

POWERS OF ATTORNEY BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Powers of Attorney Bill as brought from the House of Commons on 20 March 2023 (HL Bill 121).

- These Explanatory Notes have been prepared by the Ministry of Justice, with the consent of Viscount Stansgate, the Peer in charge of the Bill, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

Table of Contents

Subject	Page of these Notes
Overview of the Bill	2
Policy background	2
Legal background	4
Territorial extent and application	5
Commentary on provisions of Bill	5
Clause 1: Lasting powers of attorney	5
Clause 2: Certifying copies of power of attorney	6
Clause 3: Extent, commencement and short title	6
Schedule 1: Lasting Powers of Attorney	6
Paragraph 1 - Introduction	6
Paragraphs 2 and 3 – Applications for registration of lasting power of attorney	6
Paragraph 4 – Notifications	7
Paragraph 5 – Exclusion of notification requirements	7
Paragraph 6 – Identification requirements	7
Paragraph 7 – Objections to registration	7
Paragraph 8 – Evidence of registration	8
Consequential Amendments	9
Commencement	9
Financial Implications of the Bill	9
Parliamentary approval for financial costs or for charges imposed	10
Compatibility with the European Convention on Human Rights	10
Related documents	11
Annex A – Territorial extent and application in the United Kingdom	12
Subject matter and legislative competence of devolved legislatures	12

Overview of the Bill

- 1 The Powers of Attorney Bill will enable modernisation of the process for making and registering lasting powers of attorney (LPA) and make it easier for individuals to obtain certified copies of powers of attorney.
- 2 The Bill facilitates this wider modernisation by enabling changes to the process to make and register an LPA, introducing the requirement to verify identity as part of applying to register an LPA and streamlining how people can object to the registration. It also enables different processes and evidence to be accepted depending on whether an LPA is made digitally, on paper or a mix of the two.
- 3 The effect of this will be that donors find it easier to create their LPA while also being better protected from abuse. The Government believes that the public will be better protected from fraud and the Office of the Public Guardian will be able to run a more streamlined process that delivers better value for its fee payers. Overall, it will allow more individuals to retain control of their lives by planning for their future.
- 4 This Bill will also correct the current inconsistency in the regulatory framework preventing Chartered Legal Executives from certifying copies of powers of attorney.

Policy background

- 5 An LPA is a legal agreement governed by the law on deeds and the Mental Capacity Act 2005 (MCA). The MCA is designed to protect and empower people who may lack the mental capacity to make their own decisions about their care, treatment and financial affairs and LPAs have an important role within this framework. It establishes the framework for LPAs, which allow a person (the donor) to grant decision making powers to another individual (the donee, commonly called the attorney) including in circumstances where they lose mental capacity to make decisions for themselves.
- 6 The Public Guardian and supporting Office of the Public Guardian were also established by the MCA and are responsible for registering LPAs and investigating objections to the appointment of and complaints concerning the conduct of an attorney. In 2021/22, the Office of the Public Guardian received over 975k applications for LPA registration and there are currently over 6 million LPAs on the register. This figure is only set to rise with the UK's ageing population and the Office of the Public Guardian anticipates it will receive over 1m applications to register an LPA this year for the first time.
- 7 There are a number of problems facing the current system for making and registering an LPA. First, the existing protections are losing their effectiveness as technology improves and society's attitudes change. Second, all LPAs must currently be made on paper and users find this cumbersome, bureaucratic and complex. Finally, handling large amounts of paper is costly and inefficient for the Office of the Public Guardian, creating an ever-increasing need for staff, equipment and storage.
- 8 The Ministry of Justice and the Office of the Public Guardian have therefore taken forward a modernising lasting powers of attorney project to find ways to resolve these issues. The aims of this project are to:
 - Increase safeguards, especially for the donor.
 - Improve the process of making and registering an LPA for donors, attorneys and third parties.

