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STATUTORY INSTRUMENTS

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**2007 No. 1253**

The Lasting Powers of Attorney, Enduring Powers  
of Attorney and Public Guardian Regulations 2007

PART 1

PRELIMINARY

**Citation and commencement**

1.—(1) These Regulations may be cited as the Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007.

(2) These Regulations shall come into force on 1 October 2007.

**Interpretation**

2.—(1) In these Regulations—

“the Act” means the Mental Capacity Act 2005;

“court” means the Court of Protection;

“LPA certificate”, in relation to an instrument made with a view to creating a lasting power of attorney, means the certificate which is required to be included in the instrument by virtue of paragraph 2(1)(e) of Schedule 1 to the Act;

“named person”, in relation to an instrument made with a view to creating a lasting power of attorney, means a person who is named in the instrument as being a person to be notified of any application for the registration of the instrument;

“prescribed information”, in relation to any instrument intended to create a lasting power of attorney, means the information contained in the form used for the instrument which appears under the heading “prescribed information”.

**Minimal differences from forms prescribed in these Regulations**

3.—(1) In these Regulations, any reference to a form—

(a) in the case of a form set out in Schedules 1 to 7 to these Regulations, is to be regarded as including a Welsh version of that form; and

(b) in the case of a form set out in Schedules 2 to 7 to these Regulations, is to be regarded as also including—

(i) a form to the same effect but which differs in an immaterial respect in form or mode of expression;

(ii) a form to the same effect but with such variations as the circumstances may require or the court or the Public Guardian may approve; or

(iii) a Welsh version of a form within (i) or (ii).

### **Computation of time**

4.—(1) This regulation shows how to calculate any period of time which is specified in these Regulations.

(2) A period of time expressed as a number of days must be computed as clear days.

(3) Where the specified period is 7 days or less, and would include a day which is not a business day, that day does not count.

(4) When the specified period for doing any act at the office of the Public Guardian ends on a day on which the office is closed, that act will be done in time if done on the next day on which the office is open.

(5) In this regulation—

“business day” means a day other than—

- (a) a Saturday, Sunday, Christmas Day or Good Friday; or
- (b) a bank holiday under the Banking and Financial Dealings Act 1971<sup>(1)</sup>, in England and Wales; and

“clear days” means that in computing the number of days—

- (a) the day on which the period begins, and
  - (b) if the end of the period is defined by reference to an event, the day on which that event occurs,
- are not included.

## **PART 2**

### **LASTING POWERS OF ATTORNEY**

#### *Instruments intended to create a lasting power of attorney*

#### **Forms for lasting powers of attorney**

5. The forms set out in Parts 1 and 2 of Schedule 1 to these Regulations are the forms which, in the circumstances to which they apply, are to be used for instruments intended to create a lasting power of attorney.

#### **Maximum number of named persons**

6. The maximum number of named persons that the donor of a lasting power of attorney may specify in the instrument intended to create the power is 5.

#### **Requirement for two LPA certificates where instrument has no named persons**

7. Where an instrument intended to create a lasting power of attorney includes a statement by the donor that there are no persons whom he wishes to be notified of any application for the registration of the instrument—

- (a) the instrument must include two LPA certificates; and
- (b) each certificate must be completed and signed by a different person.

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(1) 1971 c.80.

### Persons who may provide an LPA certificate

- 8.—(1) Subject to paragraph (3), the following persons may give an LPA certificate—
- (a) a person chosen by the donor as being someone who has known him personally for the period of at least two years which ends immediately before the date on which that person signs the LPA certificate;
  - (b) a person chosen by the donor who, on account of his professional skills and expertise, reasonably considers that he is competent to make the judgments necessary to certify the matters set out in paragraph (2)(1)(e) of Schedule 1 to the Act.
- (2) The following are examples of persons within paragraph (1)(b)—
- (a) a registered health care professional;
  - (b) a barrister, solicitor or advocate called or admitted in any part of the United Kingdom;
  - (c) a registered social worker; or
  - (d) an independent mental capacity advocate.
- (3) A person is disqualified from giving an LPA certificate in respect of any instrument intended to create a lasting power of attorney if that person is—
- (a) a family member of the donor;
  - (b) a donee of that power;
  - (c) a donee of—
    - (i) any other lasting power of attorney, or
    - (ii) an enduring power of attorney,which has been executed by the donor (whether or not it has been revoked);
  - (d) a family member of a donee within sub-paragraph (b);
  - (e) a director or employee of a trust corporation acting as a donee within sub-paragraph (b);
  - (f) a business partner or employee of—
    - (i) the donor, or
    - (ii) a donee within sub-paragraph (b);
  - (g) an owner, director, manager or employee of any care home in which the donor is living when the instrument is executed; or
  - (h) a family member of a person within sub-paragraph (g).
- (4) In this regulation—
- “care home” has the meaning given in section 3 of the Care Standards Act 2000<sup>(2)</sup>;
- “registered health care professional” means a person who is a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002<sup>(3)</sup>; and
- “registered social worker” means a person registered as a social worker in a register maintained by—
- (a) the General Social Care Council;
  - (b) the Care Council for Wales;
  - (c) the Scottish Social Services Council; or
  - (d) the Northern Ireland Social Care Council.

