



MES PENSIONS

Power of Attorney &
Court of Protection

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People who live in one country but have interests such as a pension or property in another country, may need to arrange a power of attorney for their overseas affairs. A Power of Attorney is governed by the law of the country where the actions of the Attorney will be performed. Normally, this is the place in which the pension or property of the donor is located.

Whilst you can arrange a foreign Lasting Power of Attorney whilst living overseas, there can be complications if it needs to be recognised in England and Wales.

What is a Power of Attorney?

A Power of Attorney is a document that allows one party (the donor) to appoint another party (the attorney) to act on their behalf.

In England and Wales, a general power of attorney gives the attorney powers to deal with the financial affairs of the donor and can be as wide in its remit as the donor chooses. A general power of attorney can only continue if you have mental capacity.

A lasting power of attorney is an English and Welsh legal document that allows the appointment of one or more people to make decisions for you if you lack mental capacity to do this for yourself. There are similar documents in other jurisdictions.

If you do not put a lasting power of attorney in place and lose capacity to deal with your own affairs in England and Wales, it may be necessary for your family or friends to apply to the Court of Protection. The Court of Protection can appoint a deputy to make decisions on your behalf. The role of the deputy is like that of an attorney but there are rigorous reporting requirements and the costs of having a deputy appointed are far greater than appointing an attorney whilst you have mental capacity.

There are 2 types of lasting power of attorney in England and Wales.

The property and financial affairs lasting power of attorney

This type of lasting power of attorney you are giving your attorney/s permission to deal with your property and investments, operating bank accounts etc. You can set this up in such a way it can be used even if you still have mental capacity. If you live overseas with assets in England or Wales, and your attorneys are based in the UK this can have advantages.

The health and welfare lasting power of attorney

With this type of lasting power of attorney, you are giving your attorney/s the authority to make decisions in relation to where you live and medical treatment. You can give your attorney/s the power to decide to withdraw life-sustaining treatment. Your attorney/s can only act if you do not have mental capacity to make decisions yourself.

If I have made a power of attorney overseas, can it be used in England and Wales?

The Hague Convention XXXV on the International Protection of Adults addresses issues of jurisdiction, acceptance and enforcement with regards to powers of attorney.

The Hague Convention makes it possible to obtain a certificate which can be used to allow appointed attorney/s to act in another country that has signed and ratified the Hague Convention. Although the UK has signed the Hague Convention, it is currently only ratified in Scotland, so it is not possible to have a certificate issued in England or Wales.

Enforcement of lasting power of attorneys in the UK

Despite England and Wales not having ratified the Hague Convention, English law does recognise a translated and legalised foreign equivalent to an LPA, if it passes a two-part test.

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- The foreign equivalent to a lasting power of attorney must be valid in the jurisdiction in which it was made.
- The donor of the foreign equivalent must be habitually resident in the foreign country that the foreign equivalent of the lasting power of attorney was made.

It is difficult to use an overseas equivalent of a lasting power of attorney as most UK bodies, such as banks and pension providers, will not accept them. MES Financial Services Limited will only accept a UK Lasting Power of Attorney.



Contact

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