Law Society of Northern Ireland Response to the Draft Mental Capacity Bill (NI) Consultation

Introduction

1. The Law Society of Northern Ireland ("the Society") is a professional body established in 1922 by Royal Charter and invested with statutory functions in relation to solicitors, primarily under the Solicitors (NI) Order 1976. The functions of the Society are to regulate responsibly and in the public interest the solicitors' profession in Northern Ireland and to represent solicitors' interests.

2. The Society represents over 2,300 solicitors working across the whole of Northern Ireland. Members of the Society represent private clients in legal matters and are therefore uniquely placed to comment on policy and law reform proposals.

3. The Society welcomes the opportunity to respond to the draft Mental Capacity Bill (NI) ("the Bill") and the accompanying Consultation Document which sets out a legislative framework for mental capacity and mental health legislation in Northern Ireland. Solicitors perform a vital role in advising members of the public in relation to mental capacity and mental health law, including the most appropriate way to handle their affairs should they become mentally incapacitated.

4. In this response, the Society will highlight a number of areas in which important lessons can be learned from the experience in England and Wales after the introduction of their Mental Capacity Act 2005 ("MCA"), particularly given the similarity of large portions of the Bill to that 2005 Act. The Society also notes the valuable content in the report of the House of Lords Post-Legislative Scrutiny Committee on the Mental Capacity Act 2005 which was published on 13th March 2014 ("the House of Lords Report").

5. The Society notes that the Bill does not include any criminal justice provisions despite being referred to in the Consultation Document. The full response of the Society on these provisions must therefore be reserved until the full text of the Bill has been produced. Similarly, the Society notes that no Codes of Practice have been issued in relation to either the civil or criminal provisions of the Bill and, again, the Society will require to review those Codes and comment upon them once they have been produced.
6. The Society is concerned that the test for capacity set out in Section 2 of the Bill is in breach of the UN Convention on the Rights of Persons with Disabilities ("UNCRPD") on the basis that having a diagnostic limb within a capacity test can be argued as being inherently discriminatory. The UNCRPD was ratified by the United Kingdom on 18th June 2009 after the MCA was passed in England and Wales and the Westminster government is currently reviewing the legislation on this basis. On 11th April 2014 the UN Committee on the Rights of Persons with Disabilities adopted its General Comment on Article 12 of the UNCRPD which made this point. Additionally, Denzil Lush, Senior Judge of the Court of Protection in England and Wales gave evidence to the House of Lords Report and stated: "I am not entirely convinced that the Act is compliant with Article 12 of that Convention, so one might explore statutory amendments that give a wider range of powers to the Court, rather similar to the Bill just published in the Irish Republic enabling assisted decision making and possibly co-decision making agreement".

7. If having a diagnostic limb is considered necessary (without it, there is a risk that merely indecisive people could be found to lack capacity), it may need to be reframed to ensure that a person is considered to lack capacity only where they are unable to make a decision because of the impairment or disturbance of the mind or brain. The Court of Appeal in PC and NC [2013] EWCA Civ 478, observed that Section 2 (the capacity test) and Section 3 (the functional test) in the MCA did not establish a series of additional, free-standing tests of capacity. Instead Section 2(1) was a single test, interpreted by applying the more detailed description given in Sections 2 and 3. The wording in Section 2(2)(a) – (b) should include the words "and / or" so that it reads:

(a) "Whether the impairment or disturbance is permanent or temporary; and / or

(b) What the cause of the impairment or disturbance is".

8. Section 2(1) prefixes the meaning of "lacks capacity" by "for the purposes of this Act". This creates uncertainty as to whether all decisions where capacity may be in doubt or later challenges to capacity should apply the same test. For example, where a person is making a will is this the test to be applied even though it may never come to be decided by a Court? Additionally, does the presumption of capacity apply to the making of a will, as this could create difficulties to challenges post death where there are doubts as to capacity? With whom does the burden of proof lie? It may be almost impossible to challenge a will post death.
9. The relevant information which a person would be expected to understand includes under Section 3(2) of the Bill the information about the reasonably foreseeable consequences of:
   (a) deciding one way or another; or
   (b) failing to make the decision.
   This would mean that a testator would need to understand what would happen if he did not make a will or made it on different terms. This would extend the current common law position and would include advice on the rules of intestacy.

10. The definition of capacity within the Bill is determined by reference to inability to make "a decision" rather than inability to make decisions generally. Capacity is therefore to be determined on each occasion that a decision needs to be made. Assessing capacity every time a decision needs to be made is time consuming and has cost implications. However, the Court of Protection in England and Wales has adopted a more pragmatic approach to capacity when appointing deputies, highlighted in the case of A, B, & C v X & Z [2012] EWHC 2400 (COP) when Mr Justice Hedley said, "the general concept of managing affairs is an ongoing act and, therefore, quite unlike the specific act of making a will or making an enduring power of attorney. The management of affairs relates to a continuous state of affairs whose demands may be unpredictable and may occasionally be urgent."

This complex case involved an elderly man with dementia, with fluctuating mental capacity. The Court had refused to make declarations that he lacked mental capacity to get married, make a will, or make a Lasting Power of Attorney ("LPA"). The presumption being that he had mental capacity to undertake those acts. The Court accepted there would be times when he had capacity to make decisions about his property and affairs, but nevertheless appointed a deputy as management was an ongoing concept even if capacity was not. Mr Justice Hedley did not comment on what would happen during a period of lucidity, although Section 20(1) of the MCA (the equivalent restriction is in Section 111(1) of the Bill) shifts the power of decision making from the deputy back to the person for whom he is appointed to act, where the deputy reasonably believes the patient has mental capacity in relation to the matter.

Most property and affairs orders made by the Court in England and Wales are empowerment orders, granting general authority with the power to manage and invest as if the deputy were himself the beneficial owner. A deputy would be in breach of Section 20(1) of the MCA if he were to make a decision at a time he believed that the patient had sufficient mental capacity to
make the property and affairs decision. This can create practical problems for the deputy, who must accommodate this possibility when setting up financial management arrangements. Financial institutions struggle to adapt to the possibility of different people managing the same funds under different authorities (i.e. at times the person subject to the order will be deemed to be able to act autonomously and the deputy will be able to act under an order of the Court).

11. The Society is also concerned at the potential for a conflict of interest to arise in making an assessment of a person's capacity. In particular, whether it is a conflict of interest if the person making the capacity assessment is also involved in the ongoing treatment or ongoing management of the patient’s affairs.

Supporting the person to make a decision

12. Section 4(2)(c) provides that persons whose involvement is likely to help a person to make a decision are to be involved in helping and supporting that person. There may be a risk of conflict with legal professional conduct rules, particularly the duty of confidentiality and undue influence. The definition of "likely to help" may need to be explained in the Code of Practice (once published) so that it makes clear that it is not appropriate to involve anyone where there is a risk of undue pressure or influence or permission of the person where capacity is in doubt is obtained.

13. The Society in general welcomes the personal autonomy provisions within the Bill in relation to supporting a person to make a decision. Care would need to be taken however to ensure that the presumption of capacity and support to make a decision does not become an excuse for the provision of substandard care or indeed the denial of care entirely on the basis of a suspect view that the patient was agreeing to and had the capacity to agree to such inappropriate care. This can be particularly the case when the care decision results in a cost saving for the service provider.

14. The Society has concerns that individuals with significant communication difficulties will come within the definition of not being capable of making a decision (whether supported or otherwise) despite actually having capacity but simply not being able to communicate that properly. Detail on assessments and support for people in that situation will need to be fleshed out in the Code of Practice.
Co-Decision Makers

15. The Society notes that the Bill places an emphasis on supporting individuals to make a decision, including under Section 4(2)(c) ensuring that "persons whose involvement is likely to help the person to make a decision are involved in helping and supporting the decision". Consideration should also be given as to whether assisted and / or co-decision making measures could be incorporated as in the Republic of Ireland's Assisted Decision-Making (Capacity) Bill 2013.

Substituted Decision-Making and Best Interest

16. The Society is concerned that the regime of substituted decision making in a person's best interests pursuant to Sections 6 and 7 of the Bill are unlawful by virtue of being a breach of the UNCRPD. In its General Comment on Article 12 the UN Committee on the Rights of Persons with Disabilities stated (at paragraphs 22 and 23):

"The Committee....has repeatedly stated that States parties concerned must.....take action to develop laws and policies to replace regimes of substituted decision-making by supported decision-making, which reflects the person's autonomy, will and preferences. Substitute decision-making regimes can take many different forms. They can be defined as systems where.....any decision made by a substitute decision-maker is based on what is believed to be in the objective "best interests" of the person concerned, as opposed to being based in the person's own will and preferences".

Careful consideration needs to be given as to what steps should be taken to ensure that those supporting the patient are not imposing their own desired outcome or unduly influencing the patient.

17. If the Bill continues with its current substituted decision-making provisions, the Society recommends that the patient's wishes and feelings are given considerably greater weight in the determination of how that decision is made. It may be the case that the patient's wishes and feelings should be determinative if they are identified and capable of being implemented lawfully.

18. It is the view of the Society that, if the current substituted decision-making provisions are retained in the legislation, it may be of benefit to have a ranking of the statutory criteria in the determination of best interests.
19. Section 6 sets out people who should be consulted however an attorney acting under an
Enduring Power of Attorney ("EPA") is omitted. We note that reference to such a person is
included within the Consultation Document (page 9) and therefore that person should properly
be included within the Bill itself.

Deprivation of Liberty

20. The Bill contains a significant distinction between general acts done in connection with the care,
treatment or personal welfare of a patient (which mirrors Section 5 MCA) and those acts to
which additional safeguards apply before reliance can be placed upon the protection. There are
also different provisions in relation to short-term detentions in hospital for examinations which
can be authorised on the basis of a medical report stating that the criteria for authorisation are
met.

21. The position in England and Wales was stated by the Supreme Court in P v Cheshire West &
Chester Council and P & Q v Surrey County Council [2014] UKSC 19, which found that the “acid
test” to establish whether a person is being deprived of their liberty is whether the person
concerned “was under continuous supervision and control and was not free to leave”. The
person’s compliance or lack of objection is not relevant; the relative normality of the placement
(whatever the comparison made) is not relevant and the reason or purpose behind a particular
placement is also not relevant. The experience in England and Wales under the MCA was
summarised by the House of Lords Report. It described the deprivation of liberty safeguards
under the MCA as being unduly complicated and not understood or owned by the people on the
ground. They recommended that the entire existing regime be scrapped and new legislation be
introduced. The Society strongly urges lessons to be learnt from this to ensure that Northern
Ireland does not suffer from a repeat of the experience in England and Wales.

22. The Bill will also need to ensure the deprivation of liberty provisions include supported living and
shared lives placements.
Mental Capacity Champion

23. The Society notes the view in England and Wales that Health and Social care decision makers in particular do not generally understand the MCA. The House of Lords Report recommended to embed the Act in every day practice and that a single independent body should be established with responsibility for oversight of the implementation of the MCA. The Society recommends that provision is made for this in the Bill.

Nominated Persons

24. The Society recommends that a provision should be included within the Bill to automatically prevent a default nominated person being able to act where they have previously been found guilty of ill treatment and neglect under the Bill or removed as an attorney or deputy by the Court.

Enduring Powers of Attorney

25. The Society notes with concern that the Bill proposes to abolish the EPA by repeal of the Enduring Powers of Attorney (NI) Order 1987. It is the Society’s view that the EPA has brought a number of benefits to this jurisdiction and that the current system of the EPA should be retained.

26. The simplicity of the current EPA system has lead to widespread use by members of the public. It has also meant that the cost of putting an EPA in place both in terms of the legal costs in assisting with the completion of the prescribed forms and the Court fees for registration of the EPA has been kept low.

27. It is understood that one of the primary drivers for the proposed introduced of the LPA in Northern Ireland is that it will decrease fraud. This is not the experience in England and Wales, quite the opposite. More cases of fraud are now being prosecuted resulting from the actions of an attorney under an LPA than were ever taken under the EPA regime.

28. While the Society would not suggest that the EPA regime is beyond reproach, it would recommend that, given its significant benefits, the system be retained. If necessary this would be
alongside the introduction of the LPA regime so that clients are given the maximum choice and flexibility when choosing how to order their affairs.

29. Despite the proposed abolition of the EPA regime, there will be a transitional period in which existing EPA must continue to be administered. It is the Society’s view that the responsibility for oversight of any existing EPA should be transferred to the new OPG but that its remit should also include oversight of unregistered EPA.

**Lasting Powers of Attorney**

30. As noted above, the Society would favour the retention of the EPA regime however it can see benefits to the introduction of the LPA regime, whether that is alongside the EPA or as a complete replacement for it. The Society sees no reason why the two regimes cannot co-exist by giving clients the choice of the “Rolls Royce” or “Mini”.

31. The Society has consulted with practitioners from England and Wales to learn lessons from their experience after the introduction of their MCA and these consultations substantially inform our comments below.

32. The LPA forms are considered to be too long and are trying to do too much. It is estimated that 30% of the forms are completed incorrectly\(^1\). By way of illustration of the point, attached at Appendix 2 is the documentation required for both a Property and Affairs LPA (“P&A LPA”) and a Health and Welfare LPA (“H&W LPA”) which runs in total to over 90 pages. This compares with the EPA which only requires a 4 page form and a copy of which is attached at Appendix 1.

33. When the Office of Public Guardian (“OPG”) in England and Wales was introduced, it did not have capacity to deal with the flood of applications that it received almost immediately. There has had to be continuous consultations to fix the problems. There can be a wait of between 9 and 16 weeks for registration of an LPA which is completely impractical. The Society is concerned with the current lack of detail in relation to the funding of the Northern Ireland OPG and it is concerned that there will be a replication of the situation in England and Wales. In particular, the OPG in England and Wales requires a huge IT capacity to function and the Society is concerned at both the cost and potential delay in putting this in place.

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\(^1\) As per Martin John, the Public Guardian, the Law Gazette, 7th August 2008
34. The Society welcomes the increased investigatory powers proposed for the OPG in Northern Ireland but concerns remain as to implementation and the Code of Practice is awaited in this regard. The Society views the current standard of service provision from the Court Service as being generally of a high quality and wishes this to continue under the new OPG. The Society also wishes to seek clarification on whether the OPG will be self-funding.

35. The Society’s view is that the notification provisions in the LPA are essentially worthless. These are supposed to be a safeguard (as they are with an EPA) but any objection is by definition speculative as you cannot know how the attorney is going to act in the future and it should be for the Court to decide on the available evidence. There are approximately 350,000 LPA being registered every year in England and Wales but there are only approximately 100 objections and therefore the provisions are disproportionate. If a person objects to the OPG that triggers suspension of the registration of the LPA but the person still has to make an application to the Court on the issues as well. This double application is unnecessarily complex, time-consuming and costly. Also, given the ability of the donor of the LPA to specify the parties to be notified, the notification provisions too easily sidestepped to be of any value.

36. Furthermore in relation to the notification process, the Society notes that the donor can choose not to notify anyone but, as currently drafted, the Bill still requires that the notification period must elapse before registration is completed. This is an unnecessary delay.

37. The Society appreciates the potential benefits of the immediate registration of the LPA as opposed to registration of the EPA at the point that capacity is lost. This removes the issue of having to confront the person with their lack of capacity. However, the immediate cost may deter people from creating or registering the LPA.

38. The Society would prefer a notification process which takes place after registration of the LPA. This will allow other interested parties, usually family members, to know that the LPA is in place and that they can report the attorney to the OPG if there has been any wrongdoing. It is suggested that the class of notification parties should include spouse / civil partner, co-habitees and children and perhaps a wider class.

39. The Bill intends to provide an additional safeguard with the certificate provider being able to explain the form to the person signing it. The Society’s view is that there should be a

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requirement that the certificate provider must see the donor to ensure that they fully understand what they are signing and that the LPA is signed by the donor in the presence of that certificate provider.

40. The Society notes that a lot more work needs to be done in England and Wales on educating attorneys in relation to what constitutes misuse or abuse. There must be a massive education process for the public in Northern Ireland prior to the introduction of the Bill, especially in relation to the H&W LPA. It is estimated in England and Wales that 15% of LPA / EPA are misused or abused. There is provision in that jurisdiction to name and shame attorneys who have been found to have misused or abused their position.

41. The Society has major concerns in relation to the likely cost of making an LPA. It is estimated that the average solicitor’s fee for making an LPA in England and Wales is in the region of £500 plus VAT and when added to the application fee to the OPG for immediate registration (currently £110) then it can be reasonably expected that the total cost will put off a large number of people who would previously have made an EPA (the cost of which is approximately £100 with a further £115 payable at the point of registration). This has the effect of pricing the most vulnerable out of being able to avail of the protections provided by the LPA and it is they who are the most in need of having those protections in place.

42. The Bill does not address issues that the OPG will have in relation to the Data Protection Act 1998. When exercising its investigative function, the OPG will have cause to request details from the High Court however, due to the restrictions that the Court has by virtue of the Data Protection Act 1998, the OPG cannot gain access to the Court files and must therefore make their own enquiries with the Court. This leads to unnecessary delay and is completely impractical when dealing with urgent cases. The Society would suggest ensuring that the transfer of information between the OPG and the High Court is included as one of the exemptions under Part IV of the Data Protection Act 1998.

43. In relation to the certificate provider provisions, the Bill states they need either “skills or expertise”. The Society’s view is that all certificate providers should self-certify to say that they have the skills so that they are not automatically assumed to have those skills. The difficulty comes in how to measure those skills against a standard and further guidance is awaited on that point. The Society sees no merit whatsoever in the second certificate provider requirement.
44. The Society would make the following points in relation to certificate providers:

(a) They are intended to protect the most vulnerable but more detail is required on who can be a certificate provider.
(b) The only challenge to a certificate provider appears to be in the event of extreme negligence and loss being suffered.
(c) In Scotland, a certificate provider was limited to being doctors and solicitors and in that jurisdiction they also removed the notification provisions.
(d) It is noted that in England and Wales there has been no impact on a solicitor’s professional indemnity insurance premium when they have acted as a certificate provider.
(e) It was also noted that Courts do not treat solicitors or lay certificate providers any differently when judging whether the provider’s assessment was valid.

45. The Society notes that, strictly speaking, English LPA and EPA are not valid in Northern Ireland. They are operative in Scotland as it has ratified the Hague Convention and can provide Article 38 Certificates. The Bill needs some mechanism for this to be done in Northern Ireland. Is the intention for Northern Ireland to ratify the Convention? Also, reference should be included in the legislation specifically confirming that LPA and EPA from England, Wales and Scotland are valid in Northern Ireland. Reciprocal legislation would be required in those jurisdictions to ensure that powers made in Northern Ireland are valid there and the Society advocates having this done.

46. Clarification is required in relation to the position where a patient has more than one power of attorney. Is it going to be the case where the latter revokes the former automatically or can the powers be read together?

Court and OPG Powers

47. Section 107(4)(b) of the Bill requires that the appointment of deputies is limited in scope and duration. The practice in England and Wales is that a full application must be made every 3 years ab initio, including medical evidence. It is then a Court (not OPG) decision to consider whether the appointment is still required to stay in place. This application is at full cost and, to date, no application has ever been refused. It is the view of the Society that such a fresh application every
3 years is completely unnecessary and that it would be better not to limit the duration of such appointments. The Society does agree that it is necessary to limit the scope of the appointments in certain circumstances as envisaged by the Bill. Under the existing Controllership system, there is an annual reporting requirement and included within this is a statement on the condition of the patient. The Society sees no reason for this to change.

48. In England and Wales there have been approximately 55,000 property and affairs deputies appointed but under 300 health and welfare deputies. Partly this is because in England and Wales the applicant pays the costs, not the patient’s estate, when applying to be a welfare deputy. The scope of their appointment is also limited so often it is not worth making the application. The Society would suggest that the costs should be met from the patient’s estate so as to facilitate the uptake of health and welfare deputies.

49. The Court and the OPG both need to be able to access financial records as part of their investigatory powers. They can get access currently to health records without needing to give reasons and it is the Society’s view that there is no practical difference for financial records. At the moment in England and Wales, both the Court and the OPG have to go through the attorney for access to financial records which obviously does not work as they may be the abuser.

50. The Society notes that under the current proposals the OPG does not have retrospective power to investigate deputies or attorneys who have been removed or parties who have intermeddled in a patient’s affairs without having been formally appointed as a deputy or attorney. It is the Society’s view that this needs to be included within the final Bill and that the definition of deputies and attorneys needs to include prior appointees or those who have intermeddled.

51. The Society notes Section 119 of the Bill in relation to the duty on OPG, not a Health and Social Services Trust, to investigate cases. This duty falls on the Office of Care and Protection at the moment in Northern Ireland and it is assumed that this will be transferring to the new OPG however confirmation is required. Also, it is noted that this can be wider than the current function as it will include the deprivation of liberty rules. Resources are a massive issue for this in England and Wales and the Society urges this area to be properly resourced in Northern Ireland.

52. Under the Mental Health (NI) Order 1986, the Office of Care and Protection had to be notified if a person went in to a nursing home. The Society considers this to be a very useful provision and
it should be retained in the new Bill for notification to the OPG. The Society also considers that
an obligation should be placed on health professionals to notify the OPG in the event of
incapacity. The current legislation does not apply to a person at home, not in a nursing home,
and this loophole should be closed.

53. The Society notes that there is no provision within the legislation for the appointment of a
deputy of last resort. Currently, the Official Solicitor is appointed as controller of last resort,
often in very difficult circumstances where there is no one else within the family who is suitable.
Clarification is required on who will perform this function under the new regime.

III Treatment and Neglect

54. The Society notes that the rules in relation to ill treatment and neglect do not currently extend
to attorneys under an EPA. There does not appear to be any reason for this and it should
therefore now be done.

Dealing with Money and Valuables

55. Section 143 codifies the common law position so that a third party may make arrangements with
a supplier for necessary goods and services on behalf of a person who lacks mental capacity.
The recent English case of Aster Healthcare Ltd v the estate of Mohammed Shafi [2014]
EWHC 77 (QB) considered the equivalent provision contained in Section 7 MCA and had to rely
on the case of Re Rhodes [1890] 44 Ch Div 94 to clarify that the provision does not come into
play in circumstances in which it was not intended by the supplier that the recipient should pay
for those goods and services, but that the person making those arrangements, or someone else,
should. It is the Society’s view that it may be sensible for this to be clarified in the Bill.

