



Office of the
Public Guardian

SD16

Public Guardian practice note

Updating Public Guardian registers: Notification of death

Summary

The Public Guardian is responsible for maintaining registers of lasting powers of attorney, enduring powers of attorney, orders appointing deputies, and orders appointing guardians. This practice note outlines the requirements for notifying the Office of the Public Guardian (OPG) of deaths affecting the registers.

When to notify the Public Guardian of a death

The Office of the Public Guardian should be notified of the death of:

- the donor of a registered enduring or lasting power of attorney
- an attorney acting under a registered enduring or lasting power of attorney
- a replacement attorney
- a deputy appointed by the Court of Protection
- someone for whom the Court of Protection has appointed a deputy (P)
- a guardian appointed by the High Court
- someone for whom the High Court has appointed a guardian (the missing person)

Process followed by OPG when a death is reported by email, telephone or letter

A death can be reported to OPG by email, telephone or letter.

If someone involved in a lasting power of attorney (LPA) or enduring power of attorney (EPA) dies, the person reporting the death will be asked to send the original LPA or EPA to OPG. If someone involved in a deputyship dies, OPG will tell the relevant person what to do on a case-by-case basis.

Following notification, OPG will use the Life Event Verification (“LEV”) system to verify the death. LEV retrieves data directly from the General Registrar’s Office, so additional proof of death is not required unless this is requested by letter or email (see Proof of death).

If a death results in the cancellation of an LPA or EPA, OPG will confidentially dispose of the original document once proof of death has been confirmed. If a personal representative would like the LPA or EPA to be returned to them, a request must be made in a covering letter when sending the documents to OPG.

Death of the donor of a registered enduring or lasting power of attorney

The Public Guardian is obliged to cancel an enduring or a lasting power of attorney¹ if they are satisfied that the power has been revoked as a result of the donor's death.

OPG will verify the death by LEV, so additional proof of death is not required unless this is requested by letter or email (see Proof of death).

The original EPA or LPA document, along with any office or certified copies should be returned to OPG for cancellation.

OPG will then notify the attorney(s) by letter when the LPA or EPA has been cancelled and will confidentially dispose of the document.

Death of an attorney acting under a registered enduring or lasting power of attorney

If the attorney was a **sole attorney**, their death cancels the EPA or LPA². OPG will verify the death by LEV (see Proof of death). The EPA or LPA should be returned to OPG. OPG will notify the donor (LPA only) by letter when it has been cancelled. OPG will then confidentially dispose of the document.

If the attorney was appointed to act **jointly** (that is, they could only act together with the other attorney(s)), then their death cancels the EPA or LPA. OPG will verify the death by LEV (see Proof of death). The EPA or LPA should be returned to OPG. OPG will notify the donor and all other attorneys (LPA only) by letter when it has been cancelled. OPG will then confidentially dispose of the document.

If the deceased attorney was appointed **jointly and severally** with another attorney or attorneys (that is, they could act independently or in conjunction with the other attorney(s)), then the LPA is still valid. OPG will verify the death by LEV. The EPA or LPA must be returned to OPG, who will stamp the document to confirm the attorney has died. OPG will then return the EPA or LPA.

If the deceased attorney acted under an LPA and was appointed **jointly for some decisions and jointly and severally for other decisions** with another attorney or attorneys (that is, they could act independently or in conjunction with the other attorneys, but had to make certain

¹ Regulation 22 of The Lasting Powers of Attorney, Enduring Power of Attorney and Public Guardian Regulations 2007

² Mental Capacity Act schedule 4 Part 5 paragraph 17

decisions together), then the LPA is still valid. However, the remaining primary attorneys will not be able to act upon the decisions which are to be made jointly (together). OPG will verify the death by LEV. The EPA or LPA must be returned to OPG, who will stamp the document to confirm the attorney has died. OPG will then return the LPA.

In all of the above scenarios, it is assumed that no replacement attorney(s) have been appointed.

Death of a replacement attorney

OPG must be notified of the death of a replacement attorney, even if OPG has not amended the LPA to allow them to begin acting on the donor's behalf.

OPG will verify the death by LEV (see Proof of death) and the LPA must then be returned to them. OPG will confirm if the LPA is still valid to use and if it is, they will stamp and return the document. If it is no longer valid, OPG will cancel the LPA and dispose of it confidentially.

Death of a deputy appointed by the Court of Protection

OPG must be notified by the executor, personal representative, or a family member of the deputy that the deputy appointed by the Court of Protection has died. The register of deputies can then be updated.

OPG will verify the death by LEV, so additional proof of death is not required unless this is requested by letter or email (see Proof of death).

