Office of the Public Guardian
Mental Capacity Act 2005
Form EP2PG

Application for Registration of an Enduring
Power of Attorney

IMPORTANT: Please complete the form in BLOCK CAPITALS using a black ball-point pen. Place a clear cross 'X' mark inside square option boxes ☒ - do not circle the option.

Part One - The Donor

Please state the full name and present address of the donor. State the donor's first name in 'Forename 1' and the donor's other forenames in full in 'Other Forenames'. Company Name should be completed with the name of the nursing/care home or hospital where applicable.

Mr Mrs Ms Miss Other
 If Other, please specify here:

Place a cross against one option ☒

Last Name:

Forename 1:

Other Forenames:

Company Name:

Address 1:

Address 2:

Address 3:

Town/City:

County:

Postcode:

Donor Date of Birth: *If the exact date is unknown please state the year of birth*
 D D M M Y Y Y Y

Please do not write below this line - For Office Use Only

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Part Two - Attorney One	
Please state the full name and present address of the attorney. Professionals e.g. Solicitors or Accountants, should complete the Company Name field.	
Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Miss <input type="checkbox"/> Other <input type="checkbox"/>	
Place a cross against one option <input checked="" type="checkbox"/> If Other, please specify here: <input style="width: 150px;" type="text"/>	
Last Name:	<input style="width: 100%;" type="text"/>
Forename 1:	<input style="width: 100%;" type="text"/>
Other Forenames:	<input style="width: 100%;" type="text"/>
Company Name:	<input style="width: 100%;" type="text"/>
Address 1:	<input style="width: 100%;" type="text"/>
Address 2:	<input style="width: 100%;" type="text"/>
Address 3:	<input style="width: 100%;" type="text"/>
Town/City:	<input style="width: 100%;" type="text"/>
County:	<input style="width: 100%;" type="text"/>
Postcode:	<input style="width: 100%;" type="text"/>
DX Exchange (solicitors only):	DX No. (solicitors only): <input style="width: 100%;" type="text"/>
Attorney Date of Birth:	Daytime Tel No.: <input style="width: 100%;" type="text"/>
	D D M M Y Y Y Y (STD Code): <input style="width: 100%;" type="text"/>
Email Address:	<input style="width: 100%;" type="text"/>
Occupation:	<input style="width: 100%;" type="text"/>
Relationship to donor:	
Civil Partner / Spouse <input type="checkbox"/>	Child <input type="checkbox"/>
Other Relation <input type="checkbox"/>	No Relation <input type="checkbox"/>
Solicitor <input type="checkbox"/>	Other Professional <input type="checkbox"/>
Place a cross against one option <input checked="" type="checkbox"/>	
If 'Other Relation' or 'Other Professional', specify relationship: <input style="width: 150px;" type="text"/>	
Part B of the Enduring Power of Attorney states whether the attorney is to act jointly, jointly and severally, or alone.	
Appointment (Place a cross against one option <input checked="" type="checkbox"/>):	
	Jointly <input type="checkbox"/>
	Jointly and Severally <input type="checkbox"/>
	Alone <input type="checkbox"/>

