

Title: Powers of Attorney Bill IA No: MoJ006/2021 RPC Reference No: N/A Lead department or agency: Ministry of Justice Other departments or agencies: Office of the Public Guardian	Impact Assessment (IA)			
	Date: 9 December 2022			
	Stage: Enactment			
	Source of intervention: Domestic			
	Type of measure: Primary legislation			
Contact for enquiries: mlpaconsultation@justice.gov.uk				
RPC Opinion: Not Applicable				

Summary: Intervention and Options

Cost of Preferred (or more likely) Option (in 2022/23 prices)

Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status NQRP
£36.1m	N/A	N/A	

What is the problem under consideration? Why is government action or intervention necessary?

A lasting power of attorney (LPA) is a deed that allows an individual (the donor) to plan for circumstances where they can no longer make decisions for themselves due to a loss of mental capacity, by granting such powers to another person (the attorney). Since LPAs were introduced in 2007, technology and society's expectations have changed and people now expect digital services, with appropriate safeguards. The current process for creating LPAs is overly complex and confusing and the Office of the Public Guardian (OPG) is at risk of financial unsustainability because its costs are expected to increase while fee in came is forecast to plateau. OPG therefore needs an LPA system for the digital world and an improved paper channel which balances access to an LPA with increased protection against fraudulent or abusive use of the system. To achieve this, changes to the Mental Capacity Act 2005 are required. The government also wants to enable Chartered Legal Executives to certify copies of powers of attorney (POA), which requires that they be specified in the list of those who can do so in S.3 of the Power of Attorney Act 1971. The government has therefore decided to support this Private Members Bill as its aims cannot be achieved without primary legislation.

What are the policy objectives of the action or intervention and the intended effects?

The main objectives of modernising LPA are to: increase safeguards for the donor; improve the process of making and registering an LPA; achieve sustainability for OPG whilst keeping LPAs as affordable as possible for all people in society. The policy objective in enabling Chartered Legal Executives to certify copies of POA is to remedy the anomaly that prohibits them from certifying copies, but allows solicitors to do this and also allows them to be involved in the creation of a power of attorney, but not to certify as genuine a copy of the same document.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

- **Option 0 – do nothing:** the existing system remains unchanged.
- **Option 1 – Application and Registration:** Create an earlier, time-limited, application process and allow for different forms of the LPA to be registered and used as proof of the LPA.
- **Option 2 – Identity verification and OPG Remit:** Allow OPG to verify identity and halt registration where necessary.
- **Option 3 – Notifications and Objections:** Allow anyone to object to registration and simplify the process to do so.
- **Option 4 – Certified copies of powers of attorney:** Amend section 3 of the Power of Attorney Act 1971 to enable Chartered Legal Executives to certify copies of power of attorney.

Each option detailed above is our preferred option.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: on an ongoing basis

Does implementation go beyond minimum EU requirements?	N/A			
Is this measure likely to impact on international trade and investment?	No			
Are any of these organisations in scope?	Micro Yes	Small N/A	Medium N/A	Large N/A
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded: N/A		Non-traded: N/A	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY:  Date: 30.11.22

Summary: Analysis & Evidence

Policy Option 1

Description: Application and Registration: Create an earlier, time-limited, application process and allow for different forms of the LPA to be registered and used as proof of the LPA.

FULL ECONOMIC ASSESSMENT

Price Base Year 22/23	PV Base Year 22/23	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: 56.5

COSTS (£m)	Total Transition (Constant Price)		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/A	1	N/A	N/A
High	N/A	1	N/A	N/A
Best Estimate	N/A	2.9	0.01	0.1

Description and scale of key monetised costs by 'main affected groups'

The cost of replacing paper LPAs with digital storage for 40 days (the statutory waiting period) is estimated to be £0.01m per annum. Additionally, OPG will incur one-off costs associated with the implementation of a modernised service. The initial cost estimates are £3.0m for capital spend and £0.2m on resource which are expected to be incurred in the year 24/25.

Other key non-monetised costs by 'main affected groups'

OPG will incur costs to fund communications activity to raise awareness amongst the target audience. These activities have not yet been planned but work is in progress to estimate future costs.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A		N/A	N/A
High	N/A		N/A	N/A
Best Estimate	N/A		7.4	59.4

Description and scale of key monetised benefits by 'main affected groups'

OPG estimate that there will be a 13p saving to OPG per LPA for digital rather than paper-based storage leading to an average annual cost saving of £0.1m. It is estimated a minimum of 80% of users will transfer over and use the digital submission process to submit their LPA. This will avoid administrative resources associated with handling paper forms, leading to an average annual cost saving of £7.2m.

Other key non-monetised benefits by 'main affected groups'

Requiring the application to register earlier in the process reduces the risk of mistakes being found after a donor loses capacity and having to access the Court of Protection because the LPA is unusable. Therefore, donors may avoid fees to pay for their intended attorney to be appointed a deputy or for a new LPA to be created. The new fluid registration system that allows individuals to sign an LPA digitally or on paper, depending on their needs will be more efficient and accessible for the wide range of actors involved in creating an LPA.

Key assumptions/sensitivities/risks	3.5%
--	------

The government has assumed volume of LPAs remains constant after financial year 2026/27. Depending on actual volumes post 26/27, the estimated cost savings could be notably different to the actual benefits and costs experienced. Due to this uncertainty, the government has performed sensitivity analysis to demonstrate how monetised benefits and costs would vary if it incorporated low or high estimates of future LPA volumes. The cost saving associated with removing 80% of the work involved in paper submissions is based on the assumption that 80% of users will choose to use the digital service. If this assumption doesn't hold and take up is less than 80%, then the expected benefits will be lower than stated in the IA. 10% optimism bias has been applied to the unit cost of digitally storing an LPA to reflect the risk of changes to the exchange rate.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs:	Benefits:	Net:	

Summary: Analysis & Evidence

Policy Option 2

Description: Identity verification and OPG Remit: Allow OPG to verify identity and halt registration where necessary.

FULL ECONOMIC ASSESSMENT

Price Base Year 22/23	PV Base Year 22/23	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: -20.3

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	N/A	7.3	59.2

Description and scale of key monetised costs by 'main affected groups'

Identification verification will be a significant cost to OPG within the new digital system, this service will include the provision of a non-digital alternative to those who cannot or will not verify their identity digitally. The cost per check is estimated to be £10, leading to a projected annual cost of £7.3m.

Other key non-monetised costs by 'main affected groups'

There will be staff and time costs arising from creating and managing the digital system. As this system is still in development and new ways of working are being agreed estimates of cost are still being considered.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	N/A	4.8	38.8

Description and scale of key monetised benefits by 'main affected groups'

A digital channel for creation and submission of an LPA will automate many of the current manual administrative checks in the process. OPG expects efficiency savings of £4.87 per LPA arising from removal of 90% of administrative effort in manually completing administrative checks. The estimated value of this benefit is estimated to be £4.8m per annum.

Other key non-monetised benefits by 'main affected groups'

Automation of LPA checks will allow OPG to divert resources to investigations, which could lead to increased protection for donors against undue pressure and abuse. Resources could also be reprioritised into customer facing roles like call centres and triage teams, which should improve the user experience. Identity verification checks would protect the public from fraud by false representation.

Key assumptions/sensitivities/risks	3.5%
--	------

The government has assumed volume of LPAs and the one-off cost of simultaneous checks remain constant after 26/27. Depending on what actual volumes will be, the estimations could be notably different to the actual benefits and costs experienced. Due to this uncertainty, the government has performed sensitivity analysis to demonstrate how monetised benefits and monetised costs would vary if it incorporated low or high estimates of future LPA volumes. To calculate the unit cost saving of automating identity checks, it assumed that 90% of manual checks would be eliminated via this option, as it expects a certain portion of users to continue to use manual channels rather than the digital alternative. If the prescribed checks are too stringent then it could result in legitimate LPAs being rejected. This may result in donors having to submit a new LPA or make an application to the Court of Protection for their attorney to be appointed as a deputy, at an additional cost of £371.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs:	Benefits:	Net:	

Summary: Analysis & Evidence

Policy Option 3

Description: Notifications and Objections: Allow anyone to object to registration and simplify the process to do so.

