

Capacity and Self-Determination (Jersey) Law 2016

Person lacking capacity - Application for appointment of a delegate

Delegate for Property and Financial Affairs

Important

You should complete this form if you want to apply for a delegate to be appointed to help look after the property and financial matters of a person who lacks capacity to make their own decisions.

Once completed, this form with all supporting documentation must be provided to the Judicial Greffe.

If you have any questions as to the purpose of this form, or require additional guidance in completing this form, please contact the Judicial Greffe on 441362 or 441303.

This form is comprised of two parts –

Part A: Application information

Part B: Delegate's declaration and consent

PART A – Application information

SECTION 1 – THE PERSON TO WHOM THIS APPLICATION RELATES

- 1.1 Please provide the details of the person to whom the application for the appointment of a delegate(s) relates. (This is the person who lacks, or is alleged to lack, capacity).

Title	
First name	
Middle name(s)	
Last name	
Maiden name (if applicable)	
Former name (if applicable)	
Wife / widow of (if applicable)	
Residential address (including postcode) (e.g. home or residential care home address)	

Telephone number	
Date of birth	
Gender	

1.2 Does the person to whom the application relates have a lasting power of attorney in place? (see note 1) (Please X a box)

Yes No I don't know

If Yes, please give the LPA reference number (if known), the names of the attorney/s and explain why the appointment of a delegate is sought.

1.3 Does the person to whom this application relates have a Will? Yes No

If Yes, and if known, where is the will held and who is the executor?

SECTION 2 – THE APPLICANT(S)

2.1 Please provide details of the person(s) making the application (see note 2).

Applicant 1

Title	
First name	
Middle name(s)	
Last name	
Address (including postcode)	
Telephone number	
Email address	

In what capacity are you making the application? (Please X a box)

<input type="checkbox"/>	I am the proposed delegate
<input type="checkbox"/>	I am the person to whom this application relates
<input type="checkbox"/>	I am an Attorney for the person to whom this application relates under a current Lasting Power of Attorney
<input type="checkbox"/>	Other (give details)

What is your relationship to the person to whom this application relates (eg mother, father, brother, friend)?

Applicant 2 (if applicable)

Title	
First name	
Middle name(s)	
Last name	
Address (including postcode)	
Telephone number	
Email address	

In what capacity are you making the application? (Please X a box)

<input type="checkbox"/>	I am the proposed delegate
<input type="checkbox"/>	I am the person to whom this application relates
<input type="checkbox"/>	I am an Attorney for the person to whom this application relates under a current Lasting Power of Attorney
<input type="checkbox"/>	Other (give details)

What is your relationship to the person to whom this application relates (eg mother, father, brother, friend)?

(NOTE: If more than two applicants, please continue on a separate sheet)

2.2 Please give one address that we can send official documentation to at this stage
(If you don't complete details below we will contact Applicant 1)

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2.3 Do you require permission to make an application for the appointment of a delegate?
(see note 3) (X a box as appropriate)

Yes No

2.4 What are your reasons for the application?

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SECTION 3 – THE PROPOSED DELEGATE(S)

You should only complete this section if the proposed delegate(s) **are not** the same as the applicant(s) named in Section 2. If they are the same, go to Section 4.

Please provide details of the proposed delegate(s).

Delegate 1

Title	
First name	
Middle name(s)	
Last name	
Address (including postcode)	
Telephone number	
Email address	

Is the proposed delegate related to, or otherwise connected or associated with, the person to whom the application relates (eg mother, father, brother, friend)?

Delegate 2 (if applicable)

Title	
First name	
Middle name(s)	
Last name	
Address (including postcode)	
Telephone number	
Email address	

Is the proposed delegate related to, or otherwise connected or associated with, the person to whom the application relates (eg mother, father, brother, friend)?

NOTE: If you are applying for more than two people to be appointed as delegate, please continue on a separate sheet

SECTION 4 – THE APPLICATION

4.1 What appointment are you seeking?

Please X the box to indicate the type of appointment being sought.

<input type="checkbox"/>	Sole delegate (appointment of a single delegate)
<input type="checkbox"/>	Joint delegates (two or more delegates where <u>all</u> decisions need to be taken jointly)
<input type="checkbox"/>	Joint and several delegates (the appointment of two or more delegates who will make some decisions jointly and are able to make other decisions without consultation with the other delegate(s))

4.2 Please confirm which of the following property and financial matters it is intended the proposed delegate/s should be conferred authority (see note 4).

Where it is proposed that there is more than one delegate, identify whether decisions relating to that matter will be made jointly or joint & severally.

X the box(es) that apply.

