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MENTAL CAPACITY ACT 2008

MENTAL CAPACITY (AMENDMENT) REGULATIONS 2022

In exercise of the powers conferred by section 46 of the Mental Capacity Act 2008, the Minister for Social and Family Development makes the following Regulations:

Citation and commencement

1. These Regulations are the Mental Capacity (Amendment) Regulations 2022 and come into operation on 14 November 2022.

Amendment of regulation 2

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

(a) in the definition of “certified copy”, replace “paragraph 15” with “paragraph 11”; and

(b) after the definition of “LPA Certificate”, insert —

““Public Guardian’s email address” means the email address that is specified on the Public Guardian’s website as the email address to which communications to the Public Guardian may be sent;

“Public Guardian’s postal address” means the postal address that is specified on the Public Guardian’s website as the postal address to which communications to the Public Guardian may be sent;”.

Amendment of regulation 3

3. In regulation 3(1) of the principal Regulations, replace “(other than the forms mentioned in regulation 4(1))” with “or in the electronic transaction system”.

Replacement of regulation 4 and new regulations 4A, 4B and 4C

4. Regulation 4 of the principal Regulations is replaced with —

“Circumstances in which instrument may be made without using electronic transaction system

4. For the purposes of section 11(2A)(d) of the Act, the Public Guardian may allow an instrument conferring authority of the kind mentioned in section 11(1) of the Act to be made without using the electronic transaction system if it is not possible to use the electronic transaction system for this purpose because the donor, the donee or (if there is more than one donee) any donee does not satisfy —

(a) any of the conditions of access to, or the use of, the electronic transaction system; or

(b) any of the security and authentication requirements for such access or use,

determined by the Public Guardian under section 10B(4)(a) or (b) of the Act.

Notices to Public Guardian under section 11(7) or (8) of Act

4A. A notice to the Public Guardian under section 11(7) or (8) of the Act must be in the form provided at the Public Guardian’s website and sent to the Public Guardian’s postal address or Public Guardian’s email address.

Prescribed website

4B. For the purposes of paragraphs 1(1)(a)(ii), 3, 4(1)(b), 6, 10(2) and 16 of the First Schedule to the Act, the prescribed website is the Public Guardian’s website.

Prescribed requirements for execution of instrument

4C.—(1) For the purposes of paragraph 1(1)(d) of the First Schedule to the Act, the prescribed requirements in connection with the execution of an instrument are —

- (a) where the donor requires any information mentioned in paragraph 2(1)(a) of the First Schedule to the Act to be translated to the donor, the translation must be conducted by the person mentioned in paragraph 2(1)(e) of that Schedule (called in this regulation the witness) or another person (called in this regulation the translator) before the witness;
- (b) the full name of, and the number of the identity card issued to, each of the following persons under the National Registration Act 1965, or (if no identity card is issued to the person) the number of the person's passport or other official identification document, must be specified on the instrument:
 - (i) the donor;
 - (ii) the donee or (if there is more than one donee) every donee;
 - (iii) the replacement donee or (if there is more than one replacement donee) every replacement donee;
 - (iv) the witness;
 - (v) if applicable, the translator;
- (c) where the instrument is made using the electronic transaction system — the instrument must be executed in accordance with the requirements determined by the Public Guardian under section 10B(4) of the Act; and
- (d) where the instrument is made using any form at the Public Guardian's website instead of using the electronic transaction system — the requirements in paragraph (2).

(2) For the purposes of paragraph (1)(d), the requirements are —

- (a) a donee must sign the instrument in the presence of a witness;
- (b) a replacement donee (if any) must sign the instrument in the presence of a witness;
- (c) where a translator had translated any information mentioned in paragraph 2(1)(a) of the First Schedule to the Act to a donee or replacement donee, the translator must indicate this fact on the instrument and be the witness mentioned in sub-paragraph (a) or (b), as the case may be;
- (d) the donor must execute the instrument in accordance with paragraph 1(1)(c) of the First Schedule to the Act;
- (e) subject to paragraph (1)(a), where a translator had translated any information mentioned in paragraph 2(1)(a) of the First Schedule to the Act to the donor, the translator must indicate this fact on the instrument;
- (f) after the steps mentioned in sub-paragraphs (a) to (e) have been taken, the donor must sign at the end of every page of the instrument; and
- (g) the donor, a donee or a replacement donee (if any) may not witness any signature required for the instrument.