FULL ECONOMIC ASSESSMENT

Price Base Year 22/23	PV Base Year 22/23	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: N/A
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)
Low	N/A		N/A		N/A
High	N/A		N/A		N/A
Best Estimate	N/A		N/A		N/A
Description and scale of key monetised costs by 'main affected groups'					
It has not been possible to monetise any costs associated with this Option as volumes are anticipated to be small and therefore have limited or no financial implication					
Other key non-monetised costs by 'main affected groups'					
The number of investigations may increase which will increase OPG costs. OPG may have increased staff costs as they will be taking on additional prescribed objections. However, the government believes these costs are likely to be small due to the small volume of objections received by the CoP. In 2021/22 there were only 35 objections that were sent to the CoP, compared to OPG receiving 210 prescribed objections in same period. There will be additional small administrative costs of handling and triaging all objections through to the investigations team.					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)
Low	N/A		N/A		N/A
High	N/A		N/A		N/A
Best Estimate	N/A		N/A		N/A
Description and scale of key monetised benefits by 'main affected groups'					
It has not been possible to monetise any benefits associated with this Option.					
Other key non-monetised benefits by 'main affected groups'					
The government expects this option to make the objections system more cost-effective, as the legal clarity it provides will reduce staff time in making decisions on how objections should be dealt with. Having a single point to submit an objection may also reduce the number of objections going to the CoP and save time in the CoP referring objections to OPG to investigate. Having a single-entry point to report a concern will provide clarity for a wider range of people and organisations. This will be particularly beneficial for those with a statutory safeguarding role, increasing OPG's ability to protect against abuse. Further, OPG will now notify named persons of the intention to register the LPA, as well as donors and donees. This means OPG can be certain that notifications have been sent to all parties so they can raise objections. This will strengthen safeguards for the donor, particularly against abuse and undue pressure by providing a clearer and more streamlined process for anyone objecting to the registration of an LPA.					
Key assumptions/sensitivities/risks					3.5%
N/A					

BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs:	Benefits:	Net:	

Summary: Analysis & Evidence

Policy Option 4

Description: Amend section 3 of the Power of Attorney Act 1971 to enable Chartered Legal Executives to certify copies of powers of attorney

FULL ECONOMIC ASSESSMENT

Price Base Year 22/23	PV Base Year 22/23	Time Period Years10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: N/A
COSTS (£m)		Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)	
Low		N/A	N/A	N/A	
High		N/A	N/A	N/A	
Best Estimate		N/A	N/A	N/A	
Description and scale of key monetised costs by ‘main affected groups’ Due to the high level of uncertainty around the impacts of this option, it is not possible to accurately monetise costs.					
Other key non-monetised costs by ‘main affected groups’ Members of the Chartered Institute of Legal Executives will incur the negligible costs associated with certifying copies of PoA. However, this will likely be offset by any increase in their income from being able to offer the service. There will also be costs to those currently authorised to certify copies of PoA both in terms of loss of work which will now be performed by Chartered Legal Executives and from any potential reductions in the market price of offering the service by e.g solicitors. However, for the purpose of this IA, the government has assumed that those currently authorised to certify copies of PoA will be able to find alternative work of similar or the next best economic value.					
BENEFITS (£m)		Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)	
Low		N/A	N/A	N/A	
High		N/A	N/A	N/A	
Best Estimate		N/A	N/A	N/A	
Description and scale of key monetised benefits by ‘main affected groups’ Due to a lack of evidence and the high level of uncertainty around the impacts of this option, it is not possible to accurately monetise benefits.					
Other key non-monetised benefits by ‘main affected groups’ While there is no central data source, if each of the approximately 700,000 applications made to register a PoA in 2020/21 required one certified copy currently costing £50, the total cost of obtaining of this would be around £35m. While it is not possible to determine the market impact of allowing Chartered Legal Executives to certify copies of PoA, the above data suggests there would be a clear benefit to consumers in terms of lower prices from implementing this option. If the market price fell by 5 per cent, the saving to consumers from obtaining certified copies of the PoAs applied for in 2020/21 would be £1.75m. Due to the high level of uncertainty around the impacts of this option, these calculations are for illustrative purposes only. There would also be wider benefits to donors and their representatives from reducing the current delays and confusion concerning who is currently able to certify a copy of a PoA. It is expected there will be an increase in consumer choice and lower prices as a result of increased competition in the legal services market.					
Key assumptions/sensitivities/risks					3.5%
N/A					

BUSINESS ASSESSMENT (Option 4)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs:	Benefits:	Net:	

Evidence Base

A. Background

Lasting Powers of Attorney & The Office of the Public Guardian

1. A lasting power of attorney (LPA) is a deed that allows an individual (the donor) to plan for circumstances where they can no longer make decisions for themselves due to a loss of mental capacity, by granting decision making powers to another person (the donee, more commonly called the attorney).
2. LPAs can cover the donor's property and affairs or their health and welfare arrangements. The donor can choose how wide ranging or limited the powers of their attorney(s) will be, potentially including decisions about life sustaining treatment (for health and welfare) or the ability to take instruction before a loss of capacity (property and affairs). They can also set out restrictions and conditions for how their attorney should make decisions.
3. The LPA was established in 2007 when the Mental Capacity Act 2005 (MCA or 'the Act') was implemented, replacing the old enduring power of attorney (EPA). The Act set out a new approach to supporting and protecting those without mental capacity in England and Wales and included the requirements to register an LPA before use. The Act also set up the Office of the Public Guardian (OPG) to oversee the registration of LPAs as a safeguard against the increasing abuse that was present under the old system. Thus, although they are private agreements, in all cases, OPG must register the LPA before it can be used.
4. Since its creation in 2007, OPG has also been responsible for investigating concerns about how an attorney is using an LPA and action can be taken by OPG or the Court of Protection in relation to the supervision and oversight of actions taken by all attorneys. It is also responsible for registering any remaining EPAs created prior to them being replaced by LPAs. The number of LPAs OPG receives each year has also increased. In 2014/15, OPG received just over 390,000 LPAs for registration. By 2019/20 this had risen to just under 920,000, and for 2022/23 OPG is forecasting to receive just over 1m LPAs for the first time.

Problem with Lasting Powers of Attorney Under Consideration

5. All LPAs are created and registered on paper. This is because the LPA and to be valid, it must be signed, witnessed, attested and delivered as a deed. Although there is a digital tool to help people fill in the details of their LPA, the final stages must be completed on a paper document. The document then needs to be printed out so that all the parties; the donor and all attorneys, can sign it. Each of these signatures must be witnessed, and a certificate provider must sign to confirm the donor understands the document and that no fraud or undue pressure has taken place. The completed document is then sent to OPG for registration before use. This involves a labour-intensive process of data entry and checks to ensure the information required under the Act is included.
6. The intricacies of this process can cause difficulties for those involved. User research suggests that the process is considered overly complicated and the language difficult to understand. Large amounts of planning are required to ensure the document is completed in the right order, papers can get lost or damaged and it is too easy to make mistakes that result in the document being rejected at registration, requiring further time, effort and potentially an additional fee to correct. This can be the case even when people seek advice from third parties such as solicitors or charities. In the worst cases, it can leave a donor without the protection of an LPA because an error has not been picked up until registration, but the donor has by then lost capacity and so cannot make a new one. Modernising the process, to allow submission of an LPA by digital means, will allow OPG to create a more

straight-forward service with a more positive experience for those making and registering their LPAs.

