

Ensuring Your Veganism is Protected If You lose Capacity to Manage Your Affairs

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The scenario:

You made the decision to live vegan. For a number of years you have avoided participation in the exploitation of animals, for food, clothing and any other purpose.

Unfortunately, you have lost the capacity to make or express your decisions. This may have happened suddenly as a result of an accident or illness, or gradually through a mental disorder or old age. You are now dependent upon others, and as a result reliant upon them to ensure that you continue to live by your vegan ethics.

Do they know you are vegan? Do they understand what that means day to day? Can you rely upon them to ensure that you are fed only vegan food? Unfortunately vegan provision in our state-run facilities (hospitals, schools, care-homes etc) varies greatly. How do you ensure your right to avoid animal products is upheld?

Once you have lost the capacity to deal with your own affairs you will not be able to ensure that this is addressed. You may have family and/or friends who know you are vegan and that you will wish to continue to live according to your vegan ethics, but they will not have an automatic right to speak on your behalf. They may go to Court to get the authority to act on your behalf as your Guardian or Deputy, but this process is lengthy and expensive.

Power of Attorney

It is possible to address this issue in advance, while you have capacity, by preparing a Power of Attorney ("POA"). A POA is a written document which gives another person authority to take actions or make decisions on your behalf. It allows you to decide now what you would like to be done on your behalf if you become unable to act for yourself in the future.

The person appointed is called an Attorney. You decide which powers your Attorney should have and when you want your Attorney to act for you.

There are different types of POA's. In Scotland there are two types. A "Continuing Attorney" allows the Attorney to take decisions and actions on your behalf regarding your financial dealings. Your Continuing Attorney can act for you at any time you wish and can continue to act on your behalf if you become incapable at a future time. A "Welfare Attorney" can take decisions about your health or personal welfare and their authority to act only comes into play when you are no longer able to make such decisions yourself.

In England a Lasting POA allows an Attorney to be appointed for financial and/or welfare matters. As in Scotland, the authority to act in relation to welfare matters, such as diet and accommodation, only coming into play with the person loses capacity.

HOW it is decided when I am no longer capable?

- Since your Attorney can only make decisions about your health or personal welfare when you are no longer capable of doing so yourself, it is important that you have thought about what being "incapable" means.
- It is a statutory requirement that your POA should include a statement which shows that you have given thought as to how your incapacity is to be determined.

- It would be worthwhile discussing with your Attorney how your incapacity is to be determined so that they have the same understanding as you on this matter.

WHO can be appointed as my Attorney?

- You can appoint anyone to be your Attorney. They can be your spouse, partner, a family member or friend, or a professional such as a Solicitor or an Accountant.
- Your Attorney must be 16 years or over. There is no requirement that they are resident in the UK although this may be easier from a practical point of view.
- A firm (e.g. of solicitors) or a company can act as your Continuing Attorney but in Scotland your Welfare Attorney must be an individual.
- You can appoint more than one Attorney. Two or more Attorneys can act on your behalf, either making decisions jointly or acting separately.
- You can appoint a substitute Attorney or Attorneys in the event that the principal person appointed is unable to act themselves.

WHAT happens in practice?

- A draft Power of Attorney document is prepared for your approval by your Solicitor. Once you are satisfied that the deed best reflects your wishes, a formal document is drawn up for your signature.
- When you sign the Power of Attorney, there is a requirement that a Certificate is signed by a Solicitor or Medical Practitioner which confirms that you understand the nature and extent of the powers being granted and that there is no reason to believe that such powers should not be granted. This Certificate is attached to the Power of Attorney.
- The POA must be registered with the Office of the Public Guardian before it can be used by your Attorney. Also at this point, your Attorney needs to sign the Registration Form saying that he or she is happy to act for you.
- Once the POA is registered, the Office of the Public Guardian will return the original document to your Solicitor, and will send a copy of the Power of Attorney to you.
- The Office of the Public Guardian charges a registration fee. Currently this is levied at £74 per document and would be subject to future change

WHAT happens if I wish to cancel my Power of Attorney?

- You can cancel your POA at any time, while you still have capacity to do so, even after it has been registered with the Office of the Public Guardian.
- In order to revoke the POA, you need to submit a written revocation notice to the Office of the Public Guardian. The revocation notice should be certified by a Solicitor or Medical Practitioner.
- The Office of the Public Guardian will formally notify your Attorney although it would be sensible to let them know personally. The revocation notice should also be exhibited to any banks or other institutions who have already been shown the POA.

This briefing is written as a general guide only. Readers should not apply or rely on any of the information contained therein without first seeking legal advice.