STATUTORY INSTRUMENTS

2015 No. 899

MENTAL CAPACITY, ENGLAND AND WALES

The Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian (Amendment) Regulations 2015

Made - - - -	*25th March 2015*
Laid before Parliament	*26th March 2015*
Coming into force - -	*1st July 2015*

The Lord Chancellor makes the following Regulations in exercise of the powers conferred by sections 58(3) and (4), 65(1) and (2) of, and Schedule 1 to, the Mental Capacity Act 2005(**1**).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian (Amendment) Regulations 2015.

(2) These Regulations come into force on 1st July 2015.

(3) In these Regulations—

(a) "the 2007 Regulations" means the Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007(**2**); and

(b) a reference to a regulation or Schedule by number alone means the regulation or Schedule so numbered in the 2007 Regulations.

Amendments to the 2007 Regulations

2. The 2007 Regulations are amended in accordance with regulations 3 to 16 of these Regulations.

3. In the list of contents of the 2007 Regulations—

(a) in the entry for regulation 6, for "named persons" substitute "people to notify";

(b) omit the entry for regulation 7;

(c) in the entry for regulation 14, for "named person" substitute "person to notify";

(d) for the entry for Schedule 1, substitute—

(**1**) 2005 c.9. There are relevant amendments in S.I. 2006/1016, article 2, Schedule 1, paragraphs 30 and 37.
(**2**) S.I. 2007/1253. There are relevant amendments in S.I. 2007/2161 regulations 2, 3; S.I 2009/1884 regulations 2, 5, Schedule; S.I. 2011/2189, regulations 11, 12, 13, Schedule; S.I. 2013/506, regulations 2, 4, 9 to 12.

"SCHEDULE 1 – Form of Lasting Power of Attorney	—	
Part 1	—	Form of Lasting Power of Attorney for Property and Financial Affairs: LP1F
Part 2	—	Form of Lasting Power of Attorney for Health and Welfare: LP1H";

(e) for the entry for Schedule 2, substitute "SCHEDULE 2 – Form of Notice of Intention to Register a Lasting Power of Attorney: LPA3";

(f) for the entry for Schedule 3, substitute "SCHEDULE 3 – Form to Register Certain Lasting Powers of Attorney: LP2";

(g) omit the entry for Schedule 3A;

(h) for the entry for Schedule 4, substitute—

"SCHEDULE 4 – Form of Notices of Application to Register a Lasting Power of Attorney	—	
Part 1	—	Form of Notice to Attorney: Application to Register a Lasting Power of Attorney: LPA003A
Part 2	—	Form of Notice to Donor: Application to Register a Lasting Power of Attorney LPA003B"; and

(i) for the entry for Schedule 6, substitute "SCHEDULE 6 – Form of Disclaimer by a Proposed or Acting Attorney under a Lasting Power of Attorney: LPA005".

4. In regulation 2(1)—

(a) in the definition of "named person"—

(i) for "named person", substitute "person to notify"; and

(ii) after "means a person who", insert ", under Schedule 1, paragraph 2(1)(c)(i) of the Act,"; and

(b) in the definition of "prescribed information", at the end of the definition, for ""prescribed information"", substitute ", ""Section 8 – Your legal rights and responsibilities"".

5. In regulation 6 and in the heading to that regulation, for "named persons", substitute "people to notify".

6. Omit regulation 7.

7. In regulation 9—

(a) in paragraph (3)(a), for "Part A" substitute "Sections 1 to 7";

(b) For paragraph (3)(b) substitute—

"(b) subject to paragraph (7), in the presence of a witness—

(i) sign Section 9 of the instrument if the instrument is intended to create a lasting power of attorney for property and financial affairs (Form LP1F); or

(ii) sign Sections 5 and 9 of the instrument if the instrument is intended to create a lasting power of attorney for health and welfare (Form LP1H);";

(c) at the end of paragraph (4)(a), omit ", or";

(d) omit paragraph (4)(b);

(e) in paragraph (4), for "Part B" substitute "Section 10"; and

(f) in paragraph (6), for "Part C" each time it appears substitute "Section 11".

