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STATUTORY INSTRUMENTS

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**2007 No. 2051**

**MENTAL CAPACITY, ENGLAND AND WALES**

**The Public Guardian (Fees, etc) Regulations 2007**

<i>Made</i>	- - - -	<i>26th June 2007</i>
<i>Laid before Parliament</i>		<i>19th July 2007</i>
<i>Coming into force</i>	- -	<i>1st October 2007</i>

The Lord Chancellor makes the following Regulations in exercise of the powers conferred by section 58(3) and (4) and 65(1)(b) of the Mental Capacity Act 2005<sup>(1)</sup>:

**Citation and commencement**

1. These Regulations may be cited as the Public Guardian (Fees, etc) Regulations 2007 and shall come into force on 1 October 2007.

**Interpretation**

2. In these Regulations—

“the Act” means the Mental Capacity Act 2005;

“court” means the Court of Protection;

“P” means the person in respect of whom a deputy has been appointed under section 16 of the Act; and

“Public Guardian” means the officer appointed in accordance with section 57 of the Act;

“the registers” means—

- (a) the register of lasting powers of attorney,
- (b) the register of enduring powers of attorney, and
- (c) the register of court orders appointing deputies,

established and maintained by the Public Guardian under section 58(1)(a) and (b) of and paragraph 14 of Schedule 4 to the Act.

### **Schedule of fees**

3. The fees set out in the Schedule to these Regulations shall apply in accordance with the following provisions of these Regulations.

#### **Enduring power of attorney registration fee**

4.—(1) A fee for the registration of an enduring power of attorney shall be payable by the person seeking to register the enduring power of attorney under regulation 24 of the Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007<sup>(2)</sup> (application for registration).

(2) The fee prescribed by paragraph (1) shall be payable upon the application to register the enduring power of attorney.

#### **Lasting power of attorney registration fee**

5.—(1) A fee for the registration of a lasting power of attorney shall be payable by the person seeking to register the lasting power of attorney under regulation 11 of the Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007 (application for registration).

(2) The fee prescribed by paragraph (1) shall be payable upon the application to register the lasting power of attorney.

#### **Application to search the registers fee**

6.—(1) A fee for an application to search the registers made under regulation 31 of the Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007 (disclosure of information on a register: search by the Public Guardian) shall be payable by the person making the application.

(2) The fee prescribed by paragraph (1) shall be payable upon the application to search the registers.

(3) The fee prescribed by paragraph (1) shall not be payable where the person making the application is a:

- (a) registered health care professional; or
- (b) a representative of a public authority.

(4) In paragraph (3) “registered health care professional” means a person who is a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002<sup>(3)</sup>.

#### **Appointment of deputy fee**

7.—(1) This regulation applies where—

- (a) the court has appointed a deputy under section 16 of the Act (powers to make decisions and appoint deputies: general); or
- (b) an existing receiver is treated as if he were a deputy appointed by the court under paragraph 1(2)(a) of Schedule 5 to the Act.

(2) Where paragraph (1) applies a fee shall be payable by P.

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(2) [S.I. 2007/1253](#).

(3) [2002 c.17](#).

(3) The fee prescribed by paragraph (2) shall be payable by P within 30 days of the date of the invoice for the fee.

### **Appointment of deputy: supervision fees**

8.—(1) This regulation applies where—

- (a) the court has appointed a deputy under section 16 of the Act (powers to make decisions and appoint deputies: general); or
- (b) an existing receiver is treated as if he were a deputy appointed by the court under paragraph 1(2)(a) of Schedule 5 to the Act.

(2) Where paragraph (1) applies the Public Guardian shall determine the level of supervision required under section 58(1)(c) of the Act.

(3) The levels of supervision are—

- (a) type I (highest);
- (b) type II (lower); and
- (c) type III (minimal).

(4) Where the level of supervision determined by the Public Guardian in accordance with paragraph (2) is type I (highest) or type II (lower) an annual supervision fee shall be payable by P until the appointment of the deputy is terminated.

(5) Subject to paragraphs (6) and (7), the appropriate supervision fee prescribed by paragraph (2) shall be due on 31 March each year and shall be payable by P within 30 days of the date of the invoice for the fee.

(6) Where the period for which the fee prescribed by paragraph (4) is payable is less than one year, the amount of the fee payable shall be such proportion of the full fee as that period bears to one year.

(7) Where the deputy's appointment terminates, the appropriate fee prescribed by paragraph (4) shall be due on the date of termination and shall be payable within 30 days of the date of the invoice for the fee.

(8) In the event of termination of the appointment due to P's death, the appropriate fee prescribed by paragraph (2) shall be payable by P's estate.

