

Island of



Guernsey

Ordinance of the States

**IX
2022**

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The Capacity (Lasting Powers of Attorney) (Bailiwick of Guernsey) Ordinance, 2022

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THE STATES, in exercise of the powers conferred on them by sections 1(5), 23, 78(1) and 79 of the Capacity (Bailiwick of Guernsey) Law, 2020^a, and all other powers enabling them in that behalf, hereby order:-

Creation.

1. (1) Subject to subsection (2), a lasting power of attorney is created where -

- (a) the grantor ("P") has executed the relevant instrument,
- (b) P makes an application to Her Majesty's Greffier for the relevant instrument to be registered, and
- (c) the relevant instrument has been registered by Her Majesty's Greffier.

(2) A lasting power of attorney can only be created where, at the time when P applies to register the relevant instrument, P -

- (a) has attained the age of 18, and

^a Order in Council No. II of 2021.

- (b) has capacity to -
 - (i) execute the relevant instrument, and
 - (ii) apply to register the relevant instrument, and
- (c) the provisions of the Law and this Ordinance are complied with.

(3) For the avoidance of doubt, where -

- (a) P executes the relevant instrument, but
- (b) the relevant instrument is not registered,

no lasting power of attorney is created.

(4) Where -

- (a) any document purports to create a lasting power of attorney, but
- (b) that document does not comply with the provisions of the Law and this Ordinance,

no lasting power of attorney is created.

(5) Subject to subsection (6), the relevant instrument to be executed for the purposes of this section shall be in the prescribed form.

(6) If -

(a) a document provides the information and authentication required in accordance with section 2(1),

(b) that document is not in the prescribed form, but

(c) that document differs only in an immaterial respect in form or mode of expression from the prescribed form,

it is to be treated by Her Majesty's Greffier as sufficient in point of form and expression.

(7) In any proceedings, the Court or the Tribunal may declare that a relevant instrument which is not in the prescribed form is to be treated as if it were, if it is satisfied that P intended it to provide the information and authentication required to create a lasting power of attorney.

(8) For the avoidance of doubt, a person may make both types of lasting power of attorney set out in section 22(1)(a) and (b) of the Law using the same relevant instrument.

Requirements as to content of relevant instruments.

2. (1) A relevant instrument must include -
 - (a) the prescribed information about the purpose of the instrument and the effect of a lasting power of attorney,
 - (b) a statement by P to the effect that P -
 - (i) has read the prescribed information or a prescribed part of it (or has had it read to P), and
 - (ii) intends the authority conferred under the instrument to include authority to make decisions on P's behalf in circumstances where P no longer has capacity,
 - (c) a statement by the attorney ("A") or, if more than one, each A to the effect that A -
 - (i) has read the prescribed information or a prescribed part of it (or has had it read to A), and
 - (ii) understands the duties imposed on an attorney of a lasting power of attorney under sections 3 (the principles) and 6 (best interests) of the Law.

- (2) For the avoidance of doubt, where a relevant instrument -
 - (a) provides the information and authentication required in accordance with section 2(1), but
 - (b) was executed before the commencement of this Ordinance,

that relevant instrument shall be a valid relevant instrument for the purposes of the Law and this Ordinance and accordingly -

- (i) P may apply for it to be registered, and
- (ii) it may be registered,

in accordance with section 3.

- (3) For the avoidance of doubt –
 - (a) where a person ("B") is required to give consent for the purposes of the relevant instrument or to sign any other prescribed document for the purposes of this Ordinance -
 - (i) B must sign the relevant instrument in the presence of a witness who is not an attorney for the purposes of that lasting power of attorney, and

- (ii) the witness must sign the relevant document in B's presence,
- (b) for the purposes of paragraph (a) "sign" in relation to B includes where a third person ("C") signs the relevant instrument in B's presence and at B's direction,
- (c) where C signs the relevant instrument in accordance with paragraph (b), B must -
 - (i) acknowledge the signature in the presence of a witness who is not an attorney for the purposes of that lasting power of attorney, and
 - (ii) that witness must sign the relevant instrument in B's presence, and
- (d) article 1(d) of the Electronic Transaction (Exemptions) Order, 2001 shall apply in relation to a relevant instrument or other prescribed document as it would apply to a power of attorney.

Registration.

