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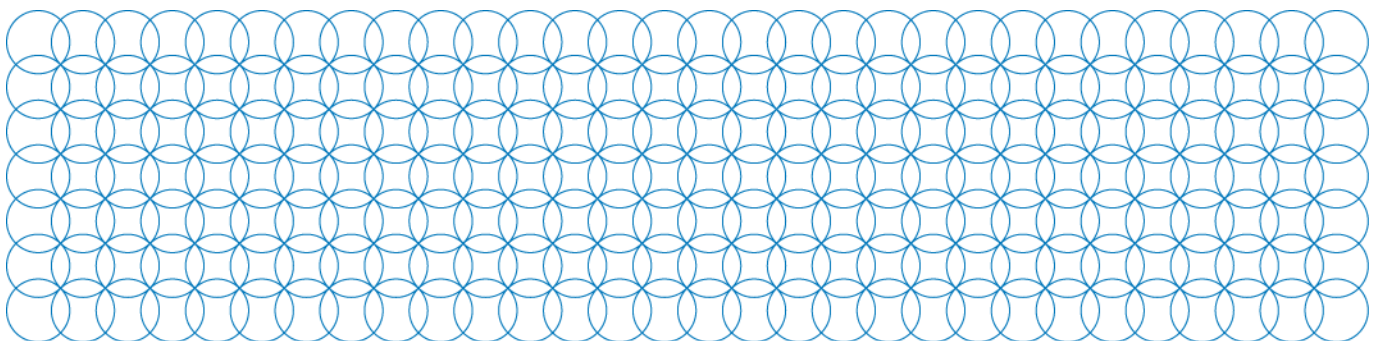
Transforming the Services of the Office of the Public Guardian:

A Consultation

Consultation Paper **CP10/2012**

This consultation begins on 27 July 2012

This consultation ends on 19 October 2012





Ministry of
JUSTICE

**Transforming the Services of
the Office of the Public Guardian:
A Consultation**

**A consultation produced by the Ministry of Justice. It is also available on the
Ministry of Justice website at www.justice.gov.uk**

About this consultation

To: This consultation is aimed at the public, the legal profession, the judiciary, the advice sector and all with an interest in this area in England and Wales

Duration: From 27 July 2012 to 19 October 2012

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How to respond: Please respond online at consult.justice.gov.uk/digital-communications/transforming-services-opg/

By 19 October 2012

Alternatively please respond by post or fax to:

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A response to this consultation exercise is due to be published within three months of the closure date at: www.justice.gov.uk

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Executive Summary

The Mental Capacity Act 2005 (“MCA 2005”) provides a statutory framework to empower and protect people who may lack capacity to make some decisions for themselves. The Act created the statutory role of the Public Guardian to ensure that those appointed to take decisions on behalf of those who lack capacity discharge their duties properly, without abuse, and act in the best interests of the person without capacity. The Public Guardian does this through the Office of the Public Guardian (OPG), by registering Lasting Powers of Attorneys (LPA) and Enduring Powers of Attorneys (EPA), supervising Deputies appointed by the Court of Protection (the Court), and investigating the ways Attorneys and Deputies exercise their powers.

The digital transformation of OPG services is designed to ensure that the OPG is able to deal effectively with future volumes across all areas of its business and to ensure that customers receive the best possible level of service. It will maximise the opportunities for individuals to plan ahead and make decisions for themselves for a time in the future when they may lose capacity by ensuring OPG processes are as simple, speedy and accessible as possible.

The OPG is working with the Government Digital Service (GDS) to deliver new user friendly services that take advantage of digital technology to assist in the making of LPAs and in the supervision of deputies. These developments will feed into the Ministry of Justice’s Transforming Justice Agenda and the Government’s commitment for more public services to be “Digital by Default”.

We intend to implement the majority of the changes by April 2013. Other changes will require primary legislation in the future. We are, therefore, now seeking your views on those changes we wish to make in 2013. In addition, we are inviting initial comments on some broader changes we may wish to make in the future. We will consult on specific proposals in more detail at a later date.

Introduction

The Mental Capacity Act (MCA 2005) came fully into force on 1 October 2007 and marked an important step in reforming the law relating to decision-making for people who may lack capacity. For the first time, it enshrined in legislation certain key principles: that a person must be assumed to have mental capacity unless it is established that he or she lacks capacity to make the decision(s) in question; that any act done in relation to, or decision made on behalf of the person, is to be made in his or her best interests; and that, before the act is done or the decision is made, consideration must be given to doing/making it in a way that is less restrictive of the person's rights and freedoms. Importantly, the MCA 2005 defines decision-making capacity as the capacity to make a particular decision at the time it needs to be made. No longer does the law define people as 'capable' and 'incapable'. Instead, there is recognition that many people, who may lack the capacity to make some decisions, could well be able to make many other decisions for themselves. Where a decision does need to be taken on a person's behalf, the law is clear that the decision must be in their best interests and be as least restrictive of their rights and freedom as possible.

