

PRACTICE DIRECTION 9G – APPLICATIONS RELATING TO THE REGISTRATION OF ENDURING POWERS OF ATTORNEY

This practice direction supplements Part 9 of the Court of Protection Rules 2017

General

1 Rule 9.11 enables a practice direction to make additional or different provision in relation to specified applications.

Applications to which this practice direction applies

2. This practice direction applies where—
 - (a) an application has been made to the Public Guardian to register an instrument creating an enduring power of attorney; and
 - (b) the Public Guardian has received a notice of objection to registration which prevents the Public Guardian from registering the instrument except in accordance with the court's directions.

Objections to registration

3. A notice of objection will prevent the Public Guardian from registering the instrument if the objection is made on one of the following grounds—¹
 - (a) that the power purported to have been created by the instrument was not valid as an enduring power of attorney;
 - (b) that the power created by the instrument no longer subsists;
 - (c) that the application is premature because the donor is not yet becoming mentally incapable;
 - (d) that fraud or undue pressure was used to induce the donor to create the power; or
 - (e) that, having regard to all the circumstances and in particular the attorney's relationship to or connection with the donor, the attorney is unsuitable to be the donor's attorney.
4. This practice direction sets out the procedure to be followed by a person entitled to be given notice of the application to register the instrument who wishes to apply to the court for—
 - (a) directions that the instrument should be registered; or
 - (b) directions that the instrument should not be registered.

¹ The grounds are set out in paragraph 13(9) of Schedule 4 to the Act. The Public Guardian is prevented from registering the instrument by paragraph 13(4) and (5) of that Schedule.

5. The persons who are entitled to receive notice of an application are the donor, certain of the donor's relatives and any attorneys under the enduring power who are not making the application for registration.²

Procedure for applications to which this Practice Direction applies

6. An application must be made using Form COP8.

(Practice Direction B accompanying Part 5 sets out more detailed requirements for statements of truth.)

7. The application form must state—

(a) what directions the applicant is seeking; and

(b) if the applicant objects to registration, the grounds on which the applicant does so;
or

(c) if the applicant is seeking registration, the applicant's reasons for doing so.

8. The application form must be supported by evidence set out in either—

(a) a witness statement; or

(b) if it is verified by a statement of truth, the application form.

9. As soon as practicable and in any event within 14 days of the application form being issued, the applicant must serve a copy of the application form, together with an acknowledgment of service using Form COP5—

(a) unless the applicant is the donor or an attorney, on the donor of the power and every attorney under the power;

(b) if the applicant is the donor, on every attorney under the power; or

(c) if the applicant is an attorney, on the donor and any other attorney under the power.

10. Where the applicant knows or has reasonable grounds to believe that the donor of the power lacks capacity to make a decision in relation to any matter that is the subject of the application, the applicant must notify the donor of the application in accordance with Part 7.

² Paragraphs 5 to 11 of Schedule 4 to the Act set out who is entitled to receive notice.