(3) Any reference in paragraph (2) to a person signing an instrument (however expressed) includes the person signing it by means of a mark or thumbprint made on the instrument at the appropriate place.”.

Replacement of regulation 8

5. Regulation 8 of the principal Regulations is replaced with —

“Prescribed period for payment of registration fee and for registration

8.—(1) For the purposes of paragraph 4(3) of the First Schedule to the Act, the prescribed period within which the prescribed fee for the registration of the instrument must be paid is 6 months after the date on which the application for the registration of the instrument is made.

(2) For the purposes of paragraph 4(5) of the First Schedule to the Act, the prescribed period at the end of which the Public Guardian must register an instrument as a lasting power of attorney in accordance with that paragraph is, subject to paragraph (3), 21 days after —

- (a) where only one donee is appointed under the instrument — the date on which the Public Guardian gives the donee a notice under paragraph 5 of the First Schedule to the Act of the receipt of an application for the registration of an instrument (called in this regulation the specified notice); or
- (b) where more than one donee is appointed under the instrument — the date on which the Public Guardian gives every donee the specified notice or (if the specified notices are given on different dates) the last of those dates.

(3) For the purposes of paragraph (2), where the last day of the period of 21 days falls on a non-business day, the prescribed period includes the next day that is not a non-business day.

(4) In this regulation, “non-business day” means Saturday, Sunday or public holiday.”.

Deletion of regulations 10 and 11

- 6.** Delete regulations 10 and 11 of the principal Regulations.

Amendment of regulation 12

7. In regulation 12 of the principal Regulations, delete paragraph (2).

Amendment of regulation 13

8. In regulation 13 of the principal Regulations —

- (a) in paragraph (2)(a), replace “paragraph 6 or 7(2)” with “paragraph 5”;
- (b) in paragraph (2)(b), replace “paragraph 12(1)” with “paragraph 9(1)(b)”;
- (c) in paragraph (3), replace “writing” with “the form provided at the Public Guardian’s website”;
- (d) after paragraph (3), insert —

“(3A) A notice of objection must be sent to the Public Guardian’s postal address or Public Guardian’s email address.”; and
- (e) in paragraph (7), replace “paragraph 12” with “paragraph 9”.

Deletion of regulation 14

9. Delete regulation 14 of the principal Regulations.

Amendment of regulation 15

10. In regulation 15 of the principal Regulations —

- (a) in paragraph (2)(b), replace “paragraph 12(1)” with “paragraph 9(1)(b)”;
- (b) in paragraph (3)(a), replace “paragraph 6 or 7” with “paragraph 5”; and
- (c) replace paragraph (4) with —

“(4) A notice of an application to the court, which a person making an objection to the court is required to give to the Public Guardian under paragraph 9(3)(b)(ii) of the First Schedule to the

Act, must be in the form provided at the Public Guardian’s website and sent to the Public Guardian’s postal address or Public Guardian’s email address.”.

Amendment of regulation 16

11. In regulation 16 of the principal Regulations, replace paragraphs (a) to (e) with —

- “(a) any non-compliance with paragraph 4(2) of the First Schedule to the Act (application for registration of instrument not accompanied by instrument);
- (b) paragraph 7(1) of that Schedule (instrument not made in accordance with section 12A or First Schedule);
- (c) paragraph 8(2) of that Schedule (deputy already appointed);
- (d) paragraph 9(2) of that Schedule (ground for objection by donee established); or
- (e) paragraph 9(4) of that Schedule (application made to court objecting to registration of instrument),”.

Deletion of regulations 17 and 18

12. Delete regulations 17 and 18 of the principal Regulations.

Replacement of regulations 20 and 21 and deletion of regulation 22

13. Regulations 20, 21 and 22 of the principal Regulations are replaced with —

“Disclaimer of appointment by donee of lasting power of attorney

20.—(1) A donee or a replacement donee (called in this regulation *A*) who wishes to disclaim *A*’s appointment as such must —

- (a) give a notice of this to the donor and every donee (excluding the donee wishing to disclaim) (each

called in this regulation *B*) in the form provided at the Public Guardian's website by —

- (i) delivering it personally to the donor or *B*;
 - (ii) prepaid registered post or ordinary post to the last postal address of the donor or *B*; or
 - (iii) if *A* is unable to send the notice in the manner described in sub-paragraph (i), or sub-paragraph (ii) because *A* does not know the last postal address of the donor or *B* — sending it to the last email address of the donor or *B*, as the case may be; and
- (b) give a notice to the Public Guardian, in the form provided at the Public Guardian's website, by sending it to the Public Guardian's postal address or Public Guardian's email address.