As well as empowering and protecting people who may lack capacity, the MCA 2005 provides a number of options for those people who wish to plan ahead for the future. It enables individuals to make a LPA to give someone the authority to make decisions relating to either their property and affairs or their personal welfare were they to lack capacity to make those decisions in the future.

The MCA 2005 created the Public Guardian, supported by the Office of the Public Guardian (OPG), which is an executive agency of the Ministry of Justice. Its purpose is: the registration of LPAs, the supervision of Deputies appointed by the Court of Protection, the maintenance of the registers of attorneys and deputies, and the investigation of any concerns raised relating to either an Attorney or Deputy's conduct, including allegations of financial abuse. The investigation into allegations of abuse, including financial abuse, by attorneys or deputies is an important function of the OPG. The OPG works closely with partners in investigating any such allegations and has already developed a safeguarding protocol when working with Local Authorities.

The OPG wishes to develop a digital approach to delivering services that are more suited to customers' needs by using interactive tools to help them through the LPA registration process and to enable deputies to fulfil their reporting responsibilities. In addition, the development of online services will reduce bureaucracy and enable the OPG to refocus its resources on its vital role in safeguarding vulnerable people.

This Consultation is divided into two sections. Section 1 deals primarily with changes to Lasting Powers of Attorney which could be made in April 2013 and other changes which may require primary legislation and on which we will consult later, whilst Section 2 covers changes to Supervision and other issues which we wish to make in April 2013.

Consultation: Transforming the Services of the Office of the Public Guardian

Introduction

This paper sets out for consultation the proposed changes to OPG services in the context of digital delivery. The consultation is aimed at the public, the legal profession, the judiciary, the advice sector and all those with an interest in this area in England and Wales.

This consultation is conducted in line with the Government's Code of Practice on Consultation and falls within the scope of the Code. The consultation criteria, which are set out on page 29, have been followed.

An Impact Assessment indicates that the proposals are unlikely to lead to additional costs or savings for businesses, charities or the voluntary sector, or on the public sector. An Impact Assessment is at Annex A.

Comments on the Impact Assessment and the Equality Impact Assessment are very welcome.

Copies of the consultation paper are being sent to:

- Action for Advocacy
- Action on Elder Abuse
- Advice UK
- Age UK
- Alzheimer's Society
- Association for Real Change (ARC)
- Association of property and fixed charge receivers
- Association of Contentious Trust & Probate Specialists (ACTAPS)
- Association of Directors of Social Services
- Association of Healthcare Communicators
- Association of Public Authorities Deputies
- BILD (British Institute for Learning Disabilities)
- British Association of Social Workers
- British Bankers Association
- British Medical Association
- British Psychological Society
- British Society of Rehabilitation Medicine
- CARE UK
- Care Quality Commission
- Carers UK
- Carers Wales
- Change
- Citizen Advocacy Information and Training (CAIT)
- Counsel and Care

- Court of Protection Visitors
- Court of Protection judiciary
- Dementia Care Trust
- Department of Health
- Department for Work and Pensions
- Disability Awareness in Action (DAA)
- Disability Law Service
- Down's Syndrome Association
- English Community Care Association
- Equality and Human Rights Commission
- Family Action
- Foundation for People with Learning Disabilities
- General Medical Council
- General Social Care Council
- Help the Hospices
- Home Farm Trust
- Independent Healthcare Association
- Independent Healthcare Forum
- Institute of Chartered Accountants
- Institute of Mental Health Law
- Intensive Care Society
- Law Centres Federation
- Law Society
- Learning Disabilities Action Group (LDAG)
- Leonard Cheshire
- Local Government Association
- Medical Research Council
- MENCAP
- Mental Health Alliance
- Mental Health Foundation
- Mental Health Lawyers Association
- MIND
- Motor Neurone Disease Association
- National Association of Citizens Advice Bureaux
- National Association of Financial Assessment Officers
- National Autistic Society
- National Care Association
- National Coalition of Citizens Advocacy Schemes
- National Council for Independent Living
- National Council for Palliative Care
- National Forum for People with Learning Disabilities

