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There may come a point in life when you, a loved one or close relative can no longer, or may find it difficult to manage your own banking, either temporarily or indefinitely. A power of attorney is a document by which one party (the Donor) gives another person (the Attorney) the power to act on his or her behalf. It may be a general power or limited to certain defined purposes, such as managing the Donor's finances and affairs. There is no reciprocal agreement between the UK Office of the Court of Protection and Ireland's High Court Wards of Court Office regarding UK Lasting Powers of Attorney and Irish Enduring Powers of Attorney. With regard to all foreign Powers, it is a matter for the individual institutions (e.g., the Bank) in this jurisdiction to decide if they will accept a foreign Power as it stands or whether they request that the foreign Power be registered here. From experience, it would appear the majority of institutions do request the foreign be registered here before they will accept same. The Irish Wards of Court office have advised that to date, they have registered U.K. Enduring Powers of Attorney but not a UK Lasting Power of Attorney The UK Mental Capacity Act 2005 provides the legal framework for the powers granted by a Lasting Power of Attorney. The provisions of the Act are only applicable within England and Wales, therefore only assets held in England and Wales come under its jurisdiction. An Attorney can be based overseas but will only be able to deal with assets in England and Wales. Under the terms of the Mental Capacity Act 2005, institutions in England and Wales should accept an EPA/LPA equivalent document which has been created under foreign legislation. Schedule 3 19(1) of the Mental Capacity Act outlines that a protective measure taken in relation to an adult under the law of a country other than England and Wales is to be recognised in England and Wales if it was taken on the grounds that the adult is habitually resident in the other country. If you are having difficulty in UK getting an Institution to accept their foreign order an application can be made to the UK Court of Protection for a recognition or enforcement order using schedule 3 20(1) or 22(1) of the Mental Capacity Act. The Court of Protection may be contacted on 0300 456 4600 or courtofprotectionenquiries@hmcts.gsi.gov.uk In Ireland, it may be required that: (i) an application be made to the Court to see if the Lasting Power of Attorney could be registered as an Enduring Power of Attorney (ii) if the Judge directs that it can be, then the Attorney can make the application to register a foreign Power To date such an application has not been received in the Wards of court Office MaintainedResource Type Glossary Jurisdictions Related Content A Power of Attorney is a legal document that authorises others - known as your attorney or attorneys - to act on your behalf. There are several types of Power of Attorney and the one you need depends on your circumstances and what you want it to cover. You may need more than one type. A Power of Attorney must be created while you are able to make decisions and understand what you're doing. In England and Wales, a doctor, solicitor, social worker, friend or colleague who you've known for at least two years, and is aged over 18, must also sign to confirm you've made the decision without pressure. In Scotland, only a solicitor registered to practise law in Scotland or a registered UK doctor can be the secondary signatory. In Northern Ireland, you do not have to register an Enduring Power of Attorney until the donor has lost capacity. There are different types of Power of Attorneys to choose from depending on your requirements, where you live, and where you have assets. Generally, you can choose one that will cover your health and personal welfare decisions or one that will cover your financial decisions - or you can choose to have both. Please read the notes below on Power of Attorney for the region you live in, and/or have assets in, or use our Power of Attorney selector tool to find the right choice for you. Read more Because you may be signing over decisions about your assets and finances, and how you will be cared for if you lose the mental capacity to make your own decisions, choosing your attorney needs careful thought. Your attorney(s) must be trustworthy, organised, and willing. They must be aged 18 years or older (16 in Scotland) and have the mental capacity to make decisions about what's best for you. They can be family, friends, a spouse or partner, or a solicitor. In some cases, someone who is bankrupt may be barred from acting as an attorney involving financial affairs. You should discuss the duties and responsibility involved with those you have in mind before deciding. Guidance and review when writing your Power of Attorney Our 'Self Service & Legal Review' option enables you to have your document reviewed by one of our wills specialists to provide extra peace of mind. You can also call or email our wills specialists with any questions you may have as you complete your forms. Our Power of Attorney