International Protection of Adults

56. LPA and EPA are not classed as protective measures. It may be useful to create a mechanism (for
example by designating them as a protective measure) so that the Court is able to make
declarations as to enforceability and recognition of foreign LPA and EPA from States which are
not a Convention State.
Advanced Directives

57. Clarification is required in relation to an Advance Directive and how it works with a H&W LPA. In particular, confirmation is required as to whether the last document to be signed is the operative document, especially given that this is most likely to be the H&W LPA as the important date is the date of registration not execution.

Non-application to Under 16s

58. The Society notes with concern that the Bill excludes children and young people under the age of 16 entirely. The Society believes that this exclusion is potentially discriminatory and does not comply with the European Convention on the Rights of the Child and the European Convention on Human Rights. This is particularly the case given that the age of capacity for criminal offences is deemed to be 10 years old but this is not taken in to account within the Bill.

59. The Society urges the government either to include under 16s within the Bill or to bring forward separate legislation as soon as possible so as to rectify this deficiency.

Mental Health Review Tribunal

60. The Society notes the expanded remit of the Mental Health Review Tribunal under the Bill. Confirmation is required that the Tribunal will be given a corresponding increase in resources to deal with this expansion in its activities.

61. The Society notes that historically the Tribunal has been chaired by either a solicitor or a barrister but that there is nothing in the Bill or the Consultation confirming that this will continue. It is the Society’s view that it is essential that the existing position continues. The Tribunal exercises a legal function akin to the Magistrates Court with the power to detain patients for up to 6 months at a time therefore the Tribunal should be chaired by legally qualified persons.

62. It is the Society’s view that the patient must always have legal representation at the Tribunal should the patient so wish. The Health Trust will always have legal representation and it is therefore vital for patients to have access to the same standard of representation to ensure that
they have full access to their rights. It is important in this regard that the current merits test continues to apply in relation to a patient's access to Legal Aid funding for the Tribunal. These are among the most vulnerable people in society and require as much protection as they can possibly receive.

63. The Society notes that there is no provision in the Bill for any appeal of a decision of the Tribunal and is concerned that this is in breach of Article 6 of the European Convention on Human Rights. If such a right of appeal is introduced, consideration must be given as to the correct forum for that hearing, whether in the High Court or otherwise.

64. The Society is concerned that there is no mechanism within the Bill for approval of a solicitor's terms of engagement when acting for a patient in the Tribunal. Under the Solicitors (Client Communication) Practice Regulations 2008, a solicitor is required to provide their terms of engagement to the client however if the client does not have capacity to enter into a contract and there is no other suitably appointed person to contract on the patient's behalf, the solicitor is placed in a very difficult position. Clarification is required in either the final Bill or the Code of Practice in relation to this situation.

Wills

65. The Society requests confirmation whether the provisions of the Bill in relation to capacity will apply when a person is making a will. The Bill should make it clear that the common law presumption of capacity still applies in relation to the making of wills rather than being replaced by the definition of capacity in the Bill.

66. The Society notes that part of understanding a decision is that the person must understand what happens if they do not do anything so the question must be answered as to whether a solicitor will also now be required to explain the intestacy rules to a client and also whether more information is required over and above the Banks v Goodfellow test?3

67. The Bill is also an opportunity for legislation on whether attorneys should see a donor's last will.

The Society notes the following differing viewpoints:

3 This states that the testator must (1) understand the nature of making a will and its effects (2) understand the extent of property of which he is disposing and (3) be able to comprehend and appreciate the claims to which he ought to give effect and is not affected by any disorder of the mind that influences his will in disposing of his property.
(a) The Society of Trust and Estate Practitioners code on will writing in England and Wales says that it should not be disclosed.

(b) The OCP says that an attorney should not however act contrary to the will.

(c) Guidance from the Law Society of England and Wales states that specific authority should be obtained from the client to permit disclosure.

The view of the Society is that the attorney should be entitled to see a copy of the will once the donor has lost capacity unless there are specific instructions to the contrary from the testator.

68. Under Section 103 of the Mental Health (NI) Order 1986, if property which has been specifically bequeathed is sold by a Controller there is no ademption (i.e. that the property is no longer within the estate so that the gift would fall) so that the proceeds of sale can be tracked and the intentions of the testator given effect (as far as possible). The Society advocates including an equivalent provision with the Bill and also that the provision should be extended to attorneys (both under an EPA and a LPA) as well as Controllers.

Legal Aid

69. The Society notes that no Legal Aid Impact Assessment has been provided with the Bill and the Consultation Document. This will need to be reviewed and commented upon by the Society once it has been produced and the Society urges its completion and publication as soon as possible.
Enduring Power of Attorney

Prescribed Form

Part A: Explanatory Information

1. An enduring power of attorney enables you to choose a person (called an "attorney") to deal with your property and affairs, and will continue in the event of your becoming mentally incapable of managing your affairs. You may choose one attorney or more than one. If you choose more than one, you must decide whether they are to be able to act:

   • Jointly (that is, they must all act together and cannot act separately)
   or
   • Jointly and severally (that is, they can all act together but they can also act separately if they wish).

In Part B of this form, at the place marked 1, show what you have decided by cross out or omitting one of the alternatives.

2. If you give your attorney(s) general power in relation to all your property and affairs, it means that they will be able to deal with your money or property and may be able to sell your house.

3. If you do not want your attorney(s) to have such wide powers, you can include any restrictions you like. For example, you can include a restriction that your attorney(s) must not act on your behalf until they have reason to believe that you are becoming mentally incapable; or a restriction that your attorney(s) may not sell your house. Any restrictions you choose must be written or typed at the place marked 2 in Part B of this form.

4. Unless you put in a restriction preventing it your attorney(s) will be able to use any of your money or property to benefit themselves or other people by doing what you yourself might be expected to do to provide for their needs. Your attorney(s) will also be able to use your money to make gifts, but only for reasonable amounts in relation to the value of your money and property.

5. Your attorney(s) can recover the out-of-pocket expenses of acting as your attorney(s). If your attorney(s) are professional people, for example solicitors or accountants, they may be able to charge for their professional services as well.

6. If your attorney(s) have reason in the future to believe that you have become or are becoming mentally incapable of managing your affairs, your attorney(s) will have to apply to the High Court (Office of Care and Protection) for registration of this power. Once registered, an enduring power of attorney cannot be revoked (or cancelled) effectively unless the Court confirms the revocation.

7. Before applying to the Court for registration of this power, your attorney(s) must give written notice that that is what they are going to do, to you and your nearest relatives as defined in the Enduring Powers of Attorney (Northern Ireland) Order 1987. You or your relatives will be able to object if you or they disagree with registration.

8. This is a simplified explanation of what the Enduring Powers of Attorney (Northern Ireland) Order 1987 and the Rules and Regulations say. If you need any more guidance you or your advisers will need to look at the Order itself and the Rules and Regulations. The Rules are contained in the Rules of the Supreme Court (Northern Ireland) 1980, Order 109A (as inserted by S. R. 1989 No. 79). The Regulations are the Enduring Powers of Attorney Regulations (Northern Ireland) 1989 (S. R. 1989 No. 64).

9. Do not sign this form unless you understand what it means. If you are in any doubt you should obtain legal advice.

10. Note for attorney(s): after the power has been registered the attorney(s) should notify the High Court (Office of Care and Protection) if the donor dies or recovers.
Part B: [To be completed by the 'donor' (the person appointing the attorney(s))]

[Please read the notes in the margin]

Donor’s name and address

Donor’s date of birth

Attorney(s) name(s) and addresses

See note 1 in Part A of this form. If you are appointing only one attorney you should cross out everything between the square brackets.

Cross out the one which does not apply (see note 1 in Part A of this form).

Cross out the one which does not apply (see note 2 in Part A of this form).

If you do not want the attorney(s) to have general power, you must give details here of what authority you are giving the attorney(s).

[1.] • jointly
  • jointly and severally

to be my attorney[s] for the purpose of the Enduring Powers of Attorney (Northern Ireland) Order 1987.
  • with general authority to act on my behalf
  • with authority to do the following on my behalf:

in relation to
  • all my property and affairs
  • the following property and affairs

[Note - anything on this page within square brackets is for guidance only and may be retained, deleted or omitted as appropriate, except that you must make it clear whether one attorney or more than one attorney is being appointed, and if more than one, whether the attorneys are being appointed to act jointly or jointly and severally.]
[Part B: continued]

[Please read the notes in the margin]

Cont'd

[2.] subject to the following restrictions and conditions:

If there are restrictions or
conditions, insert them here; if not,
cross out these words (See note 3
in Part A of this form).

I intend that this power shall continue even if I become mentally
incapable.

I have read or have had read to me the notes in Part A which are part of,
and explain, this form.

Signed, sealed and
delivered by me ______________________________ (L.S.)
on ______________________________

In the presence of ______________________________

Full name of witness ______________________________

Address of witness ______________________________

[Note - anything on this page within square brackets is for guidance only and may be retained, deleted or omitted as appropriate.]
Part C: [To be completed by the Attorney(s)]

[This form may be adapted to provide for sealing by a trust corporation with its common seal.]

[If there are more than two attorneys attach an additional Part C.]

[Do not sign this form before the donor has signed Part B]

You must be at least 18 when you sign

Signature of attorney

Date

Signature of witness

Each attorney must sign the form and each signature must be witnessed. The donor may not be the witness and one attorney may not witness the signature of another.

[To be completed only if there is a second attorney]

You must be at least 18 when you sign

Signature of attorney

Date

Signature of witness

Each attorney must sign the form and each signature must be witnessed. The donor may not be the witness and one attorney may not witness the signature of another.

I understand that I have a duty to apply to the High Court for the registration of this form under the Enduring Powers of Attorney (Northern Ireland) Order 1987 when the donor is becoming or has become mentally incapable.

I also understand my limited power to use the donor's property to benefit persons other than the donor.

I am not a minor.

Signed, sealed and delivered by me ___________________________ (L.S.)

on ___________________________

In the presence of ___________________________

Full name of witness ___________________________

Address of witness ___________________________

____________________________

____________________________

I understand that I have a duty to apply to the High Court for the registration of this form under the Enduring Powers of Attorney (Northern Ireland) Order 1987 when the donor is becoming or has become mentally incapable.

I also understand my limited power to use the donor's property to benefit persons other than the donor.

I am not a minor.

Signed, sealed and delivered by me ___________________________ (L.S.)

on ___________________________

In the presence of ___________________________

Full name of witness ___________________________

Address of witness ___________________________

____________________________

____________________________

[Note - anything on this page within square brackets is for guidance only and may be retained, deleted or omitted as appropriate.]
Notice of intention to apply for registration of a Lasting Power of Attorney

This notice must be sent to everyone named by the donor in the Lasting Power of Attorney as a person who should be notified of an application to register. Relatives are not entitled to notice unless named in the Lasting Power of Attorney.

The application to register may be made by the donor or the attorney(s).

Where attorneys are appointed to act jointly** they all must apply to register.

Details of the person to be told**

Name

Address

Telephone no.

Postcode

To the person to be told - You have the right to object to the proposed registration of the Lasting Power of Attorney. You have three weeks from the day on which this notice is given to object. Details of how to object and the grounds for doing so are on the back page.

Details of the Lasting Power of Attorney (LPA)

Who is applying to register the LPA?  

☐ the donor  ☐ the attorney(s)

Which type of LPA is being registered?  

☐ Property and Financial Affairs  ☐ Health and Welfare

(You must complete separate applications for each LPA you wish to register.)

On what date did the donor sign the LPA?

Details of the donor

Full name

Address

Telephone no.

Postcode

© Crown copyright 2013
Details of the attorney(s)

Name of 1st attorney

Address

Telephone no.

Postcode

☐ solely ☐ jointly and severally**
☐ jointly ☐ jointly in some matters and jointly and severally in others

Name of 2nd attorney

Address

Telephone no.

Postcode

☐ jointly ☐ jointly and severally
☐ jointly in some matters and jointly and severally in others

Name of 3rd attorney

Address

Telephone no.

Postcode

☐ jointly ☐ jointly and severally
☐ jointly in some matters and jointly and severally in others

Name of 4th attorney

Address

Telephone no.

Postcode

☐ jointly ☐ jointly and severally
☐ jointly in some matters and jointly and severally in others
This notice must be signed by all parties applying to register the lasting power of attorney.

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Dated [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ]
How to object to the registering of a Lasting Power of Attorney (LPA)

You can ask the Office of the Public Guardian (OPG) to stop the LPA from being registered if one of the factual grounds at (A) below has occurred. You need to tell us by completing Form LPA007 which is available from the OPG and by providing evidence to accompany it. You must send us the completed LPA007 form within three weeks from the date this notice was given. Failure to tell us could result in the LPA being registered.

(A) Factual grounds – you can ask the Office of the Public Guardian to stop registration if:

- The Donor is bankrupt or interim bankrupt (for property and financial affairs LPAs only)
- The Attorney is bankrupt or interim bankrupt (for property and financial affairs LPAs only)
- The Attorney is a trust corporation and is wound up or dissolved (for property and financial affairs LPAs only)
- The Donor is dead
- The Attorney is dead
- That there has been dissolution or annulment of a marriage or civil partnership between the Donor and Attorney (except if the LPA provided that such an event should not affect the instrument)
- The Attorney(s) lack the capacity to be an attorney under the LPA
- The Attorney(s) have dismissed their appointment

Form LPA007 is available from the OPG on 0300 456 0300 or gov.uk/power-of-attorney

You have the right to object to the Court of Protection about the registration of the LPA, but only on the grounds mentioned at (B) below. To do this you must contact the Court and complete the application to object form they will send you. Using that form, you must set out your reasons for objecting. They must receive the objection within three weeks from the date this notice was given. You must also notify the OPG when you object to the Court by using the separate form LPA008 that is available to download from www.justice.gov.uk/global/forms/opg/lasting-power-of-attorney/index.htm. Failure to notify the OPG of an objection may result in registration of the LPA.

Note: if you are objecting to the appointment of a specific attorney, it may not prevent registration if other attorneys or a substitute attorney have been appointed.

(B) Prescribed grounds -- you can only object to the Court of Protection against registration of the LPA on the following grounds:

- That the power purported to be created by the instrument* is not valid as a LPA, e.g. the person objecting does not believe the donor had capacity to make an LPA.
- That the power created by the instrument no longer exists e.g. the donor revoked it at a time the donor had capacity to do so.
- That fraud or undue pressure was used to induce the donor to make the power.
- The attorney proposes to behave in a way that would contravene his authority or would not be in the donor's best interests.

Note:

* The instrument means the LPA made by the donor.

** Some of the terms used in the 2007 version of the LPA forms are different to those used in this form and in the LPA002.

'Together' means the same as 'Jointly', 'Independently' means the same as 'Severally'.

'Named person' means the same as 'Person to be told'.

The Court will only consider objections made if they are made on the above grounds. To obtain a Court objection form please contact the Court of Protection at Thomas More Building, Strand, London WC2A 2LL or Telephone 0300 456 4590.
Application to register a Lasting Power of Attorney

Part 1 - The donor

Place a cross (x) against one option

Mr.  Mrs.  Ms.  Miss  Other

If other, please specify

Last name

First name

Middle name

Address 1

Address 2

Address 3

Town/City

County

Postcode

Daytime

Tel. no.

Date of birth

If the exact date is unknown please state the year of birth

e-mail address

Please do not write below this line - For office use only

Return your completed form to:
Office of the Public Guardian
PO Box 16185
Birmingham
B2 2WH
Part 2 - The persons making the application

Note: We need to know who is applying and how the attorney(s) have been appointed, please answer the questions in parts two and three carefully.

Place a cross (x) against one option

Is the donor applying to register the Lasting Power of Attorney?  
[ ] Yes

Is the attorney(s) applying to register the Lasting Power of Attorney?  
[ ] Yes

Part 3 - How have the attorney(s) been appointed?

The LPA states whether the attorney is to act solely, jointly or jointly and severally

Place a cross (x) against one option

There is only one attorney appointed  
[ ]

There are attorneys appointed jointly and severally  
[ ]

There are attorneys appointed jointly  
[ ]

There are attorneys appointed jointly in some matters and jointly and severally in others  
[ ]

Note: We need to know which, if any of the attorney(s) are making this application to register the LPA. You can tell us this by putting a cross in the box at the start of each attorney(s) details in Part 4.
### Part 4 - Attorney one

Place a cross (x) in this box if attorney one is applying to register [ ]

Place a cross (x) against one option

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<th>Mr.</th>
<th>Mrs.</th>
<th>Ms.</th>
<th>Miss</th>
<th>Other</th>
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If other, please specify [ ]

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Place a cross (x) against one option that best describes your relationship to the donor

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<th>Civil partner / Spouse</th>
<th>Child</th>
<th>Solicitor</th>
<th>Other</th>
<th>Other professional</th>
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</table>

If 'Other' or 'Other professional', please specify [ ]
Part 4 - Attorney two

Place a cross (x) in this box if attorney two is applying to register

Place a cross (x) against one option

Mr. □ Mrs. □ Ms. □ Miss □ Other □

If other, please specify

Last name

First name

Middle name

Company name (if relevant)

Address 1

Address 2

Address 3

Town/City

County

Postcode

DX number

Date of birth

Daytime Tel. no.

Occupation

e-mail address

Place a cross (x) against one option that best describes your relationship to the donor

Civil partner / Spouse □ Child □ Solicitor □ Other □ Other professional □

If ‘Other’ or ‘Other professional’, please specify
Part 4 - Attorney three

Place a cross (x) in this box if attorney three is applying to register □

Place a cross (x) against one option

Mr. □ Mrs. □ Ms. □ Miss □ Other □

If other, please specify

Last name

First name

Middle name

Company name
(if relevant)

Address 1

Address 2

Address 3

Town/City

County

Postcode

DX number

Date of birth

Daytime Tel. no.

Occupation

e-mail address

Place a cross (x) against one option that best describes your relationship to the donor

Civil partner / Spouse □ Child □ Solicitor □ Other □ Other professional □

If 'Other' or 'Other professional', please specify

□
Part 4 - Attorney four

Place a cross (x) in this box if attorney four is applying to register

Place a cross (x) against one option

Mr.  Mrs.  Ms.  Miss  Other

If other, please specify

Last name

First name

Middle name

Company name (if relevant)

Address 1

Address 2

Address 3

Town/City

County

Postcode

Date of birth

Daytime Tel. no.

Occupation

e-mail address

Place a cross (x) against one option that best describes your relationship to the donor

Civil partner / Spouse  Child  Solicitor  Other  Other professional

If 'Other' or 'Other professional', please specify
Part 5 - Notification of people to be told

The donor or attorney(s) making the application must give notice to the people to be told nominated by the donor in the section of the LPA marked "About people to be told when the application to register this lasting power of attorney is made." The date on which the notice was given must be completed (which is the date it was posted or given to the person to be told). If the donor decided not to notify any people to be told, please place a cross in the box provided.

The donor did not specify any people to be told in the LPA

Place a cross (x) against one option

□ I □ We

have given notice to register in the prescribed form (LP001) to the following person(s):

Date notice given

D D M M Y Y Y Y

Last name

First name

Address 1

Address 2

Address 3

Town/City

County

Postcode
### Part 5 - continued

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Part 6 - Fees

Guidelines on fee exemption and remission can be obtained from the Office of the Public Guardian.

Do you wish to pay the fee by credit or debit card?  
☐ Yes  ☐ No

Have you enclosed a cheque for the application to register fee?  
☐ Yes  ☐ No

Do you wish to apply for exemption of the fee?  
☐ Yes  ☐ No

Do you wish to apply for remission of the fee?  
☐ Yes  ☐ No

If you wish to pay by credit or debit card, please provide your telephone number so an agent can call you to arrange payment when your application has been received. If you wish to apply for an exemption or remission of all or part of the fee, you must complete the separate application form available from the Office of the Public Guardian.

Part 7 - Type of power

☐ I  ☐ We

apply to register the LPA (the original of which accompanies this application) made by the donor under the provisions of the Mental Capacity Act 2005.

What type of Lasting Power of Attorney are you applying to register?

☐ Property and financial affairs  OR  ☐ Health and welfare

Date that the donor signed the Lasting Power of Attorney

☐  ☐  ☐  ☐  ☐  ☐  ☐

To your knowledge, has the donor made any other Enduring Powers of Attorney or Lasting Power of Attorney?  
☐ Yes  ☐ No

If Yes, please give details below including registration date if applicable

☐ ☐ ☐ ☐ ☐ ☐ ☐

☐ ☐ ☐ ☐ ☐ ☐ ☐

☐ ☐ ☐ ☐ ☐ ☐ ☐
Part 8 - Donor declaration

Note: This section should only be completed by the donor if they are applying for the registration of the Lasting Power of Attorney.

I apply to register the Lasting Power of Attorney (the original of which accompanies this application).

I certify that the above information is correct and that to the best of my knowledge and belief, I have completed the application in accordance with the provisions of the Mental Capacity Act 2005 and all statutory instruments made under it.

Signed

Date

Last name

First name

Part 9 - Attorney(s) declaration

Note: This section should only be completed by the attorney(s) if they are applying for the registration of the Lasting Power of Attorney.

☐ I ☐ We apply to register the Lasting Power of Attorney (the original of which accompanies this application).

☐ I ☐ We certify that the above information is correct to the best of my knowledge and belief.

☐ I ☐ We have completed the application within the provisions of the Mental Capacity Act 2005 and all statutory instruments made under it.

Signed

Date

Last name

First name

Signed

Date

Last name

First name

11
Part 9 - continued

Signed

Date

Last name

First name

Signed

Date

Last name

First name

Signed

Date

Last name

First name

Part 10 - Declaration by a trust corporation

If you are a trust corporation making this application please complete this declaration.

☐ I ☐ We
certify that the above information is correct and that to the best of my knowledge and belief, I have completed the application in accordance with the provisions of the Mental Capacity Act 2005 and all statutory instruments made under it.