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Part Three - Attorney Two	
Please state the full name and present address of the attorney. Professionals e.g. Solicitors or Accountants, should complete the Company Name field.	
Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Miss <input type="checkbox"/> Other <input type="checkbox"/>	If Other, please specify here: <input style="width: 100%;" type="text"/>
Place a cross against one option <input checked="" type="checkbox"/>	
Last Name:	<input style="width: 100%;" type="text"/>
Forename 1:	<input style="width: 100%;" type="text"/>
Other Forenames:	<input style="width: 100%;" type="text"/>
Company Name:	<input style="width: 100%;" type="text"/>
Address 1:	<input style="width: 100%;" type="text"/>
Address 2:	<input style="width: 100%;" type="text"/>
Address 3:	<input style="width: 100%;" type="text"/>
Town/City:	<input style="width: 100%;" type="text"/>
County:	<input style="width: 100%;" type="text"/>
Postcode:	DX No. (solicitors only): <input style="width: 100%;" type="text"/>
DX Exchange (solicitors only):	<input style="width: 100%;" type="text"/>
Attorney Date of Birth:	Daytime Tel No.: <input style="width: 100%;" type="text"/>
	(STD Code): <input style="width: 100%;" type="text"/>
Email Address:	<input style="width: 100%;" type="text"/>
Occupation:	<input style="width: 100%;" type="text"/>
Relationship to donor:	
Civil Partner / Spouse <input type="checkbox"/> Other Child Relation <input type="checkbox"/> No Relation <input type="checkbox"/> Other Solicitor <input type="checkbox"/> Other Professional <input type="checkbox"/>	If 'Other Relation' or 'Other Professional', specify relationship: <input style="width: 100%;" type="text"/>
Place a cross against one option <input checked="" type="checkbox"/>	
Part Four - Attorney Three	
Please state the full name and present address of the attorney. Professionals e.g. Solicitors or Accountants, should complete the Company Name field.	
Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Miss <input type="checkbox"/> Other <input type="checkbox"/>	If Other, please specify here: <input style="width: 100%;" type="text"/>
Place a cross against one option <input checked="" type="checkbox"/>	
Last Name:	<input style="width: 100%;" type="text"/>
Forename 1:	<input style="width: 100%;" type="text"/>

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Part Four - Attorney Three cont'd					
Other Forenames:	<input type="text"/>				
Company Name:	<input type="text"/>				
Address 1:	<input type="text"/>				
Address 2:	<input type="text"/>				
Address 3:	<input type="text"/>				
Town/City:	<input type="text"/>				
County:	<input type="text"/>				
Postcode:	<input type="text"/> DX No. (solicitors only): <input type="text"/>				
DX Exchange (solicitors only):	<input type="text"/>				
Attorney Date of Birth:	Daytime Tel No.: <input type="text"/> <input type="text"/> (STD Code): <input type="text"/>				
	D D M M Y Y Y Y				
Email Address:	<input type="text"/>				
Occupation:	<input type="text"/>				
Relationship to donor:					
Civil Partner / Spouse	Other Relation	No Relation	Solicitor	Other Professional	If 'Other Relation' or 'Other Professional', specify relationship:
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>
Place a cross against one option <input checked="" type="checkbox"/>					
If there are additional attorneys, please complete the above details in the 'Additional Information' section (at the end of this form).					
Part Five - The Enduring Power of Attorney					
I (We) the attorney(s) apply to register the Enduring Power of Attorney made by the donor under the Enduring Powers of Attorney Act 1985, the original, or if the original is lost or destroyed, a certified copy of which accompanies this application.					
I (We) have reason to believe that the donor is or is becoming mentally incapable.					
Date that the Donor signed the Enduring Power of Attorney. You can find this in Part B of the Enduring Power of Attorney.	<input type="text"/>				
	D D M M Y Y Y Y				
To your knowledge, has the Donor made any other Enduring Powers of Attorney?:	<input type="checkbox"/> Yes <input type="checkbox"/> No				
	Place a cross against one option <input checked="" type="checkbox"/>				
If 'Yes', please give details below including registration date if applicable:					
<input type="text"/>					
<input type="text"/>					

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Part Six - Notice of Application to Donor

Notice must be given personally to the donor. It should be made clear if someone other than the attorney(s) gives the notice. The date on which the notice was given MUST be completed.

I (We) have given notice of the application to register in the prescribed form (EP1PG) to the donor personally,

on this date:

--	--	--	--	--	--	--	--	--	--

D D M M Y Y Y Y

If someone other than the attorney gives notice to the donor please complete the name and address details below. Please also complete the date above:

Full Name: _____
Address 1: _____
Address 2: _____
Address 3: _____
Town/City: _____
County: _____ Postcode: _____

Part Seven - Notice of Application to Relatives

Please complete details of all relatives entitled to notice.

