

*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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5 – Lasting Powers of Attorney

Chapter 1 - Lasting Powers of Attorney

Section 103 – Appointment of replacement attorneys

This section enables the donor to provide for replacement attorneys in the LPA instrument. An attorney may not be given the power to appoint a substitute or successor but the donor, in the LPA instrument, may appoint someone to step into the attorney role if a “terminating event” occurs which prevents the original attorney from acting as attorney. Terminating events are defined in section 107 and 110 and include, for example, the death of an attorney.

Where there is provision for a replacement attorney, the LPA instrument may not go further and appoint someone to replace that replacement, should a terminating event occur in respect of the attorney appointed as a replacement.

Where the LPA appoints two or more attorneys, the instrument can provide for two or more replacement attorneys. The instrument can specify the order in which the replacement attorneys are to be appointed; or it can specify which attorney the donor wants to replace a particular attorney who can no longer act due to a terminating event occurring.

The requirements for attorneys, as set out in section 101, also apply to the replacement attorney(s); however, if the replacement attorney does not meet these requirements (or those in Part 1 or 2 of Schedule 4 regarding the making of LPA instruments), the LPA can still be made. So for example, if a replacement attorney has not reached the age of 18 at the time the LPA instrument is made and therefore does not meet the requirements for attorneys in section 101, the LPA can still be created, as long as the acting attorney meets the requirements.