Company name

Signature of authorised person(s)

Last name

First name

Company seal (If applicable)
Part 11 - Correspondence address

Place a cross (x) against one option

Mr. [ ] Mrs. [ ] Ms. [ ] Miss [ ] Other [ ]

If other, please specify

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<table>
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<table>
<thead>
<tr>
<th>e-mail address</th>
</tr>
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<tbody>
<tr>
<td></td>
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</tbody>
</table>
Part 12 - Additional information

Please write down any additional information to support this application in the space below. If necessary attach additional sheets.
Office of the Public Guardian

Application to register a Lasting Power of Attorney
Guidance Notes for completing the application form LPA002

Please complete the form LPA002 in BLOCK CAPITALS using a BLACK ballpoint pen, ensuring that all relevant sections are completed clearly. This will enable us to process the information quickly and accurately.

Please note the following information:

- Form LPA002 cannot be used for registration of an Enduring Power of Attorney.
- If you are registering more than one LPA you must complete a separate form LPA002 for each LPA you are registering.

Part 1 – The donor

Part one covers the information we need about the ‘donor’ of the Lasting Power of Attorney (LPA) to register it. The donor is the person who has appointed an attorney(s) to manage their property and financial affairs or health and welfare when first setting up the LPA.

To complete this, please:

- Complete the boxes requesting the donor’s date of birth, putting the day, month and year of birth. If you don’t know this, you should be able to find it in the LPA, in Part A under the Donor’s name and address. If the date of birth differs from the date stated on the LPA itself, please explain, if you are able, the difference in Part 12 of the form and provide a copy of the donor’s birth certificate as evidence.

- Fill in the box that relates to the donor’s title. If the correct title does not appear, please provide the one now used in the boxes provided to the right.

- Please Note: Write your full name in the order shown on the form LPA002, Last name, First name, Middle name.

- Where the donor is living in a hospital or care home, the name of this should be entered where it says ‘Address 1’.

- When completing the address lines, please ensure that the town or city appears where requested.

- Please Note: Include the donor’s postcode in the boxes provided after the address details.

- If the donor’s address on the LPA is different from the one that is shown on the application form, provide the original address in Part 12 of the form under any additional information and say that the address has changed.

Part 2 – The person(s) making the application

It is very important for the OPG to know who is applying to register the LPA. Part two of the form informs us who is applying to register the LPA. It may be the donor, the attorney(s) or some other person appointed to apply. The application can be made by the donor or the attorney(s).

- If you are the donor or representing the donor applying please place an X in the box next to the statement that says – ‘Is the donor applying to register the Lasting Power of Attorney?’.

- If you are an attorney or representing an attorney applying please place an X in the box next to the statement that says – ‘Is the attorney applying to register the Lasting Power of Attorney?’.

- If joint attorneys have been appointed they must make the application jointly.

- If attorneys have been appointed to act jointly and severally one or more may make the application.
Part 3 – How have the attorney(s) been appointed?

If more than one attorney has been appointed to act it is very important that we know how they have been appointed. Some of the terms used in the 2007 version of the LPA forms are different to those used below and in the LPA002 and LPA001.

‘Together’ means the same as ‘Jointly’; ‘Independently’ means the same as ‘Severally’.

Attorneys can be appointed to act:

- Jointly, which means that none of them can act independently (on their own); they must act together; or

- Jointly and severally, which means that they may all act together, or any of them can act independently (on their own); or

- Jointly in respect of some matters and jointly and severally in respect of others. For example, the donor may want both of their attorneys to act together in relation to the sale of their property but want them to act independently (on their own) when managing their bank accounts.

Please place an X in the appropriate box to indicate how the attorneys have been appointed to act.

If attorney’s have been appointed to act jointly (rather than jointly and severally) then the LPA cannot be used if one of the jointly acting attorneys:

- Dies;
- Disclaims his or her attorneyship, or refuses to act, or is unable to act; or
- Becomes bankrupt (for property and financial affairs LPAs).

Part 4 – The Attorney(s)

Part 4 of the form records the information we need about the attorney(s) the donor has appointed. We have allowed space to record the details of up to four attorneys, however if the donor has appointed more than four attorneys then please record the relevant details in Part 12 of the form.

Please Note: You will need to indicate by placing an X in the box provided if the attorney is making the application to register the LPA.

- If it is a professionally appointed attorney, please put the name of the company in the line where it says ‘Company Name’. The rest of the form should be completed as before;
- The boxes entitled ‘DX’ will usually only be used by solicitors;
- The attorney’s date of birth should be entered in the boxes provided, putting day, month and year;
- The attorney’s occupation and contact details including telephone numbers and e-mail address must be entered on the form in the boxes provided;
- It is very important to explain the relationship the attorney(s) have with the donor by ticking the box that best describes the relationship.

Part 5 – Notification of people to be told

This part of the form covers the details of those people the donor has requested be notified upon an application to register their LPA. These people were known as ‘named persons’ in the 2007 version of the LPA forms.

Please Note: You will need to specify if more than one person has given notice to the notifiable parties by placing an X in either the ‘I’ or ‘We’ boxes provided.

- Insert the name and address details in the spaces provided. If there is not enough room please provide the details in Part 12 of the form or attach an additional sheet to the end of this form clearly marking what it is;
- Please Note: Include the postcode in the separate boxes provided after the address details;
- Insert the actual date that the notice was sent to each person in the boxes marked ‘Date Notice Given’.
Part 6 – Fee Information
If you want to apply for exemption or remission of the application to register fee, you will need to mark the appropriate box. You will also need to complete the exemption or remission application form.

If you would like to pay by credit or debit card, please tick the relevant box and provide a contact number in the box below.

If the registration application form was provided to you by the OPG, our fee exemption and remission policy will have been sent to you. However, you can obtain a copy from our web site at www.gov.uk/power-of-attorney

Part 7 – The type of power
This form can be used to apply for registration of either a property and financial affairs LPA or a health and welfare LPA. Please indicate the type of LPA being registered and the date it was signed by the donor.

Please Note: You will need to specify if more than one person applying to register the LPA by placing an X in either the 'I' or 'We' boxes provided.

- Place an X in the box to denote which type of LPA is being applied for;
- Insert the date the donor signed the LPA;
- Please also indicate whether to your knowledge any other Lasting Powers of Attorney or Enduring Powers of Attorney have been made, if there has please give details in the box provided.

Part 8 – Declaration by the donor
This section only applies if the donor is making the application to register the LPA. It is for them to certify that their application complies with the provisions of the Mental Capacity Act 2005 and all the Rules and Regulations. Copies of these are available online.

- Insert the date the form has been signed in the box marked 'dated'.

Part 9 – Declaration by the attorney(s)
This section only applies if the attorney is making the application to register the LPA. It is for them to certify that their application complies with the provisions of the Mental Capacity Act 2005 and all the Rules and Regulations. Copies of these are available online.

- Each attorney applying must sign and date the form in the boxes provided.

We have allowed space for up to five attorneys to complete the declaration, however if there are more than five attorneys then please record the relevant details in Part 12 of the form.

Part 10 – Declaration by a trust corporation
This section only applies if a trust corporation is making the application to register the LPA. It is for them to certify that their application complies with the provisions of the Mental Capacity Act 2005 and all the Rules and Regulations. Copies of these are available online.

- The company seal may be placed in the box provided.

Please note: If the trust corporation does not have a seal then:-

- The company secretary and a Director must sign the declaration; or
- Two company directors must sign the declaration.
Part 11 – Correspondence address

Please Note: If this section is left blank, all correspondence will be sent to either the Donor if they are applying or to attorney one listed on the LPA002

This section of the form requests the address where all future correspondence during the registration process is to be sent. Please note that:

- You can give the address of someone who is not the applicant and this will be used for general correspondence, but the registered instrument must be sent to the applicant or their solicitor if acting.
- The DX details will usually only apply to solicitors;
- Telephone numbers and e-mail addresses should be completed where applicable.

This information is very important and care should be taken to ensure that it is completed with accuracy.

Part 12 – Additional information

This section is for any additional information required. For instance if there are more than four attorneys (see Part 4), then the details should be entered here.

If you need further help in completing the form, or you require further guidance on making a Lasting Power of Attorney, or taking on the role of Attorney, please phone 0300 456 0300.

Please return completed forms to:
Office of the Public Guardian
PO Box 16185
Birmingham
B2 2WH

www.gov.uk/power-of-attorney
How to register your lasting power of attorney
How to register your lasting power of attorney

Registering your LPA

An LPA can be registered – by the donor or their attorney(s) – at any time after it has been made. But it cannot be used until it has been registered by the OPG. (Where a replacement attorney has replaced the attorney in an unregistered lasting power of attorney, they can also register it.)

Registering the LPA soon after it is made means that it will be ready to be used by your attorney(s) when needed.

The longer the LPA is kept after making it and before registering it, the more likely you or your attorney(s) will need to keep its contents up to date (addresses, contact details, etc.). During this period, your made LPA cannot be amended. If your circumstances change, or your LPA is no longer relevant for some reason, you must complete a fresh LPA form.

To register the LPA the person who is making the application:

- First: informs each of the people to be told (if there are any) of their intention to register the LPA (by filling-in and sending to each one a copy of form LPA001 – 5 copies are included in your LPA creation pack). This informs them that the LPA is being registered and that they have three weeks to raise any concerns.

- Then: fills in form LPA002 ‘Application to register a Lasting Power of Attorney’ – also included in your LPA creation pack with separate 4-page guidance notes – and sends this with your completed LPA form to the OPG.

The OPG will check your LPA and application to register form, and contact the applicant if there are any problems.

Assuming there are no problems with the LPA and nobody raises concerns, the OPG will register four weeks after sending the notices to the donor or attorney.

Guidance for people who want to register a lasting power of attorney

Need help? 0300 456 0300 gov.uk/power-of-attorney page 3 of 11
Form LPA001: Notice of intention to apply for registration of a Lasting Power of Attorney

In summary
The applicant fills in one of these forms for each person to be told (if any), and sends them to the address for each person in your LPA.

The detail
Read all 4 pages of this form as it explains how your people to be told should make any objections (the other two pages of the form are shown on the next page).

If it is not possible to establish contact with any of the people to be told, you must keep proof of posting slips, or returned-to-sender evidence, to demonstrate that you have made reasonable efforts.

Completion tips
'Details of the person to be told': fill in here the details of your person to be told. 2007 versions of the LPA form use the term 'Named people'.

Details of the donor = the person who made the lasting power of attorney.

To avoid rejection of your LPA when applying to register ...

If you are applying to register both types of LPA and have the same people to be told in both, you must send one of these forms for each of your LPAs. The person to be told will receive two forms as your applications are treated separately.
LPA001: completed examples

Example: completed LPA001

Guidance for people who want to register a lasting power of attorney

Need help? 0300 458 0300  gov.uk/power-of-attorney  page 5 of 11
Form LPA002: Guidance Notes for completing the application form LPA002

In summary
The applicant should
- read these LPA002 guidance notes which provide all the information required to fill in LPA002
- fill in LPA002
- send the completed LPA002 and make LPA form with your fee to the OPG.

1 To avoid rejection of your LPA when applying to register...

Remember to send:
- Your made LPA form.
- Your completed Application Form (LPA002).
- Your payment or signed application for a fee remission or exemption.

Completion tips
The address to send your application to is:
Office of the Public Guardian
PO Box 16166
Birmingham, B2 2WH

The detail:
If the attorney is making the application, the OPG will formally notify the donor. If the donor is making the application the OPG will notify the attorney(s). If one of the joint and several attorneys makes the application, the OPG will inform the donor and the other attorney(s). It is therefore a good idea to discuss the application to register the LPA with the donor or attorney beforehand.

If the original LPA form is missing, it may be possible to accept a copy certified by the donor or by the solicitor who originally prepared it. In general, only the original LPA is acceptable.

For information about how much it costs to register the LPA, see OPG fees guidance.

If you need to act on a donor's behalf before the LPA is registered, you cannot use the unregistered LPA. If you need to make an urgent decision, you can apply to the Court of Protection (a fee is payable for this).

You are advised to register your LPA as soon as you have completed the LPA form.
LPA002: completed examples

Example: completed LPA002 (pages 1–3)

Guidance for people who want to register a lasting power of attorney

Need help? 0300 456 0300 - gov.uk/power-of-attorney  page 7 of 11
## Example: completed LPA002 (continued), pages 4–6

**Part 4 - Attorney two**

<table>
<thead>
<tr>
<th>Last name</th>
<th>First name</th>
<th>Middle name</th>
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<th>Address 2</th>
<th>Address 3</th>
<th>Authority</th>
<th>County</th>
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</thead>
<tbody>
<tr>
<td>Davis</td>
<td>John</td>
<td>Smith</td>
<td>123 Main St</td>
<td>456 Park Ave</td>
<td>789 Oak Rd</td>
<td>Strength of Attorney</td>
<td>County</td>
</tr>
</tbody>
</table>

**Part 4 - Attorney three**

<table>
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<th>Address 2</th>
<th>Address 3</th>
<th>Authority</th>
<th>County</th>
</tr>
</thead>
<tbody>
<tr>
<td>Martin</td>
<td>Jane</td>
<td>doe</td>
<td>101 Elm St</td>
<td>202 Willow Ave</td>
<td>303 Rose Rd</td>
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</tr>
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</table>

**Part 4 - Attorney four**

<table>
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<th>Address 3</th>
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<tbody>
<tr>
<td>Johnson</td>
<td>Lisa</td>
<td>Lee</td>
<td>444 Cedar St</td>
<td>555 Maple Ave</td>
<td>666 Pine Rd</td>
<td>Authority</td>
<td>County</td>
</tr>
</tbody>
</table>
**Example: completed LPA002 (continued), pages 7-9**

**Part 5 - Notification of people to be told**

- The person named(s) above may need to be told about the lasting power of attorney when the nominated people need to make decisions on your behalf. The details in this section confirm who has been notified and how they have been notified.

**Date noted**

- [Day month year]

<table>
<thead>
<tr>
<th>Name</th>
<th>Address 1</th>
<th>Address 2</th>
<th>Address 3</th>
<th>Town/City</th>
<th>County</th>
<th>Postcode</th>
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<tr>
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<td>[County]</td>
<td>[Postcode]</td>
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</table>

**Part 6 - Completed**

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<th>Address 2</th>
<th>Address 3</th>
<th>Town/City</th>
<th>County</th>
<th>Postcode</th>
</tr>
</thead>
<tbody>
<tr>
<td>[Day month year]</td>
<td></td>
<td></td>
<td>[Name]</td>
<td>[Name]</td>
<td>[Address]</td>
<td>[Address]</td>
<td>[Address]</td>
<td>[Town/City]</td>
<td>[County]</td>
<td>[Postcode]</td>
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</tbody>
</table>

**Part 6 - continued**

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<th>Other details</th>
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<th>First name</th>
<th>Address 1</th>
<th>Address 2</th>
<th>Address 3</th>
<th>Town/City</th>
<th>County</th>
<th>Postcode</th>
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<td>[Day month year]</td>
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<td>[Name]</td>
<td>[Name]</td>
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<td>[Address]</td>
<td>[Address]</td>
<td>[Town/City]</td>
<td>[County]</td>
<td>[Postcode]</td>
</tr>
</tbody>
</table>
**LPA002: completed examples**

*Example: completed LPA002 (continued), pages 13 & 14*

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**Part 11 - Correspondence address**

Please note: If this section is left blank, all correspondence will be sent to either the Donor if they are applying or to attorney one listed on the LPA002.

**Contact details**

Office of the Public Guardian
PO Box 16185, Birmingham B32 2WJ
Telephone: 0300 456 0300
(from outside the UK +300 456 0300)
Fax: 0870 739 5780
Email: customerservices@publicguardian.gsi.gov.uk
Online: gov.uk/power-of-attorney
DX: 744240 Birmingham 79
Textphone: 0115 9342778
Guidance for people who want to make a lasting power of attorney for property and financial affairs

Read this guidance book first!
If after reading this guidance, you have further questions, please make a list, then give us a call.

Helpline
0300 456 0300
gov.uk/power-of-attorney
Contents of this guidance

Chapter 1:
Lasting power of attorney – do you want one? – page 3

Chapter 2:
The LPA process – page 6

Chapter 3:
How to make your lasting power of attorney – the person who is giving the lasting power of attorney, the donor / part A – page 9

Chapter 4:
How to make your lasting power of attorney – certificate provider(s)/part B – page 29

Chapter 5:
How to make your lasting power of attorney – attorney(s)/part C – page 34

Chapter 6:
Frequently asked questions, contact details, checklist – page 39

Guidance for people who want to make a lasting power of attorney for property and financial affairs

Need help? 0300 456 0300 gov.uk/power-of-attorney
Chapter 1
Lasting power of attorney: do you want one?

Do you want a lasting power of attorney?
What is a lasting power of attorney?

A lasting power of attorney is a legal document that allows someone to choose other people who they want to make decisions on their behalf including when they lack mental capacity to make the decision themselves.

It is "completed" while the person still has capacity. It cannot be used before it has been registered with the Office of the Public Guardian. It can be used immediately after registration unless the person making the LPA has included a restriction that means that it cannot be used until they have lost capacity.

The person making the lasting power of attorney is legally referred to as the 'donor'. (Throughout this guidance, we use 'you' or 'the donor'. In the lasting power of attorney form we use 'you', and 'the person giving this lasting power of attorney'.)

The people (or trust corporation) chosen to make decisions on your behalf are your 'attorneys'.

The lasting power of attorney is generally referred to as an LPA throughout the rest of this guidance.

There are two types of LPA:

- Property and financial affairs (allowing an attorney to make decisions about paying bills, dealing with the bank, collecting benefits, selling your house, etc.)
- Health and welfare (allowing decisions on treatment, care, medication, where you live, etc.)

This guidance covers property and financial affairs LPA only.

Many people make two LPAs. If you want to make a health and welfare LPA you need to obtain a separate creation pack from direct.gov.uk/paregistration or by contacting the Office of the Public Guardian. (The two types of LPA, and the process in which they are made and registered, are identical in most respects – but there are some fundamental differences between the LPA forms.)

An LPA can only be made by filling in the special 'lasting power of attorney form' (included in your LPA creation pack, downloadable from www.gov.uk/government/publications/make-a-lasting-power-of-attorney, or available from local stations). The form is designed so that anyone can fill it in. Once completed it becomes a powerful legal document so you might want to obtain legal advice.

The role of the Office of the Public Guardian

The Office of the Public Guardian (OPG) is part of the Ministry of Justice. The OPG manages the registration process of LPAs and they maintain a register of them all.

The OPG produces all the guidance and supporting materials to help people make and register an LPA. It also deals with any complaints, and concerns raised if, for example, someone feels that an attorney is acting wrongly.
Chapter 1: Lasting power of attorney: do you want one?

Who can make a lasting power of attorney
Anyone aged 18 or over can make an LPA. You must make it as an individual – two or more people cannot make a joint LPA. You can have help in writing it, but another person cannot make an LPA for you. Anyone making an LPA needs to have mental capacity when they make it.

From a legal perspective a property and financial affairs LPA covers people with assets in England and Wales. An LPA made here may not be usable in any other country (including Scotland and Northern Ireland). If you have property abroad, or you move abroad, you should obtain legal advice.

If you are habitually resident outside of England and Wales but you would like the law of England and Wales to apply, you should state this in the conditions box on Page 6 of the LPA form. You may wish to seek legal advice if you think residence may be an issue.

The benefits of making a lasting power of attorney
An LPA allows you to plan in advance
• the decisions you want to be made on your behalf if/when you lose capacity to make them yourself
• the people you want to make these decisions
• how you want the people to make these decisions.

Having an LPA is a safe way of maintaining control over decisions made for you because:
• It has to be registered with the OPG before it can be used (if someone else tries to register it and your attorney(s) will be able to make an objection).
• You choose someone to provide a ‘certificate’ confirming that you understand the significance and purpose of it.
• You can choose ‘people to be told’ about your LPA when it is registered (so that they have an opportunity to raise concerns).
• Your signature, and the signatures of your chosen attorneys must be witnessed.
• From a legal perspective, your attorney(s) must follow the Code of Practice of the Mental Capacity Act 2005 – if they don’t always act in your best interests the OPG can step in, and your attorney(s) may be held accountable.
• The OPG provides helpful support and advice.

Deciding if you want to make and register a lasting power of attorney
If you lose mental capacity at some point – for whatever reason – if you haven’t completed an LPA, other people may need to apply to the Court of Protection to be able to make any decision on your behalf. This can be costly, and can be demanding and stressful for your relatives, friends and carers.

A registered property and financial affairs LPA lets the people you choose make decisions about, for example:
• Buying and selling your property
• Opening, closing, and operating bank/building society accounts
• Claiming, receiving and using your benefits, pensions, and allowances.

(For further information about the decisions, and how you can make restrictions on the decisions, see pages 22-23.)

By choosing who you want to make decisions for you, having an LPA puts you in control of decisions eventually being made on your behalf.

Once a property and financial affairs LPA has been registered, your attorneys can start to make decisions for you – both when you have mental capacity and when you lack mental capacity. If you don’t want your attorney(s) to act until you lack capacity, you can put a restriction in your LPA (see page 22).
Chapter 2
The LPA process

The process of making a lasting power of attorney
The LPA process

In summary
There are 4 key steps to the LPA process, in this order:

1. Choose your attorney(s) and all the other people you need to be involved in your LPA, and think about how you want your attorney(s) to make decisions on your behalf.
2. Complete your LPA form.
3. Keep your LPA until you (or your attorney) need to use it. During this period it cannot be used — and you continue to make decisions yourself.
4. Register your LPA with the OPG so that people can raise any concerns, and so that it can then be used.

Your LPA is only usable — and your attorney(s) able to make decisions on your behalf — once it has been registered. It is usually best to register your LPA as soon as you have completed the LPA form.

It costs nothing to decide, complete and keep an LPA (unless you seek legal advice). You only have to pay a fee to register it.

We recommend that you register your LPA early

We recommend you register your LPA early so that any problems can be resolved and your LPA can be used as soon as it is required.

Your attorneys can act on your behalf as soon as it is registered if you want them to be able to make decisions even whilst you have mental capacity.

If you keep your LPA and delay registration...

If you keep your LPA until you lose capacity, it may by that time contain errors that could prevent it being registered, or the information in it may have become out of date. If your LPA is rejected, you will not be able to make another one.

There are also occasions when errors cannot be corrected even where you have not yet lost capacity. For example, where there is an error in either Part B or Part C of the LPA form we would normally send out a new Part B or Part C for completion. The registration does not allow a significant delay between completion of each part of the form and therefore we may have to reject the whole form if there has been a significant delay since the original was signed.

