

# Legal Representation – Part One

## Powers of Attorney

If you and/or other members of your family want to look after the financial affairs of the person needing care, and the person is able to give their consent, the best and most effective way to do this is by means of a Lasting Power of Attorney (known as a Continuing Power of Attorney in Scotland).

This is a legal process whereby the person, acting as the donor (granter in Scotland), gives permission for one or more people to act and make decisions about their property and financial affairs (becoming the attorneys) on their behalf, either immediately or at a specified time in the future.

This authority can be limited to one or two specific items or it can be all-encompassing, but the whole process can only be established if the donor/granter has full mental capacity at the time the power is granted.

If a person does not have close family members to appoint, it is possible that a solicitor and/or family friend could be nominated instead. It may be a wise decision for everyone regardless of age and health to establish a Lasting Power of Attorney as soon as possible.

**There are two different types of Lasting (Continuing) Power of Attorney (LPA):**

**Property & Financial Affairs:** This is similar to the old-style Enduring Power of Attorney (pre-dating 1st October 2007) and can be used both before and/or after loss of mental capacity (depending on the donor/granter's wishes).

But unlike the old system the LPA must be registered with the Office of the Public Guardian before it can be used (regardless of mental capacity).

**Health & Welfare:** This includes making provisions for the giving or refusing of consent to medical treatment/intervention in circumstances where the donor/ granter can no longer make such a decision. It is important to note that the welfare LPA can only be used after the donor has lost mental capacity.

**Enduring Power of Attorney:**

Up until 30th September 2007, it was possible for people to draw up an Enduring Power of Attorney. These documents are still perfectly legal, and it will be possible for named attorneys to use the powers within these existing documents, although the following points should be observed carefully:

- No new Enduring Powers of Attorney can be made
- Amendments cannot be made to existing documents

Should an attorney pre-decease the donor, a new Lasting Power of Attorney may need to be drawn up and if the donor no longer has mental capacity then an application will have to be made to the Court of Protection. This will necessitate the appointment of a Deputy to manage the donor's property and financial affairs.

It isn't necessary to register the Enduring Power of Attorney before it can become effective, providing the donor still has mental capacity.

The document must be registered with the Office of the Public Guardian at the onset of mental incapacity. An Enduring Power of Attorney doesn't enable the attorney to make substantive decisions about the donor's health and welfare.

