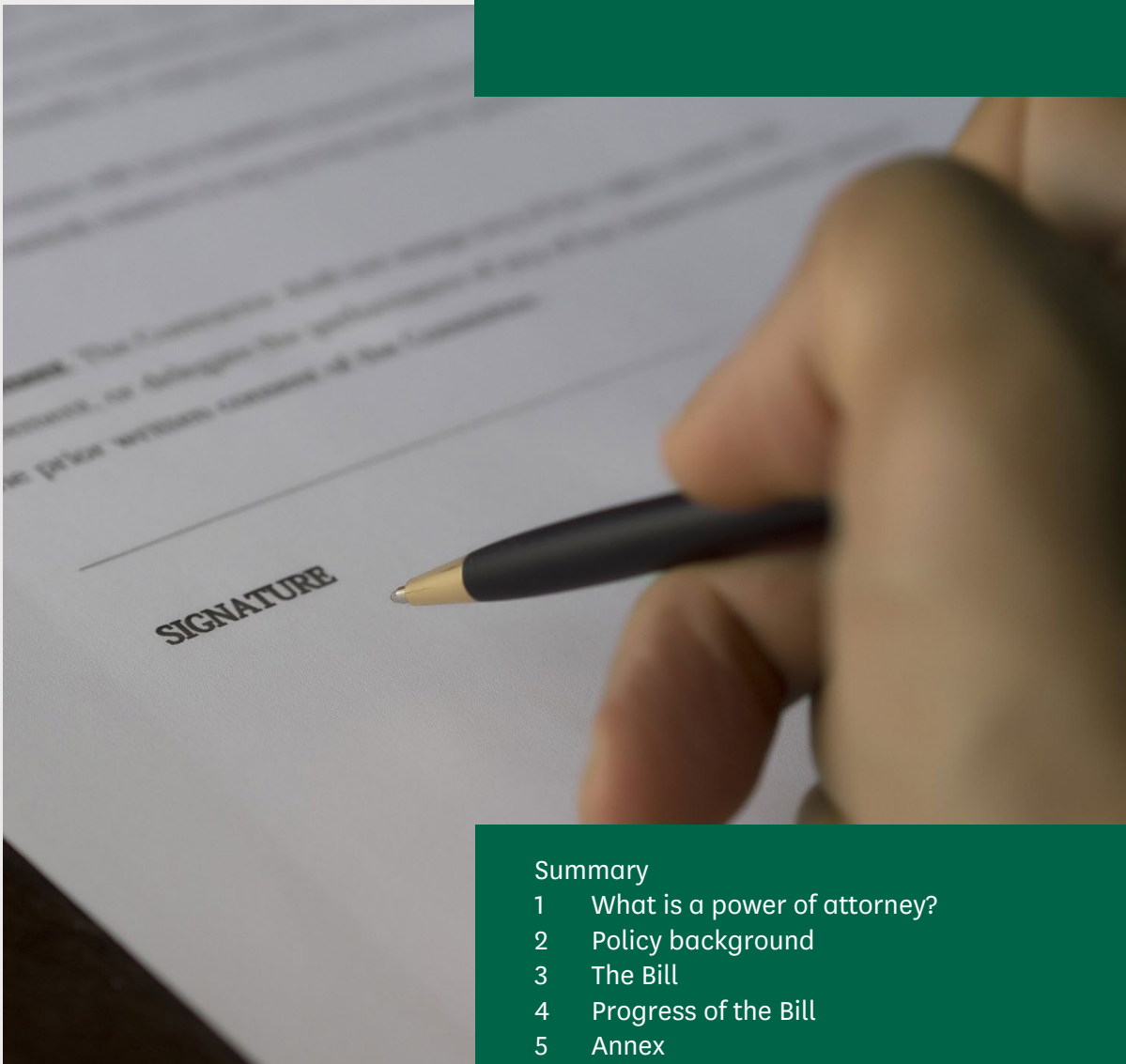


Research Briefing

14 March 2023

By Lisa Rowland

Powers of Attorney Bill



Summary

- 1 What is a power of attorney?
- 2 Policy background
- 3 The Bill
- 4 Progress of the Bill
- 5 Annex

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Summary

The Bill

The [Powers of Attorney Bill](#) (PDF) (“the Bill”) is a Private Members’ Bill sponsored by Stephen Metcalfe (Conservative). [Explanatory Notes](#) (PDF) to the Bill have been prepared by the Ministry of Justice, with the consent of Stephen Metcalfe.

