

A guide to
Enduring Powers of Attorney

Contents		
Part A	Introduction	7
	About this booklet	7
	Office of the Public Guardian	8
Part B	Enduring Powers of Attorney	9
	What is an Enduring Power of Attorney?	9
	Can new Enduring Powers of Attorney be made?	9
Part C	Registering an Enduring Power of Attorney	10
	When should an Enduring Power of Attorney be registered and by whom?	10
	What if Attorneys are appointed to act 'jointly and severally'?	10
	What if Attorneys are appointed to act 'jointly'?	10
	Registration Step 1: Notifying the relevant people	11
	What if a relative cannot be located?	13
	What if fewer than three relatives are alive?	13
	What if telling people will upset the Donor?	13
	What happens if someone objects to the registration?	14
	Registration Step 2: Submitting the application	15

Part C	Registering an Enduring Power of Attorney (continued)	
	What if the original Enduring Power of Attorney has been lost?	15
	Must there be medical evidence of lack of capacity?	16
	What if the Donor cannot afford the application fee?	16
	How long does registration take?	16
	What if registration is refused?	17
Part D	After the Enduring Power of Attorney is registered	18
	How does registration change the status of an Enduring Power of Attorney?	18
	Can the Donor still manage their own affairs?	18
	Can the Donor make a will?	19
	Can the Donor cancel their Enduring Power of Attorney?	19
	Can the Office of the Public Guardian or the Court of Protection appoint more Attorneys?	20
	What happens if the Donor dies?	20

Part E	The role of the Attorney	21
	What are the powers, duties and responsibilities of an Attorney?	21
	What should the Attorney do with the EPA document?	21
	Should Attorneys keep accounts of their dealings?	21
	Can the Attorney sell the Donor's property?	22
	Can the Attorney make gifts of the Donor's property?	23
	Can the Attorney decide where the Donor should live?	23
	Are Attorneys remunerated for time and expenses?	24
	Can Attorneys retire from their duties?	24
	How does the Office of the Public Guardian work with Attorneys?	25
Part F	Contact us	26
Part G	Useful contacts	27
Part H	Glossary	34

Part A: Introduction

About this booklet

This booklet is designed to assist those who have either made an Enduring Power of Attorney (EPA) or are acting as an Attorney under an EPA.

It explains what an EPA is for, who is involved in making an EPA and what is involved in registering an EPA.

It also sets out the roles of the Attorney, the Donor, and the Office of the Public Guardian (the 'OPG').

The glossary at Part H explains the key words and phrases used throughout this booklet and Part F sets out our contact details.

All publications mentioned are available to download from our website.

This booklet is also available in 'easy read' format.

Office of the Public Guardian

The OPG (headed by the Public Guardian) is an agency of the Ministry of Justice and is responsible under the Mental Capacity Act for:

- supervising Deputies appointed by the Court of Protection (the ‘Court’);
- keeping registers of Deputies, EPAs and Lasting Powers of Attorney (LPAs); and
- investigating complaints about Deputies or Attorneys acting under a registered EPA or LPA.

8

The OPG can provide general advice about EPAs and LPAs and the principles and procedures that apply, however we cannot provide legal advice. We recommend that you contact a solicitor or other professional advisor for advice.

Part B: Enduring Powers of Attorney

What is an Enduring Power of Attorney?

An Enduring Power of Attorney is a document appointing a person (an 'Attorney') to manage the property and financial affairs of another person (the 'Donor').

If the Donor becomes unable to make financial decisions, the EPA must be registered before it can be used or, if it is already in use, before it can continue to be used.

Can new Enduring Powers of Attorney be made?

New EPAs can no longer be created, however if a person has an EPA made before October 2007, either registered or unregistered, it can still continue to be used.

LPAs have now replaced EPAs, which only allowed people to appoint Attorneys to make decisions about property and financial matters on their behalf. The new LPAs give more protection and extra options.

If someone has already made an EPA and still has capacity, they can either replace it with a new Property and Affairs LPA or can keep the existing EPA. They can also make an additional LPA for personal welfare decisions. The OPG can provide information about the options available.

