

Mental Capacity (Amendment) Bill

Bill No. 11/2021.

Read the first time on 10 May 2021.

A BILL

intituled

An Act to amend the Mental Capacity Act and to make a related amendment to the Electronic Transactions Act.

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act is the Mental Capacity (Amendment) Act 2021 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

5 **Amendment of section 2**

2. Section 2 of the Mental Capacity Act (called in this Act the principal Act) is amended —

(a) by deleting the definitions of “deputy” and “donee” in subsection (1) and substituting the following definitions:

10 ““deputy” means a person appointed by the court under section 20(2)(b) to make decisions on behalf of another person (“P”) in relation to a matter or matters concerning all or any of the following in respect of which P lacks capacity:

15 (a) P’s personal welfare;

(b) P’s property and affairs;

“donee” means a person who is conferred authority by a donor (“P”) under a lasting power of attorney to make decisions about all or any of the following when P no longer has capacity to make such decisions:

20 (a) P’s personal welfare, or matters concerning P’s personal welfare that are specified in the lasting power of attorney;

25 (b) P’s property and affairs, or matters concerning P’s property and affairs that are specified in the lasting power of attorney;

30 “donor” means a person (“P”) who confers authority on a donee (or donees) under a lasting power of attorney to make decisions

about all or any of the following when P no longer has capacity to make those decisions:

(a) P’s personal welfare, or matters concerning P’s personal welfare that are specified in the lasting power of attorney; 5

(b) P’s property and affairs, or matters concerning P’s property and affairs that are specified in the lasting power of attorney; 10

“electronic”, “electronic record”, “record”, “secure electronic signature”, “signed” and “signature” have the meanings given by section 2(1) of the Electronic Transactions Act; 15

“electronic instrument” means an electronic record that confers authority of the kind mentioned in section 11(1);

“electronic transaction system” means the electronic transaction system established by the Public Guardian under section 10B(1);”; 20

(b) by inserting, immediately after the definition of “life-sustaining treatment” in subsection (1), the following definition:

““non-electronic lasting power of attorney” means a lasting power of attorney that is created using non-electronic means;”; 25

(c) by inserting, immediately after the definition of “registered medical practitioner” in subsection (1), the following definition: 30

““Singapore public sector agency” has the meaning given by section 2(1) of the Public Sector (Governance) Act 2018;”; and

(d) by inserting, immediately after subsection (2), the following subsection:

“(3) For the purposes of this Act, a reference to an instrument that confers authority of the kind mentioned in section 11(1) includes an electronic instrument made in accordance with section 11(2)(b)(ii).”.

New Part IIIA

3. The principal Act is amended by inserting, immediately after section 10, the following Part:

“PART IIIA

ELECTRONIC TRANSACTION SYSTEM

Interpretation of this Part

10A. In this Part, unless the context otherwise requires —

- “document” includes a document in electronic form;
- “malfunction”, in relation to the electronic transaction system, includes any defect or breakdown in that system or in any equipment, software or telecommunication networks used in or in connection with that system;
- “transaction”, in relation to the Public Guardian, means —
 - (a) the filing or lodging of any document with the Public Guardian, or the submission, production, delivery, furnishing or sending of any document to the Public Guardian, under or for the purposes of this Act;
 - (b) the making of any application, submission or request to the Public Guardian under or for the purposes of this Act;
 - (c) the provision of any undertaking or declaration to the Public Guardian under or for the purposes of this Act; and

- (d) the extraction, retrieval or accessing of any document, record or information maintained by the Public Guardian under or for the purposes of this Act.

Establishment of electronic transaction system

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10B.—(1) The Public Guardian may establish an electronic transaction system —

- (a) to enable any donor to create an electronic instrument with a view to creating a lasting power of attorney;
- (b) to enable any person to carry out any transaction with the Public Guardian; 10
- (c) to enable a person to give a notice to another person under or for the purposes of this Act;
- (d) to enable the Public Guardian to issue any approval, certification, notice or other document under or for the purposes of this Act; 15
- (e) to enable the Public Guardian to attach a note to any lasting power of attorney;
- (f) to enable the Public Guardian to provide to persons entitled copies or extracts of documents filed or lodged with, submitted to, or issued by, the Public Guardian; 20
- (g) to enable the Public Guardian to provide a service for the supply to the public of non-confidential information relating to transactions with the Public Guardian; and 25
- (h) to enable the Public Guardian to carry out any of the Public Guardian’s functions, or to provide any other service falling within those functions.
- (2) The non-confidential information that may be provided under the service mentioned in subsection (1)(g) — 30

(a) may include —

(i) information extracted from documents filed or lodged with, submitted to, or issued by, the Public Guardian; and

(ii) collations, summaries, reports or analyses of documents filed or lodged with, submitted to, or issued by, the Public Guardian; and

(b) may be derived from documents filed or lodged with, submitted to, or issued by, the Public Guardian other than through the electronic transaction system.

(3) Where any transaction with the Public Guardian can be carried out using the electronic transaction system, the Public Guardian may refuse to process the transaction unless —

(a) the transaction is carried out in accordance with this Part, including the requirements for the use of the electronic transaction system specified in subsection (4);

(b) the transaction meets the requirements prescribed in this Act or specified by the Public Guardian (as the case may be) for that transaction; and

(c) the fee payable for the transaction has been paid.

(4) Subject to this Part and any regulations made under section 46, the Public Guardian may, from time to time, determine the requirements for the use of the electronic transaction system, which may include —

(a) conditions of access to, and use of, the electronic transaction system;

(b) security and authentication requirements for access to, and use of, the electronic transaction system;

(c) retention and production of documents supporting or authenticating transactions; and

(d) modes of payment for transactions.

(5) The Public Guardian must keep a record, in such form as the Public Guardian may determine, of —

- (a) all transactions with the Public Guardian that are carried out using the electronic transaction system;
- (b) all approvals, certifications, notices and other documents issued by the Public Guardian under or for the purposes of this Act through the electronic transaction system; and
- (c) all notes attached by the Public Guardian to any lasting power of attorney using the electronic transaction system.

(6) The Public Guardian must ensure that each of the following documents is kept in such form as the Public Guardian may determine, that ensures the integrity, and enables the retrieval, of the document:

- (a) any lasting power of attorney that is created using the electronic transaction system;
- (b) any electronic copy of a non-electronic lasting power of attorney.

Requirement to use electronic transaction system

10C.—(1) Except as provided in subsection (2), a person who wishes to carry out a transaction with the Public Guardian —

- (a) must do so using the electronic transaction system if the transaction is an application for the registration of an instrument purporting to create a lasting power of attorney;
- (b) must do so using the electronic transaction system if required by the Public Guardian; or
- (c) may do so using the electronic transaction system if permitted by the Public Guardian.

(2) If a transaction with the Public Guardian under or for the purposes of this Act cannot be carried out using the electronic transaction system —

(a) because the person mentioned in subsection (1) is unable to carry out the transaction using the electronic transaction system due to the person's physical disability or other circumstance;

5 (b) because the electronic transaction system is unavailable; or

(c) for any other reason,

the transaction must be carried out in the form and manner determined by the Public Guardian.

10 **Electronic transaction system malfunction, errors and omissions**

10D.—(1) Despite any other written law or rule of law, the Public Guardian may —

15 (a) correct any error or omission in any register kept by the Public Guardian under this Act;

(b) correct any error or omission in any document filed or lodged with, or submitted to, the Public Guardian; and

(c) supply entries or records omitted to be made in any register mentioned in paragraph (a),

20 if the error or omission has occurred or arisen as a result of any malfunction of the electronic transaction system.

(2) The Public Guardian must maintain a record of every correction made under subsection (1).

25 (3) When any error or omission has been corrected under subsection (1), the error or omission is deemed not to have occurred.

30 (4) The Public Guardian, an Assistant Public Guardian, an authorised officer or any person acting under the direction of the Public Guardian or an Assistant Public Guardian is not liable for any loss or damage suffered by any person by reason of any error or omission, if —

- (a) the error or omission had occurred or arisen as a result of any malfunction of the electronic transaction system; and
- (b) the malfunction of the electronic transaction system had occurred despite the Public Guardian having acted in good faith and with reasonable care to prevent such a malfunction from occurring.”

