

# **2018-04**      **Lasting Powers of Attorney and Capacity**

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Subsidiary Legislation made under s.15.

## **Lasting Powers of Attorney (Registration) Regulations 2018**

**LN.2018/096**

*Commencement*                      **23.4.2018**

<i>Amending enactments</i>	<i>Relevant current provisions</i>	<i>Commencement date</i>
LN. 2018/207	Sch. 3	27.9.2018
LN. 2018/237	Sch. 3	1.11.2018

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**ARRANGEMENT OF REGULATIONS**

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*In exercise of the powers conferred upon him by section 15 of the Lasting Powers of Attorney and Capacity Act 2018, and all other enabling powers, the Minister has made the following Regulations—*

**Title.**

1. These Regulations may be cited as the Lasting Powers of Attorney (Registration) Regulations 2018.

**Commencement.**

2. These Regulations shall come into operation on the day of publication.

**Interpretation.**

3. In these Regulations—

“certified copy” means a photographic or other copy which is certified as an accurate copy by—

- (a) the donor; or
- (b) a barrister or solicitor approved, admitted and enrolled to practice in Gibraltar;

“court” means the Court of Protection;

“LPA” means a lasting power of attorney made in accordance with section 6 of the Act;

“the Register” means the LPA Register under the Act; and

“the Registrar” means the LPA Registrar appointed under section 4 of the Act.

**Applications for registration.**

4.(1) For the purposes of section 8(1) of the Act—

- (a) the application form shall be as set out in Part 1 of Schedule 1;
- (b) the prescribed fee shall be as set out in Schedule 3;

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- (c) the time period within which the applicant must file the LPA shall be 90 calendar days from the date of the LPA.

(2) For the purposes of section 10(1) of the Act the prescribed information shall be as set out in Part 2 of Schedule 1, being—

- (a) the information set out in Part 2(a) in relation to a Property and Financial LPA; and
- (b) the information set out in Part 2(b) in relation to a Health and Welfare LPA.

(3) Where the LPA to be registered, which is sent with the application is neither—

- (a) the original LPA; nor
- (b) a certified copy of it,

the Registrar must not register the LPA, unless the court directs him to do so.

### **Period to elapse before registration in cases not involving defect.**

5. Subject to regulation 7, (applications with a defect), the period within which the Registrar must register an LPA is the period of 30 calendar days beginning with—

- (a) the date on which the Registrar receives the application for registration; or
- (b) if a notice under regulation 7(2) is issued by the Registrar, the date on which the applicant complies with the requirements of that notice.

### **Receipt of application for registration.**

6. Upon receiving an LPA for registration, the Registrar shall issue a receipt stating the date and time of the application being submitted and the registration fee paid.

### **Applications with a defect.**

7.(1) If an application is not in order the Registrar may, if he considers it appropriate to do so—

- (a) contact the applicant to explain which provisions are defective; or

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- (b) make such other request of the applicant as appears necessary to comply with the Act and these Regulations,

specifying a period, (being not less than 14 days), within which the applicant must comply.

(2) Where a defect is identified, a notice in the form set out in Part 3 of Schedule 1, (or such other form as may be issued for such purpose by the Registrar with the approval of the Minister), shall be issued to the applicant by the Registrar.

(3) Any time elapsed between the making of a request by or on behalf of the Registrar under this regulation and compliance with the same by the applicant shall not count towards the time limit set out in regulation 5.

#### **Refusal of application.**

8.(1) Where the Registrar intends to refuse to register an LPA, he shall issue the applicant with a notice in writing stating that he is considering taking that decision and setting out—

- (a) the reasons for the refusal in accordance with section 8(4) of the Act; and
- (b) where appropriate, any defect in the application or document that requires rectification before the LPA is resubmitted for registration.

(2) After considering any representations made by the applicant, if the Registrar refuses to register the LPA, he shall issue the applicant with a notice in writing stating the reasons for his decision, in the form set out in Part 4 of Schedule 1, (or such other form as may be issued for such purpose by the Registrar with the approval of the Minister).

#### **Notice to be given on registration of an LPA.**

9. Where the Registrar registers an LPA, he must—

- (a) make or cause to be made the appropriate entry in the Register;
- (b) issue a certificate of registration in the form set out in Part 1 of Schedule 2 (or in such other form as may be issued for such purpose by the Registrar with the approval of the Minister);
- (c) retain a copy of the LPA; and

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- (d) notify the person(s) who applied for registration of the original LPA, or the certified copy of it, which accompanied the application for registration, to collect the same, from the offices of the Registrar.

