



Lasting Power of Attorney

Disclaimer

This booklet is only a guide and it has no status in law. It does not cover all the rules for every situation, nor does it provide a full interpretation of the rules. It should not be treated as a complete and authoritative statement of the law. Responsibility cannot be accepted for any decisions made on the basis of the information contained herein. More detailed information can be obtained from the leaflets referred to in this brochure. The leaflets cite relevant Acts of Parliament and Regulations to allow you to consult the legal wording of the rules. The law in Scotland and Northern Ireland in relation to some social security provisions may differ from that in England. E&OE

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Lasting Power of Attorney

This booklet is a brief version of the Lasting Power of Attorney guides. More extensive guides are provided by the Office of the Public Guardian and can be downloaded from the internet at www.publicguardian.gov.uk; this site also contains PDF copies of the relevant LPA forms, which can be completed on line.

Alternatively you can phone the Office of the Public Guardian on: 0300 456 0300 Textphone: 0207 664 7755 or write to:

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The Office of the Public Guardian is headed by the Public Guardian who is responsible for the registration of Lasting Power of Attorneys and for maintaining the register of Lasting Power of Attorneys.

A Lasting Power of Attorney (LPA) is a legal document that allows you (the “**Donor**” or “**Granter**” **in Scotland**), to choose someone (the “**Attorney**”), that you trust to make decisions on your behalf about such things as your finances and property (a **Property and Financial Affairs LPA**) and/or also to make decisions on your behalf about your health and personal welfare (a **Health and Welfare LPA**). A similar document applies in Scotland where the two forms are termed a **Continuing Power of Attorney** and a **Welfare Power of Attorney**. Northern Ireland has retained an **Enduring Power of Attorney** which relates only to Property & Financial Affairs, and not Health and Welfare.

A Lasting Power of Attorney (LPA) is a very powerful document. When choosing your Attorney(s) you need to be confident that you have chosen the right person(s) to carry out the tasks involved. Bear in mind that you may not be able to monitor what they are doing on your behalf.

The law was changed on 1st October 2007, when under the Mental Capacity Act 2005, a Lasting Power of Attorney replaced an Enduring Power of Attorney. An Enduring Power of Attorney only covered the Property and Financial Affairs of the Donor, not their Health and Welfare.

Where an Enduring Power of Attorney already existed prior to 1st October 2007, it can continue and there is no need to have it changed. However, should you wish to give your Attorney(s) the power to make decisions concerning your personal welfare, you can make a Health and Welfare LPA.

A Lasting Power of Attorney and an Enduring Power of Attorney can be revoked by you (the “**Donor**”), at any time, providing you have the mental capacity to act for yourself, and thereby bringing them to an end if you wish to do so.

Note: An LPA made in England and Wales will not be legally binding for use in other countries including Scotland and Northern Ireland.

Property and Financial Affairs LPA

A Property and Financial Affairs LPA (A **Continuing Power of Attorney in Scotland**) allows your nominated Attorney(s) to make exactly the same decisions that you can make about your money and property. For example: paying bills, collecting your benefits or other income and selling your house, subject to any restrictions and conditions you choose to add.

These decisions can only be taken on your behalf when you lack the capacity to make them for yourself. For example: if you are ill or unconscious or because of the onset of a condition such as dementia.

A Property and Financial Affairs LPA does not allow decisions to be made on your behalf concerning your health and welfare.

Your nominated Attorney(s) can only make decisions within the scope of the powers that you have given them.

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Health and Welfare LPA

A Health and Welfare LPA (**A Welfare Power of Attorney in Scotland**) allows your nominated Attorney(s) to make decisions on your behalf about your health and personal welfare, including giving or refusing consent to medical treatment on your behalf and deciding where you live.

These decisions can only be taken on your behalf when you lack the capacity to make them for yourself. For example: if you are ill or unconscious or because of the onset of a condition such as dementia.

A Health and Welfare LPA does not allow decisions to be made on your behalf concerning your property and financial affairs.

Like a Property and Financial Affairs LPA, your nominated Attorney(s) can only make decisions within the scope of the powers that you have given them.

The Property and Financial Affairs LPA and the Health and Welfare LPA are individual documents and must each be completed and registered separately. You do not have to make both; you can make just a Property and Financial Affairs LPA, a Health and Welfare LPA, or both. When completing the LPA forms, you must decide what restrictions, if any, you wish to place on your nominated Attorney(s).

How to make an LPA

To make an LPA, you must use an LPA form, also known as **the instrument**. You can download the form from the 'forms and booklets' section of the OPG website, or order copies from OPG Customer Services (see Page 1). Note that, although you can make the LPA at any time, it cannot be used until it has been registered with the OPG.

