

*These notes refer to the Mental Capacity Act (Northern Ireland)  
2016 (c.18) which received Royal Assent on 9 May 2016*

# Mental Capacity Act (Northern Ireland) 2016

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 5 – Lasting Powers of Attorney**

##### *Chapter 1 - Lasting Powers of Attorney*

##### *Section 97 – Lasting powers of attorney*

This section sets out the key features of LPAs. The LPA gives authority to an attorney to make certain decisions when the donor has lost capacity to do so him or herself. Unlike an EPA which only applies to decisions regarding property and affairs, LPAs can additionally apply to care, treatment and personal welfare decisions. The decision-making authority may relate to those areas generally or to specified matters concerning them, as long as this is specified in the LPA.

The section explains that for a LPA to be created it must first meet the Act's requirements in respect of who can be an attorney, as set out in section 101, and that the instrument (that is, the formal legal document setting up the LPA) must be made and registered with the Public Guardian in accordance with the formalities laid down in Schedule 4. The registration may be done straight away or it may be left for some time, but the LPA may not be used until it is registered. The donor must be aged 16 or over at the time he or she makes the instrument and must have capacity to do so.

The attorney is subject to the provisions of the Act, in particular the principles of the Act and the best interests test must be followed. Any conditions or restrictions that the donor may wish to include in the LPA instrument must be respected by the attorney.