3. (1) An application to Her Majesty's Greffier for the registration of the relevant instrument -

- (a) must be made in the prescribed form, and
 - (b) must include any prescribed information.
- (2) An application under subsection (1) must be made by P in person.
- (3) The application must be accompanied by -
 - (a) the relevant instrument, and
 - (b) any fee provided for under rules of court.
- (4) A person who, in an application for registration, makes a statement which that person knows or believes to be false in a material particular is guilty of an offence and is liable -
 - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding level 5 on the uniform scale, or both,
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine, or both.
- (5) Before a lasting power of attorney is registered by Her Majesty's

Greffier -

(a) Her Majesty's Greffier may request the Committee to investigate -

(i) whether P has capacity to -

(A) execute the relevant instrument, and

(B) apply to register the relevant instrument, and

(ii) the circumstances in which the instrument has been executed, and

(b) the Committee may investigate the matters set out in paragraph (a) using the powers set out in section 9.

(6) For the avoidance of doubt, Her Majesty's Greffier may refuse to register the relevant instrument where Her Majesty's Greffier reasonably believes that -

(a) P did not have capacity to -

(i) execute the relevant instrument, or

(ii) apply to register the relevant instrument,

when P applied to do so, or

- (b) P has been put under undue pressure to execute the relevant instrument or to apply to register that instrument.

(7) Where Her Majesty's Greffier refuses to register the relevant instrument, P or A may appeal to the Court in accordance with rules of court.

(8) Where Her Majesty's Greffier is satisfied that -

- (a) P had capacity to -

- (i) execute the relevant instrument, and

- (ii) apply to register the relevant instrument,

when P applied to do so,

- (b) P has not been put under pressure to execute the relevant instrument or to apply to register that instrument, and

- (c) P has complied with the requirements of this section,

Her Majesty's Greffier shall register the relevant instrument as a lasting power of attorney.

(9) Where Her Majesty's Greffier has registered the relevant instrument as a lasting power of attorney, Her Majesty's Greffier shall notify P.

Activation.

4. (1) Subject to subsection (2), where a lasting power of attorney in relation to property and financial affairs has been registered by P, A may act in accordance with that lasting power of attorney at any time after such registration (whether before or after a prescribed certificate has been completed in accordance with subsection (4)), provided that P has given A authority so to act, in the relevant instrument or otherwise, at a time when P had capacity to give that authority.

(2) Where P -

- (a) does not give A authority in the relevant instrument to act in accordance with that lasting power of attorney described in subsection (1), but
- (b) gives that authority subsequently,

A may only act in accordance with that lasting power of attorney where P has notified Her Majesty's Greffier in the prescribed form.

(3) Where -

- (a) a lasting power of attorney in relation to -
 - (i) health and welfare, or

- (ii) property and financial affairs (other than one described in subsection (1) or (2)),

has been registered by P, and

- (b) A reasonably believes that P no longer has capacity in relation to health and welfare or property and financial affairs matters (as the case may be) such that it is appropriate that the lasting power of attorney is activated,

A must request a prescribed person to assess whether P has capacity in relation to health and welfare or property and financial affairs matters (as the case may be).

(4) The prescribed person shall assess whether P no longer has capacity in relation to health and welfare or property and financial affairs matters (as the case may be) such that it is appropriate that the lasting power of attorney is activated and, if so satisfied, shall complete a prescribed certificate.

(5) Except in the case set out in subsection (1) or (2), A may only act in accordance with a lasting power of attorney where -

- (a) A has provided to Her Majesty's Greffier -
 - (i) the prescribed certificate completed in accordance with subsection (4) which states that P no longer has capacity in relation to health and welfare or

property and financial affairs matters (as the case may be) such that it is appropriate that the lasting power of attorney is activated, and

(ii) any fee provided for in rules of court, and

(b) Her Majesty's Greffier has completed the prescribed form.

(6) Before Her Majesty's Greffier completes the prescribed form -

(a) Her Majesty's Greffier may request the Committee to investigate the circumstances in which the prescribed certificate has been completed, and

(b) the Committee may investigate those circumstances using the powers set out in section 9.

(7) For the avoidance of doubt, Her Majesty's Greffier may refuse to complete the prescribed form where Her Majesty's Greffier reasonably believes that -

(a) P retains capacity in relation to health and welfare or property and financial affairs matters (as the case may be) such that it is not appropriate that the lasting power of attorney is activated, or

- (b) the circumstances in which the prescribed certificate has been completed are such that the prescribed form should not be completed until a further assessment is carried out for the purposes of subsection (4).