The OPG has produced a number of booklets that explain LPAs in detail. They are available to download from our website or call us for a printed copy or a copy of our CD-Rom.

Part C: Registering an Enduring Power of Attorney

When should an Enduring Power of Attorney be registered and by whom?

The Attorney is the person responsible for registering the EPA. This is because the EPA is only registered when the Attorney believes that the Donor is becoming or has become mentally incapable of handling his or her own affairs.

What if Attorneys are appointed to act ‘jointly and severally’?

Attorneys appointed jointly and severally can act and make decisions independently of any other Attorneys, as well together with them. Therefore any one Attorney could apply to register the EPA alone. In this situation the OPG would only accept the application if all the other Attorneys had been properly notified of the application and given the opportunity to object to it.

10

Where the Attorneys have acted together in deciding to register the EPA, all their names should be listed on the form **EP1PG: Notice of intention to apply for registration of an Enduring Power of Attorney**, notifying the relatives of the Donor – see **Registration step 1** on page 11. This will ensure that all the named Attorneys can act on behalf of the Donor once the EPA has been registered.

What if Attorneys are appointed to act ‘jointly’?

Attorneys appointed ‘jointly’ must always act together, which means they must always agree before doing anything on the Donor’s behalf. If one Attorney does not agree with a proposed action then that action cannot be taken.

If the Attorneys have been appointed in this way then all the Attorneys must apply to register the EPA together. If this is not possible then the EPA cannot be registered.

Registration step 1: Notifying the relevant people

The Donor and **at least three** of their relatives must be notified of the intention to register the EPA.

In addition, any other Attorney that has been appointed ‘jointly and severally’ but did not participate in the application must be notified.

Each person must be provided with the **EP1PG** form. There are instructions about completing it on the form itself.

11

The following are the categories of relatives who must be notified, in priority order.

1. Donor’s husband, wife or civil partner;
2. Donor’s children (including adopted children but not stepchildren);
3. Donor’s parents;
4. Donor’s brother and sisters (including half brothers and sisters);
5. widow or widower or surviving civil partner of the Donor’s child;
6. Donor’s grandchildren;

7. Donor's nephews and nieces (children of the Donor's full brothers and sisters);
8. Donor's nephews and nieces (children of the Donor's half brothers and sisters);
9. Donor's aunts and uncles (who are full brothers or sisters of a parent of the Donor); and
10. Donor's first cousins (children of the Donor's aunts and uncles who are full brothers and sisters of a parent of the Donor).

12

If one person in a particular category is notified of the application, then everyone in that category must be notified. For example if the Donor has no husband, wife or civil partner but has 10 children, then all 10 of the children must be notified (not just three of them).

If a relative is under 18 or mentally incapable of understanding the notice, they **cannot** be counted as one of the three relatives who must be notified.

If an attorney is also a relative, they do not have to notify themselves, but they still count as one of the three relatives entitled to receive notice. For example, if the attorney is the son of the donor who has no living husband, wife or civil partner but has three children, only the other two children need to receive notice.

However, if the donor has no husband, wife, civil partner or parents alive, but has two children who are both attorneys and also has five brothers, the attorneys need to notify all the brothers.

If the last example is changed so that the donor has three children who are all attorneys, the attorneys do not need to notify anybody. But, in cases where nobody has been notified, the EPA cannot be registered until the OPG has made appropriate enquiries.”

What if a relative cannot be located?

All reasonable attempts must be made to locate the relatives who should be notified, in priority order. If this is not possible then the next most appropriate relative should be notified, to make up the requirement to notify at least three relatives.

What if fewer than three relatives are alive?

If this is the case then this should be explained on the application form.

What if telling people will upset the Donor?

If the applicant reasonably believes that giving notice to the Donor or their relatives would be particularly upsetting or undesirable, an application can be made to the Court for notice to be dispensed with. Evidence will be required to support this.

The booklet **COP42: Making an application to the Court of Protection** explains the process for making a Court application and booklet **OPG506: Fees, exemptions and remissions** sets out the associated fees. These can be downloaded from our website or call us for printed copies.