The Court of Protection will need to be notified that the deputy has died by the deceased's personal representative or executor. This will help close any ongoing court applications. The Court may decide that a replacement is required. In cases where the deputies had been appointed jointly or solely, the deputyship will come to an end. If the deputies have been appointed jointly and severally, the surviving deputy can continue to act.

The Public Guardian's statutory duty to supervise usually ends when the deputy dies, as the deputyship order will be brought to an end by the Court of Protection. This happens:

- unless the deputy appointment was jointly and severally
- until the Court appoints a replacement deputy
- if it is determined that a deputy is no longer required.

In the event that P (someone for whom the Court has appointed a deputy) is left without a deputy, OPG will make a referral to the local authority to advise that P is at risk and no longer has a deputy to support them.

Death of P (someone for whom the Court has appointed a deputy)

OPG must be notified of the death of P so that the register of deputies can be updated. The death will bring the deputyship to an end although the Public Guardian can request a final report from the deputy. OPG will verify the death by LEV, so additional proof of death is not required unless this is requested by letter or email (see Proof of death).

If there are any ongoing court applications, the deputy will need to notify the Court of Protection of the death³.

Death of a guardian appointed by the High Court

A guardianship order is revoked upon the death of the guardian⁴, unless the order appoints more than one guardian, and the guardians were not appointed to act jointly⁵.

The Public Guardian must be notified of the death of a guardian by the executor, personal representative, or a family member of the guardian. The Public Guardian's register of guardianship orders can then be updated.

OPG will verify the death by LEV, so additional proof of death is not required unless this is requested by letter or email (see Proof of death).

Where the order is not revoked upon a guardian's death (i.e., another guardian appointed under the order remains alive and has not been appointed to act jointly with the deceased guardian), the guardian that remains must apply to the High Court for the variation or revocation of the order as soon as possible after becoming aware of the death.

In the event the missing person (someone for whom the High Court has appointed a guardian) is left without a guardian, OPG will make a referral to the relevant agency or body to highlight this.

³ Practice Direction 24B s7

⁴ Section 14 of the Guardianships (Missing Persons Act 2017)

⁵ Paragraph 4 of the Schedule of the Guardianships (Missing Persons Act 2017)

Death of someone for whom the High Court has appointed a guardian (the missing person)

A guardianship order is revoked upon the death of the missing person⁶.

OPG must be notified by the guardian, executor, personal representative, or a family member of the death of the missing person so that the Public Guardian's register of guardianship orders can be updated.

OPG will verify the death by LEV, so additional proof of death is not required unless this is requested by letter or email (see Proof of death).

Declaration of presumed death (applicable to guardianship orders only)

OPG must be notified by the guardian, the executor, personal representative, or a family member when a declaration of presumed death⁷ has been made, so that the Public Guardian's register of guardianship orders can be updated. This notification should be made as soon as possible.

This declaration of presumed death of the missing person (someone for whom the High Court has appointed a guardian) will bring the guardianship order to an end.

OPG requires a copy of the declaration of presumed death to close the case.

⁶ Section 14 of the Guardianships (Missing Persons Act 2017)

⁷ Section 2 of the Presumption of Death Act 2013

Proof of death

OPG will verify any death notifications through Life Event Verification (“LEV”).

Evidence of proof of death is not required unless this is requested by letter or email.

If proof of death has been requested by OPG, the correspondent should provide the OPG case reference number, full name, date of birth and last address of the deceased person, together with any of the following:

- A certificate issued by the registrar general, a superintendent registrar or a registrar of births and deaths
- A record of inquest
- Electronic verification from General Records Office or Credit Reference Agency

Written confirmation on **headed paper** or an email from a **business account** from any of the following is also acceptable:

- A solicitor, barrister or advocate authorised to practice in the country where the declaration is made
- A legal executive who is a member of the Institute of Legal Executives
- A will writer who is a member of either the Society of Will Writers, the Institute of Professional Will Writers, or the European Association of Will Writers
- A notary public or any person allowed to administer oaths in the country where the declaration is made
- A magistrate
- A consular, embassy, or high commission official if the person died abroad
- The equivalent of a certificate issued abroad by the appropriate registration authority if the person died abroad

If a legally binding document (for example a death certificate) is being presented, the original or a certified copy from the registrar must be received. Photocopies or scanned images are **not** acceptable.

The only exception to the above is where there is a presumption of death. OPG requires a copy of the presumption of death order as evidence to close the case.

For further advice:
Office of the Public Guardian
Telephone 0300 456 0300
www.gov.uk/opg