

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Sixth Delegated Legislation Committee

DRAFT PUBLIC GUARDIAN (FEES, ETC.)  
(AMENDMENT) REGULATIONS 2017

*Tuesday 21 March 2017*

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

**not later than**

**Saturday 25 March 2017**

© Parliamentary Copyright House of Commons 2017

*This publication may be reproduced under the terms of the Open Parliament licence, which is published at [www.parliament.uk/site-information/copyright/](http://www.parliament.uk/site-information/copyright/).*

**The Committee consisted of the following Members:**

*Chair:* ROBERT FLELLO

- |                                                                                 |                                                                        |
|---------------------------------------------------------------------------------|------------------------------------------------------------------------|
| † Bryant, Chris ( <i>Rhondda</i> ) (Lab)                                        | † Opperman, Guy ( <i>Lord Commissioner of Her Majesty's Treasury</i> ) |
| † Burgon, Richard ( <i>Leeds East</i> ) (Lab)                                   | † Philp, Chris ( <i>Croydon South</i> ) (Con)                          |
| † Cleverly, James ( <i>Braintree</i> ) (Con)                                    | † Smith, Nick ( <i>Blaenau Gwent</i> ) (Lab)                           |
| † Clifton-Brown, Geoffrey ( <i>The Cotswolds</i> ) (Con)                        | † Stuart, Ms Gisela ( <i>Birmingham, Edgbaston</i> ) (Lab)             |
| Coaker, Vernon ( <i>Gedling</i> ) (Lab)                                         | † Trevelyan, Mrs Anne-Marie ( <i>Berwick-upon-Tweed</i> ) (Con)        |
| † Efford, Clive ( <i>Eltham</i> ) (Lab)                                         | † Vaizey, Mr Edward ( <i>Wantage</i> ) (Con)                           |
| † Heappey, James ( <i>Wells</i> ) (Con)                                         | Clementine Brown, <i>Committee Clerk</i>                               |
| † Howell, John ( <i>Henley</i> ) (Con)                                          | † <b>attended the Committee</b>                                        |
| † Jenrick, Robert ( <i>Newark</i> ) (Con)                                       |                                                                        |
| † Lee, Dr Phillip ( <i>Parliamentary Under-Secretary of State for Justice</i> ) |                                                                        |

## Sixth Delegated Legislation Committee

Tuesday 21 March 2017

[ROBERT FLELLO *in the Chair*]

### Draft Public Guardian (Fees, etc.) (Amendment) Regulations 2017

2.30 pm

**The Parliamentary Under-Secretary of State for Justice (Dr Phillip Lee):** I beg to move,

That the Committee has considered the draft Public Guardian (Fees, etc.) (Amendment) Regulations 2017.

It is an honour to serve under your chairmanship, Mr Ffello. The regulations apply to England and Wales and serve to reduce the fee for registering enduring and lasting powers of attorney. The current fee is £110 and it will be reduced to £82. The resubmission fee, paid when an application has to be resubmitted because of an error in the original application, will be reduced to £41 from £55. If Parliament agrees, we intend the changes to take effect on 1 April.

The new fee will be an enhanced fee, allowing us to cover the full cost of registering a power of attorney as well as to ensure the efficient and effective discharge of the Public Guardian's functions. The power to charge an enhanced fee is contained in section 180 of the Anti-social Behaviour, Crime and Policing Act 2014.

There are currently more than 2 million powers of attorney registered, which comprise both lasting powers of attorney and their predecessor, enduring powers of attorney, which remain valid and may still be registered. In October 2017 we will celebrate 10 years since lasting powers of attorney were introduced. In that time, the Office of the Public Guardian, the body responsible for maintaining a register of powers of attorney, has registered nearly 2.5 million LPAs. The high uptake of lasting powers of attorney is an indication of the success of the Mental Capacity Act 2005. They allow individuals to plan ahead for a time when they may lack capacity to make decisions for themselves and appoint someone they trust to make those decisions for them.

