

Enduring power of attorney and controllership



**Alzheimer's
Society**

Together we are help & hope
for everyone living with dementia



Enduring power of attorney and controllership are two separate ways where another person or people can be given the ability to make decisions about your property and finances on your behalf.

This factsheet explains what these two legal tools are, when each should be used and the processes involved.

This factsheet is for people living in Northern Ireland. There are different arrangements in England and Wales – for more information see factsheet 472, **Lasting power of attorney**.



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1 Planning ahead

After a diagnosis of dementia, it is a good idea to plan for the future. It may be hard, but it can also be reassuring to know that you have made your wishes and preferences clear.

It can also help you to know that you have chosen people you trust to make decisions for you when you need them to. Planning ahead can make things easier for your family and friends as well.

Enduring powers of attorney are just one way to plan for the future. You can also make other arrangements, choices and decisions about your property and finances.

For example, you can:

- make a will (or update a will you have already made)
- make sure that your finances are in order – this might include getting some financial advice. See ‘Other useful organisations’ on page 12 for some suggestions about how to do this.

For more information see booklet 1510, **Planning ahead**.

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2 Enduring power of attorney

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 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 useful organisations' on page 12). It is responsible for the registration of EPAs and the appointment of controllers (see section 3 'Controllership' on page 9).

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 and The Association of Lifetime Lawyers can help. See 'Other useful organisations' on page 12.

Ordinary power of attorney

In addition to EPAs, you may come across something called an 'ordinary power of attorney'. This can also give someone permission to manage your property and finances on your behalf. It might be used, for example, if you are going abroad for some time and want someone to look after things while you are away.

Unlike an EPA, an ordinary power of attorney 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 EPA?

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. For more about controllership, see section 3 'Controllership' on page 9.

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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 the future.** They will be able to act on your behalf when you are not able to give your consent. Without an EPA, this will be more expensive, difficult and time-consuming.
- **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.

Who can be an attorney?

You can choose anyone you want to be your attorney, as long as they are 18 or over and are not bankrupt.

You can have as many attorneys as you wish but it is usual to have between one and four. If you have more than one, you can also say how you want them to work together. See 'Having multiple attorneys' on page 6.

Your attorney will have very important decisions to make, and a lot of responsibility to make choices that reflect your wishes. You should choose someone who knows you well, who you trust to make these decisions for you, is reliable and has the skills to carry out the role. Think about how well they manage their own finances.

Most people choose a family member or a close friend to be their attorney. This person may not be needed to make decisions until some time in the future. Take this into account when you are thinking about who to ask – someone younger may be appropriate.

Talk to the person you want to appoint as your attorney before you make the EPA. You can tell them about your wishes and preferences, and you can make sure that they are happy about taking on the role.

You can also choose a professional such as an accountant or solicitor to be your attorney. A professional will charge for their time and these charges will vary. Talk to the professional before you make the EPA to understand the costs and what will be involved.

What an attorney has to do

Anyone you appoint as an attorney has certain duties when they are making decisions for you. They must:

- act in your best interests
- consider your past and present wishes and feelings
- keep you involved in any decisions they make, as far as you can be
- not take advantage of you to benefit themselves
- keep records
- keep your money and property separate from their own.

Your attorney must consider whether you have mental capacity to make a decision for yourself before making it for you. They should assume that you have that capacity unless it is shown otherwise.

If they don't think you have capacity to make a decision, they should think about whether you could make it at another time in the future. They should also consider if it's possible to delay the decision until you can make it.

Your attorney might need to give you extra support so that you can make the decision yourself, for example, by using different types of communication, such as pictures.

If your attorney doesn't behave as they should, the EPA could be cancelled. The OCP doesn't actively monitor the way an attorney acts under the EPA. But if your attorney takes advantage of you or isn't acting in your best interests, this can be reported to the OCP who will look into it. In serious cases the attorney could also be prosecuted.

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Having multiple attorneys

If you choose to have more than one attorney (for example, your children, if you have more than one) you must decide how your attorneys should act. They can make decisions together ('jointly') or both separately and together ('jointly and severally').