service includes guidance notes on what to do and to consider when completing your Power of Attorney. We also advise our customers to refer to the Office of the Public Guardian's guidance notes. Scottish customers should refer to the guidance notes provided by Office of the Public Guardian (Scotland) and customers from Northern Ireland should refer to the guidance notes provided by Department of Justice (Northern Ireland) . How do you want your attorneys to act? If you choose more than one attorney, you must decide how you want them to act. You can say they should act jointly or jointly and severally: Acting jointly means they must always agree all decisions. Acting jointly and severally means they can act together but can also act on their own. Acting jointly for some decisions and jointly and severally for other decisions (This option is not available on our forms for Scotland, please refer to the Office of the Public Guardian Scotland) Registering your Power of Attorney Before your attorneys can use a power of attorney it must be registered, and this process can take anywhere between four and ten weeks. (In Northern Ireland you do not have to register an Enduring Power of Attorney until the donor has lost capacity). What if it's too late to create a Lasting Power of Attorney? If someone no longer has the mental capacity to make their own decisions, then they won't be able to make a power of attorney. In England and Wales you will need to apply to the Court of Protection. In Scotland to the nearest Sheriff Court, for a 'Guardianship Order' and in Northern Ireland you will need to apply to the Office of Care and Protection for a 'Controllership Order'. An Enduring power of attorney (EPA) is a legal tool that lets you choose someone (or several people) you trust to make decisions for you. This person is referred to as your 'attorney', and you can choose what decisions they make for you. You must have what is called 'mental capacity' to make an EPA. This means that you must be able to understand what an EPA is and what making one means. Dementia is progressive which means that it will become more difficult for you to make plans and decisions over time. It is therefore a good idea to start thinking about making an EPA as soon as you can. An attorney can use an EPA from the moment it is signed and completed if it is set up to allow this. However, if you lose capacity then they will need to register the EPA with the Office of Care and Protection (OCP). The OCP is part of the court system in Northern Ireland (for more information see Other resources. It is responsible for the registration of EPAs and the appointment of controllers.) Talking about EPAs with your family or close friends can be a good way to think about what you want for the future. It will also help them to know and understand your wishes and preferences. The attorney's powers You can give your attorney different powers, depending on what you want them to be able to do. You can give them: general power, which allows them to do most things with your property and finances on your behalf, except things you can't legally delegate, such as making a will limited powers to manage certain aspects of your property and finances, as described by you on the EPA form. For example, you might allow your attorney to manage only your bank accounts but not your house. You can put conditions or restrictions on both general and limited powers. You can also appoint different attorneys to have different responsibilities, but it's a good idea to keep arrangements as simple as you can. Things an attorney can do on your behalf include: signing cheques and withdrawing money from your bank accounts buying or selling shares or property (including your house) using your money to pay for your residential or nursing care. The attorney's powers relate to property and finance matters only - not any other powers over you. They can't decide where you live or what medical treatment or care you receive. If you're considering making an EPA, it's a good idea to seek independent legal advice from a solicitor. The Law Society of Northern Ireland can help you find a solicitor, or you can contact Solicitors for the Elderly. See Other resources for full contact details. Ordinary power of attorney In addition to EPAs, you may come across something called an ordinary power of attorney. These can also give someone permission to manage your property and finances on your behalf. They might be used, for example, if you are going abroad for some time and want someone to look after things while you are away. But unlike an EPA, these cannot be used if you become unable to make decisions about your property or finances in the future. When you have dementia, an EPA is a better option as it allows your attorney to make or continue to make certain decisions for you if you cannot make them yourself. What happens if you don't make an Enduring power of attorney? Although it can be difficult to think about the future, and to plan for life with dementia, it is important. Planning can make things much easier as your condition progresses. If you don't make an EPA, and later become unable to make