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Amendment of section 11

4. Section 11 of the principal Act is amended —

- (a) by deleting paragraph (b) of subsection (2) and substituting the following paragraph:

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“(b) an instrument conferring authority of the kind mentioned in subsection (1) —

- (i) being one executed by P before the date of commencement of section 4 of the Mental Capacity (Amendment) Act 2021 — is made and registered in accordance with the First Schedule as in force immediately before that date; or

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- (ii) being one executed by P on or after the date of commencement of section 4 of the Mental Capacity (Amendment) Act 2021 —

- (A) is made using the electronic transaction system in accordance with section 12A and the First Schedule, or (in a case under subsection (2A)) is made in accordance with the First Schedule; and

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- (B) is registered in accordance with the First Schedule; and”;

(b) by inserting, immediately after subsection (2), the following subsection:

“(2A) The Public Guardian may allow an instrument conferring authority of the kind mentioned in subsection (1) to be made in accordance with the First Schedule, without using the electronic transaction system, in any one or more of the following circumstances:

(a) the donor is unable to make the instrument using the electronic transaction system due to the donor’s physical disability or other circumstance;

(b) the donee is unable to sign the instrument using the electronic transaction system due to the donee’s physical disability or other circumstance;

(c) the electronic transaction system is unavailable;

(d) any other prescribed circumstances.”; and

(c) by inserting, immediately after subsection (4), the following subsections:

“(5) On or after the date of commencement of section 4 of the Mental Capacity (Amendment) Act 2021, the Public Guardian may return any non-electronic lasting power of attorney that is kept by the Public Guardian (whether registered before, on or after that date) to its donor if —

(a) the Public Guardian has ensured that an electronic copy of the lasting power of attorney (including all the notes attached to it under this Act), that is free from any relevant error, is made, and kept in the electronic transaction system (called in this section the electronic copy);

- (b) the return of the non-electronic lasting power of attorney is accompanied by a notice to the effect that unless the Public Guardian is notified by the donor of any relevant error in the electronic copy within 90 days (or any longer prescribed period) after the date of the notice, the electronic copy will be treated as being free from any relevant error and as the lasting power of attorney; and
- (c) a notice is sent to the donee of the lasting power of attorney (or if there is more than one donee, each of them) to the effect that where the donor lacks capacity to verify whether there is a relevant error in the electronic copy or to give a notice to the Public Guardian of any relevant error in the electronic copy, then the donee (or if there is more than one donee, any of them) may give a notice to the Public Guardian of any relevant error in the electronic copy within 90 days (or any longer prescribed period) after the date of the notice, and unless this is done the electronic copy will be treated as being free from any relevant error and as the lasting power of attorney.
- (6) The Public Guardian may also send —
- (a) a notice mentioned in subsection (5)(b) to the donor of a non-electronic lasting power of attorney that was registered before the date of commencement of section 4 of the Mental Capacity (Amendment) Act 2021; and

(b) a notice mentioned in subsection (5)(c) to the donee of such lasting power of attorney (or if there is more than one donee, each of them),

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(c) the Public Guardian has, before that date, returned the non-electronic lasting power of attorney to its donor or donee (or if there is more than one donee, any of them); and

10 (d) the Public Guardian has before or after such return ensured that an electronic copy of the lasting power of attorney (including all the notes attached to it under this Act), that is free from any relevant error, was made and is kept in the electronic transaction system (also called in this section the electronic copy).

15 (7) The donor of a non-electronic lasting power of attorney who received a notice mentioned in subsection (5)(b) may within 90 days (or any longer prescribed period) after the date of the notice, give a notice to the Public Guardian of any relevant error in the electronic copy (called in this section a notice of error).

25 (8) A donee of a non-electronic lasting power of attorney who received a notice mentioned in subsection (5)(c) may, if the donor of the lasting power of attorney lacks capacity to verify whether there is a relevant error in the electronic copy or to give a notice to the Public Guardian of any relevant error in the electronic copy, within 90 days (or any longer prescribed period) after the date of the notice, give a notice to the Public Guardian of any relevant error in the electronic copy (also called in this section a notice of error).

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(9) A notice of error under subsection (8) must be accompanied by a certificate from a registered medical practitioner verifying the lack of capacity of the donor to carry out any act described in that subsection, or to undertake tasks of a similar nature. 5

(10) On receipt of a notice of error under subsection (7) or (8), the Public Guardian may, if satisfied that there is a relevant error in the electronic copy, rectify the relevant error.

(11) The Public Guardian must give a written notice of the Public Guardian's decision whether or not to rectify the relevant error to the donor and to the donee or (if there is more than one donee) every donee. 10

(12) Subject to sections 15A and 16A, the electronic copy of a non-electronic lasting power of attorney is treated as being free from any relevant error and as the lasting power of attorney — 15

(a) if no notice of error is received by the Public Guardian by the last day of the period mentioned in subsection (5)(b) or (c), whichever is the later — on the next day (called in this section the expiry day); or 20

(b) if a notice of error is received by the Public Guardian within the period mentioned in subsection (5)(b) or (c) — 25

(i) where the Public Guardian decides to rectify the relevant error — on the later of the following:

(A) the expiry day; 30

(B) the day on which the Public Guardian rectifies the relevant error; or

(ii) where the Public Guardian decides not to rectify the relevant error — on the later of the following:

(A) the expiry day;

(B) the day on which the Public Guardian sends the written notice under subsection (11).

(13) To avoid doubt, the treatment of the electronic copy of a non-electronic lasting power of attorney as being free from any relevant error and as the lasting power of attorney under subsection (12) does not affect the rights and obligations of any party under the lasting power of attorney, and the date of registration of the lasting power of attorney remains as the date of registration of the non-electronic lasting power of attorney.

(14) In this section, “relevant error”, in relation to an electronic copy of a non-electronic lasting power of attorney, means any disparity or inconsistency between the electronic copy and the lasting power of attorney that is registered by the Public Guardian.”.

Amendment of section 12

5. Section 12 of the principal Act is amended —

(a) by deleting the words “Part I or II” in subsections (6) and (7) and substituting in each case the words “Part 1 or 2”; and

(b) by deleting subsection (9) and substituting the following subsection:

“(9) To avoid doubt, an instrument used to create a lasting power of attorney —

(a) may itself appoint one or more replacement donees in respect of a particular donee; but

- (b) cannot itself appoint a person to replace any replacement donee.”.

New section 12A

6. The principal Act is amended by inserting, immediately after section 12, the following section: 5

“Execution of lasting power of attorney

12A.—(1) On or after the date of commencement of section 6 of the Mental Capacity (Amendment) Act 2021, where a rule of law requires an instrument conferring authority of the kind mentioned in section 11(1) to be a deed, that requirement is met 10 by an electronic record in the electronic transaction system if —

- (a) the electronic record clearly states on its face that it is intended to be a deed by P;
- (b) P signs the electronic record by applying a secure electronic signature to the electronic record in the 15 electronic transaction system;
- (c) P’s signature is attested by a witness who witnesses P’s execution of the electronic record; and
- (d) the executed electronic record is delivered as a deed 20 by P.

(2) Without limiting subsection (1)(d), an executed electronic record is treated as having been delivered as a deed by P on P making an application to the Public Guardian to register it as a lasting power of attorney.”.

Amendment of section 13

7. Section 13(10) of the principal Act is amended by deleting the words “P’s property” and substituting the words “P’s personal welfare or property”. 25

Amendment of section 15

8. Section 15 of the principal Act is amended by inserting, 30 immediately after subsection (8), the following subsection:

“(9) A donor who revokes a lasting power of attorney must notify all the following persons that the donor has done so:

(a) the Public Guardian;

(b) the donee or (if there is more than one donee) every donee.”.

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New section 15A

9. The principal Act is amended by inserting, immediately after section 15, the following section:

“Rectification by Public Guardian

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15A.—(1) The donor or donee (or if there is more than one donee, any of them) of a non-electronic lasting power of attorney may, at any time after the date an electronic copy of it is treated as being free from any relevant error and as the lasting power of attorney under section 11(12), give a notice to the Public Guardian of any relevant error in the electronic copy.

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(2) The Public Guardian may, upon receipt of any notice mentioned in subsection (1) or on the Public Guardian’s own initiative, rectify a relevant error in an electronic copy of a non-electronic lasting power of attorney.

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(3) The Public Guardian must give a written notice of any rectification under subsection (2) to the donor and the donee or (if there is more than one donee) every donee of the non-electronic lasting power of attorney.

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(4) The Public Guardian must maintain a record of every rectification made under subsection (2).

(5) In this section —

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“electronic copy”, in relation to a non-electronic lasting power of attorney, means an electronic copy of the lasting power of attorney caused to be made and kept in the electronic transaction system by the Public Guardian;

“relevant error”, in relation to an electronic copy of a non-electronic lasting power of attorney, means any

disparity or inconsistency between the electronic copy and the lasting power of attorney that is registered by the Public Guardian.”.

New section 16A

10. The principal Act is amended by inserting, immediately after section 16, the following section: 5

“Protection of donees and others if electronic copy of lasting power of attorney has relevant error

16A.—(1) If an electronic copy of a non-electronic lasting power of attorney has a relevant error, a donee of the lasting power of attorney who does an act in reliance on the electronic copy without knowing of the relevant error does not incur any liability to P or to any other person, by reason only of the relevant error. 10

(2) If an electronic copy of a non-electronic lasting power of attorney has a relevant error, a person who deals or otherwise transacts in good faith with the donee without knowing of the relevant error is entitled to rely on the electronic copy in relation to that dealing or transaction. 15

(3) In this section, where 2 or more donees are appointed under a non-electronic lasting power of attorney, a reference to the donee is a reference to all or any of the donees. 20

(4) In this section —

“electronic copy”, in relation to a non-electronic lasting power of attorney, means — 25

(a) an electronic copy of the lasting power of attorney that is treated as being free from any relevant error and as the lasting power of attorney under section 11(12); or

(b) where the electronic copy mentioned in paragraph (a) has been rectified by the Public Guardian under section 15A(2), the electronic copy so rectified; 30

“relevant error”, in relation to an electronic copy of a non-electronic lasting power of attorney, means any disparity or inconsistency between the electronic copy and the lasting power of attorney that is registered by the Public Guardian.”.