What happens if someone objects to the registration?

Any person who received the **EP1PG** form is entitled to object to the application for registration. If there are objections then it may not be possible to register the EPA until all matters are resolved.

Only objections received within the timeframe set out on the EP1PG form and on the following grounds are valid:

- the document made was not a valid EPA, for example it was not properly signed and witnessed or the Donor lacked capacity when it was made;
- the EPA no longer exists, for example it was previously cancelled;
- the application is premature because the Donor is not yet becoming mentally incapable;
- that fraud or undue pressure was used to induce the Donor to create the EPA; or
- that under the circumstances the Attorney is unsuitable to act on behalf of the Donor.

If a valid objection is received, the applicant will be advised that the application has been suspended and the steps they should take next. Only the Court can decide whether to uphold or dismiss the objection.

The Attorney can usually continue to manage the Donor's affairs and prevent loss to their estate, but should act with caution. Attorneys should seek advice if they are unsure about what actions they can continue to take on the Donor's behalf.

Registration step 2: Submitting the application

The application form **EP2PG: Application to register an Enduring Power of Attorney** has accompanying guidance about how to complete it. The form and the guidance can be downloaded from our website or call us for a printed copy. The form can also be sourced from stationers who sell legal forms or from solicitors or other professional advisors.

All information on the application form must be truthful and correct. It is an offence under the Mental Capacity Act to make false statements on an application. Penalties include a prison term of up to two years and a fine of up to £5,000.

The application should be submitted to the OPG as soon as the relevant notifications have taken place and should include:

- the completed form **EP2PG**;
- the original; and
- the application fee (cheques payable to the OPG). See the booklet **OPG506: Fees, exemptions and remissions** for more information.

What if the original Enduring Power of Attorney has been lost?

If the original EPA is lost a certified copy can be registered. Office copies of a registered EPA can be obtained from the OPG for a fee.

Must there be medical evidence of lack of capacity?

No, the OPG does not require formal evidence that the person lacks capacity in order to register the EPA.

What if the Donor cannot afford the application fee?

If the Donor cannot afford to pay the fee they may be eligible for a fee exemption or remission. The booklet **OPG506: Court of Protection and Office of the Public Guardian fees, exemptions and remissions** sets out the fees policy and includes the form for applying for an exemption or remission.

How long does registration take?

The OPG will check that the application is complete and if there are any problems will contact the applicant or their solicitor if applicable.

If there are objections or queries then all matters must be resolved before the EPA can be registered.

If the application is complete and there are no objections or queries, we endeavour to register the EPA 35 days from the latest date that the last **EP1PG** notice was sent.

We will return the registered EPA within five days of the date it is registered.

What if registration is refused?

If the Donor has lost capacity to manage their financial affairs but the application to register their EPA is refused then an application may have to be made to the Court of Protection to appoint a Deputy to make financial decisions on their behalf.

Booklets **COP42: Making an Application to the Court of Protection** and **COP43: A guide for Deputies appointed by the Court of Protection** provide more information. These can be downloaded from our website or you can call us for a printed copy.

Part D: After the Enduring Power of Attorney is registered

How does registration change the status of the Enduring Power of Attorney?

The EPA must be registered when the Donor has become or is becoming mentally incapable. Registration does not change the powers granted to Attorneys under the EPA, but it does bring about three important changes:

- the Attorney(s) must now answer to the OPG or the Court if anyone questions their actions; and
- the Donor cannot end the EPA without confirmation from the Court; and
- the Attorney(s) cannot disclaim (retire) unless they give notice of this to the OPG.

Can the Donor still manage their own affairs?

Registering the EPA means that the Attorney takes over full responsibility from the Donor for managing their property and affairs. This means the Donor will be considered as unable to manage their own affairs. Should the Donor feel they are capable of being involved in managing some aspects, it is for them and their Attorney(s) to decide how this should work.

Can the Donor make a will?