These Explanatory Notes relate to the Powers of Attorney Bill as brought from the House of Commons on 20 March 2023 (HL Bill 121)

- Achieve sustainability for the Office of the Public Guardian whilst keeping LPAs as affordable as possible for all people in society.
- 9 The project will transform the way that individuals make and register their LPAs by introducing a digital channel. This will allow automation of many administrative processes and build operational resilience for the Office of the Public Guardian. The project will also improve the paper alternative so that the same level of safeguards can be provided irrelevant of the way an individual chooses to make their LPA. Overall, modernising the process will allow creation of a safer, simpler service with a more positive experience for those making and registering their LPAs.
 - 10 This Bill is crucial to delivering the aims of the project. While the Office of the Public Guardian could potentially realise some improvements to access and efficiency without changes to primary legislation, to reap the full benefits and improve the current level of safeguards, it needs the government to amend the primary legislation governing LPAs.
 - 11 For this reason, from July to October 2021, the Ministry of Justice ran a consultation on the areas of modernising lasting powers of attorney that could require primary legislation. The government published its response in May 2022, providing an in-depth breakdown of the respondents' views on each of the seven proposals and the government's intended way forwards.
 - 12 The Bill gives effect to the measures the government has said it wishes to take forward. Provisions will:
 - Allow regulations to provide for different ways to make an LPA depending on whether this is done digitally or on paper, or a mix of the two.
 - Ensure only the donor can apply to register the LPA.
 - Provide for regulations to set out identity verification requirements that must be met for an application to register an LPA to be accepted.
 - Require the Office of the Public Guardian to notify the parties when an application to register an LPA is complete and the registration process is starting.
 - Enable the Office of the Public Guardian to operate a triage system for certain types of objection.
 - Widen the group of people who can lodge an objection so that it includes third parties not named in the LPA.
 - Provide for new forms of evidence of the LPA to be created and accepted and for the electronic form of the LPA as registered to be evidence of the LPA.
 - 13 This Bill is vital to achieving the changes necessary within the modernisation project which must balance protection for vulnerable people with facilitating individuals' rights. It will also enable the development of a process to make and register an LPA which is more accessible and ensure that the Office of the Public Guardian can continue to deliver value for money to the people who pay its fees.
 - 14 The Bill also includes a measure to enable Chartered Legal Executives to certify copies of powers of attorney by amending Section 3 of the Powers of Attorney Act 1971. This stipulates that a copy of a power of attorney can only be signed by the donor of the power, a solicitor, a

person authorised to carry on notarial activities or a stockbroker. Chartered Legal Executives are not currently part of this list.

- 15 Chartered Legal Executives can facilitate the creation of an original power of attorney, but not certify a copy. Certifying a copy of power of attorney is an uncomplicated process that doesn't require any specialist skill. The Chartered Institute of Legal Executives (CILEX) argues that Section 3 of the Powers of Attorney Act is therefore unduly restrictive because Chartered Legal Executives are competent to certify copies of power of attorney. CILEX further argues that there is evidence that consumers demand this service from Chartered Legal Executives. A CILEX survey conducted between March and May 2020 found that CILEX members were requested to certify copies of powers of attorney by nearly two clients a week.
- 16 The current statutory bar does not align with the evolution in the legal services market, which has allowed Chartered Legal Executives to carry out many of the same functions as solicitors.