The intent of the Bill is to [modernise and simplify the creation and registration of lasting powers of attorney](#) (PDF) (“LPAs”). It would enable both processes to be completed digitally, although a paper service would be retained for those unable to access the digital service following [a Government commitment to do so](#) (PDF).

The Bill would introduce a requirement for the verification of identity when an application is made to register an LPA, while making the Office of the Public Guardian responsible for receiving objections to registrations from attorneys or named persons. Third parties not named in an LPA would also be able to object to registration. The electronic form of LPAs would be used as evidence of registrations, while copies of those powers already registered would continue to be valid.

The [Explanatory Notes to the Bill](#) (PDF) state that its effect would be:

... that donors find it easier to create their LPA while also being better protected from abuse. The public will be better protected from fraud and the Office of the Public Guardian will be able to run a more streamlined process that delivers better value for its fee payers.

The Bill would also add chartered legal executives to the list of persons authorised to certify copies of a lasting power of attorney.

Second reading of the Bill in the House of Commons took place on 9 December 2022, when [the Government supported it](#).

A Public Bill Committee considered the Bill in one sitting on 1 March 2023. No amendments were tabled and there was a single debate covering whether all three clauses and the Schedule should stand part of the Bill, none of which were opposed.

The Bill was reported without amendment and remaining stages in the House of Commons are scheduled for 17 March 2023.

Background

In 2021, the Ministry of Justice, in collaboration with the Office of the Public Guardian (“OPG”), launched a consultation, [Modernising Lasting Powers of Attorney](#).

The [stated aims](#) (PDF) of work by the Ministry of Justice and the Public Guardian to modernise LPAs were to:

- increase safeguards, especially for the donor;
- improve the process of making and registering an LPA for donors, attorneys and third parties; and
- achieve sustainability for the OPG whilst keeping LPAs as affordable as possible for all people in society.

Proposed changes included a move to a predominantly digital service, with a paper alternative for those unable to access electronic facilities; a widening of the powers of the Public Guardian to verify identity; and a change to the process of objecting to registration of powers of attorney to stop potential abuse.

The Government [published its response to the consultation](#) in May 2022.

[The Government said it would](#) (PDF):

- ensure there will be a method to evidence the execution of a power of attorney by the donor;
- continue to investigate appropriate methods of registering a power of attorney;
- develop a system of conditional checks on identity;
- ensure that the OPG receives all objections to registrations of powers of attorney;
- look at a system of objection from before the creation of a power up to the point of registration; and
- proceed with work on integrating a digital service with document and case management systems used by solicitors.

The Government said effecting [such changes would require amendments to the Mental Capacity Act 2005 through primary legislation](#) (PDF) and that it intended to bring forward legislation when parliamentary time allowed.

Answering a [written parliamentary question](#) on the number of cases of fraud reported to the OPG relating to powers of attorney, Parliamentary Under-Secretary of State at the Ministry of Justice, Mike Freer, said on 12 December 2022 that the Powers of Attorney Bill would bring forward the Government’s

proposals “to make the system quicker, easier to access and more secure for the thousands of people who rely on an LPA every year”.

1

What is a power of attorney?

A power of attorney is a deed by which a person (the donor) authorises another person (the attorney, sometimes called the donee) to act on behalf of the donor. The donor may appoint more than one attorney and specify that they must act together (jointly) in making decisions, or that they can act separately or together (jointly and severally), which means attorneys can make decisions on their own or with other attorneys.

A power of attorney may be created only by someone who has sufficient mental capacity to do so. It is not a document which can be applied for by one individual on behalf of another. It is for the donor to decide whether to make a power of attorney, and if so, who the attorney(s) should be.

There are a number of different types of power of attorney, including ordinary powers of attorney, enduring powers of attorney and lasting powers of attorney (“LPAs”).

LPAs were created under provisions in the [Mental Capacity Act 2005](#) (“MCA”). It was not possible to make an LPA until 1 October 2007. The MCA also created a new Public Guardian, supported by staff of the [Office of the Public Guardian](#) (“OPG”). The OPG is an executive agency of the Ministry of Justice and is responsible for, amongst other things, registering LPAs.

A Library briefing paper, [Powers of attorney and other decision-making powers](#), provides further information.¹

The [Powers of Attorney Bill](#) (PDF) would make provision for LPAs, proof of instruments creating powers of attorney and other related purposes.

¹ Commons Library Briefing CBP-03898

2 Policy background

2.1 Government consultation: Modernising Lasting Powers of Attorney

On 20 July 2021, the Ministry of Justice, in collaboration with the OPG, launched a consultation, [Modernising Lasting Powers of Attorney](#) (“the consultation paper”).² The consultation closed on 13 October 2021.

