

A guide to Deputyship and Lasting Power of Attorney

Although every care has been taken in the preparation of this Guide please note that its summarising a complex subject and does not cover all eventualities. The guide should not be treated as being legal advice. If you have queries you should consult with the Court of Protection on matters relating to the Appointment of a Deputy or the Office of the Public Guardian for queries on Lasting Powers of Attorney.



SECTION 1: Helping friends or relatives who lack mental capacity

To protect the data and privacy of our customers, we can't give information on policies to anyone but the policyholder, their legal representative or someone authorised to receive such information.

However we do understand that sometimes people need to get in touch with us about the policy of a friend or relative who **lacks mental capacity** ([full definition on page 5](#)), and we will, of course, do everything we can to help.

If you need to talk to us about a policy that belongs to a friend or relative who is unable to contact us due to lack of mental capacity, one of two legal processes must have been followed:

- They must have given you **Lasting Power of Attorney** ([full definition on page 4](#)), or
- You will need to be appointed as their '**Deputy**' by a Court.

Setting up a Lasting Power of Attorney is a complex legal process, so you should already know if you have this authority. If this isn't the case then you will need to be appointed as a 'Deputy'.

There are certain circumstances, especially in emergency situations, where people can share information with companies on behalf of someone not capable to do so, even when they don't have the legal power. For more information on this please refer to www.gov.uk/become-deputy

Note: If you already have an Enduring Power of Attorney signed and witnessed before 1st October 2007 you can still use this to manage property, money and financial affairs.

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SECTION 1: Helping friends or relatives who lack mental capacity *(continued)*

A Deputy is a person appointed by the Court of Protection to manage the affairs of someone who has lost capacity and who does not have a Lasting Power of Attorney or an Enduring Power of Attorney. The decision as to who to appoint as Deputy is a judicial decision and the Court will appoint someone who has the person's best interests in mind. The Court will look at a range of factors when deciding who to appoint (including age, as deputies must be over 18) and would prefer that this be a close family member, although it can be a relative, friend or neighbour, or professional representative, such as a solicitor, accountant or local authority officer.

If no-one is willing to act on behalf of the person lacking capacity, The Court will appoint a professional to act as Deputy.

Deputies must:

- only make decisions in the interests of the person in respect of whom they are appointed
- only make the decisions the court says they can make
- apply a high standard of care when making decisions.

There are two types of Deputy – a Deputy of Property and Affairs, and a Deputy of Health and Welfare. To deal with someone's finances you will need to be appointed as a Deputy of Property and Affairs.

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What is a Lasting Power of Attorney?

A Lasting Power of Attorney is a legal arrangement that anyone with Mental Capacity can set up to give someone else the authority to help make decisions on their behalf. This will continue even when they become unable to do so for themselves in the future. You can [find out more about the process for setting up a Lasting Power of Attorney](#) elsewhere in this guide.

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How is 'mental capacity' defined?

The Mental Capacity Act (2005) protects people who may not be able to make some decisions for themselves because of, for example:

- dementia
- learning disabilities
- mental health problems
- stroke or head injuries.

Under the Mental Capacity Act a person is presumed to be able to make their own decisions, unless it can be shown they can't:

- understand the information relevant to the decision;
- retain that information; and
- use or weigh up that information as part of the process of making the decision

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How is 'mental capacity' defined?

The Mental Capacity Act 2005 sets out a 2 stage test of capacity;

- Does the person have an impairment of their mind or brain
- Does the impairment mean the person cannot make a specific decision when they need to. People can lack capacity to make some decisions but have capacity to make others. Capacity can also fluctuate with time.

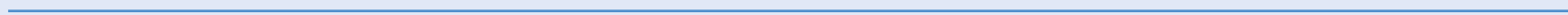
A person is unable to make a decision if they cannot do at least one of the following:

- understand the information relevant to the decision
- retain that information
- use or weigh that information as part of the process of making the decision, or
- communicate the decision, and the reason for not being able to do this is due to an impairment of, or disturbance in the functioning of the mind or brain.