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(2) 2000 c.14.

(3) 2002 c.17.

**Execution of instrument**

9.—(1) An instrument intended to create a lasting power of attorney must be executed in accordance with this regulation.

(2) The donor must read (or have read to him) all the prescribed information.

(3) As soon as reasonably practicable after the steps required by paragraph (2) have been taken, the donor must—

- (a) complete the provisions of Part A of the instrument that apply to him (or direct another person to do so); and
- (b) subject to paragraph (7), sign Part A of the instrument in the presence of a witness.

(4) As soon as reasonably practicable after the steps required by paragraph (3) have been taken—

- (a) the person giving an LPA certificate, or
- (b) if regulation 7 applies (two LPA certificates required), each of the persons giving a certificate,

must complete the LPA certificate at Part B of the instrument and sign it.

(5) As soon as reasonably practicable after the steps required by paragraph (4) have been taken—

- (a) the donee, or
- (b) if more than one, each of the donees,

must read (or have read to him) all the prescribed information.

(6) As soon as reasonably practicable after the steps required by paragraph (5) have been taken, the donee or, if more than one, each of them—

- (a) must complete the provisions of Part C of the instrument that apply to him (or direct another person to do so); and
- (b) subject to paragraph (7), must sign Part C of the instrument in the presence of a witness.

(7) If the instrument is to be signed by any person at the direction of the donor, or at the direction of any donee, the signature must be done in the presence of two witnesses.

(8) For the purposes of this regulation—

- (a) the donor may not witness any signature required for the power;
- (b) a donee may not witness any signature required for the power apart from that of another donee.

(9) A person witnessing a signature must—

- (a) sign the instrument; and
- (b) give his full name and address.

(10) Any reference in this regulation to a person signing an instrument (however expressed) includes his signing it by means of a mark made on the instrument at the appropriate place.

*Registering the instrument***Notice to be given by a person about to apply for registration of lasting power of attorney**

10. Schedule 2 to these Regulations sets out the form of notice (“LPA 001”) which must be given by a donor or donee who is about to make an application for the registration of an instrument intended to create a lasting power of attorney.

### **Application for registration**

**11.**—(1) Schedule 3 to these Regulations sets out the form (“LPA 002”) which must be used for making an application to the Public Guardian for the registration of an instrument intended to create a lasting power of attorney.

(2) Where the instrument to be registered which is sent with the application is neither—

- (a) the original instrument intended to create the power, nor
- (b) a certified copy of it,

the Public Guardian must not register the instrument unless the court directs him to do so.

(3) In paragraph (2) “a certified copy” means a photographic or other facsimile copy which is certified as an accurate copy by—

- (a) the donor; or
- (b) a solicitor or notary.

### **Period to elapse before registration in cases not involving objection or defect**

**12.** The period at the end of which the Public Guardian must register an instrument in accordance with paragraph 5 of Schedule 1 to the Act is the period of 6 weeks beginning with—

- (a) the date on which the Public Guardian gave the notice or notices under paragraph 7 or 8 of Schedule 1 to the Act of receipt of an application for registration; or
- (b) if notices were given on more than one date, the latest of those dates.

### **Notice of receipt of application for registration**

**13.**—(1) Part 1 of Schedule 4 to these Regulations sets out the form of notice (“LPA 003A”) which the Public Guardian must give to the donee (or donees) when the Public Guardian receives an application for the registration of a lasting power of attorney.

(2) Part 2 of Schedule 4 sets out the form of notice (“LPA 003B”) which the Public Guardian must give to the donor when the Public Guardian receives such an application.

(3) Where it appears to the Public Guardian that there is good reason to do so, the Public Guardian must also provide (or arrange for the provision of) an explanation to the donor of—

- (a) the notice referred to in paragraph (2) and what the effect of it is; and
- (b) why it is being brought to his attention.

(4) Any information provided under paragraph (3) must be provided—

- (a) to the donor personally; and
- (b) in a way that is appropriate to the donor’s circumstances (for example using simple language, visual aids or other appropriate means).

