

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

POWERS OF ATTORNEY BILL

Wednesday 1 March 2023

CONTENTS

CLAUSES 1 TO 3 agreed to.
SCHEDULE agreed to.
Bill to be reported, without amendment.

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

Sunday 5 March 2023

© Parliamentary Copyright House of Commons 2023

This publication may be reproduced under the terms of the Open Parliament licence, which is published at www.parliament.uk/site-information/copyright/.

The Committee consisted of the following Members:

Chair: MRS SHERYLL MURRAY

† Bell, Aaron (*Newcastle-under-Lyme*) (Con)
Firth, Anna (*Southend West*) (Con)
Fletcher, Katherine (*South Ribble*) (Con)
† Freer, Mike (*Parliamentary Under-Secretary of State for Justice*)
† Gibson, Peter (*Darlington*) (Con)
† Grady, Patrick (*Glasgow North*) (SNP)
Hendrick, Sir Mark (*Preston*) (Lab/Co-op)
† Hollern, Kate (*Blackburn*) (Lab)
Jones, Darren (*Bristol North West*) (Lab)
† Metcalfe, Stephen (*South Basildon and East Thurrock*) (Con)

† Mortimer, Jill (*Hartlepool*) (Con)
† Mumby-Croft, Holly (*Scunthorpe*) (Con)
† Onwurah, Chi (*Newcastle upon Tyne Central*) (Lab)
Rimmer, Ms Marie (*St Helens South and Whiston*) (Lab)
† Sunderland, James (*Bracknell*) (Con)
† Watling, Giles (*Clacton*) (Con)
† Williams, Hywel (*Arfon*) (PC)

Bethan Harding, *Committee Clerk*

† **attended the Committee**

Public Bill Committee

Wednesday 1 March 2023

[MRS SHERYLL MURRAY *in the Chair*]

Powers of Attorney Bill

1.30 pm

The Chair: Before we begin, I have a few preliminary reminders for the Committee. Please switch all electronic devices to silent. No food or drink is permitted during sittings, except for the water provided. *Hansard* colleagues will appreciate it if Members could email their speaking notes to hansardnotes@parliament.uk. My selection list for the sitting is available online and in the room. No amendments have been tabled. We will have a single debate on all the clauses and the schedule.

Clause 1

LASTING POWERS OF ATTORNEY

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to consider the following:

Clauses 2 and 3 stand part.

That the schedule be the schedule to the Bill.

Stephen Metcalfe (South Basildon and East Thurrock) (Con): It is a pleasure to serve under your chairmanship, Mrs Murray, I think for the first time. I also give my huge thanks to all the Members who have turned out to help with this short but important Bill.

Clause 1 will facilitate three things: first, improvements to safeguards in creating a lasting power of attorney; secondly, a simpler process for making and registering an LPA, increasing access for all involved; and, thirdly, making the Office of the Public Guardian more sustainable.

My Bill will increase access by allowing LPAs to be made and registered electronically, while—I emphasise this—also facilitating a new paper process. It is important not to overcomplicate the service, to ensure that everyone who wants an LPA has access to make one. In the new system, donors, attorneys and others involved will be able to use the channel—digital or paper—that best suits their needs. It will be a fluid system.

The new system must be balanced against the need for suitable safeguards, which my Bill also provides for through the introduction of identity verification; changes to the objection process, to ensure a more straightforward process aligned with the system that the Public Guardian operates now; and restricting who can apply to register the LPA to just the donor.

Finally, to ensure the sustainability of the Office of the Public Guardian, it is vital to reduce its reliance on paper. My Bill allows for a future system in which the LPA will be registered as an electronic document, and that electronic document will be used as evidence of registration, while still allowing physical proof for those who need it. The combination of changes realised by the schedule will enable the development of an easier but more secure process for people wishing to make and register a lasting power of attorney.

Clause 2 amends section 3 of the Powers of Attorney Act 1971 to enable chartered legal executives to certify a copy of a power of attorney. The process to certify a copy of a power of attorney does not require specialist legal skills, yet, under the existing legislation, chartered legal executives—lawyers who provide mainstream legal services—are not included among those who are able to do that. That does not make any sense and is not in line with the evolution in the legal services sector that has allowed chartered legal executives to carry out many of the same functions as solicitors. Indeed, during the pandemic, the Land Registry used its discretionary powers to accept copies of lasting powers of attorney certified by chartered legal executives.

For clarity, clause 2 extends to Scotland and Northern Ireland. The Government's position is that no legislative consent motion is needed as the changes are consequential to the legislation in England and Wales. By amending the current legislation and enabling chartered legal executives to certify copies of powers of attorney, we will remove the barrier facing chartered legal executives in the provision of this service, increase the channels through which consumers can certify a copy of a power of attorney, and promote consumer choice and generate competition in the legal services market.

