

2013 No. 506

MENTAL CAPACITY, ENGLAND AND WALES

**The Lasting Powers of Attorney, Enduring Powers of Attorney
and Public Guardian (Amendment) Regulations 2013**

<i>Made</i>	- - - -	<i>5th March 2013</i>
<i>Laid before Parliament</i>		<i>11th March 2013</i>
<i>Coming into force</i>	- -	<i>1st April 2013</i>

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

Citation and commencement

1. These Regulations may be cited as the Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian (Amendment) Regulations 2013, and come into force on 1st April 2013.

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

2.—(1) The Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007(b) (“the 2007 Regulations”) are amended in accordance with regulations 3 to 12.

(2) In these Regulations, a reference to a regulation by number alone is a reference to that regulation so numbered in the 2007 Regulations.

3. In regulation 12, for “6 weeks” substitute “4 weeks”.

4. In regulation 14(2)(c), for “5 weeks” substitute “3 weeks”.

5. In regulation 14A(2)(d), for “5 weeks” substitute “3 weeks”.

6. In regulation 15(3), for “5 weeks” substitute “3 weeks”.

7. After regulation 35(3), insert—

“(4) The Public Guardian must, if satisfied as to the matters in paragraph (3), provide written notice of that fact to S within 2 weeks of being given notification in accordance with regulation 33(3)(b) in relation to the new security.”.

(a) 2005 c. 9. The reference to Schedule 1 is cited because of the meaning given in paragraph 1(3) of that Schedule to “prescribed” and “regulations”.

(b) S.I. 2007/1253.

(c) Regulation 14(2) was amended by S.I. 2007/2161 regulations 2 and 3(3).

(d) Regulation 14A was inserted by S.I. 2007/2161, regulations 2 and 4.

8. In regulation 37—

(a) after regulation 37(3)(a) insert—

“(3A) Where S has replaced a security (“the original security”) previously given by S and the Public Guardian has provided notice in accordance with regulation 35(4), the original security shall stand discharged 2 years from the date on which that notice was issued unless discharged by earlier order of the court upon application under paragraph (2)”;

(b) after regulation 37(4) insert—

“(5) For the purposes of paragraph (3A), if a person takes any step otherwise than under paragraph (2) with a view to discharging the original security before the end of the period specified paragraph (3A), the security is to be treated for all purposes as if it were still in place.”.

9. In Schedule 1(b)—

(a) in Part 1, (“Form for instrument intended to create a property and financial lasting power of attorney”), on page 2 of that form, under the heading “What happens after you’ve filled it in?”, in the sentence starting “This means the earliest...”, for “6” substitute “4”;

(b) in Part 2, (“Form for instrument intended to create a health and welfare power of attorney”), on page 2 of that form, under the heading “What happens after you’ve filled it in?”, in the sentence starting “This means the earliest...” for “6” substitute “4”.

10. In Schedule 2, in form LPA 001—

(a) on the first page, in the words in the box beginning “To the named person”, for “five weeks” written in bold type substitute “three weeks” written in bold type;

(b) on the fourth page—

(i) in the words immediately following the title “How to object to the registering of a Lasting Power of Attorney (LPA)”, for the words “five weeks” written in bold type, substitute “three weeks” written in bold type;

(ii) in the words under the heading “(A) Factual Grounds”, in the paragraph beginning “You have the right to object.”, for “five weeks” substitute “three weeks”.

11. In Part 1 of Schedule 4, in form LPA 003A (“Notice to an attorney of receipt of an application to register a Lasting Power of Attorney”)—

(a) on the first page—

(i) for “five weeks” substitute “three weeks”;

(ii) omit “(We will treat this notice as having been given two days after the date below.)”;

(b) on the second page—

(i) in the words following the heading “How to object to the registering of a Lasting Power of Attorney (LPA)”, for the words “five weeks” written in bold type substitute “three weeks” written in bold type;

(ii) in the words under the heading “(A) Factual Grounds”, in the paragraph beginning “You have the right to object”, for the words “five weeks” substitute “three weeks”.

12. In Part 2 of Schedule 4, in form LPA 003B (“Notice to donor of receipt of an application to register a Lasting Power of Attorney”), on the first page—

(a) for “five weeks” substitute “three weeks”;

(b) omit “(We will treat this notice as having been given two days after the date below.)”.

(a) Regulation 37(3) was substituted by S.I. 2010/1063 regulations 2 and 4.

(b) Schedule 1 was substituted by S.I. 2009/1884 regulations 2, 5 and Schedule.

Transitional arrangements

13.—(1) Subject to sub-paragraph (2), regulations 3 to 6 of these Regulations apply where the application to register a lasting power of attorney is received by the Public Guardian on or after 1st April 2013.