### **Objection to registration: notice to Public Guardian**

**14.**—(1) This regulation deals with any objection to the registration of an instrument as a lasting power of attorney which is to be made to the Public Guardian.

(2) Where any person—

- (a) is entitled to receive notice under paragraph 6, 7 or 8 of Schedule 1 to the Act of an application for the registration of the instrument, and
- (b) wishes to object to registration on a ground set out in paragraph 13(1) of Schedule 1 to the Act,

he must do so before the end of the period of 5 weeks beginning with the date on which the notice is given.

- (3) A notice of objection must be given in writing, setting out—
- (a) the name and address of the objector;
  - (b) if different, the name and address of the donor of the power;
  - (c) if known, the name and address of the donee (or donees); and
  - (d) the ground for making the objection.

(4) The Public Guardian must notify the objector as to whether he is satisfied that the ground of the objection is established.

(5) At any time after receiving the notice of objection and before giving the notice required by paragraph (4), the Public Guardian may require the objector to provide such further information, or produce such documents, as the Public Guardian reasonably considers necessary to enable him to determine whether the ground for making the objection is established.

- (6) Where—
- (a) the Public Guardian is satisfied that the ground of the objection is established, but
  - (b) by virtue of section 13(7) of the Act, the instrument is not revoked,

the notice under paragraph (4) must contain a statement to that effect.

(7) Nothing in this regulation prevents an objector from making a further objection under paragraph 13 of Schedule 1 to the Act where—

- (a) the notice under paragraph (4) indicates that the Public Guardian is not satisfied that the particular ground of objection to which that notice relates is established; and
- (b) the period specified in paragraph (2) has not expired.

### **Objection to registration: application to the court**

**15.—**(1) This regulation deals with any objection to the registration of an instrument as a lasting power of attorney which is to be made to the court.

- (2) The grounds for making an application to the court are—
- (a) that one or more of the requirements for the creation of a lasting power of attorney have not been met;
  - (b) that the power has been revoked, or has otherwise come to an end, on a ground other than the grounds set out in paragraph 13(1) of Schedule 1 to the Act;
  - (c) any of the grounds set out in paragraph (a) or (b) of section 22(3) of the Act.

- (3) Where any person—
- (a) is entitled to receive notice under paragraph 6, 7 or 8 of Schedule 1 to the Act of an application for the registration of the instrument, and
  - (b) wishes to object to registration on one or more of the grounds set out in paragraph (2),

he must make an application to the court before the end of the period of 5 weeks beginning with the date on which the notice is given.

(4) The notice of an application to the court, which a person making an objection to the court is required to give to the Public Guardian under paragraph 13(3)(b)(ii) of Schedule 1 to the Act, must be in writing.

### **Notifying applicants of non-registration of lasting power of attorney**

16. Where the Public Guardian is prevented from registering an instrument as a lasting power of attorney by virtue of—

- (a) paragraph 11(1) of Schedule 1 to the Act (instrument not made in accordance with Schedule),
- (b) paragraph 12(2) of that Schedule (deputy already appointed),
- (c) paragraph 13(2) of that Schedule (objection by donee or named person on grounds of bankruptcy, disclaimer, death etc),
- (d) paragraph 14(2) of that Schedule (objection by donor), or
- (e) regulation 11(2) of these Regulations (application for registration not accompanied by original instrument or certified copy),

he must notify the person (or persons) who applied for registration of that fact.

### **Notice to be given on registration of lasting power of attorney**

17.—(1) Where the Public Guardian registers an instrument as a lasting power of attorney, he must—

- (a) retain a copy of the instrument; and
- (b) return to the person (or persons) who applied for registration the original instrument, or the certified copy of it, which accompanied the application for registration.

(2) Schedule 5 to these Regulations sets out the form of notice (“LPA 004”) which the Public Guardian must give to the donor and donee (or donees) when the Public Guardian registers an instrument.

(3) Where it appears to the Public Guardian that there is good reason to do so, the Public Guardian must also provide (or arrange for the provision of) an explanation to the donor of—

- (a) the notice referred to in paragraph (2) and what the effect of it is; and
- (b) why it is being brought to his attention.

(4) Any information provided under paragraph (3) must be provided—

- (a) to the donor personally; and
- (b) in a way that is appropriate to the donor’s circumstances (for example using simple language, visual aids or other appropriate means).

(5) “Certified copy” is to be construed in accordance with regulation 11(3).

### *Post-registration*

### **Changes to instrument registered as lasting power of attorney**

18.—(1) This regulation applies in any case where any of paragraphs 21 to 24 of Schedule 1 to the Act requires the Public Guardian to attach a note to an instrument registered as a lasting power of attorney.