Registration takes at least four weeks. If you need your LPA to be used urgently, it cannot be used during the four week period. If your attorney needs to make decisions urgently, they will have to apply for a Court order.

You do not need to pay a fee until you make an application to register your LPA.

After registration you do not need to inform the OPG every time there is a change of address (or name) of any of the people in your LPA.
The documents required – all in your creation pack

To complete your LPA, use:
- the information sheet
- the LPA form and
- the LPA form continuation sheets.

Guidance on using these is covered in Chapters 3 to 5.

To register your LPA, use:
- Form LPA001 ‘Notice of intention to apply for registration’ Form
- LPA002 ‘Application to register a Lasting Power of Attorney’.

See ‘Guidance on registering an LPA’ in the creation pack.

Read the information sheet

You complete LPA form part A

Your certificate provider(s) complete LPA form part B

Each attorney completes a copy of LPA form part C

You or your attorney(s) register to make your LPA usable.

You are advised to include all the pages from your completed LPA form. This includes the cover sheet which asks you about how many attorneys and replacement attorneys you are appointing and the second page which starts with ‘Information you must read’.

If you change your mind about the contents of your LPA after it has been registered, you can revoke it if you have the capacity to do so. You should also contact the OPG for information on how to get the LPA removed from the register.
Chapter 3
How to make your lasting power of attorney
the person who is giving the lasting power of attorney: the donor / part A
The detail: continuation sheets

The lasting power of attorney form comes with continuation sheets which allow you to provide information in a way that will help the registration process.

Your completed lasting power of attorney must be made up of your completed form and any completed continuation sheets — you should not provide additional information on any pieces of paper other than the sheets provided (or copies of them).

Continuation sheet A1 allows you to nominate more attorneys, replacement attorneys, or people to be told.

You can:
- fill in any number of people on this sheet (bearing in mind that you cannot have more than five people to be told)
- attach as many sheets as you need.

Continuation sheet A2 allows you to provide more information about how you want your attorneys to make decisions on your behalf. You can:
- provide as much additional information as you like on this sheet
- attach as many sheets as you need.

Continuation sheet A3: PFA should only be used if you can sign or make a mark. If needed, only one copy of this sheet should be attached.

Continuation sheet B should only be used if you have no people to be told, and therefore need to nominate a second certificate provider. If needed, only one copy of this sheet should be attached.

Continuation sheet C should only be used if you are appointing a trust corporation as an attorney or replacement attorney. If needed, only one copy of this sheet should be attached.
Chapter 3: How to make your lasting power of attorney: the donor/part A

About page 1

In summary

This is page one of the three part form you use to make your LPA.

This guidance document is the 'relevant guidance' referred to here.

Completion tips

Don't fill in the checklist until you have finished filling in the form and completed your LPA. It summarises all the people involved in your LPA and allows you to note how many continuation sheets (if any) your LPA has.

Registration of LPAs is not dependent on completion of this checklist, but it is a useful check that you have filled in your LPA form correctly. It also reduces potential fraud (by making it harder for someone to amend any pages of your LPA).
In summary

Because the LPA form is a powerful legal document, some key aspects of the Mental Capacity Act 2005 must be read by everyone involved in making an LPA. (Alternatively the information can be read to you.)

After reading this page, if you feel unsure about any aspect of making your LPA, you are advised to read this guidance booklet throughout—it should provide answers to most questions you may have. If you still feel unsure,

- obtain legal advice
- contact the DPG on 0300 456 0300.
About page 3

In summary
In section 1, fill in details about you (i.e., the person who is giving the lasting power of attorney, the ‘donor’), making sure you provide your usual address.

In section 2, fill in details of the person(s) you have chosen to make decisions for you (i.e., your attorney(s)) about your property and financial affairs.

To avoid rejection of your LPA when applying to register...

Make sure that you provide details of named individuals (i.e., not a title, like ‘Director of Social Services’, or the name of a firm of solicitors).

To avoid problems with your LPA when applying to register...

If you have only one attorney, make sure you cross through the second attorney.

You can have as many attorneys as you like. Supply their details on continuation sheet A1. If you are appointing more than two.

If you are appointing a trust corporation to be your only attorney, cross through the whole of section 2.

Make sure you have completed the date of birth field for each attorney or the appointment may be invalid.

The detail: choosing your attorney(s)

Being your attorney is an important role. You need to be sure that the person you choose knows you well enough to make decisions on your behalf that are in your best interests. You must be able to trust them.

You also need to make sure that the person is happy to take on the role. Get them to read Chapter 5 of this guide. They sign part C of your LPA form to confirm that they understand their role and responsibilities.

Once your LPA has been registered, the person will be able to make all decisions about your property and financial affairs on your behalf — unless you specify otherwise in your LPA form (see page 22 for how to make restrictions and conditions).

Your attorney(s) could be anyone aged 18 or over, for example:

- a family member
- a friend
- a professional (e.g., a solicitor)
- your spouse, partner, or civil partner.

If you choose your spouse or civil partner, bear in mind that if the relationship is legally ended, your LPA will become unusable unless you:

- include a condition in your LPA that they can continue to act as your attorney (see page 22)
- appoint a replacement attorney (see page 15)
- have appointed more than one attorney, and have indicated in section 4 that you would like them to act jointly and severally (see page 20).

Who you cannot choose to be your attorney

You cannot choose anyone who:

- is under the age of 18
- lacks mental capacity
- is an undischarged bankrupt.

If an attorney becomes bankrupt after your LPA has been registered, they will not be able to act and your LPA may be cancelled.
Page 3 completed examples

Example: appointing one attorney

Example: appointing three attorneys

Guidance for people who want to make a lasting power of attorney for property and financial affairs

Need help? 0300 456 0300  go.gov.uk/power-of-attorney

Page 14 of 43
In summary – trust corporations

In section 2A, if you are appointing a trust corporation as an attorney or replacement attorney, fill in its details. If you are not appointing a trust corporation, cross through this section.

### Completion tips

**Trust corporation**

- Only tick one box to indicate if you are appointing a trust corporation as attorney or replacement attorney.
- If you are appointing a trust corporation they need to complete continuation sheet C when your other attorney(s) complete part C (see page 35).
- If you are appointing a trust corporation to be your replacement attorney cross through the whole of section 3.

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The detail: a trust corporation

A trust corporation is an organisation – usually run by a commercial bank – that manages your funds (savings, pensions, investments, etc.) based on a set of objectives and criteria you approve with it.

You do not have to appoint a trust corporation as an attorney. However, if you decide to appoint a trust corporation do not appoint more than one, and you can only appoint them as either your attorney or replacement attorney (not both).

If you are appointing a trust corporation make sure you ask them for the exact name that they operate under.
The details choosing your replacement attorney(s)

At some point, your attorney(s) might not be able to make decisions for you. There are a lot of reasons why this could happen: for example, they could die, they could lack mental capacity themselves, or could just decide that they do not want to act for you any more.

Having at least one replacement attorney means that when this happens, your LPA will continue to be usable, because you have a replacement person to make decisions for you instead.

For example, if you choose your spouse to be your attorney, you might choose a son or daughter as your replacement attorney if your spouse dies.

When choosing replacement attorney(s), the same issues apply as for choosing your attorneys (see page 13). (So, in summary, you can choose anyone who is 18 or over and not bankrupt, and you need to be sure they understand their role and responsibilities, that they agree to being appointed, and get them to sign part C of your forms).

If you decide to appoint a replacement attorney, they will not make any decisions for you until they are needed to replace your attorney(s).

You cannot appoint a replacement attorney:

- to make decisions for you when your attorney is still able to act (for example, when on holiday, or unavailable for some reason)
- to take over from another replacement attorney.

Once you have signed and dated your LPA you cannot make any amendments – this includes adding or changing replacement attorneys.

Once your LPA has been registered, someone will need to inform the OPG if a replacement is to act. They will ask you to return the LPA, attach a note, update the LPA register, and send it back to you.
Example: appointing one replacement attorney

Example: appointing two replacement attorneys
Completion tips

About filling in completion sheets

Fill in as many additional people as you like on continuation sheet A1 — you don’t need a fresh sheet for each one.

Make sure it is clear what role you have chosen each person for.

To avoid rejection of your LPA when applying to register...

Continuation sheets can only be used for one LPA. If you are making two LPAs you must use separate copies of the continuation sheet(s).

Make sure each continuation sheet clearly states the person whose LPA it belongs with.

Your signature and date on all your A1 continuation sheets must be the same as your signature and date at the end of part A.

If the form is not signed or not dated it will be treated as invalid.
In the event that one of your attorneys becomes unable to act and in the absence of any direction from you on the order in which your replacement attorneys should act, they will all be able to start acting. The order in which you list the replacements is not a sufficient indication that you intend them to act in that order.

The detail: how you want your attorneys to make decisions on your behalf

This will depend on how many attorneys and replacement attorneys you are appointing, how happy you are for individuals to make decisions, the individuals themselves, and how quickly you might need them to make decisions, for example.

Jointly

Choosing this option means that all your attorneys must always make all decisions together. If one of your attorneys does not agree with something, that decision cannot be made on your behalf.

You might choose this option, for example, if you want to be sure that your attorneys are in agreement about every decision. However, bear in mind that:

- getting agreement of all your attorneys could take extra time, and delay otherwise straightforward decisions that could (or may need to) be taken very quickly even if there is no disagreement
- if your attorneys cannot work together, your LPA may be cancelled
- if one of your attorneys dies or can no longer act, your LPA will be cancelled unless a replacement attorney has been appointed. In such a case the surviving original attorney(s) can no longer act and the replacement attorney will step in and act alone.

For example, if you appoint your spouse and child as your original attorneys and your grandchildren as the replacements, you could say that your grandchildren are to replace the first original attorney who is unable to act or they are to step in only when both original attorneys are unable to act.
Jointly and severally

Choosing this option means that all your attorneys can act together or independently for all decisions. So, any one of your attorneys can make any decision on your behalf.

You might choose this option if, for example:

- one of your attorneys is closely involved in your financial affairs, and you trust them to make your decisions on their own
- one of your attorneys is frequently unavailable (working abroad, for example)
- you want to ensure that your LPA continues to be workable if one of your attorneys dies.

Many people find this option works best for them.

Jointly for some decisions, and jointly and severally for other decisions

Choosing this option means that your attorneys can make some decisions independently. But for other decisions they must all be in agreement.

You might choose this option if, for example, you want your attorneys to:

- make day-to-day decisions – like paying regular nursing home fees – on their own
- be in agreement when making more significant decisions – like selling your house.

If you choose this option, you need to list all the decisions that can be made

- jointly
- jointly and severally

Note that you cannot allocate a particular decision to a specific attorney. For example you cannot say that any decisions about selling your property must only be made by your first attorney.

Bear in mind that if one of your attorneys dies (or can no longer act on your behalf), the other attorney will not be able to make the decisions you have specified to be taken jointly. In this situation it is advisable to have a replacement attorney. The surviving original attorney(s) may act with the replacement attorney in making decisions which may be taken jointly and severally, but cannot continue to make decisions which were to be taken jointly. The replacement attorney will make those decisions.
Page 5 completed examples

Example: choosing attorneys to act jointly for some decisions, and jointly and severally for other decisions

My attorney must act jointly in relation to decisions about selling my house, and may act jointly and severally for everything else.

My attorney must act jointly in relation to decisions about investments, and may act jointly and severally for everything else.

Guidance for people who want to make a lasting power of attorney for property and financial affairs
About page 6

In summary

In section 6, fill in details about any restrictions or conditions which your attorneys must follow when they make decisions for you, making sure they will work in practice.

In section 6, fill in details of any guidance you want your attorneys to take into account when they make decisions for you.

Restrictions and conditions are legally binding and must be followed. Guidance is not binding.

In section 7, fill in details about what payment you have agreed that should be made to your attorneys for the decision-making they do on your behalf.

To avoid rejection of your LPA when applying to register...

Make sure that you explain restrictions and conditions clearly and in such a way that banks and building societies for example can easily follow them without confusion.

If your LPA contains a restriction that will not work in practice, it may not be registered – and may result in a delay in the time taken for your LPA to be usable. (This can also lead to additional costs.)

If you are in any doubt about this, you are advised to seek professional advice.

Restrictions and conditions that will not work in practice include making gifts that are wider than the gifts allowed under the statutory gift making power. You can see many examples of invalid restrictions by looking at the ‘Orders made by the Court of Protection’ pages on the Justice.gov.uk website. The most common example is stating that a specific decision can only be made by all attorneys when you have appointed them to act Jointly and Severally.

The detail: restrictions and conditions

If you leave this box blank, or cross through it, once your LPA has been registered, your attorney(s) will be able to make all decisions about your property and financial affairs on your behalf.

Filling in this box gives you the opportunity to specify:

• procedures they must follow (keeping and submitting annual accounts to an accountant or friend, or continuing to make charitable donations, for example)
• advice they must seek (obtaining professional financial advice before making any investments, for example)

An example of a typical, useful, restriction, would be one which states that your LPA cannot be used after being registered until you lack mental capacity.

Bear in mind that any restrictions and conditions which you fill in here are binding – your attorneys must follow them.
If you do not want to impose any restrictions, provide guidance, or make payment to your attorneys, make sure you cross through each box.

A requirement that cannot be incorporated as a restriction can often be achieved as guidance. For example, if you have 3 attorneys acting jointly and severally, you cannot include a 'restriction and condition' that two of them must act jointly in relation to decisions about selling your house. It is possible, however, to state in the 'guidance for your attorneys' that you wish them to work together for transactions of this kind.

You can list as many restrictions, guidance notes, and payment notes as you like — if you run out of space use continuation sheet A2. (Bear in mind that making lots of restrictions and guidance could result in your LPA being impractical.)

The detail: guidance

Giving guidance about how you want your attorney(s)
to act is not binding. Filling in this box gives you the
opportunity to provide broader information that you would
like your attorney(s) to consider when making decisions
on your behalf. For example,

- your views on ethical investment
- minimum amounts you like to maintain in certain bank
  accounts
- your preferences for tax returns and tax claims
- how to deal with interest accrued
- who you would like your attorney(s) to consult.

Guidance is anything that you feel will help your
attorney(s) when making decisions in your best interests.
You cannot, however, give guidance about making gifts
that would be outside of the attorney's statutory powers.

The detail: payment

You should discuss and agree with your attorney(s)
before completing your LPA, whether they are to be
paid for acting on your behalf.

Your attorney(s) do not have to be paid. And you can, for
example, decide to pay each of your attorneys differently.

All attorneys can claim reasonable out-of-pocket
expenses that they incur whilst acting on your behalf.
Page 6 completed examples

Example: restrictions, guidance, and payment

Text not visible in the image
About page 7

In summary
Fill in details of the person(s) who you know well, and who you would like to be given the opportunity to raise any concerns before your LPA is registered.
If you do not want any people to be told at that time, cross through page 7 – the whole of section B.

To avoid rejection of your LPA when applying to register...
If you do not want any people to be told when your LPA is registered, you must have two certificate providers – one to complete part B and the second to complete continuation sheet B (for guidance on certificate providers see page 30).

It’s not essential, but it’s a good idea to mention who you have appointed as attorney(s) and as certificate provider, when you discuss your LPA with your people to be told – so that they may raise any concerns.

Make sure that you provide details of named individuals (i.e. not a title, like ‘Director of Social Services’, or the name of a firm of solicitors).

Completion tips
If you have only one person to be told, make sure you cross through the second one.
You can choose up to five people to be told. Supply their details on continuation sheet B1 if you are appointing more than two.
If contact details change for any of your people to be told after you have completed your LPA and before it is registered, do not make any changes to your LPA. This would make it invalid. Instead, record any changes on a separate sheet of paper, and keep this with your LPA.
Your people to be told could die, or move away – this is a good reason to register your LPA straightaway.

The detail: choosing your people to be told
To make sure that someone hasn’t put you under pressure to make your LPA you can choose up to five people to be told about it when an application is made to register it. This is an important safety aspect of your LPA.

When an application is made to register your LPA each of your people to be told are contacted by you or your attorney(s) using form LPA001. They are given three weeks (from the day on which the notice is given) to raise any concerns (for detailed information on this see this guidance, Chapter 6).

Your people to be told do not have to do anything when they receive your LPA001 notice form – but they have the opportunity to raise any concerns. It is therefore advisable to ask the individual if they are happy to take on this role before naming them here. It is also advisable that your people to be told are over the age of 18.

You can choose anyone who knows you well enough to be able to raise any concerns that they might have about your LPA. Let them know that you would like them to perform this role. So that they understand what they are being asked to do, get them to read Chapter 1 of this guidance. And if they are not happy to do this for you, choose someone else.

Your people to be told could (and will often) be:
• family members
• friends.

You cannot choose:
• your chosen attorney(s)
• your chosen replacement attorney(s)
Example: appointing one person to be told

Name: SHEILA DAVIES
Address: 63 LANDSCROFT ROAD, BATH, BA1 2FF

Other people to be told

Place your signature or seal here: John Williams
Date: 16/01/2023

Example: appointing five people to be told

Name 1: SHEILA DAVIES
Address: 63 LANDSCROFT ROAD, BATH, BA1 2FF

Name 2: ANDREW ROBERTS
Address: 19 VICTORIA ROAD, WREXHAM, LL11 2EE

Name 3: DANNY
Address: 87 PLEASANCE ROAD, NEWCASTLE, NE12 9TT

Name 4: JENNY
Address: 56 LANDSCROFT ROAD, BATH, BA1 3FF

Name 5: JOHN WILLIAMS
Address: 19 VICTORIA ROAD, WREXHAM, LL11 2EE

Other people to be told

Place your signature or seal here: John Williams
Date: 16/01/2023

Guidance for people who want to make a lasting power of attorney for property and financial affairs

Need help? 0300 456 0030 gov.uk/power-of-attorney
In summary
After you have completed pages 3 to 7 (i.e. part A) of your LPA, read the declaration on page 8. If you are then happy with the contents of your LPA, choose someone to act as a witness.
You and your witness then sign and date section 9. You must do this before your certificate provider signs part B and your attorneys sign part C.

Completion tips
If you are not able to sign or make a mark, choose another person to sign on your behalf, and use continuation sheet A3.PFA, crossing through the whole of page 8.
The phrase ‘signed (or marked) by the person giving this lasting power of attorney and delivered as a deed’ is a legal phrase that gives legal formality to your LPA.

To avoid rejection of your LPA when applying to register ... Make sure your witnesses write their name and address clearly and legibly.
Your chosen attorney(s) or replacement attorney(s) cannot act as a witness to your signature.

Completion tips
You do not need to cross through anything here.
The detail: being a witness
Your witness is someone who signs your LPA to confirm that they witnessed you signing and dating it. This is an important safety aspect of your LPA.
The same person could witness both your signature to part A (here), and your attorney(s) signature(s) to part C (see page 35). If you have two separate witnesses, one for part A and one for part C, each witness must see the relevant person sign and date that part of the form.
Chapter 3: How to make your lasting power of attorney: the donor / part A

Page 8 completed examples

Example: part A signed, dated, and witnessed

Example: part A signed, dated and witnessed on behalf of someone who cannot sign or make a mark

Completion tips

Fill in your name - the donor - the person giving the LPA.
To avoid rejection of your LPA when applying to register...

Part B (and part C) must be kept with all the other pages of your LPA: without them your LPA cannot be registered. The LPA could also be rejected if there is a significant time delay between completion of Part A and completion of Part B.

You cannot choose anyone who is listed here to be your certificate provider. If your chosen certificate provider knows you personally, you need to ensure they tell us in what capacity they know you. It is not sufficient just to state how long they have known you.

Completion tips

Make sure you cross through the box that has not been completed on page 9.

Make sure your certificate provider completes both pages - 9 and 10.
About pages 9 and 10 (continued)

Guidance for certificate provider:

Being a certificate provider is an important role. In


carrying out the role in a professional capacity, you should


have no doubt about the person's identity.

You need to fully understand what the role involves before

agreed to take it on – and you can refuse to do it if you

do not feel able to confirm everything that you are being

asked to certify.

In completing Part B of the donor's LPA, you are

confirming that in your opinion the donor understands

• what an LPA is

• the contents of the LPA

• the powers they are giving to their attorney(s),

and that

• the donor is not being put under pressure, being tricked,

or being forced by someone else to make the LPA, or

nothing else exists that would prevent the donor's LPA

being created.

To establish the donor's capacity and understanding, here

are some suggested topics to discuss:

• What is your understanding of what an LPA is?

• What are your reasons for making an LPA?

• Why have you chosen me to be your certificate

provider?

• Who have you chosen to be your attorneys?

• Why them?

• What powers are you giving them?

• In what circumstances should the power be used by

your attorneys?

• What types of decision would you like them to make, and

what (if any) should they not take?

• If there are any restrictions in the LPA, what do you

believe they achieve?

• What is the difference between any restrictions and any

guidance made in the LPA?

• Have the chosen attorneys provided you with answers

to any of these questions?

• Do you have any reason to think they could be

untrustworthy?

• Do you know when you could cancel the LPA?

• Are there any other reasons why the LPA should

not be created?

It is advisable to keep a record of the questions and

answers in case someone challenges the donor's

capacity to make an LPA. You could be asked to explain

to the Court of Protection how you formed your opinion.

If you have any concerns about the donor's understanding,

or feel that they may be being put under pressure, do not

sign. You can discuss your concerns with the OPG.

If you are forming your opinion as someone who has

known the donor personally, personal knowledge of the

donor could include:

• I have been a neighbour for 5 years, and I have

frequently talked at length with the donor

• We attend the same congregation at church

every week

• I am a close friend who meets the donor in the pub

every fortnight. I've known him since 1962.

If you are forming your opinion as someone with relevant

professional skills, you should carefully consider whether

you have the relevant professional skills to carry out the

role.

You are asked to form your opinion at the point in time

that the donor signs Part A of their form. You will not

subsequently be responsible if the donor loses their

capacity.
Example: certificate provider with personal knowledge of the donor

I, [Name of Certificate Provider], certify that I have personal knowledge of [Donor's Name], the donor of the power of attorney, and that I have personally known the donor for a period of not less than [specified period].