Sole		Joint	Joint & Severally
<input type="checkbox"/>	Cash in hand.	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Current bank accounts.	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Savings and Co-op Bank Accounts.	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Pensions and benefits	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Vehicles and valuables.	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Premium bonds, NS&I bonds and individual shareholdings.	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Conducting legal proceedings on behalf of the person to whom this application relates.	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Stocks and shares held in an investment portfolio.	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Residential immovable or share transfer estate, including their contents.	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Commercial immovable estate.	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Carrying on a trade or business in the name of the person to whom this application relates, or carrying out contracts in the name of the person to whom this application relates.	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Dissolving a partnership of which the person to whom this application relates is a member.	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Other (please give details)	<input type="checkbox"/>	<input type="checkbox"/>

4.3 Please give any further information in relation to the above that you think relevant.

4.4 Interim orders or directions (see note 5)

Do you require the Court to agree any decisions while this application is pending?

Yes No (Please X a box)

If yes, please state the decisions sought and the reasons:

SECTION 5 – INTERESTED PARTIES TO THE APPLICATION

5.1 Please detail immediate family members of the person to whom this application relates and any other interested party (e.g. social worker, general practitioner, Minister for Health and Social Services)

Full name	Relationship to the Person to whom this application relates

If you do not believe that one or more of the persons named above should be notified of this application, please explain why not (*for example, "has had no contact for X years"*). Please attach additional documents giving evidence to support this if possible

5.2 Does the person to whom this application relates have an Independent Capacity Advocate? If so, please give their name below (see note 6)

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NOTE: Letters of consent from immediate family members may be requested in support of the application to appoint a delegate.

SECTION 6 – INCOME AND ASSETS

Please list below all of the assets and sources of income for the person that requires a delegate. For example, residential property, commercial property, bank account balances, shares, investments, pensions, vehicles/boats and any benefits, such as Long Term Care.

NOTE: We do not require exact valuations of assets at this stage, estimated is sufficient. If you are appointed Delegate you will be required to provide a more detailed inventory.

You may attach separate documents if you need to.

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Signatures

Applicant 1	
Signed	
Print name	
Date	

Applicant 2 <i>(if applicable)</i>	
Signed	
Print name	
Date	

NOTE: If there are more than two applicants, they should sign and date below.

PART B – Delegate(s) declaration and consent

Delegate’s Declaration and Consent

This Part B is to be completed by each of the proposed delegate(s). Additional copies of Part B can be obtained from the Judicial Greffe or from gov.je.

Where there is more than one delegate, please ensure the application is submitted together with a completed and signed Part B for each delegate.

If you have any questions as to the purpose of this form, or require additional guidance in completing this form, please contact the Judicial Greffe on 441303 or 441362.

SECTION 1 – THE PROPOSED DELEGATE (the person to be appointed delegate)

1.1 Please confirm your full name.

1.2 Are your details as set out in Section 2 or Section 3 of Part A of this form correct?

Yes No (Please X a box)

If No, please provide details

1.3 Do you personally visit or otherwise contact the person to whom the application relates?

Yes No (Please X a box)

If Yes, how frequent are the visits/contact?

1.4 Have you ever been appointed to act as a delegate for anyone else? (Please X a box)

Yes No

If Yes, please give the name of the person(s) for who you were appointed.

SECTION 2 – SCOPE OF APPOINTMENT

2.1 Please give details of the ongoing property and affairs decisions you are seeking to make on behalf of the person to whom this application relates.

2.2 Are the assets over which you are seeking authority and the scope of authority set out in Part A Section 4 of this application correct?

Yes No

If No, please give details below.

2.3 How long do you want to be appointed for?

If you think the person to who this application relates will recover their ability to make decisions for themselves, let us know how long you think that will take. If you think they will not recover, enter “Whole life” in the box below.

SECTION 3 – REMUNERATION

The Court may direct when appointing a delegate for property and affairs that they may charge, and be paid out of the Person’s estate, fees for doing any work performed by them as the Person’s delegate.

3.1 Are you seeking the Court’s permission to charge fees for acting as delegate?

Yes No If no, proceed to Section 4.

3.2 If Yes, please estimate the fees you will charge for the first year of your appointment as delegate.

£ .

- 3.3 Provide a statement of action that you anticipate may be necessary on behalf of the Person during your first year as delegate (for example: the sale of any immovable property or the realization of investments).

SECTION 4 – YOUR PERSONAL CIRCUMSTANCES

NOT APPLICABLE FOR THE VISCOUNT TO COMPLETE SECTION 4

In support of your application, you are required to arrange a Disclosure Barring Service check to confirm that you have not had any convictions. (Please see note 7)

- 4.1 Have you ever been convicted of a criminal offence (see note 8)?

Yes No

If Yes, please provide details of the offence, including the date of conviction.

- 4.2 Do you have a personal bank or building society current/deposit account?

Yes No (Please X a box)

- 4.3 Have you ever been refused a credit card or had a personal loan application refused? (Please X a box)

Yes No

- 4.4 Do you have any outstanding judgment debts? (Please X a box)

Yes No

If Yes, please provide details.