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SECTION 2: Making arrangements to take care of your financial decisions if you're unable to in the future

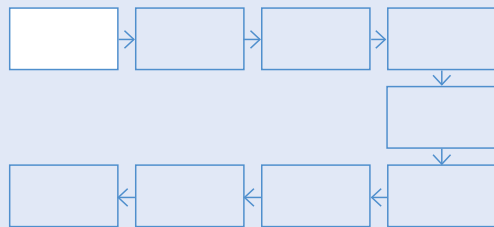
Lasting Power of Attorney contents



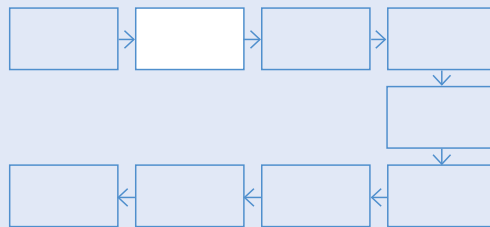
If you're unsure about your rights and responsibilities you may wish to seek legal advice (this may incur cost)

Delegating authority to someone to make decisions for you, for a time when you may become unable to do so for yourself, is a big decision. Making sure you understand the options available to you can help you with the process and make you feel more at ease, so seeking Legal advice may be something you wish to consider.

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Setting up a Lasting Power of Attorney



An attorney is someone who you appoint to make decisions on your behalf if you lack the mental capacity to make the decision yourself. A Lasting Power of Attorney is the legal document that details this appointment, and you'll need to register it for the Lasting Power of Attorney to be effective.

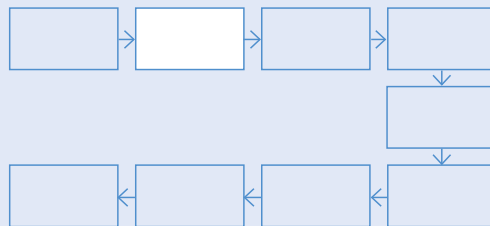
A Lasting Power of Attorney allows you to plan in advance:

- the decisions you want to be made on your behalf if you lose the mental capacity to make them yourself
- the people you want to make these decisions
- how you want the people to make these decisions.

Your attorney(s) cannot do whatever they like. They must follow the principles of the Mental Capacity Act (2005).

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Setting up a Lasting Power of Attorney

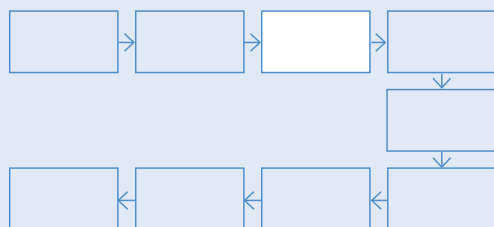


The principles of the Mental Capacity Act 2005

- A person must be assumed to have capacity unless it is established they have lost capacity.
- A person must not be treated as unable to make a decision unless all reasonable steps to help them have been unsuccessful.
- A person must not be treated as unable to make a decision just because they make an unwise decision.
- Any act or decision on behalf of a person who lacks capacity must be in that person's best interests.
- Before an act or decision is carried out on someone's behalf, take due regard to consider if the purpose it is being made for can be achieved in a way that is less restrictive of the person's rights and freedom of action.

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Select the Powers
that are relevant to
your situation



There are two types of Lasting Power of Attorney – Property and Financial affairs, and Health and Welfare. These cover the different decisions that can be made by your Attorney(s).

- A Property and Financial Affairs Lasting Power of Attorney allows an attorney to make decisions about things like paying bills, dealing with the bank, collecting benefits, selling your house, etc.
- A Health and Welfare Lasting Power of Attorney allows decisions on things like treatment, care, medication, where you live, etc.

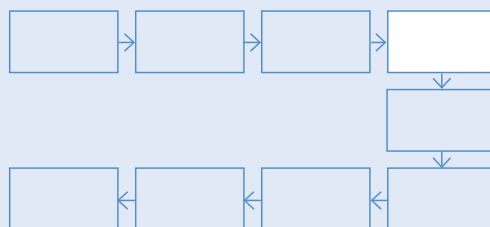
Many people register two Lasting Powers of Attorney (one of each). Please be aware that you will have to pay for each registration you make, although there are exemptions and remissions to the fees. Details of current fees are available for England and Wales [here](#) and for Scotland [here](#).

Please note that Lasting Power of Attorney is applied for through by the [Office of the Public Guardian](#) for England and Wales, and in Scotland by the [Office of the Public Guardian \(Scotland\)](#).

If you live in Northern Ireland the process is different and involves obtaining an Enduring Power of Attorney – managed by the [Office of Care and Protection \(OCP\)](#).

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Choose your attorney(s)
and all other people
you wish to be involved
in your Lasting Power
of Attorney



It's important to think carefully about who you want your attorney(s) to be – after all, they may be making important decisions for you in the future.

