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Memorandum for Executive Council

SUBJECT **Mental Health and Mental Capacity (Lasting Power of Attorney) Regulations, 2017**

Memorandum by Chairman, Public Health Committee

ADVICE SOUGHT 1. **Council is asked to advise whether the attached Mental Health and Mental Capacity (Lasting Power of Attorney) Regulations, 2017 should be enacted.**

BACKGROUND & CONSIDERATIONS

2. The Mental Health and Mental Capacity (Lasting Power of Attorney) Regulations, 2017 ('the Regulations') are proposed under section sections 91(2) and 137 and the First Schedule to the Mental Health and Mental Capacity Ordinance 2015 ('The Ordinance'). Sections 91 (2) and 137 allows the Governor in Council to make provision for regulations, which may prescribe forms to be used for the purposes of the Ordinance

3. At the moment, there is no legal instrument in St Helena which allows someone who may be, in the future, losing their mental capacity, to appoint another who is capable of making that decision on their behalf when they have lost the capacity to do so.

4. The Regulations set out Lasting Powers of Attorney ('LPA') are for two fields, one for property and finance (Form A) and another for health and welfare (Form B). An LPA allows others to make decisions on behalf of the donor of the LPA when they have lost the mental capacity to do so, these decision makers are called Attorneys. A donor is the person who is making the LPA and who may, in the future, be losing the mental capacity to make the decisions set out in the LPA.

5. LPAs must be registered with the Public Guardian in order for them to take effect. A property and finance LPA can be used by the Attorneys to make decisions as soon as it is registered; a health and welfare LPA can only be used once it has been registered and the donor has lost mental capacity.

6. In both LPAs, a certificate must be given by someone who has known the donor for more than 2 years or by a qualified professional such as a doctor or solicitor. This person ensures that the donor understands the LPA and that there is no one

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pressuring the donor to sign and register the LPA.

7. These Regulations also set out persons suitable to give certificates, how to object to an LPA and how to give notice to someone of the registration of an LPA.

8. A copy of the proposed Regulations accompanies this memo.

FINANCIAL IMPLICATIONS

9. A mechanism will need to be in place for the receiving of fees (£12) that must be paid when a person files an LPA with the Public Guardian (currently Paul McGinnety).

ECONOMIC IMPLICATIONS

10. Providers of financial services and those who offer direct debits for payment of services (telecommunications providers, insurance providers etc) will have to be trained to recognise these documents (especially with regard to the property and finance LPA) and the legal significance that they hold.

PUBLIC/SOCIAL IMPACT

11. Providers of health care services and social services will have to be trained to recognise the legal significance of LPAs, particularly health and welfare LPAs. Training should be given to emergency medical staff with regards to the donor's wishes on Life Sustaining Treatment as specified in the health and welfare LPA.

ENVIRONMENTAL IMPACT

12. There are no known environmental impacts.

PREVIOUS CONSULTATION / COMMITTEE INPUT

13. The Regulations were discussed by the Public Health Committee on 6 September 2017. The Committee recommended that once approved by Executive Council, the Regulations should be mentioned in the ExCo report and associated SHG press release.

PUBLIC REACTION

14. No adverse public reaction anticipated.

PUBLICITY

15. The implementation of these regulations would benefit from publicity to encourage and promote the use of both types of LPA.

SUPPORT TO STRATEGIC OBJECTIVES OPEN AGENDA ITEM

16. None

17. This item is recommended for the open agenda.

Corporate Services
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Jamestown

DFT
21.09.2017