

Parliamentary Briefing

Powers of Attorney Bill

Background

A lasting power of attorney (LPA) is a way of giving someone you trust, your attorney, the legal authority to make decisions on your behalf if you lose the mental capacity to do so in the future, or if you no longer want to make decisions for yourself.

In 2021, the Government launched a public consultation on proposals to modernise lasting powers of attorney. The proposals included the introduction of a digital channel for making an LPA and measures designed to better protect those setting up an LPA (donors) from abuse and fraud.

Stephen Metcalfe MP has introduced a Private Members Bill through the ballot system which would implement these proposals by amending the Mental Capacity Act 2005 (MCA).

Older people and lasting power of attorney

Lasting powers of attorney are of particular significance for older people. In 2019/20, the average age of a donor was aged 74.5 years, with the majority of donors aged over 65¹.

In 2022, Age UK received thousands of orders for our information publications regarding lasting powers of attorney and related matters, and hundreds of contacts to our Advice Line, which highlights how this remains a significant issue in the day-to-day lives of older people.

Age UK's Position

Age UK broadly welcomes the measures in the Bill and the Government's wider modernisation policy.

We are pleased that the Government has committed to retaining a paper channel for making and registering an LPA, which will coexist with the digital system. **Age UK would like the Bill to be amended to establish an express requirement in the MCA 2005 to retain a paper channel.**

The Bill introduces new measures designed to better protect those setting up an LPA from abuse and fraud, namely identity verification requirements and changes to how objections to the registration to an LPA are made. **Age UK believes a reasonable safeguard is for attorneys to be required to prove their identity as part of the LPA application process.**

Retention of the paper channel

The ability to make an LPA using a paper form must continue to exist alongside a new digital system. A digital-only system will be inaccessible to a high proportion of older people. We note that in 2021, 25% of over 65s - equivalent to 3.1 million people, did not use the internet which rises to 40%, or 2.2 million people over 75.1. Among older people who do use the internet, a large proportion may use it solely for basic tasks, such as writing emails, meaning they may not be able to make use of the digital LPA system.

¹ Ministry of Justice, [Modernising Lasting Powers of Attorney](#), paragraph 15

We welcome the Government's commitment to retain a paper channel for making an LPA under the modernised system. In its response to the LPA modernisation consultation, we note the Government states: *'We know not everybody is able or willing to use digital Modernising Lasting Powers of Attorney technology to access services. For this reason, any future LPA service will allow for multi-channel access; we will retain a paper channel while introducing a digital channel'*².

We have been advised by the Ministry of Justice that, in its current form, the Bill only enables regulations to be made to introduce paper and digital means of making an LPA.

This would enable the Government to introduce, or withdraw, a paper channel through regulations. We believe an express requirement added to the MCA to retain a paper channel would better protect the interests of older people, as this could only be removed with primary legislation. **Age UK would like to see the Bill make express provision for the retention of the paper channel.**

We want to ensure that a modernised LPA system remains accessible to older people unable or unwilling to use a digital service. Age UK would be deeply concerned by any amendments to the Bill that sought to establish a digital-only LPA service.

Identification requirements

The Bill seeks to amend the MCA so that certain identification requirements, to be specified in regulations, must be satisfied for the Office of the Public Guardian to register an LPA.

As part of ensuring that older people are not excluded from the modernised LPA service, it is important that any identification requirements are not overly restrictive. Some older people will not have access to forms of identification that can be verified online. As such, we are pleased that the Government has accepted the importance of ensuring that a wide range of identification options will be accepted.

Under current Government policy, identification requirements will apply to those setting up an LPA, (donors) and certificate providers (a party to the LPA application, who checks the donor understands the effect of the LPA and has not been subject to undue pressure, fraud, etc), **but not to attorneys**³. An attorney has legal authority to act for the donor, for example to access and spend the donor's money, to sell property and other assets, and are therefore in a position to subject the donor to abuse. Given this, Age UK believes a reasonable safeguard is for attorneys to also be required to prove their identity as part of the LPA application process.

Get in touch

If you have any questions please contact Roshni Mistry, Senior Public Affairs Officer at roshni.mistry@ageuk.org.uk.

² Ministry of Justice, [Modernising Lasting Powers of Attorney: Government Response](#), paragraph 351

³ Ministry of Justice, [Powers of Attorney Bill: Impact Assessment](#), paragraph 43