8. In regulation 10, for "("LPA 001")", substitute "(Form LPA3)".

9. For regulation 11, substitute—

"**Application for registration**

11.—(1) An application to the Public Guardian for the registration of an instrument intended to create a lasting power of attorney that is in Form LP1F or LP1H must be made by completion of Sections 12 and 13, the relevant parts of Section 14 and Section 15 of that Form.

(2) An application to the Public Guardian for the registration of an instrument intended to create a lasting power of attorney that is in a pre-July 2015 form must be made by using Form LP2 set out in Schedule 3 to these Regulations.

(3) An application to the Public Guardian for the registration of an instrument intended to create a lasting power of attorney where the application is a repeat application ("a reduced fee repeat application") may only be made if—

(a) the initial application for the registration of a lasting power of attorney is made on or after 1st October 2011;

(b) the initial application was returned to the applicant as invalid;

(c) the reduced fee repeat application is submitted for registration within three months of the date on which the initial application was returned to the applicant as invalid; and

(d) the reduced fee for such applications applies.

(4) Where the initial application for the registration of the lasting power of attorney was made in accordance with paragraph (1) using Form LP1F or LP1H, a reduced fee repeat application must also be made by the completion of Form LP1F or LP1H as appropriate, including completion of the repeat application option in Section 14 of that Form.

(5) Where the initial application for the registration of the lasting power of attorney was made in accordance with paragraph (2) using a pre-July 2015 form, a reduced fee repeat application must be made by the completion of Form LP1F or LP1H as appropriate, including completion of the repeat application option in Section 14 of that Form.

(6) 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 the Public Guardian to do so.

(7) In this regulation—

(a) "pre-July 2015 form" means a valid instrument intended to create a lasting power of attorney that is not in Form LP1F or LP1H but that complies with these Regulations as they were in force immediately before 1st July 2015; and

(b) "certified copy" means a photographic or other facsimile copy which is certified as an accurate copy by—

(i) the donor; or

(ii) a solicitor or notary."

10. In regulation 14(1) and (2) and in the heading to that regulation, for "named person", substitute "person to notify".

11. For Schedule 1, substitute the Schedule contained in Schedule 1 of these Regulations.

12. For Schedule 2, substitute the Schedule contained in Schedule 2 of these Regulations.

13. For Schedule 3, substitute the Schedule contained in Schedule 3 of these Regulations.

14. Omit Schedule 3A.

15. For Schedule 4, substitute the Schedule contained in Schedule 4 of these Regulations.

16. For Schedule 6, substitute the Schedule contained in Schedule 5 of these Regulations.

Transitional provisions

17. A lasting power of attorney executed by the donor before 1st January 2016 in one of the forms prescribed in the Schedules as though it had not been substituted by these Regulations is capable of being a valid instrument, whether or not it has been registered.

18. Subject to regulation 19 of these Regulations, any other instrument executed before 1st January 2016 in one of the forms prescribed in the Schedules as though it had not been substituted by these Regulations is capable of being a valid instrument.

19.—(1) An application to register a lasting power of attorney in the form prescribed in Schedule 3 as though it had not been substituted by these Regulations that is executed and received by the Public Guardian before 1st January 2016 is capable of being valid, and regulation 11 applies to such applications as though that regulation had not been substituted by these Regulations.

(2) Paragraphs (3) and (4) apply in relation to repeat applications to register a lasting power of attorney where the original application to register received by the Public Guardian before 1st January 2016 is returned to the applicant as invalid.

(3) Where a repeat application is—

(a) in the form set out in Schedule 3A as though it had not been omitted by these Regulations; and

(b) is executed and received by the Public Guardian before 1st January 2016,

that application is capable of being valid and regulation 11 applies to such applications as though that regulation had not been substituted by these Regulations.

(4) For the avoidance of doubt, where a party wishes to make a repeat application but the repeat application will not be executed and received by the Public Guardian before 1st January 2016, regulation 11(5) applies as it has been substituted by these Regulations.

(5) In this regulation, "repeat application" means an application where—

(a) the initial application for the registration of a lasting power of attorney is made on or after 1st October 2011;

(b) the initial application is returned to the applicant as invalid;

(c) the reduced fee repeat application is submitted for registration within three months of the date on which the initial application was returned to the applicant as invalid; and

(d) the reduced fee for such applications applies.

Signed by authority of the Lord Chancellor

Simon Hughes
Minister of State
Ministry of Justice

25th March 2015