certain decisions for yourself, there may come a time when no one can legally make those decisions for you. This can make things difficult, such as paying bills or care costs. If this happens, someone may need to apply to become a controller. This gives them similar powers to an attorney, but they will be under more control by the OCP. However, the process of becoming a controller is more time-consuming and expensive than for an EPA. The controller is chosen by the court, not by you. A controller must also do some things on an ongoing basis, such as paying approval fees to the OCP and submitting an annual report. So it is usually cheaper and easier for someone to be an attorney rather than a controller. The benefits of making an Enduring power of attorney Enduring powers of attorney (EPAs) can help to make things easier for you and the people you are close to as your dementia progresses. There are many benefits to having an EPA in place - some of these are listed below. It can be reassuring to know that, if you are unable to make a decision for yourself in the future, someone you have chosen and trust will make that decision for you. You can allow your attorney to make decisions even if you can still make them yourself. You don't have to choose to do this, but it can be a useful way of giving yourself some extra support. It can also help your attorney to get familiar with all your financial and legal arrangements. Making an EPA now will make things easier for the people close to you in future. It will be more expensive, difficult and time-consuming for them to get permission to act on your behalf when you are not able to give your consent. Making an EPA can start discussions with your family or others about what you want to happen. This means decisions they have to make in the future will be based on your wishes. The law in Northern Ireland in this area is set to change. However, at the time of publication it's not possible to say for certain when that will be. Prior to the Mental Capacity Act 2005 coming into force in October 2007, you could appoint someone to assist with your financial affairs using an Enduring Power of Attorney (EPA). From 1st October 2007, Enduring Powers of Attorney were replaced with Lasting Powers of Attorney (LPA). You are no longer able to make an EPA, but existing EPAs are still valid.This page explains the differences between the two; helps you to decide whether you need to make a new Lasting Power of Attorney, and helps you to register an Enduring Power of Attorney if the person who made it has lost mental capacity.LPAs vs EPAs : overviewLasting Powers of Attorney are a replacement for the Enduring Power of Attorney. If you made an Enduring Power of Attorney before these were replaced on 1st October 2007, it will still be valid, even if it has not been registered. Should you lose capacity (or begin to lose capacity), the Enduring Power of Attorney would then need to be registered by one of your nominated attorneys to be valid. at a cost of £82 unless you are entitled to help with the fees. They won't have to pay the fee if you receive certain means-tested benefits; or if your income is less than £12,000 before tax, the fee will be 50%.An Enduring Power of Attorney only covers property and financial affairs, so you may want to consider making a Health and Welfare Lasting Power of Attorney in addition. If you only have an Enduring Power of Attorney for finance and you then lose capacity, it may be necessary to obtain a Deputyship Order regarding health and care decisions - however, the Court is typically reluctant to grant these.Some people decide to replace their Enduring Power of Attorney with two new Lasting Powers of Attorney. The main benefits of getting both types of Lasting Power of Attorney if you already have an Enduring Power of Attorney are:Enduring Powers of Attorney are registered once you start to lose capacity - Lasting Powers of Attorney are registered once they are made. If your Enduring Power of Attorney contains a restriction, it may be necessary for your Attorneys to obtain evidence before they can register the document. Once the application has been sent off, there can be a delay of 8 to 10 weeks in registering the Enduring Power of Attorney during which time it cannot be used, and this period can be extended if a family member objects. In the meantime, nobody will be able to manage your affairs.Lasting Powers of Attorney allow you to better manage who makes decisions for you if you are incapacitated - you do not have to choose the same people to make finance decisions as you do to make health decisions.Enduring Powers of Attorney can be used with your permission if they are not registered, provided that you still have capacity. Property and Finance Lasting Powers of Attorney can also be used with your permission provided that you have capacity. For example, you could choose to use either document if you are in hospital or abroad for a period of time and want someone to handle your affairs temporarily. However, few banks ensure that their staff are fully trained on Powers of Attorney and it is likely that they will be more familiar with the newer form