

# Powers of Attorney Bill

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[AS INTRODUCED]

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# B I L L

TO

Make provision about Lasting Powers of Attorney; to place duties on banks in respect of Lasting Powers of Attorney; to make provision about the powers of the Office of the Public Guardian to investigate the actions of an attorney; to require the Secretary of State to review the effectiveness of the powers of the Office of the Public Guardian to investigate the actions of an attorney and of its use of those powers; to make provision about the duties of care homes in respect of Lasting Powers of Attorney; to require an attorney to notify the Office of the Public Guardian of the death of a donor; to require the Office of the Public Guardian to take steps to promote the facility to request a search of its registers of powers of attorney; and for connected purposes.

**B**E 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:—

## **1 Duties of banks in respect of Lasting Powers of Attorney**

- (1) If a relevant financial institution to which this section applies has reasonable grounds to believe that an attorney (or attorneys if there is more than one) registered as a donee under section 10 (appointment of a donees) of the Mental Capacity Act 2005— 5
- (a) has behaved or is suspected of planning to behave in a way that goes against their fiducial duties or is not in the donor's best interests, or
- (b) is suspected of potential misuse, negligence or fraud in respect of money held in a donor's account,
- it must notify the Public Guardian as soon as practicable after detecting concerns that an attorney may be abusing their position. 10
- (2) The Secretary of State may by regulations make provision about the information to be included in a notification and timescale for reporting to the Public Guardian.
- (3) Regulations under subsection (2)— 15
- (a) may provide that the institution which includes information in a notification in accordance with the regulations does not breach any obligation of confidence owed by the institution in relation to the provision of that information where there is a public interest for said disclosure; 20

- (b) may not require or authorise the inclusion of information which contravenes any other restriction on the disclosure of information (however imposed).
- (4) A relevant financial institution means —
  - (a) a bank, which means an authorised deposit-taker, other than a building society, that has its head office or a branch in the United Kingdom. 5
  - (b) a building society, which has the same meaning as in the Building Societies Act 1986.
  - (c) an electronic money institution, or
  - (d) a payment institution. 10

## 2 Powers of the Public Guardian in relation to investigations

- (1) This section applies if the Public Guardian —
  - (a) has reasonable grounds for suspecting that money held in an account maintained with a relevant financial institution in the donor's name is not being used by an attorney (or attorneys if there is more than one) in the best interests of the donor, and 15
  - (b) is investigating the actions of that attorney or attorneys.
- (2) Under this section the Public Guardian may apply to the relevant court for an account freezing order in relation to the account in which the money is held. 20
- (3) A judge may, on an application made to him by the Public Guardian, make an account freezing order if he is satisfied that —
  - (a) the application is sought for the purposes of an investigation; and
  - (b) a person or persons specified in the application, who are registered donees, are behaving or planning to behave, in a way that goes against their fiduciary duties or is not in the donor's best interests. 25
- (4) For the purposes of this section —
  - (a) an account freezing order is an order that prohibits each person by or for whom the account to which the order applies is operated from making withdrawals or payments from the account; 30
  - (b) an account is operated by or for a person if the person is an account holder or a signatory or identified as a beneficiary in relation to the account.
- (5) An application for an account freezing order may be made without notice if the circumstances of the case are such that notice of the application would prejudice the taking of any steps under this section to prevent money intended by any person for use in unlawful conduct from being so used. 35
- (6) The power to vary an account freezing order includes (amongst other things) power to make exclusions from the prohibition on making withdrawals or payments from the account to which the order applies. 40
- (7) Exclusions from the prohibition may also be made when the order is made.

- (8) An exclusion may (amongst other things) make provision for the purpose of enabling a person by or for whom the account is operated to meet the donor's reasonable living expenses.
- (9) An exclusion order must not be made for the purpose of enabling a person to meet legal expenses that the person has incurred, or may incur, in respect of proceedings relating to an investigation. 5
- (10) An exclusion may be made subject to conditions.
- (11) The application for an account freezing order may relate to –
  - (a) all accounts held by the person specified in the application for the order at the financial institution so specified, 10
  - (b) a particular description, or particular descriptions, of accounts so held, or
  - (c) a particular account, or particular accounts, so held.
- (12) A relevant financial institution means –
  - (a) a bank, which means an authorised deposit-taker, other than a building society, that has its head office or a branch in the United Kingdom. 15
  - (b) a building society, which has the same meaning as in the Building Societies Act 1986.
  - (c) an electronic money institution, or
  - (d) a payment institution. 20