The Office of the Public Guardian has produced guidance about how to complete the Health and Welfare LPA and the Property and Financial Affairs LPA forms. These are available in the guidance booklets listed on Page 8. You can download an application pack containing the guidance and forms you require to make an LPA from the Making a Lasting Power of Attorney section of the OPG Website.

Note: The forms can also be completed and saved electronically using the latest version of Adobe Acrobat Reader.

An LPA is a very powerful document and you may wish to seek advice from someone with experience in preparing these documents, such as a solicitor. The OPG is not able to provide legal advice. The forms have been designed to be as simple to complete as possible and you are not required to seek legal advice - it is your choice.

The Donor's Statement (Part A of the form)

The “Donor’s” statement asks for your personal details, details of the person(s) you are appointing to make decisions for you in the future (the “Attorney(s)”), and how you want them to act on your behalf. You can also use this part of the form to place restrictions or conditions on the decisions your Attorney(s) can make or give them guidance. This part will also ask you to give the names of anyone you wish to be notified (person to be told - see Page 5) when the LPA is registered with the OPG. Finally you will need to sign this part of the form and ask someone to witness your signature. Your appointed Attorney(s) cannot also be a witness to your signature. Also, your appointed Attorney(s) cannot be one of your chosen people to be told (see Page 5).

Appointing an Attorney

When appointing an Attorney(s) it is important to choose someone that you know well and trust to make decisions on your behalf. You must also check that it is someone who is prepared to take on the role.

You can choose family members, friends, your spouse, partner or civil partner – providing that they are aged over 18.

Your Attorney(s) must be a named individual and not listed as an office holder or the name of a firm of solicitors.

You can appoint more than one Attorney although, the more you appoint, the more difficulties that can arise.

If you appoint more than one Attorney you need to specify if they are to act:

- Together; or
- Together or independently; or
- Together in some matters and together and independently in others.

Everyone you choose as an Attorney will need to provide their personal details and confirm that they understand their legal duties should they need to act as your Attorney (**Part C of the form**). This part of the form will need to be signed by each of your Attorneys and their signatures will need to be witnessed.

Your Attorney(s) **must have regard** to the Code of Practice, which provides guidance on the Mental Capacity Act 2005. The Code makes it clear that Attorneys must always act in your best interests. The Office of the Public guardian have produced guidance for Attorney(s) acting under a Property and Financial Affairs LPA and those acting under a Health and Welfare LPA and these are available in the guidance booklets listed on Page 8.

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Replacement Attorney

Replacement Attorneys are people you can appoint to act in place of an Attorney who is no longer able to, or does not wish to, make decisions as your Attorney. You can choose as many replacements as you like. They can then act in place of your Attorneys but you must set out how they are to be appointed.

As with appointing an Attorney(s), when appointing a replacement Attorney(s), you must consider how they are to act, as already set out on Page 4 of this booklet.

If you do want to appoint a replacement Attorney(s), you must do so at the time you make your LPA and your replacement Attorney(s) must sign to agree to take on this role in the same way as your appointed Attorneys. You do not have to appoint a replacement Attorney(s). Appointing a replacement Attorney(s) is not a requirement of an LPA.

People to be told (previously Named Person)

People to be told are those people specified on your LPA who you would like to be notified when an application is made to register your LPA.

Once notified, if the people you choose have any concerns about the registration of your LPA, they can object to the LPA being registered.

You can choose up to **five people** to be told. This aspect of your LPA is an important safety aspect for you the “**Donor**”.

Guidance on how the people to be told can object is part of the notice sent to them by the person making an application to register the LPA.

It is important to remember that the people to be told should know you well enough to be able to raise any concerns they may have about an application to register your LPA.

If you decide not to name any people to be told when your LPA is registered, or if you do not know anyone suitable to name, then you must have two **Certificate Providers** (see below for more information on certificate providers).

People to be told **may** also be a certificate provider (see below) and a witness to your signature or to the signature/s of your appointed Attorney(s). However, people to be told cannot also be one of your appointed Attorneys.

Note: In Scotland people to be told is not a requirement.

The Certificate Provider (Part B of the form)

A **Certificate Provider** is an independent person **that you must choose** to complete Part B certificate of the LPA form confirming that you understand the significance of your LPA and that you are not under any pressure to make it.

The responsibilities of the Certificate Provider

The Certificate Provider is a very important role and something that the provider must fully understand before agreeing to undertake it.