The stated aims of the work by the Ministry of Justice and OPG to modernise LPAs were to:

- increase safeguards, especially for the donor;
- improve the process of making and registering an LPA for donors, attorneys and third parties; and
- achieve sustainability for the OPG whilst keeping LPAs as affordable as possible for all people in society.³

In his Ministerial Foreword to the consultation, Alex Chalk, then junior Justice Minister, spoke of increased demand for access to digital services and the need to consider new safeguards:

The protections that exist in the LPA are based on decades, if not centuries, of tradition and legal case law. They’re based on known and trusted paper-based social conventions, such as signing and witnessing. However, the world is changing and people increasingly want to access services digitally. The COVID-19 pandemic has accelerated this demand and transformed the way many people think and act. Digital channels provide many opportunities to improve access and speed of service, but they also require us to think anew about the safeguards we put in place in such systems. The old paper practices are not appropriate for a new digital world. New ways of achieving the same, or better, levels of protection have to be identified before we can move forwards. At the same time, we must meet the needs of those who cannot or will not use digital channels.⁴

² Ministry of Justice, [Modernising Lasting Powers of Attorney](#) (PDF), July 2021

³ As above, [p6, para 13](#)

⁴ As above, [p3](#)

The consultation paper set out the case for change. Part of the rationale, the paper stated, was an increasing expectation by the public to be able to access Government services online.⁵ It also referred to the inefficiencies arising from large volumes of paperwork and the subsequent impact on costs:

OPG's operating costs are funded entirely by the income from the fees it charges. If the LPA service is not made more efficient, either fees will have to increase or the way OPG is funded will become unsustainable in the longer term.⁶

The consultation paper then set out the need to use technology as a means of safeguarding those creating and registering LPAs:

When the LPA was introduced in 2007, the safeguards put in place were appropriate for the time, but technology and society have moved on. Technology now offers new ways for OPG to protect its users through identity and information verification. Society's attitudes to fraud and abuse, and the expected protections against them, have also changed.

We need to respond to these challenges and look at how technology can make it easier for people to make and register an LPA. We must also fully consider concerns about security – finding the right balance between ease of use and protection against abuse. Ease of access and protections must also be ensured for those who cannot use the digital service or do not want to.⁷

The consultation sought views and evidence on seven proposals for modernising LPAs that the Government said required changes to primary legislation:

- **Proposal 1** considered the role and value of witnessing;
- **Proposal 2** assessed the role of applying to register an LPA and who could apply;
- **Proposal 3** evaluated the remit of the OPG and how it could be widened;
- **Proposal 4** considered the process of objecting to an LPA;
- **Proposal 5** looked at when a party could object to an LPA;
- **Proposal 6** evaluated the speed of the LPA service; and
- **Proposal 7** assessed how solicitors should access the LPA service.⁸

The consultation paper acknowledged not everybody is able or willing to use digital technology to access services and said any future LPA service would allow for multi-channel access.⁹

⁵ Ministry of Justice, [Modernising Lasting Powers of Attorney](#) (PDF), July 2021 [p5, para 7](#)

⁶ As above, [pp5-6, paras 8-9](#)

⁷ As above, [p6, paras 10-11](#)

⁸ As above, [pp7-8, paras 19-25](#)

⁹ As above, [p13, para 53](#)

2.2

Government response to the consultation

The [Government published its response to the consultation](#) on 19 May 2022. In the Ministerial Foreword, Tom Pursglove, then Minister for Justice and Tackling Illegal Migration, said donors must be at the forefront of any reform:

... it remains for me to emphasise again the importance of us modernising LPAs in a way that is right for donors. They are the ones who choose their attorneys, they are the ones that should set the scope of the powers they wish to confer under an LPA, and they are the ones whose rights and freedoms must be protected and facilitated through this service. It therefore remains the case that their needs are paramount and must come before those of any other party as we seek to make changes.¹⁰

The Government responded to each of the consultation proposals as follows.

