

EXPLANATORY MEMORANDUM TO
MENTAL CAPACITY, ENGLAND AND WALES
PUBLIC GUARDIAN (FEES ETC) (AMENDMENT) REGULATIONS 2013

2013 No. 1748

- 1.** 1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The Public Guardian (Fees etc) (Amendment) Regulations 2013 make provision (by amending the Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007 – “the 2007 Regulations”) to permit the Public Guardian to remit or reduce fees prescribed by the 2007 regulations where a relevant person is in receipt of universal credit, to reduce the registration fees in respect of Lasting and Enduring Powers of Attorney and to reduce the resubmission fee in respect of Lasting Powers of Attorney.

3. Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Legislative Context

- 4.1 Section 58(3) and (4) of the Mental Capacity Act 2005 (“the Act”) confers power on the Lord Chancellor to make regulations in connection with the discharge by the Public Guardian of the latter’s functions under that Act. This includes power to make provision regarding the fees which the Public Guardian may charge, and regarding exemptions from, reductions in and remissions of such fees.

- 4.2 Regulations 4 and 5 of the 2007 Regulations provide for the fees payable upon an application to register an Enduring Power of Attorney, a Lasting Power of Attorney or on resubmission of an application for registration of the latter.

- 4.3 Regulation 10 of the 2007 Regulations allows the Public Guardian to reduce or remit fees.

5. Territorial Extent and Application

- 5.1. This instrument applies to England and Wales.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Act enables individuals to make a Lasting Power of Attorney (LPA) to give someone authority to make decisions relating to either their property and affairs or their personal health and welfare, were they to lack capacity at sometime in the future.

7.2 The Public Guardian maintains a register of LPAs and EPAs, and supervises court appointed deputies. This is part of his or her statutory obligation to ensure that those appointed to act in the best interests of those who lack capacity discharge their duties properly and without abuse,

7.3 The OPG operates on a full cost recovery basis and its fees must cover the costs associated with service delivery and the cost of any upgrades and developments in information technology, processes and capacity. In October 2011, the OPG raised the LPA/EPA registration fees from £120 to £130 specifically to fund a transformation in its operating model and to implement a new IT system to support their 'digital by default' policy. This increase was temporary and it was intended to return the fee to the original level by October 2013.

7.4 The new fee for Power of Attorney applications is £110 per application and £55 for a resubmission, with effect from 1st October 2013. This means that the reduction will in fact take these fees *below* the original levels prior to October 2011.

7.5 The Public Guardian operates a system of fee exemption and remission. This is currently based on specific automatic exemptions based on the receipt of means tested welfare benefits (regulation 9 of the 2007 Regulations), with an additional power to remit for other cases in regulation 10 where exceptional hardship due to payment of a fee is demonstrated. With the phased introduction of Universal Credit under the Welfare Reform Act 2012, provision will need to be made to deal with applicants who would otherwise be liable for a fee but who may be in receipt of Universal Credit. As Universal Credit will not operate in the same way as other means tested benefits, and because not all recipients of Universal Credit will merit automatic exemption as a result, a new approach to dealing with applicants in receipt of Universal Credit will need to be developed.

7.6 The amendment to regulation 10 to include Universal Credit is therefore a temporary solution to allow the Public Guardian to remit the relevant fees in the case of those applicants in receipt of this benefit where appropriate whilst a permanent solution is identified for the treatment of Universal Credit cases, which it is hoped will be by way of regulation 9 exemption in a future amendment.

8. Consultation outcome

8.1 A Consultation Paper, *Office of the Public Guardian: Fees 2011/2012 (CP16/10)* was published on 28 February 2011 and invited responses up until 21 May 2011. This dealt with the 2011 fee increases.

8.2 A consultation for the proposed reduction in the fees was not considered necessary as we consider that this change, reducing fees below the original 2011 levels, will be widely welcomed by stakeholders

9. Guidance

9.1 Guidance is not being prepared specifically on this instrument. The OPG is preparing detailed communications for stakeholders.

10. Impact

10.1. An impact assessment has not been prepared for this instrument. The impact assessment for the consultation ‘Transforming the services of the Office of the Public Guardian’ can be found at: <https://consult.justice.gov.uk/digital-communications/transforming-services-opg/>

10.2. There is no impact on business, charities or voluntary bodies

10.3. There is no impact on the public sector.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Public Guardian’s transformation programme and its aspiration to deliver services digitally by default, is set to continue until 2015. To facilitate this, the Government will continue to review the Public Guardian’s operational process and how this is affected by legislation whether primary or secondary on an annual basis.

13. Contact

Joan Goulbourn, in the Family Policy Unit in the Ministry of Justice, 102 Petty France, London SW1H 9AJ Tel: 0203 334 3019 or email: joan.goulbourn@justice.gsi.gov.uk. can answer any queries regarding this instrument.