
STATUTORY INSTRUMENTS

2011 No. 2189

MENTAL CAPACITY, ENGLAND AND WALES

**The Public Guardian (Fees, etc.)
(Amendment) Regulations 2011**

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| <i>Made</i> | - - - - | <i>5th September 2011</i> |
| <i>Laid before Parliament</i> | | <i>6th September 2011</i> |
| <i>Coming into force</i> | - - | <i>1st October 2011</i> |

The Lord Chancellor makes these Regulations in exercise of the powers conferred by sections 58(3) and (4), 64(1) and 65(1) of, and Schedule 1 to, the Mental Capacity Act 2005⁽¹⁾.

Citation and commencement

1. These Regulations may be cited as the Public Guardian (Fees, etc.) (Amendment) Regulations 2011 and come into force on 1st October 2011.

Amendment of the Public Guardian (Fees, etc.) Regulations 2007

2. The Public Guardian (Fees, etc.) Regulations 2007⁽²⁾ are amended as follows.

3. In regulation 4 (enduring power of attorney registration fee) for the heading substitute “Fee for application to register an enduring power of attorney”.

4. In regulation 5 (lasting power of attorney registration fee)—

(a) for the heading substitute “Fees for application to register a lasting power of attorney and repeat application to register”;

(b) after paragraph (1) insert—

“(1A) A reduced fee for an application to register a lasting power of attorney shall be payable where the application is a repeat application in the following circumstances—

(a) the initial application to register a lasting power of attorney is made on or after 1st October 2011;

(b) the initial application is returned to the applicant as invalid; and

(1) 2005 c. 9.

(2) S.I. 2007/2051, amended by S.I. 2009/514 and S.I. 2010/1062. There are no other relevant amending instruments.

- (c) the repeat application to register is submitted within 3 months of the date on which the invalid application was returned to the applicant.”; and
- (c) for paragraph (2) substitute—
 - “(2) The fee prescribed by—
 - (a) paragraph (1) shall be payable upon the application to register the lasting power of attorney; and
 - (b) paragraph (1A) shall be payable upon the submission of the repeat application to register.”.
- 5. Omit regulation 6 (application to search the registers fee).
- 6. Omit regulation 7 (appointment of deputy fee).
- 7. In regulation 8 (appointment of deputy: supervision fees)—
 - (a) for the heading substitute “Appointment of deputy: assessment and supervision fees”;
 - (b) in paragraph (2), for “determine” substitute “assess”;
 - (c) in paragraph (3)—
 - (i) in sub-paragraph (a), for “type I (highest);” substitute “general; and”;
 - (ii) omit sub-paragraph (aa);
 - (iii) in sub-paragraph (b), for “type II (lower); and” substitute “minimal.”; and
 - (iv) omit sub-paragraph (c);
 - (d) after paragraph (3) insert—
 - “(3A) Where the Public Guardian makes an assessment in accordance with paragraph (2) a fee shall be payable by P within 30 days of the date of the invoice for the fee.”;
 - (e) for paragraph (4) substitute—
 - “(4) Where the level of supervision assessed by the Public Guardian in accordance with paragraph (2) is—
 - (a) “general”, an annual supervision fee shall be payable by P until the appointment of the deputy is terminated; and
 - (b) “minimal”, an annual administration fee shall be payable by P until the appointment of the deputy is terminated.”;
 - (f) in paragraph (5), for “paragraph (2)” substitute “paragraph (4)”;
 - (g) in paragraph (8), for “paragraph (2)” substitute “paragraphs (3A) and (4)”.
- 8. In regulation 9 (exemptions)—
 - (a) in paragraph (1), for “paragraph (2)” substitute “paragraphs (2) and (2A)”;
 - (b) after paragraph (2) insert—
 - “(2A) Paragraph (1) does not apply to the office copy fees prescribed by regulations 4A and 5A.”.
- 9. In regulation 10 (reductions and remissions in exceptional circumstances), in paragraph (2), after “deputy:” insert “assessment and”.
- 10. In the Schedule (fees to be taken)—
 - (a) for the entry for enduring power of attorney registration, substitute in column 1 “Fee for application to register an enduring power of attorney (regulation 4)” and in column 2 “£130.00”;

- (b) for the entry for lasting power of attorney registration, substitute in column 1 “Fee for application to register a lasting power of attorney (regulation 5)” and in column 2 “£130.00”;
- (c) after the entry for fee for application to register a lasting power of attorney, insert in column 1 “Reduced fee for repeat application to register a lasting power of attorney (regulation 5)” and in column 2 “£65.00”;
- (d) in the entry for lasting power of attorney office copy fee, in column 2 for “£25.00” substitute “£35.00”;
- (e) omit the entry for application to search the registers;
- (f) for the entry for appointment of deputy, substitute in column 1 “Deputy assessment fee (regulation 8)”;
- (g) for the entry for type I (highest) supervision, substitute in column 1 “general supervision (regulation 8)” and in column 2 “£320.00”;
- (h) omit the entry for type IIA (intermediate) supervision;
- (i) in the entry for type II (lower) supervision, substitute in column 1 “minimal supervision (regulation 8)” and in column 2 “£35.00”; and
- (j) omit the entry for type III (minimal) supervision.