- **Jointly** – this means that the attorneys must always act together, so they must agree on all decisions and all sign documents. If one of them dies or resigns, the EPA is no longer valid, as the law doesn't allow for replacements. If your original attorney(s) are unable to act you can appoint new ones, but you would need to have the mental capacity to do that at the time.
- **Jointly and severally** – attorneys can act together, but they can also act on their own. If an attorney dies or resigns, the surviving attorney(s) can still act.

It can be helpful to have more than one attorney so that they can share decision-making and bring different points of view to the role.

This can be particularly useful if you own a property with someone who is your attorney. In this situation, if the property needs to be sold, it can become complicated and you should seek legal advice.

Having another attorney who does not have a share in the property, and who can act 'jointly and severally' with the first attorney, can make things easier.

How to make an Enduring power of attorney

To make an Enduring power of attorney (EPA) you will need to complete a form. This will be available from a solicitor or a stationer specialising in legal documents. It's important to ensure that an up-to-date form is used and that it is completed correctly, or it won't be valid.

If you are considering making an EPA, it's a good idea to seek independent legal advice from a solicitor. You don't have to do this, but it can be difficult to make an EPA on your own, and a solicitor can help you with filling out the form.

Once you have completed the EPA form, it must be signed by you and witnessed. It must then be signed by the attorney(s) and witnessed. Attorney(s) can't act as witnesses for each other's signatures or yours, and you can't act as a witness for theirs.

You must have the mental capacity to make an EPA at the time you make it. The attorney(s) must sign the form before you lose that capacity. It's a good idea for them to sign it as soon as possible after you've signed it.

If the original EPA is kept by an attorney, solicitor or bank, you should keep a copy for yourself. Your solicitor can provide certified copies. These might be needed as evidence that the EPA exists, for example, by your bank or a utility company.

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Next steps

You don't register your EPA with the OCP as soon as you've made it. Your attorneys must apply to register it when you no longer have the capacity to manage your property and finances.

They should first notify you and certain close relatives that they intend to do so. This must be done using an EP1 form. The OCP or your solicitor can explain which relatives need to be informed.

An application to register must then immediately be made to the OCP. This must be done using an EP2 form, accompanied by the original EPA document and the registration fee. EP1 and EP2 forms are available from legal stationers or from the OCP (see 'Other useful organisations' on page 12).

There is a fee for registering the EPA. Details of the current fee are available from the OCP. However, your attorney can apply for a reduction if paying this fee is likely to be difficult for you. The fee will normally be waived if:

- you are receiving certain means-tested benefits
- your care home fees are being paid by the health and social care trust, or
- your house is your only asset.

The OCP will hold the papers for 35 days from the date that the last EP1 was sent. This gives you and your relatives time to make any objections. The OCP can also make whatever enquiries it thinks are necessary. If there are no problems, the EPA will be registered.

While the EPA is being registered, your attorney can use your finances on your behalf to pay for essentials, such as food or bills. But they are not able to arrange larger transactions, such as the sale of your house, until the EPA has been registered. Once the EPA has been registered, your attorney can make decisions on your behalf about your property and finances.

The OCP can ask attorneys to produce accounts for it to check. But this usually only happens if there's been a query or complaint about the way the EPA is being handled. There is a charge for checking accounts.

3 Controllership

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If you haven't made an EPA and you become unable to manage your property and finances, the OCP will need to appoint someone, known as a 'controller', to manage them on your behalf.

However, if you only need to manage your income from benefits, it may be possible for someone to do this through appointeeship. For more information about appointeeship, visit <https://www.nidirect.gov.uk/articles/becoming-appointee-social-security-benefits>

Who can be a controller?

A controller is usually a relative or close friend. But it could be a professional such as a solicitor or accountant. They will be appointed by the OCP, so unlike with an EPA, they may not be someone you would have chosen yourself.

If nobody suitable can be found, the OCP can appoint the Official Solicitor to act as a controller. The Official Solicitor is a specific role created to represent people who can't represent themselves and where no one else (for example, a friend or relative) is available.

If the controller is a professional or the Official Solicitor, they can charge for their services and take their fees from your money. The level of fees is assessed and authorised by the OCP.

A controller has many responsibilities that can be very demanding and time-consuming. Anyone wishing to become a controller should consider whether they will be able to carry out the role.

They should read the information produced by the OCP to make sure they understand what being a controller involves. They might want to get help from a solicitor.