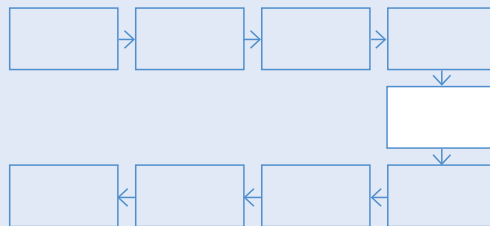
When appointed under a Lasting Power of Attorney, your attorney(s) must act in your best interests but trust is obviously an important part of choosing the person or people to appoint as attorneys.

It's also important to think about replacement attorney(s), in case the people you've originally chosen cannot act for you any more. If you do not appoint any replacement attorney(s), the Lasting Power of Attorney will end when your attorney(s) can no longer act.

You also need to think about the people who will be told that you are applying for a Lasting Power of Attorney. Before your Lasting Power of Attorney is registered, the '**people to be told**' are given an opportunity to raise any concerns or objections. You do not have to tell any one, but you can **choose up to five** to be informed.

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Think about how you want your attorney(s) to make decisions on your behalf



If you have more than one attorney, you need to think about the ways in which your attorney(s) can exercise their power:

To act jointly – they must make all decisions together.

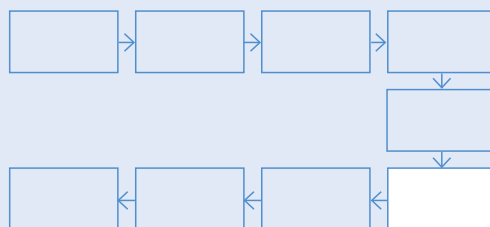
To act jointly and severally – they can make decisions together but if one attorney is unavailable then the others can still act, and if one attorney cannot act, the remaining attorney(s) is/are able to continue to make decisions.

You can also decide to allow your attorneys to act jointly for some decisions, and jointly and severally for other decisions, meaning that your attorneys must make certain decisions together and may make certain decisions separately.

Your attorney(s) must also follow any restrictions that you include in the Lasting Power of Attorney. It may not be possible to register or use a Lasting Power of Attorney if a restriction is not workable.

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Obtain and complete Lasting Power of Attorney forms



The Lasting Power of Attorney forms for Property and Financial Affairs (in both standard and large font versions) can be found [here](#).

You can also apply for Lasting Power of Attorney online [here](#) if you live in England or Wales.

Or [here](#) if you live in Scotland.

When filling in the forms, you will need the following people to sign certain parts:

Your witness (this confirms that they witnessed you signing and dating it).

A certificate provider (someone who you choose who can confirm that you understand the Lasting Power of Attorney and have not been put under pressure to make it).

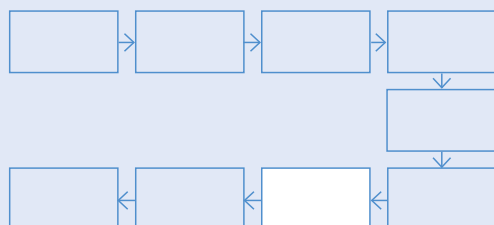
You will need to check who can be a witness and/or a Certificate provider.

The two different Lasting Powers of Attorney have two different sets of forms, and each has three parts – A, B and C:

- You fill in, sign, and date part A.
- Your certificate provider fills in, signs, and dates part B.
- Your attorney(s) and replacement attorney(s) sign part C.

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Seek legal help, or contact the Office of the Public Guardian, if you're uncertain



Setting up a Lasting Power of Attorney isn't the simplest of processes, so if you are uncertain about any of the forms, there is a useful guide included in the pack [here](#), or you can ask the Office of the Public Guardian for help. You could alternatively seek legal advice. The Office of the Public Guardian can reject an application for a Lasting Power of Attorney if the details are not correct, so it's best to get them right the first time.