(8) Where Her Majesty's Greffier refuses to complete the prescribed form, P or A may appeal to the Court in accordance with rules of court.

(9) Where Her Majesty's Greffier completes the prescribed form, Her Majesty's Greffier shall -

- (a) notify P and A of that fact, and
- (b) update the Register accordingly.

(10) For the avoidance of doubt, A may act in accordance with the lasting power of attorney upon notification by Her Majesty's Greffier in accordance with subsection (9)(a).

(11) For the purposes of this section and section 6 -

- (a) A,
- (b) A's spouse or civil partner, or
- (c) any child of A,

cannot act as the prescribed person in relation to a lasting power of attorney created by P.

Amendment.

5. (1) Where P wishes to amend a lasting power of attorney, including by

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- (a) substituting a different A, or
- (b) amending any conditions or restrictions specified in the relevant instrument,

P must -

- (i) complete the prescribed form, and
- (ii) apply in person to Her Majesty's Greffier.

(2) A lasting power of attorney can only be amended where, at the time P applies to register the prescribed form, P -

- (a) has attained the age of 18, and
- (b) has capacity to -
 - (i) amend the lasting power of attorney, and

- (ii) apply to register the prescribed form.
- (3) The application must be accompanied by -
 - (a) the prescribed form, and
 - (b) any fee provided for in rules of court.
- (4) Before an amendment is registered by Her Majesty's Greffier -
 - (a) Her Majesty's Greffier may request the Committee to investigate -
 - (i) whether P has capacity as required in subsection (2)(b), and
 - (ii) the circumstances in which the amendment has been made, and
 - (b) the Committee may investigate the matters set out in subparagraph (a) using the powers set out in section 9.
- (5) For the avoidance of doubt, Her Majesty's Greffier may refuse to register an amendment to a lasting power of attorney where Her Majesty's Greffier reasonably believes that -

(a) P does not have capacity as required in subsection (2)(b), or

(b) P has been put undue pressure to amend the lasting power of attorney.

(6) Where Her Majesty's Greffier refuses to register an amendment to a lasting power of attorney, P or A may appeal to the Court in accordance with rules of court.

(7) Where Her Majesty's Greffier registers an amendment to a lasting power of attorney, Her Majesty's Greffier -

(a) shall notify -

(i) P, and

(ii) A, and

(b) update the Register accordingly.

(8) For the avoidance of doubt -

(a) where A may act in accordance with the lasting power of attorney as set out in section 4(1) or (2), A must act in accordance with that lasting power of attorney as it has

been amended upon notification by Her Majesty's Greffier in accordance with subsection (7)(a)(ii), and

- (b) in any other case, A must act in accordance with the lasting power of attorney as it has been amended when A is authorised to so act.

Suspension.

6. (1) Where A believes, or has reasonable grounds to believe, that P has regained capacity in relation to health and welfare or property and financial affairs matters (as the case may be) such that it is appropriate that the lasting power of attorney is suspended, A shall request a prescribed person to assess P's capacity and complete the prescribed certificate.

(2) The prescribed person shall assess whether P has capacity in relation to health and welfare or property and financial affairs matters (as the case may be) such that it is appropriate that the lasting power of attorney is suspended and, if so satisfied, shall complete a prescribed certificate.

(3) Where a prescribed person has completed the prescribed certificate on the basis that -

- (a) P has regained capacity in relation to health and welfare or property and financial affairs matters (as the case may be) such that it is appropriate that the lasting power of attorney is suspended -

(i) A must immediately, except where A is authorised by P to act in accordance with section 4(1) or (2) -

(A) notify Her Majesty's Greffier that the lasting power of attorney has been suspended using the prescribed form,

(B) notify any other A of the suspension of the lasting power of attorney, and

(C) cease to act in accordance with that power of attorney,

(ii) upon notification in accordance with subparagraph (i)(B), any other A must cease to act in accordance with that power of attorney, or

(b) P has not regained capacity in relation to health and welfare or property and financial affairs matters (as the case may be) such that it is appropriate that the lasting power of attorney is suspended, A may continue to act in accordance with the lasting power of attorney.

(4) Where Her Majesty's Greffier receives notification under subsection (3)(a)(i)(A), Her Majesty's Greffier must update the Register.