[Signature of Certificate Provider]

[Date]

[Address]

[Telephone]

[Email]

[Note: The certificate provider should be an individual with personal knowledge of the donor and should certify that the donor is of sound mind and capacity to make the decision to appoint a power of attorney. The certificate should be signed and dated, and the certificate provider's contact details should be provided.]
Example: second certificate provider, a different person with relevant professional skills

Guidance for people who want to make a lasting power of attorney for property and financial affairs
Chapter 5
How to make your lasting power of attorney – attorneys/part C
About page 11

In summary
After reading the completed Part A your Attorney reads part C and then signs and dates it. If you have more than one attorney then every attorney must read part C and then each must sign and date an individual copy of Part C.
A witness then signs.
If you have appointed a trust corporation to act as either your attorney or replacement attorney, those who are authorised to sign on behalf of the trust corporation should fill in, sign, and date continuation sheet C.

To avoid rejection of your LPA when applying to register ...
If the date on any attorney declaration is earlier than the date of your signature in Part A of your certificate provider's in part B, your LPA will be rejected. It will also be rejected if there has been a significant delay between the completion of Part B and the completion of Part C. It is therefore advisable to complete Part C as soon as possible after completing Part B.
Part C (and part B) must be kept with all the other pages of your LPA: without them your LPA cannot be registered.

Completion tips
Make sure you have a copy of part C (page 11) for each of your chosen attorneys and replacement attorneys.
Make sure you use the correct Part C if you need to include additional copies. The Health and Welfare Part C is different to the Property and Financial Affairs Part C.
(These copies do not count as continuation sheets to your LPA.)
Make sure each attorney fills in their full name and makes it clear whether they are an attorney or replacement attorney.

The detail: being an attorney
Being an attorney is an important role. You need to fully understand what it involves before agreeing to take on the role – and you can refuse to do it if you feel uncomfortable about it. The donor should discuss their LPA with you.
Attorneys can not use the LPA and start making decisions until it has been registered. The donor or an attorney can apply to register the LPA any time after it has been made.
Even if the donor has the capacity to make decisions themselves, the LPA, once registered, allows you to make decisions on their behalf – unless the donor has included a condition stating that you can only act when they lack capacity (see restrictions and conditions, page 22) (also see page 36 for advice on assessing capacity).
In completing part C you are declaring that you understand the role and the responsibilities associated with it.

The detail: being a witness
The witness is someone who signs the LPA to confirm that they witnessed your attorney(s) signing and dating it. This is an important safety aspect of your LPA.
The same person could witness both your attorney(s) signature(s) (here), and your signature to part A (see page 27).
If you have two witnesses, one for part A and one for part C, each witness must see the relevant person sign and date that part of the form.
About page 11 (continued)

Additional guidance for attorneys

For key aspects of the role and responsibilities of an attorney or replacement attorney read the declaration in Part C.

In addition:

The Mental Capacity Act 2005 and its Code of Practice set out other responsibilities of attorneys, including:

- a duty of care when making decisions on behalf of the donor;
- to carry out instructions that the donor has made in their LPA unless the LPA says you can;
- not to benefit yourself but to benefit the donor – meaning that you should avoid any potential conflicts of interest and not to profit or benefit personally from the position other than where specified within the LPA;
- a duty of good faith – meaning that you should act with honesty and integrity;
- keeping the donor’s affairs confidential unless the donor has specified otherwise;
- to comply with directions of the Court of Protection;
- to give up your role without discussing it with the donor if possible;
- to keep the donor’s money and property separate from your own;
- to keep accurate accounts in all of your dealings as an attorney.

You should read/refer to the Mental Capacity Act Code of Practice (particularly when assessing the donor’s capacity). It can be found at www.gov.uk/government/publications/mental-capacity-act-code-of-practice

You may be accountable if you fail to carry out your duties properly.

Make sure you use the correct Part C if you need to include additional copies. The Health and Welfare Part C is different to the Property and Financial Affairs Part C.

The donor’s instructions in section 4 of their LPA define whether you, as an attorney, make decisions:

- jointly;
- jointly and severally;
- jointly for some decisions and jointly and severally for others.

See page 19-20 for guidance on how the donor may want you to make decisions together with other attorneys.

If you are the only attorney, you will be able to make all the decisions about the donor’s property and financial affairs that they would have made themselves.

If the donor wants to restrict or limit the decisions you make, their instructions are given in section 5 of their LPA and you must follow them (see page 22 for guidance on restrictions and conditions).

If the donor has stated that you can only act when they lack capacity, you need to be able to assess their capacity. To do this, consider whether the donor:

- has a general understanding of the decision that needs to be made;
- has an understanding of the consequences of the decision;
- can weigh up information in order to make the decision themselves;
- could make the decision themselves if you were to help them;
- needs help communicating their decision or thinking.

You can claim reasonable expenses for transport costs, telephone calls, postage etc. that you incur whilst acting on behalf of the donor.

Professional attorneys can charge fees. If you agree fees with the donor, they should record this in section 7 (see payment on page 23 for further information).

If you become bankrupt you cannot continue being an attorney, and must contact the OPG.

If you need to give up the role of attorney:

- before the LPA is registered, you should tell the donor;
- after the LPA has been registered, you should give formal notice to the donor and the OPG (formally using form LPA005 available at www.gov.uk/government/publications/disclaim-a-lasting-power-of-attorney).
Additional guidance for attorneys

A property and financial affairs LPA does not allow you to make decisions about the donor’s health and welfare. (A separate health and welfare LPA would allow an attorney to make such decisions.)

In making decisions with other attorneys, if you feel another attorney is not acting in accordance with their role and responsibilities you should:
- firstly, raise your concern with the attorney, then
- if you are not satisfied with the outcome, contact the OPG.

The same applies if your decision-making is disputed. Keep notes or records of discussions so that you can demonstrate why you made the decision, and
- firstly, raise your concern with the person(s) making the dispute, then
- if you are not satisfied with the outcome, contact the OPG.

Always bear in mind that the key objective at all times is the best interests of the donor.

Even after registering the LPA, you should assume that the donor has capacity to make decisions themselves.

A person should not be treated as unable to make a decision just because they make a decision which, in your opinion, is unwise.

You should only be making decisions for the donor when they
- are incapable of making them themselves
- may be capable, but have asked you to make them on their behalf.

The donor may have a gradually degenerating condition, or may have capacity on one day, but not on another. You should devise a strategy for dealing with this that allows you to
- assess their capacity from time to time, and
- support them in making as many decisions as possible for themselves, whilst allowing you to make everyday decisions like paying bills.

You might consider, for example,
- whether the donor has all the relevant information they need to make a decision?
- could the information be presented or explained in ways that would make it easier for them to understand (e.g. by using pictures, photographs, sign language)?
- are there times of the day when the donor is most lucid?
- could the support of a third party (e.g. a relative or friend) help the donor decide?

If the donor disagrees with your decision, and they have capacity, you must go with the donor’s view. If they lack capacity you can make the decision, bearing in mind that donors can inform the OPG if they are unhappy about your decision-making (and the OPG can ask you to explain your decisions).

In deciding what is in the donor’s best interests, bear in mind:
- their past and recent wishes
- any views the donor has expressed in the past
- their beliefs and values
- the views of family members, parents, carers, etc.
- the possibility that the donor could regain capacity
- any other factors that may be specific to a donor’s circumstances
- any guidance in the LPA or other written statement.

There may be occasions when you need to obtain personal or confidential information about the donor from a doctor, bank, or solicitor, for example. Provided you are acting within the powers of the LPA this is appropriate, but you must only ask for information that is strictly relevant and maintain confidentiality where at all possible.

Under a property and affairs LPA provided the donor has not placed restrictions you can make decisions about:
- Selling a donor’s house—this may involve deciding where the donor should live, and if so you should consult with those involved in making welfare decisions. If a sale would be below the property’s market value, or if you want to buy the property yourself or sell it to a family member you may need to ask the court for authorisation. You should seek legal advice in such circumstances.
- Selling the donor’s stocks and shares.
- Making gifts on the donor’s behalf (see page 40 in frequently asked questions for more on making gifts).

But you cannot make decisions about:
- making a will on the donor’s behalf
- voting on the donor’s behalf
- access the donor’s will unless the donor has included a condition that you can—however you can apply to the Court if you believe the will is essential in helping you carry out your role, and the person who holds the will refuses to show it to you.
Example: Part C signed, dated and witnessed

Part C

Declaration by each attorney or representative attorney

I, [Name], do solemnly swear that I have read and understand the contents of this power of attorney and that I am not a minor or not of sound mind or body.

Witnesses

[Names and signatures]

Example: Continuation sheet C signed, and dated by two people authorised to sign on behalf of a trust

Cont[inue]nt sheet C - appointing a trust corporation or intestacy or representative attorney

I, [Name], do solemnly swear that I have read and understand the contents of this power of attorney and that I am not a minor or not of sound mind or body.

Witnesses

[Names and signatures]
Chapter 9
Frequently asked questions.

FAQs
Frequently asked questions

Donor's questions

What if my attorney dies?

After registration: if you have only one attorney and no replacement attorneys your LPA becomes unusable. If you have a replacement, they take over.

Before registration: if you have capacity you can make a new LPA and choose a new attorney. Contact the OPG to discuss your options.

Can my attorney give gifts on my behalf?

Unless you make a restriction stating otherwise, your attorney(s) will be able to give (limited) gifts on your behalf:

- to charitable organisations
- to relatives, very close friends and any attorney named in your LPA who is a relative or very close friend
- on birthdays, weddings, anniversaries, etc. when you would usually give gifts
- of a value that is appropriate to your assets

You cannot authorise any gifts which would exceed the attorney's statutory power.

Can a property and financial affairs attorney make decisions about where I live?

No.

Attorney's questions

Can I make decisions about the donor's personal welfare or by someone with authority to do so under the general law?

Decisions about the donor's personal welfare can only be made by an attorney acting under a welfare LPA or by someone given the authority to do so by the Court of Protection.

However, if you are also appointed to perform any of these roles for the donor then you will be able to take those decisions within the limits of the powers given to you.

Can I stop being a property and financial affairs attorney?

Yes, you can stop acting as the attorney at any time. Before the LPA is registered you should formally notify the donor using form LPA006. If the LPA is registered you will need to complete form LPA005 Disclaiming Your Appointment and send this to the OPG and the donor. Contact the OPG immediately if you need to discuss this.

You should also inform any other attorneys appointed on the LPA.

Will anyone replace me and if so, who?

Possibly — if you decide to stop or cannot continue as attorney, a replacement attorney could act as a replacement if the donor has made arrangements for this in the LPA document.

Please note: The donor can appoint a replacement attorney either to act as a replacement for a specific attorney only or alternatively he/she can appoint a replacement to replace whoever first stops acting.

What if I am one of the attorneys appointed to act jointly?

If one attorney can no longer act, the remaining attorney(s) cannot carry on and the LPA will end unless there is a replacement attorney. In this situation the replacement attorney will act alone.

What if I am an attorney appointed to act jointly and severally?

If you are appointed to act jointly and severally and the donor has not appointed a replacement attorney the LPA will continue providing there is at least one remaining attorney acting on behalf of the donor.

Can another attorney be added after the LPA has been registered?

No, if the donor has capacity to cancel the existing LPA he/she can do so and make a new one appointing a new attorney.

I am acting as a replacement attorney, should I let the OPG know?

Yes, if you are a replacement attorney you are required to advise the OPG that you are now acting as attorney.

You must ensure that the LPA is returned to us to note the change on the LPA and to update the LPA register.

Please note: If the LPA does not have a note of the change the replacement attorney will not be able to act.

If the LPA is no longer valid can the donor make another?

Yes, but only if the donor still has the capacity to do so.

What happens when the donor dies?

The LPA will automatically come to an end. You should send the original LPA and a death certificate to the OPG as soon as possible. We cannot give advice on how to deal with the donor's estate. You should contact a legal advisor or a District Probate Registry for this advice.

Can I make decisions about the donor's will?

No you cannot. If the donor has capacity to make a will, they can do so if they wish. If the donor no longer has capacity to make such decisions and you think a will needs to be made or changed, you can apply to the Court of Protection for a 'statutory will' to be made for the donor.
Chapter 8: Frequently asked questions

Frequently asked questions (continued)

What if someone objects to me being appointed as an attorney?
The donor, the people to be told or other attorneys are able to object to the registration of an LPA.

Other persons (apart from people to be told and attorneys) can object to registration but they have to pay a court fee.

Objections by a person to be told or an attorney will have to be either:

On factual grounds — the OPG can be asked to stop the registration if:
- the donor is bankrupt or interim bankrupt (for property and financial affairs LPA only)
- the attorney is bankrupt or interim bankrupt (for property and financial affairs LPA only)
- the attorney is a trust corporation and is wound up or dissolved (for property and financial affairs LPA only)
- the donor is dead
- the attorney is dead
- there has been dissolution or annulment of a marriage or civil partnership between the donor and attorney (except if the LPA provided that such an event should not affect the instrument)
- the attorney(s) lack the capacity to be an attorney under the LPA or
- the attorney(s) have disclaimed their appointment.

On prescribed grounds — objections to the Court of Protection against registration of the LPA can only be made on the following grounds:
- that the power is not valid as an LPA for example, the person objecting does not believe the donor had capacity to make an LPA
- that the power no longer exists — for example the donor revoked it at a time when he/she had capacity to do so
- that fraud or undue pressure was used to induce the donor to make the power or
- the attorney proposes to behave in a way that would contravene his/her authority or would not be in the donor’s best interests.

The OPG will require appropriate evidence to support any factual objection raised.

Objections by the donor do not need to be on any specific grounds.

If the OPG or the Court receive an objection to your application to register an LPA, they will contact you to advise what steps you need to take next.

Certificate provider’s questions
As a certificate provider can I discuss the LPA with the donor with the attorney present?
You should discuss the contents of the LPA with the donor — not in the presence of the chosen attorney(s) if at all possible — in order to form your opinion. Make sure the donor is able to communicate with you freely. However, there may be exceptional circumstances when this just may not be possible — a husband and wife meeting with their GP in the consulting room for example.

Questions about registration
What happens if the LPA cannot be registered?
If the donor does not have the capacity to make another LPA, someone such as the attorney or other relevant person should consider applying to the Court for an order covering the decisions that need to be made on the donor’s behalf.

Can the registered LPA be cancelled or revoked?
Yes, the OPG can cancel registration on factual grounds (such as bankruptcy of the attorney) and the Court of Protection can terminate an LPA for other reasons (such as where the attorney is not carrying out his or her duties correctly). Alternatively, if the donor still has the capacity, they can revoke the LPA. They will be required to advise their attorney(s) and the OPG of the revocation so that we can remove the LPA from the register.

What is the LPA register?
The LPA register is a searchable database containing the details of all registered LPAs. It is important to remember that once an LPA is registered, certain pieces of personal information will be available to anyone who applies to search the register.

Why does the OPG have a register?
The Mental Capacity Act 2005 sets out the functions of the OPG. One of those is to establish and maintain a register of LPAs.

One of the purposes of the register is to allow those with an interest, such as healthcare professionals, to search the register to see whether an LPA has been registered by the OPG for a particular person.

What information will be on the register?
The type of information made available from the register will depend on the type of search that someone applies for. There are two types of search: a first tier and a second tier search, with each providing different levels of information to the applicant.

The first tier search provides limited data about the donor and the LPA.

Anyone who has made a first tier search can undertake a second tier search. The applicant must explain in detail to the OPG why they require the information and show that the request is in the donor’s best interests. This second tier search relates to further information about the donor only.

There is not a defined list of the information disclosed in a second tier search because it will be different in every case, depending on what is required and what is in the donor’s best interests.
Frequently asked questions (continued)

What if I want to register my property and financial affairs LPA but don't want my attorney to act until I lack capacity?
You can include a restriction stating how the attorney must demonstrate this - e.g. 'my attorney(s) must not use my LPA until they have obtained medical evidence stating that I have lost mental capacity' however this may cause problems in practice.

Who else should be notified of the application to register the LPA?
You must notify the people to be told listed in the LPA using form LPA001. Once you have decided to make an application to register, this should be the first thing you do.

If the donor requested that the LPA is only to be registered upon loss of capacity, does medical evidence need to be supplied to the OPG on loss of capacity?
No, we will not need medical evidence. But, with all applications to register, we will notify the donor upon receipt to give them an opportunity to object to the registration.

Once I have served notices, what do I do next?
Once you have served the last notice you will need to send us the original LPA form, the completed registration form LPA002 and the appropriate fee.

Are two separate fees payable if I am registering both types of LPA at the same time?
Yes, a separate application to register fee must be paid for each separate LPA registered.

What if the donor or attorney cannot afford the application to register fee(s)?
The fee is normally paid from the donor’s assets, however, if you cannot afford it you can ask us to waive payment. See the OPG’s guidance on fees, exemptions and remissions for more information.

Where can I get information on applying for an order from the Court of Protection?
Information on how to make an application to the Court is available from HM Courts & Tribunals Service website under the Court of Protection heading or you can call the court enquiry line on 0300 455 4600.

Where do I get extra copies of the registered LPA?
The Donor can make certified copies of the registered LPA if they still have capacity. This can be done by copying the registered document and writing the following text at the bottom of each page of the document:
'I certify this is a true and complete copy of the corresponding page of the original LPA'
The donor should then sign and date each page after this declaration.

If the Donor has lost capacity, the attorney should be able to get a certified copy made by a solicitor. The process for creating a certified copy is the same as it is for the Donor as detailed above.

In exceptional cases, the OPG may be able to provide an office copy of the registered document for a fee.

What if the original LPA is missing?
We will not usually accept an application to register without the original LPA form. However, we can register a ‘certified copy’. You can certify copies yourself as soon as you have made the LPA, in case the original gets lost before registration. If you have not done this, a solicitor can certify a copy (for a fee) if he prepared the LPA and has a copy on file.

You will also need to send a written statement explaining how the original was lost. If only an uncertified photocopy is available, it cannot be registered without an order of the court.
### Checklist for sending your LPA for registration

- [ ] Have you filled in or crossed through all sections and boxes in part A of your LPA form?
- [ ] Has your certificate provider filled in (or crossed through) all the boxes on part B of your LPA form?
- [ ] Is your certificate provider aged 18 or over?
- [ ] If you have no people to told, do you have two certificate providers?
- [ ] Have each of your attorneys filled in all the boxes in a copy of part C of your LPA form?
- [ ] If you are appointing a trust corporation as an attorney (or replacement) have they signed and dated continuation sheet C?
- [ ] Check that your people to be told do not include the people you have chosen as your attorney(s) or replacement attorney(s).
- [ ] Have you included parts A, B, and C of your LPA form, signed and dated in A, B, C, order?
- [ ] Have you signed, numbered and dated all part A continuation sheets to your LPA form?
- [ ] Have you filled in the 'Checklist' on the front of your LPA form?
- [ ] Have you sent to each of your people to be told, form LPA001 'Notice of intention to apply for registration'?
- [ ] Have you completed all parts of form LPA002 'Application to register a Lasting Power of Attorney'?
- [ ] Have you included in your envelope:
  - Parts A, B, and C of your LPA form
  - Your completed form LPA002
  - Your payment?
Lasting power of attorney

Information sheet – the people involved

You are the person giving the lasting power of attorney. You are referred to as the Donor. To complete your lasting power of attorney, you need the following people involved:

- at least one person to act as your attorney
- at least one certificate provider
- at least one person to be told or a second certificate provider
- at least one witness.

Your attorney(s) The people you want to make decisions for you. Attorneys do not have to have any legal knowledge or training.

How many? You must have at least one attorney, and you can have as many as you like. (Note, however, that too many attorneys might make things difficult in practice.)

Your replacement attorney(s) The people you want to make decisions for you when your attorney(s) cannot act for you any more.

How many? You don’t have to appoint any replacement attorneys, but you can have as many as you like.

The people to be told Adults who know you well. Before your lasting power of attorney is registered, the ‘people to be told’ are given an opportunity to raise any concerns or objections.

Your attorney(s) or replacement attorney(s) cannot also act as a person to be told.

How many? You do not have to have any people to be told, but you can have up to five. If you don’t have any, you must have two certificate providers.

A certificate provider An independent person who is able to confirm that you understand the significance of your lasting power of attorney. They must have known you well for at least two years, or have relevant professional skills to enable them to confirm that you understand the significance of your lasting power of attorney (for example, your GP or solicitor). They also need to certify that no undue pressure or fraud is involved in the making of the lasting power of attorney.

Your attorney(s) or replacement attorney(s) cannot also act as a certificate provider.

A person to be told can act as a certificate provider.

How many? You must have at least one certificate provider. If you decide not to have any people to be told, you must have two certificate providers.

Independent witnesses The people who see your lasting power of attorney being signed, and who then sign themselves to confirm that it was signed in their presence.

How many? When you sign at the end of part A your signature must be witnessed. Your certificate provider or person to be told can act as a witness. Your attorney(s) or replacement attorney(s) cannot act as a witness.

When your attorney(s) sign part C their signature(s) must be witnessed. Another attorney, your replacement attorneys, or a certificate provider can also act as a witness to the attorney’s signature.

Helpline 0300 456 0300

gov.uk/power-of-attorney

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C Your attorney(s) and any replacement attorney(s) sign part C.

- Your attorney(s), replacement attorney(s) and their witness(es) sign part C.
- If you have more than one attorney or replacement attorney, they should sign photocopies of part C.
- If you are completing a property and financial affairs lasting power of attorney, and you are appointing a trust corporation as attorney or replacement attorney, the person signing on behalf of the trust corporation signs continuation sheet C.

A You fill in, sign, and date part A.

- You fill in the details of who you want to act as your attorney(s) (and replacement attorneys, if any), and how you want them to make decisions for you.
- You fill in the details of any people to be told when your lasting power of attorney is registered.
- If you are completing a health and welfare power of attorney you and a witness sign to indicate your preference around life sustaining treatment.
- You and a witness sign at the end of part A (the date of signature on part A must be before or the same as the date of signature on parts B and C).

If you decided not to have any people to be told when your lasting power of attorney is registered, your second certificate provider fills in continuation sheet B.

Use continuation sheet B if you require more space for joint decision making, restrictions, guidance or charges for services.

Use continuation sheet A3 if you can’t sign or make a mark.

Fill in, sign and attach each continuation sheet to the end of your lasting power of attorney. Continuation sheets cannot be added after part A has been filled in and signed.
Lasting power of attorney - property and financial affairs

About this lasting power of attorney
This lasting power of attorney allows you to choose people to act on your behalf (as an attorney) and make decisions about your property and financial affairs, when you are unable to make decisions for yourself.