(2) The Public Guardian must give a notice to the donor and the donee (or, if more than one, each of them) requiring him to deliver to the Public Guardian—

- (a) the original of instrument which was sent to the Public Guardian for registration;
- (b) any office copy of that registered instrument; and
- (c) any certified copy of that registered instrument.

- (3) On receipt of the document, the Public Guardian must—
  - (a) attach the required note; and
  - (b) return the document to the person from whom it was obtained.

**Loss or destruction of instrument registered as lasting power of attorney**

- 19.**—(1) This regulation applies where—
- (a) a person is required by or under the Act to deliver up to the Public Guardian any of the following documents—
    - (i) an instrument registered as a lasting power of attorney;
    - (ii) an office copy of that registered instrument;
    - (iii) a certified copy of that registered instrument; and
  - (b) the document has been lost or destroyed.
- (2) The person required to deliver up the document must provide to the Public Guardian in writing—
- (a) if known, the date of the loss or destruction and the circumstances in which it occurred;
  - (b) otherwise, a statement of when he last had the document in his possession.

**Disclaimer of appointment by a donee of lasting power of attorney**

- 20.**—(1) Schedule 6 to these Regulations sets out the form (“LPA 005”) which a donee of an instrument registered as a lasting power of attorney must use to disclaim his appointment as donee.
- (2) The donee must send—
- (a) the completed form to the donor; and
  - (b) a copy of it to—
    - (i) the Public Guardian; and
    - (ii) any other donee who, for the time being, is appointed under the power.

**Revocation by donor of lasting power of attorney**

- 21.**—(1) A donor who revokes a lasting power to attorney must—
- (a) notify the Public Guardian that he has done so; and
  - (b) notify the donee (or, if more than one, each of them) of the revocation.
- (2) Where the Public Guardian receives a notice under paragraph (1)(a), he must cancel the registration of the instrument creating the power if he is satisfied that the donor has taken such steps as are necessary in law to revoke it.
- (3) The Public Guardian may require the donor to provide such further information, or produce such documents, as the Public Guardian reasonably considers necessary to enable him to determine whether the steps necessary for revocation have been taken.
- (4) Where the Public Guardian cancels the registration of the instrument he must notify—
- (a) the donor; and
  - (b) the donee or, if more than one, each of them.

### **Revocation of a lasting power of attorney on death of donor**

**22.**—(1) The Public Guardian must cancel the registration of an instrument as a lasting power of attorney if he is satisfied that the power has been revoked as a result of the donor’s death.

(2) Where the Public Guardian cancels the registration of an instrument he must notify the donee or, if more than one, each of them.

## **PART 3**

### **ENDURING POWERS OF ATTORNEY**

#### **Notice of intention to apply for registration of enduring power of attorney**

**23.**—(1) Schedule 7 to these Regulations sets out the form of notice (“EP1PG”) which an attorney (or attorneys) under an enduring power of attorney must give of his intention to make an application for the registration of the instrument creating the power.

(2) In the case of the notice to be given to the donor, the attorney must also provide (or arrange for the provision of) an explanation to the donor of—

- (a) the notice and what the effect of it is; and
- (b) why it is being brought to his attention.

(3) The information provided under paragraph (2) must be provided—

- (a) to the donor personally; and
- (b) in a way that is appropriate to the donor’s circumstances (for example using simple language, visual aids or other appropriate means).

#### **Application for registration**

**24.**—(1) Schedule 8 to these Regulations sets out the form (“EP2PG”) which must be used for making an application to the Public Guardian for the registration of an instrument creating an enduring power of attorney.

(2) Where the instrument to be registered which is sent with the application is neither—

- (a) the original instrument creating the power, nor
- (b) a certified copy of it,

the Public Guardian must not register the instrument unless the court directs him to do so.

(3) “Certified copy”, in relation to an enduring power of attorney, means a copy certified in accordance with section 3 of the Powers of Attorney Act 1971(4).

#### **Notice of objection to registration**

**25.**—(1) This regulation deals with any objection to the registration of an instrument creating an enduring power of attorney which is to be made to the Public Guardian under paragraph 13(4) of Schedule 4 to the Act.

(2) A notice of objection must be given in writing, setting out—

- (a) the name and address of the objector;
- (b) if different, the name and address of the donor of the power;

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(4) 1971 c.27

- (c) if known, the name and address of the attorney (or attorneys); and
- (d) the ground for making the objection.