### **3 Review: effectiveness of the powers of the Office of the Public Guardian**

- (2) The Secretary of State must, within three months of the passing of this Act, appoint an independent person (“the independent person”) to carry out a review of the regulation of the effectiveness of the powers of the Office of the Public Guardian to investigate the actions of attorneys (“the review”). 25
- (3) The review must consider –
  - (a) whether the existing powers of the Office of the Public Guardian are sufficient to enable it to carry out its duties,
  - (b) whether the Office of the Public Guardian is using its powers effectively to safeguard donors, 30
  - (c) whether there is a need for any change to the powers of the Office of the Public Guardian.
- (4) The independent person must prepare a report of the review and provide a copy of that report to the Secretary of State.
- (5) The report under subsection (3) may contain recommendations for such changes to the law or to government policy as the independent reviewer considers appropriate. 35
- (6) The Secretary of State must lay before Parliament a copy of the report before Parliament as soon as is reasonably practicable after receipt.

#### **4 Duties of care homes in respect of Lasting Powers of Attorney**

- (1) *The Public Guardian must establish and maintain a register containing such information as appears to the Public Guardian to be necessary to protect persons whose primary residence is a care home who have –*
  - (a) *made, and* 5
  - (b) *registered**a lasting power of attorney.*
- (2) *Under this section a registered person or manager in a care home establishment must give notice in writing to the Public Guardian, as soon as it is reasonably practicable to do so, if, to their knowledge, any of the following events takes place relating to persons whose primary residence is that home –*
  - (a) *a resident makes or registers a lasting power of attorney;*
  - (b) *a new resident arrives with a registered lasting power of attorney;*
  - (c) *a proposed change in the name or address of a person in a care home with a registered lasting power of attorney;* 15
  - (d) *the death of a person in a care home with a registered lasting power of attorney.*
- (3) *Following a notification under subsection (2) the Public Guardian must carry out a review to confirm there is no reason to suspect a person has been put under undue influence, manipulated or forced into granting a power of attorney against their will.* 20
- (4) *For the purposes of this Act, a care home establishment in England and Wales is a care home if it provides accommodation, together with nursing or personal care, for any of the following persons –*
  - (a) *persons who are or have been ill;*
  - (b) *persons who have or have had a mental disorder;* 25
  - (c) *persons who are disabled or infirm; or*
  - (d) *persons who are or have been dependent on alcohol or drugs.*
- (5) *For the purpose of this section –*
  - “registered manager” in relation to a care home, means a person who is registered as the manager of the care home;* 30
  - “registered person” in relation to a care home, means any person who is the registered provider or registered manager in respect of the care home.*

#### **5 Requirement for the Public Guardian to notify a donor’s General Practitioner**

- (1) *Schedule 1 to the Mental Capacity Act 2005 is amended as follows –*
- (2) *In paragraph 15, after sub-paragraph (b) insert –* 35
  - “(c) the donor’s general practitioner.*
  - (2) The notification to a general practitioner in sub-paragraph (c) must set out the grounds and process for registering an objection to the registration of a lasting power of attorney.”*

**6 Requirement for Attorneys to notify a death of a donor**

(1) Schedule 1 to the Mental Capacity Act 2005 is amended as follows—

(2) At the end of paragraph 23, insert—

*“Death of a donor*

23A In the event of the death of a donor, it is the duty of a registered donee (or donees if there is more than one) to notify the Public Guardian, as soon as is practicable, of the death and the date of death of a donor.”

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**7 Requirement for Public Guardian to take steps to promote search facility**

(1) The Mental Capacity Act 2005 is amended as follows.

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(2) In section 58(1) (functions of the Public Guardian), after paragraph (i) insert—

“(j) promoting and publishing public information to ensure public awareness of how individuals may apply to the Public Guardian to establish whether a person has applied for or registered a lasting power of attorney.”

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**8 Extent, commencement and short title**

(1) This Act extends to England and Wales.

(2) This section comes into force on the day on which this Act is passed.

(3) 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.

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(4) The regulations—

(a) may make transitional, transitory or saving provision, and

(b) may make different provision for different purposes.

(5) This Act may be cited as the Powers of Attorney Act 2025.

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*Presented by Fabian Hamilton  
supported by Bambos Charalambous, Mark Sowards,  
Paula Barker, Layla Moran, Tim Roca, Chris Law,  
Alex Sobel, Yuan Yang and Andrew George.*

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