



In the Royal Court of the Island of Guernsey

The

Orders of the Royal Court

IV

2022

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 14th day of March, 2022 before Richard James McMahon, Esquire, Bailiff; present:- Stephen Murray Jones, OBE, Steven John Morris, David James Mortimer, Esquires, Joanne Marie Wyatt, David John Robilliard, Esquire, Marilyn Jasmine King, Paul Martin Burnard, Esquire, Heather Reed, Simon Ernest Bodkin, James Robert Toynton, Esquires, Jurats.

No. IV Order, 2022

ENTITLED

THE CAPACITY (LASTING POWERS OF ATTORNEY) (APPEALS ETC.)

RULES, 2022

The Capacity (Lasting Powers of Attorney) (Appeals, etc.) Rules, 2022

THE ROYAL COURT, in exercise of the powers conferred upon it by section 83 of the Capacity (Bailiwick of Guernsey) Law, 2020^a, and all other powers enabling it in that behalf, hereby orders:-

PART I

APPEALS AGAINST THE DECISION OF HER MAJESTY'S GREFFIER

Appeals.

1. (1) A person who –
 - (a) may appeal to the Royal Court ("the Court") against a decision of Her Majesty's Greffier under section 3(7), 4(8), 5(6) or 7(6) of the Capacity (Lasting Powers of Attorney) (Bailiwick of Guernsey) Ordinance, 2022 ("the Ordinance"),
 - (b) wishes to do so,

must appeal in accordance with this Part.

(2) A person wishing to appeal against a decision of Her Majesty's Greffier in accordance with this Part shall, within a period of 28 days immediately following the date of the decision, serve notice of such appeal on Her Majesty's Greffier by summons using the notice set out in the Schedule, accompanied by such evidence as

^a Order in Council No. II of 2021.

that person wishes to rely upon.

(3) Her Majesty's Greffier may, where an appeal in accordance with this Part has been instituted, apply to the Court, by summons served on the appellant, for an order that the appeal shall be dismissed for want of prosecution, and upon hearing the application the Court may –

- (a) dismiss the appeal or dismiss the application (in either case upon such terms and conditions as the Court may direct), or
- (b) make such other order as the Court considers just,

and the provisions of this subparagraph are without prejudice to the inherent powers of the Court or to the provisions of rule 52 of the Royal Court Civil Rules, 2007^b.

(4) On an appeal under this Part the Court may, if it considers that –

- (a) the decision of Her Majesty's Greffier was –
 - (i) ultra vires or there was some other error of law,
 - (ii) unreasonable, or
 - (iii) made in bad faith,
- (b) there was a lack of proportionality in the decision, or
- (c) there was a material error as to the facts or as to the

^b Order of the Royal Court No. IV of 2007.

procedure when Her Majesty's Greffier made the decision,

set aside the decision of Her Majesty's Greffier and remit the matter to Her Majesty's Greffier with such directions as the Court thinks fit.

(5) If paragraph (4) does not apply, the Court shall confirm the decision.

(6) The decision of the Court on an appeal under this rule shall be in writing and transmitted by Her Majesty's Greffier to the appellant.

(7) An appeal from a decision of the Court under this Part lies to the Court of Appeal on a question of law in accordance with section 17 of the Ordinance.

Representation before Royal Court.

2. Any party to an appeal under Part 1 may address the Court in person or by an Advocate of the Royal Court.

Procedure before Royal Court.

3. (1) The Court may call for such documents and examine such persons on oath, affirmation or otherwise as appear likely to afford testimony relevant and material to any question of law to be determined by it on an appeal under rule 1.

(2) Any party to an appeal under rule 1 may cause a summons to be served on any person, in the same manner as a witness summons must be served in respect of a civil action before the Court under rule 85 of the Royal Court Civil Rules, 2007, summoning that person to attend a hearing of the Court for the purpose of giving testimony or producing any document likely to assist the Court in determining the question of law which is the subject of the appeal or reference.

(3) A person summoned in accordance with paragraph (2) shall be under a like obligation as to the giving of testimony and the production of documents as if that person were summoned in respect of a civil action before the Court under rule 85 of the Royal Court Civil Rules, 2007.

(4) The Court may adjourn the hearing of any appeal from time to time as it may think fit.

(5) If the Court is satisfied that all parties to an appeal under rule 1 have been notified of the place, date and time of the hearing thereof, and if any of such persons fails to appear, the Court may proceed to determine the appeal in the absence of that person.

(6) Save as otherwise expressly provided in these Rules, the procedure at the hearing of an appeal under rule 1 shall be such as the Court may from time to time determine.

PART II

APPLICATION BY THE COMMITTEE

Application by the Committee.

4. (1) Where the Committee wishes to make an application under -

(a) section 8(1) or (2),

(b) section 9(8),

of the Ordinance, the Committee shall serve notice of such application on A by summons, accompanied by such evidence as the Committee wishes to rely upon.

(2) For the avoidance of doubt, the Royal Court Civil Rules, 2007 shall apply to any such application, subject to any decision of the Royal Court to depart from them where it is just to do so.

PART III

APPLICATION TO COURT FOR THE DISPOSAL OF REAL PROPERTY

Real property located in the Bailiwick.