- National Institute for Mental Health in England (NIMHE)
- Neurological Alliance
- NHS Confederation
- NHS Litigation Authority
- Norah Fry Research Centre
- Oaklea Trust
- Office of the Accountant General
- Official Solicitor and Public Trustee
- Oyez stationers
- Patient Concern
- People First
- POPAN
- Practitioner Alliance Against Abuse of Vulnerable Adults (PAVA)
- Relatives and Residents Association
- Rescare
- Respond
- Rethink
- Centre for Mental Health
- SCOPE
- Sense
- Social Care Association
- Social Care Institute for Excellence (SCIE)
- Solicitors for the Elderly
- Society of Trusts and Estate Practitioners
- Stroke Association
- Turning Point
- UK Advocacy Network
- United Kingdom Home Care Association
- United Response
- Values into Action
- Welsh Assembly Government
- Members of the Office of the Public Guardian Stakeholder Group
- Members of the Court of Protection User Group

This list is not meant to be exhaustive or exclusive. Responses are welcomed from anyone with an interest in, or views on, the subject covered by this paper.

The proposals

Section 1 – Lasting Powers of Attorney

1. Background

Since its inception, the OPG's systems have struggled to cope with the high levels of demand for its services, in particular, those customers applying to register Lasting Powers of Attorney (LPA) and Enduring Powers of Attorney (EPA). The main barrier to this has been the unreliability and inflexibility of the existing legacy IT system.

Since April 2011, the OPG has been working to develop a new and more robust IT solution that will enable it consistently to meet demands for its services and will radically improve the quality of those services. In the process of developing the new IT solution, the OPG is taking the opportunity to develop a digital approach to delivering its services, which will enable it to achieve its strategic ambition to deliver a 'digital by default' service, whilst still retaining a paper based service for those customers who require it.

This section covers the proposed changes to the Lasting Power of Attorney process. Some of these changes are ones which we would like to make by April 2013, while others could be made in the future and are included because we wish to obtain your views now to inform our thinking. If we do consider making changes after April 2013, we will consult further as appropriate.

2. Lasting Powers of Attorney

A Lasting Power of Attorney (LPA) is an important legal document that gives significant powers to other individuals to make decisions about a person's property and affairs or health and welfare. Unless it states otherwise, a property and affairs LPA can be used whilst the person still has capacity to make those decisions. A health and welfare LPA can **only** be used when the person lacks the capacity to make decisions themselves.

Following responses to the Consultation 'Lasting Powers of Attorney – Forms and Guidance' launched by the Department for Constitutional Affairs in January 2006, it was decided that there should be two LPA forms, one for property and affairs and the other for health and welfare.

The Mental Capacity Act (MCA) 2005 requires an LPA to be in a 'prescribed form'. This means that the format and content of the form must be set down in regulations that are laid before Parliament. The Public Guardian must reject any form that appears to him to be materially different from the prescribed form. Any changes to the design and content must, therefore, be laid before Parliament before they can be used.

As part of the digitalisation of its services, the OPG is developing an online process that will assist individuals in completing the LPA form, using prompt messages to ensure that all sections are completed fully and accurately. It is hoped that this will eradicate errors in completion, which in turn will result in the OPG having to return forms less often. Feedback from the development of the digital LPA form is also being used to inform the development of a shorter and simpler revised paper form.

3. Current forms

In October 2008, having received feedback on the versions of the LPA forms launched in October 2007, the Ministry of Justice ran a public consultation on revising the LPA forms. Following this consultation, revised LPA forms were launched in October 2009, but ongoing feedback indicates that there are still problems. Issues range from concerns about the length of the forms and accompanying guidance, to misunderstandings about the order in which parts of the forms should be completed, leading in turn to forms being rejected by the OPG.

Building on the stakeholder and customer feedback received since 2009, the experiences of the OPG in dealing with registrations for LPAs, and the current development of a digital service, we are taking the opportunity to review the LPA forms and process once again and would seek your views in the areas listed below.

4. Application

Feedback from a consultation in 2006 on the original LPA form indicated that individuals preferred to have two separate forms for the LPAs, as it was felt that the same person would not necessarily be appointed as an attorney for each type of power. However, since October 2007 evidence suggests that individuals who have made both property and affairs, and health and welfare LPAs tend to appoint the same person(s) in the majority of applications. We are, therefore, considering whether to replace the two current separate forms for property and affairs and health and welfare with one combined 'hybrid LPA form' which would cover both types of decisions. The form would enable the donor to specify whether the power related just to property and affairs decisions, or to health and welfare decisions, or to both.

In circumstances where the donor wishes to appoint different attorneys for each type of decision, two forms would be completed – one covering just property and affairs decisions and the other covering just health and welfare decisions.

An alternative approach would be to retain the existing separate property and affairs and health and welfare forms, and then introduce the new 'hybrid LPA form' alongside them.