(5) Where -

- (a) a lasting power of attorney has been suspended under subsection (3)(a), and
- (b) A reasonably believes that P no longer has capacity in relation to health and welfare or property and financial affairs matters (as the case may be) such that it is appropriate that the lasting power of attorney is activated,

A must act in accordance with section 4(3).

(6) If, other than where A is authorised by P to act in accordance with section 4(1) or (2), A -

- (a) does not, on the basis of the information known to A -
 - (i) request a prescribed person to assess P's capacity and complete the prescribed certificate, or
 - (ii) notify Her Majesty's Greffier,

in circumstances where a reasonable person might reasonably believe that P had regained capacity in relation to health and welfare or property and financial affairs

matters (as the case may be) such that it is appropriate that the lasting power of attorney is suspended, or

- (b) continues to act in accordance with the lasting power of attorney where a prescribed person has completed the prescribed certificate on the basis that P has regained capacity in relation to health and welfare or property and financial affairs matters (as the case may be) such that it is appropriate that the lasting power of attorney is suspended,

A is guilty of an offence.

- (7) Where A is guilty of an offence under subsection (6), A is liable -
 - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding level 5 on the uniform scale, or both,
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine, or both.
- (8) Where -
 - (a) A has disposed of any of P's property, and
 - (b) any of the circumstances set out in subsection (6) apply,

P may apply to the Court to make any order which the Court sees fit -

- (i) for the purpose of -
 - (A) preventing any further disposal of the property in question, or
 - (B) returning that property to P, and
- (ii) for any purpose ancillary to the purposes set out in subparagraph (i).

(9) For the avoidance of doubt -

- (a) the Committee may give guidance as to the meaning of "has capacity" or "regain capacity", especially in relation to cases of fluctuating capacity, in any Code of Practice issued under the Law, and
- (b) any person (including a court) must take any such guidance into account for the purposes of this Ordinance.

Revocation, etc.

7. (1) Where P wishes to revoke the lasting power of attorney, P must -

- (a) complete the prescribed form, and
- (b) apply in person to Her Majesty's Greffier.

(2) A lasting power of attorney can only be revoked where, at the time P applies to register the prescribed form, P -

- (a) has attained the age of 18, and
- (b) has capacity to -
 - (i) revoke the lasting power of attorney, and
 - (ii) apply to register the prescribed form.

(3) The application must be accompanied by -

- (a) the prescribed form, and
- (b) any fee provided for in rules of court.

(4) Before the revocation is registered by Her Majesty's Greffier -

- (a) Her Majesty's Greffier may request the Committee to investigate -

- (i) whether P has capacity as required in subsection (2)(b), and
 - (ii) the circumstances in which the amendment has been made, and
- (b) the Committee may investigate the matters set out in subparagraph (a) using the powers set out in section 9.

(5) For the avoidance of doubt, Her Majesty's Greffier may refuse to register the revocation of a lasting power of attorney where Her Majesty's Greffier reasonably believes that -

- (a) P does not have capacity as required in subsection (2)(b), or
- (b) P has been put undue pressure to revoke the lasting power of attorney.

(6) Where Her Majesty's Greffier refuses to register the revocation of a lasting power of attorney, P or A may appeal to the Court in accordance with rules of court.

(7) Where Her Majesty's Greffier registers the revocation of a lasting power of attorney, Her Majesty's Greffier -

- (a) shall notify -

(i) P, and

(ii) A, and

(b) update the Register accordingly.

(8) For the avoidance of doubt, A no longer has authority to act in accordance with a lasting power of attorney when Her Majesty's Greffier has given notification in accordance with subsection (7)(a)(ii).

(9) P's bankruptcy revokes the lasting power of attorney so far as it relates to P's property and financial affairs.

(10) The occurrence in relation to A of an event mentioned in subsection

(11) -

(a) terminates A's appointment, and

(b) except in the cases given in subsection (12), revokes the lasting power of attorney.

(11) The events are -

(a) the disclaimer of the appointment by A in accordance with the prescribed requirements,

- (b) subject to subsection (13), the death or bankruptcy of A or, if A is a person holding (or deemed to be holding) a primary or secondary fiduciary licence for the purposes of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2020^b, its winding-up or dissolution, or loss of its fiduciary licence held under that Law,
- (c) subject to subsection (14), the dissolution or annulment of a marriage or civil partnership between P and A, and
- (d) A's lack of capacity.

(12) The cases are -

- (a) A is substituted under the terms of the relevant instrument,
- (b) A is one of two or more persons appointed to act jointly and severally in respect of any matter and, after the event, there is at least one remaining A.