If you also want someone to make decisions about your health and welfare, you will need a separate form (downloadable from our website or call 0300 456 0300).

Who can fill it in?
Anyone aged 18 or over, who has the mental capacity to do so.

Before you fill in the lasting power of attorney:
1. Please read the guidance available at gov.uk/power-of-attorney or by calling 0300 456 0300. See, for example, the Guidance for people who want to make a lasting power of attorney for property and financial affairs or other relevant guidance booklets which are all available online or by post.
2. Make sure you understand the purpose of this lasting power of attorney and the extent of the authority you are giving your attorneys.
3. Read the separate information sheet to understand all the people involved, and how the three parts of the form should be filled in.
4. Make sure you, your certificate provider(s), and your attorney(s) have read the section on page 2 called Information you must read before filling in their relevant part.

⚠️ This lasting power of attorney could be rejected at registration if it contains any errors.
Information you must read

This lasting power of attorney is a legal document. Each person who signs parts A, B and C must read this information before signing.

Purpose of this lasting power of attorney

This lasting power of attorney gives your attorneys authority to make decisions about your property and financial affairs when you cannot make your own decisions. This can include running your bank accounts and savings accounts, decisions about making or selling investments and selling property, and spending your money.

When your attorneys can act for you

Your attorneys can use this lasting power of attorney only after it has been registered and stamped on every page by the Office of the Public Guardian. Your attorneys can make decisions for you as soon as this lasting power of attorney is registered – both when you have mental capacity and when you lack mental capacity, unless you put a restriction in this lasting power of attorney.

The Mental Capacity Act

Your attorneys cannot do whatever they like. They must follow the principles of the Mental Capacity Act 2005. Guidance about these principles is in the Mental Capacity Act Code of Practice. Your attorneys must regard your Code of Practice. They can get a copy from The Stationery Office at tsoc.co.uk or read it online at gov.uk/power-of-attorney

Principles of the Act that your attorneys must follow

1. Your attorneys must assume that you can make your own decisions unless they establish that you cannot do so.
2. Your attorneys must help you to make as many of your own decisions as you can. They cannot treat you as unable to make the decision in question unless all practicable steps to help you to do so have been made without success.
3. Your attorneys must not treat you as unable to make the decision in question simply because you make an unwise decision.
4. Your attorneys must make decisions and act in your best interests when you are unable to make the decision in question.
5. Before your attorneys make the decision in question or act for you, they must consider whether they can make the decision or act in a way that is less restrictive of your rights and freedom but still achieves the purpose.

Your best interests

Your attorneys must act in your best interests in making decisions for you when you are unable to make the decision yourself. They must take into account all the relevant circumstances. This includes, if appropriate, consulting you and others who are interested in your welfare. Any guidance you add may assist your attorneys in identifying your views.

Cancelling this lasting power of attorney

You can cancel this lasting power of attorney at any time before or after it is registered as long as you have mental capacity to cancel it. Please read the guidance available at gov.uk/power-of-attorney

How to fill in this form

- Tick the boxes that apply like this ✓
- Use black or blue ink and write clearly
- Cross through any boxes or sections that don't apply to you, like this:

Any other names you are known by in financial documents or accounts

WILLIAM EDWARD SMITH
A.S.B / W.E.S. SMYTH

- Don't use correction fluid – please cross out any mistakes and rewrite nearby. All corrections must be initialed by the person completing that section of the form (and their witness) like this:

Any other names you are known by in financial documents or accounts

Your application could be rejected if your intentions are not clear and explicit; if you are in any doubt, please start again on a new copy of the form.

What happens after you've filled it in?

The next step is to register it. You or your attorneys can do this at any time. The person applying will need to fill in a registration form and may need to pay a fee at that time. They will also need to send notices to the ‘people to be told’ named at part A when the application to register this lasting power of attorney is made. You can find out more and download the registration form at direct.gov.uk/ lparegistration

The ‘people to be told’ are given time to raise any concerns or objections. This means the earliest the Office of Public Guardian can register this lasting power of attorney is 4 weeks after they notify the donor or attorneys that an application to register has been received.

Your lasting power of attorney will end if it can no longer be used. For example, if a sole attorney dies or can no longer act for you and no replacement attorney has been named in this lasting power of attorney. Please read the guidance available at gov.uk/power-of-attorney

Helpline
0300 456 0300
gov.uk/power-of-attorney

Valid only with Office of the Public Guardian stamp
**Part A** Declaration by the person who is giving this lasting power of attorney

**Please write clearly using black or blue ink.**

1. About the person who is giving this lasting power of attorney

<table>
<thead>
<tr>
<th>Mr</th>
<th>Mrs</th>
<th>Ms</th>
<th>Miss</th>
<th>Other title</th>
<th>Address and postcode</th>
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First names

Last name

Date of birth

2. About the attorneys you are appointing

*If you are appointing a trust corporation alone, cross through this section and go to 2A →*

**Thinking about your attorneys**

- You can appoint more than one attorney if you want to. You do not have to appoint more than one attorney.
- Each attorney must be aged 16 or over. Choose people you know and trust to make decisions for you.
- You are recommended to read the separate guidance for people who want to make a lasting power of attorney for property and financial affairs.
- Your attorney must not be bankrupt.

**Your first or only attorney**

<table>
<thead>
<tr>
<th>Mr</th>
<th>Mrs</th>
<th>Ms</th>
<th>Miss</th>
<th>Other title</th>
<th>First names of your first or only attorney</th>
<th>Last name of your first or only attorney</th>
<th>Date of birth of your first or only attorney</th>
<th>Address and postcode of your first or only attorney</th>
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**Your second attorney**

*Please cross through this section if it does not apply.*

<table>
<thead>
<tr>
<th>Mr</th>
<th>Mrs</th>
<th>Ms</th>
<th>Miss</th>
<th>Other title</th>
<th>First names of your second attorney</th>
<th>Last name of your second attorney</th>
<th>Date of birth of your second attorney</th>
<th>Address and postcode of your second attorney</th>
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3. If you are appointing more than two attorneys, use continuation sheet A1 to tell us about your other attorneys.

**Other attorneys you are appointing**

Number of attorneys named in continuation sheet A1 attached to this lasting power of attorney

Cross through this box if this does not apply

---

Helpline 0300 456 0300
gov.uk/power-of-attorney

Valid only with Office of the Public Guardian stamp
**2A. About appointing a trust corporation as attorney or replacement attorney**

About the trust corporation you are appointing: Please cross through this section if it does not apply.

- A trust corporation cannot be going through winding-up proceedings.

<table>
<thead>
<tr>
<th>Company name</th>
<th>Address</th>
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Are you appointing this trust corporation to act as an

- [ ] attorney, or
- [ ] replacement attorney?

<table>
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<tr>
<th>Postcode</th>
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**3. About appointing replacements if an attorney can no longer act**

*If you are appointing a trust corporation as replacement attorney, cross through this section. Your trust corporation should then fill in continuation sheet C →*

Thinking about replacement attorneys

- Replacement attorneys will only act once your attorney can no longer act for you.
- You can appoint replacements to replace an attorney who does not want to act for you or who is permanently no longer able to act because they are dead, bankrupt, have disclaimed, lack mental capacity or if they were married to you or were your civil partner, and have now had the marriage or civil partnership annulled or dissolved.
- You do not have to appoint any replacements.
- If you appoint only one attorney and no replacements, this lasting power of attorney will end when your attorney can no longer act.

<table>
<thead>
<tr>
<th>Your first or only replacement attorney</th>
<th>Please cross through this section if it does not apply:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mr</td>
<td>Mrs</td>
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<table>
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<tr>
<th>First names of your first or only replacement</th>
<th>Address and postcode of your first or only replacement</th>
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</table>

| Last name of your first or only replacement | |
|---------------------------------------------||

*If you are appointing more than one replacement, use continuation sheet A1 to tell us about your other replacement attorneys.*

<table>
<thead>
<tr>
<th>Other replacement attorneys you are appointing</th>
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</thead>
<tbody>
<tr>
<td>Number of replacement attorneys named in continuation sheet A1 attached to this lasting power of attorney</td>
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</table>

Cross through this box if this does not apply
Thinking about how you want your attorneys to make decisions

If you leave this section blank, your attorneys will be appointed to make all decisions jointly.

- Jointly: this means that the attorneys must make all decisions together. Go to section 5 for further information on appointing your attorneys jointly, see the separate guidance.

- Jointly and severally: this means that attorneys can make decisions together and separately. This might be useful, for example, if one attorney is not available to make a decision at a certain time. If one attorney cannot act the remaining attorney is able to continue to make decisions.

- Jointly for some decisions, and jointly and severally for other decisions: this means that your attorneys must make certain decisions together and may make certain decisions separately. You will need to set out below how you want this to work in practice.

Choosing which decisions must be made together and which decisions may be made separately — how this will work in practice

- Please make your intentions clear about how your attorneys are to make decisions about running bank accounts and savings accounts, making or selling investments and selling property, and spending your money.

- Please check that your intentions will work in practice — it may not be possible to register or use this lasting power of attorney if, for example, a bank or building society account cannot be operated as you wish.

How you want your attorneys to make decisions

If you are appointing only one attorney and no replacement attorneys, now go to section 5 →

Jointly

Jointly and severally

Jointly for some decisions, and jointly and severally for other decisions

Only if you have ticked the last box above, now tell us in the space below which decisions your attorneys must make jointly and which decisions may be made jointly and severally

If you need more space, use continuation sheet A2
5. About restrictions and conditions

Putting restrictions and conditions into words

- You should read the separate guidance for examples of conditions and restrictions that will not work in practice.
- Your attorneys must follow any restrictions or conditions you put in place. But it may not be possible to register or use this lasting power of attorney if a condition is not workable.
- Either: give any restrictions and conditions about property and financial affairs here
- Or: if you would like your attorneys to make decisions with no restrictions or conditions, you should cross through this box.

Restrictions and conditions about property and financial affairs

If you need more space, use continuation sheet A2

8. About guidance to your attorneys

Putting guidance into words

- Any guidance you add may help your attorneys to identify your views. You do not have to add any.
- Your attorneys do not have to follow your guidance but it will help them to understand your wishes when they make decisions for you.
- Either: Give any guidance about property and financial affairs here
- Or: if you have no guidance to add, please cross through this box.

Guidance to your attorneys about property and financial affairs

If you need more space, use continuation sheet A2

7. About paying your attorneys

Professional charges

- Professional attorneys, such as solicitors and accountants, charge for their services. You can also choose to pay a non-professional person for their services. You should discuss payment with your attorneys and record any agreement made here to avoid any confusion later.
- You can choose to pay non-professional attorneys for their services, but if you do not record any agreement here they will only be able to recover reasonable out-of-pocket expenses.

Charges for services

If you need more space, use continuation sheet A2

For further information on paying attorneys, please see the separate guidance.

Helpline

0300 456 0300

gov.uk/power-of-attorney

Valid only with Office of the Public Guardian stamp
8. About people to be told when the application to register this lasting power of attorney is made

Thinking about people to be told

- For your protection you can choose up to five people to be told when your lasting power of attorney is being registered. This gives people who know you well an opportunity to raise any concerns or objections before this lasting power of attorney is registered and can be used.

- You do not have to choose anyone. But if you leave this section blank, you must choose two people to sign the certificate to confirm understanding at part B.

- The people to be told cannot be your attorney or replacement named at part A or in continuation sheets to part A.

<table>
<thead>
<tr>
<th>The first or only person to be told</th>
<th>The second person to be told</th>
</tr>
</thead>
<tbody>
<tr>
<td>Please cross through this section if it does not apply.</td>
<td>Please cross through this section if it does not apply.</td>
</tr>
<tr>
<td>Mr</td>
<td>Mrs</td>
</tr>
<tr>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>First names of first or only person to be told</td>
<td>First names of second person to be told</td>
</tr>
<tr>
<td>Last name of first or only person to be told</td>
<td>Last name of second person to be told</td>
</tr>
<tr>
<td>Address and postcode of first or only person to be told</td>
<td>Address and postcode of second person to be told</td>
</tr>
<tr>
<td>Postcode</td>
<td>Postcode</td>
</tr>
</tbody>
</table>

Other people to be told

Please cross through this section if it does not apply

Tell us about other people to be told on continuation sheet A1.

Number of other people to be told named in continuation sheet A1 attached to this lasting power of attorney
Declaration by the person who is giving this lasting power of attorney

Before signing please check that you have:
- filled in every answer that applies to you
- crossed through blank boxes that do not apply to you
- filled in any continuation sheets
- crossed through any mistakes you have made
- initialled any changes you have made

No changes may be made to this lasting power of attorney and no continuation sheets may be added after part A has been filled in and signed. If any change appears to have been made, this lasting power of attorney will not be valid and will be rejected when an application is made to register it.

By signing (or marking) on this page, or by directing someone to sign continuation sheet A3:PFA, I confirm all of the following:

Statement of understanding
I have read or had read to me:
- the section called 'Information you must read' on page 2
- all information contained in part A and any continuation sheets to part A of this lasting power of attorney.

I appoint and give my attorneys authority to make decisions about my property and financial affairs, including when I cannot act for myself because I lack mental capacity, subject to the terms of this lasting power of attorney and to the provisions of the Mental Capacity Act 2005.

People to be told when the application to register this lasting power of attorney is made
I have chosen the people to be told, and have chosen one person to sign the certificate of understanding at part B.

OR
I do not want anyone to be told, and have chosen two people to sign certificates of understanding at part B.

If you cannot sign this lasting power of attorney you can make a mark instead.

If you cannot sign or make a mark use continuation sheet A3:PFA.

Signed (or marked) by the person giving this lasting power of attorney and delivered as a deed
Sign with usual signature

Date signed or marked

Sign (or mark) and date each continuation sheet at the same time as you sign (or mark) part A.
You must sign (or mark) and date part A here before parts B and C are signed and dated.

The witness should be independent of you and:
- Must be 18 or over.
- Cannot be an attorney or replacement attorney named at part A or any continuation sheets to this lasting power of attorney or the employee of any trust corporation named as an attorney or replacement attorney.
- Can be a certificate provider at part B.
- Can be a person to be told when the application to register this lasting power of attorney is made.
- Must initial any changes made in Part A.

Witnessed by
Signature of witness

Full names of witness

Address and postcode of witness

Postcode

Helpline
0300 456 0300
gov.uk/power-of-attorney

Valid only with Office of the Public Guardian stamp.
Declaration by the person who is signing this certificate

Please refer to separate guidance for certificate providers. If the guidance is not followed, this lasting power of attorney may not be valid and could be rejected when an application is made to register it.

In part A (section 8) has the person giving this lasting power of attorney chosen at least one person to be told when the application to register this lasting power of attorney is made?

If yes = one certificate provider fills in this part
If no = the first certificate provider fills in this part and the second certificate provider must fill in continuation sheet B.

The donor is the person who is giving this lasting power of attorney.

By signing below, I confirm:

My understanding of the role and responsibilities
I have read part A of this lasting power of attorney, including any continuation sheets.
I have read the section called 'Information you must read' on page 2 of this lasting power of attorney.
I understand my role and responsibilities as a certificate provider.

Statement of acting independently
I confirm that I act independently of the attorneys and of the donor and I am aged 18 or over.

I am not:
- an attorney or replacement attorney named in this lasting power of attorney or any other lasting power of attorney or enduring power of attorney for the donor
- a family member related to the donor or any of their attorneys or replacements
- a business partner or paid employee of the donor or any of their attorneys or replacements
- the owner, director, manager or employee of a care home that the donor lives in, or a member of their family
- a director or employee of a trust corporation appointed as an attorney or replacement attorney in this lasting power of attorney.

How you formed your opinion
Before signing this certificate you must establish that the donor understands what it is, the authority they are giving their attorneys, and is not being pressurised into making it.

If someone challenges this lasting power of attorney, you may need to explain how you formed your opinion.

Statement of personal knowledge or relevant professional skills
Please cross through the box that does not apply.

EITHER
I have known the donor for at least two years and as more than an acquaintance. My personal knowledge of the donor is:

OR
I have relevant professional skills. (Please state your profession – for example, a GP or solicitor – and then the particular skills that are relevant to you form your opinion – for example, a consultant specialising in geriatric care.)

My profession and particular skills are:

Continues over →
**Part B – Declaration by the person who is signing this certificate (continued)**

**Things you certify**

I certify that, in my opinion, at the time of signing part A:

- the donor understands the purpose of this lasting power of attorney and the scope of the authority conferred under it
- no fraud or undue pressure is being used to induce the donor to create this lasting power of attorney
- there is nothing else which would prevent this lasting power of attorney from being created by the completion of this form.

**Your signature**

Do not sign until part A of this lasting power of attorney has been filled in and signed. Sign as soon as possible after part A is signed. If this part is signed before part A is signed, this lasting power of attorney will not be valid and will be rejected when an application is made to register it.

Signature of certificate provider

<table>
<thead>
<tr>
<th>Name and address of the person who is signing this certificate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mr</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>First names of certificate provider</th>
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<table>
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<tr>
<th>Last name of certificate provider</th>
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</thead>
</table>

<table>
<thead>
<tr>
<th>Address and postcode of certificate provider</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Postcode</th>
</tr>
</thead>
</table>
Part C Declaration by each attorney or replacement attorney
Your attorney(s) and replacement attorney(s) sign and date this part.

If you are appointing more than one attorney, including replacement attorneys: photocopy this sheet before it is filled in so that each attorney has a copy to fill in and sign.

Statement by the attorney or replacement attorney who is signing this declaration:

- The attorney or replacement attorney must not be bankrupt.
- Before a replacement can act for you, they must get in touch with the Office of the Public Guardian and return the original lasting power of attorney form. They will get guidance at that time about what needs to happen next.

By signing below, I confirm all of the following:

Understanding of role and responsibilities
I have read the section called ‘Information you must read’ on page 2 of this lasting power of attorney.
I understand my role and responsibilities under this lasting power of attorney, in particular:
- I have a duty to act based on the principles of the Mental Capacity Act 2005 and have regard to the Mental Capacity Act Code of Practice
- I can make decisions and act only when this lasting power of attorney has been registered
- I must make decisions and act in the best interests of the person who is giving this lasting power of attorney
- I can spend money to make gifts but only to charities or on customary occasions and for reasonable amounts
- I have a duty to keep accounts and financial records and produce them to the Office of the Public Guardian and/or to the Court of Protection on request.

Further statement of replacement attorney
If an original attorney’s appointment is terminated, I will replace the original attorney if I am still eligible to act as an attorney.
I have the authority to act under this lasting power of attorney only after an original attorney’s appointment is terminated and I have notified the Public Guardian of the event.

The witness must be over 18 and can be:
- another attorney or replacement attorney named at part A or in continuation sheet A to this lasting power of attorney.
- a certificate provider at part B of this lasting power of attorney.
- a person to be told when the application to register this lasting power of attorney is made.

The donor cannot be a witness.
The witness must see the attorney or replacement attorney sign or make a mark.

Signature of witness

Full name of witness

Address and postcode of witness

Valid only with Office of the Public Guardian stamp

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gov.uk/power-of-attorney
Use this continuation sheet for details of all additional attorneys, replacement attorneys, or people to be told. Make copies of this sheet before filling it in if you need more than one sheet.

About the additional people

For each additional person, provide the following details

- Whether you want them to act as an attorney, replacement attorney or person to be told
- Their title, full name, address (including postcode)
- Their date of birth

For example:

- Third attorney
  - Mr John Smith,
  - 38 London Street, Posttown, PC6 9ZZ
  - 19 January 1960

or:

- Second replacement attorney
  - Mrs Susan Jones
  - 27 Lincoln Road, Posttown, PC7 9XX
  - 12 December 1962

About you

Name of person who is giving this lasting power of attorney

Signed or marked by (or signed by the direction of) the person giving this lasting power of attorney

Date signed or marked

Please attach this sheet to the back of your lasting power of attorney before you sign and date the declaration in part A.

This is continuation sheet number

Total number of continuation sheets

And number your continuation sheets consecutively.

Helpline

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gov.uk/power-of-attorney

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LPA118 (08.13)

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### A2 Continuation sheet A2 – how your attorneys make decisions jointly and severally, restrictions & conditions, guidance, payment

Only use this continuation sheet to provide further additional information about how you want your attorneys to act. Make copies of this sheet before filling it in if you need more than one sheet.

#### About the additional information

For each additional piece of information you are providing, state whether it relates to:

- Which decisions your attorneys should make jointly and which decisions they should make jointly and severally (only if this applies)
- Restrictions and conditions
- Guidance to your attorneys
- Paying your attorneys

<table>
<thead>
<tr>
<th>Information</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
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</tr>
</tbody>
</table>

#### About you

Name of person who is giving this lasting power of attorney: [Name]

Signed or marked by (or signed by the direction of) the person giving this lasting power of attorney: [Signature]

Date signed or marked: [Date]

Please attach this sheet to the back of your lasting power of attorney before you sign and date the declaration in part A. And number your continuation sheets consecutively.

This is continuation sheet number: [Number]

Total number of continuation sheets: [Number]

---

Helpline: 0300 456 0300

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**A3: PFA**

Continuation sheet A3 (property and financial affairs) – if you cannot sign or make a mark

Use this continuation sheet if you cannot sign at part A of your lasting power of attorney.

**Signature of someone signing on behalf of the person giving this lasting power of attorney**

The person signing on behalf of the person giving this lasting power of attorney must
- sign in the person’s presence and in the presence of two witnesses.
- sign in their own name.
- not also be a witness.

Full name of the person signing

Signed as a deed and delivered in the presence of and at the direction of the person giving this lasting power of attorney and in the presence of two witnesses

Date signed

1. **Sign and date each continuation sheet at the same time as you sign part A here.**
   You must sign and date part A here before parts B and C are signed and dated.

Each witness
- Must be 18 or over.
- Cannot be an attorney or replacement attorney named at part A or any continuation sheet A to this lasting power of attorney.
- Can be a certificate provider at part B
- Can be a person to be told when the application to register this lasting power of attorney is made
- Must initial any changes made in Part A

<table>
<thead>
<tr>
<th>Witnessed by</th>
<th>Also witnessed by</th>
</tr>
</thead>
<tbody>
<tr>
<td>Signature of first witness</td>
<td>Signature of second witness</td>
</tr>
</tbody>
</table>

Date signed

Full names of first witness

Full names of second witness

Address and postcode of first witness

Address and postcode of second witness

About you

Name of person who is giving this lasting power of attorney

Please attach to the back of your lasting power of attorney after this sheet has been signed and dated.