Amendment of section 31

11. Section 31(1) of the principal Act is amended by deleting the full-stop at the end of paragraph (*k*) and substituting a semi-colon, and by inserting immediately thereafter the following paragraph:

“(l) establishing and maintaining the electronic transaction system.”.

New section 31A

12. The principal Act is amended by inserting, immediately after section 31, the following section:

“Public Guardian may interview donor

31A.—(1) If on receiving an application to register an instrument purporting to create a lasting power of attorney, the Public Guardian has reasonable cause to suspect that fraud or undue pressure was used to induce a person (“P”) to —

(a) execute the instrument; or

(b) execute the instrument to appoint a particular person as P’s donee,

the Public Guardian or an authorised officer mentioned in section 30(3) may require P to appear before the Public Guardian or the authorised officer (as the case may be) at any reasonable time and at any convenient place.

(2) The Public Guardian or authorised officer may interview P to ascertain whether any fraud or undue pressure was used to induce P to do either of the acts mentioned in subsection (1)(a) or (b).

(3) Where the Public Guardian has reason to suspect that fraud or undue pressure has been used to induce P to execute an instrument to appoint a particular person as P’s donee, the Public Guardian may disclose to P the following information:

- (a) the number of lasting powers of attorney under which that person is appointed as donee; 5
- (b) the number of applications pending for the registration of an instrument that appoints that person as a donee under the instrument.”.

New section 32A 10

13. The principal Act is amended by inserting, immediately after section 32, the following section:

“Evidence of transaction with Public Guardian

32A.—(1) Despite any other written law or rule of law, any document prepared by the Public Guardian that — 15

- (a) consists of information reproduced or extracted from any original document; and
- (b) contains a statement by the Public Guardian that the information is a true reproduction or extract of the original document, 20

is in any proceedings admissible in evidence in place of and to the same extent as the original document, unless evidence to the contrary is adduced.

(2) A copy of an instrument certified by the Public Guardian under paragraph 11 of the First Schedule to be a true copy of the original instrument registered to create a lasting power of attorney is — 25

- (a) evidence of the contents of the original instrument on the date and time specified on that copy; and
- (b) evidence of the registration of the instrument by the Public Guardian on the date and time specified on that copy. 30

(3) In this section, “original document” means a document that is filed or lodged with, submitted to, or issued by, the Public Guardian.”.

New section 33A

5 **14.** The principal Act is amended by inserting, immediately after section 33, the following section:

“Rectification or updating on Public Guardian’s initiative

10 **33A.—**(1) The Public Guardian may rectify or update any particulars or document in a register kept by the Public Guardian, if the Public Guardian is satisfied that —

(a) there is an error or a defect in the particulars or document arising from any grammatical, typographical or similar mistake; or

15 (b) there is evidence of a conflict between the particulars of a person and —

(i) any other information in the register relating to that person; or

20 (ii) any other information relating to that person obtained from any Singapore public sector agency that may be prescribed.

(2) Before the Public Guardian rectifies or updates a register under subsection (1), the Public Guardian must, except under prescribed circumstances, give written notice to the person whose particulars or document is to be rectified or updated of the Public Guardian’s intention to do so, and state in the notice —

25 (a) the reasons for and details of the proposed rectification or updating to be made to the register; and

30 (b) the date by which any written objection to the proposed rectification or updating must be delivered to the Public Guardian, being a date at least 14 days (or any longer prescribed period) after the date of the notice.

(3) The person notified under subsection (2) may deliver to the Public Guardian, not later than the date specified under subsection (2)(b), a written objection to the proposed rectification or updating of the register.

(4) The Public Guardian must not rectify or update the register if the Public Guardian receives a written objection under subsection (3) to the proposed rectification or updating of the register by the date specified under subsection (2)(b), unless the Public Guardian is satisfied that the objection is frivolous or vexatious or has been withdrawn.

(5) The Public Guardian may rectify or update the register if the Public Guardian does not receive a written objection under subsection (3) by the date specified under subsection (2)(b).

(6) The Public Guardian may include such notation as the Public Guardian thinks fit on a register for the purposes of providing information relating to any error or defect in any particulars or document in the register, and may remove such notation if the Public Guardian is satisfied that it no longer serves any useful purpose.

(7) Despite anything in this section, the Public Guardian may, if the Public Guardian is satisfied that there is any error or defect in any particulars or document in a register, by written notice, request that the person to which the particulars or document relates take such steps within such time as the Public Guardian may specify to ensure that the error or defect is rectified.

(8) In this section —

“document” does not include a lasting power of attorney;

“register” means —

(a) a register of lasting powers of attorney;

(b) a register of orders appointing deputies; or

(c) a register of professional deputies.”.

New section 43C

15. The principal Act is amended by inserting, immediately after section 43B, the following section:

“Service of documents

5 **43C.**—(1) A document that is permitted or required by this Act to be served by the Public Guardian on a person may be served as described in this section.

10 (2) This section does not apply to documents to be served in proceedings in court for an offence or any other matter under this Act.

(3) Subject to subsections (2), (6), (7), (8) and (9), a document may be served on an individual —

(a) by giving it to the individual personally;

15 (b) by sending it by prepaid registered post or ordinary post to the address specified by the individual for the service of documents or, if no address is so specified, the individual’s residential address or business address;

20 (c) by leaving it at the individual’s residential address with an adult person apparently residing there, or at the individual’s business address with an adult person apparently employed there;

25 (d) by affixing a copy of the document in a conspicuous place at the individual’s residential address or business address;

(e) by sending it by fax to the fax number given by the individual as the fax number for the service of documents under this Act;

30 (f) by sending it by email to the individual’s email address; or

(g) by sending it to the individual’s account with the electronic transaction system and notifying the individual of this fact by —

- (i) email to the individual's email address; or
- (ii) an electronic notice to the individual's mobile telephone number via short message service.

(4) Subject to subsections (2), (6), (7), (8) and (9), a document may be served on a partnership (other than a limited liability partnership) — 5

- (a) by giving it to any partner or other similar officer of the partnership;
- (b) by leaving it at, or by sending it by prepaid registered post or ordinary post to, the partnership's business address; 10
- (c) by sending it by fax to the fax number used at the partnership's business address;
- (d) by sending it by email to the partnership's email address; or 15
- (e) by sending it to the partnership's account with the electronic transaction system and notifying the partnership of this fact by —
 - (i) email to the partnership's email address; or
 - (ii) an electronic notice to the partnership's mobile telephone number via short message service. 20

(5) Subject to subsections (2), (6), (7), (8) and (9), a document may be served on a body corporate (including a limited liability partnership) or an unincorporated association —

- (a) by giving it to the secretary or other similar officer of the body corporate or unincorporated association, or the limited liability partnership's manager; 25
- (b) by leaving it at, or by sending it by prepaid registered post or ordinary post to, the body corporate's or unincorporated association's registered office or principal office in Singapore; 30

(c) by sending it by fax to the fax number used at the body corporate's or unincorporated association's registered office or principal office in Singapore;

(d) by sending it by email to the body corporate's or unincorporated association's email address; or

(e) by sending it to the body corporate's or unincorporated association's account with the electronic transaction system and notifying the body corporate or unincorporated association of this fact by —

(i) email to the body corporate's or unincorporated association's email address; or

(ii) an electronic notice to the body corporate's or unincorporated association's mobile telephone number via short message service.

(6) A document may only be served on a person by sending it to the person's account with the electronic transaction system and notifying the person of this fact by an electronic notice to the person's mobile telephone number via short message service under subsection (3)(g)(ii), (4)(e)(ii) or (5)(e)(ii) if the person has —

(a) given written consent to the Public Guardian to serve any document using that manner of service; and

(b) provided the person's mobile telephone number to the Public Guardian for this purpose.

(7) Where a person has given the person's written consent to the Public Guardian under subsection (6)(a) and provided the person's mobile telephone number to the Public Guardian under subsection (6)(b), and there is a change to the person's mobile telephone number, the person must, as soon as practicable but not later than the prescribed period, give notice to the Public Guardian of such change in any manner and form that the Public Guardian requires.

(8) Each of the following notices may not be served by sending it to the person's account with the electronic transaction system and notifying the person of this fact by an electronic notice to the person's mobile telephone number via short message service under subsection (3)(g)(ii), (4)(e)(ii) or (5)(e)(ii):

- (a) a notice under section 11(5)(b) or (c);
- (b) a notice under paragraph 5 of the First Schedule;
- (c) a notice of cancellation of registration of an instrument as a lasting power of attorney under paragraph 12(2) of the First Schedule;
- (d) a notice to inform a person of the Public Guardian's refusal to register the person as a professional deputy under section 25A;
- (e) a notice of intention to cancel the registration of a professional deputy under section 25A(5);
- (f) a notice of intention to rectify a register under section 33A(2).