#### **Notifying applicants of non-registration of enduring power of attorney**

**26.** Where the Public Guardian is prevented from registering an instrument creating an enduring power of attorney by virtue of—

- (a) paragraph 13(2) of Schedule 4 to the Act (deputy already appointed),
- (b) paragraph 13(5) of that Schedule (receipt by Public Guardian of valid notice of objection from person entitled to notice of application to register),
- (c) paragraph 13(7) of that Schedule (Public Guardian required to undertake appropriate enquiries in certain circumstances), or
- (d) regulation 24(2) of these Regulations (application for registration not accompanied by original instrument or certified copy),

he must notify the person (or persons) who applied for registration of that fact.

#### **Registration of instrument creating an enduring power of attorney**

**27.—(1)** Where the Public Guardian registers an instrument creating an enduring power of attorney, he must—

- (a) retain a copy of the instrument; and
  - (b) return to the person (or persons) who applied for registration the original instrument, or the certified copy of it, which accompanied the application.
- (2) “Certified copy” has the same meaning as in regulation 24(3).

#### **Objection or revocation not applying to all joint and several attorneys**

**28.** In a case within paragraph 20(6) or (7) of Schedule 4 to the Act, the form of the entry to be made in the register in respect of an instrument creating the enduring power of attorney is a stamp bearing the following words (inserting the information indicated, as appropriate)—

“THE REGISTRATION OF THIS ENDURING POWER OF ATTORNEY IS QUALIFIED AND EXTENDS TO THE APPOINTMENT OF .....(insert name of attorney(s) not affected by ground(s) of objection or revocation) ONLY AS THE ATTORNEY(S) OF ..... (insert name of donor)”.

#### **Loss or destruction of instrument registered as enduring power of attorney**

**29.—(1)** This regulation applies where—

- (a) a person is required by or under the Act to deliver up to the Public Guardian any of the following documents—
  - (i) an instrument registered as an enduring power of attorney;
  - (ii) an office copy of that registered instrument; or
  - (iii) a certified copy of that registered instrument; and
- (b) the document has been lost or destroyed.

(2) The person who is required to deliver up the document must provide to the Public Guardian in writing—

- (a) if known, the date of the loss or destruction and the circumstances in which it occurred;

- (b) otherwise, a statement of when he last had the document in his possession.

## PART 4 FUNCTIONS OF THE PUBLIC GUARDIAN

### *The registers*

#### **Establishing and maintaining the registers**

- 30.**—(1) In this Part “the registers” means—
- (a) the register of lasting powers of attorney,
  - (b) the register of enduring powers of attorney, and
  - (c) the register of court orders appointing deputies,
- which the Public Guardian must establish and maintain.
- (2) On each register the Public Guardian may include—
- (a) such descriptions of information about a registered instrument or a registered order as the Public Guardian considers appropriate; and
  - (b) entries which relate to an instrument or order for which registration has been cancelled.

#### **Disclosure of information on a register: search by the Public Guardian**

- 31.**—(1) Any person may, by an application made under paragraph (2), request the Public Guardian to carry out a search of one or more of the registers.
- (2) An application must—
- (a) state—
    - (i) the register or registers to be searched;
    - (ii) the name of the person to whom the application relates; and
    - (iii) such other details about that person as the Public Guardian may require for the purpose of carrying out the search; and
  - (b) be accompanied by any fee provided for under section 58(4)(b) of the Act.
- (3) The Public Guardian may require the applicant to provide such further information, or produce such documents, as the Public Guardian reasonably considers necessary to enable him to carry out the search.
- (4) As soon as reasonably practicable after receiving the application—
- (a) the Public Guardian must notify the applicant of the result of the search; and
  - (b) in the event that it reveals one or more entries on the register, the Public Guardian must disclose to the applicant all the information appearing on the register in respect of each entry.

#### **Disclosure of additional information held by the Public Guardian**

- 32.**—(1) This regulation applies in any case where, as a result of a search made under regulation 31, a person has obtained information relating to a registered instrument or a registered order which confers authority to make decisions about matters concerning a person (“P”).

(2) On receipt of an application made in accordance with paragraph (4), the Public Guardian may, if he considers that there is good reason to do so, disclose to the applicant such additional information as he considers appropriate.

(3) “Additional information” means any information relating to P—

- (a) which the Public Guardian has obtained in exercising the functions conferred on him under the Act; but
- (b) which does not appear on the register.

(4) An application must state—

- (a) the name of P;
- (b) the reasons for making the application; and
- (c) what steps, if any, the applicant has taken to obtain the information from P.

(5) The Public Guardian may require the applicant to provide such further information, or produce such documents, as the Public Guardian reasonably considers necessary to enable him to determine the application.