Yes, a Donor can make a will or codicil (an amendment to a will) in the same way that anyone can. However, if the will or codicil is made after the EPA has been registered it may encourage others to challenge it after the Donor's death on the basis that the Donor may have lacked the testamentary capacity (see the glossary at Part G) to make it.

It can be complicated to resolve the question of capacity after the Donor has died, and therefore it is advisable to seek legal and medical advice if the Donor wishes to make or makes a new will after the EPA is registered.

If you have concerns about a will made prior to registration you can also apply to the Court to have a statutory will made.

Can the Donor cancel their Enduring Power of Attorney?

If the Donor has the mental capacity to do so, they can cancel their EPA at any time, provided that it has not yet been registered. If the EPA has been registered, it cannot be revoked unless the Court confirms the revocation.

To revoke an EPA the Donor signs a formal document called a 'Deed of Revocation'. The Donor may wish to seek legal advice for assistance with this.

If the Donor cancels their EPA they may wish to consider making an LPA.

Can the Office of the Public Guardian or the Court of Protection appoint more Attorneys?

Neither the Court nor the OPG has the power to appoint more Attorneys or transfer the power to another person.

What happens if the Donor dies?

If the Donor dies the EPA automatically comes to an end. The Attorney should send the original EPA and the death certificate to the OPG as soon as possible. The OPG cannot provide advice about how to deal with the Donor's estate; this is a matter for a solicitor, District Probate Registry or other professional advisor.

Part E: The role of the Attorney

What are the powers, duties and responsibilities of an Attorney?

The powers of the Attorney will be set out in the EPA. Their duties and responsibilities include to:

- always act in the best interests of the Donor and consider their needs and wishes as far as possible;
- not take advantage of the Donor's position to gain any benefit for themselves;
- keep the Donor's money and property separate from their own and other people's; and
- consider the Mental Capacity Act and the supporting Code of Practice when acting on behalf of the Donor.

What should the Attorney do with the EPA document?

The Attorney may wish to provide a copy of the EPA to relevant people and organisations to prove they have authority to make certain decisions on behalf of the person who lacks capacity.

Should Attorneys keep accounts of their dealings?

Yes, Attorneys have a duty to keep accurate accounts of their dealings for the Donor. They should have a list of the Donor's bank and building society accounts and other investments, as well as proper records of all of the Donor's income and expenditure. This includes receipts, bank statements etc. The Donor's money and assets should remain in the Donor's name.

The Court can direct that Attorneys produce accounts at any time. If satisfactory accounts are not produced then the EPA may be cancelled.

After the Donor's death the Attorney may be required to account to the personal representatives of the Donor's estate in relation to their dealings.

Can the Attorney sell the Donor's property?

All actions taken on behalf of the Donor must be in the Donor's best interests. If the Attorney believes that selling the property is in the Donor's best interests **and** the Donor is the sole owner of the property **and** the EPA allows it, then the Attorney decide to sell the property.

22

Attorneys do not need approval from the Court or the OPG to sell the Donor's property. However they must apply to the Court for permission if for any reason the sale is below market value, the Attorney wants to buy the property or the Attorney wants to give the property to someone else.

If the Attorney does not seek the Court's approval under these circumstances then the sale may be challenged.

If the Donor has a registered Personal Welfare LPA, the Attorney may need to discuss matters about the sale of the Donor's property with any Attorney(s) appointed to make decisions about where the Donor lives.

Can the Attorney make gifts of the Donor's property?

The Attorney has limited powers to make gifts to themselves and others of the Donor's property. Seasonal gifts can be made, for example at Christmas or to mark other religious festivals, or on occasions such as anniversaries, births or marriage/civil partnership to people who are related to or connected with the Donor.

Attorneys can also donate to any charity the Donor supported or might have been expected to support. The value of any gift must be reasonable and proportionate in relation to the value of the Donor's estate.

If larger gifts of money or property are to be made, for example as part of planning for inheritance tax, the Attorney must apply to the Court.

If a gift larger than the limits set is made without permission from the Court it may have to be paid back.

Can the Attorney decide where the Donor should live?

The EPA does not give the Attorney the legal right to decide where the Donor should live.