Proposal 1: Role of the witness

The Government said it would continue to look at the use of technology to replace witnesses with a similar digital function and assess how to combine the function of the witness and certificate provider in relation to execution of an LPA.¹¹ It also pledged to provide more clarity around execution by both donor and attorney, while stating that it would ensure that LPAs continue to be treated as a deed. There would also be further clarity on the role of the certificate provider in protecting against fraud, abuse and undue pressure, but the Government declined to introduce a requirement that the certificate provider be a professional.¹²

Proposal 2: Role of the application

The Government said it would continue to assess two approaches to registration of an LPA. Under the first approach, execution of an LPA would start the registration process, underpinned by automated checks that would identify and amend errors. The second approach would allow donors to delay registering an LPA and require the OPG to store digital LPAs until registration. However, donors would need to register an LPA within a defined timeframe, after which point the document would be deleted.¹³

Proposal 3: Remit of the OPG

Having assessed how to widen the OPG's remit to increase safeguards during the process of creating and registering an LPA, the Government stated it

¹⁰ Ministry of Justice, [Modernising Lasting Powers of Attorney. Government Response](#) (PDF), May 2022, [p6](#)

¹¹ See Office of the Public Guardian Blog, [Creating an LPA – Frequently Asked Questions Part 1](#), 26 August 2021, Q4. [Who can witness an LPA?](#) and Q5. [Who can be a certificate provider for my LPA?](#)

¹² Ministry of Justice, [Modernising Lasting Powers of Attorney. Government Response](#) (PDF), May 2022, [p27, para 93](#)

¹³ As above, [p28, paras 96-97](#) and [p34, para 125](#)

would consider whether checks on an attorney are necessary and appropriate in light of other safeguarding mechanisms. It declined to introduce additional checks such as those relating to criminal background. The Government said it would seek to verify the identity of the donor and the certificate provider under a modernised LPA service, using a range of identification options. Any checks would not, the Government said, be discretionary, but rather conditional.¹⁴ This would mean that automated checks would be introduced for all users of the service, with a requirement to provide one of several identification options. If checks were passed, the LPA would be registered immediately; if checks were failed, an LPA would be rejected and parties would need to go through the Court of Protection to verify that the LPA was valid.¹⁵

Proposal 4: How to object to registration of LPAs

The Government decided the best approach to objections to LPAs would be for the OPG to receive them and that primary legislation should be amended to allow anyone to object to the registration of an LPA. The Government said it would amend legislation to give the OPG power to refer cases directly to the [Court of Protection](#), where necessary.¹⁶

Proposal 5: When to object to registration

The Government said it would investigate methods for people to object to an LPA during its creation and consider a system that would allow third party objections before the LPA process starts. The Government committed to retaining a statutory waiting period as part of the objections process in relation to registering an LPA.¹⁷

Proposal 6: Speed of service

The Government decided not to proceed with an urgent LPA service, despite a significant minority of respondents stating that an urgent service would be beneficial. The Government cited “clear concern about the logistical and operational complexities of operating such a service” as the reason behind its decision.¹⁸

Proposal 7: Solicitors’ access to the service

The Government said it would work to integrate a digital LPA service with document and case management systems used by solicitors and ensure that

¹⁴ Ministry of Justice, [Modernising Lasting Powers of Attorney, Government Response](#) (PDF), May 2022, [p44, para 164](#)

¹⁵ As above, [p35, para 127](#)

¹⁶ As above, [p53, para 204](#)

¹⁷ As above, [p67, para 259](#)

¹⁸ As above, [p74, para 290](#)

any legislation would allow for mandatory use of a digital service by legal professionals in the future (if required).¹⁹

¹⁹ Ministry of Justice, [Modernising Lasting Powers of Attorney, Government Response](#) (PDF), May 2022, [p82, para 328](#)

3 The Bill

The [Powers of Attorney Bill](#) (PDF) is a Private Members' Bill introduced by Stephen Metcalfe (Conservative) and was [read for the first time in the House of Commons on 15 June 2022](#).²⁰ Information about the Bill is available on the [Bill page](#) of the Parliament website.

3.1 Overview

The [Explanatory Notes to the Bill](#) (PDF) state that the Bill would modernise and simplify the creation and registration of lasting powers of attorney.²¹

The Bill would enable both processes to be completed digitally, although a paper service would be retained, in accordance with the Government's commitment to retain such a service as part of its response to the consultation on modernising LPAs.²²

It would introduce a requirement for the verification of identity when an application is made to register an LPA, while making the OPG responsible for receiving objections to registrations from attorneys and named persons. Third parties not named in an LPA would also be able to object to registration. The electronic form of LPAs would be used as evidence of registrations, while copies of those powers already registered would continue to be valid.