Please place a cross in the box if no relatives are entitled to notice:

I (We) have given notice to register in the prescribed form (EP1PG) to the following relatives of the donor:

Full Name: _____ Relationship to Donor: _____
Address: _____
Date notice given: _____
D D M M Y Y Y Y

Full Name: _____ Relationship to Donor: _____
Address: _____
Date notice given: _____
D D M M Y Y Y Y

Full Name: _____ Relationship to Donor: _____
Address: _____
Date notice given: _____
D D M M Y Y Y Y

Full Name: _____ Relationship to Donor: _____
Address: _____
Date notice given: _____
D D M M Y Y Y Y

Full Name: _____ Relationship to Donor: _____
Address: _____
Date notice given: _____
D D M M Y Y Y Y

If there are additional relatives please complete the Relative Name, Relationship, Address and Date details in the 'Additional Information' section (at the end of this form).

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Part Eight - Notice of Application to Co-Attorney(s)	
Do not complete this section if it does not apply. If there are additional co-attorneys please complete the Attorney Name, Relationship, Address and Date details in the 'Additional Information' section (at the end of this form).	
Are all the attorneys applying to register? Yes <input type="checkbox"/> No <input type="checkbox"/> Place a cross against one option <input checked="" type="checkbox"/>	
If no, I (We) have given notice to my (our) co-attorney(s) as follows:	
Full Name: <input type="text"/>	Relationship to Donor: <input type="text"/>
Address: <input type="text"/> <input type="text"/> <input type="text"/>	Date notice given: <input type="text"/> <input type="text"/> D D M M Y Y Y Y
Full Name: <input type="text"/>	Relationship to Donor: <input type="text"/>
Address: <input type="text"/> <input type="text"/> <input type="text"/>	Date notice given: <input type="text"/> <input type="text"/> D D M M Y Y Y Y
Part Nine - Fees	
Guidelines on remission and postponement of fees can be obtained from the Office of the Public Guardian.	
Have you enclosed a cheque for the registration fee for this application? Yes <input type="checkbox"/> No <input type="checkbox"/> Place a cross against one option <input checked="" type="checkbox"/>	
Do you wish to apply for postponement, exemption or remission of the fee? Yes <input type="checkbox"/> No <input type="checkbox"/> Place a cross against one option <input checked="" type="checkbox"/>	
If yes, please complete the application for exemption or remission form.	
Part Ten - Declaration	
Note: The application should be signed by all attorneys who are making the application. This must not pre-date the date(s) when the notices were given.	
I (We) certify that the above information is correct and that to the best of my (our) knowledge and belief I (We) have complied with the provisions of the Mental Capacity Act 2005.	
Signed: <input type="text"/>	Dated: <input type="text"/> D D M M Y Y Y Y
Signed: <input type="text"/>	Dated: <input type="text"/> D D M M Y Y Y Y
Signed: <input type="text"/>	Dated: <input type="text"/> D D M M Y Y Y Y

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007 (SI 2007/1253) (“the principal Regulations”). The amendments are as follows.

Regulation 3 adds new paragraph (1A) to regulation 24 (application for registration) of the principal Regulations. New paragraph (1A) provides that an instrument may not be registered where only a certified copy of it is sent with the application, unless the applicant verifies that s/he cannot produce the original instrument because it has been lost or destroyed.

Regulation 4 substitutes an amended paragraph (3) into regulation 37 (discharge of any endorsed security) of the principal Regulations. The substituted paragraph (3) reduces to 2 years the 7-year period during which a security may not be discharged in cases where the person for whose benefit the security was given dies; the 2-year period begins on the date of the death. The 7-year period is retained in all other cases where discharge of the security is not provided for by an order of the court.

Regulation 5 adds to regulation 48 (other functions in relation to enduring powers of attorney) of the principal Regulations new paragraph (2) which provides that the functions conferred on the Public Guardian by the regulation may be discharged in co-operation with any other person who has functions in relation to the care or treatment of P (the subject of the enduring power of attorney).

Regulations 6 and 7 substitute revised forms in Schedules 7 (notice of intention to register an enduring power of attorney) and 8 (application to register an enduring power of attorney) respectively of the principal Regulations.

Regulation 8 sets out transitional provisions.

The Regulations come into force on 1st May 2010.