of Lasting Power of Attorney, which can help prevent unnecessary delays.SummaryThe main differences between a Lasting Power of Attorney and an Enduring Power of Attorney are:You can make a Lasting Power of Attorney for both Finance and Health & Welfare - by contrast, an Enduring Power of Attorney only covers finance.Your attorneys don't need to register the Enduring Power of Attorney until you lose capacity. They can use it (unregistered) with your permission, whilst you still have capacity. By contrast a Lasting Power of Attorney must be registered before it can be used. Once registered, a finance LPA can be used with your permission whilst you have capacity. A health LPA can only be used once you have lost capacity. Lasting Powers of Attorney have section which an independent person must sign to confirm that you understand what you are doing by making the document, and you are not subject to any pressure.LPAs allow you to appoint replacement attorneys, should one of your attorneys be unable to act. By contrast, if your EPA appoints attorneys jointly and one is unable to act, the document is rendered useless.With an LPA, you can 'notify' people when it has been registered. This is a benefit as people have formal notice of the existence of the LPA.With an LPA, you have more flexibility as to what can be included. You can also choose different people to make finance decisions and health decisions if you want to.With an EPA, your attorneys only have a common law duty to act in your best interests. With an LPA, your attorneys must act in accordance with the provisions of the Mental Capacity Act 2005.Banks and other institutions may be unfamiliar with the older style Enduring Powers of Attorney and they may cause delays.How do I register an Enduring Power of Attorney?Note that this advice concerns Enduring Powers of Attorney, which are registered when the person (Donor) loses mental capacity. A Lasting Power of Attorney by contrast is registered when it is made.If someone has made an Enduring Power of Attorney (EPA) which has been properly executed,and that person loses mental capacity, the next step will be for their attorneys to register the EPA.If there are no restrictions on the EPA, this can simply be done by applying to the Court with the necessary forms and fee. See below under 'Next steps'.What do I do if there are restrictions on the Enduring Power of Attorney?If there is a restriction in Part B of the EPA that the EPA cannot be registered without medical evidence that you are losing capacity, you will need a letter from the person's doctor to be able to register the form. The letter needs to say that the person has become or is becoming mentally incapable of managing their finances and affairs.Some people have asked us in the past if medical evidence such as a Continuing Healthcare Assessment would be sufficient for this purpose. Unfortunately, even if the evidence does identify a severe need in relation to cognition, this is not specific enough to show conclusively and specifically that the person is incapable of managing her financial affairs. They may struggle with some aspects of life whilst managing perfectly well with others.To obtain medical evidence you can approach the persons GP for a letter. If you have any difficulty obtaining evidence a private company such as - offers paid assessments and they operate throughout the UK.Registering an Enduring Power of Attorney: Next stepsOnce you have the evidence from the doctor (if required), you will need to download and complete form EP1PG (click here - choose the top 'Zip pack' option as it has both forms that you are going to need in it).You will need to give a copy of the completed form EP1PG to the person who has lost mental capacity, 3 family members and to any other named attorney unless they will be joining in on the application to register. There is a list on this page of the family members you should notify, under 'Telling people you intend to register' - you start at the top and pick at least 3 family members closest to the top of the list as you can. If you pick family members from a particular class (for example 'donor's brothers and sisters') you must send the notice to everyone in that class.You then need to complete form EP2PG which is the application to register, and send this to the Office of the Public Guardian with the original EPA and a fee of £82. If the person gets certain means-tested benefits you can apply for an exemption in relation to the fee - or if they have less than £12,000 a year income you can apply for a 50% reduction. In both cases you need to provide evidence (e.g. a benefits letter or proof of income). There are more details on the application form LPA120 which is included with the Zip pack of forms.At April King Legal, we have a team of lawyers and independent solicitors experienced in drafting and submitting Lasting Powers of Attorney. Our headquarters are in Nottingham and we have locations across the UK. We would be happy to see you at a location near you or visit you in your home if this is more convenient - just give us a call or email us.

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