

# New lasting powers of attorney – for Guernsey resident individuals

Update prepared by Gilly Kennedy-Smith and Iona Mitchell (Guernsey)

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The Capacity (Lasting Powers of Attorney) (Bailiwick of Guernsey) Ordinance, 2022 (the **Ordinance**) will allow individuals to create lasting powers of attorney for the time first time in Guernsey.

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This Update focuses on how the new provisions will affect individuals resident in Guernsey. We have issued a separate Update looking at the implications for international clients owning assets in Guernsey, and their advisors, [here](#).

## Why is this important?

If you lose capacity, you no longer have the legal power to manage your affairs, which includes the ability to make decisions about your finances or make healthcare arrangements for yourself. Creating a lasting power of attorney (**LPA**) enables you to appoint someone you trust (the **Attorney**), in advance of any loss of capacity, to deal with your affairs. You can choose different people to make financial decisions and healthcare decisions. Usually the Attorney is a family member or trusted friend, but they may be a professional such as an Advocate. You can appoint more than one Attorney and you can specify that your Attorneys may act independently or together.

The new legislation will mean that you can create a Guernsey LPA, which will continue to have effect after you lose capacity. This is an important change from the current position, which is that an LPA becomes invalid when you lose capacity and a Guardianship order from the Royal Court is required to give someone else the power to manage your affairs, which process can be expensive and stressful for you and your family.

## What does an LPA cover?

There will be two types of LPA:

- **Health and Welfare**

This enables decisions to be made about your general health and welfare, such as where to live, who you may or may not have contact with and what medical treatment to receive. A Health and Welfare LPA will only have effect where you lack, or the Attorney reasonably believes that you lack, mental capacity to make a decision yourself.
- **Property and financial affairs**

This enables decisions to be made about your financial affairs, such as paying bills and managing your bank accounts, property and investments. The Attorney must act in your best interests in doing so.

You will be able to create one or both types of LPA.

## How do you create an LPA?

An LPA is not valid until the person granting it registers it at the Greffe and they must be physically present at the appointment to do this. From 30 March 2022, the application form for registering an LPA will be available to download from the Royal Court website or available for collection from the Greffe. You do not need an Advocate to draft or register an LPA but some clients will find it helpful to have a lawyer guide

them through the roles and the process as the LPA needs to be signed in a very specific order to have effect.

The court fee for one LPA will be £80 or if you wish to register both LPAs at the same time, the fee will be £100.

### **When does the new legislation come into force?**

The Ordinance bringing in the changes discussed in this Update is due to be debated at the States meeting on 30 March and if it is approved it will come into force on 1 April.

More information is on the Royal Court website [here](#).

## **Contacts**

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