

20 April 2021

## Briefing Note

### What is expected from the new Capacity Law in Guernsey

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#### *The Capacity (Bailiwick of Guernsey) Law, 2020: Introduction of Lasting Powers of Attorney*

A long-awaited new piece of legislation known as “The Capacity Law” is due to come into force in the Bailiwick of Guernsey. Bailiwick residents will be particularly interested to know that the new law will introduce, amongst other things, “Lasting Powers of Attorney” (LPAs).

A Lasting Power of Attorney is a legal document by which a person (“the Grantor”) gives power to one or more persons (“the Attorney(s)”) to make decisions on their behalf.

There are two types of LPA:-

- (1) Property & Financial Affairs LPA: grants powers relating to property and finances (e.g. for paying bills, collecting pensions and benefits, or dealing with property).
- (2) Health & Welfare LPA: grants powers relating to health and general welfare (e.g. medical treatment, life-sustaining treatment (if expressly authorised), diet, daily routines, and living accommodation).

Unlike an “ordinary” Power of Attorney, a Lasting Power of Attorney will not cease to be valid due to the Grantor losing capacity in the future, as it is made specifically for that purpose. On the other hand, a Health & Welfare LPA might only be “activated” once the Grantor has lost capacity.

An Attorney appointed by LPA must be at least 18 years of age and they can be a relative, friend or a professional. For the Property & Financial Affairs LPA, you can also appoint a company or person with a full fiduciary licence.

You can appoint more than one Attorney. It is important to choose Attorneys you can trust to act in your best interests and who will have the knowledge, skills and time to do so, whatever your circumstances may be in the future.

The new Capacity Law also enables a person to create an “Advance Decision to Refuse Treatment” (ADRT) also known as a “Living Will”, to make a decision to refuse specified treatment when they no longer have capacity. The “Living Will” could only be validly made if the person has capacity in relation to the matter of refusing a specified treatment and it would only be used if the person has lost that capacity thereafter.

The Capacity Law will come into force at a date to be appointed by Ordinance of the States of Guernsey and it is likely that it will be brought into force on a phased basis.

It will be paramount for anyone wishing to put in place any of the instruments introduced by the Capacity Law to take detailed legal advice to ensure that they are valid and more importantly, to ensure that they appreciate the consequences of handing over powers to appointed persons at a time when they may be at their most vulnerable. In addition, clear and detailed drafting will ensure that the instruments interact well with each other and contain appropriate safeguards.

The team at Babbé will be pleased to assist anyone requiring more information or interested in LPAs and/or Living Wills.

## Key Contacts



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