The Explanatory Notes to the Bill state that it would be protective of donors and create a more efficient OPG:

The effect ... will be that donors find it easier to create their LPA while also being better protected from abuse. The public will be better protected from fraud and the Office of the Public Guardian will be able to run a more streamlined process that delivers better value for its fee payers.²³

The Bill would also add chartered legal executives to the list of persons authorised to certify copies of an LPA.²⁴ The current law stipulates that only a

²⁰ Bill No. 033, 2022-23

²¹ [Explanatory Notes to the Powers of Attorney Bill](#) (PDF), June 2022, [p2, para 1](#)

²² Ministry of Justice, [Modernising Lasting Powers of Attorney, Government Response](#) (PDF), May 2022, [p105, para 453](#)

²³ [Explanatory Notes to the Powers of Attorney Bill](#) (PDF), June 2022, [p2, para 3](#)

²⁴ Chartered legal executives are authorised lawyers who often work alongside solicitors. See CILEX Regulation, [Chartered Legal Executives](#) (accessed 14 March 2023)

solicitor, authorised person or stockbroker may certify true and complete copies of LPAs.²⁵

3.2

Bill provisions

Lasting powers of attorney

Clause 1 introduces the Schedule to the Bill, which would amend the Mental Capacity Act 2005 (“MCA”) in the context of creating and registering a lasting power of attorney.

Certifying copies of powers of attorney

Clause 2 would amend [section 3\(1\)\(b\)](#) of the [Powers of Attorney Act 1971](#) to permit chartered legal executives to certify copies of powers of attorney, along with solicitors, authorised persons or stockbrokers. An additional subsection (3A) would be inserted into the 1971 Act to define chartered legal executive.

Extent, commencement and short title

Clause 3 sets out the territorial extent (see section 4.2 of this briefing paper below) and date of commencement of the Bill.²⁶ It also sets out the Bill’s short title.

Schedule 1, Part 1: Lasting powers of attorney

Paragraph 1 introduces the proposed amendments to [Schedule 1 to the MCA](#) in the subsequent paragraphs.

Paragraph 2 would amend [paragraph 4](#) of Schedule 1 to the MCA. The proposed amendment provides that only a donor would be able to apply to register an LPA, removing the ability for attorneys to do so. Any application may be accompanied by a document intended to create an LPA that has not yet been fully executed.²⁷ The amendment would also abolish the need for an application to be accompanied by a fee.

Paragraph 3 would add paragraph 4A to Schedule 1 to the MCA. The new paragraph states that where a document creating an LPA is submitted with an application for registration, but has not yet been executed, the

²⁵ [Powers of Attorney Act 1971, s3\(1\)\(b\)](#)

²⁶ For detailed commentary on the territorial extent and application of the Bill, see [Explanatory Notes to the Powers of Attorney Bill](#) (PDF), June 2022, [p6, paras 25-30](#), and [Annex A to the Explanatory Notes](#) (PDF), p14

²⁷ Forms to be used, in the circumstances to which they apply, for instruments intending to create a lasting power of attorney are set out in [Part 1](#) and [Part 2](#) of [Schedule 1 to The Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007](#) (SI 2007/1253)

Public Guardian would need to take the necessary steps to ensure execution by the parties, in line with prescribed requirements under [paragraph 1\(1\)\(c\)](#) of Schedule 1 to the MCA.

Paragraph 4 would remove the current [paragraph 6](#) of Schedule 1 to the MCA, which requires donors or attorneys to notify named persons that an application to register an LPA is about to be made,²⁸ and so remove the obligation to notify named persons. Paragraph 4 would also amend [paragraph 7](#) of Schedule 1 to the MCA, giving responsibility to the Public Guardian for notifying named persons, donors and attorneys once an application has been received and where the instrument for creating the power has been made in accordance with the requirements of the Schedule.

Paragraph 5 would replace the existing [paragraph 10](#) of Schedule 1, which permits donors or attorneys to dispense with notification requirements if giving notice would serve no useful purpose. The new provision would permit the Public Guardian to dispense with notification, if it was satisfied that special circumstances warranted disapplication of the general requirement to notify named persons.

Paragraph 6 would insert paragraph 10A into Schedule 1, mandating the verification of identity in relation to an application to register an LPA. Such a requirement would be imposed by regulations provided for in the new paragraph 10A. If it appeared that identity requirements imposed by regulations were not met, the Public Guardian would not be permitted to register an LPA unless directed to do so by the court – in this case, the Court of Protection.

Paragraph 7 would amend paragraph 13 of Schedule 1 to the MCA. It would remove the [current requirement in paragraph 13\(3\)\(b\)\(i\)](#) of the Schedule for an attorney or named person to apply to court to object to a registration on a prescribed ground where notice has been received of an application to register an LPA.²⁹ The Bill provides that, in future, objections on prescribed grounds would be made only to the Public Guardian.

