

## **THE MENTAL CAPACITY ACT 2005 – NEW LAWS DUE TO COME IN.**

In April 2007 the relevant provisions of the new Mental Capacity Act are expected to come in to force and replace the present regime relating to “Enduring Powers of Attorney”. As a result from April 2007 Enduring Powers of Attorney will be replaced by “Lasting Powers of Attorney.” However, all unrevoked Enduring Powers of Attorney made prior to that date will continue to be valid.

Lasting Powers of Attorney are expected to be in two forms: one will relate to financial and property matters similar to the present Enduring Powers of Attorney; the other will relate to the welfare of the person making it and has some similarities to the present form of “Living Will”. Both documents will run to approximately 10-12 pages and will require registration at the Court of Protection before they can be used.

Since Lasting Powers of Attorney will be longer and more complex than Enduring Powers of Attorney, they will undoubtedly be more expensive to prepare. In addition the Court of Protection will charge a fee for their compulsory registration. By comparison, Enduring Powers of Attorney are simple, easy to prepare and complete, and only need to be registered at the Court of Protection if the donor loses mental capacity. Therefore they can be used to assist a physically frail person who has full mental capacity without the need for registration.

In view of the above, it would seem sensible for anyone currently considering making an Enduring Power of Attorney to discuss the position with us before the more complex regime of Lasting Powers of Attorney comes into effect next year.