7. While applications to register LPAs have risen substantially, the trend is slowing and is predicted to plateau over the next three years. This is predicted to occur because the number of people who have not yet made an LPA but are likely to do so, especially those aged 75 and over, is starting to decline. As OPG is largely funded by fees, this will impact OPG's financial position as its costs are expected to increase at a faster rate than its income because the size of the register and case management system OPG needs to maintain will continue to increase. Similarly, demand for its investigation services is increasing, further adding to OPG costs. This could make OPG unsustainable in the long term without a significant increase in the fee for users.
8. One aim of LPA modernisation is therefore to allow OPG to achieve sustainability, reallocate its resources to achieve better value for its users and increase accessibility. As a significant amount of its current costs relate to ensuring the LPA is compliant with the legislation in ways that do not increase protection for users, OPG is confident it can increase the value of the service while reducing costs.
9. The impact of Covid-19 created further complexity within the LPA process for OPG, which saw impacts on its ability to safely process and register LPAs. OPG is working to tackle a backlog that arose due to the pandemic while working to manage the increasing levels of demand on its service. A modern, more digital, service will help build resilience into the system. This will ensure there are multiple channels to enable more flexible creation and registration in the future, and reduce the reliance on paper processing through increased automation of key processes.
10. Balanced against ease of access and efficiency, it is vital that the government considers the safeguards against fraud, abuse and undue pressure, including coercion, in any new system. The safeguards introduced with the LPA were appropriate for 2007. However, since then, technology has since moved on and society's attitudes to fraud and abuse, as well as the expected protections against them, have changed. These changes increasingly expose the system to the risk of abuse, including fraud. Action is needed to ensure that the system continues to protect the public in the way it was intended to, allowing the registration of valid LPAs while identifying and preventing the registration of invalid ones, including those created fraudulently or through undue pressure. Digital systems offer new ways for OPG to protect its users through the use of identity and information verification.
11. In summary, the intention behind the introduction of LPAs was to retain freedom of access for all who wanted one while increasing protection against abuse compared to EPAs. Since their introduction, however, society has increasingly moved from paper to digital services and COVID-19 has accelerated this. However, digital systems require different safeguards to paper services in order to achieve the same, or better, levels of protection.
12. The government therefore needs to create an LPA service for the digital world which retains the balance of access to an LPA while providing increased protection for individuals against fraudulent or abusive use of the system. This needs to be done while retaining access and improving safeguards for those who do not want to use, or cannot use, digital services. Modernising the LPA will require the development of a service that allows for both digital and analogue (including paper) access for individuals to make and register their LPAs.
13. While OPG could potentially realise some improvements to access and efficiency without changes to primary legislation, to reap the full benefits and retain or improve the current level of safeguards, it needs the government to amend the primary legislation governing LPAs.

Certifying copies of power of attorney

14. Currently Chartered Legal Executives can facilitate the creation of a power of attorney, but they cannot certify copies of the same document.
15. The government wants to make it possible for Chartered Legal Executives to certify copies of power of attorney, as they are not included in the list of those who can certify copies under S.3 of the Power of Attorney Act 1971. This will remedy the anomaly that allows them to be involved in the creation of such power, but renders them unable to certify as genuine a copy of the same document. It will also bring the regulatory framework in line with the reality of the legal services market evolution that has enabled Chartered Legal Executives to perform many of the same functions as solicitors.

Modernising Lasting Powers of Attorney Consultation and Government Response

16. In order to make the necessary changes to primary legislation, the government consulted on the changes it proposed to make. This resulted in the *Modernising Lasting Power of Attorney Consultation*¹, which ran from 20 July 2021 to 13 October 2021. The government also continued to conduct user research, interviews and surveys to gather views from users, as well as workshops with members of the public and stakeholders to inform policy development.
17. The consultation process refined the changes the government believed were needed to take forward modernisation. It also identified other potential options which the government committed to consider further in its response, published on 19 May 2022². Since then, the government has undertaken further work to determine which options to take forward into legislation. These measures form the basis of the Powers of Attorney Bill, which was introduced to Parliament on the 15 June 2022. This Impact Assessment (IA) provides analysis on the impact of the changes identified and section D below sets these out in more detail.
18. The Powers of Attorney Bill is being taken forward as a Private Members Bill by Stephen Metcalfe MP and is supported by the government. If passed, the changes required will need to be implemented by the OPG, supported by the MOJ. The Impact Assessment (IA) has been approached on this basis.
19. For more details on the exact changes to policy decisions, please see Section D below. The impact assessment also provides analysis on the impact of taking these options forward.

B. Policy Rationale and Objectives

20. The conventional economic approaches to Government intervention are based on efficiency or equity arguments. Governments may consider intervening if there are strong enough failures in the way markets operate (e.g., monopolies overcharging consumers) or there are strong enough failures in existing Government interventions (e.g., waste generated by misdirected rules) where the proposed new interventions avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and distributional reasons (e.g., to reallocate goods and services to more vulnerable groups in society).
21. The rationale behind the proposed changes to LPAs, and enabling Chartered Legal Executives to certify copies of power of attorney reflects both equity and efficiency reasons.

¹ <https://consult.justice.gov.uk/opg/modernising-lasting-powers-of-attorney/>

² <https://consult.justice.gov.uk/opg/modernising-lasting-powers-of-attorney/>

The options are intended to improve accessibility and ensure that the process is as efficient as possible for those most in need and for OPG, whilst balancing the need for safeguards.

22. The policy objectives associated with modernising LPA are to:
- increase safeguards, especially for the donor
 - improve the process of making and registering an LPA
 - achieve sustainability for OPG whilst keeping LPAs affordable for all those people in society who may need one.
23. The policy objectives for enabling Chartered Legal Executives to certify copies of power of attorney include to:
- remedy the anomaly that allows them to be involved in the creation of such power, but renders them unable to certify as genuine a copy of the same document.
 - bring the regulatory framework in line with the reality of the legal services market evolution that has enabled Chartered Legal Executives to perform many of the same functions as solicitors, and also diversify service provision relating to certifying copies of powers of attorney.

C. Affected Stakeholder Groups, Organisations and Sectors

24. The following groups would be most affected by the options presented in this IA:
- Members of the public who make an LPA; donors and attorneys.
 - Other actors involved in the creation and registration of LPAs: certificate providers, witnesses and correspondents; these could include members of the public, legal professionals or charities.
 - OPG, Ministry of Justice, Court of Protection (CoP), Department for Health and Social Care, the NHS.
 - Those who provide legal assistance and advice on creating lasting powers of attorney including solicitors, will writers, and estate planning practitioners.
 - Third sector and charity organisations who advise and support people making LPAs.
 - Third parties that have concerns about the creation of the LPA or that interact with an LPA once it has been registered or is being used such as local authorities, the financial sector, health and social care providers, and utility companies.
 - Members of the Institute of Chartered Legal Executives (CILEX)

D. Description of Options Considered

25. There are three areas of the LPA creation and registration process that the government intend to change in order to achieve the aims of improving safeguards, increasing access and achieving financial sustainability for OPG. Some of these were set out in the government's response to the consultation and discussed in the accompanying impact assessment. In some areas the government committed to undertaking further work to determine a way forward. Detail of these policy options is provided below. An additional measure is being taken forward to amend section 3 of the Power of Attorney Act 1971 to add Chartered Legal Executives to the list of persons authorised to certify copies of POAs.
26. The following options are considered in this IA:
- **Option 0 – do nothing:** the existing system remains unchanged.