Contact details for the office of the Public Guardian in England and Wales are:

Email:

customerservices@publicguardian.gsi.gov.uk

Telephone:

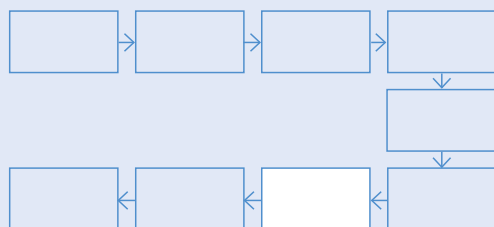
0300 456 0300

Address:

**Office of the Public Guardian
PO Box 16185
Birmingham
B2 2WH**

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Seek legal help, or
contact the Office of
the Public Guardian,
if you're uncertain



Contact details for the Office of the Public Guardian (Scotland) are:

Email:

OPG@scotcourts.gov.uk

Telephone:

01324 678398

Address:

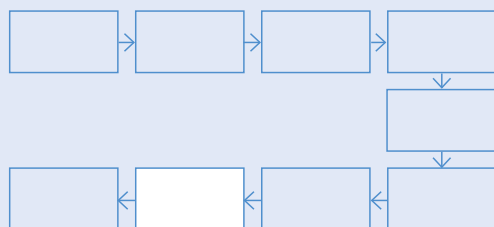
**The Office of the Public Guardian
Hadrian House
Callendar Business Park
Callendar Road
Falkirk
FK1 1XR**

Webpage:

**[http://www.publicguardian-scotland.gov.uk/
general/news](http://www.publicguardian-scotland.gov.uk/general/news)**

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Register your Lasting Power of Attorney



The fees for registering Lasting Powers of Attorney in England and Wales are [here](#) and for Scotland [here](#).

Note: If you need to make a revised application, it must be within 3 months of the original invalid application to qualify for the lower fee.

You or your attorney(s) can register your Lasting Power of Attorney at any time after you have finalised it. However, it cannot be used until it has been registered. Registering the Lasting Power of Attorney as soon as you can means that it will be ready when needed. If you keep your Lasting Power of Attorney for a long time without registering it, it is more likely that details will change and you will need to fill in a new form.

‘Form to notify people’ (Form LP3). To register your Lasting Power of Attorney, you must first inform each of the people to be told of your intention to register, by sending each of them a completed LPA3 form. They then have three weeks to raise any concerns they have with the relevant Office of the Public Guardian.

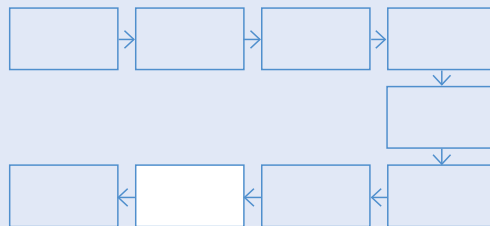
To make your LPA.

Either download the forms, or you can also apply for Lasting Power of Attorney online [here](#) if you live in England or Wales.

Or [here](#) if you live in Scotland.

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Register your Lasting Power of Attorney

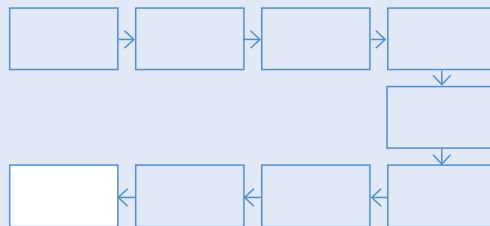


Choose form LP1F to make an LPA for Financial decisions or LP1H to make an LPA for health and care decisions.

Complete the forms following the advice in the guide. The Office of the Public Guardian will check your Lasting Power of Attorney and application to register form, and contact you if there are any issues. If there are no issues, and nobody raises any concerns, the Office of the Public Guardian will register your lasting Power of Attorney around four weeks after sending notices to you and your attorney(s).

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Send a copy of your registered Lasting Power of Attorney to your financial services provider so that they can verify it



Once it's complete, it's unlikely that a financial services company will accept your delegation for making decisions until you have verified your Lasting Power of Attorney with them. To do this you will need to send them a certified copy of the registered Lasting Power of Attorney. You can do this by copying your registered Lasting Power of Attorney and writing at the bottom of each page:

'I certify this is a true and complete copy of the corresponding page of the original Lasting Power of Attorney'

and then signing and dating each page after this declaration.

If you haven't verified your Lasting Power of Attorney with your financial services provider and have lost mental capacity, your attorney should be able to get a certified copy made by a solicitor.

In exceptional cases, the Office of the Public Guardian may be able to provide an office copy of the registered Lasting Power of Attorney for a [fee](#).

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Please let us know if you would like a copy of this in large print or braille, or on audiotape or CD.

We'd like everyone to find it easy to deal with us. Please let us know if you need information about our plans and services in a different format. All our literature is available in large print or braille, or on audiotape or CD.

If you are a textphone user, we can answer any questions you have through a Tynetalk operator. Please call us on 18001 (use existing business phone number). Or, if you prefer, we can introduce your adviser to a sign language interpreter.

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