(9) The notices mentioned in subsection (8)(a) and (c) to (f) may not be served by ordinary post.

(10) Service of a document on a person under this section takes effect —

- (a) if the document is sent by prepaid registered post — on the second day after the day the document was posted (even if it is returned undelivered);
- (b) if the document is sent by fax and a notification of successful transmission is received — on the day of the transmission;
- (c) if the document is sent by email — at the time that the email becomes capable of being retrieved by the person at the email address of the person; or

(d) if the document is sent to the person’s account with the electronic transaction system — at the time when an electronic record of the document reaches the person’s account.

5 (11) In this section —

“business address” means —

(a) in the case of an individual, the individual’s usual or last known place of business in Singapore; and

10 (b) in the case of a partnership (other than a limited liability partnership), the partnership’s principal or last known place of business in Singapore;

15 “email address” means the last email address given by the addressee concerned to the Public Guardian as the email address for the service of documents under this Act;

20 “mobile telephone number” means the last mobile telephone number given by the addressee concerned to the Public Guardian as the mobile telephone number for the service of an electronic notice under subsection (3)(g)(ii), (4)(e)(ii) or (5)(e)(ii);

“person”, in respect of which a document may be served, includes a partnership and an unincorporated association;

25 “residential address” means an individual’s usual or last known place of residence in Singapore.”.

Amendment of section 46

16. Section 46 of the principal Act is amended —

(a) by deleting the word “and” at the end of subsection (2)(a);

30 (b) by deleting the full-stop at the end of paragraph (b) of subsection (2) and substituting a semi-colon, and by inserting immediately thereafter the following paragraphs:

“(c) prescribe the form and manner in which any prescribed notice is required to be given by any person to the Public Guardian, or to be given by a donor to a donee or vice versa;

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(d) prescribe the persons who may be given access by the Public Guardian to view a lasting power of attorney on the electronic transaction system or obtain any information on any particular lasting power of attorney, and the requirements that must be satisfied before the Public Guardian may give such access or information, as the case may be; and

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(e) contain such supplementary and incidental provisions as appear to the Minister to be appropriate for carrying out the purposes of Part IIIA.”; and

15

(c) by inserting, immediately after subsection (2), the following subsection:

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“(3) For the purposes of subsection (2)(c), a different form and manner may be prescribed for any notice to be given to the Public Guardian or donor or donee under different circumstances.”.

Repeal and re-enactment of First Schedule

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17.—(1) The First Schedule to the principal Act is repealed and the following Schedule substituted therefor:

“FIRST SCHEDULE

Sections 11(2), (2A) and (3), 12(6) and
(7), 16(1), 32A(2), 43C(8) and 45

LASTING POWERS OF ATTORNEY: FORMALITIES

5

PART 1

MAKING INSTRUMENTS

General requirements as to making instruments

1.—(1) An instrument is not made in accordance with this Schedule unless —

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(a) subject to paragraph 3 —

(i) it is made using the electronic transaction system and is in the prescribed form provided in the electronic transaction system; or

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(ii) in a case where section 11(2A) applies — it is in any of the forms provided at the prescribed website;

(b) it complies with paragraph 2;

(c) the donor executes the instrument in the presence of a witness, who must be a person mentioned in paragraph 2(1)(e), and must attest the donor’s execution of the instrument; and

20

(d) all the prescribed requirements in connection with its execution are satisfied.

(2) Regulations made under section 46 may make different provision according to whether —

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(a) the instrument relates to personal welfare or to property and affairs (or to both); or

(b) only one or more than one donee is to be appointed (and if more than one, whether jointly or jointly and severally).

Requirements as to content of instruments

2.—(1) The instrument must include —

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(a) the information specified in any of the forms mentioned in paragraph 1(1)(a) about the purpose of the instrument and the effect of a lasting power of attorney;

- (b) a statement by the donor to the effect that the donor —
- (i) has read the information mentioned in sub-paragraph (a) (or has had it read to the donor); and
 - (ii) intends the authority conferred under the instrument to mean authority to make decisions on the donor’s behalf in circumstances where the donor no longer has capacity; 5
- (c) a statement by the donee (or if there is more than one donee, each of them) to the effect that the donee —
- (i) has read the information mentioned in sub-paragraph (a) (or has had it read to the donee); and 10
 - (ii) understands the duties imposed on a donee of a lasting power of attorney under sections 3 (the principles) and 6 (best interests);
- (d) a statement by the replacement donee (if any) or if there is more than one replacement donee, each of them, to the effect that the replacement donee — 15
- (i) has read the information mentioned in sub-paragraph (a) (or has had it read to the replacement donee); and
 - (ii) understands the duties imposed on a donee of a lasting power of attorney under sections 3 (the principles) and 6 (best interests); 20
- (e) a certificate by a person of a prescribed description that, in the person’s opinion, at the time when the donor executes the instrument —
- (i) the donor understands the purpose of the instrument and the scope of the authority conferred under it; 25
 - (ii) no fraud or undue pressure is being used to induce the donor to create a lasting power of attorney; and
 - (iii) there is nothing else which would prevent a lasting power of attorney from being created by the instrument; and 30
- (f) a statement by the person mentioned in sub-paragraph (e) that the person witnessed the donor’s execution of the instrument.
- (2) The certificate mentioned in sub-paragraph (1)(e) may not be given by a person appointed as donee under the instrument.

Failure to comply with form

3.—(1) If an instrument differs in an immaterial respect in form or mode of expression from any form for an instrument provided at the prescribed website or in the electronic transaction system (as the case may be), it is to be treated by the Public Guardian as sufficient in point of form and expression.

(2) The court may declare that an instrument which is not in any form for an instrument provided at the prescribed website or in the electronic transaction system (as the case may be) is to be treated as if it were, if the court is satisfied that the persons executing the instrument intended it to create a lasting power of attorney.

(3) To avoid doubt, an instrument is treated as being made in a form for the instrument provided at the prescribed website or in the electronic transaction system (as the case may be), if it complies with the form that was provided at the prescribed website or in the electronic transaction system (as the case may be) at the time of its making.

PART 2

REGISTRATION

Applications and procedure for registration

4.—(1) An application to the Public Guardian for the registration of an instrument that is intended to create a lasting power of attorney must be made —

(a) within 6 months (or any longer period determined by the Public Guardian if the Public Guardian is satisfied that there is good reason for the delay) after the date on which the donor executes the instrument;

(b) using the electronic transaction system or, in a case where section 10C(2) or 11(2A) applies, in the form provided at the prescribed website; and

(c) by the donor.

(2) An application made under sub-paragraph (1) must be accompanied by the instrument.

(3) Unless waived by the Public Guardian in any particular case, the prescribed fee for the registration of the instrument must be paid in the manner specified by the Public Guardian, within the prescribed period (or any longer period determined by the Public Guardian if the Public Guardian is satisfied that there is good reason for the delay).

(4) If the prescribed fee is not paid in accordance with sub-paragraph (3), the application is treated as not having been made.

(5) Subject to paragraphs 7, 8 and 9, the Public Guardian must register the instrument as a lasting power of attorney at the end of the prescribed period if —

(a) the application complies with sub-paragraphs (1), (2) and (3); and

(b) the Public Guardian is not aware that any of the following events has occurred:

(i) the donor has passed away;

(ii) the instrument is revoked as a result of the donor's bankruptcy;

(iii) the donor has revoked the instrument;

(iv) the instrument is revoked as a result of an event mentioned in section 15(5)(a), (b), (c) or (d).

(6) A person who, in an application for registration of an instrument, makes a statement which the person knows to be false in a material particular shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

Notification to donee

5. As soon as is practicable after receiving an application by the donor under paragraph 4(1) and determining that the application is in order, the Public Guardian must notify the donee (or donees) that the application has been received.

Notification requirements

6. A notice under paragraph 5 must include such information (if any) as may be mentioned at the prescribed website.

Instrument not made properly or containing ineffective provision

7.—(1) If it appears to the Public Guardian that an instrument is not made in accordance with section 12A and this Schedule or, in a case where section 11(2A) applies, in accordance with this Schedule, the Public Guardian must not register the instrument unless the court directs the Public Guardian to do so.

(2) Sub-paragraph (3) applies if the court determines under section 18(1) that the instrument contains a provision which —

- (a) would be ineffective as part of a lasting power of attorney; or
- (b) would prevent the instrument from operating as a valid lasting power of attorney.

(3) The court must —

- (a) notify the Public Guardian that it has severed the provision; or
- (b) direct the Public Guardian not to register the instrument.

(4) Where the court notifies the Public Guardian that the court has severed a provision, the Public Guardian must register the instrument with a note to that effect attached to it.

10 **Deputy already appointed**

8.—(1) Sub-paragraph (2) applies if it appears to the Public Guardian that —

- (a) there is a deputy appointed by the court for the donor; and
- (b) the powers conferred on the deputy would, if the instrument were registered, to any extent conflict with the powers conferred on the attorney.

(2) The Public Guardian must not register the instrument unless the court directs the Public Guardian to do so.