- **Option 1 – Application and Registration:** Create an earlier, time-limited, application process and allow for different forms of the LPA to be registered and used as proof of the LPA.
- **Option 2 – Identity verification and OPG Remit:** Allow OPG to verify identity and halt registration where necessary.
- **Option 3 – Notifications and Objections:** Allow anyone to object to registration and simplify the process to do so.
- **Option 4 – Certified copies of powers of attorney:** Amend section 3 of the Power of Attorney Act 1971 to enable Chartered Legal Executives to certify copies of power of attorney.

27. Each option detailed above is necessary to reach our policy objectives and therefore are our preferred options.

Option 0/Do nothing

28. Under this option, the existing LPA system would remain unchanged. Individual donors would continue to make paper LPAs following the existing requirements to make their mark on the document (most commonly as a pen and ink signature), witness in person, execute the LPA as a deed, and send it to OPG for registration. The donor, or attorney, would still be able to choose when to register the LPA, delaying until a later point in time if they wished to.
29. Likewise, OPG would continue to carry out the administrative checks required by the MCA and a statutory waiting period of 4 weeks for objections to be raised by those named within the LPA would continue to apply. The regulated legal sector would also continue to use the paper-based process for their clients.
30. This option will also mean that Chartered Legal Executives would continue to be unable to certify copies of power of attorney, which reduces access to this service for consumers, many of whom may be elderly and vulnerable.

Option 1 - Application and Registration: Create an earlier, time-limited, application process and allow for different forms of the LPA to be registered and used as proof of the LPA.

31. The consultation examined what purpose application serves within the process of creating and registering an LPA and who could apply to register one. The options also considered how to reduce the chance of an LPA being rejected.
32. To meet the policy objectives, the following options were considered:
- **Execution starts registration:** There would be a requirement for an LPA to be sent for registration as soon as it has been executed. (previously option 2a)
 - **Execution allows delayed registration:** Donors would be allowed to delay registering an LPA with OPG after it has been executed. (previously option 2b)
- Digital submission of the LPA would be a component of either option, replacing the current paper-based application process.
33. While most respondents agreed there would be significant benefits to execution starting registration, feedback from a significant minority of respondents highlighted the reasons why some donors might choose to delay registration. In response to this, the government committed to investigating both options further.

34. Upon further consideration, the government will be proceeding with a system where an LPA will be sent to OPG as soon as it is executed, whether on paper or digitally. OPG will then coordinate the other parties signing the LPA, and automatically begin the registration process once this is complete. This will facilitate the existence of a fluid channel of LPA creation so that each actor (donor, attorney or certificate provider) can sign in the way that best suits their needs – digital or paper. All parties will need to sign the LPA within a set time limit from the point the donor executed the LPA for it to be accepted for registration.
35. Related to this, whether an LPA is signed digitally or on paper, in the future all LPAs will be created as electronic documents at the point of registration. This will mean that the ‘Use an LPA’ service will provide direct access to the electronic LPA and be legally accepted as proof of the LPA. There will also be further provisions to outline what other forms of physical proof can be provided if a donor, attorney or third party cannot access digital systems.
36. Option 1 below therefore encompasses:
- An LPA must be sent to OPG as soon as it has been executed and the registration process will start as soon as all parties have signed.
 - Only the donor can consent to the LPA being registered by OPG.
 - The donor, attorney and CP can use the route (paper or digital) that best meets their needs to make the LPA.
 - All modernised LPAs as created, will be electronic instruments.
 - “Use an LPA” service will be legally acceptable proof of the LPA and its contents.
 - Provisions will be made to allow for new forms of physical proof of an LPA.

Option 2 – Identity verification and OPG Remit: Allow OPG to verify identity and halt registration where necessary.

37. This proposal considered ways to widen the functions of OPG in legislation to provide clarity on the checks it can carry out and the actions it could take as a result of those checks. In particular, these options sought to clarify OPG’s ability to check the LPA for more than just administrative purposes to aid the prevention of fraud, abuse and undue pressure.
38. To meet the policy objectives, the following options were considered:
- **Conditional registration:** An LPA would be registered if it can pass a set of prescribed checks, this process would be automated replacing the current manual process and introduce automated identity checks. OPG could delay registration until the checks are met and it would reject the LPA if it cannot meet the requirements. (previously option 3a)
 - **Discretionary registration:** An LPA would be registered if it reached a confidence threshold about the level of risk associated with it. This would include automated identification checks. Where the LPA does not meet the threshold, it would not be registered. OPG would have discretion as to the evidence it accepted to understand the risk. (previously option 3b)
39. The responses to the consultation overwhelmingly favoured conditional registration as the way forwards. As well as taking this forward, the government response also committed to:
- a) consider further if identity verification on the donee is needed
 - b) continue work to ensure a proportionate approach is taken to identity checks and a wide range of options are made available.
40. Further refinement of this option means the government will introduce a system of conditionally verifying the identity of donors and certificate providers for both health and welfare, and property and finance LPAs. In line with current best practice these checks will need to meet the Cabinet Office’s low confidence threshold in order for the LPA to be registered. The details of who is to be checked and to what threshold will be set out in

secondary legislation (LPA regulations) to ensure that safeguards can be easily updated as best practice changes. This will also mean that the LPA fee will be taken at a different point in the process; at the point the identification check is conducted.

41. Under this approach, donors and certificate providers will be able to provide a variety of identity information. This will be set out in regulations, again so it can be amended as best practice changes, but could include passports, driving licences, or matching against existing government datasets such as pension records or benefit receipt. This will keep the service accessible whilst providing OPG with suitable assurance of each party's identity enhancing protections against fraud.
42. OPG will also be required not to register an LPA where this standard cannot be met, unless directed to do so by the Court of Protection. Furthermore, identity verification for registration after this legislation comes into force will apply to LPAs executed prior to this. The exact details of the identification required across new and legacy LPAs will be set out in secondary legislation and guidance will be produced as needed.
43. The government will not be introducing identification requirements for attorneys but the Bill makes provision for this to happen in the future if is necessary. Attorneys are often asked for identity information at the point of using an LPA. These are required checks under money laundering regulations for the finance and legal sectors. The greatest risk to the donor is at the time the LPA is used, so requesting identification at the point of creating the LPA is less valuable and potentially introduces duplication of effort for the attorney. Additionally, it is not for OPG to determine suitability of the attorney, this remains the donor's choice. Therefore, if an attorney was unable to meet the conditional checks required, OPG would potentially be going beyond its role as a registrar, and arguably be removing some of the donors' choice and control over their LPA.
44. Option 2 below therefore encompasses:
 - The introduction of a system of conditional identification checks for both property and affairs LPAs, and health and welfare LPAs.
 - Providing for regulations to specify which parties must provide identification and what identification information can be accepted.
 - Amendments to facilitate a change in the timing of the LPA fee.

Option 3 – Notifications and Objections: Allow anyone to object to registration and simplify the process to do so.