(2) In this regulation —

“last email address” means —

- (a) an email address of the donor or *B* (as the case may be) at which *A* corresponds with the donor or *B* (as the case may be); or
- (b) if there is no such email address — an email address which the donor or *B* (as the case may be) represents to *A* as the email address to which communications to the donor or *B* (as the case may be) may be sent;

“last postal address” means —

- (a) the postal address of the donor or *B* (as the case may be) at which *A* corresponds with the donor or *B* (as the case may be);
- (b) if there is no postal address mentioned in paragraph (a) — a postal address which the donor or *B* (as the case may be) represents to *A* as the postal address to which communications

to the donor or *B* (as the case may be) may be sent; or

- (c) if there is no postal address mentioned in paragraph (a) or (b) — the usual or last known place of residence or business of the donor or *B* (as the case may be).

Revocation by donor of lasting power of attorney

21.—(1) For the purposes of section 15(9) of the Act, a donor who revokes a lasting power of attorney must —

- (a) give a written notice of this to the donee or (if there is more than one donee) every donee by —
 - (i) delivering it personally to the donee;
 - (ii) prepaid registered post or ordinary post to the donee’s last postal address; or
 - (iii) if the donor is unable to send the notice in the manner described in sub-paragraph (i), or sub-paragraph (ii) because the donor does not know the donee’s last postal address — sending it to the last email address of the donee; and
- (b) give a notice to the Public Guardian, in the form provided at the Public Guardian’s website, by sending it to the Public Guardian’s postal address or Public Guardian’s email address.

(2) In this regulation —

“last email address” means —

- (a) an email address of the donee at which the donor corresponds with the donee; or
- (b) if there is no such email address — an email address which the donee represents to the donor as the email address to which communications to the donee may be sent;

“last postal address” means —

- (a) the postal address of the donee at which the donor corresponds with the donee;
- (b) if there is no postal address mentioned in paragraph (a) — a postal address which the donee represents to the donor as the postal address to which communications to the donee may be sent; or
- (c) if there is no postal address mentioned in paragraph (a) or (b) — the usual or last known place of residence or business of the donee.”.

Deletion of regulation 25A

14. Delete regulation 25A of the principal Regulations.

Amendment of regulation 26

15. In regulation 26 of the principal Regulations —

- (a) in the regulation heading, after “register”, insert “of court orders appointing deputies”;
- (b) in paragraph (1), replace “one or more of the registers” with “the register of court orders appointing deputies”; and
- (c) in paragraph (2)(a), delete sub-paragraph (i).

New regulation 27A

16. After regulation 27 of the principal Regulations, insert —

“Application for electronic copy of instrument registered under Act as lasting power of attorney by donee for another person

27A.—(1) Subject to paragraph (2), the donee or (if there is more than one donee) any donee of an instrument registered under the Act as a lasting power of attorney (whether registered before, on or after 14 November 2022) may, for the purpose of making a decision for the donor who lacks capacity, apply to the

Public Guardian for an electronic copy of the lasting power of attorney to be sent to a person, who is neither a donee or donor of the lasting power of attorney.

(2) An application mentioned in paragraph (1) must be accompanied by a declaration by the donee that as at the date of the application, a medical practitioner has assessed and certified that the donor of the lasting power of attorney lacks capacity to make decisions about any matter relating to the donor's personal welfare or property and affairs, or both.”.

New regulations 28A and 28B

17. After regulation 28 of the principal Regulations, insert —

“Access to view lasting powers of attorney on electronic transaction system

28A. The Public Guardian must give access to the following persons to view an instrument registered under the Act as a lasting power of attorney (whether registered before, on or after 14 November 2022) on the electronic transaction system:

- (a) the donor of the lasting power of attorney;
- (b) the donee or (if there is more than one donee) any donee of the lasting power of attorney.

