



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 unable to act for some 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 after twelve months 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 or maybe limited to a specific action. 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.

Enduring Power of Attorney (EPA)

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 then registered. It can relate to all or only a specified part of the Donor's property and affairs and restrictions on its use may be incorporated in the document 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 be revoked following registration without permission of the Court of Protection 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 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 (LPA)

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 to make health and welfare decisions on their behalf. This is through a Lasting Power of Attorney (LPA). LPAs replaced EPAs on 01 October 2007, when that part of the Mental Capacity Act came 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

1. regarding your personal welfare, including healthcare and consent to medical treatment
2. personal finances and property

Different attorneys can be named for making different kinds of decisions; you will need to think carefully about who you nominate.

An EPA can be used when the person still has capacity without being registered, an LPA may only be used once it is registered

LPA's will need to be set up using an official form and be registered with the Office of the Public Guardian.

There will be a register of LPA's that may be checked to ascertain if an individual has an LPA in force.

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 has created 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.