And number your continuation sheets consecutively.

This is continuation sheet number

Total number of continuation sheets

Helpline

0300 456 0300

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Valid only with Office of the Public Guardian stamp
Your second certificate provider signs and dates this continuation sheet.

Declaration by the person who is signing this certificate

Please refer to separate guidance for certificate providers. If the guidance is not followed, this lasting power of attorney may not be valid and could be rejected when an application is made to register it.

In part A (property and financial affairs section B, or health and welfare section C) has the person giving this lasting power of attorney chosen at least one person to be told when the application to register this lasting power of attorney is made?

If yes = you only need one certificate provider so you do not need to fill in this continuation sheet.
If no = the second certificate provider must fill in this continuation sheet.

The donor is the person who is giving this lasting power of attorney.

By signing below, I confirm:

My understanding of the role and responsibilities

I have read part A of this lasting power of attorney, including any continuation sheets.
I have read the section called 'Information you must read' on page 2 of this lasting power of attorney.
I understand my role and responsibilities as a certificate provider.

Statement of acting independently

I confirm that I act independently of the attorneys and of the donor and I am aged 18 or over.
I am not:
- an attorney or replacement attorney named in this lasting power of attorney or any other lasting power of attorney or enduring power of attorney for the donor
- a family member related to the donor or any of their attorneys or replacements
- a business partner or paid employee of the donor or any of their attorneys or replacements
- the owner, director, manager or employee of a care home that the donor lives in, or a member of their family
- a director or employee of a trust corporation appointed as an attorney or replacement attorney in this lasting power of attorney (for property and financial affairs only).

How you formed your opinion

Before signing this certificate you must establish that the donor understands what it is, the authority they are giving their attorneys, and is not being pressurised into making it.

If someone challenges this lasting power of attorney, you may need to explain how you formed your opinion.

Statement of personal knowledge or relevant professional skills

Please cross through the box that does not apply.

EITHER

I have known the donor for at least two years and as more than an acquaintance. My personal knowledge of the donor is:

OR

I have relevant professional skills. (Please state your profession - for example, a GP or solicitor - and then the particular skills that are relevant to you forming your opinion - for example, a consultant specialising in geriatric care.)

My profession and particular skills are:

Number each page individually and attach both continuation sheet B pages to the back of your lasting power of attorney after you sign and date the declaration in part A.

This is continuation sheet number
Total number of continuation sheets

Helpline 0300 456 0300 gov.uk/power-of-attorney

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Declaration by the person who is signing this certificate (continued)

Things you certify
I certify that, in my opinion, at the time of signing part A:
• the donor understands the purpose of this lasting power of attorney and the scope of the authority conferred under it
• no fraud or undue pressure is being used to induce the donor to create this lasting power of attorney
• there is nothing else which would prevent this lasting power of attorney from being created by the completion of this form.

Your signature

⚠️ Do not sign until part A of this lasting power of attorney has been filled in and signed.
Sign as soon as possible after part A is signed. If this part is signed before part A is signed, this lasting power of attorney will not be valid and will be rejected when an application is made to register it.

Signature of certificate provider

Date signed

Number each page individually and attach both pages of continuation sheet B to the back of your lasting power of attorney after you sign and date the declaration in part A.

This is continuation sheet number
Total number of continuation sheets

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Continuation sheet C – appointing a trust corporation as attorney or replacement attorney

Use this continuation sheet if you are appointing a trust corporation as attorney or replacement attorney. A trust corporation cannot be going through winding-up proceedings.

<table>
<thead>
<tr>
<th>Statement by the trust corporation acting as attorney or replacement attorney – person(s) signing on behalf of the trust corporation sign and date this statement</th>
</tr>
</thead>
</table>

By execution of this deed the trust corporation confirms all of the following:

**Understanding of role and responsibilities**

It has read the section called ‘Information you must read’ on page 2 of this lasting power of attorney. It understands its role and responsibilities under this lasting power of attorney, in particular it:

- has a duty to act based on the legal principles of the Mental Capacity Act 2005 and have regard to the Mental Capacity Act Code of Practice
- can make decisions and act only when this lasting power of attorney has been registered
- must make decisions and act in the best interests of the person who is giving this lasting power of attorney
- can spend money to make gifts but only to charities or on customary occasions and for reasonable amounts
- has a duty to keep accounts and financial records and produce them to the Office of the Public Guardian or the Court of Protection on request.

**Tick the option which applies:**

**Either:**

- Seal of trust corporation stamped below

**Or:**

- At least one authorised person has signed and dated in the right-hand column

---

**For this lasting power of attorney to be valid and registered this part should not be signed before Part A or part B have been completed, signed and dated. Sign part C as soon as possible after part B is signed.**

**We are authorised to sign on behalf of the trust corporation acting as attorney whose details are given in this continuation sheet to this lasting power of attorney.**

Signed as a deed and delivered by

**Signature of first authorised person**

Full name of first person signing

Date signed

Signature of second authorised person (cross through if only one authorised person is required)

Full name of second person signing

Date signed

Company registration number

---

Please attach this sheet to the back of your lasting power of attorney after parts A and B are signed. And number your continuation sheets consecutively.

This is continuation sheet number

Total number of continuation sheets

---

Helpline
0300 456 0300
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Part C  Declaration by each attorney or replacement attorney

Your attorney(s) and replacement attorney(s) sign and date this part.

If you are appointing more than one attorney, including replacement attorneys: photocopy this sheet before it is filled in so that each attorney has a copy to fill in and sign.

Statement by the attorney or replacement attorney who is signing this declaration

- The attorney or replacement attorney must not be bankrupt.
- Before a replacement can act for you, they must get in touch with the Office of the Public Guardian and return the original lasting power of attorney form. They will get guidance at that time about what needs to happen next.

By signing below, I confirm all of the following:

Understanding of role and responsibilities

I have read the section called 'Information you must read' on page 2 of this lasting power of attorney.

I understand my role and responsibilities under this lasting power of attorney, in particular:

- I have a duty to act based on the principles of the Mental Capacity Act 2005 and have regard to the Mental Capacity Act Code of Practice.
- I can make decisions and act only when this lasting power of attorney has been registered.
- I must make decisions and act in the best interests of the person who is giving this lasting power of attorney.
- I can spend money to make gifts but only to charities or on customary occasions and for reasonable amounts.
- I have a duty to keep accounts and financial records and produce them to the Office of the Public Guardian and/or to the Court of Protection on request.

Further statement of replacement attorney

If an original attorney’s appointment is terminated, I will replace the original attorney if I am still eligible to act as an attorney.

I have the authority to act under this lasting power of attorney only after an original attorney’s appointment is terminated and I have notified the Public Guardian of the event.

The witness must be over 18 and can be:

- another attorney or replacement attorney named at part A or in continuation sheet A to this lasting power of attorney.
- a certificate provider at part B of this lasting power of attorney.
- a person to be told when the application to register this lasting power of attorney is made.

The donor cannot be a witness.

The witness must see the attorney or replacement attorney sign or make a mark.

Signature of witness

Full name of witness

Address and postcode of witness

Postcode

Helpline
0300 456 0300
gov.uk/power-of-attorney

Valid only with Office of the Public Guardian stamp.
LPA and EPA fees
with effect from 1 October 2013

<table>
<thead>
<tr>
<th>Service</th>
<th>Full fee</th>
<th>Exemption or remission available</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lasting power of attorney (LPA)</td>
<td>£110</td>
<td>If the donor qualifies, exemption or remission may be available (see details below)</td>
</tr>
<tr>
<td>Enduring power of attorney (EPA)</td>
<td>£110</td>
<td></td>
</tr>
<tr>
<td>Repeat LPA application fee</td>
<td>£55</td>
<td></td>
</tr>
<tr>
<td>Office copy/certified copy of an LPA</td>
<td>£35</td>
<td>No exemption or remission available</td>
</tr>
<tr>
<td>Office copy/certified copy of an EPA</td>
<td>£25</td>
<td></td>
</tr>
</tbody>
</table>

Exemption – when a donor doesn’t have to pay because they get certain means-tested benefits

Remission – a 50% fee reduction based on a donor’s financial circumstances or a reduction based on the donor receiving Universal Credit

Office copy/certified copy – official copies that are only supplied in exceptional cases

- You must pay an application fee when you apply to register a power of attorney. Fees are non-refundable, even if the power of attorney isn’t registered.
- Application fees are paid by or on behalf of the donor – the person making the power of attorney. If they make both types of LPA they need to pay 2 fees.
- Office copy fees are paid by the person requesting the document.

Make a payment

Online payment – if you make your LPA using the digital LPA tool, you can make a secure online payment by credit or debit card.

On the phone by credit or debit card – if you want to pay this way, please say so in your application form (LPA002) or covering letter and we will contact you.

Cheque payment – please make your cheque payable to ‘Office of the Public Guardian’ and write the donor’s full name on the back.

Exemption and remission of application fees

A donor may be entitled to an exemption or remission of application fees based on their financial circumstances. It’s only the donor whose benefits and income matter.

To apply you must:

- fill in form LPA120A (which follows this information sheet) and sign the declaration
- gather supporting evidence – without evidence we can’t consider a claim so make sure you read the sections on page 2 about acceptable supporting evidence
- send us form LPA120A and your evidence along with your LPA or EPA forms when you apply to register.

If you’re registering 2 powers of attorney at the same time you only need to fill in 1 form LPA120A.

Make your LPA online

If you haven’t already made your LPA you could use the digital LPA tool. It will:

- help you make your LPA
- guide you through to registration
- let you pay online or by cheque

www.gov.uk/lasting-power-of-attorney
Exemption

If the donor receives any of the following means-tested benefits when an application to register is made, they can apply for an exemption, or their attorney or solicitor can do so on their behalf:

- Income Support
- Income-based Employment and Support Allowance
- Income-based Jobseeker’s Allowance
- Guarantee Credit element of State Pension Credit
- Housing Benefit
- Council Tax Reduction/Support – also known by other names (not the 25% single person discount or the Class U exemption)
- Local Housing Allowance
- A combination of Working Tax Credit and at least one of:
  - Child Tax Credit
  - Disability Element of Working Tax Credit
  - Severe Disability Element of Working Tax Credit

Not included: Disability Living Allowance, Invalidity Benefit, Personal Independence Payment

Remission based on income

If the donor’s gross annual income is less than £12,000, they may be eligible for a 50% reduction of the fee. Gross annual income is income before tax. It may come from employment, non-means-tested benefits (such as Attendance Allowance, Disability Living Allowance or Personal Independence Payment), pensions, Pensions Savings Credit, interest from savings and investments, or the rent of property.

Supporting evidence for remission

You need to send proof of the donor’s gross annual income. Evidence must relate to the time you sent the application to register. We can’t accept bank statements. Evidence can be:

- Paid employment – A P60 or 3 months’ consecutive wage slips from current employment.
- Non-means-tested benefits and pensions – an official letter or notice from the payer.
- Interest from capital, stocks, shares or bonds – statements or vouchers showing gross income.
- Self-employment – most recent self-assessment tax return and HMRC tax calculation, or audited account certified by a qualified accountant.

If the donor receives no income, they must send a signed statement explaining how they support themselves. If they don’t have mental capacity their attorney or solicitor can supply and sign this statement.

Exception

If the donor has been awarded personal injury damages of more than £16,000 which were ignored when they were assessed for one of the above benefits, they won’t qualify for exemption.

Supporting evidence for exemption

You need to send copies of letters from a benefit provider showing the donor received at least 1 of the listed benefits at the time you applied to register. Letters must confirm that the benefit was being paid to the donor and include their printed details (title, full name, address and postcode).

Remission based on Universal Credit

A donor may qualify for remission if they receive Universal Credit.

Supporting evidence of Universal Credit

You need to send copies of letters showing the donor received Universal Credit at the time you applied to register. Letters must confirm that the benefit was being paid to the donor and include their printed details (title, full name, address and postcode).

Contact OPG

Office of the Public Guardian
PO Box 16185
Birmingham B2 2WH
DX: 744240 Birmingham 79
Telephone: 0300 456 0300
(+44 300 456 0300 outside the UK)
Textphone: 0115 934 2776
Fax: 0870 739 5780
Phone line open - Monday to Friday 9am to 5pm (Wednesday 10am to 5pm)
Email: customerservices@publicguardian.gsi.gov.uk
Online: www.gov.uk/power-of-attorney

Review

If an application for exemption or remission is unsuccessful, you can appeal within 4 weeks of the decision by writing to the Head of Corporate Services. If the original decision is upheld, it will be referred to the Public Guardian for confirmation.

Hardship

If the donor doesn’t qualify for remission or exemption, but paying fees would cause hardship – for example, paying would mean they couldn’t meet normal living costs – you can apply to have fees waived. To claim write to OPG explaining why payment would cause hardship, enclosing bank statements and other documents showing all savings, income and outgoings.
### Section 3 – Fee exemption based on permitted benefits

<table>
<thead>
<tr>
<th>3a Does the donor receive any of the benefits listed?</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Income Support</td>
</tr>
<tr>
<td>- Income-based Employment and Support Allowance</td>
</tr>
<tr>
<td>- Income-based Jobseeker’s Allowance</td>
</tr>
<tr>
<td>- Guarantee Credit element of State Pension Credit</td>
</tr>
<tr>
<td>- Housing Benefit</td>
</tr>
<tr>
<td>- Council Tax Reduction/Support – also known by other names (not the 25% single person discount or the Class U exemption)</td>
</tr>
<tr>
<td>- Local Housing Allowance</td>
</tr>
<tr>
<td>- A combination of Working Tax Credit and at least one of:</td>
</tr>
<tr>
<td>- Child Tax Credit</td>
</tr>
<tr>
<td>- Disability Element of Working Tax Credit</td>
</tr>
<tr>
<td>- Severe Disability Element of Working Tax Credit</td>
</tr>
<tr>
<td><strong>Not included:</strong> Disability Living Allowance, Invalidity Benefit, Personal Independence Payment</td>
</tr>
</tbody>
</table>

■ Yes → Go to question 3b

■ No → Go to Section 4

### Section 4 – Fee remission based on gross annual income or Universal Credit

<table>
<thead>
<tr>
<th>Is the donor’s gross annual income less than £12,000?</th>
</tr>
</thead>
<tbody>
<tr>
<td>■ Yes, I want to apply for a remission of 60% of the fee based on the donor’s gross annual income.</td>
</tr>
</tbody>
</table>

⇒ Evidence must be enclosed.

■ No

Does the donor receive Universal Credit?

■ Yes, I want to apply for a remission based on the donor receiving Universal Credit.

⇒ Evidence must be enclosed.

■ No

### Section 5 – Declaration

I declare that the information I have given is true to the best of my knowledge, and I enclose the required evidence to support the claim for a fee exemption or remission.

I understand that this application will be refused if I fail to provide evidence.

Signature  

Date

Send your completed application to:
Office of the Public Guardian, PO Box 16185, Birmingham B2 2WH
or
DX 744240 Birmingham 79
Lasting power of attorney for health and welfare

About this lasting power of attorney
This lasting power of attorney allows you to choose people to act on your behalf (as an attorney) and make decisions about your health and personal welfare, when you are unable to make decisions for yourself. This can include decisions about your healthcare and medical treatment, decisions about where you live and day-to-day decisions about your personal welfare, such as your diet, dress or daily routine.

If you also want someone to make decisions about your property and financial affairs, you will need a separate form (downloadable from our website or call 0300 456 0300).

Who can fill it in?
Anyone aged 18 or over, who has the mental capacity to do so.

Before you fill in the lasting power of attorney:
1. Please read the guidance available at gov.uk/power-of-attorney or by calling 0300 456 0300. See, for example, the Lasting power of attorney creation pack or other relevant guidance booklets which are all available online or by post.
2. Make sure you understand the purpose of this lasting power of attorney and the extent of the authority you are giving your attorneys.
3. Read the separate Information sheet to understand all the people involved, and how the three parts of the form should be filled in.
4. Make sure you, your certificate provider(s), and your attorney(s) have read the section on page 2 called Information you must read before filling in their relevant part.

This lasting power of attorney could be rejected at registration if it contains any errors.
Information you must read

This lasting power of attorney is a legal document.
Each person who signs parts A, B and C must read
this information before signing.

Purpose of this lasting power of attorney
This lasting power of attorney gives your attorneys authority to
make decisions about your health and welfare when you cannot
make your own decisions. This can include where you live, who
visits you and the type of care you receive.

When your attorneys can act for you
Your attorneys can use this lasting power of attorney only after it
has been registered and stamped on every page by the Office of
the Public Guardian. Your attorneys can only act when you lack
the capacity to make the decision in question. You may have
capacity to make some decisions about your personal health and
welfare but not others.

The Mental Capacity Act
Your attorneys cannot do whatever they like. They must follow the
principles of the Mental Capacity Act 2005.
Guidance about these principles is in the Mental Capacity Act
Code of Practice. Your attorneys must have regard to the Code of
Practice. They can get a copy from The Stationery Office at
tso.co.uk or read it online at gov.uk/power-of-attorney

Principles of the Act that your attorneys must follow
1 Your attorneys must assume that you can make your own
decisions unless they establish that you cannot do so.
2 Your attorneys must help you to make as many of your own
decisions as you can. They cannot treat you as unable to make
the decision in question unless all practicable steps to help you
to do so have been made without success.
3 Your attorneys must not treat you as unable to make the decision
in question simply because you make an unwise decision.
4 Your attorneys must make decisions and act in your best
interests when you are unable to make the decision in question.
5 Before your attorneys make the decision in question or act for
you, they must consider whether they can make the decision or
act in a way that is less restrictive of your rights and freedom but
still achieves the purpose.

Your best interests
Your attorneys must act in your best interests in making
decisions for you when you are unable to make the decision in
question yourself. They must take into account all the relevant
circumstances. This includes, if appropriate, consulting you and
others who are interested in your health and welfare. Any guidance
you add may assist your attorneys in identifying your views.

Cancelling this lasting power of attorney
You can cancel this lasting power of attorney at any time before or
after it is registered as long as you have mental capacity to cancel
it. Please read the guidance available at
gov.uk/power-of-attorney

How to fill in this form

• Tick the boxes that apply like this ☑
• Use black or blue ink and write clearly
• Cross through any boxes or sections that
don't apply to you, like this:

Any other names you are known by in financial
documents or accounts

• Don't use correction fluid – please cross
out any mistakes and rewrite nearby. All
corrections must be initialed by the person
completing that section of the form (and their
witness) like this:

Any other names you are known by in financial
documents or accounts

William Edward Shad
A.S.B / W.E. Smyth

• Your application could be rejected if your
intentions are not clear and explicit. If you
are in any doubt, please start again on a new
copy of the form.

What happens after you've filled it in?
The next step is to register it. You or your
attorneys can do this at any time. The person
applying will need to fill in a registration form
and may need to pay a fee at that time. They
will also need to send notices to the 'people to
be told' named at part A when the application
to register this lasting power of attorney is
made. You can find out more and download the
registration form at gov.uk/power-of-attorney

The 'people to be told' are given time to raise
any concerns or objections. This means the
earliest the Office of Public Guardian can
register this lasting power of attorney is
4 weeks after they notify the donor or
attorneys that an application to register has
been received.

Your lasting power of attorney will end if it
can no longer be used. For example, if a sole
attorney dies or can no longer act for you and
no replacement attorney has been named in
this lasting power of attorney. Please read the
guidance available at
gov.uk/power-of-attorney

Helpline
0300 456 0300
gov.uk/power-of-attorney

Valid only with Office of the Public Guardian stamp
Part A Declaration by the person who is giving this lasting power of attorney

Please write clearly using black or blue ink.

1. About the person who is giving this lasting power of attorney

<table>
<thead>
<tr>
<th>Mr</th>
<th>Mrs</th>
<th>Ms</th>
<th>Miss</th>
<th>Other title</th>
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<tbody>
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</tbody>
</table>

First names

Last name

Date of birth

Address and postcode

Postcode

Any other names you are known by in medical records or welfare records

2. About the attorneys you are appointing

Thinking about your attorneys

- You can appoint more than one attorney if you want to. You do not have to appoint more than one attorney.
- Each attorney must be aged 18 or over. Choose people you know and trust to make decisions for you.

You are recommended to read the separate guidance for people who want to make a lasting power of attorney for health and welfare.

Your first or only attorney

<table>
<thead>
<tr>
<th>Mr</th>
<th>Mrs</th>
<th>Me</th>
<th>Miss</th>
<th>Other title</th>
</tr>
</thead>
<tbody>
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</tbody>
</table>

First names of your first or only attorney

Last name of your first or only attorney

Date of birth of your first or only attorney

Address and postcode of your first or only attorney

Postcode

Your second attorney

Please cross through this section if it does not apply.

<table>
<thead>
<tr>
<th>Mr</th>
<th>Mrs</th>
<th>Me</th>
<th>Miss</th>
<th>Other title</th>
</tr>
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<tbody>
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</table>

First names of your second attorney

Last name of your second attorney

Date of birth of your second attorney

Address and postcode of your second attorney

Postcode

If you are appointing more than two attorneys, use continuation sheet A1 to tell us about your other attorneys.

Other attorneys you are appointing

Number of attorneys named in continuation sheet A1 attached to this lasting power of attorney

Cross through this box if this does not apply

Helpline
0300 456 0300
gov.uk/power-of-attorney

Valid only with Office of the Public Guardian stamp
3. About appointing replacements if an attorney can no longer act

Thinking about replacement attorneys

- Replacement attorneys will only act once your attorney can no longer act for you.
- You can appoint replacements to replace an attorney who does not want to act for you or who is permanently no longer able to act because they are dead, have disclaimed, lack mental capacity or if they were married to you or were your civil partner, and have now had the marriage or civil partnership annulled or dissolved.
- You do not have to appoint any replacements.
- If you appoint only one attorney and no replacements, this lasting power of attorney will end when your attorney can no longer act.

Your first or only replacement attorney  

Please cross through this section if it does not apply.