- 4.5 Have you personally ever been declared bankrupt in Jersey or been the subject of bankruptcy proceedings in Jersey? Have you ever been the subject of any insolvency or proceedings of a similar nature to bankruptcy in any place outside Jersey? (Please X a box)

Yes No

If Yes, please provide details.

4.6 Has any business that you have been involved with (whether a company, partnership or otherwise) been subject to a recognised bankruptcy or insolvency regime in Jersey or elsewhere (eg voluntary arrangement, winding up, administration)? (Please X a box)

Yes No

4.7 Have you been the subject of a Debt Remission Order? (Please X a box)

Yes No

4.8 Are you aware of any matter in which your financial interests may conflict with those of the person to whom the application relates? (eg occupation of a property which the person owns, any interest under the terms of their will). (Please X a box)

Yes No

If Yes, please provide details.

4.9 Do you know of any reason (for example illness) that might affect your carrying out the obligations and duties required of a delegate effectively?

Yes No

If Yes, please provide details.

SECTION 5 – YOUR PERSONAL UNDERTAKINGS TO THE PERSON TO WHOM THE APPLICATION RELATES

5.1 Becoming a delegate means that you have to take on a number of duties and responsibilities and have to act in accordance with certain standards. If you are appointed as a delegate, the Act of Court, read in conjunction with Part 4 of the Capacity and Self-Determination (Jersey) Law 2016, will determine the exact powers conferred on you.

- 5.2 The main duties and responsibilities you may have to take on are set out below. Please review each one and cross 'Yes' if you give your undertaking to act in accordance with the duty or responsibility. You can use the 'Comments' section to support your undertakings. Please mention if you have a particular professional skill, life experience, public duty or role that you think is relevant.
- 5.3 If you do not give your undertaking and cross 'No', please use the 'Comments' section to explain your reasons. It may be because you do not yet have experience in the particular duty, or think you might not have the skills needed. It will not necessarily prevent your appointment as delegate.
- 5.4 Not all of the undertakings set out below will be relevant to every delegate. If you think this is the case, cross 'No' and explain in the 'Comments' section that the undertaking would be irrelevant to your appointment.

	Undertaking	Yes or No	Comments
1	I will have regard to the Capacity and Self-Determination (Jersey) Law 2016 Code of Practice and I will apply the principles of the Law when making a decision. In particular I will act in the best interests of the person to whom the application relates and I will only make those decisions that the person cannot make themselves.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
2	I will act within the scope of the powers conferred on me by the Court as set out in the order of appointment and will apply to the Court if I feel additional powers are needed.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
3	I will act with due care, skill and diligence, as I would do in making my own decisions and conducting my own affairs. Where I undertake my duties as a delegate in the course of my professional work (if relevant), I will abide by professional rules and standards.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
4	I will make decisions on behalf of the person to whom the application relates as required under the court order appointing me. I will not delegate any of my powers as a delegate unless this is expressly permitted in the court order appointing me.	<input type="checkbox"/> Yes <input type="checkbox"/> No	

5	I will ensure that my personal interests do not conflict with my duties as a delegate, and I will not use my position for any personal benefit.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
6	I will act with honesty and integrity, and will take any decisions made by the person to whom the application relates while they still had capacity, into account when determining their best interests.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
7	I will keep the person's financial and personal information confidential (unless there is a good reason that requires me to disclose it).	<input type="checkbox"/> Yes <input type="checkbox"/> No	
8	I will comply with any directions of the Court or reasonable requests made by the Viscount, the Judicial Greffe or the Health and Social Services Department, including requests for reports to be submitted.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
9	I will visit the person to whom the application relates as regularly as is appropriate and take an interest in their welfare.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
10	I will work with the person to whom the application relates and any carer(s) to achieve the best quality of life for him or her within the funds available.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
11	I will co-operate with any representative of the court, the Viscount, the Judicial Greffe or the Health and Social Services Department who might wish to meet me or the person to whom the application relates to check that the delegate arrangements are working.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
12	I will immediately inform the court and the Viscount if I have any reason to believe that the person to whom the application relates no longer lacks capacity and may be able to manage his or her own affairs.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
13	I understand that I may be required to provide security for my actions as delegate. If I am required to purchase insurance, such as a guarantee bond, I undertake to pay premiums promptly from the funds of the person to whom the application relates.	<input type="checkbox"/> Yes <input type="checkbox"/> No	

14	I will keep accounts of dealings and transactions taken on behalf of the person to whom the application relates.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
15	I will keep the money and property of the person to whom the application relates separate from my own.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
16	I will ensure so far as is reasonable that the person to whom the application relates receives all benefits and other income to which they are entitled, that their bills are paid and that a tax return for them is completed annually.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
17	I will take reasonable steps to maintain the property of the person to whom the application relates (if applicable), for example arranging for insurance, repairs or improvements. If necessary I will arrange and oversee a sale or letting of property with appropriate legal advice.	<input type="checkbox"/> Yes <input type="checkbox"/> No	

SECTION 6 – PERSONAL STATEMENT TO THE COURT

Please state why you wish to be the delegate of the person to whom the application relates.