It is positive that so many more people are making powers of attorney, but that has led to a position where the income we receive from fees charged exceeds the cost of delivering the service. A detailed review of power of attorney fees together with an improved forecasting model for volumes of applications, taking into account the ageing demographic and the rise in dementia, has enabled us to take decisive action to reduce fees and bring them closer to the cost of providing the service.

As many more people have been registering LPAs in recent years, increased volumes coupled with greater efficiencies in processing applications have resulted in fees being charged above the operational cost of delivering the service without our having exercised the power provided by legislation to allow us to do that. Clearly, that situation must be remedied, which is what the regulations seek to do.

Furthermore, alongside the reduction in fee, we will also introduce a scheme for refunding a portion of the fee to customers who may have paid more than they should. Full details of the scheme will be announced in due course. We will take such steps as are necessary to ensure that people are made aware of and receive the refunds to which they are entitled.

The Government's aim is to ensure that the Public Guardian's functions are properly resourced. We consider that an enhanced fee will go towards funding wider functions carried out by the Office of the Public Guardian. The enhanced fee will allow the Public Guardian to ensure that those who cannot afford to pay still have access to the key services offered by the Office of the Public Guardian.

**John Howell (Henley) (Con):** How many people does the Minister estimate are likely to be affected?

**Dr Lee:** I do not have the number to hand. As I said, 2.5 million LPAs have been granted. The number will be less than that, but I am happy to get back to my hon. Friend with the exact figure.

The fee will also contribute to the cost of the Public Guardian's safeguarding activities, including the annual cost of supervising deputies appointed by the court to manage the affairs of people who have lost capacity to do so for themselves. I commend the regulations to the Committee.

**The Chair:** Before I call the Opposition spokesman, I remind Members that, if they wish to take part in the debate, they should rise in their place to ensure that they catch my eye.

2.34 pm

**Richard Burgon (Leeds East) (Lab):** It is a pleasure to serve under your chairmanship, Mr Ffello. Matters of over-recovery and charges—reductions and otherwise—must be judged on a case-by-case basis. I thank the Minister for his explanation of the statutory instrument, which I confirm the Opposition will not oppose. The statutory instrument and the Minister's explanation are a welcome step given that the Government had not exercised the power to over-recover from registration fees in relation to registering power of attorney. The Government's position therefore no longer offends against that rule.

2.35 pm

**Mr Edward Vaizey (Wantage) (Con):** It is a great pleasure to appear under your chairmanship, Mr Ffello, to debate these important regulations. The Office of the Public Guardian plays an important role in our society, and to my mind the need for people to take out lasting powers of attorney is good housekeeping, particularly as we have an ageing population. All families should look to ensure they have lasting power of attorney in place, should—heaven forbid—their loved ones become incapacitated in the future.

I welcome the fact that the Government are reducing the fees. Those of us who sat through the Budget and supported it heart and soul were still a little disconcerted by some of its measures such as the increase in probate

fees, which will affect millions of people. I wonder whether the Minister has any reflections on why the Government have decided to reduce fees for this important matter, which affects many millions of people, while increasing them significantly for probate. I note that the regulations are due to come in on 1 April, but I think it is normal in such circumstances to have a period of 21 days between Parliament passing such a regulation and the fees coming into force, so will he enlighten us on why Parliament has been given such a short time to debate this important measure?

I wonder whether the Minister could widen his remarks, perhaps beyond the strict terms of the statutory instrument, and comment on the reason why so many more people are taking out lasting power of attorney. Is it anything to do with the Government Digital Service, the excellent service that the previous Government empowered? I think I am right in saying that lasting power of attorney is one of its most used services. For those of us who like to take part in pub quizzes, I was told that its least used service is for applications to be buried at sea—apparently, there are a dozen such applications a year. I will not ask the Minister to comment on the number of applications to be buried at sea, but I would like his reflections on whether the Government Digital Service has contributed to more people taking out lasting power of attorney.

It is now easy to take out lasting power of attorney digitally, but what measures are the Government taking to publicise it? Members who have listened carefully to my speech will have heard my opening remarks about how this is an important part of family housekeeping. I have never seen an advert on, say, the tube or a bus about lasting power of attorney. I wonder whether the Minister has any plans to publicise it further and wider.