Clause 3 confirms the Bill's short title, makes provision for the Bill to come into force and sets out its territorial extent. Clause 2, relating to chartered legal executives, will come into force two months after the Bill receives Royal Assent, while the remaining provisions, which relate to modernising lasting powers of attorney, will come into force by regulation.

Clause 1 and the schedule extend to England and Wales, save in respect to evidence of registration, dealt with by paragraph 8 of the schedule, which extends to Scotland and Northern Ireland. That relates to what can be accepted as evidence of an LPA registered in England and Wales and so aligns the new provisions for evidence with the territorial extent of the existing provisions of the Mental Capacity Act 2005 that are being amended.

Clause 2 also extends to Scotland and Northern Ireland, because it is about the acceptance of certified copies of powers of attorney made in England and Wales and therefore has the same territorial extent as the provision in the Powers of Attorney Act 1971 that is being amended.

Overall, the Bill relates to the process of making and registering an LPA in England and Wales. It will not affect the making of LPAs in Northern Ireland and Scotland, as they have their own mental capacity legislation, which makes similar provisions in those territories.

I will now talk in detail about each of the changes set out in the schedule, which fall loosely into five categories: simplifying the process of applying to register a lasting power of attorney; changing how people are notified that a lasting power of attorney has been submitted for registration; introducing identity checks; streamlining how objections to the registration of an LPA can be made; and providing for electronic evidence of the LPA, alongside physical evidence.

To make the application process simpler for donors, I am introducing three changes. My Bill removes the ability of an attorney to apply to register an LPA, thus maintaining donor control of the process. In the future, the donor will apply at the point they execute the

document, and the signatures of other parties will be co-ordinated through the Office of the Public Guardian. The Bill also allows the fee to be taken at a different point. In combination, these changes will facilitate a hybrid system that allows different actors to use different channels and will therefore improve access to LPAs.

My Bill makes a small but necessary change to the notification process by requiring the Public Guardian, instead of the donor, to notify named persons, donors and attorneys when a completed LPA is ready to start the registration process. That simplifies the process for those applying to register their LPA and means that the Public Guardian can be certain that notifications have been sent to all parties so that they have the opportunity to raise any objections. That is a key safeguard. In exceptional circumstances, the Bill will allow the donor to ask the Public Guardian to disapply the notification requirements.

The change that will have the biggest impact on enhancing safeguards for the donor is the introduction of identity verification. My Bill gives the Public Guardian the ability to conduct identity checks on individuals involved in making, or who are named in, the lasting power of attorney, as a condition of its registration. If the identity cannot be verified, the LPA must not be registered without a direction from the Court of Protection. Regulations will set out the detail of who will be checked, when and how. I am confident that this will reduce the chances of any fraudulent LPAs being registered, and ultimately increase user confidence in LPAs and the system as a whole.

The Bill also strengthens safeguards through changes to the objection process. To simplify the process and to avoid discouraging genuine objections, I am introducing three changes. My Bill will allow anyone with an objection to register it. All objections will be directed to the Public Guardian in the first instance to be triaged and investigated where necessary. That formalises the process that the Public Guardian already operates. Additionally, third parties will now be able to lodge an objection from the time the Public Guardian is aware of the donor's intention to make an LPA. Conditions for that will be set out in regulations. These changes will strengthen safeguards for the donor, particularly against abuse and undue pressure, by providing a clearer and more streamlined process for anyone objecting to the registration of a lasting power of attorney.

Peter Gibson (Darlington) (Con): I commend the work that my hon. Friend is doing on this important Bill. I declare an interest as a former solicitor. Having prepared many hundreds of lasting powers of attorney, I strongly welcome the changes that the Bill will make in terms of safeguards and improvements in processes.

However, I recently met Age UK, and I share some of its concerns about keeping access to paper-based systems for those who are digitally disadvantaged or not familiar with digital processes. Could my hon. Friend reassure us that those systems will remain accessible? I would also be failing in my duties as a lawyer, with my years of experience, if I did not put on record the recommendation that legal advice should, wherever possible, be taken to look at these documents.

Stephen Metcalfe: I am grateful to my hon. Friend for his intervention. He makes two important points. On the first, I emphasise that there is no intention at all—in

my Bill or in any other thinking—to do away with the paper-based system. People will still be allowed to apply for an LPA using the paper-based system. However, the Bill introduces an electronic system, which will hopefully streamline the process and reduce the paper burden on the Office of the Public Guardian, making it more sustainable in the long term.