Amendment of the Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007

11. The Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007(3) are amended as follows.

12. In regulation 11 (application for registration), after paragraph (1) insert—

“(1A) Schedule 3A to these Regulations sets out the form (“LPA 002R”) which must be used for submitting an application to the Public Guardian for the registration of an instrument intended to create a lasting power of attorney where the application is a repeat application in the circumstances set out in paragraphs (1B) and (1C) and the reduced fee for such applications applies (“a reduced fee repeat application”).

(1B) A reduced fee repeat application may only be submitted where the initial application for the registration of a lasting power of attorney is—

- (a) made on or after 1st October 2011; and
- (b) returned to the applicant as invalid.

(1C) The reduced fee repeat application must be submitted for registration within three months of the date on which the initial application was subsequently returned to the applicant as invalid.”.

13. After Schedule 3 (application to register a lasting power of attorney: LPA 002) insert the Schedule to these Regulations.

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Signed by the authority of the Lord Chancellor

5th September 2011

J Djanogly
Parliamentary Under Secretary of State
Ministry of Justice

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SCHEDULE

Regulation 13

Schedule 3A

Repeat Application to Register a Lasting Power of Attorney: LPA 002R

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Repeat Application to register a Lasting Power of Attorney

| |
|------------|
| Issue date |
| |

This form allows you to submit a repeat application to register a Lasting Power of Attorney (LPA), where your original LPA was invalid. The information provided in this form will be added to the information in your original application and any information from your new LPA. Please refer to the guidance contained in OPG's letter for details on how to complete this form.

Donor's name:

Case number:

LPA type:

Name(s) of applicant(s):

Correspondence details:

Notification of people to be told (*please choose one*)

The donor did not specify any people to be told in the LPA

or

I/We have given notice to these people to be told on the following date(s):

| First name | Surname | Date Notice given |
|----------------------|----------------------|----------------------|
| <input type="text"/> | <input type="text"/> | <input type="text"/> |
| <input type="text"/> | <input type="text"/> | <input type="text"/> |
| <input type="text"/> | <input type="text"/> | <input type="text"/> |
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FEES

Please choose one of the following.

- A cheque has been enclosed with this application.
- I would like to pay the fee with a debit or credit card.

Please provide your number so we can telephone you to arrange payment:

- I/We have already applied for a remission or exemption of the fees.
- I/We would like to apply for a remission or exemption now, and have enclosed the appropriate form with evidence relating to the Donor's eligibility.

Applicant's declaration

I We

- apply to register the Lasting Power of Attorney (the original of which accompanies this application);
- certify that the above information is correct; and
- certify that to the best of my/our knowledge and belief, I/we have completed the application in accordance with the provisions of the *Mental Capacity Act 2005* and all statutory instruments made under it.

Signed

Date

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Public Guardian (Fees, etc) 2007 Regulations by—

- amending the title for the fees payable under regulations 4 and 5 to reflect their being payable for the “application” of the specified instruments (regulations 3 and 4(a));
- introducing a reduced fee for repeat application where an application for registration of a lasting power of attorney is made on or after 1st October 2011 and subsequently rejected as invalid and the applicant submits a repeat application within the specified time limit (regulation 4);
- removing the fee for search of the registers of the Office of the Public Guardian (regulation 5);
- removing regulation 7 and the fee for appointment of a Deputy and substituting for that fee one for assessing the level of supervision and making consequential amendments (regulations 6, 7(a), (b), (d) and (g) and 9);
- removing the reference to the current “Types” of supervision levels and making provision for two categories of supervision and supervision fees including consequential amendments (regulation 7(c), (e), (f) and (g));
- providing that there can be no exemptions in relation to an office copy fee (regulation 8);
- increasing the fees for an application to register an enduring power of attorney and a lasting power of attorney (from £120 to £130) (regulation 10(a) and (b)); introducing a reduced repeat application fee of £65.00 to register a lasting power of attorney (regulation 10(c)); increasing the fee for an office copy of a lasting power of attorney from £25 to £35.00 (regulation 10(d)); removing the fee for searching the registers of the Office of the Public Guardian (regulation 10(e)); substituting the fee for appointment of a Deputy with a fee for assessing the supervision level of a Deputy (regulation 10(f)); removing the reference to type I (highest), type IIA (intermediate) and type II (lower) levels of supervision including the associated fees and introducing a new “general” level of supervision fee of £320.00 (regulation 10(g), (h) and (i)) and introducing a new “minimal” level of supervision fee of £35.00 and removing the reference to type III (minimal) level of supervision including the associated fee (regulation 10(i) and (j)).

These Regulations also amend the Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007 by introducing a new form “LPA 002R” which must be used when submitting a repeat application to register a lasting power of attorney where the initial application was returned as invalid (regulations 11 to 13 and the Schedule to these Regulations).