

*Status: This version of this cross heading contains provisions that are prospective.*  
**Changes to legislation:** *Mental Capacity Act (Northern Ireland) 2016, Cross Heading: Creation of lasting power of attorney is up to date with all changes known to be in force on or before 05 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*



## 2016 CHAPTER 18

### PART 5

#### LASTING POWERS OF ATTORNEY

PROSPECTIVE

##### *Creation of lasting power of attorney*

##### **Lasting powers of attorney**

**97.—(1)** A lasting power of attorney is a power of attorney by which the donor confers on the attorney (or attorneys) authority to make decisions about (or about specified matters concerning) all or any of the following—

- (a) the donor's care, treatment and personal welfare,
- (b) the donor's property and affairs,

and which includes authority to make such decisions in circumstances where the donor no longer has capacity.

**(2)** A lasting power of attorney is created only if—

- (a) an instrument conferring authority of the kind mentioned in subsection (1) is made and registered in accordance with Schedule 4;
- (b) at the time when the donor executes the instrument, the donor is 16 or over and has capacity to execute it; and
- (c) section 101 (requirements as respects attorneys) is complied with.

**(3)** An instrument which—

- (a) purports to create a lasting power of attorney, but

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- (b) does not comply with this section, section 101 or Schedule 4, confers no authority.
- (4) The authority conferred by a lasting power of attorney is subject to—
  - (a) the provisions of this Act and, in particular—
    - (i) sections 98 to 100 (restrictions);
    - (ii) sections 1, 2, 5 and 7 (principles, best interests); and
  - (b) any conditions or restrictions specified in the instrument.
- (5) In the following provisions of this Part, in relation to a lasting power of attorney or an instrument executed with a view to creating such a power—
  - (a) any reference to “care, treatment and personal welfare” includes matters concerning care, treatment or personal welfare that are specified in the power or instrument;
  - (b) any reference to “property and affairs” includes matters concerning property or affairs that are specified in the power or instrument.
- (6) Subsections (2) and (3) are subject to—
  - (a) section 102(5) (joint and several appointments: breach of requirements as respects some but not all attorneys); and
  - (b) section 103(6) (breach of requirements as respects replacement attorneys).

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 285(2)(a)-(c) substituted for s. 285(2)(a)(b) by [2022 c. 18 \(N.I.\) Sch. 3 para. 77\(b\)](#)