### **Exemptions**

9.—(1) Subject to paragraph (2) no fee shall be payable under these regulations when, at the time when the fee would otherwise become payable, the relevant person is in receipt of any qualifying benefit.

(2) Paragraph (1) does not apply to a person who has an award of damages in excess of £16,000 which has been disregarded for the purposes of determining eligibility for that benefit.

(3) For the purposes of regulation 4 the relevant person is the donor of the enduring power of attorney.

(4) For the purposes of regulation 5 the relevant person is the donor of the lasting power of attorney.

(5) For the purposes of regulation 6 the relevant person is the person making the application.

(6) For the purposes of regulations 7 and 8 the relevant person is P.

(7) The following are qualifying benefits for the purposes of paragraph (1)—

- (a) income support under the Social Security Contributions and Benefits Act 1992(4);

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(4) 1992 c.4.

- (b) working tax credit, provided that—
- (i) child tax credit is being paid to the relevant person, or to a couple (as defined in section 3(5)(A) of the Tax Credits Act 2002<sup>(5)</sup>) which includes the relevant person; or
  - (ii) there is a disability element or severe disability element (or both) to the child tax credit received by the relevant person;
- (c) income-based job-seeker’s allowance under the Jobseekers Act 1995<sup>(6)</sup>;
- (d) guarantee credit under the State Pensions Credit Act 2002<sup>(7)</sup>;
- (e) council tax benefit under the Social Security Contributions and Benefits Act 1992; and
- (f) housing benefit under the Social Security Contributions and Benefits Act 1992.

### **Reductions and remissions in exceptional circumstances**

**10.** Where it appears to the Public Guardian that the payment of any fee prescribed by these Regulations would, owing to the exceptional circumstances of the particular case, involve undue hardship, he may reduce or remit the fee in that case.

### **Transitional provision**

**11.**—(1) In respect of the administration fee that would have been payable under rule 78 of the Court of Protection Rules 2001<sup>(8)</sup> on 31 March 2008, the appropriate proportion of that fee shall be due on 30 September 2007 and shall be payable within 30 days of the date of the invoice for the fee.

(2) Where the period for which the fee prescribed by paragraph (1) is payable is less than six months, the amount of the fee payable shall be such proportion of that fee as that period bears to six months.

### **Amendment to Schedule 7 of the Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007**

**12.**—(1) Schedule 7 of the Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007 is amended as follows.

(2) For paragraph 1 of Form EP1PG substitute “You have the right to object to the proposed registration on one or more of the grounds set out below. You must notify the Office of the Public Guardian of your objection within five weeks from the day this notice was given to you. You may make an application to the Court of Protection under rule 68 of the Court of Protection Rules 2007<sup>(9)</sup> for a decision on the matter. No fee is payable for such an application. If you do not make such an application, the Public Guardian will ask for the court’s directions about registration.”

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(5) 2002 c.21.

(6) 1995 c.18.

(7) 2002 c.16.

(8) S.I. 2001/824, amended by S.I. 2002/833, 2004/1291 and 2006/653; there are other amending instruments but none is relevant.

(9) S.I. 2007/1744.

Signed by authority of the Lord Chancellor

26th June 2007

*Catherine Ashton*  
Parliamentary Under-Secretary of State  
Ministry of Justice

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

## SCHEDULE

Regulation 3

## FEES TO BE TAKEN

<i>Column 1</i>	<i>Column 2</i>
<b>Enduring power of attorney registration (regulation 4)</b>	£120.00
<b>Lasting power of attorney registration (regulation 5)</b>	£150.00
<b>Application to search the registers (regulation 6)</b>	£25.00
<b>Appointment of deputy (regulation 7)</b>	£125.00
<b>Type I (highest) supervision (regulation 8)</b>	£800.00 per annum
<b>Type II (lower) supervision (regulation 8)</b>	£175.00 per annum
<b>Type III (minimal) supervision (regulation 8)</b>	No fee

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations provide for fees to be charged in connection with the functions carried out by Public Guardian under the Mental Capacity Act 2005 (c.9) (“the Act”).

Regulation 8 provides that where the Court of Protection has appointed a deputy under section 16 of the Act the Public Guardian must determine the level of supervision required by section 58(1) (c) of the Act and the level of fee is payable accordingly. The three levels of supervision are type I (highest), type II (lower) and type III (minimal).

Regulation 12 makes an amendment to Form EP1G (Notice of Intention to Apply for Registration of an Enduring Power of Attorney) which forms Schedule 7 of the Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007 (S.I. 2007/1253).