Legal background

- 17 An LPA is defined in section 9 of the MCA as a power of attorney under which one party (the donor) confers on another (the donee or attorney) authority to make certain decisions including decisions in circumstances where the donor no longer has capacity in relation to either the donor's personal welfare or the donor's property and affairs.
- 18 The authority conferred by an LPA is subject to the provisions in the MCA, in particular sections 1 (the principles) and 4 (best interests), as well as any conditions or restrictions specified in the instrument (section 9(4) of the MCA). The scope of the attorney's authority is extensive although the donor can limit it so that the power only relates to specified matters or operates in certain circumstances.
- 19 An LPA is not created unless the conditions set out in section 9(2) of the MCA are met including that an instrument conferring the authority is made and registered in accordance with Schedule 1. An instrument that fails to comply with the relevant provisions in the MCA confers no authority (section 9(3)).
- 20 Part 1 of Schedule 1 to the MCA concerns the making of instruments intended to create an LPA, and contains provision (some of which is further prescribed by regulation) for the form, content and execution of an LPA. Part 2 of Schedule 1 covers the registration of LPAs by the Public Guardian including the process of application, notification of specified people, and how objections to the registration are handled. Part 2 also specifies the circumstances in which the Public Guardian must not register an LPA unless directed to do so by the Court of Protection ("CoP"), being the specialist court established by section 45 of the MCA to deal with decision making for adults who may lack capacity to make specific decisions for themselves.
- 21 Section 57 of the MCA creates the Public Guardian, supported by staff forming the Office of the Public Guardian. The functions of the Public Guardian are set out in section 58 which include establishing and maintaining a register of LPAs.
- 22 The CoP has powers under sections 22 and 23 of the MCA to determine questions concerning whether an LPA should be registered, whether it has been validly created or has been revoked; to give directions about the meaning of an LPA or extend the power it confers; and to remove an attorney.
- 23 Further details as to the process and requirements for the making and registration of an LPA are set out in the Lasting Powers of Attorney, Enduring Powers of Attorney and Public

Guardian Regulations 2007, made under the powers given by sections 13(6)(a), 58(3) and 64(1) of, and Schedules 1 and 4 to, the MCA.

- 24 Section 3 of the Powers of Attorney Act 1971 permits a copy of a power of attorney to be signed only by the donor of the power, a solicitor, a person authorised to carry on notarial activities or a stockbroker.

Territorial extent and application

- 25 The law on mental incapacity is devolved in relation to Scotland and Northern Ireland. Mental incapacity, expressly the subject of the MCA, in Wales is a reserved matter (Section L5 of Schedule 7A to the Government of Wales Act 2006).
- 26 Clause 3 sets out the territorial extent of the Bill that is the legal jurisdiction in which the Bill is intended to form part of the law. The extent of a Bill can be different from its application. Application is about where a Bill will have practical effect.
- 27 Subject to subsection (2) the extent and application of the Bill is England and Wales only. Subsection 2 provides that the amendments made by clause 2 and paragraphs 8(a) and (b) of the Schedule to the Bill also extend to Scotland and Northern Ireland.
- 28 Both those provisions make amendments concerning forms of acceptable evidence of an LPA, or other power of attorney, registered or certified as a copy by a body or person in England & Wales. Clause 2 amends section 3 of the Powers of Attorney Act 1971 which concerns proof of instruments creating powers of attorney. Section 3 of the Powers of Attorney Act 1971 extends to the United Kingdom. Similarly, paragraphs 8(a) and (b) of Schedule 1 to the Bill amend paragraph 16(1) of Schedule 1 to the MCA which currently extends to the United Kingdom and adds a new paragraph 16(1A) to Schedule 1.
- 29 There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly without the consent of the legislature concerned. The matters to which the above identified provisions of the Bill relate are consequential to and consistent with the main changes being made by the Bill. They make changes to Scottish and Northern Ireland law which are consequential to legislation concerning matters (the law in England and Wales relating to mental capacity and powers of attorney) which are not within the legislative competence of the Scottish Parliament, Senedd Cymru, or the Northern Ireland Assembly, and the UK Government's position is that no legislative consent motion is required in relation to any provision of the Bill.
- 30 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Bill

Clause 1: Lasting powers of attorney

- 31 This clause introduces the Schedule to the Bill which provides for amendments to the Mental Capacity Act 2005 in relation to the process for making and registering lasting powers of attorney.

Clause 2: Certifying copies of power of attorney

- 32 This clause amends Section 3 of the Powers of Attorney Act 1971 to include Chartered Legal Executives amongst those who can certify copies of power of attorney.
- 33 Subsection (1) and (2) provides that Section 3(1)(b) of the Powers of Attorney Act 1971 is amended in order to include Chartered Legal executives in the list of those who can certify copies of power of attorney.
- 34 Subsection (3) amends subsection (3) of Section 3 of the Power of Attorney Act 1971 in order to define 'Chartered Legal Executive'.