Are Attorneys remunerated for time and expenses?

Professional Attorneys such as solicitors or accountants may charge for their services if the EPA provides for this. Attorneys are not normally paid for their work but can recover reasonable expenses such as postage, stationery and the cost of phone calls from the Donor's estate.

What is considered to be a reasonable expense will vary according to the circumstances of each case. It depends on what the Attorney is required to do and also the value of the estate of the person who lacks capacity.

24

The OPG can look into any complaints that Attorneys are claiming excessive expenses. If expenses are considered unreasonable they may have to be repaid and in extreme cases the OPG may apply to the Court to cancel the Attorney's appointment.

Contact the OPG or a legal professional for advice about expenses.

Can Attorneys retire from their duties?

Yes, Attorneys can cease to act in this role any time they wish. This is known as 'disclaiming the power' and is done by signing a Deed of Disclaimer, although a formal deed is not a legal requirement. If the EPA is not registered the Donor should be notified of the resignation.

If the retiring Attorney is the only Attorney of a registered or unregistered EPA and believes the Donor needs to have a Deputy appointed for them, they should try to find someone suitable to make an application to the Court to make decisions on the Donor's behalf.

If the Attorney is appointed **jointly** with another Attorney (i.e. they must always act together) and one of them retires from the role, then the EPA can no longer be used.

If the Attorneys are appointed **jointly and severally** (i.e. can act independently of each other **or** together) and one of them wishes to retire, the remaining Attorney(s) can continue to act under the EPA.

The OPG should always be advised of any changes.

How does the Office of the Public Guardian work with Attorneys?

The OPG does not supervise Attorneys or tell them how they should manage the Donor's affairs, however the OPG will consider complaints about Attorneys where necessary.

If Attorneys need advice on practical, financial or legal matters, they should seek help from solicitors or other professional advisers. The OPG can provide general guidance on our processes but cannot provide legal advice or services.

Part F: Contact us

Office of the Public Guardian and Court of Protection
Archway Tower
2 Junction Road
London N19 5SZ

Phone Number: 0845 330 2900

Fax Number: 020 7664 7705

Email: customerservices@publicguardian.gsi.gov.uk

Website: www.publicguardian.gov.uk

DX: 141150 Archway 2

Textphone: 020 7664 7755 (If you have speech or hearing difficulties and have access to a textphone, you can call the OPG for assistance)

International Calls: +44 20 7664 7000

International Faxes: +44 20 7664 7705

Disclaimer

OPG and Court staff can provide advice about OPG and Court processes only, and cannot provide legal advice or services. We recommend that you seek independent legal advice where appropriate. Information in this publication is believed to be correct at the time of printing, however we do not accept liability for any error it may contain.

Part G: Useful contacts

Organisation and what it is/does	Contact Information
<p>Action for Advocacy</p> <p>A resource and support agency for the advocacy sector</p>	<p>PO Box 31856, Lorrimore Square, London, SE17 3XR</p> <p>www.actionforadvocacy.org.uk</p>
<p>Age Concern England</p> <p>The UK's largest organisation working to promote wellbeing of all older people. It provides vital services, information and support to thousands of older people</p>	<p>Astral House, 1268 London Road, London, SW16 4ER</p> <p>www.ageconcern.org.uk</p> <p>www.accymru.org.uk</p> <p>Information line 0800 00 99 66</p>
<p>Alzheimer's Society</p> <p>The UK's leading care and research charity for people with dementia, their families and carers</p>	<p>Gordon House, 10 Greencoat Place, London, SW1P 1PH</p> <p>www.alzheimers.org.uk</p> <p>Helpline 0845 300 0336</p>