45. This option previously consisted of two separate options:
 - How to Object (previously option 4) and
 - When to Object (previously option 5)
46. Within the consultation, the proposal for how to object considered how to clarify and streamline the way to object to the registration of an LPA. This process allows people to raise an objection to an LPA being registered if they have concerns about what is contained within it or how it was created. Currently, the legislation sets out different processes for different types of objection. The government sought to understand how to make it easier for those wanting to raise an objection to do so.
47. To meet the policy objectives, the following options were considered:
 - **OPG receives all objections:** Anyone could raise an objection. All objections would be sent to OPG to review and investigate. (Previously proposal 4a)
 - **OPG receives only factual objections:** Anyone could raise an objection. Objections would need to be referred directly to OPG or the Court of Protection, depending upon the nature of the objection. (Previously proposal 4b)

48. The proposal for when to object sought to understand what the benefits of an objections process were and how best to realise these in a future service. To meet the policy objectives, the following options were considered:
- **Objection during creation:** Objections would be permitted from the point the donor starts creating their LPA until it is sent for registration. (Previously proposal 5a)
 - **Reduce the statutory waiting period:** The current time period for objections to be received by OPG would be reduced. (Previously proposal 5b)
 - **Remove the statutory waiting period:** The objection period would be removed, although there would still be a mechanism for people to object to an LPA. (Previously proposal 5c)
49. The Bill will amend legislation so that OPG receives all objections in the first instance and create a framework for objections from anyone. OPG will become responsible for sending out letters to people to notify. It will also triage all objections to determine the level of evidence available and, once the LPA is ready to start the registration process, it will investigate where this is appropriate or necessary.
50. The government will also introduce a formal process for OPG to receive objections once OPG knows that an LPA has been started. OPG will only be able to investigate these objections from the point the LPA has been completed by all parties and is ready to begin the registration process. Some respondents in the consultation suggested a formal process for OPG to receive objections before an LPA is started. Having considered this further, the government has decided not to take this forward. This option would require OPG to store objections to LPAs that may never be created. It would also be difficult to develop a system that would accurately and reliably match historical objections to LPAs made in the future.
51. Option 3 below therefore encompasses:
- Allow for third parties to object to the registration of an LPA.
 - Introduce a formal process for OPG to receive and store objections once it knows an LPA has been started.
 - OPG to notify named parties once the LPA is ready to begin the registration process.
 - OPG to act as a triage system for all prescribed objections.
 - OPG to have the power to investigate an objection to registration from the point the LPA has been signed by all parties and is ready to start the registration process.

Option 4 – Certified copies of powers of attorney: Amend section 3 of the Power of Attorney Act 1971 to enable CILEX lawyers to certify copies of power of attorney.

52. Obtaining a certified copy of a PoA can be necessary to administer the donor's affairs (e.g., banks may require a certified copy to permit access to the donor's accounts). Under section 3 of the Powers of Attorney Act 1971, a copy of a PoA can be signed by the donor of the power, a solicitor, a person authorised to carry on notarial activities or a stockbroker. Chartered Legal Executives are not included in this list
53. The legal services market has, however, evolved since the 1971 Act. In particular, members of the Chartered Institute of Legal Executives (CILEX) are now able to exercise many of the same functions as solicitors.
54. A 2020 internal survey by CILEX found that a majority of its members who work in this area of law report dealing with 1 to 10 requests to certify copies of a PoA per month. However, under the Power of Attorney Act, a CILEX qualified lawyer cannot currently certify a copy of a power of attorney. Internal CILEX research also finds that preventing Chartered Legal Executives from certifying copies of a PoA can cause delays and confusion to the detriment of clients, some of whom are vulnerable.

55. As the current statutory bar does not align with the evolution in the legal services market which has allowed Chartered Legal Executives to carry out many of the same functions as solicitors, the government will support the bill to amend section 3 of the 1971 Act and include Chartered Legal Executives among those that are authorised to certify copies of PoA.

Other options outlined in the modernising lasting powers of attorney consultation and response

56. There were two additional options which were considered in the consultation and response.

Witnessing (previously option 1 in the response)

57. The consultation considered the following options to assess if there was value to the role of the witness and, if so, how to retain this value in a future service:

- **Remove Witnessing:** Remove the requirement for another person to observe the signing of the LPA by the donor or the attorneys. (Previously proposal 1a)
- **Remote Witnessing:** A witness would be able to use technology to witness the donor and attorneys signing the LPA without being physically present in the same location. (Previously proposal 1b)
- **Replace witnessing with a similar function:** Replace the witness with objective evidence that the donor executed the LPA. (Previously proposal 1c)

58. In its response the government committed to investigating alternative options raised during consultation: Combining the roles of the witness and certificate provider, and removing the requirement for the attorneys' signatures to be witnessed. These are the options the government wishes to proceed with, but they do not require primary legislation and can be addressed via amending the Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007 (the 2007 regulations). This option is therefore not modelled in this IA and further analysis and costings will be provided at the next stage of implementation.

Access to the service (previously option 6 in the response)

59. The consultation also looked at ways to support solicitors to use a new service:

- a) **Integration only:** The new service would meet the needs of solicitors and be integrated into their existing document management systems.
- b) **Mandate solicitors to use parts of the service:** Solicitors would be required to use the new service for certain aspects of the registration process.
- c) **Mandate Solicitors to use the service:** Solicitors would be required to use the whole digital channel for all LPA registrations after a certain date.

60. Following the consultation, the government committed to developing an integrated service but outlined that it would seek to ensure it had powers to mandate the regulated legal sector to use the digital system if needed. It has been decided not to take this forward at the present time due to the complexity of the change that would be needed to implement this. However, OPG will continue to monitor take up of the digital service by the legal sector and take forward measures for mandating use in the future if this proves necessary. This option is therefore not modelled in the below IA. If this is needed, further development work and consultation will take place which would include provision of an impact assessment.

E. Cost Benefit Analysis

61. This IA follows the procedures and criteria set out in the Impact Assessment Guidance and is consistent with HM Treasury Green Book guidance.

62. Where possible, IAs identify both monetised and non-monetised impacts on individuals, groups and businesses in Great Britain with the aim of understanding what the overall impact on society might be from the proposals under consideration. Impact Assessments place a strong focus on monetisation of costs and benefits. There are often, however, important impacts which cannot sensibly be monetised. Impacts in this Impact Assessment are therefore interpreted broadly, to include both monetisable and non-monetisable costs and benefits, with due weight given to those that are not monetised.
63. The costs and benefits of the options are compared to Option 0, the counterfactual or ‘do nothing’ option. As the counterfactual is compared to itself, the costs and benefits are necessarily zero, as is its net present value (NPV).
64. The NPV has been appraised over a 10-year period beginning in 2024/25, with a 3.5% discount rate applied and a 2022/23 discounted base year. 10% optimism bias has been applied to the unit cost of digitally storing an LPA to reflect the risk of changes to the exchange rate, since these costs will be paid in US dollars. All costs in this IA are given in 2022/23 prices. It should be noted that figures quoted in Section E are inflation adjusted and only involve social discounting where NPV’s are mentioned. However, the figures quoted in other sections of this IA are discounted.
65. IAs typically place a strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However, there are important aspects that cannot sensibly be monetised which might include how the policy impacts differently on particular groups of society or changes in equity and fairness. In the case of these proposals, it has not been possible to sensibly monetise the cost and benefits associated with the measures proposed in Options 3 and 4.
66. Many of the quantified costs associated with options presented below have been produced using MoJ’s scenario-based forecasts of LPA creation. These forecasts estimate the volumes of LPA creation up until the financial year 2026/27. In order to provide a 10-year appraisal period, it has been assumed that LPA creation volumes will remain flat from 2026/27 onwards. Forecasted LPA volumes are provided in Section F in Table 6.
67. The government will continue to refine its figures and further monetise costs and benefits ahead of a Royal Assent Stage Impact Assessment.

Option 1 – Application and Registration: Create an earlier, time-limited, application process and allow for different forms of the LPA to be registered and used as proof of the LPA.

Costs of Option 1

Monetised Costs

68. This option will enable the use of digital channels for the registration of an LPA, whether the parties have completed their sections on paper or digitally. It will lead to a system whereby LPAs will be stored and processed digitally by OPG following the point they are received complete and ready for registration, unlike in the current system which requires physical storage and processing.
69. Paper LPAs are currently held by OPG for an average of 63 days, the government has estimated the cost of digitally storing LPAs for 40 days (the statutory waiting period) as this will replace the paper storage. A 10% optimism bias has been applied to the unit cost of digitally storing an LPA to reflect the risk of changes to the exchange rate, since these costs

would be paid in US dollars by OPG. Since the unit cost of digitally storing an LPA was given for a single year, the government has profiled the cost for all financial years included in its 10-year appraisal period by inflating this cost in line with forecasted CPI rates. The figures have then been reported in real terms in Table 1 below. Year on year costs will vary due to the changes to the forecasted volume of LPAs (see Table 6).