Clause 3: Extent, commencement and short title

- 35 This clause makes general provisions concerning the extent of the Bill, when it will come into force and what it will be called.
- 36 Subsection (1) provides that the Bill extends to England and Wales only, subject to subsection (2).
- 37 Subsection (2) provides that parts of the Bill extend to England and Wales, Scotland and Northern Ireland.
- 38 Subsection (3) means that clause 3 comes into force on the day it is given Royal Assent.
- 39 Subsection (4) means that clause 2 comes into force 2 months after the Act has been given Royal Assent.
- 40 Subsection (5) allows the Lord Chancellor to bring the other parts of the Bill into force by commencement regulation.
- 41 Subsection (6) allows that regulations bringing parts of the Bill into force may also contain any transitional, transitory or saving provision as may be required, and make different provision for different purposes.
- 42 Subsection (7) provides that the Bill may be cited as the Powers of Attorney Act 2023.

Schedule 1: Lasting Powers of Attorney

Paragraph 1 - Introduction

- 43 Paragraph 1 introduces changes to Schedule 1 of the MCA.

Paragraphs 2 and 3 – Applications for registration of lasting power of attorney

- 44 Paragraph 2 amends paragraph 4 of Schedule 1 of the MCA so that only the donor will be able to apply to register an LPA. It removes the ability for the attorney or attorneys to apply to register the document. It also removes the requirement for the application to be accompanied by a fee and allows for the application to be accompanied by an instrument intended to create an LPA that has not been completed (fully executed), in line with the requirements of the Schedule.
- 45 Paragraph 3 inserts new paragraph 4A to Schedule 1 of the MCA which provides that where an instrument intended to create a power of attorney is submitted with an application for registration, but is not yet fully executed, the Public Guardian shall take steps to ensure that it is executed by all parties in accordance with paragraph 1(1)(c) of Schedule 1. The provision also allows regulations to set out the steps the Public Guardian will take to coordinate completion of the LPA.

Paragraph 4 – Notifications

- 46 Paragraph 4 removes the requirement for the applicant to tell the named persons in an LPA that it has been sent for registration. It also amends the provisions regarding steps the Public Guardian will take to notify relevant parties of an application to register an LPA.
- 47 Paragraph 4(2) amends paragraph 7 of Schedule 1 to the MCA so that the Public Guardian must now notify named persons, donors and attorneys where an application to register the LPA has been received by the Public Guardian and appears to meet the requirements of Schedule 1 of the MCA. This would include completion of any actions the Public Guardian takes as a result of new paragraph 4A.
- 48 This simplifies the process for applying to register an LPA for the donor, who in the future will be the only person able to apply, by removing the obligation to notify named persons. Making all notifications the responsibility of the Public Guardian provides certainty for the Public Guardian that they have been sent.

Paragraph 5 – Exclusion of notification requirements

- 49 Paragraph 5 replaces existing paragraph 10 of Schedule 1 to the MCA which allows a donor or attorney to apply to the Court of Protection to dispense with notification requirements if the process of doing so would not serve a useful purpose in the process. As in the future, the Public Guardian will send the notifications, this is replaced with a provision that allows the Public Guardian, where the donor makes such a request, to dispense with notifying a named person if the Public Guardian is satisfied there are special circumstances that justify doing so.

Paragraph 6 – Identification requirements

- 50 Paragraph 6 inserts new paragraph 10A to Schedule 1 of the MCA, which makes identification verification a requirement in relation to an application to register an LPA. It allows regulations to set out how the Public Guardian will check a person's identification and provide detail on who needs to verify their identity, what documents will be accepted and how they will be checked. Regulations could apply to any person named in the LPA or taking part in the process of applying to register the LPA, which includes the donor, certificate provider, attorneys and replacement attorneys.
- 51 If the requirements for identification checks are not met, the Public Guardian cannot register the LPA. For registration to proceed, the Court of Protection must decide if the LPA meets the criteria for registration, and if so, direct the Public Guardian to register it.