Objection by donee

20 9.—(1) Sub-paragraph (2) applies if a donee —

- (a) receives a notice under paragraph 5 of an application for the registration of an instrument; and
- (b) before the end of the prescribed period, gives notice to the Public Guardian of an objection to the registration on the ground that an event mentioned in section 15(3) or (5)(a) to (d) has occurred which has revoked the instrument.

25 (2) If the Public Guardian is satisfied that the ground for making the objection is established, the Public Guardian must not register the instrument unless the court, on the application of the person applying for the registration —

- (a) is satisfied that the ground is not established; and
- (b) directs the Public Guardian to register the instrument.

30

- (3) Sub-paragraph (4) applies if a donee —
 - (a) receives a notice under paragraph 5 of an application for the registration of an instrument; and
 - (b) before the end of the prescribed period —
 - (i) makes an application to the court objecting to the registration on a prescribed ground; and 5
 - (ii) notifies the Public Guardian of the application.
- (4) The Public Guardian must not register the instrument unless the court directs the Public Guardian to do so.

Registration 10

- 10.—(1) The Public Guardian may register an instrument in any form and manner as the Public Guardian may determine (including in an electronic form and by electronic means).
- (2) Where the Public Guardian registers an instrument under this Schedule, the Public Guardian must give notice of such registration, in the form provided at the prescribed website, to the following persons: 15
 - (a) the donor;
 - (b) the donee (or if there is more than one donee, each of them).

Evidence of registration, etc.

- 11. The Public Guardian may, in accordance with any prescribed requirements (if prescribed), give to a person a copy of, or certify a copy of, an instrument registered by the Public Guardian under this Schedule to create a lasting power of attorney. 20

PART 3

CANCELLATION OF REGISTRATION AND NOTIFICATION OF SEVERANCE 25

Cancellation of registration

- 12.—(1) The Public Guardian must cancel the registration of an instrument as a lasting power of attorney —
 - (a) upon receipt of a notice mentioned in section 15(9)(a), if the Public Guardian is satisfied that the donor has taken such steps as are necessary in law to revoke the lasting power of attorney; or 30

- (b) on being satisfied that the power has been revoked —
- (i) as a result of the donor’s bankruptcy;
 - (ii) as a result of the donor’s death; or
 - (iii) on the occurrence of an event mentioned in section 15(5)(a),
5 (b), (c) or (d).

(2) If the Public Guardian cancels the registration of an instrument, the Public Guardian must notify —

- (a) the donor (except where sub-paragraph (1)(b)(ii) applies); and
- (b) the donee (or if there is more than one donee, each of them).

10 **Direction by court to cancel registration**

13. The court must direct the Public Guardian to cancel the registration of an instrument as a lasting power of attorney if the court —

- (a) determines under section 17(2)(a) that a requirement for creating the power was not met;
- 15 (b) determines under section 17(2)(b) that the power has been revoked or has otherwise come to an end; or
- (c) revokes the power under section 17(4)(b) or (c).

Circumstances for severance or cancellation

14.—(1) Sub-paragraph (2) applies if the court determines under
20 section 18(1) that a lasting power of attorney contains a provision which —

- (a) is ineffective as part of a lasting power of attorney; or
- (b) prevents the instrument from operating as a valid lasting power of attorney.

(2) The court must —

- 25 (a) notify the Public Guardian that it has severed the provision; or
- (b) direct the Public Guardian to cancel the registration of the instrument as a lasting power of attorney.

Delivery of instrument on cancellation of registration

15. On the cancellation of the registration of an instrument that is not made
30 using electronic means, any person who possesses all or any of the following documents must deliver them to the Public Guardian to be destroyed:

- (a) the instrument;

- (b) any copy of the instrument that has been certified by the Public Guardian under paragraph 11.

PART 4

RECORDS OF ALTERATIONS IN REGISTERED POWERS

Forms

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16. A reference to a numbered form in paragraphs 17, 18 and 19 is a reference to the current version of the form bearing the corresponding number set out at the prescribed website or in the electronic transaction system.

Partial revocation of power as a result of bankruptcy

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17.—(1) If in the case of a registered instrument that is in Form 1, it appears to the Public Guardian that under section 15 a lasting power of attorney is revoked in relation to the donor’s property and affairs (but not in relation to other matters), the Public Guardian must attach to the instrument a note to that effect.

15

(2) If in the case of a registered instrument that is in Form 2, it appears to the Public Guardian that —

(a) the donor is bankrupt; or

(b) an event (other than an event mentioned in sub-paragraph (a)) that is identified in the registered instrument in the manner required by Form 2 as one which would result in the revocation of a lasting power of attorney in relation to the donor’s property and affairs (but not in relation to other matters) has occurred,

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the Public Guardian must attach to the instrument a note stating this fact.

Termination of appointment of donee which does not revoke power

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18.—(1) If in the case of a registered instrument that is in Form 1, it appears to the Public Guardian that an event has occurred —

(a) which has terminated the appointment of a donee; but

(b) which has not revoked the instrument,

the Public Guardian must attach to the instrument a note to that effect.

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(2) If in the case of a registered instrument that is in Form 2, it appears to the Public Guardian that —

(a) an event mentioned in section 15(5)(a), (b), (c) or (d) has occurred in relation to a donee; or

(b) an event (other than an event mentioned in sub-paragraph (a)) that is identified in the registered instrument in the manner required by Form 2 as one which would —

(i) terminate the appointment of a donee; but

(ii) not revoke the instrument,

has occurred,

the Public Guardian must attach to the instrument a note stating this fact.

Replacement of donee

19.—(1) If in the case of a registered instrument that is in Form 1, it appears to the Public Guardian that a donee has been replaced under the terms of the instrument, the Public Guardian must attach to the instrument a note to that effect.

(2) If in the case of a registered instrument that is in Form 2 and that appoints one or more replacement donees, it appears to the Public Guardian that —

(a) an event mentioned in section 15(5)(a), (b), (c) or (d) has occurred in relation to a donee; or

(b) an event (other than an event mentioned in sub-paragraph (a)) that is identified in the registered instrument in the manner required by Form 2 as one which would replace a donee under the terms of the instrument has occurred,

the Public Guardian must attach to the instrument a note stating this fact.

Severance of ineffective provisions

20. If in the case of a registered instrument, the court notifies the Public Guardian under paragraph 14(2)(a) that the court has severed a provision of the instrument, the Public Guardian must attach to the instrument a note to that effect.

Delivery of instrument for attachment of note

21.—(1) If the Public Guardian is required to attach a note to a registered instrument (that is not an electronic instrument) under paragraph 7(4), 17, 18, 19 or 20, any person who possesses all or any of the following documents must (if required by the Public Guardian) deliver them to the Public Guardian:

(a) the instrument;

(b) any copy of the instrument that has been certified by the Public Guardian under paragraph 11.

(2) The Public Guardian may attach to the registered instrument, the note in any form and manner as the Public Guardian may determine (including in an electronic form and by electronic means).

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Notification of alterations

22. If the Public Guardian attaches a note to an instrument under paragraph 7(4), 17, 18, 19 or 20, the Public Guardian must give notice of the note to the donor and the donee or donees of the power (or, as the case may be, to the other donee or donees of the power).

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PART 5

MISCELLANEOUS

Recognition of electronic record

23. To avoid doubt —

- (a) a registered instrument under this Schedule;
- (b) a copy of a registered instrument given by the Public Guardian under this Schedule;
- (c) a copy of a registered instrument certified by the Public Guardian under this Schedule; or
- (d) a note attached to a registered instrument by the Public Guardian under this Schedule,

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is not to be denied legal effect, validity or enforceability solely on the ground that it is in the form of an electronic record.”.

(2) The principal Act, as amended by subsection (1), is further amended by inserting, immediately after paragraph 1 of the First Schedule, the following paragraph:

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“Remote witnessing of execution of electronic instrument by donor

1A.—(1) For the purposes of paragraph 1(1)(c), if the Public Guardian has given prior approval on an application made under sub-paragraph (2), the requirement that the donor execute the instrument in the presence of a witness may be met by the witness witnessing the donor’s execution of the electronic instrument via a live video or live television link and by using a method of accessing the electronic instrument which enables the witness to view the contents of the instrument being executed and to attest the execution on the same instrument.

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(2) Upon an application by the donor, the Public Guardian may grant approval for the donor to execute the instrument in accordance with sub-paragraph (1) and the prescribed requirements, if the Public Guardian is satisfied that there is good reason why the donor cannot appear physically before a person mentioned in paragraph 2(1)(e) to execute the electronic instrument.

(3) Where the Public Guardian refuses to grant an application under sub-paragraph (2), the Public Guardian must, if requested to do so by the donor, state in writing the reasons for the Public Guardian's refusal."

Related amendment to Electronic Transactions Act

18. Item 3 of the First Schedule to the Electronic Transactions Act is amended by inserting, immediately after the words "resulting trusts" in the second column, the words "and a lasting power of attorney defined under section 2(1) of the Mental Capacity Act".

Saving and transitional provisions

19.—(1) For the purposes of section 11(2)(b) of the principal Act as amended by section 4, section 11 of the principal Act as in force immediately before the date of commencement of section 4 continues to apply to or in relation to any instrument conferring authority of the kind mentioned in section 11(1) of the principal Act that is executed by a donor before that date.

