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STATUTORY INSTRUMENTS

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**2007 No. 1253**

**The Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007**

**PART 4**

**FUNCTIONS OF THE PUBLIC GUARDIAN**

*Security for discharge of functions*

**Persons required to give security for the discharge of their functions**

**33.**—(1) This regulation applies in any case where the court orders a person (“S”) to give to the Public Guardian security for the discharge of his functions.

(2) The security must be given by S—

- (a) by means of a bond which is entered into in accordance with regulation 34; or
- (b) in such other manner as the court may direct.

(3) For the purposes of paragraph (2)(a), S complies with the requirement to give the security only if—

- (a) the endorsement required by regulation 34(2) has been provided; and
- (b) the person who provided it has notified the Public Guardian of that fact.

(4) For the purposes of paragraph (2)(b), S complies with the requirement to give the security—

- (a) in any case where the court directs that any other endorsement must be provided, only if—
  - (i) that endorsement has been provided; and
  - (ii) the person who provided it has notified the Public Guardian of that fact;
- (b) in any case where the court directs that any other requirements must be met in relation to the giving of the security, only if the Public Guardian is satisfied that those other requirements have been met.

**Security given under regulation 33(2)(a): requirement for endorsement**

**34.**—(1) This regulation has effect for the purposes of regulation 33(2)(a).

(2) A bond is entered into in accordance with this regulation only if it is endorsed by—

- (a) an authorised insurance company; or
- (b) an authorised deposit-taker.

(3) A person may enter into the bond under—

- (a) arrangements made by the Public Guardian; or
- (b) other arrangements which are made by the person entering into the bond or on his behalf.

(4) The Public Guardian may make arrangements with any person specified in paragraph (2) with a view to facilitating the provision by them of bonds which persons required to give security to the Public Guardian may enter into.

(5) In this regulation—

“authorised insurance company” means—

- (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000<sup>M1</sup> to effect or carry out contracts of insurance;
- (b) <sup>F1</sup> ...
- (c) a person who carries on insurance market activity (within the meaning given in section 316(3) of that Act); and

“authorised deposit-taker” means—

- (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits;
- (b) <sup>F2</sup> ...

(6) The definitions of “authorised insurance company” and “authorised deposit-taker” must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order<sup>M2</sup> under that section; and
- (c) Schedule 2 to that Act.

#### Textual Amendments

- F1** Words in [reg. 34\(5\)](#) omitted (31.12.2020) by virtue of [The EEA Passport Rights \(Amendment, etc., and Transitional Provisions\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1149\)](#), [reg. 1\(3\)](#), [Sch. para. 53\(a\)](#) (with [reg. 4](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)
- F2** Words in [reg. 34\(5\)](#) omitted (31.12.2020) by virtue of [The EEA Passport Rights \(Amendment, etc., and Transitional Provisions\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1149\)](#), [reg. 1\(3\)](#), [Sch. para. 53\(b\)](#) (with [reg. 4](#)); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

#### Marginal Citations

- M1** 2000 c.8.
- M2** [S.I. 2001/544](#), as amended by [S.I. 2001/3544](#), 2002/682, 1310, 1776 and 1777, 2003/1475, 1476 and 2822, 2004/1610 and 2737, 2005/593, 1518 and 2967 and 2006/1969, 2383 and 3221.

### Security given under regulation 33(2)(a): maintenance or replacement

**35.**—(1) This regulation applies to any security given under regulation 33(2)(a).

(2) At such times or at such intervals as the Public Guardian may direct by notice in writing, any person (“S”) who has given the security must satisfy the Public Guardian that any premiums payable in respect of it have been paid.

(3) Where S proposes to replace a security already given by him, the new security is not to be regarded as having been given until the Public Guardian is satisfied that—

- (a) the requirements set out in sub-paragraphs (a) and (b) of regulation 33(3) have been met in relation to it; and
- (b) no payment is due from S in connection with the discharge of his functions.