Paragraph 7 – Objections to registration

- 52 Paragraph 7 does two things: It amends existing paragraph 13 of Schedule 1 to the MCA so that prescribed objections to the registration of an LPA from an attorney or named person are now made to the Public Guardian. It also adds new paragraph 13A to allow third parties (those who are not named in the LPA) to make objection to the registration of an LPA.
- 53 A named person is someone the donor wants to be informed when an application to register the LPA is made. They are listed in the LPA.
- 54 Existing paragraph 13 of Schedule 1 to the MCA sets out the process that is followed if an attorney or a named person makes an objection to the registration of an LPA on factual or prescribed grounds. Examples of factual grounds are where the donor has died or the attorney is or has become bankrupt. They mean that the LPA was made correctly but it may not confer any power. Examples of prescribed grounds are that the donor lacked capacity to make the LPA or there was undue pressure applied to the donor to make it. This would mean the LPA was never validly made in the first place.

- 55 Paragraph 7(1) amends the process relating to an objection on prescribed grounds, so that these can be made to the Public Guardian, rather than needing to be made to the Court. In addition, under new paragraph 13(4) to Schedule 1 to the MCA, if the Public Guardian is content that there is no evidence which reasonably supports the concern, it must register the LPA. However, if there is evidence which reasonably supports the objection, then the LPA can only be registered if the donor or attorney applies to the Court of Protection and the Court directs the Public Guardian to register the LPA. This change simplifies the objection process by providing people with a single point of contact for both types of objection. This will give clarity to those who wish to object.
- 56 Paragraph 7(2) inserts a new paragraph 13A into Schedule 1 to the MCA so that people or organisations who are not named in the LPA can also raise concerns about the registration of an LPA with the Public Guardian or the Court of Protection. Third party objections will be dealt with in the same way by the Public Guardian as those made by donors, attorneys or named persons so long as they are received in accordance with the conditions set out in new paragraph 13A(1).
- 57 These conditions are that the Public Guardian must have received an application to register an LPA, that the third party must have raised an objection with the Public Guardian, and that the Public Guardian must be aware of the donor's intention to create an LPA. In the case of the third condition, the events that establish the donor's intention with the Office of the Public Guardian will be set out in regulations. These events are likely to relate to the point at which people start to engage with the digital process, by creating an account for instance, or by requesting a paper LPA form which will then be recorded and linked to a specified individual when sent out.
- 58 The effect of this provision is that third parties can make an objection to the Public Guardian at any point after the Public Guardian is aware that the donor intends to create an LPA. Depending on exactly when such objections are made, they can either be considered immediately by the Public Guardian (where the application is already well advanced) or stored to be considered at the relevant point, along with any other objections made during the statutory waiting period, when deciding whether to register the LPA.
- 59 Taken together the changes to paragraph 13 and insertion of new paragraph 13A to Schedule 1 to the MCA will allow a wider group of people to raise concerns with the Public Guardian and provide a simpler system to do this, while retaining the Court of the Protection as the final decision maker on prescribed objections.

Paragraph 8 – Evidence of registration

- 60 Paragraph 8 makes amendment to current paragraph 16(1) of Schedule 1 to the MCA so as to make clear that the current provision of an “office copy” of a registered LPA provided from the Public Guardian's records will continue to have effect with regard to LPAs registered before the coming into force of the Bill.
- 61 Paragraph 8 also introduces a new paragraph 16(1A) of Schedule 1 to the MCA which provides that for an LPA registered in electronic form, the electronic form will be evidence of the content and fact of registration. It further allows secondary legislation to set out in regulations what other documents provided by the Public Guardian will be acceptable as proof of an LPA where the registered LPA will be an electronic document in the future. This ensures that if donors, attorneys or third parties find themselves unable to access the electronic record, a paper alternative (as prescribed) can be used.

Consequential Amendments

- 62 Part 2 to Schedule 1 of the Bill sets out minor and consequential amendments to the MCA including Schedule 1.