(6) In determining whether to disclose any additional information to P, the Public Guardian must, in particular, have regard to—

- (a) the connection between P and the applicant;
- (b) the reasons for requesting the information (in particular, why the information cannot or should not be obtained directly from P);
- (c) the benefit to P, or any detriment he may suffer, if a disclosure is made; and
- (d) any detriment that another person may suffer if a disclosure is made.

### *Security for discharge of functions*

#### **Persons required to give security for the discharge of their functions**

**33.**—(1) This regulation applies in any case where the court orders a person (“S”) to give to the Public Guardian security for the discharge of his functions.

(2) The security must be given by S—

- (a) by means of a bond which is entered into in accordance with regulation 34; or
- (b) in such other manner as the court may direct.

(3) For the purposes of paragraph (2)(a), S complies with the requirement to give the security only if—

- (a) the endorsement required by regulation 34(2) has been provided; and
- (b) the person who provided it has notified the Public Guardian of that fact.

(4) For the purposes of paragraph (2)(b), S complies with the requirement to give the security—

- (a) in any case where the court directs that any other endorsement must be provided, only if—
  - (i) that endorsement has been provided; and
  - (ii) the person who provided it has notified the Public Guardian of that fact;
- (b) in any case where the court directs that any other requirements must be met in relation to the giving of the security, only if the Public Guardian is satisfied that those other requirements have been met.

### **Security given under regulation 33(2)(a): requirement for endorsement**

- 34.**—(1) This regulation has effect for the purposes of regulation 33(2)(a).
- (2) A bond is entered into in accordance with this regulation only if it is endorsed by—
- (a) an authorised insurance company; or
  - (b) an authorised deposit-taker.
- (3) A person may enter into the bond under—
- (a) arrangements made by the Public Guardian; or
  - (b) other arrangements which are made by the person entering into the bond or on his behalf.
- (4) The Public Guardian may make arrangements with any person specified in paragraph (2) with a view to facilitating the provision by them of bonds which persons required to give security to the Public Guardian may enter into.
- (5) In this regulation—
- “authorised insurance company” means—
- (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000<sup>(5)</sup> to effect or carry out contracts of insurance;
  - (b) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule to effect or carry out contracts of insurance;
  - (c) a person who carries on insurance market activity (within the meaning given in section 316(3) of that Act); and
- “authorised deposit-taker” means—
- (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits;
  - (b) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule to accept deposits.
- (6) The definitions of “authorised insurance company” and “authorised deposit-taker” must be read with—
- (a) section 22 of the Financial Services and Markets Act 2000;
  - (b) any relevant order<sup>(6)</sup> under that section; and
  - (c) Schedule 2 to that Act.

### **Security given under regulation 33(2)(a): maintenance or replacement**

- 35.**—(1) This regulation applies to any security given under regulation 33(2)(a).
- (2) At such times or at such intervals as the Public Guardian may direct by notice in writing, any person (“S”) who has given the security must satisfy the Public Guardian that any premiums payable in respect of it have been paid.
- (3) Where S proposes to replace a security already given by him, the new security is not to be regarded as having been given until the Public Guardian is satisfied that—
- (a) the requirements set out in sub-paragraphs (a) and (b) of regulation 33(3) have been met in relation to it; and

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<sup>(5)</sup> 2000 c.8.

<sup>(6)</sup> S.I. 2001/544, as amended by S.I. 2001/3544, 2002/682, 1310, 1776 and 1777, 2003/1475, 1476 and 2822, 2004/1610 and 2737, 2005/593, 1518 and 2967 and 2006/1969, 2383 and 3221.

- (b) no payment is due from S in connection with the discharge of his functions.

#### **Enforcement following court order of any endorsed security**

**36.**—(1) This regulation applies to any security given to the Public Guardian in respect of which an endorsement has been provided.

(2) Where the court orders the enforcement of the security, the Public Guardian must—

- (a) notify any person who endorsed the security of the contents of the order; and
- (b) notify the court when payment has been made of the amount secured.

#### **Discharge of any endorsed security**

**37.**—(1) This regulation applies to any security given by a person (“S”) to the Public Guardian in respect of which an endorsement has been provided.

(2) The security may be discharged if the court makes an order discharging it.

(3) In any other case, the security may not be discharged until the end of the period of 7 years commencing with whichever of the following dates first occurs—

- (a) if the person on whose behalf S was appointed to act dies, the date of his death;
- (b) if S dies, the date of his death;
- (c) 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;
- (d) 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.

(4) For the purposes of paragraph (3), if a person takes any step with a view to discharging the security before the end of the period specified in that paragraph, the security is to be treated for all purposes as if it were still in place.

