

2019 No. 1033

MENTAL CAPACITY, ENGLAND AND WALES

The Public Guardian (Fees, etc) (Amendment) Regulations 2019

<i>Made</i> - - - -	<i>26th June 2019</i>
<i>Laid before Parliament</i>	<i>28th June 2019</i>
<i>Coming into force</i> - -	<i>31st July 2019</i>

The Lord Chancellor, in exercise of the powers conferred by section 58(3) and (4) of the Mental Capacity Act 2005(a), makes the following Regulations:

Citation and commencement and interpretation

1. These Regulations may be cited as the Public Guardian (Fees, etc) (Amendment) Regulations 2019 and come into force on 31st July 2019.

2. In these Regulations—

- (a) “the 2007 Regulations” means the Public Guardian (Fees, etc) Regulations 2007(b); and
- (b) a reference to a regulation by number alone is a reference to that regulation so numbered in the 2007 Regulations.

Amendments to the 2007 Regulations

3. The 2007 Regulations are amended in accordance with regulations 4 to 9 of these Regulations.

4. In regulation 2 (interpretation)—

- (a) before the definition of “the Act”, insert—
 - ““the 2017 Act” means the Guardianship (Missing Persons) Act 2017(c);”;
- (b) in the definition of “court”, at the end insert “or in relation to proceedings under the 2017 Act the court for the time being designated by the Lord Chancellor under section 23 of the 2017 Act;”;
- (c) after the definition of “court”, insert—
 - ““guardian” has the meaning given in the 2017 Act;
 - “guardianship order” has the meaning given in the 2017 Act;
 - “missing person” has the meaning given in the 2017 Act;”;
- (d) in the definition of “the registers”—
 - (i) in paragraph (b) omit “and”;

(a) 2005 c. 9.

(b) S.I. 2007/2051. Amended by S.I. 2007/2616, 2009/514, 2010/1062, 2011/2189, 2013/1748 and 2017/503.

(c) 2017 c. 27.

- (ii) in paragraph (c), at the end insert “and”;
- (iii) after paragraph (c), insert—
 - “(d) the register of guardianship orders.”;
- (iv) after “under section 58(1)(a) and (b)”, insert “and (2A)(a)”.

5. After regulation 8 (appointment of deputy: assessment and supervision fees), insert—

“Guardianship orders: set-up and supervision fees

8A.—(1) This regulation applies where the court has made a guardianship order.

(2) A set-up fee shall be payable by the guardian within 30 days of the date of the invoice for the fee.

(3) An annual supervision fee shall be payable by the guardian until—

- (a) the period of guardianship specified in the guardianship order expires under section 7 of the 2017 Act (period of guardianship);
- (b) the court makes an order revoking the guardianship order under section 13 of the 2017 Act (revocation of the guardianship order); or
- (c) the guardianship order is automatically revoked under section 14 of the 2017 Act (automatic revocation).

(4) Subject to paragraph (6), the annual supervision fee shall be due—

- (a) for the first year, on the date 12 months after the date of the guardianship order;
- (b) thereafter, on the date 12 months after the previous annual supervision fee became payable; and

shall be payable by the guardian within 30 days of the date of the invoice for the fee.

(5) Where the period for which the fee prescribed by paragraph (3) is payable is less than one year, the amount of the fee payable shall be such proportion of the full fee as that period bears to one year.

(6) Where the period of guardianship expires or the guardianship order is revoked, the appropriate fee prescribed by paragraph (3) shall be due on the date of expiry or revocation and shall be payable within 30 days of the date of the invoice for the fee.

(7) In the event of automatic revocation of the guardianship order under section 14(1)(c) of the 2017 Act due to the death of the guardian, the appropriate fee prescribed by paragraphs (2) and (3) above shall be payable by the missing person or charged to their estate.”.

6. In regulation 9 (exemptions)—

(a) in paragraph (1) for “no fee shall be payable under these regulations, when” substitute “the Public Guardian shall grant an exemption such that no fee shall be payable under these regulations where, on application for an exemption, reduction or remission, it is shown that”;

(b) after paragraph (1) insert—

“(1A) Where the Public Guardian grants an exemption under paragraph (1) in respect of the following fees—

- (a) deputyship general supervision (regulation 8); or
- (b) guardianship supervision (regulation 8A);

that exemption shall be granted for a period that the Public Guardian sees fit, such a period not to exceed 3 years.

