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MENTAL CAPACITY ACT (CHAPTER 177A)

MENTAL CAPACITY (AMENDMENT) REGULATIONS 2019

In exercise of the powers conferred by section 46 of the Mental Capacity Act, the Minister for Social and Family Development makes the following Regulations:

Citation and commencement

1. These Regulations are the Mental Capacity (Amendment) Regulations 2019 and come into operation on 1 August 2019.

Amendment of regulation 2

2. Regulation 2 of the Mental Capacity Regulations 2010 (G.N. No. S 105/2010) (called in these Regulations the principal Regulations) is amended —

- (a) by deleting the definition of “prescribed information”; and
- (b) by deleting “<http://www.publicguardian.gov.sg>” in the definition of “Public Guardian’s website” and substituting “<http://www.msf.gov.sg/opg>”.

Deletion and substitution of regulation 3

3. Regulation 3 of the principal Regulations is deleted and the following regulation substituted therefor:

“Differences in forms

3.—(1) Any reference in these Regulations to a form provided at the Public Guardian’s website (other than the forms mentioned in regulation 4(1)) is to be treated as including —

- (a) a form to the same effect but which differs in an immaterial respect in form or mode of expression; or

(b) a form to the same effect but with such variations as circumstances may require or as the Public Guardian may approve.

(2) If an instrument intended to create a lasting power of attorney differs in an immaterial respect in form or mode of expression from any of the forms mentioned in regulation 4(1), such difference is to be dealt with in accordance with paragraph 3 of the First Schedule to the Act.”

Amendment of regulation 4

4. Regulation 4 of the principal Regulations is amended by deleting paragraph (1) and substituting the following paragraph:

“(1) For the purposes of paragraph 1(1)(a) of the First Schedule to the Act, the forms to be used for an instrument intended to create a lasting power of attorney are provided at the Public Guardian’s website.”

Amendment of regulation 7

5. Regulation 7(1) of the principal Regulations is amended by deleting the words “Subject to paragraph (2), the following persons” and substituting the words “For the purposes of paragraph 2(1)(e) of the First Schedule to the Act and subject to paragraph (2), the following persons are persons of a prescribed description who”.

Amendment of regulation 8

6. Regulation 8 of the principal Regulations is amended by deleting paragraphs (1), (2), (3), (4), (5), (6), (7), (7A) and (7B) and substituting the following paragraphs:

“(1) For the purposes of paragraph 1(1)(c) of the First Schedule to the Act, the prescribed requirements in connection with the execution of an instrument intended to create a lasting power of attorney are set out in this regulation.

(2) The instrument must be executed in accordance with the instructions specified in any of the forms mentioned in regulation 4(1).

(3) A donee must sign the instrument in the presence of a witness.

(4) Where a translator had assisted a donee in the execution of the instrument, the translator must be the witness mentioned in paragraph (3).

(5) The donor must sign the instrument in the presence of a witness, who must be a person mentioned in regulation 7(1) providing the LPA Certificate for that instrument.

(6) After the steps mentioned in paragraphs (3), (4) and (5) have been taken, the donor must sign at the end of every page of the instrument.

(7) Any reference in this regulation to a donee includes a replacement donee.”.

Amendment of regulation 10

7. Regulation 10 of the principal Regulations is amended —

(a) by deleting paragraph (1) and substituting the following paragraph:

“(1) For the purposes of paragraph 4(1) of the First Schedule to the Act, the form for an application for registration of an instrument is provided at the Public Guardian’s website.”;

(b) by deleting the word “An” in paragraph (3) and substituting the words “Subject to paragraph (4), an”; and

(c) by inserting, immediately after the words “appropriate fee” in paragraph (3), the words “specified in the Mental Capacity (Public Guardian Fees) Regulations 2010 (G.N. No. S 106/2010)”.

Amendment of regulation 11

8. Regulation 11 of the principal Regulations is amended —

(a) by deleting the words “the period of 6 weeks beginning with” and substituting the words “the relevant period starting on”; and

(b) by renumbering the regulation as paragraph (1) of that regulation, and by inserting immediately thereafter the following paragraph:

“(2) In paragraph (1), “relevant period” means —

(a) if the application for registration of the instrument was made before 1 August 2019 — 6 weeks; and

(b) in any other case — 3 weeks.”.

