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Lasting Powers of Attorney



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From the 1st October 2007 you are able to make a new type of power of attorney, called a 'Lasting Power of Attorney' (LPA). A power of attorney is a legal document where a person (the 'donor') gives another person or persons (the 'attorney') authority to make certain decisions on his or her behalf. A Lasting Power of Attorney can remain in force after the donor becomes mentally incapable of managing his or her own affairs.

Types of LPAs

There are two types of LPAs:

- A Property and Affairs LPA, which allows your attorney authority to deal with your property and finances, as you specify
- A Personal Welfare LPA, which allows your attorney to make welfare and health care decisions on your behalf, but only when you lack mental capacity to do so yourself. This could also extend, if you wish, to giving or refusing consent to the continuation of life sustaining treatment.

Who can act as Attorney?

As with any power of attorney, it is an important document and you should take care whom you appoint as they should be trustworthy and have appropriate skills to make the proposed decisions. The attorney(s) must be over 18 and mentally capable of handling not only their own, but also the donor's affairs. You can appoint more than one attorney. If you appoint more than one attorney, you can appoint them to act together (jointly) or together or separately (jointly and severally). You may even appoint them to act jointly for some things and jointly and severally for others, although this should only be done with advice, as it may cause problems when using the power.

You may also choose to appoint a successor to your attorney, in case the attorney dies or otherwise cannot act for you.

When will the LPA come into effect?

The attorney will only be able to act when the LPA has been signed by you and your attorney and certified by an independent person (other than your attorney) that you understand the nature and scope of the LPA and have not been unduly pressured into making the power. The certificate provider will also need to confirm that there has not been any fraud or another reason why you cannot make the power. It must then be registered with the Office of the Public Guardian before it can be used. The Property and Affairs LPA can be used both when you have capacity to act, as well as if you lack mental capacity to make a financial decision. The Personal Welfare LPA can only be used if you lack mental capacity to make a welfare or medical decision.

Who will be notified when the LPA is registered?

Both types of LPA must be in the prescribed form. The separate forms of Property and Affairs LPA and Personal Welfare LPA are 25 pages long containing certain prescribed information about the purpose and effect of the LPA and the names of persons whom the donor wishes to be notified of an application to register the LPA or a statement by the donor confirming that no one is to be notified.

Can I prevent the Attorney(s) from making any gifts?

Yes, by placing a restriction in the Property and Affairs LPA but in any event attorneys only have a limited power to make gifts without the approval of the Office of the Public Guardian on birthdays or Christmas or other anniversary or similar occasion.

Existing Enduring Powers of Attorney (EPA)

Any Enduring Power of Attorney, validly made before 1st October 2007, will continue to be able to be used but only

in respect of your property and affairs. If you wish to give authority over your health or welfare you will need to make a Personal Welfare LPA.

What happens if you have not made an LPA or EPA?

If you lack capacity to make a financial decision, then it may be necessary for an application to be made to the Court of Protection for an appropriate order, such as appointing another person to make decisions on your behalf. This is both costly and time consuming. The person appointed might not be the one you would chose. If you wish to preserve your right to choose then consider a Property and Affairs LPA.

Most care and treatment decisions can be made on your behalf without the need for a court application. However, if you wish to avoid potential disputes, you can give a person(s) authority to make those decisions on your behalf by making a Personal Welfare LPA.