Additionally, emerging evidence has shown that, in practice, around 90% of individuals do nothing more complex than name an attorney or attorneys and give them the authority to make decisions on their behalf. They do not generally place any specific restrictions on their attorney(s) or offer guidance, or provide for a long list of notifiable persons.

We are, therefore, considering whether we should also introduce a separate, short version of the 'hybrid LPA form', designed for the majority of donors. However, this approach would only be viable if we did not retain the separate property and affairs and health and welfare LPA forms, as otherwise, we would risk creating confusion by having too many options for people to choose between.

An alternative approach to introducing the 'hybrid LPA form' and a short version of it would be to only introduce the 'hybrid LPA form' but to split it into two separate sections. Part A would contain the essential elements dealing only with the naming of the donor, attorneys, notifiable persons and certificate providers. All donors would need to complete this section. Part B would contain the additional, optional elements such as restrictions and additional guidance. This could be prefaced by a clear warning that errors in this section could invalidate the LPA and a statement that it may be helpful to seek professional advice. This section would only need to be completed by those donors with more complex requirements.

To inform our thinking around the development of the online and paper based forms, we welcome your views on the option of introducing a 'hybrid LPA form', whether the separate property and affairs and health and welfare forms should be retained, and whether there is merit in developing an additional short version of the 'hybrid LPA form' for those people whose needs are relatively simple.

Question 1. Are there any reasons why a 'hybrid LPA form', covering both property and affairs and health and welfare should not be introduced?

Question 2. If a 'hybrid LPA form' is introduced, should the current two separate forms be retained alongside it?

Question 3. Should a short version of the 'hybrid LPA form' be introduced? Or, alternatively, should the 'hybrid LPA form' be split into two sections?

Question 4. Is there anything else that could be removed from, or amended in, the current LPA forms?

5. Language

Initial user testing during the development of the online process has shown us that there may still be issues with the language on the current forms. Responses to the October 2008 consultation on the forms revealed that customers preferred the traditional legal terminology, as opposed to plainer English options which could be legally imprecise.

However, individuals are often confused by certain precise legal wording. In particular, what is meant by the distinction between attorneys appointed 'jointly' or 'jointly and severally'. While the option to appoint an attorney to act 'jointly and severally' for some decisions is not often chosen, when it is, the resulting LPA often requires correction before it can be registered by the OPG. We are, therefore, considering removing the choice to appoint attorneys to act 'jointly' for some decisions and 'jointly and severally' for others. However, we are mindful

that this may restrict a donor's choices about how decisions are made in the future in relation to their property and affairs and health and welfare decisions.

Question 5. Should donors continue to be able to appoint attorneys to act 'jointly' for some decisions or 'jointly and severally' for others?

Question 6. Do you agree that the wording 'jointly' or 'jointly and severally', although legally precise, is confusing? What alternative wording would you suggest?

6. Certificate providers

A certificate provider is an independent person who is able to confirm that the person making the LPA understands its significance. They must have known the individual for at least two years or have the relevant professional skills to confirm that the person making the LPA understands its significance. They also need to certify that no undue pressure or fraud was involved in the making of the LPA application. If the donor has not chosen any named person to be notified on registration of the LPA, a second certificate provider is required for the donor's added protection.

The certificate providers, therefore, provide an important safeguarding role. We are aware, however, of the difficulties that can be caused in donors needing to find a second certificate provider where they have not specified any named persons to be notified of their intention to register an LPA. We are, therefore, considering whether the requirement for an additional certificate provider remains necessary and should be removed. One certificate provider would still be required.

Beyond this, we would also like to explore whether the certificate provider role is operating as the Mental Capacity Act (MCA) 2005 intended and how it might operate in the future in a digital context. While any changes to the requirements for certificate providers would be for the future, we would welcome your views now on any amendments that could be made.

Question 7. Should the requirement for an additional certificate provider, in circumstances where the donor has not specified any named persons, be removed?

Question 8. How well do you think that the role of the certificate provider is operating and is it in the way that the MCA legislation intended?

Question 9. What value do you think the role of the certificate provider might add to the process for making an LPA within a digital context?

7. Registration

An LPA is not created until it has been registered with the Public Guardian. The LPA form and the application to register, known as the LPA 002, are currently two separate documents.

We are aware of stakeholder concerns that duplicate information is required to complete both forms, adding to an already lengthy process. We would like to consider whether an LPA form and the application to register could be combined into one single document. This would apply for both the paper version and the digital version of the process.