<table>
<thead>
<tr>
<th>Mr</th>
<th>Mrs</th>
<th>Ms</th>
<th>Miss</th>
<th>Other title</th>
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</tbody>
</table>

Date of birth of your first or only replacement

First names of your first or only replacement

Address and postcode of your first or only replacement

Last name of your first or only replacement

Postcode

If you are appointing more than one replacement, use continuation sheet A1 to tell us about your other replacement attorneys.

Other replacement attorneys you are appointing

Number of replacement attorneys named in continuation sheet A1 attached to this lasting power of attorney

Cross through this box if this does not apply

Helpline
0300 456 0300
gov.uk/power-of-attorney

Valid only with Office of the Public Guardian stamp.
How you want your attorneys to make decisions

Thinking about how you want your attorneys to make decisions

If you leave this section blank, your attorneys will be appointed to make all decisions jointly.

- Jointly: this means that the attorneys must make all decisions together. → For further information on appointing your attorneys jointly, see the separate guidance.
- Jointly and severally: this means that attorneys can make decisions together and separately. This might be useful, for example, if one attorney is not available to make a decision at a certain time. If one attorney cannot act the remaining attorney is able to continue to make decisions.
- Jointly for some decisions, and jointly and severally for other decisions; this means that your attorneys must make certain decisions together and may make certain decisions separately. You will need to set out below how you want this to work in practice.

Choosing which decisions must be made together and which decisions may be made separately — how this will work in practice

- Please make your intentions clear about how your attorneys are to make the decision in question, for example about where you live, who visits you and the type of care you receive.
- Please check that your intentions will work in practice — it may not be possible to register or use this lasting power of attorney if they are not workable. Please read the separate guidance for examples that will not work in practice.

How you want your attorneys to make decisions

If you are appointing only one attorney and no replacement attorneys, now go to section 5 →

Jointly

[ ] → Go to section 5 and cross through the box below

Jointly and severally

[ ] → Go to section 5 and cross through the box below

Jointly for some decisions, and jointly and severally for other decisions

[ ]

Only if you have ticked the last box above, now tell us in the space below which decisions your attorneys must make jointly and which decisions may be made jointly and severally

If you need more space, use continuation sheet A2

Helpline
0300 456 0300
gov.uk/power-of-attorney
## About life-sustaining treatment

Life-sustaining treatment means any treatment that a doctor considers necessary to keep you alive. Whether or not a treatment is life-sustaining will depend on the specific situation. Some treatments will be life-sustaining in some situations but not in others.

The decisions you authorise your attorneys to make for you in this lasting power of attorney take the place of any advance decision you have already made on the same subject.

You must be clear whether or not you want to give your attorneys this authority. This is very important so please be clear about the choice you are making. You might want to discuss this first with your attorneys or doctors and health professionals.

### Option A

I want to give my attorneys authority to give or refuse consent to life-sustaining treatment on my behalf.

Signed in the presence of a witness by the person who is giving this lasting power of attorney

Your signature or mark

Date signed or marked

The date you sign (or mark) here must be the same as the date you sign or mark section 10 Declaration.

Who can be a witness

- You must be 18 or over.
- You cannot be an attorney or replacement attorney named at Part A or any continuation sheets A to this lasting power of attorney.
- If you have been asked to be the certificate provider at Part B, you can be a witness at Part A.
- A person to be told when the application to register this lasting power of attorney is made can be a witness.

### Option B

I do not want to give my attorneys authority to give or refuse consent to life-sustaining treatment on my behalf.

Signed in the presence of a witness by the person who is giving this lasting power of attorney

Your signature or mark

Date signed or marked

The date you sign (or mark) here must be the same as the date you sign or mark section 10 Declaration.

Witnessed by

Signature of witness

Full names of witness

Address and postcode of witness

Helpline

0300 456 0300

gov.uk/power-of-attorney

Valid only with Office of the Public Guardian stamp
6. About restrictions and conditions

Putting restrictions and conditions into words

- You should read the separate guidance for examples of conditions and restrictions that will not work in practice.
- Your attorneys must follow any restrictions or conditions you put in place. But it may not be possible to register or use this lasting power of attorney if a condition is not workable.
- Either: give any restrictions and conditions about health and welfare here.
- Or: if you would like your attorneys to make decisions with no restrictions or conditions, you should cross through this box.

Restrictions and conditions about health and welfare

If you need more space, use continuation sheet A2

7. About guidance to your attorneys

Putting guidance into words

- Any guidance you add may help your attorneys to identify your views. You do not have to add any.
- Your attorneys do not have to follow your guidance but it will help them to understand your wishes when they make decisions for you.
- Either: Give any guidance about health and welfare here.
- Or: if you have no guidance to add, please cross through this box.

Guidance to your attorneys about health and welfare

If you need more space, use continuation sheet A2

8. About paying your attorneys

Professional charges

- Professional attorneys, such as solicitors and accountants, charge for their services. You can also choose to pay a non-professional person for their services. You should discuss payment with your attorneys and record any agreement made here to avoid any confusion later.
- You can choose to pay non-professional attorneys for their services, but if you do not record any agreement here they will only be able to recover reasonable out-of-pocket expenses.

Charges for services

If you need more space, use continuation sheet A2

For further information on paying attorneys, please see the separate guidance.
9. About people to be told when the application to register this lasting power of attorney is made

Thinking about people to be told

- For your protection you can choose up to five people to be told when your lasting power of attorney is being registered. This gives people who know you well an opportunity to raise any concerns or objections before this lasting power of attorney is registered and can be used.

- You do not have to choose anyone. But if you leave this section blank, you must choose two people to sign the certificate to confirm understanding at part B.

- The people to be told cannot be your attorney or replacement named at part A or in continuation sheets to part A.

<table>
<thead>
<tr>
<th>The first or only person to be told</th>
<th>The second person to be told</th>
</tr>
</thead>
<tbody>
<tr>
<td>Please cross through this section if it does not apply.</td>
<td>Please cross through this section if it does not apply.</td>
</tr>
<tr>
<td>Mr</td>
<td>Mrs</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>First names of first or only person to be told</td>
<td>First names of second person to be told</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Last name of first or only person to be told</td>
<td>Last name of second person to be told</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Address and postcode of first or only person to be told</td>
<td>Address and postcode of second person to be told</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Postcode</td>
<td>Postcode</td>
</tr>
</tbody>
</table>

Other people to be told

Please cross through this section if it does not apply

Tell us about other people to be told on continuation sheet A1.

Number of other people to be told named in continuation sheet A1 attached to this lasting power of attorney
10 Declaration by the person who is giving this lasting power of attorney

Before signing please check that you have:
• filled in every answer that applies to you
• crossed through blank boxes that do not apply to you
• filled in any continuation sheets
• crossed through any mistakes you have made
• initialled any changes you have made.

No changes may be made to this lasting power of attorney and no continuation sheets may be added after part A has been filled in and signed. If any change appears to have been made, this lasting power of attorney will not be valid and will be rejected when an application is made to register it.

By signing (or marking) on this page, or by directing someone to sign a continuation sheet, I confirm all of the following:

Statement of understanding
I have read or had read to me:
• the section called ‘Information you must read’ on page 2
• all information contained in part A and any continuation sheets to part A of this lasting power of attorney.

I appoint and give my attorneys authority to make decisions about my health and welfare, when I cannot act for myself because I lack mental capacity, subject to the terms of this lasting power of attorney and to the provisions of the Mental Capacity Act 2005.

Statement about life-sustaining treatment
I have chosen option A or option B about life-sustaining treatment in section 5 of this lasting power of attorney.

People to be told when the application to register this lasting power of attorney is made
I have chosen the people to be told, and have chosen one person to sign the certificate of understanding at part B.

OR
I do not want anyone to be told, and have chosen two people to sign certificates of understanding at part B.

If you cannot sign this lasting power of attorney you can make a mark instead.

If you cannot sign or make a mark use continuation sheet A3:HW →

Signed (or marked) by the person giving this lasting power of attorney and delivered as a deed

Date signed or marked

Sign (or mark) and date
• section 5 (Option A or Option B), and
• each continuation sheet at the same time as you sign (or mark) part A here.

You must sign (or mark) and date part A here before parts B and C are signed and dated.

The witness should be independent of you and:
• Must be 18 or over.
• Cannot be an attorney or replacement attorney named at part A or any continuation sheets to this lasting power of attorney.
• Can be a certificate provider at part B.
• Can be a person to be told when the application to register this lasting power of attorney is made.
• Must initial any changes made in Part A.

Sign section 8 (witnessing Option A or Option B) at the same time as you sign part A here.

Witnessed by

Signature of witness

Full names of witness

Address and postcode of witness

Postcode

Helpline
0300 456 0300
gov.uk/power-of-attorney

Valid only with Office of the Public Guardian stamp
Declaration by the person who is signing this certificate

Please refer to separate guidance for certificate providers. If the guidance is not followed, this lasting power of attorney may not be valid and could be rejected when an application is made to register it.

In part A (section 9) has the person giving this lasting power of attorney chosen at least one person to be told when the application to register this lasting power of attorney is made?

If yes = one certificate provider fills in this part
If no = the first certificate provider fills in this part and the second certificate provider must fill in continuation sheet B [8]

The donor is the person who is giving this lasting power of attorney.

By signing below, I confirm:

My understanding of the role and responsibilities

I have read part A of this lasting power of attorney, including any continuation sheets.
I have read the section called ‘Information you must read’ on page 2 of this lasting power of attorney.
I understand my role and responsibilities as a certificate provider.

Statement of acting independently

I confirm that I act independently of the attorneys and of the donor and I am aged 18 or over.
I am not:
• an attorney or replacement attorney named in this lasting power of attorney or any other lasting power of attorney or enduring power of attorney for the donor
• a family member related to the donor or any of their attorneys or replacements
• a business partner or paid employee of the donor or any of their attorneys or replacements
• the owner, director, manager or employee of a care home that the donor lives in, or a member of their family.

How you formed your opinion

Before signing this certificate you must establish that the donor understands what it is, the authority they are giving their attorneys, and is not being pressurised into making it.

If someone challenges this lasting power of attorney, you may need to explain how you formed your opinion.

Statement of personal knowledge or relevant professional skills

Please cross through the box that does not apply.

EITHER

I have known the donor for at least two years and as more than an acquaintance. My personal knowledge of the donor is:

[Blank space for personal knowledge]

OR

I have relevant professional skills. (Please state your profession – for example, a GP or solicitor – and then the particular skills that are relevant to you forming your opinion – for example, a consultant specialising in geriatric care.)

My profession and particular skills are:

[Blank space for professional knowledge]

Continues over →
Things you certify

I certify that, in my opinion, at the time of signing part A:

- the donor understands the purpose of this lasting power of attorney and the scope of the authority conferred under it
- no fraud or undue pressure is being used to induce the donor to create this lasting power of attorney
- there is nothing else which would prevent this lasting power of attorney from being created by the completion of this form.

Your signature

Do not sign until part A of this lasting power of attorney has been filled in and signed.
Sign as soon as possible after part A is signed. If this part is signed before part A is signed, this lasting power of attorney will not be valid and will be rejected when an application is made to register it.

Signature of certificate provider

Date signed

Name and address of the person who is signing this certificate

Mr  Mrs  Ms  Miss  Other title

First names of certificate provider

Last name of certificate provider

Address and postcode of certificate provider

Postcode

Helpline 0300 456 0300
gov.uk/power-of-attorney

Valid only with Office of the Public Guardian stamp
Part C  Declaration by each attorney or replacement attorney

Your attorney(s) and replacement attorney(s) sign and date this part.

If you are appointing more than one attorney, including replacement attorneys: photocopy this sheet before it is filled in so that each attorney has a copy to fill in and sign.

Statement by the attorney or replacement attorney who is signing this declaration

- Before a replacement can act for you, they must get in touch with the Office of the Public Guardian and return the original lasting power of attorney form. They will get guidance at that time about what needs to happen next.

By signing below, I confirm all of the following:

Understanding of role and responsibilities

I have read the section called ‘Information you must read’ on page 2 of this lasting power of attorney.

I understand my role and responsibilities under this lasting power of attorney, in particular:

- I have a duty to act based on the principles of the Mental Capacity Act 2005 and have regard to the Mental Capacity Act Code of Practice
- I can make decisions and act only when this lasting power of attorney has been registered and when the person who is giving this lasting power of attorney lacks mental capacity
- I must make decisions and act in the best interests of the person who is giving this lasting power of attorney

Further statement of replacement attorney

If an original attorney's appointment is terminated, I will replace the original attorney if I am still eligible to act as an attorney.

I have the authority to act under this lasting power of attorney only after an original attorney’s appointment is terminated and I have notified the Public Guardian of the event.

The witness must be over 18 and can be:

- another attorney or replacement attorney named at part A or in continuation sheet A to this lasting power of attorney
- a certificate provider at part B of this lasting power of attorney.
- a person to be told when the application to register this lasting power of attorney is made.

The donor cannot be a witness.
The witness must see the attorney or replacement attorney sign or make a mark.

Signature of witness

Full name of witness

Address and postcode of witness to the attorney’s or replacement attorney’s signature

Postcode

Helpline
0300 456 0300
gov.uk/power-of-attorney

Valid only with Office of the Public Guardian stamp
A1  Continuation sheet A1 – Additional people

Use this continuation sheet for details of all additional attorneys, replacement attorneys, or people to be told. Make copies of this sheet before filling it in if you need more than one sheet.

About the additional people

For each additional person, provide the following details
- Whether you want them to act as an attorney, replacement attorney or person to be told

If you don't make your requirements for each person clear this lasting power of attorney could be rejected at registration
- Their title, full name, address (including postcode)
- Their date of birth

For example:
- Third attorney
  - Mr John Smith,
  - 38 London Street,
  - Posttown, PC8 9ZZ
  - 19 January 1980

or:
- Second replacement attorney
  - Mrs Susan Jones
  - 27 Lincoln Road,
  - Posttown, PC7 9XX
  - 12 December 1962

About you

Name of person who is giving this lasting power of attorney

Signed or marked by (or signed by the direction of) the person giving this lasting power of attorney

Date signed or marked

Please attach this sheet to the back of your lasting power of attorney before you sign and date the declaration in part A.
And number your continuation sheets consecutively.

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LPA116 (D7.13)
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**A2 Continuation sheet A2 - how your attorneys make decisions jointly and severally, restrictions & conditions, guidance, payment**

Only use this continuation sheet to provide further additional information about how you want your attorneys to act. Make copies of this sheet before filling it in if you need more than one sheet.

### About the additional information

For each additional piece of information you are providing, state whether it relates to:

- Which decisions your attorneys should make jointly and which decisions they should make jointly and severally (only if this applies)
- Restrictions and conditions
- Guidance to your attorneys
- Paying your attorneys

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<tr>
<th>Information</th>
<th>Date</th>
<th>Remarks</th>
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### About you

**Name of person who is giving this lasting power of attorney**

**Signed or marked by (or signed by the direction of) the person giving this lasting power of attorney**

**Date signed or marked**

**Please attach this sheet to the back of your lasting power of attorney before you sign and date the declaration in part A.**

And number your continuation sheets consecutively.

**This is continuation sheet number**

**Total number of continuation sheets**

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**Helpline**

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A3:HW  Continuation sheet A3 (health and welfare) — if you cannot sign or make a mark

Use this continuation sheet if you cannot sign or make a mark at part A of your lasting power of attorney.

The person signing on behalf of the person giving this lasting power of attorney must
• sign in the person's presence and in the presence of two witnesses.
• sign in their own name
• not also be a witness.

Option A  ![Do not sign both boxes]
I want to give my attorneys authority to give or refuse consent to life-sustaining treatment on my behalf.
Signature of someone signing for the person who is giving this lasting power of attorney

Date signed

![The date you sign here must be the same as the date you sign below.]

Option B  ![Do not sign both boxes]
I do not want to give my attorneys authority to give or refuse consent to life-sustaining treatment on my behalf.
Signature of someone signing for the person who is giving this lasting power of attorney

Date signed

![The date you sign here must be the same as the date you sign below.]

Signature of someone signing on behalf of the person giving this lasting power of attorney:

I confirm that I have signed at Option A or Option B in the presence of and directed by the person giving this lasting power of attorney and in the presence of two witnesses

Date signed

Signed as a deed and delivered in the presence of and directed by the person giving this lasting power of attorney and in the presence of two witnesses

⚠️ This continuation sheet has two pages.
Two witnesses must sign on the next page ➔

Number each page individually and attach both pages of continuation sheet A3:HW to the back of your lasting power of attorney after they have been signed and dated.

This is continuation sheet number
Total number of continuation sheets

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Continues over ➔
Each witness
- Must be 18 or over.
- Cannot be an attorney or replacement attorney named at part A or any continuation sheets A to this lasting power of attorney.

Also witnessed by
- Can be a certificate provider at part B.
- Can be a person to be told when the application to register this lasting power of attorney is made.
- Must initial any changes made in Part A.

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<th>Witnessed by</th>
<th>Also witnessed by</th>
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<tr>
<td>Signature of first witness</td>
<td>Signature of second witness</td>
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<th>Full names of first witness</th>
<th>Full names of second witness</th>
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<tr>
<th>Address and postcode of first witness</th>
<th>Address and postcode of second witness</th>
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<th>Postcode</th>
<th>Postcode</th>
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About you
Name of person who is giving this lasting power of attorney

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This continuation sheet has two pages.

Number each page individually and attach both pages of continuation sheet A3:HW to the back of your lasting power of attorney after they have been signed and dated.

This is continuation sheet number

Total number of continuation sheets

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Your second certificate provider signs and dates this continuation sheet

**Declaration by the person who is signing this certificate**

Please refer to separate guidance for certificate providers. If the guidance is not followed, this lasting power of attorney may not be valid and could be rejected when an application is made to register it.

In part A (property and financial affairs section 8, or health and welfare section 9) has the person giving this lasting power of attorney chosen at least one person to be told when the application to register this lasting power of attorney is made?

If yes = you only need one certificate provider so you do not need to fill in this continuation sheet

If no = the second certificate provider must fill in this continuation sheet

The donor is the person who is giving this lasting power of attorney.

**By signing below, I confirm:**

**My understanding of the role and responsibilities**

I have read part A of this lasting power of attorney, including any continuation sheets.

I have read the section called ‘Information you must read’ on page 2 of this lasting power of attorney.

I understand my role and responsibilities as a certificate provider.

**Statement of acting independently**

I confirm that I act independently of the attorneys and of the donor and I am aged 18 or over.

I am not:

- an attorney or replacement attorney named in this lasting power of attorney or any other lasting power of attorney or enduring power of attorney for the donor

- a family member related to the donor or any of their attorneys or replacements

- a business partner or paid employee of the donor or any of their attorneys or replacements

- the owner, director, manager or employee of a care home that the donor lives in, or a member of their family

- a director or employee of a trust corporation appointed as an attorney or replacement attorney in this lasting power of attorney (for property and financial affairs only).

**How you formed your opinion**

Before signing this certificate you must establish that the donor understands what it is, the authority they are giving their attorneys, and is not being pressured into making it.

**If someone challenges this lasting power of attorney, you may need to explain how you formed your opinion.**

**Statement of personal knowledge or relevant professional skills**

Please cross through the box that does not apply.

**EITHER**

I have known the donor for at least two years and as more than an acquaintance. My personal knowledge of the donor is:

**OR**

I have relevant professional skills. (Please state your profession – for example, a GP or solicitor – and then the particular skills that are relevant to you forming your opinion – for example, a consultant specialising in geriatric care.)

My profession and particular skills are:

---

Number each page individually and attach both continuation sheet B pages to the back of your lasting power of attorney after you sign and date the declaration in part A.

This is continuation sheet number [ ]

Total number of continuation sheets [ ]

Continues over →

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### Declaration by the person who is signing this certificate (continued):

**Things you certify**

I certify that, in my opinion, at the time of signing part A:

- the donor understands the purpose of this lasting power of attorney and the scope of the authority conferred under it
- no fraud or undue pressure is being used to induce the donor to create this lasting power of attorney
- there is nothing else which would prevent this lasting power of attorney from being created by the completion of this form.

**Your signature**

⚠️ **Do not sign until part A of this lasting power of attorney has been filled in and signed.**

Sign as soon as possible after part A is signed. If this part is signed before part A is signed, this lasting power of attorney will not be valid and will be rejected when an application is made to register it.

**Signature of certificate provider**

**Date signed**

---

**Name and address of the person who is signing this certificate**

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<tr>
<th>Mr</th>
<th>Mrs</th>
<th>Ms</th>
<th>Miss</th>
<th>Other title</th>
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**First names of certificate provider**

**Last name of certificate provider**

**Address and postcode of certificate provider**

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*Postcode*

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Number each page individually and attach both pages of continuation sheet B to the back of your lasting power of attorney after you sign and date the declaration in part A.

This is continuation sheet number

Total number of continuation sheets

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Part C Declaration by each attorney or replacement attorney

Your attorney(s) and replacement attorney(s) sign and date this part.

If you are appointing more than one attorney, including replacement attorneys: photocopy this sheet before it is filled in so that each attorney has a copy to fill in and sign.

Statement by the attorney or replacement attorney who is signing this declaration

- Before a replacement can act for you, they must get in touch with the Office of the Public Guardian and return the original lasting power of attorney form. They will get guidance at that time about what needs to happen next.

By signing below, I confirm all of the following:

Understanding of role and responsibilities

I have read the section called ‘Information you must read’ on page 2 of this lasting power of attorney.

I understand my role and responsibilities under this lasting power of attorney, in particular:

- I have a duty to act based on the principles of the Mental Capacity Act 2005 and have regard to the Mental Capacity Act Code of Practice

- I can make decisions and act only when this lasting power of attorney has been registered and when the person who is giving this lasting power of attorney lacks mental capacity

- I must make decisions and act in the best interests of the person who is giving this lasting power of attorney

Further statement of replacement attorney

If an original attorney's appointment is terminated, I will replace the original attorney if I am still eligible to act as an attorney.

I have the authority to act under this lasting power of attorney only after an original attorney's appointment is terminated and I have notified the Public Guardian of the event.

The witness must be over 18 and can be:

- another attorney or replacement attorney named at part A or in continuation sheet A to this lasting power of attorney

- a certificate provider at part B of this lasting power of attorney.

- a person to be told when the application to register this lasting power of attorney is made.

The donor cannot be a witness.

The witness must see the attorney or replacement attorney sign or make a mark.

Signature of witness

Full name of witness

Address and postcode of witness to the attorney's or replacement attorney's signature

Postcode

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