(13) The bankruptcy of A does not terminate A's appointment, or revoke the power, in so far as A's authority relates to P's health and welfare.

^b Order in Council No. XIX of 2020. This enactment has been amended.

(14) The dissolution or annulment of a marriage or civil partnership does not terminate A's appointment, or revoke the lasting power of attorney, if the relevant instrument provided that it was not to do so.

(15) For the avoidance of doubt -

(a) the Court under section 14 of the Law, or

(b) the Tribunal under section 18 of the Law,

may revoke a lasting power of attorney or A's appointment.

(16) Where Her Majesty's Greffier believes on reasonable grounds that

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(a) A's appointment has been terminated or revoked, or

(b) the lasting power of attorney has been revoked,

Her Majesty's Greffier shall update the Register accordingly, subject to making such enquiries as may be reasonable in the circumstances.

(17) Where A knows or reasonably believes that an event has occurred in relation to A or another A which would -

(a) terminate the appointment of any A, or

(b) revoke the lasting power of attorney,

in accordance with subsection (10), A must notify Her Majesty's Greffier as soon as reasonably practicable.

(18) Where A does not notify Her Majesty's Greffier in accordance with the requirement set out in subsection (17), A is guilty of an offence.

(19) Where A is guilty of an offence under subsection (18), A is liable, on summary conviction, to imprisonment for a term not exceeding 2 years, to a fine not exceeding level 5 on the uniform scale, or to both.

(20) Without prejudice to subsection (16), where Her Majesty's Greffier has been notified in accordance with subsection (17) -

(a) Her Majesty's Greffier may request the Committee to investigate whether an event has occurred which would terminate the appointment of any A or revoke the lasting power of attorney, and

(b) the Committee may investigate the matters set out in subparagraph (a) using the powers set out in section 9.

Power of Court to suspend exercise of lasting power of attorney.

8. (1) In addition to any power of the Court under the Law, the Court, on application of the Committee, may direct that -

- (a) A may not act in accordance with a lasting power of attorney, or
- (b) A may only exercise that power, or make specified decisions under that power, with the consent of the Committee,

for a specified period to allow the Committee to investigate if it considers that -

- (i) fraud or undue pressure was used to induce P -
 - (A) to execute a relevant instrument, or
 - (B) to create a lasting power of attorney, or
- (ii) A has behaved, is behaving or proposes to behave in a way contrary to section 30(3)(b) of the Law.

(2) Where the Committee -

- (a) has completed its investigation under subsection (1), and
- (b) reasonably believes that -

- (i) fraud or undue pressure was used to induce P to act in one, or both, of the ways set out in subsection (1)(i), or
- (ii) A has behaved, is behaving or proposes to behave in a way contrary to section 30(3)(b) of the Law,

it shall apply to the Court to decide whether to revoke A's appointment.

(3) Any application under subsection (1) or (2) shall be made in accordance with rules of court.

(4) Where the Court has notified Her Majesty's Greffier that it has made a direction under subsection (1), Her Majesty's Greffier shall update the Register accordingly.

Power of Committee to investigate.

9. (1) Without prejudice to any power under an Ordinance made under Part 9 of the Law, where -

- (a) Her Majesty's Greffier has requested the Committee to undertake an investigation in accordance with this Ordinance, or
- (b) the Committee believes that A may -

- (i) have behaved, or be behaving, in a way that contravenes A's authority or was not in the best interests of P,
- (ii) be proposing to behave in a way that would contravene that authority or would not be in P's best interests, or
- (iii) have failed to comply with the requirements of an order made, or directions given, by the Court or the Tribunal (as the case may be),

the Committee may exercise the powers set out in this section.

- (2) The Committee may require A -
 - (a) to provide specified information or information of a specified description, or
 - (b) to produce specified documents or documents of a specified description.
- (3) The information or documents must be provided or produced -

- (a) before the end of such reasonable period as may be specified, and

- (b) at such place as may be specified.

- (4) The Committee may require -

- (a) any specified information provided to be verified in such manner, or

- (b) any specified document produced to be authenticated in such manner,

as it may reasonably require.

- (5) For the purposes of this section, "**specified**" means specified in a notice in writing given to A by the Committee.