#### **Retaining of copies.**

- 10. The Registrar shall retain copies of the LPAs that are registered.

#### **Form of Register.**

- 11. The Registrar shall keep the Register in the form determined by him to be the most appropriate to enable a record of LPAs to be maintained.

#### **Revocation by donor of LPA.**

- 12.(1) A donor who revokes an LPA must—

- (a) notify the Registrar that he has done so; and
- (b) notify the donee, (or, if more than one, each of them), of the revocation.

- (2) Where the Registrar receives a notice under subregulation (1)(a), he must cancel the registration of the LPA if he is satisfied that the donor has taken such steps as are necessary in law to revoke it.

- (3) The Registrar may require the donor to provide such further information, or produce such documents, as the Registrar reasonably considers necessary to enable him to determine whether the steps necessary for revocation have been taken.

#### **Revocation of LPA on death of donor.**

- 13 (1) The Registrar must cancel the registration of an LPA if he is satisfied that the power has been revoked as a result of the donor's death.

- (2) Where the Registrar cancels the registration of an LPA he must notify the donee or, if more than one, each of them.

#### **Fees.**

- 14. The fees to be taken by the Registrar shall be the fees set out in Schedule 3.

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**SCHEDULE 1**

**Regulation 4(1)(a)**

**PART 1**

**APPLICATION FORM FOR AN ENTRY IN THE REGISTER**

Applicant's Ref. ....

To the Registrar

Application on behalf of

.....

for the entry in the Register of an LPA of Type .....

(If applying to register two LPAs, you must complete a separate cover page for each LPA).

Type 1 - Property and Financial

Type 2 - Health and Welfare

Date of LPA .....

made by (name of donor) .....

Dated the ..... day of .....

Name and address of applicant .....

.....

.....

Signature of applicant or applicant's representative .....

Notes:

An application must be accompanied by–

1. An LPA of the type referred to above; and

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2. Payment of the registration fee.



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**Regulation 4(2)**

**PART 2(a)**

**PRESCRIBED INFORMATION**

**Lasting Power of Attorney – Property and Affairs**

You must read this information carefully to understand the purpose and legal consequences of making an LPA. Your donee(s) and certificate provider(s) should also read this.

A Lasting Power of Attorney (LPA) is a legal document that allows you to authorise someone (the donee(s)) to make decisions on your behalf. Your donee(s) can only use the LPA after it is registered at the LPA Register at the Supreme Court of Gibraltar.

Your donee(s) must follow the principles set out in sections 86 to 89 of the Mental Health Act 2016, which are:

- a person must be assumed to have capacity unless it is established that the person lacks capacity;
- a person is not to be treated as unable to make a decision unless all practicable steps to help the person to do so have been taken without success;
- a person is not to be treated as unable to make a decision merely because the person makes an unwise decision;
- an act done, or decision made, under the Lasting Powers of Attorney and Capacity Act 2018 for or on behalf of a person who lacks capacity must be done, or made, in the person's best interests; and
- before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

Your donee(s) also has a binding duty to have regard to the Code of Practice issued in accordance with section 16 of the Lasting Powers of Attorney and Capacity Act 2018.

**Before this LPA can be used** it must be registered at the LPA Register at the Supreme Court of Gibraltar.

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You can allow your donees to make decisions either:

- As soon as the LPA has been registered; or
- Only when you do not have mental capacity.

**Cancelling your LPA:** You can cancel this LPA at any time, as long as you have the mental capacity to do so. It does not matter if the LPA has been registered or not.

**Your Will and your LPA:** Your donee cannot use this LPA to change your Will (if you have one). This LPA will expire when you pass away. Your donee must then send the registered LPA, any certified copies and a copy of your death certificate to the Registrar.

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**PART 2(b)**

**PRESCRIBED INFORMATION**

**Lasting Power of Attorney – Health and Welfare**

You must read this information carefully to understand the purpose and legal consequences of making an LPA. Your donee(s) and certificate provider(s) should also read this.

A Lasting Power of Attorney (LPA) is a legal document that allows you to authorise someone (the donee(s)) to make decisions on your behalf. Your donee(s) can only use the LPA after it is registered at the LPA Register at the Supreme Court of Gibraltar.

