

MENTAL CAPACITY ACT 2005

Many practitioners will be familiar with Enduring Powers of Attorney which were introduced as a useful tool to assist people in their latter years and as a more streamlined and cost effective alternative to the Court of Protection.

The Mental Capacity Act 2005 will bring in Lasting Powers of Attorney which will replace Enduring Powers of Attorney from the date the act comes into force.

Initially the Government were looking to bring these new provisions in from 1 April 2007 but this has now been put back until October this year at the earliest.

The main difference between an Enduring Power of Attorney and a Lasting Power of Attorney is that Lasting Powers of Attorney can allow the recipient of the Power to make decisions concerning the donor's welfare as well as over their financial affairs. In addition the Lasting Power of Attorney must be registered before it can be used.

Lasting Powers of Attorney will replace Enduring Powers of Attorney, which will however remain valid if they were executed before the commencement of these new provisions.

The Act also takes a far more subjective approach to a person's mental capacity. The Act contemplates, as in reality, that mental capacity may change due to illness and indeed a person may be capable of making one set of value decisions at a time when they were incapable of making another set of value decisions. It is clear that all professionals who have day-to-day direct client contact will need to be aware of these issues, and we will update you as soon as clearer guidance has been issued.

If you would like an informal chat or require any specific advice in connection with the material contained in this bulletin, or on any other Private Client issues, please contact a member of the Private Client Team on 0151 600 3451.

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Horton House – Exchange Flags – Liverpool – L2 3YL - www.brabnerschaffestreet.com

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