

# Norton Peskett

## Solicitors

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*Please note that this is a general guide and not to be relied upon when taking any personal or business decisions and that it is not a substitute for legal advice tailored to the reader's circumstances.*

## **Lasting Powers of Attorney and The Mental Capacity Act 2005**

As you get older managing your financial affairs can become harder. Have you ever thought about who would look after your financial affairs or make decisions about your personal welfare or health care if due to incapacity either mentally or physically you are unable to do so.

As of 1st October 2007 the Mental Capacity Act 2005 revoked the Enduring Powers of Attorney Act 1985. It is now no longer possible to create an Enduring Power of Attorney, or make changes to an existing Enduring Power of Attorney. However, if you have a valid Enduring Power of Attorney it will still be recognised and enforceable. Your Attorneys will still need to register the Enduring Power of Attorney with the Office of the Public Guardian if they have reason to believe you are, or are becoming, mentally incapable.

The Mental Capacity Act 2005 introduces a new type of power of attorney called a Lasting Power of Attorney. In addition to making decisions about your finances you can appoint your Attorney to make important decisions about your medical treatment and long term health care.

Everyone over the age of 18 can make a Lasting Power of Attorney, provided that they are capable of understanding how to make it, the choices that they can make and the power that it gives. It is very important that everyone involved understands the implications of a Lasting Power of Attorney and we can discuss this with you in detail.

As you will appreciate, the person(s) that you choose to be your Attorneys is crucial. The person that you choose could be a member of your family, a trusted friend or a legal advisor and you can nominate different attorneys to assume different responsibilities i.e. a legal advisor to deal with you financial affairs and a family member to deal with decisions relating to your personal welfare.

### **Lasting Powers of Attorney – Property and Affairs**

The powers granted to Attorneys are similar to those under the former Enduring Powers of Attorney, such as operating a bank account and selling your property.

## **Lasting Powers of Attorney – Personal Welfare**

This is a new power introduced under The Mental Capacity Act 2005 allowing you to choose a person who will have the power to make decisions about your health care and medical treatment, e.g. where you should live, consenting to or refusing medical treatment and examination.

You can, if you wish, add restrictions and conditions to both types of Lasting Powers of Attorney where you would not wish the Attorney to have powers to act.

The new legislation states that all Lasting Powers of Attorney must be registered with the Office of the Public Guardian before it can be used and an unregistered Lasting Power of Attorney does not give your attorneys any legal powers. You can register the Lasting Power of Attorney while you are still capable, or the Attorney can apply to register the Lasting Power of Attorney at any time.

We can advise you on setting up Lasting Powers of Attorney and on the application for registration. Please contact a member of our Probate and Wills Department.