



CARERS FACT SHEET 7a

Powers of Attorney

Ordinary Power of Attorney

Ordinary Powers of Attorney are created for a set period of time in cases where the Donor is going abroad or is unable to act for some other reason and wishes someone else to have the authority to act on his or her behalf. An Ordinary Power of Attorney will usually end either at a specified time or upon the request of the Donor at any time using a Deed of Revocation and will automatically be revoked if the Donor loses mental capacity. There is no requirement for the Ordinary Power of Attorney to be registered.

This **Ordinary Power of Attorney** gives the Attorney authority to take decisions/actions on behalf of the Donor, as if the Donor were taking them himself or herself, in relation to nearly all the Donor's property and affairs. This could include buying or selling property or shares, signing cheques etc. It does not enable the Attorney to exercise functions which the Donor has as a trustee or personal representative (i.e. where the Donor is the co-owner of land or the administrator of someone's estate). It allows you to appoint up to four Attorneys. If the Donor does not wish to give the Attorney a general power he or she can limit the Attorney's activities to specific areas of the Donor's property and affairs, such as operating bank/building society accounts or signing cheques. The following allow you to appoint up to four Attorneys:

Power of Attorney to Operate Bank Accounts or Sign Cheques

This includes a Power of Attorney that allows the Attorney to open, operate and close any bank or building society account in the Donor's name, and a Power of Attorney that allows the Attorney to sign cheques on behalf of the Donor.

Enduring Power of Attorney

An Enduring Power of Attorney is a special form of Power of Attorney which generally gives all the rights an ordinary Power of Attorney gives but continues to be valid after the Donor has become mentally incapable of managing his or her affairs, provided that it is registered. It can relate to all or only a specified part of the Donor's property and affairs and must be granted while the Donor is of sound mind. When the Attorney becomes aware or has reason to believe that the Donor has become or is becoming mentally incapable then he or she has a duty to apply to the Court of Protection for registration of the Power. The Donor can revoke the Power of Attorney at any time prior to registration with the Court of Protection. It cannot normally be revoked following registration and loss of mental capacity, therefore you should only grant an Enduring Power of Attorney to a person, or persons whom you trust.



The Enduring Power of Attorney form is prescribed by the Enduring Powers of Attorney (Prescribed Form) Regulations 1990. It allows you to appoint up to four Attorneys. The document package includes guidance on completion and how to register the document with the Court of Protection, the forms required for registration and a Deed of Revocation which can be used any time prior to registration. Please note that the registration forms could be out of date by the time you come to register the Power of Attorney so you should check with the Court of Protection that the forms you have are still valid.

Lasting powers of attorney

The Mental Capacity Act 2005 has made provision for people to choose someone to manage not only their finances and property should they become incapable, but also to make health and welfare decisions on their behalf. They will be able to do this through a lasting power of attorney (LPA). LPAs will replace EPAs in 2007, when the Mental Capacity Act comes into force, although EPAs made before this time will still be valid.

An LPA will enable you (the donor) to nominate a spokesperson (the attorney, sometimes referred to as a 'donee') to make decisions regarding your personal welfare, including healthcare and consent to medical treatment. Different attorneys can be named for making different kinds of decisions; you will need to think carefully about who you nominate.

Whereas an EPA can be used when the person still has capacity, an LPA will only become legal once the person has lost capacity. Both EPAs and LPAs will need to be set up using an official form and be registered with the office of the public guardian (currently the public guardianship office). EPAs set up before the Mental Capacity Act comes into force will still be valid.

You must decide whether you want your attorney to act generally or only in relation to specific situations. For example, the attorney will only be able to make decisions about end of life treatment if you have included this in a clear statement on the LPA form. However, the LPA form will not grant the attorney the right to demand certain medical treatment for you if the medical professionals are not in agreement; nor will it give the attorney the right to make decisions which are not in your best interests.

The government is proposing to create two prescribed forms – one for making an LPA in relation to property and affairs and one for making an LPA in relation to personal welfare. Under the proposals, even if people want the same person to act in relation to both their personal welfare and their property and affairs, two separate forms (and two separate certificates) would be required, one for each area. The consultation on this ends on 14 April 2006 after which the forms and the guidance for use will be issued.