On my hon. Friend's second point, seeking legal advice is a sound recommendation in many areas, but, particularly when creating something as powerful as a lasting power of attorney, it cannot be a bad idea to seek the advice and guidance of someone with professional qualifications and experience. For many people involved in making a lasting power of attorney, it may well be the first time they have done anything like it. Seeking the advice of an expert is sensible.

Finally, as we all know, LPAs are currently paper documents. To reduce reliance on paper, the schedule provides that all future LPAs will be electronic documents accessed through electronic means, as well the paper channel. The effects of that change will be increased efficiency, accessibility and confidence for users in the new system.

Chi Onwurah (Newcastle upon Tyne Central) (Lab): I congratulate the hon. Gentleman on his Bill, which is an example of the much-needed modernisation of legal processes and—as he said—the efficiency and ease of access that digitalisation can bring. Does he agree that in addition to maintaining the paper route and providing efficiency and ease of access through the digital route, it is important to put greater emphasis on increasing digital literacy, particularly for under-represented groups?

Stephen Metcalfe: I am grateful to my hon. Friend—I say that deliberately, because she is—for her intervention, and I completely agree. We are moving to a digital world, but we are not all moving at the same pace, so it is important that we all promote digital awareness and digital accessibility where we can and help people to become digitally aware who have not had the opportunity before. We should always be thinking about how we can make people more aware of the services they could access if they had basic digital skills. This is an example of where, with digital skills, we can streamline the process, and that is important.

1.45 pm

The effect of this change will be to increase efficiency and accessibility for users. A digital database facilitates changes to an LPA in real time, so that as the LPA is changed, there is a record of that, and the digital version will be a single source of truth for the status of a lasting power of attorney. However, I recognise that there may be circumstances where donors, attorneys and third parties are unable to access a digital service, and the schedule therefore provides for a measure in secondary legislation to allow for physical proof of an LPA to be recognised.

Overall, I want to modernise lasting powers of attorney to ensure that everyone who needs one can make one. It has never been more important to make this a quicker, easier to access and more secure system, and I believe that these changes will achieve those aims. The Bill also facilitates wider changes for the Public Guardian, to ensure that it is able to run a more streamlined process that delivers better value for its fee payers. For these reasons, I commend the Bill to the Committee.

Patrick Grady (Glasgow North) (SNP): I congratulate the hon. Member for South Basildon and East Thurrock on bringing forward the Bill and securing Government support. I have a few brief comments to make. Power of attorney provisions are increasingly valuable and necessary as the population ages and our interactions with different authorities and agencies become more complicated. The Bill's simplification of the application process and introduction of further safeguards for applicants and donors are very welcome.

As the hon. Member recognised, the legal system in Scotland is devolved; in fact, it has had its own legal system since the Acts of Union. The aspects of the Bill that apply north of the border are largely technical and consequential in nature—for example, relating to the recognition of chartered legal executives. There are certain differences in how power of attorney arrangements work north and south of the border—for example, in how the application is witnessed and certified—and Scotland has its own Office of the Public Guardian. It is important that both systems are robust and that everybody—donors, or granters as they are known in Scotland, attorneys and the institutions they interact with—has full confidence in the integrity of the system.

I understand that there are some issues with mutual recognition north and south of the border. I am not sure whether the Bill is the correct vehicle to tackle them, but I wonder whether there is an opportunity to explore that before Report. If there is an opportunity to simplify and clarify the law in this area and ensure that there is mutual recognition north and south of the border, it is important that we take it. There are often cross-border issues for families and individuals and their attorneys. Many of us, myself included, have had constituency casework related to the complications that can arise when a family is in one part of the United Kingdom but care is being received or properties have to be managed in another part of the United Kingdom. Perhaps that could be considered before Report.

I am extremely glad that there is consensus on the Bill, and I am glad to be able to take part in the Committee and help it to progress. It cannot cover everything, and there are some wider issues that could be considered in the longer term—not least the variation in the charges that solicitors often apply when providing advice in this area. Ensuring that more people can safely and with confidence provide for a power of attorney in the long run will hopefully help people to save money and, more importantly, save some of the stress and confusion that can arise when a relative is incapacitated. We should all be working to raise awareness of the value that having the power of attorney in place can bring. I congratulate the hon. Member for South Basildon and East Thurrock again, and I look forward to the progress of the Bill.

The Parliamentary Under-Secretary of State for Justice (Mike Freer): It is a great pleasure to serve under your chairmanship, Mrs Murray. I will try not to detain the Committee for long. I want to express my wholehearted support for the Bill of my hon. Friend the Member for South Basildon and East Thurrock, and I thank him for introducing it.