I noticed that the Government explain in the explanatory memorandum that, even though the fees are being reduced, they will cover the cost of administering the lasting power of attorney, but I did not hear in the Minister's remarks or see in the explanatory memorandum—I am sure that is entirely my fault—the overall cost to the Exchequer.

2.38 pm

**Ms Gisela Stuart** (Birmingham, Edgbaston) (Lab): I shall be very brief. I am grateful for the opportunity to speak. I declare an interest: I have been involved in arranging lasting power of attorney for a member of my family in the past 12 months. I am therefore slightly puzzled about how the Minister will alert people who may have overpaid to the opportunity to recover some of those fees, and I am still at a loss as to why the Government are actually making this change at this time.

2.39 pm

**Dr Lee:** I thank hon. Members for their numerous questions. I view the establishment of the Office of the Public Guardian by the Labour Government 10 years ago as an indication of a civilised society. We recognise that, with increasing ageing and the consequent increase in dementia and various other ailments that impair function, we, as individuals, will have to take some really challenging decisions about advance directives on care and, indeed, our financial affairs. The Department was found to have failed—this was a shared mistake of

Labour and Conservative Governments—in not predicting that society would age. In response to such an obvious and simplistic mistake, I have asked the Department to assure me that a similar situation is not developing with other Ministry of Justice fees.

To answer the question about awareness and uptake, the fact that 2.5 million LPAs have been taken out is an indication that people are aware of the provision. Despite that success, there was a campaign in 2015 to make people more aware. The details about refunds will be on the website and the Office of the Public Guardian will be responsible for administering the scheme. Those who are entitled to claim will be able to do so. We have estimated how much that might cost and expect to be in a position to fund it.

**Ms Stuart:** Thinking back to personal circumstances of making arrangements for someone, that member of my family is unlikely to go on the Office of the Public Guardian's website to check whether the new arrangements mean that she is entitled to a refund. Surely the Office of the Public Guardian could write to affected individuals—the data must be available. Is there a practical approach?

**Dr Lee:** Yes, there is a practical approach, but in those situations, other family members are often aware of such a directive and can access the website, but I am happy to look at further details.

**Mr Vaizey:** In my previous role as Minister for telecommunications, I was aware of how Government policy could have an impact on nuisance calls. Have the Government evaluated whether alerting people to the need to get a refund might encourage spurious companies to be set up to encourage people, by cold calling the vulnerable, to make such claims?

**Dr Lee:** My right hon. Friend makes a decent point. I take note of it and will pass it on to the relevant officials to ensure that such abuse does not ensue.

On timing and the 21 days, I was made aware of the issue shortly after becoming a Minister and we have been working extremely hard on finding the best way of putting in place a system for refunding when necessary. We have acted swiftly and I am not sure that the point about the 21 days is particularly relevant. The statutory instrument will come into force on 1 April, which means that it is unlikely that there will be 21 days between its making and coming into force. It is important for the lower fee to be brought into force as quickly as possible. In addition, the Department does not consider that the regulations significantly diminish rights, impose significantly more onerous new duties or require the adoption of different patterns of behaviour.

Clearly, there has been a rather basic error in the long-term projection analysis of demand in an ageing society. The accounting officer has reassured me that the forecasting model has been properly reviewed. Indeed, from now on, there will be an annual review of all the figures. The issue has arisen every year for four to five years and I have been reassured that that will not be the case in future.

My right hon. Friend the Member for Wantage and the right hon. Member for Birmingham, Edgbaston are right that communicating the change is important. We

[Dr Lee]

will do our very best to ensure that everyone knows that this has happened and that they can seek a refund when appropriate.

We have had an interesting debate. I thank members of the Committee for the points that have been made. The changes that the regulations introduce will bring about a welcome reduction in the fee for registering a

power of attorney. I am sure we all agree that that is an important tool, of which we would encourage people to take advantage, while balancing that with the need to fund the important functions of the Public Guardian. I hope that the Committee will support the regulations.

*Question put and agreed to.*

2.45 pm

*Committee rose.*