Organisation and what it is/does	Contact Information
<p>Carers UK</p> <p>Looks after family, partners or friends in need of help because they are ill, frail or have a disability. Aims to help carers' by providing unpaid care for ill, frail or disabled family members or friends</p>	<p>20/25 Glasshouse Yard, London, EC1A 4JT</p> <p>www.carersuk.org</p> <p>T 020 7566 7637</p> <p>F 020 7490 8824</p>
<p>Down's Syndrome Association</p> <p>Provides information and support for people with Down's Syndrome, their families and carers</p>	<p>Langdon Down Centre, 2a Langdon Park, Teddington, Middlesex, TW11 9PS</p> <p>www.downs-syndrome.org.uk</p> <p>T 0845 230 0372</p> <p>F 0845 230 0373</p>
<p>Foundation for People with Learning Disabilities</p> <p>Works with people with learning disabilities, their families and those who support them to improve the quality of their lives and promotes the rights, quality of life and opportunities of people with learning disabilities and their families</p>	<p>Sea Containers House, 20 Upper Ground, London, SE1 9QB</p> <p>www.learningdisabilities.org.uk</p> <p>T 020 7803 1100</p>

Organisation and what it is/does	Contact Information
<p>Headway – the brain injury association</p> <p>Promotes understanding of all aspects of brain injury; and provides information, support and services to people with a brain injury, their family and carers</p>	<p>4 King Edward Court Service, King Edward Street, Nottingham, NG1 1EW</p> <p>www.headway.org.uk</p> <p>Helpline 0808 800 2244</p>
<p>MENCAP</p> <p>Charity working with people with learning disabilities, their families and carers</p>	<p>123 Golden Lane, London, EC1Y 0RT</p> <p>www.mencap.org.uk</p> <p>T 020 7454 0454</p>
<p>Mental Health Foundation</p> <p>A leading UK charity that provides information, carries out research, campaigns and works to improve services for anyone affected by mental health problems, whatever their age and wherever they live</p>	<p>Sea Containers House, 20 Upper Ground, London, SE1 9QB</p> <p>www.mentalhealth.org.uk</p> <p>T 020 7803 1100</p>

Organisation and what it is/does	Contact Information
<p>MIND</p> <p>Leading mental health charity, working to create a better life for everyone with experience of mental distress</p>	<p>15-19 Broadway, Stratford, London, E15 4BQ</p> <p>www.mind.org.uk</p> <p>Infoline 0845 766 0163</p>
<p>National Autistic Society (NAS)</p> <p>Champions the rights and interests of all people with autism and provide accessible support and services to people with autism and their families</p>	<p>393 City Road, London, EC1V 1NG</p> <p>www.nas.org.uk</p> <p>Helpline 0845 070 4004</p>
<p>National Care Association (NCA)</p> <p>Provides easy access to information about the independent care sector to members of the public and care professionals</p>	<p>45-49 Leather Lane, London, EC1N 7JT</p> <p>www.nca.gb.com</p> <p>T 020 7831 7090</p>
<p>The National Family Carer Network</p> <p>A network that provides a focal point for issues affecting families that include an adult with a learning disability</p>	<p>Merchants House, Wapping Road, Bristol, BS1 4RW</p> <p>www.familycarers.org.uk</p> <p>T 0117 930 2600</p>

Organisation and what it is/does	Contact Information
<p>The Home Farm Trust Ltd.</p> <p>A network that provides support and information for family carers</p>	<p>Merchants House, Wapping Road, Bristol, BS1 4RW</p> <p>www.hft.org.uk</p> <p>T 0117 930 2600</p>
<p>Patient Concern</p> <p>An organisation committed to promoting choice and empowerment for all health service users.</p>	<p>PO Box 23732, London, SW5 9FY</p> <p>www.patientconcern.org.uk</p> <p>E patientconcern@hotmail.com</p>
<p>The Relatives and Residents Association</p> <p>An organisation for older people needing, or living in, residential care and the families and friends left behind. Offers support and information via a helpline</p>	<p>24 The Ivories, 6-18 Northampton Street, London, N1 2HY</p> <p>www.relres.org</p> <p>Helpline 020 7359 8136</p>