5. (1) For the purposes of section 10(1) and (2) of the Ordinance, where A intends to dispose of P's real property located in the Bailiwick (other than Alderney or Sark), A must apply to the Court in accordance with this rule.

(2) The notice must be accompanied by any evidence which A wishes the Court to consider, including -

- (a) the identity of the real property,
- (b) how A proposes to dispose of the real property,
- (c) the purpose for which A proposes to dispose of the real property,
- (d) where section 10(8)(a) applies -
 - (i) the amount of any proceeds from the disposal of the real property, and
 - (ii) an independent report on the value of the real property,
- (f) where section 10(8)(a) does not apply, any change in

value of the real property if the Court gives A permission to dispose of the property,

and evidence that A has complied with all of the requirements set out in section 10(2)(a) of the Ordinance.

- (3) For the avoidance of doubt and the purposes of paragraph 2(d) -
 - (a) the expert valuer providing the independent report must not be told any amount agreed in relation to the disposal of the real property, and
 - (b) in the independent report, the expert valuer must -
 - (i) provide details of relevant qualifications and experience in Guernsey property, and
 - (ii) confirm that the valuer has no interest in the proposed sale other than receiving a fee for giving expert evidence to the Court.

(4) For the avoidance of doubt, the Royal Court Civil Rules, 2007 shall apply to any such application, subject to any decision of the Royal Court to depart from them where it is just to do so.

(5) An appeal from a decision of the Court under this Part lies to the Court of Appeal on a question of law in accordance with section 17 of the Ordinance.

PART IV APPLICATIONS

Other applications.

6. (1) Where a person wishes to make an application under the Law for the 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, that person shall serve notice of such application on -

- (a) A,
- (b) if P has not reached 18, any person with parental responsibility for P,
- (c) a guardian appointed by a court for P, and
- (d) any other person directed by the Court,

by summons, accompanied by such evidence as that person wishes to rely upon.

(2) For the avoidance of doubt, the Royal Court Civil Rules, 2007 shall apply to any such application, subject to any decision of the Royal Court to depart from them where it is just to do so.

PART V FEES

Fees.

7. (1) The fee for the purposes of -
- (a) section 3(3)(b) of the Ordinance (registration) is -
 - (i) where an application for registration is made by P in relation to a single type of lasting power of attorney, £80, and

(ii) where an application for registration is made by P in relation to both types of lasting power of attorney on the same occasion, £100,

(b) section 5(3)(b) of the Ordinance (amendment) is £30, and

(c) section 7(3)(b) of the Ordinance (revocation) is £30.

(2) Where Her Majesty's Greffier attends on P at any place other than the Royal Court House for the purposes of the Ordinance, including for the registration, amendment or revocation of a lasting power of attorney, an additional fee of £150 is payable, unless Her Majesty's Greffier at his absolute discretion waives that additional fee in full or in part.

(3) Where a person requests an additional document (including a notification) in hard copy which is provided by Her Majesty's Greffier under the Ordinance, a fee of £20 is payable for each additional document or notification provided.

PART VI MISCELLANEOUS

Interpretation.

8. (1) In these Rules, except where the context requires otherwise -

"A" includes every other attorney under a lasting power of attorney where the person making an application is an attorney under that same lasting power of attorney,

"the Court" has the meaning given in rule 1,

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

"the Ordinance" means the Capacity (Lasting Powers of Attorney) (Bailiwick of Guernsey) Ordinance, 2022,

"type" of lasting power of attorney, for the purposes of rule 7, means the category of lasting power of attorney dealing with the matters set out in section 22(1)(a) and (b) of the Law,

and any other expressions, unless the context otherwise requires, have the same meaning as in the Law or the Ordinance, as the case maybe.

(2) Any provision of these Rules imposing a duty on Her Majesty's Greffier shall (except where a specific time limit is imposed) be construed as requiring the performance of the act as soon as is reasonably practicable.

(3) The Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016^c applies to the interpretation of these Rules as it applies to the interpretation of an enactment.

Citation.

9. These Rules may be cited as the Capacity (Lasting Power of Attorney) (Appeals, etc.) Rules, 2022.

Commencement.

10. These Rules shall come into force on the 1st April, 2022.

^c Order in Council No. V of 2018.

SCHEDULE

The Capacity (Lasting Power of Attorney) (Appeals, etc.) Order, 2022

Rule 1(2)

Notice of Appeal to the Royal Court

To Her Majesty's Greffier,
The Royal Court House,
St. Peter Port,
Guernsey
GY1 2NZ.

I [*insert full name*]
of [*insert full address*]

being aggrieved by a decision of Her Majesty's Greffier given on the day of..... , 20.....[*insert date of decision appealed against*], in respect of an appeal to the Court concerning [*give brief description of decision appealed against and names of any other parties to the appeal*]

under section[*insert relevant section*] of the Capacity (Lasting Powers of Attorney) (Bailiwick of Guernsey) Ordinance, 2022, hereby give notice of appeal against the said decision.

The contentions on which I rely in support of my appeal are set out below.

In support of this appeal the following documents are attached [*insert list of all documents sent with this application*].

Dated this day of, 20.....

Signature

(Appellant)

N.B. The particulars furnished on this form and all other information and documents sent to Her Majesty's Greffier by or on behalf of an appellant in connection with his or her appeal will be disclosed to any other party.

CONTENTIONS