24/25	25/26	26/27	27/28	28/29	29/30	30/31	31/32	32/33	33/34
£10,000	£10,000	£10,000	£10,000	£10,000	£10,000	£10,000	£10,000	£10,000	£10,000

70. OPG and MOJ will incur one-off costs associated with the implementation of a modernised service that allows digital submission of LPAs. The initial cost estimates are £3.0m for capital spend and £0.2m on resource. These estimates are based on current team costs profiling and forecasted team growth during the lifecycle of the build of this service. This covers the development of a digital channel only. The costs to OPG for the development of the paper route and wider transformation are part of on-going work to determine any future reoccurring and one-off costs as a result of implementation for both the OPG and Justice Digital Function.

Non-Monetised Costs

71. There will be costs in relation to new communications activity, which will aim to raise awareness amongst the target audience regarding changes to the law. These activities have not yet been planned but work is in progress to estimate future costs and include this in OPG’s planning activity.

Benefits of Option 1

Monetised Benefits

72. Under Option 0 paper LPAs are held and stored physically, however, OPG’s physical storage costs would decrease under Option 1 as more LPAs are submitted digitally. OPG estimate that there will be a 13p saving to OPG per LPA for digital rather than paper-based storage (over the 40-day statutory waiting period). This is because physical storage costs are higher than the equivalent digital storage costs. Over the 10-year appraisal period this equates to a yearly saving of not having to provide paper storage as represented in Table 2 (given in real terms).

24/25	25/26	26/27	27/28	28/29	29/30	30/31	31/32	32/33	33/34
£0.14m	£0.14m	£0.14m	£0.13m	£0.13m	£0.13m	£0.13m	£0.12m	£0.12m	£0.12m

73. Option 1 will enable digital submission of an LPA for registration rather than paper-based submission. OPG estimate a minimum of 80% of users will transfer over and use the digital submission process and 20% will continue using a paper form to submit their LPA. The 80% of applications which are submitted via the digital route will avoid administrative resources associated with handling paper forms. All LPAs, whether submitted digitally or by paper would become digital documents and would be stored digitally. Therefore, benefits estimated elsewhere in the IA apply to 100% of LPAs.

74. Applying the forecasted LPA volumes in Table 6 (in Section F below), and associated staff costs, OPG are expected to experience an administrative cost saving of between £0.12-£0.14m per annum as represented in Table 2 (given in real terms). These yearly monetised benefits to OPG are due to the removal of 80% of the work associated with handling

incoming post, posting physical LPA documents, taking payments by cheque or by card over the phone, filing and file creation for LPA applications and completing support work associated with LPAs. The government has excluded remissions/exemptions related work from the associated benefits (e.g., DWP records stating whether the user is eligible for a fee exemption). Since OPG do not expect this element of the checks will be automated but will continue to be manually checked.

75. It should be noted that these staffing costs estimates do not include the costs associated with the processing of LPAs once digitised. In addition, it should be noted that this estimate is not intended to represent an estimate of cash-releasing benefit to OPG. Instead, the figures quoted in Table 2 purely represent a monetised estimate of administrative resource that would no longer need to be dedicated to processing paper applications were Option 1 to be implemented. Any resource savings would be for OPG to decide how to manage and redeploy to alternative activities.
76. No optimism bias has been applied because of a high degree of certainty that at least 80% of users will transfer to the digital solution. This is because OPG statistics suggest approximately 90% of LPA submissions are currently filled in using a computer rather than being written by hand.
77. Year on year savings vary due to changes in the volume of LPAs forecasted as well as inflation adjustments. It has been conservatively assumed that staffing costs saved by Option 2 would remain constant in nominal terms across the appraisal period meaning that, when inflation adjustments are applied, the annual real terms saving presented in Table 3 decreases year by year.

Table 3: Cost saving from digital submission of LPAs

24/25	25/26	26/27	27/28	28/29	29/30	30/31	31/32	32/33	33/34
£7.7m	£7.8m	£7.6m	£7.5m	£7.3m	£7.2m	£7.0m	£6.9m	£6.8m	£6.6m

Non-Monetised Benefits.

78. At present 4% of users delay registering their LPA by over 200 days (this equates to 34,421 of the 860,522 LPAs submitted within the 21/22 FY). This leads to a risk of a mistake being found by OPG after the donor has lost the mental capacity to address the issue. If this happens, the error cannot be corrected, and a new LPA cannot be made. The donor is left without a usable LPA.
79. In this circumstance, where an LPA is no longer a possibility, the intended attorney would need to make an application to the CoP on the donor’s behalf to be appointed as a deputy, at a fee of £371 (paid by the donors’ estate). In addition to this, the donor’s estate would also have to pay a deputy assessment fee of £100 payable up front, and thereafter an annual fee of either £35 or £320 depending on whether the deputyship is a minimal or general supervision³. Furthermore, donors may seek legal support in making a deputyship application, these fees can start from £3,000 plus VAT. Therefore, this option reduces the risk of the donor having to access the CoP and pay these additional fees.
80. The new fluid registration system that allows individuals to sign an LPA digitally or on paper, depending on their needs will be more efficient and accessible for the wide range of actors involved in registering an LPA. It will also reduce the logistical complexity which has been a source of confusion for users of the current system, by having OPG take on this administrative role. The donor’s control of the process is maintained through live progress

³ Minimal supervision exists for some properties and affairs orders for deputies managing less than £21,000.

updates and the ability to use the digital system to remind other actors to complete their sections of the LPA.

- 81. The main benefit of the application to register the LPA being processed as soon as the LPA is completed by all parties, is that it aligns with the role of the LPA as an insurance policy against a loss of mental capacity. The attorneys are more likely to be in the position to use the LPA in an emergency without having to wait for the LPA to be registered, as now.
- 82. The changes being made to ensure delay is avoided mean that in the future there is no need to allow the donee to be the applicant. Restricting who can apply to register an LPA to the donor will add additional security into the process by removing the chance for an attorney to take control of this stage away from the donor.
- 83. In relation to the registered LPA as being an electronic document, this will ensure increased confidence in the LPA system by providing a single source of truth for the current status and details of the document. Third parties can access the LPA as created directly through OPG’s register system as well as obtain real time information on the LPA so they will know whether an LPA still confers power and to whom. Where digital access is not possible, individuals will still be able to obtain and provide physical proof of the registered LPA to ensure non-digital donees can continue to use the LPA. However, these will likely be time limited to ensure the same trust and confidence in the LPA system.
- 84. Taking into account the costs of digitally storing LPAs for 40 days plus the cost savings associated with digitally submitting LPAs and avoiding paper-based storage costs, the NPV of option 1 over the 10-year appraisal period is £56.5m.

Option 2 – Identity verification and OPG Remit: Allow OPG to verify identity and halt registration where necessary.

Costs of Option 2

Monetised Costs:

- 85. Identification verification will act as a significant cost to OPG within the new digital system. Based on existing private and public sector solutions in use by other government departments, the cost per check is estimated to be £10 with a lower bound of 33p and an upper bound of £22; these cost ranges include the need for OPG to provide a non-digital alternative to those who cannot or will not verify their identity digitally or by assisted digital. This form of identification will have a higher cost implication than the digital alternative. The exact figure is subject to the contract procurement process. Utilising the central figure of £10 has allowed the government to estimate the overall cost to OPG, which is displayed within Table 4.
- 86. In 51% of the LPAs registered by OPG, the donor has simultaneously made both a property and affairs and a health and welfare LPA. In these instances, OPG would only need to verify the identity of the donor and CP once, thus in 25.5% of cases an identity check would not be required. Additionally, it is common for partners to make their LPAs at the same time and use the same CP, in these cases the CP would only need their identity checked once.