If the Public Guardian were to be satisfied that no evidence existed to reasonably support an objection on the ground given, it would have to register the LPA. In contrast, if evidence existed to reasonably support the objection, the Public Guardian would not be permitted to register the LPA unless the donor or attorney applied to the Court of Protection and the Court directed the Public Guardian to do so.³⁰

²⁸ A named person is a person whom the donor wishes to be notified of any application for the registration of an instrument to create an LPA: [Mental Capacity Act 2005, Schedule 1, para 2\(1\)\(c\)\(i\)](#)

²⁹ Prescribed grounds include the donor lacking capacity to make the LPA, or undue pressure what applied to the donor to make it: [Explanatory Notes to the Powers of Attorney Bill](#) (PDF), June 2022, [p9, para 53](#)

³⁰ [Explanatory Notes to the Powers of Attorney Bill](#) (PDF), June 2022, [p9, para 56](#)

A new paragraph 13A to Schedule 1 would be inserted to allow third parties to object to the Public Guardian about an application to register an LPA.³¹ If the following conditions were to be satisfied, the Public Guardian would be permitted to deal with third party objections in the same way as those received from donors, attorneys or named persons:

- the Public Guardian received an application to register an LPA;
- the third party raised an objection with the Public Guardian; and
- the Public Guardian was aware of the donor’s intention to create an LPA.

The effect of the new paragraph 13A would be that third parties would be able to object to the OPG at any stage after the Public Guardian becomes aware that a donor intends to create an LPA.³²

Paragraph 8 would amend [paragraph 16\(1\)](#) of Schedule 1 to the MCA to ensure that “office copies” from the Public Guardian’s records of LPAs registered before the coming into force of the Bill would continue to have effect.

It also makes provision for the electronic form of a registered LPA to be evidence in any part of the United Kingdom of its content and (by regulations) the fact of registration, in a new paragraph 16(1A) of Schedule 1. This amendment would further allow for regulations prescribing which documents provided by the Public Guardian would be evidence (also in any part of the United Kingdom) of the contents of an LPA and the fact of registration. The Explanatory Notes to the Bill state that such regulations would set out which documents would be acceptable as evidence:

... where the registered LPA will be an electronic document in the future. This ensures that if donors, attorneys or third parties find themselves unable to access the electronic record, a paper alternative (as prescribed) can be used.³³

Schedule 1, Part 2: Minor and consequential amendments

This Part sets out minor and consequential amendments to [section 58](#) and [section 65](#) of the MCA and Schedule 1 thereto.

³¹ A third party for the purposes of the Bill would be defined as a person who is not the donor, an attorney or a named person. Powers of Attorney Bill (PDF), [Schedule 1, para 7\(2\)](#)

³² [Explanatory Notes to the Powers of Attorney Bill](#) (PDF), June 2022, [p9, para 57](#)

³³ As above, [p10, para 60](#)

4 Progress of the Bill

4.1 House of Commons second reading

[Second reading of the Bill](#) took place in the House of Commons on 9 December 2022.

Stephen Metcalfe (Conservative) introduced the Bill, saying that some 15 years after the introduction of LPAs in 2007, “the system is in need of an update” in several respects.³⁴

In the first instance, those wishing to make LPAs struggle to understand the system.³⁵ Secondly, the reliance on a paper system is making the process unnecessarily complicated.³⁶ This means the OPG is unable to deliver the kind of service its fee payers expect and is taking an average of 20 weeks to process LPA applications, versus its target of eight weeks.³⁷ Thirdly, Stephen Metcalfe said “probably the most important” point is that the desire of donors, attorneys and the OPG for an electronic system for LPAs “must be balanced against the need for suitable safeguards”.³⁸

When asked by James Sunderland (Conservative) whether the Bill would make the system any cheaper, Stephen Metcalfe said although he could not guarantee it would be cheaper, he could say “that it will be no more expensive.”³⁹

He also highlighted the fact that chartered legal executives would, under the Bill, be authorised to certify copies of LPAs, which he said was “completely right” given they are permitted to provide legal services under the Legal Services Act 2007.⁴⁰

In closing, Stephen Metcalfe said the Powers of Attorney Bill would generate numerous improvements to the LPA process:

It will make the Office of the Public Guardian more sustainable; streamline the process; increase the number of people who can authorise copies of lasting powers of attorney; and introduce some important safety checks. I very much look forward to hearing what the Minister has to say. I thank him and his