In addition, if the proposal outlined in sub-section 4 (on applications) were to be adopted and a 'hybrid LPA form' was introduced, we would similarly envisage that the 'hybrid LPA form' would be combined with the application to register. This would mean an individual currently making both types of power of attorney (property and affairs, and health and welfare) would not have to fill in a separate application form to register each power. Instead, we envisage that they would potentially only have to complete one single form, instead of the four current forms.

We would also like to provide the facility where applicants using the online process could submit their application to register on line by providing further minimal details and confirming with a tick box that they wish to register the LPA Applicants would still be required to send the hard copy LPA, with signatures, to the OPG.

Question 10. Can you see any reasons why the LPA form and the application to register (the LPA 002) should not be amalgamated?

Question 11. In principle, do you agree with the proposal that applicants should be able indicate, via a tick box, that they are applying for registration?

8. Named persons

Legislation currently provides that the person making the LPA can name up to five people whom they wish to be notified that the LPA is about to be registered. These are known as named persons. Once notified of the impending LPA registration, the named persons are able to object to the appointment of the attorney if they feel that the individual who has made the LPA lacked the capacity to do so, or that the LPA was made under duress, or that the attorney may not act in the best interests of the individual. Currently, it is the responsibility of the person applying to notify the named person(s) of their intention to register the LPA. On receipt of an application to register, it is also then the responsibility of the OPG to notify either the donor or the attorney of the application (whoever did not make the application).

The Mental Capacity Act (MCA) 2005 intends for named persons to act as another safeguarding measure. However, we wish to understand in more detail the protection their role offers to the LPA process. Evidence suggests that, for the

majority of the LPA applications made, only one or two named persons are given. Therefore, we are seeking views on whether we should reduce the maximum number of named persons allowed.

In the future, we may also wish to consider whether the notification process could be revisited. This could include removing the notification process in its entirety, or limiting the persons notified to just the attorney and the donor. We would welcome your views on this and any other changes that could be made to the notification process.

If the notification process is retained in its current form, we seek your views on whether the OPG should assume responsibility for notifying all parties of the application to register the LPA. This would be irrespective of whether the application had been made digitally or on paper.

Question 12. Do you think the maximum number of named persons should be reduced from five? If you do, what do you think the maximum number should be?

Question 13. What other changes to the notification process could we consider?

Question 14. If the facility to notify named persons is retained, do you agree the OPG should send notifications of the application to register to the named persons, rather than the onus being on the donor/ attorney?

9. Confirmation of Registration

Currently, once the LPA has been registered, the OPG returns the whole document to either the donor or the attorney. This is because the LPA is a deed and it must therefore be returned to whoever made the application.

We are seeking views now about whether the OPG should retain the original LPA and only issue a short 'Certificate of Registration' (in either a digital or paper form) in the future, instead of returning the whole LPA as it does at present.

The Certificate would only contain basic information concerning the donor and the attorney, as well as the details of any powers granted.

Question 15. What are your views on the proposal that the OPG should retain the original LPA and issue a 'Certificate of Registration' instead? Do you have any concerns about the OPG retaining the original LPA?

Question 16. Do you envisage any particular advantages or disadvantages of adopting a model where the donor's authority is proven by a Certificate of Registration without the LPA attached?

10. Statutory Waiting Times

The Mental Capacity Act (MCA) 2005 provides that there should be a 'prescribed period' – commonly known as the statutory waiting period - before the Public Guardian registers an LPA. The purpose of the prescribed waiting period is to allow named persons to lodge any objections that they may have to the appointment of the attorney. Currently, the Lasting Power of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007 stipulate that the prescribed period is six weeks.

We are considering reducing the prescribed period to five weeks, bringing it in line with the current prescribed waiting period for EPAs and would seek your views on this change. In addition, we would like to explore whether there is merit in reducing the statutory waiting period for both LPAs and EPAs further in the future, for example, reducing it to four weeks or less (although for EPAs this would require primary legislation because of the way the relevant provisions are framed).

We know that the prescribed period can cause difficulties in times of emergency. Therefore, we wish to explore more widely what value the waiting period offers and whether it might operate differently. For example, we seek views on the proposal that in certain circumstances, such as if there was a serious threat to the donor's assets, the prescribed period should be waived (subject to the agreement of any named persons).

Question 17. Should the prescribed LPA waiting period be reduced from six to five weeks, bringing it in line with the EPA prescribed waiting period?

Question 18. Do you feel the waiting period could be reduced further or perhaps removed entirely?

Question 19. Should the waiting period be waived in certain emergency situations, providing the named persons have no objections?

Section 2 - Supervision and other issues

1. Introduction

This section sets out for consultation the proposed changes to supervision of deputies, security bonds, fees and access to the Registers. It is proposed that any changes will come into effect from April 2013.