Table 4: Cost to OPG per Identification Check									
24/25	25/26	26/27	27/28	28/29	29/30	30/31	31/32	32/33	33/34
£7.9m	£7.8m	£7.7m	£7.5m	£7.4m	£7.2m	£7.1m	£7.0m	£6.8m	£6.7m

Non-Monetised Costs

87. There will be staff and time costs associated with creating the system and checks, as well as for carrying them out manually where checks cannot be automated, or the conclusions need to be manually verified. As this system is still in development and new ways of working are being finalised estimates of these costs are still being considered.
88. In instances where identity cannot be verified via any available option, a donor or attorney would need to apply to the CoP to have the LPA registered. This would result in additional time and CoP fee costs for the donor. However, recent data modelling predicts that 99.89% of the population with legitimate LPA claims will be able to pass the identity verification that OPG intends to build. Additionally, OPG are committed to utilising other routes to enable the other 0.11% of the population to meet the checks (via the Customer Contact Centre or visits) meaning the costs of failing to verify identity are likely to be negligible.

Benefits of Option 2

Monetised Benefits

89. A digital channel for the making and submission of an LPA will allow for most checks made on LPAs to be automated in place of the current manual process, increasing the efficiency of registering an LPA. OPG expects to experience efficiency savings of £4.87 per LPA, from removing 90% of the administrative effort dedicated to manually checking LPAs by automating these checks. The estimated inflation-adjusted savings are represented in Table 5. Here, year on year changes are due to changes in OPG's forecasted volume of LPAs as well as inflation adjustments. The government has conservatively assumed the £4.87 unit cost of digital checks would remain flat in nominal terms across the 10-year appraisal period.
90. It should be noted that these cost savings represent a monetised estimate of the administrative resource that would be freed up as a consequence of implementing Option 2. This does not necessarily imply a cashable saving to OPG, but the government estimates this would allow administrative effort of equivalent monetary worth to be deployed to alternative uses by the organisation.
91. It should also be noted that savings to OPG associated with Option 2 differ to those from digitisation associated with Option 1. The savings presented in Table 5 represent savings (in real terms) associated with manual checks being automated. By contrast, the savings presented in Table 2 represent savings associated with a reduction in paper LPA submissions reducing staff time used to create digital records.

Table 5: Cost saving from automating checks on LPAs

24/25	25/26	26/27	27/28	28/29	29/30	30/31	31/32	32/33	33/34
£5.2m	£5.1m	£5.0m	£4.9m	£4.8m	£4.8m	£4.7m	£4.6m	£4.5m	£4.4m

92. The NPV of the costs of Option 2, as presented in table 4, is estimated to be -£59.2m in 2022/23 prices over the 10-year appraisal period. Consequently, given the discounted benefits in Table 5, the total NPV for Option 2 is estimated to be -£20.3m in 22/23 prices of costs over the 10-year appraisal period. This takes into account the cost to OPG of verifying identity minus the cost savings from automating checks on LPAs.

Non-Monetised Benefits

93. Automating checks on LPAs could ensure that OPG can better focus its resources on investigations that will require more in-depth consideration of evidence, such as concerns

about capacity or abuse. This could lead to increased protection against undue pressure and abuse. There could also be reprioritisation of resources into both the call centre (which provides direct user support) and triage team (which triages concerns before they go to the investigation team).

94. The introduction of identification verification would be a further deterrent to fraudsters seeking to make LPAs through false representation. This would serve as a further protection to potentially vulnerable members of the public by bolstering protections that exist in the wider LPA service through third party checks at point of use.

Option 3 – Notifications and Objections: Allow anyone to object to registration and simplify the process to do so.

Costs of Option 3

95. It has not been possible to monetise the costs and benefits for this option. Volumes are anticipated to be small and therefore to have only a negligible impact.

Non-Monetised Costs

96. The number of investigations may increase which will increase OPG costs. OPG may have increased staff costs as they will be taking on additional prescribed objections. However, the government believes these costs are likely to be small due to the small volume of objections received by the CoP. In 2021/22 there were only 35 objections that were sent to the CoP, compared to OPG receiving 210 prescribed objections in same period.

97. There will be additional small administrative costs for handling and triaging all objections through to the investigations team.

Benefits of Option 3

Non-Monetised Benefits

98. The government expects that Option 3 will make the objections system more cost-effective, as the legal clarity it provides will reduce staff time in making decisions on how objections should be dealt with. Having a single point to submit an objection may also reduce the number of objections going to the CoP and save time in the CoP referring objections to OPG to investigate. As all objections coming to the CoP will have already been assessed by OPG and referred to the CoP as necessary, this could give the CoP more time to deal with other legal concerns.

99. Having a single-entry point to report a concern will provide clarity for a wider range of people and organisations. This will be particularly beneficial for those with a statutory safeguarding role, such as local authorities, increasing OPG's ability to protect against abuse.

100. Further, the fact that OPG will now notify named persons of the intention to register the LPA, as well as donors and donees, means OPG can be certain that notifications have been sent. This will strengthen safeguards for the donor by ensuring that persons to notify have clarity on when they can raise their objections and the notifications aren't forgotten.

Option 4: Certified copies of powers of attorney: Amend section 3 of the Power of Attorney Act 1971 to enable CILEX lawyers certify copies of power of attorney

Costs of Option 4

101. It has not been possible to monetise the costs and benefits for this option due to a lack of evidence on the impacts. However, illustrative examples have been provided where appropriate.

Non-Monetised Costs

102. There might be negligible costs for Chartered Legal Executives in certifying copies of PoA. However, we expect this to be offset by an increase in their income from being able to offer the service.

103. There would also be costs to those currently authorised to certify copies of PoA both in terms of work which would now be performed by Chartered Legal Executives and from any reduction in the market price of offering this service. However, for the purpose of this IA, the government has assumed that those currently authorised to certify copies of PoA will be able to find alternative work of similar or the next best economic value.

Benefits of Option 4

Non-Monetised Benefits

104. While there is no central data source, the government believes the current market price (which can vary by location) for certifying a copy of a PoA can range between £25 to £100, with a median price of between £40 – £60. Likewise, while there is no data on the number of times a certified copy of a PoA may be needed, if each of the approximately 700,000 applications made to register a PoA in 2020/21 required one certified copy currently costing £50, the total cost of obtaining of this would be around £35m.

105. While it is not possible to determine the market impact of allowing Chartered Legal Executives to certify copies of PoA, the above data suggests there would be a clear benefit to consumers in terms of lower prices from implementing this option. By way of illustration, assuming all 700,000 applications required one certified copy and the market price were to fall by 5 per cent, the saving to consumers from obtaining certified copies of the PoAs applied for in 2020/21 would be £1.75m.

106. Enabling Chartered Legal Executives to certify copies of PoA will promote consumer choice and generate competition in the legal services market, in addition to lower prices for consumers.

107. Chartered Legal Executives would see an increase in their incomes from being able to certify copies of PoA although it is not possible to quantify this benefit. This benefit would largely offset the cost to those currently able to authorise a copy of a PoA.

108. There would also be wider benefits to donors and their representatives from reducing the current delays and confusion concerning who is currently able to certify a copy of a PoA.

F. Risks and Assumptions

109. The analysis presented in Section E is based on assumptions, each of which have associated risks. This section highlights the main assumptions made and the nature of the related risks.

