

ST HELENA



MENTAL HEALTH AND MENTAL CAPACITY ORDINANCE, 2015

***MENTAL HEALTH AND MENTAL CAPACITY (LASTING POWER OF ATTORNEY)
REGULATIONS, 2017***

In exercise of the powers conferred by sections 91(2) and 137 and the First Schedule to the Mental Health and Mental Capacity Ordinance, 2015, the Governor in Council makes the following Regulations:

Citation

1. These Regulations may be cited as the Mental Health and Mental Capacity (Lasting Power of Attorney) Regulations, 2017.

Lasting power of attorney

2. (1) An instrument creating a lasting power of attorney relating to property and affairs under section 103 of the Ordinance must be in the form and contain the information as set out in Form A in Schedule 1.

(2) An instrument creating a lasting power of attorney relating to personal health and welfare under section 103 of the Ordinance must be in the form and contain the information as set out in Form B in Schedule 2.

Certificate

3. (1) A certificate required by paragraph 2(1)(e) of Schedule 1 to the Ordinance must be in the form and contain the information as set out in Section 9 of Form A or Form B.

(2) The certificate referred to in paragraph (1) must, subject to paragraph (3), be given by a person chosen by the donor as being someone who—

- (a) has known the donor personally for the period of at least 2 years immediately preceding the date on which that person signs the certificate; or
- (b) has professional skills and expertise such as the donor's medical practitioner, a healthcare professional or a solicitor;

and the person so chosen by the donor under paragraph (a) or (b) is able to certify the matters set out in paragraph (2)(1)(e) of Schedule 1 to the Ordinance.

(3) A person is disqualified from giving a certificate under paragraph (1) if that person is—

- (a) a family member of the donor;
- (b) a donee of that lasting power of attorney;
- (c) a family member of a donee referred to in item (b);
- (d) a director or employee of a trust corporation acting as a donee referred to in item (b);
- (e) a business partner or employee of the donor or a donee of that lasting power of attorney;
- (f) a donee of—
 - (i) any other lasting power of attorney; or
 - (ii) an enduring power of attorney, which has been executed by the donor (whether or not it has been revoked);
- (g) an owner, director, manager or employee of any care home in which the donor is living when the instrument is executed; or
- (h) a family member of a person referred to in item (g).

(4) For the purposes of this regulation, “family member” in relation to a person means his or her spouse, life partner, son, daughter, step-son, step-daughter or parent.

Registration of instrument with Public Guardian

4. An application to the Public Guardian for the registration of an instrument intended to create a lasting power of attorney must be made by completing Sections 11, 12 and 13 of the relevant form (Form A or Form B) and must be accompanied by any fees prescribed in Schedule 3.

Objection by donee or donor

5. (1) The prescribed period for objection by a donee or donor under paragraph 8 or 9 of Schedule 1 to the Ordinance is 21 days.

(2) The prescribed ground for objection by a donee under paragraph 8(3)(b)(ii) of Schedule 1 to the Ordinance is that that an event mentioned in section 107(3) or (5)(a) to (d) has occurred which has revoked the instrument.

Notice of registration

6. Notice of registration of an instrument under paragraph 10 of Schedule 1 to the Ordinance must be given by the Public Guardian in writing and state the name of the donor, the name of the attorney(s) and the date upon which the instrument was entered into the register.

SCHEDULE 1

Insert form Property and Financial Affairs here

SCHEDULE 2

Insert form Personal Health and Welfare here

SCHEDULE 3

FEES

Fee to register Lasting Power of Attorney with Public Guardian £12.00

Made by the Governor in Council this day of 2017.

Lydia H. D. Buchanan
Clerk of Councils

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe the forms in which instruments creating a lasting power of attorney must be made to comply with the requirements of the Mental Health and Mental Capacity Ordinance, 2015. The Regulations also prescribe the forms and fee for registering the lasting power of attorney with the Public Guardian.