A Certificate Provider is a person you the **“Donor”** choose to complete Part B Certificate of the Lasting Power of Attorney (LPA) to confirm that, in his or her opinion you, the **“Donor”**:

- Understands what an LPA is and understands the contents of the LPA;
- Understands what powers you are giving to the Attorney(s) in the LPA;
- Are not being pressured, tricked or placed under duress by someone else to make the LPA; and
- That there is nothing else that would prevent the LPA in question being created.

A certificate provider will need to talk to you the **“Donor”** about LPAs generally, and about the contents of the LPA in a place where they feel able to speak or communicate with you freely.

They will need to talk to you the **“Donor”** in private and away from the Attorney(s) and they will need to confirm in the Certificate that they have done so. **The Certificate is not valid if the Attorney(s) is present when the Certificate Provider discusses the LPA with the Donor.**

The certificate is a **vital** part of the LPA document. Without it, the LPA is not valid and cannot be registered. The certificate must not be detached from the LPA.

It is recommended that you the **“Donor”** also make the persons to be told aware of your choice of certificate provider. This allows them to raise any concerns that they may have about the certificate provider.

There are two types of certificate provider and you the **“Donor”** can choose either.

Who can be a Certificate Provider?

Either someone who:

- You the **“Donor”** has known for at least **two years**, or
- Someone who has relevant skills or knowledge to be able to form a professional judgement about your understanding.

Skills Certification

If you choose someone with relevant professional skills, they must be one of the following:

- A registered healthcare professional (including your GP);
- A Solicitor, Barrister or Advocate;
- A registered Social Worker; or
- An Independent Mental Capacity Advocate (IMCA).

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Who can be a certificate provider? Cont'd

You cannot select anyone from the following list to be a certificate provider:

- A member of your family;
- A member of your Attorneys family;
- A business partner or paid employee of yours or your Attorneys;
- Any Attorney appointed by you on any LPA or EPA (Enduring Power of Attorney);
- The owner, director, manager, or an employee of a care home in which you currently live or any member of their family;
- A director or employee of a trust corporation appointed as an Attorney in your LPA.

A certificate provider **may** also be one of the people to be told (see Page 5 for information on people to be told), and a witness to your signature or to the signature/s of your Attorney(s). However, a certificate provider **cannot** also be one of your appointed Attorneys.

In Scotland the document must also include a statutory certificate signed by a solicitor registered to practice in Scotland, a practising member of the Scottish Faculty of Advocates or a registered and licensed medical practitioner.

Note: Without the completed certificate, your LPA cannot be registered or used.

Registering your LPA

No one other than your appointed Attorneys can use your LPA. Your Attorneys can only use your LPA when it has been correctly completed, signed, witnessed **and has been registered** with the Office of the Public Guardian. Your LPA **cannot be** used until it has been registered.

You can register the LPA at any time after it has been made. Your Attorney(s) will only be able to make decisions on your behalf after your LPA has been **registered with the OPG**. They will have to act subject to any restrictions or conditions you have specified on the LPA form and they must always act in your best interests.

The benefit of registering the LPA shortly after it is made is that it will be ready to be used by your Attorneys when it is needed.

A signed, witnessed and certified LPA is a deed, therefore changes **cannot** be made to a completed LPA.

The LPA Register

The LPA Register is the OPG's searchable database containing the details of all registered LPAs. It is worth noting that, once your LPA is registered, certain pieces of information will be available **to anyone who applies to search the register**, for which there is a fee.

Objections

Only the Donor, the People to be told or other Attorneys are able to object to the registration of an LPA.

Objections by the People to be told or Attorney will have to be either on factual grounds or on prescribed grounds.

A comprehensive list of grounds for objection can be found in the publications listed below and published by the Office of the Public Guardian.

Note: The Health and Welfare LPA and the Property and Financial Affairs LPA must be registered individually and individual fees are required for each registration.

For further and more comprehensive information on all aspects of a Health and Welfare or a Property and Financial Affairs Lasting Power of Attorney, please refer to the guides listed below. These guides are produced by the Office of the Public Guardian and the Court of Protection.

Publications:

EPA101 A guide to Enduring Powers of Attorney

LPA001 Notice of intention to apply for registration of a Lasting Power of Attorney

LPA002 Application to register a Lasting Power of Attorney

OPG506 Office of the Public Guardian – Fees, exemptions and remissions

OPG503 Office of the Public Guardian and Court of Protection – Service Standards

Guidance for people who want to make a Health and Welfare Lasting Power of Attorney

Guidance for people who want to make a Property and Financial Affairs Lasting Power of Attorney

All of the above publications are available in Welsh from the OPG website.

To find out more about our services please contact:

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