Organisation and what it is/does	Contact Information
<p>RESCARE</p> <p>The national society for children and adults with learning disabilities and their families</p>	<p>Steven Jackson House, 31 Buxton Road, Heaviley, Stockport, SK2 6LS</p> <p>www.rescare.org.uk</p> <p>Helpline 0800 032 7330</p>
<p>Scope</p> <p>Disability organisation in England and Wales, whose focus is people with cerebral palsy</p>	<p>6 Market Road, London, N7 9PW</p> <p>www.scope.org.uk</p> <p>Response line 0808 800 3000</p> <p>T 020 7619 7100</p>
<p>Sense</p> <p>Charity providing specialist information, advice and services to deaf blind people, their families, carers and the professionals who work with them. Funded to develop training materials which address the advocacy issues for deaf blind people</p>	<p>11-13 Clifton Terrace, Finsbury Park, London, N4 3SR</p> <p>www.sense.org.uk</p> <p>T 0845 127 0060</p> <p>F 0845 127 0061</p> <p>Text 0845 127 0062</p>

Organisation and what it is/does	Contact Information
<p>Turning Point</p> <p>The UK's leading social care organisation, providing services for people with complex needs, including those affected by drug and alcohol misuse, mental health problems and those with a learning disability</p>	<p>Standon House, 21 Mansell Street, London E1 8AA</p> <p>www.turning-point.co.uk</p> <p>T 020 7841 7600</p>
<p>United Response</p> <p>Supporting people with learning disabilities and mental health needs across England to live in the community</p>	<p>113-123 Upper Richmond Road, Putney, London, SW15 2TL</p> <p>www.unitedresponse.org.uk</p> <p>T 020 8246 5200</p> <p>F 020 8780 9538</p> <p>Minicom 020 8785 1706</p>

Part H: Glossary

Attorney	Someone appointed under either a Lasting Power of Attorney or an Enduring Power of Attorney who has the legal right to make decisions within the scope of their authority on behalf of the person (the Donor) who made the Power of Attorney.
Best interests	Any decisions made or anything done for a person who lacks capacity to make specific decisions must be in the person's best interests. There are standard minimum steps to follow when working out someone's best interests. These are set out in section 4 of the Mental Capacity Act. See also chapter 5 of the Code of Practice.
Capacity	A person's capacity (or lack of capacity) refers specifically to their capacity to make a particular decision at the time it needs to be made.
Code of Practice	The Code of Practice is practical guidance to support the Mental Capacity Act. It explains how the Act will operate on a day-to-day basis and offers examples of best practice to carers and practitioners.
Court of Protection	The specialist Court for issues relating to people who lack capacity to make specific decisions.

Deputy	Someone appointed by the Court with ongoing legal authority as prescribed by the Court to make decisions on behalf of a person who lacks capacity to make particular decisions as set out in Section 16(2) of the Mental Capacity Act.
Enduring Power of Attorney (EPA)	A Power of Attorney created under the Enduring Powers of Attorney Act 1985 appointing an Attorney to deal with the Donor's property and financial affairs. Existing EPAs will continue to operate under Schedule 4 of the Mental Capacity Act, which replaces the EPA Act 1985.
Lasting Power of Attorney (LPA)	A Power of Attorney created under the Mental Capacity Act (see Section 9(1)) appointing an Attorney to make decisions about the Donor's personal welfare (including healthcare) or to deal with the Donor's property and affairs.
Mental Capacity	See 'Capacity'.

Office of the Public Guardian	The Public Guardian is an officer established under Section 57 of the Mental Capacity Act. The Public Guardian is supported by the Office of the Public Guardian, which supervises Deputies, keeps a register of Deputies, LPAs and EPAs, and investigate any complaints about Attorneys or Deputies. The OPG replaces the Public Guardianship Office.
Personal welfare	Personal welfare decisions are those about a person’s healthcare, where they live, what clothes they wear, what they eat and anything needed for their general care and well-being. Attorneys and Deputies can be appointed to make decisions about personal welfare on behalf of a person who lacks capacity. Many acts of care are to do with personal welfare.
Property and affairs	This includes any possessions owned by a person (such as a house or flat, jewellery or other possessions), the money they have in income, savings or investments and any expenditure. Attorneys and Deputies can be appointed to make decisions about property and affairs on behalf of a person who lacks capacity.
Public Guardian	See ‘Office of the Public Guardian’