### *Deputies*

#### **Application for additional time to submit a report**

**38.**—(1) This regulation applies where the court requires a deputy to submit a report to the Public Guardian and specifies a time or interval for it to be submitted.

(2) A deputy may apply to the Public Guardian requesting more time for submitting a particular report.

(3) An application must—

- (a) state the reason for requesting more time; and
- (b) contain or be accompanied by such information as the Public Guardian may reasonably require to determine the application.

(4) In response to an application, the Public Guardian may, if he considers it appropriate to do so, undertake that he will not take steps to secure performance of the deputy’s duty to submit the report at the relevant time on the condition that the report is submitted on or before such later date as he may specify.

#### **Content of reports**

**39.**—(1) Any report which the court requires a deputy to submit to the Public Guardian must include such material as the court may direct.

- (2) The report must also contain or be accompanied by—
  - (a) specified information or information of a specified description; or
  - (b) specified documents or documents of a specified description.
- (3) But paragraph (2)—
  - (a) extends only to information or documents which are reasonably required in connection with the exercise by the Public Guardian of functions conferred on him under the Act; and
  - (b) is subject to paragraph (1) and to any other directions given by the court.
- (4) Where powers as respects a person's property and affairs are conferred on a deputy under section 16 of the Act, the information specified by the Public Guardian under paragraph (2) may include accounts which—
  - (a) deal with specified matters; and
  - (b) are provided in a specified form.
- (5) The Public Guardian may require—
  - (a) any information provided to be verified in such manner, or
  - (b) any document produced to be authenticated in such manner,as he may reasonably require.
- (6) "Specified" means specified in a notice in writing given to the deputy by the Public Guardian.

#### **Power to require final report on termination of appointment**

- 40.**—(1) This regulation applies where—
  - (a) the person on whose behalf a deputy was appointed to act has died;
  - (b) the deputy has died;
  - (c) the court has made an order discharging the deputy; or
  - (d) the deputy otherwise ceases to be under a duty to discharge the functions to which his appointment relates.
- (2) The Public Guardian may require the deputy (or, in the case of the deputy's death, his personal representatives) to submit a final report on the discharge of his functions.
- (3) A final report must be submitted—
  - (a) before the end of such reasonable period as may be specified; and
  - (b) at such place as may be specified.
- (4) The Public Guardian must consider the final report, together with any other information that he may have relating to the discharge by the deputy of his functions.
- (5) Where the Public Guardian is dissatisfied with any aspect of the final report he may apply to the court for an appropriate remedy (including enforcement of security given by the deputy).
- (6) "Specified" means specified in a notice in writing given to the deputy or his personal representatives by the Public Guardian.

#### **Power to require information from deputies**

- 41.**—(1) This regulation applies in any case where—
  - (a) the Public Guardian has received representations (including complaints) about—
    - (i) the way in which a deputy is exercising his powers; or
    - (ii) any failure to exercise them; or

- (b) it appears to the Public Guardian that there are other circumstances which—
  - (i) give rise to concerns about, or dissatisfaction with, the conduct of the deputy (including any failure to act); or
  - (ii) otherwise constitute good reason to seek information about the deputy’s discharge of his functions.
- (2) The Public Guardian may require the deputy—
  - (a) to provide specified information or information of a specified description; or
  - (b) to produce specified documents or documents of a specified description.
- (3) The information or documents must be provided or produced—
  - (a) before the end of such reasonable period as may be specified; and
  - (b) at such place as may be specified.
- (4) The Public Guardian may require—
  - (a) any information provided to be verified in such manner, or
  - (b) any document produced to be authenticated in such manner,
 as he may reasonably require.
- (5) “Specified” means specified in a notice in writing given to the deputy by the Public Guardian.

#### **Right of deputy to require review of decisions made by the Public Guardian**

**42.**—(1) A deputy may require the Public Guardian to reconsider any decision he has made in relation to the deputy.

(2) The right under paragraph (1) is exercisable by giving notice of exercise of the right to the Public Guardian before the end of the period of 14 days beginning with the date on which notice of the decision is given to the deputy.

- (3) The notice of exercise of the right must—
  - (a) state the grounds on which reconsideration is required; and
  - (b) contain or be accompanied by any relevant information or documents.

(4) At any time after receiving the notice and before reconsidering the decision to which it relates, the Public Guardian may require the deputy to provide him with such further information, or to produce such documents, as he reasonably considers necessary to enable him to reconsider the matter.

- (5) The Public Guardian must give to the deputy—
  - (a) written notice of his decision on reconsideration, and
  - (b) if he upholds the previous decision, a statement of his reasons.