Amendment of regulation 13

9. Regulation 13(3) of the principal Regulations is amended by deleting the words “the donee” in sub-paragraph (c) and substituting the words “the other donee”.

Amendment of regulation 15

10. Regulation 15(2) of the principal Regulations is amended by deleting the words “paragraph (a) or (b) of” in sub-paragraph (c).

Deletion and substitution of regulation 17

11. Regulation 17 of the principal Regulations is deleted and the following regulation substituted therefor:

“Notice of registered instrument, etc.

17.—(1) For the purposes of paragraph 14(2) of the First Schedule to the Act, the form of the Public Guardian’s notice of registration of an instrument is provided at the Public Guardian’s website.

(2) Where the Public Guardian registers (whether before, on or after 1 August 2019) an instrument as a lasting power of attorney following an application for registration made before 1 August 2019, the Public Guardian must —

(a) retain a copy of the registered instrument; and

(b) return to the person (or persons) who made the application, the instrument that accompanied the application.

(3) Where the Public Guardian registers an instrument as a lasting power of attorney following an application for registration made on or after 1 August 2019, the Public Guardian —

- (a) must provide, in any form and manner as the Public Guardian may determine, a copy of the registered instrument to the donor and every donee; and
- (b) need not return the instrument that accompanied the application to the person (or persons) who made the application, unless a request is made by the person (or persons) for the return of the instrument.”.

Amendment of regulation 18

12. Regulation 18 of the principal Regulations is amended by deleting paragraphs (2), (3) and (4) and substituting the following paragraphs:

“(2) The Public Guardian must give a notice to every person to whom the Public Guardian has —

- (a) returned the instrument under regulation 17(2)(b) or (3)(b); or

- (b) given a certified copy of the registered instrument,

to deliver the instrument or certified copy (as the case may be) to the Public Guardian.

(3) If the instrument or a certified copy is delivered by a person to the Public Guardian (whether following a notice under paragraph (2) or under paragraph 23A(1) of the First Schedule to the Act), the Public Guardian must —

- (a) in relation to the instrument, return to the person the instrument with the required note attached; or

- (b) in relation to the certified copy, provide to the person a new certified copy of the instrument that has the required note attached.”.

Amendment of regulation 19

13. Regulation 19(1) of the principal Regulations is amended by deleting sub-paragraph (ii) of sub-paragraph (a).

Amendment of regulation 25

14. Regulation 25 of the principal Regulations is amended —

(a) by deleting the words “such descriptions of” in paragraph (2)(a); and

(b) by inserting, immediately after paragraph (2), the following paragraph:

“(3) Each register may be established and maintained in any form and manner as the Public Guardian may determine.”.

New regulation 25A

15. The principal Regulations are amended by inserting, immediately after regulation 25, the following regulation:

“Application for copy of registered instrument

25A.—(1) A donee under a registered instrument may, for the purpose of making a decision for the donor who lacks capacity, apply to the Public Guardian for a copy of the registered instrument to be provided to a person nominated by the donee.

(2) An application must be —

(a) in the form and manner required by the Public Guardian; and

(b) supported by any information and documents as the Public Guardian may require.

(3) The Public Guardian may provide a copy of the registered instrument to the person nominated by the donee if the Public Guardian is satisfied, based on the information and documents mentioned in paragraph (2)(b), that the donor lacks capacity to make the decision concerned.”.

Amendment of regulation 26

16. Regulation 26(2) of the principal Regulations is amended by inserting, immediately after the words “appropriate fee” in sub-paragraph (b), the words “specified in the Mental Capacity (Public Guardian Fees) Regulations 2010”.

Deletion of Schedule

17. The Schedule to the principal Regulations is deleted.

Miscellaneous amendments

18. The principal Regulations are amended by deleting the words “set out” in the following provisions and substituting in each case the word “provided”:

Regulations 12(1) and (2) and 20(1).

[G.N. Nos. S 524/2014; S 531/2018]

Made on 9 July 2019.

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Ministry of Social and Family
Development,
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