(2) Regulations 3 to 6 of these Regulations do not apply where the notice required by paragraph 6 of Schedule 1 to the 2005 Act was given on or before 31st March 2013.

(3) The amendment made by regulation 8 of these Regulations applies to any original security in relation to which the Public Guardian provides written notice to S in accordance with the amendment made by regulation 7 of these Regulations regarding the new security on or after 1st April 2013.

(4) Where notice under paragraph 6 of Schedule 1 to the 2005 Act is given to a named person on or before 30th September 2013 in the form in Schedule 2 to the 2007 Regulations without amendment as required by regulation 10 of these Regulations—

- (i) a notice of objection to registration received by the Public Guardian from that named person on or before the end of the period of 5 weeks beginning with the date on which the notice is given shall be deemed to have been given within the 3 week period required by regulation 14(2) as amended by regulation 4 of these Regulations; and
- (ii) an application to the court received by the court from that named person on or before the end of the period of 5 weeks beginning with the date on which the notice is given shall be deemed to have been received within the 3 week period required by regulation 15(3) as amended by regulation 6 of these Regulations.

(5) In this regulation—

“the 2005 Act” means the Mental Capacity Act 2005;

“named person” has the meaning given by regulation 2.

Signed on the authority of the Lord Chancellor

5th March 2013

Helen Grant
Parliamentary Under Secretary of State
Ministry of Justice

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 (S.I. 2007/1253) (“the 2007 Regulations”). The amendments are as follows:

Regulation 3 substitutes a period of 4 weeks for the existing 6 week period that must elapse under regulation 12 of the 2007 Regulations between the date of the latest notice by which the Public Guardian notifies the donor or donees (as appropriate) of a lasting power of attorney (“LPA”) that an application to register has been received, and the date on which the LPA is registered.

Regulations 4 and 5 substitute a 3 week period for a 5 week period during which a donee or donor of the power, or a named person, must give notice of objection to registration to the Public Guardian under regulations 14 and 14A of the 2007 Regulations.

Regulation 6 substitutes a period of 3 weeks for the current 5 week period in which a person who wishes to make an application to the court objecting to registration must do so under regulation 15 of the 2007 Regulations.

Regulation 8 introduces a new basis on which a security given by a deputy to the Public Guardian in respect of the discharge of his or her functions can be discharged. Where the Public Guardian is satisfied that a new, replacement, security meets the requirements of regulation 35(3) of the 2007 Regulations, the amendment to regulation 37 of those Regulations introduced by regulation 8 provides that the original security will be automatically discharged after 2 years without the need for an application to court. The 2 year period runs from the date on which the Public Guardian notifies the deputy of his or her satisfaction as to fulfilment of regulation 35(3) criteria under regulation 35(4) of the 2007 Regulations, itself a new requirement provided by regulation 7.

Regulation 9 amends Schedule 1 to the 2007 Regulations (the forms of instrument for the property and financial LPA or the health and welfare LPA), to reflect the change in the time period made by regulation 3 to regulation 12 of the 2007 Regulations.

Regulations 10 to 12 amend Schedules 2 and 4 to the 2007 Regulations (forms LPA 001, LPA 003A and LPA 003B) to reflect the changes made by regulations 4 to 6. These forms are prescribed for the purposes of providing notice of intention to apply for registration of an LPA, and notice of receipt of application for such registration under paragraphs 6, 7 and 8 of Schedule 1 to the Mental Capacity Act 2005.

Regulation 13 makes transitional provision. Under the 2007 Regulations, notice to a named person that an application for registration is about to be made must be given either before, or at the same time as the application is made. It is therefore likely that for applications made close to the 1st April 2013 commencement date, the form of notice that has actually been given will be the un-amended version referring to a 5 week rather than a 3 week period for the lodging of an objection to registration (or application to court). Regulation 13(2) makes provision for this situation by requiring that the original time periods (those amended by regulations 3 to 6 of these Regulations) apply to such cases. Regulation 13(4) addresses the problem that would arise from inadvertent use of the un-amended version of the LPA 001 form for notification of a named person after the 31st March 2013, because that form refers the named person to what will be an incorrect time period for objection or application to court. Where the named person makes an objection or an application within the original 5 week period (to which an outdated form will refer), the objection or application will be deemed to be “in time” in relation to the new time periods notwithstanding that it has been made later than the new 3 week period. This provision will apply for a 6 month period from the commencement of these Regulations.

Forms LPA 001, LPA 003A and LPA 003B will be available for download in their amended form on the website of the Office of the Public Guardian from the date on which these Regulations come into force.

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£4.00

E5991 03/2013 135991T 19585

ISBN 978-0-11-153617-9



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