#### *Miscellaneous functions*

#### **Applications to the Court of Protection**

**43.** The Public Guardian has the function of making applications to the court in connection with his functions under the Act in such circumstances as he considers it necessary or appropriate to do so.

#### **Visits by the Public Guardian or by Court of Protection Visitors at his direction**

**44.**—(1) This regulation applies where the Public Guardian visits, or directs a Court of Protection Visitor to visit, any person under any provision of the Act or these Regulations.

- (2) The Public Guardian must notify (or make arrangements to notify) the person to be visited of—
  - (a) the date or dates on which it is proposed that the visit will take place;
  - (b) to the extent that it is practicable to do so, any specific matters likely to be covered in the course of the visit; and
  - (c) any proposal to inform any other person that the visit is to take place.
- (3) Where the visit is to be carried out by a Court of Protection Visitor—
  - (a) the Public Guardian may—
    - (i) give such directions to the Visitor, and
    - (ii) provide him with such information concerning the person to be visited, as the Public Guardian considers necessary for the purposes of enabling the visit to take place and the Visitor to prepare any report the Public Guardian may require; and
  - (b) the Visitor must seek to carry out the visit and take all reasonable steps to obtain such other information as he considers necessary for the purpose of preparing a report.
- (4) A Court of Protection Visitor must submit any report requested by the Public Guardian in accordance with any timetable specified by the Public Guardian.
- (5) If he considers it appropriate to do so, the Public Guardian may, in relation to any person interviewed in the course of preparing a report—
  - (a) disclose the report to him; and
  - (b) invite him to comment on it.

#### **Functions in relation to persons carrying out specific transactions**

- 45.**—(1) This regulation applies where, in accordance with an order made under section 16(2) (a) of the Act, a person (“T”) has been authorised to carry out any transaction for a person who lacks capacity.
- (2) The Public Guardian has the functions of—
    - (a) receiving any reports from T which the court may require;
    - (b) dealing with representations (including complaints) about—
      - (i) the way in which the transaction has been or is being carried out; or
      - (ii) any failure to carry it out.
  - (3) Regulations 38 to 41 have effect in relation to T as they have effect in relation a deputy.

#### **Power to require information from donees of lasting power of attorney**

- 46.**—(1) This regulation applies where it appears to the Public Guardian that there are circumstances suggesting that the donee of a lasting power of attorney may—
  - (a) have behaved, or may be behaving, in a way that contravenes his authority or is not in the best interests of the donor of the power,
  - (b) be proposing to behave in a way that would contravene that authority or would not be in the donor’s best interests, or
  - (c) have failed to comply with the requirements of an order made, or directions given, by the court.
- (2) The Public Guardian may require the donee—
    - (a) to provide specified information or information of a specified description; or

- (b) to produce specified documents or documents of a specified description.
- (3) The information or documents must be provided or produced—
  - (a) before the end of such reasonable period as may be specified; and
  - (b) at such place as may be specified.
- (4) The Public Guardian may require—
  - (a) any information provided to be verified in such manner, or
  - (b) any document produced to be authenticated in such manner,
 as he may reasonably require.
- (5) “Specified” means specified in a notice in writing given to the donee by the Public Guardian.

#### **Power to require information from attorneys under enduring power of attorney**

**47.**—(1) This regulation applies where it appears to the Public Guardian that there are circumstances suggesting that, having regard to all the circumstances (and in particular the attorney’s relationship to or connection with the donor) the attorney under a registered enduring power of attorney may be unsuitable to be the donor’s attorney.

- (2) The Public Guardian may require the attorney—
  - (a) to provide specified information or information of a specified description; or
  - (b) to produce specified documents or documents of a specified description.
- (3) The information or documents must be provided or produced—
  - (a) before the end of such reasonable period as may be specified; and
  - (b) at such place as may be specified.
- (4) The Public Guardian may require—
  - (a) any information provided to be verified in such manner, or
  - (b) any document produced to be authenticated in such manner,
 as he may reasonably require.
- (5) “Specified” means specified in a notice in writing given to the attorney by the Public Guardian.

#### **Other functions in relation to enduring powers of attorney**

- 48.** The Public Guardian has the following functions—
- (a) directing a Court of Protection Visitor—
    - (i) to visit an attorney under a registered enduring power of attorney, or
    - (ii) to visit the donor of a registered enduring power of attorney,
 and to make a report to the Public Guardian on such matters as he may direct;
  - (b) dealing with representations (including complaints) about the way in which an attorney under a registered enduring power of attorney is exercising his powers.

Signed by authority of the Lord Chancellor.

16th April 2007

*Cathy Ashton,*  
Parliamentary Under-Secretary of State,  
Department for Constitutional Affairs