(1AA) At the end of the exemption period granted under paragraph (1A) further application for an exemption, reduction or remission may be made under paragraph (1);”;

(c) after paragraph (6) insert—

“(6A) For the purposes of regulation 8A the relevant person is the missing person.”.

7. In regulation 10 (reductions and remissions)—

(a) after paragraph (1A) insert—

“(1AA) The Public Guardian shall grant a 50% remission of a fee payable under these regulations where, on application for an exemption, reduction or remission it is shown that at the time the fee under these regulations is payable, the relevant person’s gross annual income does not exceed £12,000.

(1AB) Where the Public Guardian grants a remission under this regulation in respect of the following fees—

- (a) deputyship general supervision (regulation 8); or
- (b) guardianship supervision (regulation 8A);

that remission will be granted for a period that the Public Guardian sees fit, such a period not to exceed 3 years.

(1AC) At the end of the remission period granted under paragraph (1AB) further application for an exemption, reduction or remission may be made under paragraph (1AA).”;

(b) in paragraph (1B)—

- (i) for “Paragraph (1A) does not apply to” substitute “Paragraphs (1AA) and (1AB) do not apply to—”;
- (ii) the words from “the office copy” to the end become sub-paragraph (a);
- (iii) in sub-paragraph (a), at the end insert “, or”;
- (iv) after sub-paragraph (a), insert—

“(b) the annual administration fee for minimal supervision, prescribed by regulation 8(4)(b).”.

(c) in paragraph (1C)—

- (i) for “paragraph (1A)” substitute “this regulation”;
- (ii) in sub-paragraph (b), for “.” substitute “; and”;
- (iii) after sub-paragraph (b) insert—

“(c) “gross annual income” means total annual income received before tax and National Insurance are paid, for the 12 months preceding the date the fee would otherwise become payable.”;

(d) omit paragraph (2).

8. After regulation 10 (reductions and remissions), insert—

“Applications for exemptions, reductions and remissions

10A.—(1) An application for an exemption, reduction or remission of any fee payable under—

- (a) regulation 4 (fees for application to register an enduring power of attorney; or
- (b) regulation 5 (fees for application to register a lasting power of attorney and repeat application to register);

must be made to the Public Guardian at the time the application to register the enduring power of attorney or lasting power of attorney is made.

(2) An application for an exemption, reduction or remission of any fee payable under—

- (a) regulation 8 (appointment of deputy: assessment and supervision fees); or
- (b) regulation 8A (guardianship orders: set-up and supervision fees);

must be made to the Public Guardian within 6 months after the date of the invoice in respect of that fee.

(3) Where an application for an exemption, reduction or remission of a fee is made, the applicant must—

- (a) indicate the fee to which the application relates;
- (b) indicate whether the applicant is requesting an exemption or remission for more than 12 months under regulation 9(1A) or 10(1AB); and
- (c) provide documentary evidence of the basis on which the applicant considers the relevant person may be entitled to an exemption, reduction or remission.”.

9. In the Schedule (fees to be taken), after the entry for minimal supervision (regulation 8), insert—

“Guardianship set-up fee (regulation 8A)	£200.00
Guardianship supervision (regulation 8A)	£320.00”

Signed by the authority of the Lord Chancellor

26th June 2019

Paul Maynard
Parliamentary Under Secretary of State
Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Public Guardian (Fees, etc) Regulations 2007 (S.I. 2007/2015) (“the 2007 Regulations”) by—

- providing for the fees to be charged in connection with the Public Guardian’s functions under section 58(2A) of the Mental Capacity Act 2005 (c. 9) (“the 2005 Act”), as inserted by the Guardianship (Missing Persons) Act 2017 (c. 27) (“the 2007 Act”);
- introducing a new set-up fee (£200) and annual supervision fee (£320) for guardians; and
- extending the provisions relating to exemptions, reductions and remissions (regulations 9 and 10) and setting out the application requirements (regulation 10A).

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