(2) For the purposes of section 11(2)(b) of the principal Act as amended by section 4, Part I of the First Schedule to the principal Act as in force immediately before the date of commencement of section 17(1) continues to apply to an instrument conferring authority of the kind mentioned in section 11(1) of the principal Act that is executed by the donor of that instrument before that date.

(3) For the purposes of section 11(2)(b) of the principal Act as amended by section 4, Part II of the First Schedule to the principal Act as in force immediately before the date of commencement of section 17(1) continues to apply to or in relation to an application for the registration of an instrument intended to create a lasting power of attorney, where that instrument conferring authority of the kind mentioned in section 11(1) of the principal Act was executed by the donor of the instrument before that date.

(4) For a period of 2 years after the date of commencement of any provision of this Act, the Minister may, by regulations, prescribe such additional provisions of a saving or transitional nature consequent on the enactment of that provision as the Minister may consider necessary or expedient.

EXPLANATORY STATEMENT

This Bill seeks to amend the Mental Capacity Act mainly for the following purposes:

- (a) to enable the Public Guardian to establish an electronic transaction system for the following purposes:
 - (i) to enable any donor to create an electronic instrument with a view to creating a lasting power of attorney;
 - (ii) to enable any person to carry out any transaction with the Public Guardian;
 - (iii) to enable a person to give a notice to another person under or for the purposes of the Act;
 - (iv) to enable the Public Guardian to carry out the Public Guardian's functions under the Act;
- (b) to require an instrument that is intended to create a lasting power of attorney (called an instrument) to be executed using the electronic transaction system, unless certain circumstances apply;
- (c) to set out the requirements for executing an instrument electronically as a deed;
- (d) to treat an electronic copy of a lasting power of attorney that is created by non-electronic means as the lasting power of attorney on the satisfaction of certain conditions;
- (e) to enable the Public Guardian or an authorised officer to require a donor to appear before him or her for an interview if the Public Guardian has reasonable cause to suspect that fraud or undue pressure has been used to induce the donor to execute the instrument, or to execute the instrument to appoint a particular person as the donor's donee;

- (f) to enable the Public Guardian to rectify or update any particulars or document of any register kept by the Public Guardian under certain circumstances;
- (g) to provide the methods by which the Public Guardian may serve a document on a person under the Act;
- (h) to require an application to the Public Guardian for the registration of an instrument to be made using the electronic transaction system, unless certain circumstances apply.

The Bill also makes a related amendment to the First Schedule to the Electronic Transactions Act.

Clause 1 relates to the short title and commencement.

Clause 2 amends section 2 to introduce several new definitions.

The definitions of “deputy”, “donee” and “donor” are amended to make them clearer and more readable.

The definitions of “electronic”, “electronic record”, “record”, “secure electronic signature”, “signed” and “signature” have the meanings given by section 2(1) of the Electronic Transactions Act.

An “electronic instrument” is defined to mean an electronic record under which a donor confers on one or more donees authority to make decisions on any matter concerning the donor’s personal welfare, or property and affairs, or both, when the donor no longer has capacity to make such decisions.

A “non-electronic lasting power of attorney” is defined to mean a lasting power of attorney that is created using non-electronic means.

The definition of “Singapore public sector agency” has the meaning given by section 2(1) of the Public Sector (Governance) Act 2018.

The clause also inserts a new subsection (3) in section 2 to make clear that any reference to an instrument that confers authority of the kind mentioned in section 11(1) includes an electronic instrument that is made using the electronic transaction system in accordance with the new section 12A and the First Schedule.

Clause 3 inserts a new Part IIIA (comprising new sections 10A to 10D) relating to the establishment of an electronic transaction system by the Public Guardian.

The new section 10A defines the terms “document”, “malfunction” and “transaction” which are used in the new Part IIIA.

The new section 10B(1) enables the Public Guardian to establish the electronic transaction system —

- (a) to enable any donor to create an electronic instrument with a view to creating a lasting power of attorney;

- (b) to enable any person to carry out any transaction with the Public Guardian;
- (c) to enable a person to give a notice to another person under or for the purposes of the Act;
- (d) to enable the Public Guardian to provide a service for the supply to the public of non-confidential information relating to transactions with the Public Guardian; and
- (e) to enable the Public Guardian to carry out the Public Guardian's functions under the Act.

The new section 10B(2) sets out some of the types of non-confidential information that may be supplied to the public under the service provided by the Public Guardian using the electronic transaction system.

The new section 10B(3) enables the Public Guardian to refuse to process a transaction that is carried out using the electronic transaction system unless the transaction is carried out in accordance with the new Part IIIA and the requirements specified by the Public Guardian for the use of the electronic transaction system, the transaction meets the requirements under the Act or specified by the Public Guardian for that transaction, and the fee for the transaction is paid.

The new section 10B(4) enables the Public Guardian to determine the requirements for the use of the electronic transaction system.

The new section 10B(5) requires the Public Guardian to keep a record of —

- (a) all transactions with the Public Guardian that are carried out using the electronic transaction system; and
- (b) certain acts undertaken by the Public Guardian using the electronic transaction system.

The new section 10B(6) requires the Public Guardian to keep any lasting power of attorney that is created using the electronic transaction system, and any electronic copy of a non-electronic lasting power of attorney that is kept in the electronic transaction system, in a form determined by the Public Guardian, that ensures the integrity, and enables the retrieval, of such documents.

The new section 10C sets out the provision relating to the use of the electronic transaction system.

The new section 10C(1) requires a person who wishes to apply for the registration of an instrument as a lasting power of attorney, to do so using the electronic transaction system. A person who wishes to carry out any other transaction with the Public Guardian must do so using the electronic transaction

system if required by the Public Guardian, and may do so using the electronic transaction system if permitted by the Public Guardian.

Where a transaction cannot be carried out using the electronic transaction system for certain reasons, the new section 10C(2) requires the transaction to be carried out in the form and manner determined by the Public Guardian.

The new section 10D deals with any error or omission arising from a malfunction of the electronic transaction system.

Under the new section 10D(1), the Public Guardian may correct any error or omission in any register or document maintained by the Public Guardian in the electronic transaction system if the error or omission is due to any malfunction of the electronic transaction system.

The new section 10D(2) requires the Public Guardian to keep a record of every correction made.

The new section 10D(3) provides that where an error or omission has been corrected, the error or omission is treated as not having occurred.

The new section 10D(4) confers immunity on the Public Guardian, an Assistant Public Guardian, a person acting under the direction of the Public Guardian or an Assistant Public Guardian and an authorised officer against any loss or damage suffered by any other person due to an error or omission if the error or omission is due to a malfunction of the electronic transaction system, and the Public Guardian had acted in good faith and with reasonable care to prevent such malfunction from occurring.

Clause 4 amends section 11 —

- (a) to require an instrument that is executed by its donor before the date on which the amendments to section 11 come into force (called the commencement date), to be made and registered in accordance with the First Schedule as in force immediately before the commencement date;
- (b) to require an instrument that is executed by its donor on or after the commencement date to be —
 - (i) made using the electronic transaction system in accordance with the new section 12A and the First Schedule or (where the new section 11(2A) applies) in accordance with the First Schedule; and
 - (ii) registered in accordance with the First Schedule;
- (c) to insert a new subsection (2A) to enable the Public Guardian to allow an instrument to be made on or after the commencement date without using the electronic transaction system if the donor is unable to make

the instrument, or the donee is unable to sign the instrument, using the electronic transaction system, the electronic transaction system is unavailable, or any other prescribed circumstances are present;

- (d) to insert a new subsection (5) which states the conditions that must be satisfied before the Public Guardian may return a non-electronic lasting power of attorney to its donor on or after the commencement date. These conditions are —
 - (i) the Public Guardian must make an accurate electronic copy of the lasting power of attorney and keep it in the electronic transaction system; and
 - (ii) the Public Guardian must send notices to the donor and donee (or donees) of the lasting power of attorney informing them to verify the accuracy of the electronic copy of the lasting power of attorney, and to inform the Public Guardian of any discrepancy between the electronic copy and the lasting power of attorney;
- (e) to insert a new subsection (6) which enables the Public Guardian to send the notices mentioned in the new subsection (5)(b) and (c) to the donor and donee (or donees) of a non-electronic lasting power of attorney that has been returned by the Public Guardian to its donor or donee before the commencement date and of which the Public Guardian has made an accurate electronic copy that is kept in the electronic transaction system;
- (f) to insert a new subsection (7) which enables a donor who received a notice sent by the Public Guardian, to notify the Public Guardian of any relevant error in the electronic copy of the lasting power of attorney within the period specified in that subsection;
- (g) to insert a new subsection (8) which enables a donee who received a notice sent by the Public Guardian, to notify the Public Guardian of any relevant error in the electronic copy of the lasting power of attorney within the period specified in that subsection, where the donor lacks capacity to verify the accuracy of the electronic copy or to notify the Public Guardian of any relevant error in the electronic copy;
- (h) to insert a new subsection (9) which requires a notice given by the donee under the new subsection (8) to be accompanied by a certificate from a registered medical practitioner verifying the donor's lack of capacity;
- (i) to insert a new subsection (10) which enables the Public Guardian to rectify a relevant error in an electronic copy of a lasting power of

attorney, on being notified of the relevant error by the donor or donee of the lasting power of attorney;

- (j) to insert a new subsection (11) which requires the Public Guardian to notify the donor and donee (or donees) of the Public Guardian's decision whether or not to rectify a relevant error of which the Public Guardian has been notified;
- (k) to insert a new subsection (12) to treat an electronic copy of a lasting power of attorney as being free from any relevant error and as the lasting power of attorney under certain circumstances;
- (l) to insert a new subsection (13) to clarify that the new subsection (12) does not alter the date of registration of the lasting power of attorney by the Public Guardian, and does not affect the rights and obligations of any party under the lasting power of attorney; and
- (m) to insert a new subsection (14) which defines a "relevant error" of an electronic copy of a non-electronic lasting power of attorney to mean any disparity or inconsistency between the electronic copy and the lasting power of attorney registered by the Public Guardian.