- (6) A person who, in purported compliance with a requirement imposed under this section, does any of the following -

- (a) makes a statement which that person knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,

- (b) dishonestly or otherwise, recklessly makes a statement which is false, deceptive or misleading in a material particular,
- (c) produces or causes or permits to be produced any information or document which that person knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or
- (d) dishonestly or otherwise, recklessly produces or recklessly causes or permits to be produced any information or document which is false, deceptive or misleading in a material particular,

is guilty of an offence.

(7) A person guilty of an offence under subsection (6) is liable, on summary conviction, to imprisonment for a term not exceeding 2 years, to a fine not exceeding level 5 on the uniform scale, or to both.

(8) Without prejudice to any other power of the Committee to do so, where -

- (a) A does not provide any specified information or produce any specified document in accordance with the notice, or

- (b) A has provided the information or produced any document in accordance with the notice, but the Committee believes that A's conduct falls within subsection (1)(b),

the Committee may make an application to the Court in accordance with rules of court to make an appropriate order, including but not limited to, an order terminating A's appointment.

Disposal of real property.

10. (1) For the purposes of section 27 of the Law, where the real property is located -

- (a) in the Bailiwick, A must comply with the requirements set out in subsection (2),
- (b) outside the Bailiwick, A must comply with the requirements set out in subsection (4) if P is ordinarily resident in the Bailiwick.

(2) Where subsection (1)(a) applies, A may only dispose of P's real property where -

- (a) A has given at least 28 days' notice to -
 - (i) all other As, and

- (ii) any person of whom A is aware, after reasonable investigation, has an interest (whether vested or contingent) in that real property,

of the application to the relevant court to make an order approving the disposal of the real property, and

- (b) the relevant court has made an order approving that disposal.

(3) For the purposes of subsection (2)(b) -

- (a) A may make an application to the relevant court in accordance with rules of court, and

- (b) the relevant court -

- (i) where P is ordinarily resident in Alderney, is the Court of Alderney,

- (ii) where P is ordinarily resident in Sark, is the Court of the Seneschal, and

- (iii) in any other case, is the Royal Court (sitting as an Ordinary Court).

(4) Where subsection (1)(b) applies, A may only dispose of P's real property where A has given at least 28 days' notice immediately preceding the date of that disposal to -

- (a) all other As (where relevant), and
- (b) any person of whom A is aware, after reasonable investigation, who has an interest (whether vested or contingent) in that real property,

of the disposal of the real property.

(6) For the purposes of subsection (4), "**dispose of**" P's real property which is located outside the Bailiwick means dealing with the real property in a way corresponding to one of ways set out in subsection (6) recognised by the jurisdiction in which the real property is located.

(7) For the purposes of subsections (2)(a) and (4), A satisfies this requirement where A sends a notice -

- (a) setting out A's intention to dispose of P's real property and provides sufficient detail to permit the person receiving the notice to understand the nature of the disposal and to object to that disposal when the Court considers making an order approving that disposal or when the real property is otherwise disposed of, and

- (b) satisfies any requirement set out in regulations made under section 19.

(8) For the purposes of this section and section 27 of the Law, "**dispose of**" P's real property means where A deals with the real property by -

- (a) selling or otherwise conveying the real property,
- (b) creating a charge over that property,
- (c) granting a long lease over the real property,
- (d) granting any person a life interest in the real property, or
- (e) granting an *usufruit, droit d'habitation, hypothèque* or servitude over the real property,

and cognate expressions shall be construed accordingly.

Offences.

11. (1) Where A -

- (a) may act in the exercise of A's authority under a lasting power of attorney,

- (b) does any thing which is not within A's authority to do, and
- (c) A knows that, or is reckless to whether, this thing is not within A's authority,

A is guilty of an offence.

(2) Where A -

(a) does any thing which -

(i) is not, or

(ii) is no longer,

within A's authority to do under a lasting power of attorney, and

(b) A knows that, or is reckless to whether, this thing is not, or is no longer, within A's authority to do,

A is guilty of an offence.

(3) Where A is guilty of an offence under subsection (1) or (2), A is liable -

- (a) on summary conviction, to imprisonment for a term not exceeding 2 years or a fine not exceeding level 5 on the uniform scale, or both,
- (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years or a fine, or both.

Further provision.

12. (1) The Committee may by regulations make alternative provision in relation to any requirement in this Ordinance to do any act in person, notwithstanding any provision to the contrary, where the Committee is satisfied that there is a good reason to do so (including, but not limited to, a public health reason).

(2) Any regulations made under subsection (1) may only be in force for a period not exceeding 3 months.