³⁴ [HC Deb 9 December 2022 c683](#)

³⁵ As above

³⁶ As above

³⁷ [HC Deb 9 December 2022 c684](#)

³⁸ As above

³⁹ [HC Deb 9 December 2022 c685](#)

⁴⁰ [HC Deb 9 December 2022 c686](#)

Department for working with me to bring the Bill to this stage and I hope that, after today's debate, we can take it further forward.⁴¹

Alex Cunningham (Labour), the Shadow Minister for Justice, said that Labour “supports the Bill’s aims and welcomes the modernisation of the process for making and registering lasting powers of attorney”, but prefaced that comment by saying “there is still much to be done to improve the system beyond the Bill’s parameters.”⁴²

The Shadow Minister welcomed the Bill’s amendments to [section 3](#) of the [Powers of Attorney Act 1971](#), enabling chartered legal executives to certify copies of powers of attorney. Nevertheless, he said, there were several omissions from the Bill and he wanted to understand why.

Alex Cunningham suggested “one notable absence” from the Government’s response to its consultation on modernising lasting powers of attorney was the Law Society’s recommendation that certification should expressly include consideration of the donor’s capacity. He said: “This seems like a sensible proposal to me, and I am interested to hear why the Bill has not taken it on.”⁴³

He also pointed out that other legislative measures could be used to support the exercise of legal capacity:

While LPAs are one important mechanism by which it is possible to support the exercise of legal capacity, as Alex Ruck Keene KC notes in an article on his excellent website about mental capacity law and policy, it is certainly not the only mechanism. He notes that it would be possible within the same zone of endeavour as this Bill “to flesh out the provisions of the Mental Capacity Act 2005 to secure that a person is recognised as being able to make their own decisions in more situations than is currently the case.”⁴⁴

The Shadow Minister asked whether further legislation enabling wider reforms should be expected, or whether the Bill was “the extent of the Government’s ambition for legislative work in this area”.⁴⁵

In concluding his remarks, Alex Cunningham said he was pleased with the Minister’s [Tom Pursglove’s] foreword to the Government’s consultation response, which emphasised the need to put donors first, and that Labour was “looking forward to scrutinising and potentially improving these measures at Committee stage.”⁴⁶

Speaking on behalf of the Government, the Parliamentary Under-Secretary of State for Justice, Mike Freer, said the Bill “reflects and builds on the

⁴¹ [HC Deb 9 December 2022 c686](#)

⁴² [HC Deb 9 December 2022 c687](#)

⁴³ As above

⁴⁴ As above

⁴⁵ As above

⁴⁶ [HC Deb 9 December 2022 c688](#)

Government’s response to the consultation [on modernising lasting powers of attorney]”.⁴⁷

In response to the question on capacity raised by Alex Cunningham, Mike Freer said:

... the Government remain committed to the principle of supporting decision making, but believe that that is provided best by the Mental Capacity Act 2005. The proposals in the consultation were carefully considered by the Government, but we still have concerns that a formal framework may be unnecessarily legalistic and would overlap with other provisions, such as advocacy.⁴⁸

On the matter of LPAs, Mike Freer said he wanted to “give a commitment to the House that we are seeking to ensure that the system is as simple and easy to navigate as possible”.⁴⁹ He commended the creation of a digital channel to make LPAs, as well as the flexibility afforded by improvements to the paper service.⁵⁰ Mike Freer also commended the safeguards to be built into the system. These would include identity verification, introduced by regulations that would specify who would be subject to checks and which supported documents would be accepted.⁵¹

The Minister stated in addition the Bill would “give us the levers to make further changes in regulations that will improve other protections, including the role of certificate providers”,⁵² who would witness the execution of LPA instruments.

In his final remarks, Mike Freer said the Bill would facilitate a much-improved service:

I reiterate how vital the improvements in the Bill are to support individuals to make a lasting power of attorney and to certify copies of such important documents. The efficiency savings will ensure that donors and attorneys have a better system, with the savings made reinvested to increasingly improve the service, so it is an all-round benefit.”⁵³

4.2

Public Bill Committee

The Bill was [considered in one sitting by a Public Bill Committee](#) on 1 March 2023.

⁴⁷ [HC Deb 9 December 2022 c691](#)

⁴⁸ [HC Deb 9 December 2022 c691](#)

⁴⁹ As above

⁵⁰ As above

⁵¹ [HC Deb 9 December 2022 c692](#)

⁵² As above

⁵³ As above

The sponsor of the Bill, Stephen Metcalfe, set out each clause of the Bill and the effect of the Schedule.