Your donee(s) must follow the principles set out in sections 86 to 89 of the Mental Health Act 2016, which are:

- a person must be assumed to have capacity unless it is established that the person lacks capacity;
- a person is not to be treated as unable to make a decision unless all practicable steps to help the person to do so have been taken without success;
- a person is not to be treated as unable to make a decision merely because the person makes an unwise decision;
- an act done, or decision made, under the Lasting Powers of Attorney and Capacity Act 2018 for or on behalf of a person who lacks capacity must be done, or made, in the person's best interests; and
- before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

Your donee(s) also has a binding duty to have regard to the Code of Practice issued in accordance with section 16 of the Lasting Powers of Attorney and Capacity Act 2018.

**Before this LPA can be used** it must be registered at the LPA Register at the Supreme Court of Gibraltar.

**Your donee(s) can only use this LPA if you do not have mental capacity.**

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**Life-sustaining treatment:** You must choose whether your donee can give or refuse consent to life-sustaining treatment on your behalf. Life-sustaining treatment means care, surgery, medicine or other help from doctors that is required to keep you alive, for example:

- a serious operation, such as a heart bypass or organ transplant;
- cancer treatment; or
- artificial nutrition or hydration, (food or water given other than by mouth).

**Cancelling your LPA:** You can cancel this LPA at any time, as long as you have the mental capacity to do so. It does not matter if the LPA has been registered or not.

**Your Will and your LPA:** Your donee(s) cannot use this LPA to change your Will, (if you have one). This LPA will expire when you pass away. Your donee(s) must then send the registered LPA, any certified copies and a copy of your death certificate to the Registrar.

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PART 3

Regulation 7(2)

DEFECTS NOTICE

Pursuant to Regulation 7(2) of the Lasting Powers of Attorney (Registration) Regulations 2018, I hereby issue you with notice that your application dated the ..... day of ..... 20.... cannot be processed further for the following reasons:

.....  
.....  
.....  
.....  
.....

Please note that you are entitled to respond, within 14 days of the date of service of this notice, with written representations to the Registrar addressing any material defects and including any supporting documentation.

Dated the ..... day of ..... 20.....

Signed:

.....

Registrar

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**PART 4**

**Regulation 8(2)**

**REJECTION NOTICE**

Pursuant to Regulation 8(2) of the Lasting Powers of Attorney (Registration) Regulations 2018, I hereby issue you with notice that your application dated the.....day of .....20..... cannot be processed for the following reasons:

.....  
.....  
.....  
.....  
.....

Dated the ..... day of ..... 20.....

Signed:

.....  
Registrar

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**SCHEDULE 2**

**PART 1**

**Regulation 9(1)(b)**

**FORM OF CERTIFICATE OF REGISTERED LPA**

Pursuant to the Lasting Powers of Attorney and Capacity Act 2018, I hereby certify the foregoing LPA has been recorded in the LPA Register.

Dated the ..... day of ..... 20.....

Signed:

.....  
Registrar

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**PART 2**

**Regulation 12**

**REVOCAION BY DONOR OF LPA**

I make this application on behalf of ..... in  
relation to an LPA as described below:

Date of LPA .....  
made by (name of Donor) .....

Dated the ..... day of .....

Name and address of applicant  
.....  
.....  
.....

Signature of applicant or applicant's representative .....

An application must be accompanied by–

1. A Deed of Revocation signed by the donor of the LPA which is to be revoked; and
2. Payment of the registration fee.



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### SCHEDULE 3

#### Regulation 14

#### FEES

1. Pursuant to section 8(1)(c) of the Lasting Powers of Attorney and Capacity Act 2018, the fee for registration of an LPA including the certificate of registration is £100.
2. Repeat application fee, (where LPA submitted for registration is defective) - £50.
3. Fee for the revocation of a registered LPA - £25.
4. Fee for a search of the LPA Register - £10.

The fees in paragraphs 1, 2, 3 and 4 will not apply in respect of a person who is only in receipt of an old age pension under the Social Security (Open Long Term Benefits Scheme) Act 1996 or the Social Security (Closed Long Term Benefits and Scheme) Act 1997, rent relief under the Housing Act 2007 or minimum income guarantee payments under the Social Assistance Fund.