Non-resident attorneys.

13. For the avoidance of doubt, A is not required to be ordinarily resident in the Bailiwick in order to be appointed as, or to exercise the functions of, an attorney in accordance with a lasting power of attorney.

Other powers of attorney.

14. For the avoidance of doubt -

- (a) the provisions of the Power of Attorney and Affidavits (Bailiwick of Guernsey) Law, 1995 do not apply in relation

to any lasting power of attorney created in accordance with this Ordinance, and

- (b) this Ordinance does not affect the law of agency or the operation of any power of attorney made in accordance with that Law.

Savings.

15. (1) For the avoidance of doubt, nothing in the Law or this Ordinance shall -

- (a) invalidate the registration by the Court before the date of commencement of this Ordinance of any lasting power of attorney created in accordance with the legislation of a jurisdiction outside the Bailiwick,
- (b) prevent the performance of any act or taking of any decision after the date of commencement in accordance with a lasting power of attorney registered in accordance with paragraph (a), or
- (c) prevent the registration after the date of commencement of this Ordinance by any court in the Bailiwick of any lasting power of attorney created in accordance with the legislation of a jurisdiction outside the Bailiwick.

(2) Accordingly, the provisions of this Ordinance shall not apply in relation to the creation, registration, activation, amendment or suspension of a lasting power of attorney created in accordance with the legislation of a jurisdiction outside the Bailiwick.

Saving of transactions for value without notice.

16. (1) Subject to any requirement in relation to real property set out in this Ordinance, where -

- (a) A has disposed of any of P's property other than in accordance with A's authority under a lasting power of attorney, and
- (b) that property has been acquired by a bona fide purchaser for value of the goods on the basis of A's ostensible authority to dispose of that property,

the acquisition of that property by that purchaser shall not be impugned by reason of a subsequent determination of any application by a court to decide the lawful ownership of the property or otherwise to oppose the disposal.

(2) Where subsection (1) applies, P's rights shall attach instead to the proceeds of sale received by A or to any property representing the proceeds of sale.

Appeal from the Royal Court.

17. (1) An appeal from a decision of the Court made in exercise of its powers in relation to a lasting power of attorney (whether under the Law or this Ordinance) on a point of law shall, with leave of the Court or the Court of Appeal, lie to the Court of Appeal.

(2) An application to the Court of Appeal for leave to appeal under subsection (1) shall be treated, for the purposes of section 21 of the Court of Appeal (Guernsey) Law, 1961, in respect of -

- (a) the powers that may be exercised by a single judge of the Court under section 21(1) of that Law, and
- (b) the entitlement of an applicant under section 21(2) of that Law,

as if it were an application made under Part II of that Law.

Applications to the Royal Court.

18. (1) For the avoidance of doubt, any application for the Royal Court to exercise any of the powers set out in section 30 or 31 of the Law, or any other power under the Law in relation to a lasting power of attorney, must be made in accordance with rules of court.

(2) Further to section 21 of the Law, no permission is required for an application to the Court by the Committee for the exercise of any of its powers under this Ordinance or under the Law in relation to a lasting power of attorney.

Service.

19. The Committee may by regulations make such provisions as it thinks fit in relation to the service of any document, howsoever named (but including, for the avoidance of doubt, a notification by Her Majesty's Greffier), for the purposes of this Ordinance.

Interpretation.

20. (1) For the purposes of this Ordinance, unless the context requires otherwise -

"**the Committee**", for the purposes of sections 3(5), 4(6), 5(4), 7(20), 8 and 9, includes any person appointed or otherwise directed by the Chief Pleas of Sark, or one of its committees, to deal with safeguarding matters,

"**the Court**" means the Royal Court sitting as an Ordinary Court, which may be properly constituted by the Bailiff sitting unaccompanied by the Jurats,

"**Her Majesty's Greffier**" includes -

- (a) any Deputy Greffier or other person authorised by Her Majesty's Greffier to exercise any of the, or any specified, functions of Her Majesty's Greffier under this Ordinance, and

- (b) any person appointed for the time being by Her Majesty's Greffier for the purpose of exercising any of the, or any specified, functions of Her Majesty's Greffier under this Ordinance in Alderney or Sark,

"**the Law**" means the Capacity (Bailiwick of Guernsey) Law, 2020,

"**long lease**" means a lease granted for a term of years certain of 21 years or more, whether or not at a premium or rack rent and whether or not the lease is or may become terminable before the end of that term by notice given by or to the tenant or by re-entry, forfeiture or otherwise, and also any other lease which contains, or in relation to which there exists, a covenant, obligation or option -

