

Powers of Attorney Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Ministry of Justice with the consent of Stephen Metcalfe MP, the member in charge of the Bill, are published separately as Bill 33—EN.

Powers of Attorney Bill

[AS INTRODUCED]

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[AS INTRODUCED]

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BILL

TO

Make provision about lasting powers of attorney; to make provision about proof of instruments creating powers of attorney; and for connected purposes.

BE IT ENACTED by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Lasting powers of attorney

1 Lasting powers of attorney

The Schedule makes provision in relation to lasting powers of attorney.

Certifying copies of power of attorney

2 Certifying copies of power of attorney

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- (1) Section 3 of the Powers of Attorney Act 1971 is amended as follows.
- (2) In subsection (1)(b), after “authorised person” insert “, chartered legal executive”.
- (3) After subsection (3) insert—

“(3A) In this section “chartered legal executive” means a person authorised by the Chartered Institute of Legal Executives to practise as a chartered legal executive.”

10

General provisions

3 Extent, commencement and short title

- (1) This Act extends to England and Wales only, subject to subsection (2). 15
- (2) The following provisions extend to England and Wales, Scotland and Northern Ireland—
 - (a) section 2;
 - (b) this section;
 - (c) paragraph 8(a) and (b) of the Schedule. 20

- (3) This section comes into force on the day on which this Act is passed.
- (4) Section 2 comes into force at the end of the period of two months beginning with the day on which this Act is passed.
- (5) The remaining provisions of this Act come into force on such day or days as the Lord Chancellor may by regulations made by statutory instrument appoint.
- (6) The regulations—
 - (a) may make transitional, transitory or saving provision, and
 - (b) may make different provision for different purposes.
- (7) This Act may be cited as the Powers of Attorney Act 2022.

SCHEDULE

Section 1

LASTING POWERS OF ATTORNEY

PART 1

REGISTRATION OF LASTING POWERS OF ATTORNEY

Introduction 5

- 1 Schedule 1 to the Mental Capacity Act 2005 (lasting powers of attorney: formalities) is amended as follows.

Application for registration of lasting power of attorney

- 2 In paragraph 4—
(a) in sub-paragraph (1)(a), after “made” insert “by the donor”; 10
(b) omit sub-paragraph (2);
(c) for sub-paragraph (3) substitute—

“(3) The application must be accompanied by the instrument (whether or not the instrument complies with paragraph 1(1)(c)).” 15

- 3 After that paragraph insert—
“4A If it appears to the Public Guardian that the instrument as submitted under paragraph 4(3) fails in a prescribed respect to comply with paragraph 1(1)(c), the Public Guardian must take any steps that may be prescribed for ensuring that the instrument complies with paragraph 1(1)(c) in that respect.” 20

Notifications

- 4 (1) Omit paragraph 6.
(2) For paragraph 7 substitute—
“7 (1) As soon as is practicable after both the conditions in sub-paragraph (2) are met, the Public Guardian must notify the donor, the donee (or, if more than one, each of them) and each named person that those conditions have been met. 25
(2) The conditions are—
(a) that the Public Guardian has received an application under paragraph 4 in relation to an instrument intended to create a lasting power of attorney, and 30
(b) that it appears to the Public Guardian that the instrument has been made in accordance with this Schedule.”
(3) Omit paragraph 8. 35

Exclusion of notification requirements

5 For paragraph 10 and the italic heading before it substitute –

“*Exclusion of notification requirements*

10 The Public Guardian may, on an application made by the donor with respect to a named person, determine that paragraph 7 is not to apply in relation to that person if satisfied that there are special circumstances which justify the disapplication of that provision in relation to that person.” 5

Identification requirements

6 After paragraph 10 insert – 10

“*Identification requirements*

10A (1) *Regulations may impose, in respect of applications under paragraph 4 for the registration of an instrument, requirements for the purpose of establishing or verifying the identity of persons named in an instrument or taking part in the process of an application.* 15

(2) *If it appears to the Public Guardian that a requirement imposed by regulations under sub-paragraph (1) is not met in the case of an instrument, the Public Guardian must not register the instrument unless directed to do so by the court.*”

Objections to registration 20

7 (1) In paragraph 13 –

(a) for sub-paragraph (3)(b) substitute –

“(b) before the end of the prescribed period, gives notice to the Public Guardian of an objection to the registration on a prescribed ground.”; 25

(b) for sub-paragraph (4) substitute –

“(4) The Public Guardian must not register the instrument unless –

(a) the Public Guardian is satisfied that no evidence has been provided which reasonably supports the making of the objection on that ground, or 30

(b) the court, on the application of the donor or the donee (or, if more than one, any of them), directs the Public Guardian to register the instrument.”

