COLLAS CRILL

Take control of your future: Lasting powers of attorney and advance decisions to refuse treatment

NOVEMBER 2018

The Capacity and Self-Determination (Jersey) Law 2016 (the **Law**) came into force in October 2018, providing the legal framework to ensure individuals can 'take control' of their future financial, personal and medical decisions in circumstances where they lack the capacity to make them themselves. The Law now brings into force the following concepts:

1. Lasting Powers of Attorney (**LPAs**);
2. Advanced Decisions to Refuse Treatment (**ADRTs**); and
3. Delegates (replacing the concept of curatorship).

Like a curatorship, the appointment of a delegate involves application to the Royal Court, and the individual must have capacity at the time of entering into any arrangement.

This article takes a closer look at how LPAs and ADRTs work.

Lasting Powers of Attorney

The new LPAs are very similar to those which have been available for some time in England and Wales, and is the tool for individuals to nominate who they would like to make or help make their decisions (the attorney). There can be one or more attorneys, and anyone can be chosen, as long as they have capacity and are over the age of 18. They can be a spouse, civil partner, family member, close friend or a professional person. Attorneys can be authorised to make decisions jointly and severally (acting either together or alone), jointly (all must agree) or jointly for some and jointly and severally for others. If there is only one attorney then they will always act alone.

There are two types of LPA:

Health and welfare

This LPA covers personal welfare and health care. Some examples of decisions which this type of LPA might cover, include:

- whether someone would like to be moved into a care home;
- decisions relating to the day-to-day care of an individual; and

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

- whether someone would like to refuse medical treatment in certain circumstances, including in relation to life-sustaining treatment.

Property and affairs

This type of LPA covers a person's money and property. Some examples of decisions which this type of LPA might cover, include:

- how someone would like their bank accounts managed;
- decisions relating to claiming, receiving and using a person's benefits, pensions and allowances; and
- how someone would like their home to be maintained or managed.

It is important to remember that an attorney must follow the requirements of the Law and the Capacity and Self-Determination Law Code of Practice. Broadly speaking, an attorney must assume the donor can make their own decisions unless they establish otherwise, and must help them make as many of their own decisions as they can. Crucially, an attorney must not treat a donor as unable to make a decision because they consider such decision unwise. Where the donor is unable to make a decision, the attorney must act and make decisions in the donor's best interests.

How is an LPA made?

LPAs are made through the States of Jersey's online portal.

Copies of the LPAs must be printed and then signed by the person making the LPAs, their proposed attorney(s) and a witness (who must satisfy specific criteria). Following this, they must take the signed forms in person together with photographic ID to the Judicial Greffe for the LPAs to be registered. There is a fee of £25 for registering an LPA (£10 for anyone on income support, long-term incapacity allowance or long-term care) and amendments are charged at £10. Further guidance can be found on the online portal.

Advanced decisions to refuse treatment

An ADRT (often referred to as a 'living will') is a legally binding record, in Jersey, of a person's wishes regarding which treatments they would like to refuse if they were to lose capacity. It allows an individual to make decisions in relation to their future care and medical treatments at times where they would not be able to do so themselves.

Unlike LPAs, there is no specific form in which an ADRT must be produced. For guidance, through the portal, there is an example form which can be used to draft an ADRT.

For an ADRT to be valid it must satisfy the following:

- The person making the ADRT must be 16 or over and have capacity.

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

- If the decision in the ADRT is in relation to life-sustaining treatment, the ADRT must clearly state that it applies even when the person's life is at risk. This type of ADRT must also be signed, dated and witnessed.

It is important to note:

- Each treatment the person wishes to refuse must be clearly stated in the ADRT otherwise it will not apply to a specific treatment.
- The circumstances when the ADRT is to apply must be clearly stated.
- An ADRT is not valid if the person making it does anything (including withdrawing the decision) which is inconsistent with the ADRT.
- An ADRT will not apply to any treatment if at the material time the person making it has capacity to give or refuse consent to that treatment.
- An ADRT cannot be used to request particular treatments or for the purpose of assistance to end the person's life.

It is advisable that the person making the ADRT makes sure people are aware of its existence, for example family members, close friends and health visitors. A person's GP should also be provided with a copy of the ADRT so that it can be included in their patient notes.

Where the maker of an ADRT also makes a Health and Welfare LPA, its authority will be subject to the provisions of the ADRT. To avoid confusion, it is advisable not to give an attorney power to make the same decisions described in an ADRT.

How can we help you?

To ensure that the individual's wishes are carried out correctly, it is important that the LPA application forms are completed accurately and we can provide the requisite professional guidance. Our team is also experienced in the preparation of ADRTs and can help ensure someone does not fall foul of the complex statutory provisions. If you have any questions, please contact a member of the team.

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

COLLAS CRILL

For more information please contact:



Dionne Gilbert

Partner (Advocate) | Jersey

t: +44 (0) 1534 601682 | **e:** dionne.gilbert@collascrill.com



Arcadius Gregory

Senior Associate* | Jersey

t: +44 (0) 1534 601612 | **e:** arcadius.gregory@collascrill.com

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.