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What can a controller do?

The controller will be able to:

- manage your income to ensure that your day-to-day needs are met and your bills are paid
- ensure that any property is kept in a good state
- ensure that your income tax is kept up to date
- ensure that important documents are in order and kept safely.

The OCP must authorise any use of your assets, such as your home or other property, on your behalf. The controller must liaise with the OCP about any investments, which are usually made by the OCP. The sale of property must also be approved by the OCP.

The controller should be aware of your needs and wishes. They should consult you as far as possible on how you would like your money to be spent.

A controller has to submit annual accounts to the OCP and take out a 'security bond' (a type of insurance – meaning that if the controller acts irresponsibly, your assets will be protected). They can reclaim the cost from your money.

Becoming a controller

The first step to becoming a controller is to get the application forms from the OCP. The OCP can also help answer questions about the forms, but it can't give legal advice.

The person filling in the forms can apply to be appointed as controller themselves, or they can ask for someone else to be appointed. A medical certificate is required, confirming that you don't have the mental capacity to manage your property and finances yourself. The completed forms should be returned to the OCP with the application fee (see 'Fees' on page 11).

If the court is satisfied that this is the right course of action, the OCP will appoint the person as a controller. Otherwise, it will make a short procedure order (see 'Short procedure order' on page 11).

Both of these arrangements give the person appointed the legal power to manage your property and finances on your behalf, in accordance with the court's instructions. In either case, the court will set out the exact duties and responsibilities involved.

Short procedure order

In some cases, the OCP may decide to make a 'short procedure order', rather than appointing a controller. This is a simpler and more limited arrangement. It usually happens where the value of someone's property or income is relatively low. A short procedure order may authorise someone to:

- use your pensions and income on your behalf
- use your social security benefits and money held in a bank or building society
- pay care home fees and any other debts and expenses
- make sure any documents and valuables are safely looked after.

For full details of the criteria for a short procedure order, contact the OCP. See 'Other useful organisations' on page 12.

Fees

There are fees for controllership and short procedure orders. These are for both the initial application and for ongoing supervision by the OCP. The OCP can give details of these – see 'Other useful organisations' on page 12.

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Other useful organisations

Age NI

0808 808 7575 (advice line, 9am–5pm Monday–Friday)

advice@ageni.org

www.ageuk.org.uk/northern-ireland

Age NI provides information and advice for older people in Northern Ireland.

Citizens Advice

www.citizensadvice.org.uk/about-us/northern-ireland

Citizens Advice may be able to help signpost to sources of free legal advice. See website for local contact details.

Law Centre NI

028 9024 4401

admin@lawcentreni.org

www.lawcentreni.org

Law Centre NI offers free legal advice and support on benefits and employment.

Law Society of Northern Ireland

028 9023 1614 (9am–5pm Monday–Friday)

www.lawsoc-ni.org/solicitors

Law Society of Northern Ireland can help people who live in Northern Ireland find a solicitor.

Office of Care and Protection (OCP)

0300 200 7812

OCP@courtsni.gov.uk

www.justice-ni.gov.uk/topics/courts-and-tribunals/office-care-and-protection-patients-section

The OCP manages the registration of Enduring powers of attorney (EPAs) and the appointment of controllers.

The Association of Lifetime Lawyers

020 8234 6186 (9am–5pm Monday–Friday)

www.lifetimelawyers.org.uk

The Association of Lifetime Lawyers is an association of solicitors, barristers and legal executives who are committed to providing legal advice for vulnerable and older people, their families and carers.



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Our publications are reviewed by people affected by dementia.

To give feedback on this factsheet, or for a list of sources, please email publications@alzheimers.org.uk

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At Alzheimer's Society we're working towards a world where dementia no longer devastates lives. We do this by giving help to everyone who needs it today, and hope for everyone in the future.

We have more information on **Practical arrangements after diagnosis**.

For advice and support on this, or any other aspect of dementia, call us on **0333 150 3456** or visit **alzheimers.org.uk**

Thanks to your donations, we're able to be a vital source of support and a powerful force for change for everyone living with dementia. Help us do even more, call **0330 333 0804** or visit **alzheimers.org.uk/donate**



Patient Information Forum



Together we are help & hope
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