Birmingham Law Society welcomes the review and the desire to learn from the experience gained in the first five years since implementation of the MCA, and supports the objectives of simplifying procedures and embracing digital technology as far as possible.

Our responses indicate broad support for the proposed changes but indicate some specific points, largely around the risk of fraud and undue influence, where it is important to ensure adequate safeguards, even where inconvenient.

In practice the vast majority of Lasting Powers of Attorney (LPAs) are made by willing donors in the context of supportive and honest families, and for them any additional procedural obstacles may be burdensome but our members unfortunately see how LPAs, which are powerful documents, can be a means of financial abuse and because of these the honest minority must, to some extent, bear the burden of safeguards.

In response to the questions:

1-4 Our experience is that it is only a minority of people who make a Property and Affairs (P&A) LPA who also do a Health and Welfare (H&W) LPA at the same time. A single form for both forms of power could be expected to lead to an increase in creation of H&W powers, particularly if there was a single fee structure. It is important to retain the potential for different attorneys to be appointed for the different types of power. We think that if a single application form could be achieved that would avoid confusion and the Hybrid Form split into two sections (including provision for the naming of different attorneys for H&W powers) should be attempted. Hopefully with the experience gained to date such a form can be achieved without it having so many options as to be too confusing.

5 We agree that donors rarely go for this option but it should probably be retained for those with more complicated financial and property affairs, for example with business interests.

6 The terms ‘separately’ and ‘separately or together’ should be considered.

7 There is the potential for someone seeking to exploit the procedure to take advantage of a vulnerable person to manipulate or coerce someone to sign as certificate provider. For someone so seeking to exploit the procedure the requirement for there to be either a named person or a second certificate provider is an additional hurdle.

8, 9 Whilst the requirement may seem an unnecessary burden for many making an LPA in a planned way, it is a valuable check where the donor is vulnerable or their mental capacity is in question. The wording of the certificate certainly concentrates the mind of the professional certificate provider, and doubtless the majority of those signing on the basis of having known the donor for two years. The certificate will be even more important as a safeguard given the potential for the unscrupulous to submit an application for someone online.

10, 11 The requirement for applicants to lodge the original hard copy LPA, with signatures to the OPG is absolutely vital, and the OPG will have to commit adequate resource to check every form. In principle both suggestions are logical and sensible.

12-14 Under the Enduring Power of Attorney regime the persons to be notified were prescribed and we understand the thinking behind abandoning this approach in favour of giving the choice to the donor. This does however have the potential for the unscrupulous to manipulate and influence the donor into naming someone who clearly will not respond – for example someone lacking capacity or a public figure. We suggest that the extent to which this potential abuse has occurred be researched.

12 We believe that the maximum number of named persons should be at least three.

13 We suggest that there be a requirement that the named person is someone who has known the donor for at least two years and should be someone of ‘sound mind’.

14 This would be a valuable additional safeguard against fraud.

15-16 We fully support moving to the short ‘Certificate’. Any third party seeking to rely on the LPA does not want or need to wade through fifteen or more pages but simply to know whether the attorney seeking to use the power is properly authorised. However there will need to be a search facility whereby the third party can check that the certificate being produced to them is still current, and that for example the power has not been cancelled or revoked, or the attorney details changed, by direction of the court, or by a substitute attorney having been registered. The Land Registry online search facility would be a useful model to examine – the search screen would simply ask whether there has been any change to the power since the date of the certificate on which the applicant seeks to rely and a search certificate would be generated which could be printed. The cost per search would be nominal and third parties would presumably ask the attorney to pay that.

17-19 Our view is that the waiting time could be reduced to four weeks. We understand the attraction of reducing the waiting time to NIL if the named persons confirm they have no objection, but in the event of fraud or coercion there would then be no waiting period during which the application to register might come to the attention of someone able to intervene.

20 We believe that the facility to manage accounts online will be particularly welcome to lay Deputies. Professional Deputies may well choose to adopt this facility but many have developed quite sophisticated accounting systems which they prefer to keep.

21-22 We support any arrangements to minimise the practical difficulties and cost of changing security bond provider.

23-25 We support these proposals.

26-28 We are unable to comment usefully.