Clause 5 amends section 12 —

- (a) to make consequential amendments to section 12(6) and (7) arising from the repeal and re-enactment of the First Schedule by clause 17(1); and
- (b) to make clear that an instrument used to create a lasting power of attorney may itself appoint one or more replacement donees in respect of a particular donee but cannot itself appoint a person to replace any replacement donee.

Clause 6 inserts a new section 12A.

The new section 12A(1) sets out the following requirements for executing an instrument electronically by a donor as a deed:

- (a) the electronic record constituting the instrument states expressly that it is intended to be a deed by the donor;
- (b) the donor signs the electronic record in the electronic transaction system using a secure electronic signature;
- (c) the donor's signature is attested by a witness who witnesses the donor's execution of the electronic record;
- (d) the executed electronic record is delivered as a deed by the donor.

The new section 12A(2) states that a donor, in making an application to the Public Guardian to register an electronic record that is executed in accordance

with the new section 12A(1), is treated as having satisfied the common law requirement that the instrument be delivered by the donor as a deed.

Clause 7 amends section 13(10) to enable a person who is dealing with a donee in matters relating to a donor's personal welfare to require the donee to produce a certificate from a registered medical practitioner stating that the donor's lack of capacity is likely to be permanent. If the donee fails to produce such certificate, the person may refuse to accept the donee's authority to make decisions for the donor in matters relating to the donor's personal welfare.

Clause 8 amends section 15 to insert a new subsection (9) which requires a donor who revokes a lasting power of attorney to notify the Public Guardian and the donee (or donees) of this fact.

Clause 9 inserts a new section 15A under which the donor or donee (or if there is more than one, any of them) of a non-electronic lasting power of attorney, an electronic copy of which has been treated as being free from any relevant error and as the lasting power of attorney under the new section 11(12), may notify the Public Guardian of any relevant error in the electronic copy.

On being notified of a relevant error in an electronic copy of a non-electronic lasting power of attorney, or on the Public Guardian discovering such error, the Public Guardian may rectify the relevant error. The Public Guardian must give a written notice of any rectification of a relevant error to the donor and donee (or if there is more than one, each of them) of the lasting power of attorney. The Public Guardian must also keep a record of every rectification made under the new section 15A(2).

Clause 10 inserts a new section 16A.

Under the new section 16A(1), if an electronic copy of a non-electronic lasting power of attorney that has been treated as being free from any relevant error and as the lasting power of attorney under the new section 11(12), has a relevant error, and a donee does an act in reliance on the electronic copy without knowing of the relevant error, the donee does not incur any liability to the donor of the lasting power of attorney or any other person by reason only of the relevant error.

Under the new section 16A(2), a person who deals or otherwise transacts in good faith with the donee without knowing of the relevant error in the electronic copy is entitled to rely on the electronic copy for that dealing or transaction.

The new section 16A(4) sets out the definitions of "electronic copy" and "relevant error" that are used in the new section 16A.

Clause 11 amends section 31(1) to insert a new paragraph (*J*) to expand the Public Guardian's functions to include establishing and maintaining the electronic transaction system.

Clause 12 inserts a new section 31A.

Under the new section 31A(1), the Public Guardian or an authorised officer may require a donor to attend an interview if, on receiving an application to register an instrument, the Public Guardian has reasonable cause to suspect that fraud or undue pressure has been used to induce the donor to execute the instrument, or to execute the instrument to appoint a particular person (intended donee) as the donor's donee.

The new section 31A(2) enables the Public Guardian or authorised officer to interview the donor to ascertain whether such fraud or undue pressure was used on the donor.

The new section 31A(3) allows the Public Guardian to disclose to the donor certain information about the intended donee if the Public Guardian has reason to suspect that such fraud or undue pressure has been used on the donor.

Clause 13 inserts a new section 32A.

The new section 32A(1) states that any document that is prepared by the Public Guardian that consists of information reproduced or extracted from an original document, and contains a statement by the Public Guardian that the information is a true reproduction or extract of the original document, is in any proceedings admissible in evidence in place of and to the same extent as the original document, unless evidence to the contrary is adduced.

The new section 32A(2) states that a copy of a lasting power of attorney certified by the Public Guardian to be a true copy of the lasting power of attorney is evidence of the contents of the lasting power of attorney on the date and time specified on the copy, and the registration of the lasting power of attorney by the Public Guardian on the date and time specified on the copy.

The new section 32A(3) sets out the definition of the term "original document".

Clause 14 inserts a new section 33A which allows the Public Guardian to rectify or update any particulars or document in a register kept by the Public Guardian.

The new section 33A(1) states that the Public Guardian may exercise this power if the Public Guardian is satisfied that —

- (a) there is an error or a defect in the particulars or document arising from any grammatical, typographical or similar mistake; or
- (b) there is evidence of a conflict between the particulars of a person, and any other information in the register relating to the person or obtained from any prescribed Singapore public sector agency.

The new section 33A(2) requires the Public Guardian to give written notice of the Public Guardian's intention to rectify or update any person's particulars or document, to the person, unless any prescribed circumstances apply.

The new section 33A(3) states that the person may object to the proposed rectification or updating of the register by a date specified in the notice sent under the new section 33A(2).

Under the new section 33A(4), the Public Guardian, on receiving a written objection from the person, must not rectify or update the register unless the Public Guardian is satisfied that the objection is frivolous or vexatious or has been withdrawn.

Under the new section 33A(5), the Public Guardian may proceed to rectify or update the register if the Public Guardian does not receive any objection by the date specified in the notice to the person.

The new section 33A(6) enables the Public Guardian to include any notation as the Public Guardian thinks fit on a register to provide information relating to any error or defect in any particulars or document in the register, and may remove the notation if the Public Guardian is satisfied that it no longer serves any useful purpose.

Under the new section 33A(7), where the Public Guardian is satisfied that there is any error or defect in any person's particulars or document in a register, the Public Guardian may request that the person take the necessary steps to ensure that the error or defect is rectified.

The new section 33A(8) sets out the definitions of "document" and "register" that are used in the new section 33A.

Clause 15 inserts a new section 43C.

The new section 43C(1) states that the Public Guardian may serve on a person any document in accordance with the new section 43C.

The new section 43C(2) excludes documents to be served in proceedings in court for an offence or any other matter under the Act from the application of the new section 43C.

The new section 43C(3) sets out the methods which the Public Guardian may use to serve a document on an individual.

The new section 43C(4) sets out the methods which the Public Guardian may use to serve a document on a partnership (other than a limited liability partnership).

The new section 43C(5) sets out the methods which the Public Guardian may use to serve a document on a body corporate (including a limited liability partnership) or an unincorporated association.

The new section 43C(6) sets out the conditions that must be satisfied before the Public Guardian may serve a document on a person by sending the document to the person's account with the electronic transaction system and notifying the

person of this fact by an electronic notice to the person's mobile telephone number via short message service. The conditions are that —

- (a) the person has given written consent to the Public Guardian to serve any document using that manner of service; and
- (b) the person has provided the person's mobile telephone number to the Public Guardian for this purpose.

The new section 43C(7) requires a person who has satisfied the conditions mentioned in the new section 43C(6) to notify the Public Guardian as soon as practicable of any change in the person's mobile telephone number.

The new section 43C(8) sets out the documents that may not be served by the Public Guardian on any person by sending the document to the person's account with the electronic transaction system and notifying the person of this fact by an electronic notice to the person's mobile telephone number via short message service.

The new section 43C(9) sets out the documents that may not be served by the Public Guardian on any person using ordinary post.

The new section 43C(10) sets out the time when service of a document on a person under the new section 43C takes effect.

The new section 43C(11) sets out the definitions of "business address", "email address", "mobile telephone number", "person" and "residential address" that are used in the new section 43C.

Clause 16 amends section 46 to enable the Minister to make regulations —

- (a) to prescribe the form and manner in which any prescribed notice is required to be given by any person to the Public Guardian, or to be given by a donor to a donee or vice versa. A different form and manner may be prescribed for any such notice that is to be given under different circumstances;
- (b) to prescribe the persons who may be given access by the Public Guardian to view a lasting power of attorney on the electronic transaction system or obtain information on any particular lasting power of attorney, and the requirements that must be satisfied before the Public Guardian may give such access or information; and
- (c) to prescribe supplementary and incidental provisions that the Minister thinks are appropriate for carrying out the purposes of the new Part IIIA.