2. Supervision

The Public Guardian is responsible for supervising deputies appointed by the Court of Protection. Deputies are generally required as a minimum, on an annual basis, to submit to the Public Guardian a report setting out how they have discharged their duties as deputy and what decisions they have made on behalf of the person who lacks capacity. In the case of a financial deputy, they are also required to provide details of income and expenditure in the past year and details of current assets.

The introduction of online services will not only apply to those processes associated with LPAs and EPAs - the OPG wants to ensure that **all** of its customers derive some benefit from digitalisation and that all of its business processes operate in as effective and efficient a way as possible. This includes the ways that deputies interact with the OPG and the ways in which they are supervised. We wish to develop a facility to enable deputies to manage their deputyship 'account' online and to be able to amend/update their records via this route. At the end of the year, a deputy would then be able to submit their annual report and any additional information required by the OPG online via a secure network. The system will also be able to provide information and guidance to deputies – including on the completion of annual reports. We suggest this would speed up the delivery of reports and information to the OPG.

Question 20. What are your views on the proposal that deputies should be able to submit their reports and manage their accounts online throughout the year?

3. Change of security bond provider

A security bond is a form of financial security set by the Court of Protection on the appointment of a deputy. A yearly sum is payable, which is variable dependent on the level of security set by the Court. The bond provides protection for the person lacking capacity from any financial loss that may occur due to the deputy's handling of their finances. Any bond put in place must meet the Public Guardian's requirements, as set out in the Lasting Power of Attorney, Enduring Power of Attorney and Public Guardian Regulations 2007. The bond then normally remains in place until two years *after the death* of the person lacking capacity, or if an application is made to the Court of Protection for the bond to be discharged.

As more insurers enter the market to provide security bonds, we are aware that deputies are investigating the schemes being offered in order to get the best

value for the person lacking capacity. This means they may wish to change bond providers, potentially on more than one occasion, over the life of their deputyship. At present, if a deputy wishes to change insurer this must be approved by the OPG. In such circumstances, the previous bond will still remain in place unless an application is made to the Court of Protection to have it discharged. The decision whether to discharge the bond in any given case will be a judicial one. The risk, therefore, is that changing bond providers may result in two premiums being payable for a period of time unless an application for discharge is made.

Applications to the Court of Protection will incur fees and legal costs that could outweigh the savings to be made by changing bond provider. We are keen to ensure that, where a deputy is able to find an alternative provider and as long as that provider meets the requirements of the regulations, they are able to switch with minimal expense or difficulty while ensuring that the assets of the person lacking capacity continue to be protected.

We are, therefore, exploring how this process could be simplified. A possible approach would be to provide for the automatic discharge of a bond within two years of the commencement date of the bond with the new provider. This would be in line with the current provisions for a bond being automatically discharged two years (after the death of the person lacking capacity). In addition, the two year period would provide a greater opportunity to identify any issues or irregularities that may have occurred.

Question 21. In order to allow deputies to change bond provider without the need to apply to the Court of Protection, should the Regulations be amended to allow the original bond to be automatically discharged after a certain time period?

Question 22. If you agree, do you think two years is an adequate time period?

4. Fees

In an average month, the OPG receives over 15,000 applications to register LPA or EPAs, each accompanied with a cheque to pay the necessary fee. Processing receipt of cheques for both LPA fees and supervision fees takes time and resources that could be diverted to other areas of the OPG. New improved IT systems will enable the OPG to provide an online payment facility for all types of fees, receipt of which would be processed on the day.

With the provision of digital services, the recovery of costs via fees charged to customers could move to a more flexible model to reflect the variances in the processing costs. Digital LPAs would require minimal processing compared to paper-based models and the potential for errors in completion and the amount of time spent checking at registration would also be reduced. This allows the possibility of offering differential fees to reflect the difference in processing costs at the OPG between paper based and digital applications.

Question 23. Would you support the development of a facility to pay both LPA and supervision fees online?

Question 24. Would you support the charging of variable fees to customers depending on the channel used?

5. Access to the Registers

The current registers (for EPAs, LPAs and Court of Protection appointed deputies) are stored on the OPG's current IT system. Anyone can request a 'first tier' search of the register and receive basic limited information about whether a deputy or attorney exists for a given person and what type of power is in place. A 'second tier' search can then be requested for more detailed information about the LPA or deputyship. Any information provided after a request for 'tier two' information is at the discretion of the Public Guardian and will take into account the status of the person making the request and the reasons why. Also, any information given on a 'tier two' search must relate to the donor or the person who is the subject of the deputy order. It must not relate to any other person.