SECTION 7 – CONSENT

The role of delegate is an important one and will require careful consideration. A delegate must make all decisions for the person to whom the application relates in that person’s best interests, and must act in accordance with specific legal requirements. If you are in doubt as to any aspect of your appointment as delegate, or your obligations as delegate, you should seek legal advice.

Do you consent to being appointed as delegate for the person to whom the application relates? (Please X a box)

Yes No

SECTION 8 – DELEGATE’S DECLARATION

I confirm that to the best of my knowledge and ability the information contained herein is true and complete in all respects. I understand that if I knowingly provide false or misleading information there may be legal consequences.

Signatures

<u>Delegate</u>	
Signed	
Print name	
Date	

NOTE: Where there is to be more than one delegate, each delegate should complete their own Part B and attach it to the “Application for the appointment of a delegate” form.

Guidance notes

<p>Note 1</p>	<p>A lasting power of attorney (“LPA”) is a legal document that lets a person (the ‘donor’) appoint one or more people (known as ‘attorneys’) to help make decisions or to make decisions on the donor’s behalf.</p> <p>A delegate appointed by the Court may not make a decision which is inconsistent with a decision made by an attorney acting under the authority of an LPA. As such, it is important for the Court, and the proposed delegate, to understand whether the person to whom the application relates has made an LPA and what the terms of that LPA are.</p>
<p>Note 2</p>	<p>An application for the appointment of a delegate may be made by a person who wishes themselves to be appointed as a delegate or who wishes to apply for another person to be appointed as a delegate.</p> <p>An application for the appointment of a delegate may be made by more than one person, for example if you and another family member are applying to be appointed as joint-delegates for another family member, such as your mother or father. If you are intending to make an application jointly with another person, you should coordinate the submission of the required information and completion of this form with them.</p>
<p>Note 3</p>	<p>In many cases, it is expected that the applicant for the appointment of a delegate will be a relative of the person to whom the application relates, or will be an official person such as the Attorney General or some other authorized person such as an attorney under a lasting power of attorney. The Law automatically enables such persons to make an application for the appointment of a delegate without further permission being required from the Court.</p> <p>In some cases, however, permission of the Court may be required in order to make an application for the appointment of a delegate. Typically this will be required in cases where the applicant is not a relative of the person to whom the application relates or a person acting in an official or authorized capacity. For example, if the applicant is simply a friend or associate of the person to whom the application relates, that applicant will be required to obtain permission from the Court to make an application for the appointment of a delegate. In such cases, the applicant will need to explain to the Court, among other things, the applicant’s connection to the person to whom the application relates and reasons for the application.</p>
<p>Note 4</p>	<p>If property is held in joint names, the delegate(s), when appointed, will not have the legal authority to deal with its sale, disposal, etc. It is recommended that a delegate(s) seek legal advice if unsure as to the scope and effect of powers in relation to property.</p>
<p>Note 5</p>	<p>The Court has the power to make orders or give directions pending its determination of an application for the appointment of a delegate. These directions or orders (known as “interim directions” or “interim orders”) might be made in cases where there is an urgent need for authorisation to make a specific decision, or undertake a specific act, which is in the best interests of the person to whom the application relates. If you consider an interim order or interim direction is required, you should provide as much information as possible in that regard in Part A Section 4.4 of this form.</p>
<p>Note 6</p>	<p>An independent Capacity Advocate (ICA) is someone who provides support and representation for a person who lacks capacity to make specific decisions, where the person has no-one else to support them.</p>

Note 7	<p>Proposed delegates are required to apply for a basic Disclosure Barring Service (DBS) check to confirm that they have not had any convictions. The Judicial Greffe requires sight of the original DBS certificates for each of the proposed delegates in support of the application to appoint a delegate. A DBS check can be applied for online through:</p> <p>gov.uk https://www.gov.uk/request-copy-criminal-record</p> <p>mygov.scot (https://www.mygov.scot/basic-disclosure/apply-for-basicdisclosure/?via=http://www.disclosurescotland.co.uk/basicdisclosureonline/index.htm)</p> <p>and other commercial providers.</p> <p>Once you have been appointed a delegate you will be able to recover the nominal charge for the DBS check from the assets of the person for whom the application relates.</p>
Note 8	<p>A person who lacks capacity to make decisions for himself or herself is a vulnerable person. As such, the law requires the disclosure of the proposed delegate's spent convictions in order that the proposed delegate may be assessed for his or her suitability for appointment as a delegate.</p>