Request for information on lasting power of attorney

28B. A person specified in the first column of the table in the Schedule may request for any information relating to the lasting power of attorney of a donor (called in this regulation *P*), if —

- (a) subject to section 10C(2) of the Act, the request is made using the electronic transaction system and in the form provided in the electronic transaction system;
- (b) the person provides to the Public Guardian the person's reason for the request;

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- (c) the person submits to the Public Guardian —
- (i) a declaration that as at the date of the request, *P* lacks capacity to make decisions about any matter relating to *P*'s personal welfare, or property and affairs, or both; and
 - (ii) any other information or document that the Public Guardian requires to determine the application;
- (d) the request is accompanied by the applicable fees prescribed in the Mental Capacity (Public Guardian Fees) Regulations 2010 (G.N. No. S 106/2010);
- (e) the requirements specified opposite that person in the second column of the table in the Schedule are satisfied; and
- (f) the Public Guardian is of the opinion that it is in the best interests of *P* to provide the information to the person.”.

New Part IV and Schedule

18. After regulation 38 of the principal Regulations, insert —

“PART IV

MISCELLANEOUS

Notice of change in mobile telephone number under section 43C(7) of Act

39. For the purposes of section 43C(7) of the Act, the prescribed period within which the person mentioned in that section must give notice to the Public Guardian of any change to the person's mobile telephone number is one month after the change.

THE SCHEDULE

Regulation 28B

<i>First column</i>	<i>Second column</i>
<i>Person</i>	<i>Requirements</i>
1. Next-of-kin of <i>P</i>	<p>The next-of-kin must submit to the Public Guardian satisfactory evidence that —</p> <ul style="list-style-type: none"> (a) he or she is a next-of-kin of <i>P</i>; and (b) the next-of-kin — <ul style="list-style-type: none"> (i) does not know the identity of <i>P</i>'s donee; or (ii) is unable to contact <i>P</i>'s donee after having made reasonable attempts to do so.
2. The licensee of a licensed healthcare institution at which <i>P</i> is receiving medical treatment or care	<p>The licensee must submit to the Public Guardian satisfactory evidence that —</p> <ul style="list-style-type: none"> (a) <i>P</i> is receiving medical treatment or care at the licensed healthcare institution; and (b) the licensee — <ul style="list-style-type: none"> (i) does not know the identity of <i>P</i>'s next-of-kin or donee; or (ii) is unable to contact <i>P</i>'s next-of-kin or donee after having made reasonable attempts to do so.

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| <p>3. The embassy of a country of which <i>P</i> is a citizen</p> | <p>The embassy must submit to the Public Guardian satisfactory evidence that —</p> <ul style="list-style-type: none"> (a) <i>P</i> is a citizen of the country; (b) <i>P</i> is in Singapore; and (c) the embassy — <ul style="list-style-type: none"> (i) does not know the identity of <i>P</i>'s donee or next-of-kin; or (ii) is unable to contact <i>P</i>'s donee or next-of-kin after having made reasonable attempts to do so. |
| <p>4. A person who wishes to apply for an order of the court under section 20(2)(b) of the Act to appoint a deputy to make decisions on <i>P</i>'s behalf in relation to a matter or matters concerning <i>P</i>'s personal welfare or <i>P</i>'s property and affairs</p> | <p>The person must submit to the Public Guardian satisfactory evidence that —</p> <ul style="list-style-type: none"> (a) the person — <ul style="list-style-type: none"> (i) does not know the identity of <i>P</i>'s donee; or (ii) is unable to contact <i>P</i>'s donee after having made reasonable attempts to do so; and (b) the person has taken one or more steps for the purpose of commencing proceedings to apply for the order. |

In this Schedule, “licensed healthcare institution” means —

- (a) any premises or conveyance specified in a licence granted under the Healthcare Services Act 2020 for the provision of any licensable healthcare service; or
- (b) a healthcare institution that is licensed under the Private Hospitals and Medical Clinics Act 1980.”.

Saving and transitional provision

19.—(1) Despite regulations 3, 4 and 5, regulations 3, 4 and 8 of the principal Regulations as in force immediately before 14 November 2022 continue to apply to or in relation to the making of an instrument conferring authority of the kind mentioned in section 11(1) of the Act that is executed before that date.

(2) Despite regulations 6 to 12, regulations 10 to 17 of the principal Regulations as in force immediately before 14 November 2022 continue to apply to or in relation to an application for the registration of an instrument intended to create a lasting power of attorney, where that instrument conferring authority of the kind mentioned in section 11(1) of the Act was executed before that date.

[G.N. Nos. S 524/2014; S 531/2018; S 501/2019]

Made on 26 October 2022.

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