These registers are only accessible by registered OPG users accessing the systems on OPG premises. This means any search of the register – whether a basic 'tier one' search or a 'tier two' search – can only be completed by OPG staff during working hours. Carrying out searches outside office hours would require the provision of dedicated staff to fulfil that role and the costs would need to be met from fees charged and these would potentially be prohibitive.

Subject to data protection requirements and any other necessary safeguards, the shift to a digital approach opens up the possibility of additional models. We are considering a range of options relating to accessing the registers and would welcome your views. For example, basic 'tier one' searches, which provide minimal information to anyone requesting a search, could be made available online with live access to registers over the internet protected by any necessary security/registration requirements. 'Tier two' searches, which are more detailed and are subject to assessment by the OPG, could be submitted electronically and a response issued by email once staff had the opportunity to assess the request. Having online access to 'tier one' information would mean that immediate information could be available in the event of an urgent out of hour's situation, such as a serious accident or emergency situation, where time may be of the essence.

Question 25. Would you agree with making 'tier one' searches of the registers available online?

6. Assisted Digital

We want to take a proactive approach to ensure that all those people who want to use the new digital services are able to do so, whilst also ensuring that there are appropriate safeguards.

Although paper based options will still be available, we are aware that the introduction and increased use of online services may disadvantage some groups, for example, those who do not have access to the internet, those who are more elderly or vulnerable, or those with limited digital media literacy.

Therefore, assisted digital services will be provided for people who can't ever use digital channels or who could use digital channels but currently face barriers to doing so. This could be provided through a number of avenues, whereby those who cannot access the internet directly are assisted in accessing a digital service via a trusted and supported intermediary – in many cases that may already be a family member, but this could be extended to professional groups or voluntary/NGO sectors, or other environments such as libraries and post offices.

We want to ensure that we are considering all available avenues to provide assisted digital support and we would welcome your views on how we might do this.

An equalities impact assessment initial screen has been completed and is attached to this consultation paper. It has not identified any significant equality impacts at this stage. We will continue to develop this assessment further throughout the consultation process and will take into account any evidence received from consultation.

Question 26. How do you think we can get the balance right between providing 'digital by default' (online) services and providing an 'assisted digital' alternative?

Question 27. Are you aware of any equalities data that would help inform the development of the new digital channels?

Question 28. Do the proposals outlined in this consultation raise any potential equality impacts which are not covered by the attached equalities impact assessment initial screening?

Glossary

Applicants	The persons applying to register the Lasting Power of Attorney (LPA)
Attorney	Someone appointed under either a Lasting Power of Attorney (LPA) or an Enduring Power of Attorney (EPA), who has the legal right to make decisions within the scope of their authority on behalf of the person who made the Power of Attorney.
Assisted Digital	The methods by which individuals who cannot access the internet directly are assisted in accessing a digital service via a trusted and supported intermediary
Certificate Provider	An independent person who is able to confirm that the person making the LPA understands its significance
Court of Protection	The specialist Court for all issues relating to people who lack capacity to make specific decisions. The Court of Protection is established
Deputy	Someone appointed by the Court of Protection with ongoing legal authority to make decisions on behalf of a person who lacks capacity to make particular decisions
Digital By Default	The delivery of government services on line or by other digital means
Donor	The person making the Lasting Power of Attorney (LPA)
Enduring Power of Attorney (EPA)	A Power of Attorney created under the Enduring Power of Attorney Act 1985 appointing an attorney to deal with the property and affairs of the person who made the Enduring Power of Attorney
Jointly	Attorneys must always make all decisions together. If one of the attorneys does not agree with something, that decision cannot be made.
Jointly and severally	Attorneys can act together or independently for all decisions.
Lasting Power of Attorney (LPA)	A Power of Attorney created under the Mental Capacity Act 2005 appointing an attorney (or attorneys) to make decisions about the donor's personal welfare (including healthcare) and/or deal with the donor's property and affairs.
Mental Capacity Act 2005 (MCA)	The Mental Capacity Act (2005) protects people who may not be able to make some decisions for themselves
Named persons	The persons specified in the LPA, who should be notified that the LPA is about to be registered
Security bond	The financial security set by the Court of Protection. The bond provided by an insurer and provides protection for the person lacking capacity from any financial loss that may occur due to the deputy's handling of their finances

Questionnaire

We would welcome responses to the following questions set out in this consultation paper:

Question 1. Are there any reasons why a 'hybrid LPA form', covering both property and affairs and health and welfare should not be introduced?

Question 2. If a 'hybrid LPA form' is introduced, should the current two separate forms be retained alongside it?