He emphasised that the Bill related to the creation and registration of powers of attorney in England and Wales, as law on mental capacity is devolved in relation to Scotland and Northern Ireland, but made some clarifying remarks about the extent of the Bill as follows:

- **Clause 1:** extends to England and Wales
- **Clause 2:** extends to England and Wales. It also extends to Scotland and Northern Ireland, having the same territorial extent as the provision it amends in the Powers of Attorney Act 1971.
- **Schedule:** extends to England and Wales, apart from matters relating to evidence of registration in paragraph 8 of the Schedule, which also extends to Scotland and Northern Ireland.⁵⁴

Peter Gibson (Conservative) stated he had recently met with the charity for the elderly, Age UK,⁵⁵ and said he shared some of its concerns about continued access to a paper-based systems “for those who are digitally disadvantaged or not familiar with digital processes”. He asked for reassurance that such systems would remain accessible.⁵⁶

Stephen Metcalfe emphasised there was no intention to abolish a paper-based system for LPAs, albeit the introduction of an electronic system will “hopefully” reduce the paper burden on the Office of the Public Guardian.⁵⁷

Stephen Metcalfe went on to say the introduction of a digital system would create a “single source of truth for the status of a lasting power of attorney” and that the Bill would deliver better value for fee payers by enabling wider changes to the Public Guardian. On this basis, he commended the Bill to the Committee.⁵⁸

Patrick Grady (SNP) commented on the implications of the Bill for Scotland, which he considered to be “technical and consequential in nature”.⁵⁹ However, he went on to say the arrangements for powers of attorney differ in Scotland, and “that there are some issues with mutual recognition north and south of the border”.⁶⁰ He suggested the matter could be considered before

⁵⁴ [PBC Deb 1 March 2023 c4](#)

⁵⁵ Age UK set out its position on the Bill in the document, [Parliamentary Briefing, Powers of Attorney Bill](#) (PDF)

⁵⁶ [PBC Deb 1 March 2023 c5](#)

⁵⁷ [PBC Deb 1 March 2023 c6](#)

⁵⁸ As above

⁵⁹ [PBC Deb 1 March 2023 c7](#)

⁶⁰ As above

Report stage and any opportunity to clarify the law in relation to mutual recognition should be taken.⁶¹

Mike Freer, speaking for the Government, alighted on Patrick Grady's point and said:

I ... want to take the time to affirm that it is the Government's position that no legislative consent motion is needed, as changes are consequential to the legislation in England and Wales. I take the point the hon. Member for Glasgow North made, and if he wishes to contact my hon. Friend the Member for South Basildon and East Thurrock or myself afterwards, we will see if we can address any specific concerns he may have about the application in Scotland.⁶²

The Minister went on to commend the Bill, saying it would “guarantee” access to a simpler system with greater safeguards for donors.⁶³

The Committee agreed that Clauses 1, 2 and 3 stand part of the Bill. The Schedule was also agreed to.⁶⁴

4.3 Remaining stages

The Bill was [reported without amendment](#) and [remaining stages](#) in the House of Commons are due to take place on 17 March 2023.

⁶¹ For recent legal commentary on reciprocal provisions between the jurisdictions of England and Wales and Scotland in relation to the operation of LPAs, see 39 Essex Chambers, [Mental Capacity Report: Scotland - March 2023](#), 1 March 2023

⁶² [PBC Deb 1 March 2023 c8](#)

⁶³ [PBC Deb 1 March 2023 c9](#)

⁶⁴ [PBC Deb 1 March 2023 c10](#)

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Annex

Membership of the Public Bill Committee

The Public Bill Committee comprised 11 Conservative MPs, four Labour MPs, one Labour (Co-op) MP, one Scottish National Party MP and one Plaid Cymru MP.

Chair:

Sheryll Murray (Conservative)

Members:

Aaron Bell (Conservative)

Anna Firth (Conservative)

Katherine Fletcher (Conservative)

Mike Freer (Conservative, Parliamentary Under-Secretary of State for Justice)

Peter Gibson (Conservative)

Patrick Grady (Scottish National Party)

Sir Mark Hendrick (Labour (Co-op))

Kate Hollern (Labour)

Darren Jones (Labour)

Stephen Metcalfe (Conservative)

Jill Mortimer (Conservative)

Holly Mumby-Croft (Conservative)

Chi Onwurah (Labour)

Marie Rimmer (Labour)

James Sunderland (Conservative)

Giles Watling (Conservative)

Hywel Williams (Plaid Cymru)

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