[<sup>F3</sup>(4) The Public Guardian must, if satisfied as to the matters in paragraph (3), provide written notice of that fact to S within 2 weeks of being given notification in accordance with regulation 33(3) (b) in relation to the new security.]

#### Textual Amendments

**F3** Reg. 35(4) inserted (1.4.2013) by [The Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian \(Amendment\) Regulations 2013 \(S.I. 2013/506\)](#), regs. 1, 7

#### Enforcement following court order of any endorsed security

**36.**—(1) This regulation applies to any security given to the Public Guardian in respect of which an endorsement has been provided.

- (2) Where the court orders the enforcement of the security, the Public Guardian must—
- (a) notify any person who endorsed the security of the contents of the order; and
  - (b) notify the court when payment has been made of the amount secured.

#### Discharge of any endorsed security

**37.**—(1) This regulation applies to any security given by a person (“S”) to the Public Guardian in respect of which an endorsement has been provided.

(2) The security may be discharged if the court makes an order discharging it.

[<sup>F4</sup>(3) Otherwise the security may not be discharged—

- (a) if the person on whose behalf S was appointed to act dies, until the end of the period of 2 years beginning on the date of his death; <sup>F5</sup>...

[<sup>F6</sup>(aa) if, in respect of the person on whose behalf S was appointed to act, the court makes a declaration of presumed death under section 2(1) of the Presumption of Death Act 2013, until the end of the period of 2 years beginning on the date the court makes the declaration of presumed death; or]

- (b) in any other case, until the end of the period of 7 years beginning on whichever of the following dates first occurs—
  - (i) if S dies, the date of his death;
  - (ii) if the court makes an order which discharges S but which does not also discharge the security under paragraph (2), the date of the order;
  - (iii) the date when S otherwise ceases to be under a duty to discharge the functions in respect of which he was ordered to give security.]

[<sup>F7</sup>(3A) Where S has replaced a security (“the original security”) previously given by S and the Public Guardian has provided notice in accordance with regulation 35(4), the original security shall stand discharged 2 years from the date on which that notice was issued unless discharged by earlier order of the court upon application under paragraph (2)].

(4) For the purposes of paragraph (3), if a person takes any step with a view to discharging the security before the end of the period specified in that paragraph, the security is to be treated for all purposes as if it were still in place.

[<sup>F8</sup>(5) For the purposes of paragraph (3A), if a person takes any step otherwise than under paragraph (2) with a view to discharging the original security before the end of the period specified in paragraph (3A), the security is to be treated for all purposes as if it were still in place.]

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**Changes to legislation:** There are currently no known outstanding effects for the The Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007,  
Cross Heading: Security for discharge of functions. (See end of Document for details)

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[<sup>F9</sup>(6) For the purposes of paragraph (3)(aa), “the court” means the High Court.]

**Textual Amendments**

- F4** Reg. 37(3) substituted (1.5.2010) by The Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian (Amendment) Regulations 2010 (S.I. 2010/1063), regs. 1, 4 (with reg. 8)
- F5** Word in reg. 37(3)(a) omitted (31.7.2019) by virtue of The Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian (Amendment) Regulations 2019 (S.I. 2019/1030), regs. 1, 6(a)
- F6** Reg. 37(3)(aa) inserted (31.7.2019) by The Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian (Amendment) Regulations 2019 (S.I. 2019/1030), regs. 1, 6(b)
- F7** Reg. 37(3A) inserted (1.4.2013) by The Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian (Amendment) Regulations 2013 (S.I. 2013/506), regs. 1, 8(a) (with reg. 13(3))
- F8** Reg. 37(5) inserted (1.4.2013) by The Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian (Amendment) Regulations 2013 (S.I. 2013/506), regs. 1, 8(b) (with reg. 13(3))
- F9** Reg. 37(6) inserted (31.7.2019) by The Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian (Amendment) Regulations 2019 (S.I. 2019/1030), regs. 1, 6(c)

**Changes to legislation:**

There are currently no known outstanding effects for the The Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007, Cross Heading: Security for discharge of functions.