Question 3. Should a short version of the 'hybrid LPA form' be introduced? Or, alternatively, should the 'hybrid LPA form' be split into two sections?

Question 4. Is there anything else that could be removed from, or amended in, the current LPA forms?

Question 5. Should donors continue to be able to appoint attorneys to act 'jointly' for some decisions or 'jointly and severally' for others?

Question 6. Do you agree that the wording 'jointly' or 'jointly and severally', although legally precise, is confusing? What alternative wording would you suggest?

Question 7. Should the requirement for an additional certificate provider, in circumstances where the donor has not specified any named persons, be removed?

Question 8. How well do you think that the role of the certificate provider is operating and is it in the way that the MCA legislation intended?

Question 9. What value do you think the role of the certificate provider might add to the process for making an LPA within a digital context?

Question 10. Can you see any reasons why the LPA form and the application to register (the LPA 002) should not be amalgamated?

Question 11. In principle, do you agree with the proposal that applicants should be able indicate, via a tick box, that they are applying for registration?

Question 12. Do you think the maximum number of named persons should be reduced from five? If you do, what do you think the maximum number should be?

Question 13. What other changes to the notification process could we consider?

Question 14. If the facility to notify named persons is retained, do you agree the OPG should send notifications of the application to register to the named persons, rather than the onus being on the donor/ attorney?

Question 15. What are your views on the proposal that the OPG should retain the original LPA and issue a 'Certificate of Registration' instead? Do you have any concerns about the OPG retaining the original LPA?

Question 16. Do you envisage any particular advantages or disadvantages of adopting a model where the donor's authority is proven by a Certificate of Registration without the LPA attached?

Question 17. Should the prescribed LPA waiting period be reduced from six to five weeks, bringing it in line with the EPA prescribed waiting period?

Question 18. Do you feel the waiting period could be reduced further or perhaps removed entirely?

Question 19. Should the waiting period be waived in certain emergency situations, providing the named persons have no objections?

Question 20. What are your views on the proposal that deputies should be able to submit their reports and manage their accounts online throughout the year?

Question 21. In order to allow deputies to change bond provider without the need to apply to the Court of Protection, should the Regulations be amended to allow the original bond to be automatically discharged after a certain time period?

Question 22. If you agree, do you think two years is an adequate time period?

Question 23. Would you support the development of a facility to pay both LPA and supervision fees online?

Question 24. Would you support the charging of variable fees to customers depending on the channel used?

Question 25. Would you agree with making 'tier one' searches of the registers available online?

Question 26. How do you think we can get the balance right between providing 'digital by default' (online) services and providing an 'assisted digital' alternative?

Question 27. Are you aware of any equalities data that would help inform the development of the new digital channels?

Question 28. Do the proposals outlined in this consultation raise any potential equality impacts which are not covered by the attached equalities impact assessment initial screening?

Thank you for participating in this consultation exercise.

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Contact details/How to respond

Please send your response by 19 October 2012 to:

Kathy Malvo
Justice Policy Group
Ministry of Justice
Location 4:16
102 Petty France
London SW1H 9AJ

Tel: 0203 334 3124

Fax: 0203 334 3147

Email: OPGCONSULTATION@justice.gsi.gov.uk

Or Online at consult.justice.gov.uk/digital-communications/transforming-services-opg/

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available on-line at consult.justice.gov.uk/digital-communications/transforming-services-opg/

Alternative format versions of this publication can be requested from **0203 334 3124**

Publication of response

A paper summarising the responses to this consultation will be published in [insert publication date, which as far as possible should be within three months of the closing date of the consultation] months time. The response paper will be available on-line at <http://www.justice.gov.uk/index.htm>.

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but

we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Impact Assessment

The Impact Assessment and Equality Impact Assessment of these proposals can be found as an Annex to this document.

The consultation criteria

The seven consultation criteria are as follows:

1. **When to consult** – Formal consultations should take place at a stage where there is scope to influence the policy outcome.
2. **Duration of consultation exercises** – Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. **Clarity of scope and impact** – Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. **Accessibility of consultation exercises** – Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. **The burden of consultation** – Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. **Responsiveness of consultation exercises** – Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. **Capacity to consult** – Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

These criteria must be reproduced within all consultation documents.

Consultation Co-ordinator contact details

Responses to the consultation must go to the named contact under the How to Respond section.

However, if you have any complaints or comments about the consultation **process** you should contact Sheila Morson on 020 3334 4498, or email her at consultation@justice.gsi.gov.uk.

Alternatively, you may wish to write to the address below:

**Ministry of Justice
Consultation Co-ordinator
Better Regulation Unit
Analytical Services
7th Floor, 7:02
102 Petty France
London SW1H 9AJ**

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