It is my privilege to be the Minister responsible for mental capacity, and I am particularly aware of how necessary these provisions are. A lasting power of attorney,

or LPA, ensures that a person's wishes and preferences can be considered and reduces the stress and burden on families when capacity is lost unexpectedly. However, despite the intention, the reality is that a lot of people find the current paper process for making LPAs stressful, confusing and bureaucratic. Having had experience of trying to put an LPA in place for both my mother and my mother-in-law, I can testify to how confusing, bureaucratic and difficult the process can be.

It is ever clearer that modernisation is no longer just an option, but an absolute necessity. It will help the Public Guardian to respond to changing societal needs and ultimately make the process for making and registering LPAs safer, simpler and more accessible. No doubt the introduction of a digital channel and an improved paper route will help to make an LPA more accessible for more people. The hybrid approach will provide flexibility between digital and paper channels to create a single LPA. However, it is the changes to the application process that my hon. Friend explained, such as removing the ability for anyone other than the donor to apply to register an LPA and allowing the Public Guardian to co-ordinate the completion of the document, which allow for that flexibility.

My hon. Friend outlined that in the new system, the LPA will be registered as an electronic document and accessed digitally; therefore, proof of an LPA can be provided and accessed instantly. Of course, as my hon. Friend also mentioned, physical proof of an LPA can still be requested for those unable to access a digital service. More generally, chartered legal executives will also be able to certify copies of any power of attorney, including LPAs, which they are unable to do under the current legislation. That will remedy an anomaly in the process that allows Chartered Institute of Legal Executives lawyers to participate in the creation of a power of attorney, but then renders them unable to certify as genuine a copy of the same document. Along with modernising the LPA, that will help to make sharing and using all LPAs, whether old or modernised, easier in the future.

As my hon. Friend covered, those measures relating to evidence of the LPA or power of attorney are the only sections of the Bill that extend to Scotland and Northern Ireland. I therefore 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.

So far, I have spoken about the benefits of the Bill for the access and use of LPAs and powers of attorney generally, but digitisation will also help the Public Guardian to become more sustainable. Digitisation reduces the Public Guardian's burden to scan, process and store enormous volumes of paper—11 tonnes at any one time. Manual checks can be automated and happen earlier; I am confident that that will create a speedier process, help to reduce errors in the LPA that prevent registration and ensure the Public Guardian is fit for the modern world.

As my hon. Friend has so eloquently explained, the Bill will guarantee access to a system that is simple to navigate and easier to complete. However, that must be balanced against the need for suitable safeguards. That is partly achieved through changes made by the Bill to notification and objection. Currently, the Public Guardian trusts that the applicant has notified people of their ability to object. Having the Public Guardian inform parties means it can be certain that notifications have been sent, increasing the protection provided.

What is more, the Bill simplifies the objection process by providing a single route for all objections, starting with the Public Guardian and ending at the Court of Protection. If required, the Court of Protection can step in. I share my hon. Friend's view that formalising the existing process will increase protections for donors, due to clarity about where and how to express concerns about the registration of an LPA.

I am also delighted to see the introduction of identity verification for certain parties. That will help to protect donors and wider society from unauthorised access to people's assets by reducing the risk of fraud. It is a significant increase in safeguards. The introduction of identity verification, alongside the changes to notification and objections, is a driving factor in why the Government support the Bill. It will embed robust safeguards throughout the process for making an LPA.

In closing, I reiterate my thanks to my hon. Friend the Member for South Basildon and East Thurrock for sponsoring this important Bill and confirm the Government's continuing support for it. This may not be a long Bill, but its impact is far-reaching. It is therefore vital that we support the measures, and I am

grateful to the Committee members who have spoken so helpfully. I look forward to engaging more as the Bill progresses through Parliament.

Stephen Metcalfe: I will add a few thanks to the Minister's, in particular to my hon. Friend the Member for Darlington and the hon. Members for Newcastle upon Tyne Central and for Glasgow North for their contributions, and to all Members for their attendance and support. I thank the Minister for his positive support, all the officials who helped to bring the Bill to this stage, and you and your team, Mrs Murray, for keeping us all on track.

As the Minister and I have said, this is a relatively small and short Bill. It is tight in its provisions and scope, but it will have a huge impact on people's ability to make a lasting power of attorney and it will introduce some particularly welcome safeguards. I am grateful for the support, and I hope that everyone will continue to support the Bill as it moves through the House.

My final thank you is to all the external organisations that have been in contact with me throughout the process of sponsoring the Bill. I thank them for their advice, their views and their general support for what we are trying to do.

Question put and agreed to.

Clause 1 accordingly ordered to stand part of the Bill.

Clauses 2 and 3 ordered to stand part of the Bill.

Schedule agreed to.

Bill to be reported, without amendment.

1.58 pm

Committee rose.