- (a) for perpetual renewal, pursuant to which any party to the lease is entitled to enforce (whether or not subject to the fulfilment of any condition) the perpetual renewal or extension thereof,
- (b) for renewal, pursuant to which any party to the lease is entitled to enforce (whether or not subject to the fulfilment of any condition) the renewal or extension thereof (whether on one or more occasions, and whether or not for a specified term) which, if exercised in accordance with the terms of the covenant, obligation or option, and on

whatever number of occasions, would bring the aggregate of terms granted to 21 years or more,

and for the purposes of this Ordinance -

- (c) a lease for a fixed term and thereafter until determined shall be deemed to be a lease for a term equal to the fixed term together with such further period as must elapse before the earliest date upon which the lease can be determined,
- (d) a lease for life or for any term determinable with life or on marriage shall be deemed to be a lease granted for a term of years certain of 21 years or more,
- (e) without prejudice to the generality of paragraphs (a) and (b) above, any covenant, obligation or option to take a lease for a further or extended term shall be taken into account in calculating the length of the term for which the lease was originally granted, and accordingly (by way of example) a lease for a definite term with an option to renew or extend for a further definite term shall be deemed to be a lease for the aggregate term,
- (f) a renewal or extension of a lease which does not contain, and in relation to which there does not exist, a covenant,

obligation or option described in paragraph (a) or (b) above shall be deemed to be a grant of a lease, and

- (g) the expression "lease" includes an underlease or other tenancy, and

"**notify**" means, subject to subsection (3)(b), giving notification of the required information in writing,

"**prescribed**" means prescribed by regulations of the Committee.

(2) Any term used in this Ordinance shall have the same meaning as found in the Law and cognate expressions shall be construed accordingly.

(3) For the avoidance of doubt -

- (a) any person appointed by Her Majesty's Greffier under section 20(1) is a person responsible to Her Majesty's Greffier for the purposes of section 34 of the Law, and
- (b) Her Majesty's Greffier may notify a person for the purposes of this Ordinance in such manner as Her Majesty's Greffier sees fit.

Amendments.

21. (1) In the Law -

(a) in section 1(1) -

- (i) in the definition of "grantor" and "lasting power of attorney", for "21" substitute "22", and
- (ii) insert the following definitions in the appropriate places -

""**dispose of**", for the purposes of section 27(1), means dealing with the real property by way of any legal transaction specified in an Ordinance made under section 23, and "**disposal**" shall be construed accordingly," and

""**full fiduciary licence**", for the purposes of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000, includes a primary or secondary fiduciary licence for the purposes of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2020,"

- (iii) in the definition of "**bankrupt**", after paragraph (e), add the following paragraph –

"(f) that an event, measure or procedure has occurred outside the Bailiwick in relation to the individual which corresponds as nearly as may be to any event, measure or procedure described in paragraphs (a) to (e),"

(b) for section 24(2), substitute the following subsection –

"(2) An individual who is bankrupt may not be appointed as A under a lasting power of attorney in relation to P's property and financial affairs –

(a) where one or more of paragraphs (a) to (e) of the definition of "bankrupt" apply -

(i) the declaration, appointment or order was made, or

(ii) the composition, compromise or arrangement was entered into,

(as may be applicable having regard to the definition of "bankrupt") less than 10 years before the appointment as A is made, and

(b) where paragraph (f) of the definition of "bankrupt" applies, that individual has not been discharged

from bankruptcy for the purposes of the law of the other jurisdiction outside the Bailiwick under which that individual was made bankrupt."

(c) in section 29(4)(a), for "created" substitute "activated", and

(d) in section 34, for "22" substitute "23".

(2) In section 4(4)(b) of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2020 -

(a) in paragraph (iv), for "." substitute ",", and

(b) insert the following paragraph -

"(v) acting as an attorney under a lasting power of attorney created under the Capacity (Bailiwick of Guernsey) Law, 2020."

Citation and commencement.

22. This Ordinance -

(a) may be cited as the Capacity (Lasting Powers of Attorney) (Bailiwick of Guernsey) Ordinance, 2022, and

(b) shall come into force on 1st April 2022.

Extent.

23. This Ordinance shall have effect throughout the Bailiwick of Guernsey.