Commencement

- 63 Clause 3(4) provides for section 2 of the Bill, in relation to Chartered Legal Executives, to be brought into force at the end of a period of two months beginning with the day on which the Act receives Royal Assent.
- 64 Clause 3(5) provides for the remaining provisions of the Bill to be brought into force by commencement regulation. Clause (3)(6)(a) allows transitional, transitory or saving provision in connection with the coming into force of any such provision of the Bill. Clause 3(6)(b) allows different provision on commencement can be made for different purposes.

Financial Implications of the Bill

- 65 The Office of the Public Guardian and the Ministry of Justice will incur one-off costs associated with the development of a digital method of making and registering LPAs. Justice Digital, within the Ministry of Justice, have been allocated funding of £3m capital as part of the 2020/21 spending review with a further £0.2m resource included in the Office of the Public Guardian annual expenditure plan.
- 66 The Office of the Public Guardian will incur additional one-off costs for designing, developing and implementing the overall modernised service including the paper route and wider organisational change, as well as specific elements such as updating forms and training staff. Costs will also be incurred on associated communications activity to raise awareness amongst the target audience regarding changes to the law.
- 67 The Office of the Public Guardian will incur costs on an ongoing basis to maintain and run the modernised service. This includes, for instance, costs for the identification checking service, for digital registration and storage of lasting powers of attorney documentation, and to a small degree, for handling and triaging additional prescribed objections.
- 68 Establishing the costs to the Office of the Public Guardian for the development of the paper route and wider transformation is part of on-going work to determine any future reoccurring and one-off costs as a result of implementation. These costs will be met from the Office of the Public Guardian fee income.
- 69 Additional costs will be incurred to members of the Chartered Institute of Legal Executives associated with certifying copies of powers of attorney.
- 70 There are no public sector financial implications in respect of the measure to enable Chartered legal executives to certify copies of power of attorney. Any costs relating to this measure will be costs relating to service provision by Chartered Legal Executives, who are part of the legal services sector and independent of government. But the Government's assessment is that such costs will be offset by the income from providing the service.

Parliamentary approval for financial costs or for charges imposed

- 71 A money resolution is required where a Bill gives rise to, or creates powers that could be used so as to give rise to, new charges on the public revenue (broadly speaking, new public expenditure). A money resolution was required in the House of Commons in relation to clause 1 and the Schedule, which will enable the introduction of a digital channel in which lasting powers of attorney may be made and registered, including changes to the procedure. The financial implications of this Bill will mostly be borne by the Office of the Public Guardian and therefore funded through fee income. However, a small amount of funding – £3m allocated over the course of the current spending review – comes from public revenue.
- 72 There is no new head of expenditure, which requires Parliamentary approval, arising from the measure to enable Chartered Legal Executives to certify copies of power of attorney.
- 73 A ways and means resolution was not required in the House of Commons as the Bill does not impose any charges.

Compatibility with the European Convention on Human Rights

- 74 This is a Private Member's Bill and the Government is not required to give a statement of compatibility with the European Convention on Human Rights (ECHR) in accordance with section 19(1)(a) of the Human Rights Act 1998.
- 75 The Ministry of Justice has, nevertheless, considered the question of compatibility and has concluded that the Bill is compatible with the ECHR. The MCA (itself considered compatible with ECHR) established the legal framework for the creation of LPAs, the role of the Public Guardian and its functions in relation to that process and the Court of Protection which may determine issues regarding the creation, validity and use of LPAs. This Bill makes certain amendments to the process for making and registering an LPA, and as such it engages Article 8, and may indirectly engage Articles 2 and 3 of the ECHR and Article 1 of the First Protocol to the ECHR.
- 76 The ability to make an LPA promotes the state's positive obligation under Article 8 to ensure respect for private life. An LPA is in many respects a private agreement between a donor and the attorney they appoint, though the MCA imposes legal requirements for its creation including registration with the Public Guardian, who also has an oversight role in the use of an LPA. The ability to make an LPA allows a person to grant decision making powers to another individual, and to make personal provision for the future. This promotes individual autonomy and control in relation to a person's private life, through deciding who can make decisions, and in what areas (and subject to any limits as chosen), including in the event the donor lacks capacity to make those decisions themselves.
- 77 [Article 8](#) is engaged by the Bill to the extent that amends the process of making and registering an LPA; enabling a process which is more accessible for some, but also increases requirements for registration, and widens to any third party an ability to object.
- 78 To the extent that these changes may amount to additional interference with Article 8 rights, any such interference is considered to be proportionate and justified in pursuance of the legitimate aim to provide suitable protection for persons lacking capacity, both in the making of the LPA, and in its use by an attorney.