(2) After that paragraph insert – 35

“*Objection by third party*

13A (1) This paragraph applies where –

- (a) an application has been made under paragraph 4 for the registration of an instrument (and at the time when the notice mentioned in paragraph (b) is given that application has not been determined),
 - (b) a third party has given the Public Guardian notice of an objection on a relevant ground to the registration of the instrument (“the notice of objection”), and 5
 - (c) that notice was given after the Public Guardian was first notified in a prescribed manner by (or on behalf of) the donor of the donor’s intention to make the application mentioned in paragraph (a). 10
- (2) In sub-paragraph (1) “on a relevant ground” means –
- (a) on the ground that an event mentioned in section 13(3) or (6)(a) to (d) has occurred which has revoked the instrument, or 15
 - (b) on a prescribed ground.
- (3) Where the notice of objection is given on the ground within sub-paragraph (2)(a) and the Public Guardian is satisfied that the ground for making the objection is established, the Public Guardian must not register the instrument unless the court, on the application of the donor or the donee (or, if more than one, any of them) – 20
- (a) is satisfied that the ground is not established, and
 - (b) directs the Public Guardian to register the instrument.
- (4) Where the notice of objection is given on a ground within sub-paragraph (2)(b) the Public Guardian must not register the instrument unless – 25
- (a) the Public Guardian is satisfied that no evidence has been provided which reasonably supports the making of the objection on that ground, or 30
 - (b) the court, on the application of the donor or the donee (or, if more than one, any of them) directs the Public Guardian to register the instrument.
- (5) In this paragraph “third party” means a person who is not the donor, a donee or a named person.” 35

Evidence of registration

- 8 In paragraph 16 –
- (a) in sub-paragraph (1), in the words before paragraph (a), after “Schedule” insert “before the day on which paragraph 8(a) of the Schedule to the Powers of Attorney Act 2022 comes into force”; 40
 - (b) after sub-paragraph (1) insert –
 - “(1A) In the case of any instrument registered under this Schedule in electronic form –

- (a) the record in the register of that instrument is to be, in any part of the United Kingdom, sufficient proof of the contents of the instrument;
- (b) regulations may provide that a document provided by the Public Guardian in a prescribed manner is to be, in any part of the United Kingdom, evidence of the contents of the instrument and of the fact that it has been registered.”; 5
- (c) in sub-paragraph (2), for “Sub-paragraph (1) is” substitute “Sub-paragraphs (1) and (1A) are”. 10

PART 2

MINOR AND CONSEQUENTIAL AMENDMENTS

- 9 The Mental Capacity Act 2005 is amended as follows.
- 10 In section 58(4) (functions of the Public Guardian), after paragraph (c) insert – 15
- “(ca) the time at which such fees are to be paid;”.
- 11 In section 65 (rules, regulations and orders), in subsection (1)(c), after “cases” insert “or purposes”.
- 12 (1) Schedule 1 is amended as follows.
- (2) In paragraph 5, for “11 to 14” substitute “10A to 13A”. 20
- (3) In paragraph 9 –
- (a) omit sub-paragraph (1);
- (b) in sub-paragraph (2), for “6, 7 or 8” substitute “7”.
- (4) In paragraph 11(1) –
- (a) after “If” insert “, at the end of the period mentioned in paragraph 5,”; 25
- (b) for “an instrument accompanying an application under paragraph 4” substitute “the instrument to which an application under paragraph 4 relates”.
- (5) In paragraph 13 – 30
- (a) in sub-paragraph (1)(a), for “6, 7 or 8” substitute “7”;
- (b) in sub-paragraph (2), in the words before paragraph (a), for “person applying for the registration” substitute “donor or the donee (or, if more than one, any of them)”;
- (c) in sub-paragraph (3)(a), for “6, 7 or 8” substitute “7”. 35
- (6) Omit paragraph 14 and the italic heading before it.

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Presented by Stephen Metcalfe MP

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