
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations supplement the requirements set out in Schedule 1 to the Mental Capacity Act 2005 (c. 9) (“the Act”) which apply to the making and registration of lasting powers of attorney and the requirements set out in Schedule 4 to the Act which apply to the registration of enduring powers of attorney. The Regulations also confer functions on the Public Guardian and make other provision in connection with functions conferred on him by the Act or by these Regulations.

Part 1 of the Regulations is general and contains a number of definitions and interpretative provisions.

Part 2 of, and Schedules 1 to 6 to, the Regulations deal with lasting powers of attorney. Under section 9(2)(b) of the Act, a lasting power of attorney is not created unless it has (amongst other things) been made and registered in accordance with Schedule 1 to the Act. Regulation 5 (and Schedule 1) set out the forms of instruments to be used to make a lasting power of attorney. A different form must be used according to whether the instrument is intended to confer authority to make decisions about the donor’s personal welfare, or about his property and affairs. Regulations 6 to 8 make detailed provision about the content of the instrument. Regulation 9 specifies the steps that must be taken to execute the instrument and the sequence in which those steps must be taken. Regulations 10 to 17 make provision about the procedure for registering an instrument as a lasting power of attorney, and Schedules 2 to 5 set out the application form and the form of notices to be used at different stages of the process. There are also certain other requirements specified which relate to the registration process.

Regulations 18 to 22 contain a number of miscellaneous provisions that apply to instruments which have been registered as lasting powers of attorney. These provisions specify steps to be taken if an instrument is changed, revoked, lost or destroyed. Regulation 20 (and Schedule 6) set out the form to be used by the donee of a lasting power when he wishes to disclaim his appointment.

Part 3 of, and Schedules 7 and 8 to, the Regulations deal with enduring powers of attorney. No new enduring power of attorney may be created after the commencement of section 66(1)(b) of the Act, but Schedules 4 and 5 to the Act apply to any power that was created before then. Regulation 23 (and Schedule 7) set out the form of notice to be given to the donor, and to his relatives, when an attorney under an enduring power intends to apply for registration. Regulation 23 also requires that the notice be given to the donor personally, together with an explanation of its effect. Regulations 24 to 28 (and Schedule 8) specify certain other requirements applying to the registration process and regulation 29 specifies steps to be taken if an instrument creating an enduring power of attorney is lost or destroyed after it has been registered.

Part 4 of the Regulations confers a number of specific functions on the Public Guardian. It also makes provision in connection with functions conferred on him by the Act or by these Regulations.

Additional functions are conferred by regulations 43, 45 and 48. Regulation 43 deals with the making of applications to the Court of Protection, regulation 45 sets out functions in relation to persons who are authorised to carry out a particular transaction and regulation 48 sets out functions in relation to enduring powers of attorney.

There are also provisions relating to the registers which the Public Guardian is required to maintain under the Act (regulations 30 to 32); relating to the giving of any security and the replacement, maintenance, enforcement or discharge of a security which has been endorsed (regulations 33 to 37); relating to the information that a deputy appointed by the Court of Protection must give to

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the Public Guardian (regulations 38 to 41); and relating to the review of a decision made by the Public Guardian in relation to a deputy (regulation 42). Regulations 44, 46 and 47 make provision in connection with a number of other areas where the Public Guardian has functions, including the requirements to be met when visits on any person are carried out by, or at the direction of, the Public Guardian (regulation 48).