- 79 Articles 2 and 3 may be indirectly engaged insofar as the Bill relates to the making of LPAs, under which an attorney can be given power to refuse to give consent to life-sustaining treatment on behalf of the donor (section 11(7) and (8) of the MCA). However, the Bill does not make any amendment concerning the type of health and welfare decisions a donor may under an LPA allow an attorney to make, nor place any further restrictions or conditions on this type of LPA. To the extent that the Bill introduces the additional safeguards in relation to applications to register any LPA, such provisions are designed to protect a person's Article 2 and 3 rights, while also discharging the obligation to respect the Article 8 rights of those who choose to give powers to an attorney to make such health decisions.
- 80 Similarly rights under Article 1 of the First Protocol may be indirectly engaged since LPAs provide for the control of a person's property and affairs. Again, nothing in this Bill directly alters the scope of a property and affairs LPA or the extent of the powers it may bestow. To the extent that the Bill introduces additional safeguards in relation to applications to register an LPA, this may constitute interference with a person's ability to control arrangements for their own property. Any such interference or control in relation to the property is in the general public interest and continues to strike a fair balance between the property interests of the person lacking capacity, their own wider welfare interests and the interests of others.

Related documents

81 The following documents are relevant to the Bill and can be read at the stated locations:

- Modernising Lasting Powers of Attorney Consultation:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1003938/mlpa-consultation-document.pdf
- Modernising Lasting Powers of Attorney Government Response:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1075417/mlpa-consultation-response.pdf
- Impact Assessment of this Bill:
<https://publications.parliament.uk/pa/bills/cbill/58-03/0033/PoABillImpactAssessmentFINAL.pdf>

Annex A – Territorial extent and application in the United Kingdom

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clause 1	Yes	Yes	No	No	N/A	N/A	N/A	N/A
Clause 2	Yes	Yes	In part	In part	No	No	No	No
Clause 3	Yes	Yes	No	No	N/A	N/A	N/A	N/A
Schedule 1	Yes	Yes	In part	In part	No	No	No	No

Subject matter and legislative competence of devolved legislatures

82 The law on mental capacity is devolved in relation to Scotland and Northern Ireland. Mental capacity, expressly the subject of the MCA, in England and Wales is a reserved matter (Section L5 of Schedule 7A to the Government of Wales Act 2006). The Bill extends to England and Wales, save for clause 2 which amends section 3 of the Powers of Attorney Act 1971 allowing chartered legal executives to certify a copy of a power of attorney, and paragraph 8(a) and (b) of the Schedule to the Bill which makes provision in relation to evidence of a registered LPA, which also extend to Scotland and Northern Ireland. These provisions make changes to Scottish and Northern Ireland law which are consequential to the main provision of the Bill (the law relating to mental capacity and powers of attorney in England and Wales) which would be outside the legislative competence of the Scottish parliament, the Senedd Cymru, or the Northern Ireland Assembly.

POWERS OF ATTORNEY BILL

EXPLANATORY NOTES

These Explanatory Notes relate to the Powers of Attorney Bill as introduced in the House of Commons on 20 March 2023 (Bill 121).

Ordered by the House of Lords to be printed, 15 June 2023

© Parliamentary copyright 2023

This publication may be reproduced under the terms of the Open Parliament Licence which is published at www.parliament.uk/site-information/copyright

PUBLISHED BY AUTHORITY OF THE HOUSE OF LORDS