Clause 17(1) repeals and re-enacts the First Schedule, which comprises 5 Parts.

Part 1 of the new First Schedule (comprising new paragraphs 1, 2 and 3) sets out the requirements relating to the making of an instrument, including —

- (a) the instrument must be in the prescribed form;
- (b) the instrument must contain the information mentioned in the new paragraph 2(1); and
- (c) the donor must execute the instrument in the presence of a witness, who must be a person mentioned in the new paragraph 2(1)(e), and must attest the donor's execution of the instrument.

The new paragraph 3 sets out the circumstances under which an instrument that is not in a prescribed form is to be treated as being in the prescribed form.

Part 2 of the new First Schedule (comprising new paragraphs 4 to 11) sets out the provisions relating to the registration of an instrument.

The new paragraph 4 states how an application to the Public Guardian for the registration of an instrument is to be made.

The new paragraph 4(1) sets out the time within which an application to the Public Guardian for the registration of an instrument must be made. It also requires the application to be made by the donor using the electronic transaction system or (where section 10C(2) or 11(2A) applies) in the form provided at the prescribed website.

The new paragraph 4(2) requires an application for the registration of an instrument to be accompanied by the instrument.

The new paragraph 4(3) requires the prescribed fee for the registration of the instrument to be paid in the manner specified by the Public Guardian and within the prescribed period, or any longer period determined by the Public Guardian if the Public Guardian is satisfied that there is good reason for the delay.

Under the new paragraph 4(4), if the prescribed fee is not paid for an application to register an instrument, the application is treated as not having been made.

The new paragraph 4(5) requires the Public Guardian to register an instrument if, subject to paragraphs 7, 8 and 9, the application for the registration of the instrument complies with the requirements set out in the new paragraph 4(1), (2) and (3), and the Public Guardian is not aware of the occurrence of certain events which would revoke the instrument.

Under the new paragraph 4(6), a person who makes a statement in an application for the registration of an instrument knowing that the statement is materially false is guilty of an offence.

Under the new paragraphs 5 and 6, on receiving an application to register an instrument, the Public Guardian must notify the donee (or donees) of the application. The notice by the Public Guardian must contain certain information that is specified at the prescribed website.

The new paragraph 7 relates to any instrument that is not properly made or contains an ineffective provision.

Under the new paragraph 7(1), the Public Guardian must not register an instrument if the Public Guardian is of the view that the instrument is not made in accordance with the new section 12A and the First Schedule or, in a case where section 11(2A) applies, in accordance with the First Schedule, unless the court directs the Public Guardian to do so.

Under the new paragraph 7(2) and (3), if the court determines that an instrument contains a provision which would be ineffective or would prevent the instrument from operating as a valid lasting power of attorney, the court must notify the Public Guardian that the court has severed the provision or direct the Public Guardian not to register the instrument.

Under the new paragraph 7(4), where the court notifies the Public Guardian that the court has severed a provision in an instrument, the Public Guardian must register the instrument with a note stating this fact.

Under the new paragraph 8, the Public Guardian must not register an instrument unless the court directs the Public Guardian to do so, if it appears to the Public Guardian that —

- (a) a deputy is appointed by the court for the donor; and
- (b) the powers of the deputy would conflict with the powers conferred under the instrument, if it were registered.

Under the new paragraph 9, on being notified by the Public Guardian of an application for the registration of an instrument, a donee may give a notice to the Public Guardian or apply to the court, to object against the application.

Under the new paragraph 10, the Public Guardian may register an instrument in any form and manner as the Public Guardian determines. Where the Public Guardian registers an instrument, the Public Guardian must give notice of the registration to the donor and donee (or donees).

Under the new paragraph 11, the Public Guardian may give to a person a copy or certify a copy of a registered instrument in accordance with the prescribed requirements.

Part 3 of the new First Schedule (comprising new paragraphs 12 to 15) sets out the provisions relating to the cancellation of the registration of an instrument and the severance of a provision in a registered instrument.

Under the new paragraph 12, the Public Guardian must cancel the registration of an instrument as a lasting power of attorney on being satisfied that the power has been revoked. Where the Public Guardian cancels the registration of an instrument, the Public Guardian must give notice of the cancellation to the donor and donee (or donees).

Under the new paragraph 13, the court must direct the Public Guardian to cancel the registration of an instrument as a lasting power of attorney if —

- (a) the court determines that the power is not validly made or has been revoked or come to an end; or
- (b) the court revokes the power.

Under the new paragraph 14, where the court determines that a registered instrument contains a provision that is ineffective or would prevent the instrument from operating as a valid lasting power of attorney, the court must —

- (a) notify the Public Guardian that it has severed the provision; or
- (b) direct the Public Guardian to cancel the registration of the instrument as a lasting power of attorney.

Under the new paragraph 15, where the Public Guardian cancels the registration of an instrument that is not made using electronic means, any person who possesses the instrument, or any copy of the instrument certified by the Public Guardian, must deliver the instrument or copy to the Public Guardian for destruction.

Part 4 of the new First Schedule (comprising new paragraphs 16 to 22) sets out the provisions relating to the circumstances under which the Public Guardian must attach a note to a lasting power of attorney.

The new paragraph 16 states that a reference to a numbered form in the new paragraphs 17, 18 and 19 is a reference to the current version of the numbered form as set out at the prescribed website or in the electronic transaction system.

Under the new paragraph 17, the Public Guardian must —

- (a) attach a note to a lasting power of attorney that is in Form 1 if it appears to the Public Guardian that the lasting power of attorney is revoked in relation to the donor's property and affairs, but not in relation to other matters; and
- (b) attach a note to a lasting power of attorney that is in Form 2 if it appears to the Public Guardian that the donor is bankrupt, or any other event that is identified in the registered instrument (in the manner required by Form 2) as an event which would result in the revocation of the lasting power of attorney in relation to the donor's property and affairs (but not in relation to other matters) has occurred.

Under the new paragraph 18, the Public Guardian must —

- (a) attach a note to a lasting power of attorney that is in Form 1 if it appears to the Public Guardian that an event has occurred which has terminated the appointment of a donee, but which has not revoked the instrument; and

- (b) attach a note to a lasting power of attorney that is in Form 2 if it appears to the Public Guardian that an event mentioned in section 15(5)(a) to (d) has occurred in relation to a donee, or any other event that is identified in the registered instrument (in the manner required by Form 2) as an event which would terminate the appointment of a donee but not revoke the instrument has occurred.

Under the new paragraph 19, the Public Guardian must —

- (a) attach a note to a lasting power of attorney that is in Form 1 if it appears to the Public Guardian that a donee has been replaced; and
- (b) attach a note to a lasting power of attorney that is in Form 2 if it appears to the Public Guardian that an event mentioned in section 15(5)(a) to (d) has occurred in relation to a donee, or any other event that is identified in the registered instrument (in the manner required by Form 2) as an event which would replace a donee has occurred.

Under the new paragraph 20, where the court notifies the Public Guardian that it has severed a provision of a registered instrument, the Public Guardian must attach a note to it.

Under the new paragraph 21, where the Public Guardian is required to attach a note to a non-electronic lasting power of attorney, any person who possesses the lasting power of attorney, or any copy of the lasting power of attorney certified by the Public Guardian, must deliver the instrument or copy to the Public Guardian if required to do so by the Public Guardian.

Under the new paragraph 22, if the Public Guardian attaches a note to an instrument, the Public Guardian must give notice of the note to the donor and donee (or donees).

Part 5 of the new First Schedule comprises the new paragraph 23.

Under the new paragraph 23, any of the following is not to be denied legal effect, validity or enforceability only on the ground that it is in the form of an electronic record:

- (a) a registered instrument;
- (b) a copy of a registered instrument given by the Public Guardian;
- (c) a copy of a registered instrument certified by the Public Guardian;
- (d) a note attached to a registered instrument by the Public Guardian.

Clause 17(2) inserts a new paragraph 1A in the First Schedule. Under the new paragraph 1A, an application may be made to the Public Guardian for the donor's execution of an electronic instrument to be witnessed by a witness remotely. The Public Guardian may approve such application if the Public Guardian is satisfied that there is good reason why the donor cannot appear physically before the witness to execute the electronic instrument. Where the Public Guardian refuses to grant an application and the donor requests the Public Guardian's reasons for the refusal, the Public Guardian must state those reasons in writing.

Clause 18 makes a related amendment to item 3 of the First Schedule to the Electronic Transactions Act so that the creation of a lasting power of attorney is not excluded from the application of Part II of that Act.

Clause 19 contains saving and transitional provisions. Clause 19(4) also confers power on the Minister to prescribe additional provisions of a saving or transitional nature consequent on the enactment of any provision of the Bill as the Minister may consider necessary or expedient. The additional provisions are by way of regulations in the *Gazette* which must be made within a 2-year time limit.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.
