



**This factsheet explains a Power of Attorney, depending on where you live in the UK, and should be read in conjunction with your suitability report and any provider documentation.**

### **Power of Attorney (England & Wales)**

A lasting power of attorney is a legal document that lets you appoint someone (known as an 'attorney') to make decisions on your behalf. It could be used if you became unable to make your own decisions.

There are two types:

- Health and Welfare
- Property and Financial Affairs

You can choose to make one type of lasting power of attorney or both.

#### **Health & Welfare Lasting Power of Attorney**

This allows you to choose one person or more to make decisions about things like:

- medical care
- your daily routine (e.g. eating, what to wear)
- moving into a care home
- refusing life-sustaining treatment

The lasting power of attorney can only be used when you're unable to make your own decisions.

#### **Property & Financial Affairs Lasting Power of Attorney**

This lets you choose one person or more to make decisions about money and property for you, e.g.:

- paying bills
- collecting benefits
- selling your home

You can appoint someone to look after your property and financial affairs at any time. More information on making and registering a power of attorney can be found at the relevant pages of the Government website (<https://www.gov.uk/power-of-attorney/overview>) or by contacting the Office of the Public Guardian.

## Power of Attorney (Scotland)

A lasting power of attorney is a legal document that lets you appoint someone (known as an 'attorney') to make decisions on your behalf. It could be used if you became unable to make your own decisions.

There are two types:

- Continuing Powers of Attorney (for financial matters)
- Welfare Powers of Attorney

These can be combined in one document and one attorney can act under both or they can be two separate powers with different individuals being appointed under each.

### Continuing Powers of Attorney

A continuing power of attorney only covers property and financial affairs. The document must specify exactly what powers the attorney is to have. There may be a general power to deal with all financial affairs or there may be a list of powers given by the granter.

A continuing attorney cannot make a Will for the granter, cannot take decisions on personal welfare and cannot make gifts to himself or herself or to anyone else unless specifically authorised to do so. If it is intended that the attorney has specific powers, especially in connection with making gifts or any other tax planning arrangements, this must be specifically stated in the power.

### Welfare Powers of Attorney

The granter of a welfare power chooses what powers he or she wishes the attorney to have. For example, deciding on care arrangements, deciding where the granter should live, having access to health records, consenting to medical treatment, bringing and defending legal actions etc.

Under the Act's principles the welfare attorney must always take the granter's wishes into account when making any decisions so it is important to make sure that he or she knows as much as possible about the granter's likes and dislikes. Ideally the granter should record his wishes in writing or the attorney should keep a note of any wishes expressed verbally.

A welfare attorney, unless he is also a continuing attorney, cannot make a Will, cannot manage finances and property or appoint a successor and indeed cannot do anything that is not specified in the power.

### Office of the Public Guardian

More information on making and registering a power of attorney can be found at the relevant pages of: (<http://www.publicguardian-scotland.gov.uk/general/contact-us> ) or by contacting the Office of the Public Guardian.

## Power of Attorney (Northern Ireland)

In Northern Ireland there is only one type of Power of Attorney when it comes to loss of capacity. This is known as Enduring Power of Attorney and it deals with the control of finance and property.

An enduring power of attorney is a legal document that lets you appoint someone (known as an 'attorney') to make decisions on your behalf. It could be used if you became unable to make your own decisions.

In Northern Ireland, the general practice is that you do not apply to register the EPA until just as or just after the donor becomes mentally incapable.

Attorneys must give notice of an intention to register an EPA, to at least three relatives of the donor. There is a strict order of who should be notified first, details of which can be found on The Office of Care and Protection website (<https://www.courtsni.gov.uk/en-GB/Services/OCP/Pages/default.aspx> ).

If the Donor doesn't have three living relatives who fall into the relevant categories, then this should be noted on the application. If the attorneys also happen to be notifiable relatives, you can count them as having been notified.

To become effective, all Enduring Powers of Attorney need to be registered with the High Court (Office of Care and Protection) but registration is not required until the point where your attorney believes you are no longer capable of managing your affairs.

### **The Office of Care and Protection**

More information on making and registering a power of attorney can be found at the relevant pages of: (<https://www.nidirect.gov.uk/articles/managing-your-affairs-and-enduring-power-attorney> ) or by contacting The Office of Care and Protection on 028 9072 5953.