110. The cost and benefits in this IA have been appraised over 10 years, beginning in financial year 2024/25, assuming an implementation date of all options occurring simultaneously in September 2024. However, the implementation date of these options will be influenced by whether the Powers of Attorney Bill achieves Royal Assent and OPG is able to complete the operational transformation necessary to implement the changes needed.
111. Sensitivity analysis involves exploring the sensitivity of expected outcomes of an intervention to potential changes in key inputs. It can be used to test the impact of changes in assumptions and is intended to reflect modelling uncertainty.
112. Sensitivity analysis has been applied to look at the impact on associated costs and benefits of changing assumptions regarding the forecasted volume of LPAs. Table 6 displays low and high estimates of LPA volumes, alongside the central forecasted volumes that have been used to calculate the NPV present in the IA.
113. Table 6 incorporates the scenario based forecast model figures for LPAs up until the end of the 26/27 FY. The Covid-19 pandemic has introduced volatility and uncertainty into the model, leading to a considerably widened range of potential LPA volumes compared to the pre-Covid comparator.

Year	22/23	23/24	24/25	25/26	26/27
Low scenario	770,000	790,000	800,000	800,000	800,000
Central forecast	1,100,000	1,100,000	1,100,000	1,100,000	1,100,000
High Scenario	1,600,000	1,600,000	1,600,000	1,600,000	1,600,000

114. Unlike previous forecast, these May 2022 LPA receipt scenarios do not reflect the trajectory for LPA receipts but capture the range that receipts might move within the next five years; which could mean for instance that demand remains relatively flat then spikes rapid to the high scenario as delayed demand is suddenly realised. The high scenario reflects a steady recovery in LPA demand back to near or exceeding pre-covid expectations. Whilst the low forecasts demonstrate significantly volatile demand driven by new viral outbreaks and short-term ‘pingdemic’ effects.
115. All tables showing sensitivity analysis in the section below display figures which have been amended to reflect a 3.5% social discount rate. This has resulted in figures differing to those in the central scenario estimates quoted in the cost and benefit analysis sections above.

Option 1

116. The central forecast in Table 6 suggests that growth in LPAs is expected to flatten out in the mid-2020s, therefore the government has assumed the forecasted volume of LPAs will remain constant after financial year 2025/26. However, actual number of LPAs may not follow these forecasts, such that the cost saving from digital rather than paper-based storage could be understated or an overestimation.
117. The government has applied sensitivity analysis to observe how costs and benefits will be impacted if there are changes to the forecasted LPA figures. Table 7 estimates the impact

over the 10-year appraisal period, of LPA volumes in the low and high scenarios to illustrate the sensitivity of the digital storage cost, to variations in LPA volumes.

	24/25	25/26	26/27	27/28	28/29	29/30	30/31	31/32	32/33	33/34
Low	£7,000	£6,000	£6,000	£6,000	£6,000	£5,000	£5,000	£5,000	£5,000	£5,000
Central	£9,000	£9,000	£8,000	£8,000	£8,000	£8,000	£7,000	£7,000	£7,000	£7,000
High	£13,000	£12,000	£12,000	£12,000	£11,000	£10,000	£10,000	£10,000	£10,000	£9,000

118. Table 7 illustrates that costs associated with digital storage could vary by approximately minus £3,000 p/a in the low scenario and plus £4,000 p/a in the high scenario.

119. Similarly, in Table 8 the government has applied the upper and lower bound of LPA volumes to the discounted cost saving associated with transferring from physical storage of paper LPAs to digital storage of a digital LPA.

	24/25	25/26	26/27	27/28	28/29	29/30	30/31	31/32	32/33	33/34
Low	£94,000	£90,000	£85,000	£80,000	£76,000	£72,000	£68,000	£65,000	£61,000	£58,000
Central	£131,000	£125,000	£118,000	£112,000	£106,000	£101,000	£95,000	£90,000	£86,000	£81,000
High	£186,000	£178,000	£169,000	£160,000	£151,000	£143,000	£136,000	£129,000	£122,000	£115,000

120. The cost saving associated with removing 80% of the work involved in paper submissions is based on the assumption that 80% of users will choose to use the digital service. OPG data analysis and research to date suggests that 80% of users will shift to digital channels in the first year of live service. However, if the digital submission process is not user friendly then less people may decide to use the digital solution, the benefits the government has estimated may be less than the benefits realised.

Option 2

121. Similar to the cost saving in option 1, the government has assumed volume of LPAs remain constant after financial year 2025/26. Depending on what actual volumes will be in the years post 25/26, the estimated cost savings could be notably different to the actual benefits experienced.

122. To calculate the unit cost saving of automating identity verification, the government assumed that 90% of manual checks would be eliminated via this option, as it expects a certain portion of users to continue to use manual channels rather than the digital alternative.

123. The government has further modelled the impact of changing the assumption on LPA volumes on the cost saving from automating checks on LPAs. The discounted benefits of this over a 10-year period is shown in Table 9.

	24/25	25/26	26/27	27/28	28/29	29/30	30/31	31/32	32/33	33/34
Low	£3.5m	£3.3m	£3.2m	£3.0m	£2.8m	£2.7m	£2.5m	£2.4m	£2.3m	£2.2m
Central	£4.9m	£4.6m	£4.4m	£4.2m	£3.9m	£3.7m	£3.5m	£3.4m	£3.2m	£3.0m
High	£6.9m	£6.6m	£6.3m	£5.9m	£5.6m	£5.3m	£5.0m	£4.8m	£4.5m	£4.3m

124. Additionally, If the prescribed checks are too stringent then it could result in legitimate LPAs being rejected. This may result in donors having to submit a new LPA or make an

application to the Court of Protection for their attorney to be appointed as a deputy, at an additional cost of £371.

125. The government has also modelled the costs associated with different unit costs for identification checks. The range of potential unit costs have already been set out within Section E; this is subject to change dependant on the procurement process. The discounted costs of this option over the 10-year appraisal period are displayed in Table 10.

	24/25	25/26	26/27	27/28	28/29	29/30	30/31	31/32	32/33	33/34
Low	£0.2m	£0.2m	£0.2m	£0.2m	£0.2m	£0.2m	£0.2m	£0.2m	£0.2m	£0.2m
Central	£7.4m	£7.1m	£6.7m	£6.3m	£6.0m	£5.7m	£5.4m	£5.1m	£4.8m	£4.6m
High	£16.3m	£15.6m	£14.7m	£14.0m	£13.2m	£12.5m	£11.9m	£11.2m	£10.6m	£10.1m

F. Wider Impacts

Equalities

126. An equalities statement has been published in addition to this IA.

Better Regulation

127. This proposal is a Non-Qualifying Regulatory Provision as defined by the Small Business, Enterprise and Employment Act 2015 and will not score against the departments' business impact target.

Potential implications for trade

128. There is no significant impact on trade.

Family Impact Test

129. An assessment of the impact of these policies on family formation, relationships and functioning has been provided as part of the equalities statement. Overall, it is the ability to create an LPA that has an impact on families and not the specific changes to how it is made and registered. Therefore, the new policy has a limited impact on families.
130. However, where there are impacts from this new policy, they are considered to be mainly positive, for example: reducing the stress on families by making it quicker and easier for donors to make an LPA and making it easier for families to support donors by improving the "Use an LPA" service.
131. Where areas of concern are identified, the family impact test outlines the mitigations that are being put in place. For example: to mitigate the risk of the Office of the Public Guardian receiving unevidenced objections, the Office of the Public Guardian will utilise its triage team to determine what objections would need further investigation. This will give families the added confidence that their loved ones are being protected as frivolous objections would be sifted out the objection process.
132. Allowing Chartered Legal Executives to certify copies of powers of attorney poses no impact on family connections or their relationships. This is because changes are to an administrative process that does not affect the contents of the power of attorney.

H. Monitoring and Evaluation

133. The impact of this legislative change will be monitored on an ongoing basis, as evidence becomes available. In meeting its obligations to the government service standards⁴, OPG will measure and publish three key metrics on digital take up, user satisfaction and cost per transition. Additionally, as outlined above, the government will be monitoring the uptake of the service and if this does not meet target, will consider further action to address this.

⁴ <https://www.gov.uk/service-manual/service-standard>