

ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

Exercising Power of Attorney (POA)



The POA you were granted has now been registered with the Office of the Public Guardian (OPG) in Scotland under the terms of the Adults with Incapacity (Scotland) Act 2000. The person granting you the POA (granter) may have appointed you as a continuing attorney, a welfare attorney or both.

The document will list the range of powers that you will be able to carry out when the POA takes effect. You will only need to carry out these powers as and when required and you will not necessarily need to carry out all of them.

What do you need to know before acting as an attorney?

The following principles must be observed and applied by anyone appointed under the terms of the Adults with Incapacity (Scotland) Act 2000 when deciding to act or when exercising powers on behalf of someone.

- **Benefit** - No action should be taken unless it will benefit the adult (granter).
- **Minimum intervention** - Any action that is taken should be the least restrictive option available.
- **Take account of the wishes of the adult** - The past and present wishes and feelings of the adult should be taken into account.
- **Consultation with relevant others** - The views of the adult, nearest relative, primary carer, guardian, attorney or any other person deemed to have interest must be determined before any intervention is made.
- **Encourage the adult to exercise whatever skills he or she has** - The adult should be encouraged, where possible, to exercise his/her skills in as far as they are capable concerning their financial affairs, property and personal welfare.

What is a continuing / welfare attorney?

A continuing attorney has authority to manage the granter's financial and/or property affairs. A welfare attorney has authority to manage matters.

What if there are other attorneys?

The granter can appoint as many attorneys as s/he requires. You may have been appointed as a joint attorney and have responsibility for some or all of the powers.

If you have been appointed as a substitute attorney, you are not required to act straight away. You will only be required to act should the sole attorney no longer be able to or they resign their appointment. The Public Guardian will want to be satisfied when the time comes that you are willing to act in this capacity.

When can you start acting?

If you are a continuing attorney you may have been given authority to either act as soon as the POA is registered or at a later date. You will need to check the POA document to find out.

If you have been appointed as a welfare attorney, your authority will start if/when the granter becomes incapable and is no longer able to deal with their own welfare matters.

Your duties as an attorney

When acting as an attorney you must keep records of how you exercise your powers. A continuing attorney must keep the adult's financial affairs separate from their own as records may be required at some point by the Public Guardian. Further guidance on record keeping can be found in the Code of Practice for Continuing and Welfare Attorneys. Details on how to obtain a copy are noted below.

You, as the attorney, should notify the Public Guardian if:

- you or the granter of the POA changes his/her address
- you decide to resign
- the granter of the POA should die
- if you have been declared bankrupt and you have been appointed as a continuing attorney
- any other event which results in the termination of the POA

How can I prove that I can act as attorney?

When a POA is registered in Scotland with the OPG a certificate of registration and copy document is issued to the sender of that document (usually a solicitor). A copy of the document conferring a continuing or welfare POA, authenticated by the Public Guardian, serves as sufficient evidence of the contents of the original. You must therefore ensure that you hold an authentic copy. If required OPG can issue a duplicate. A fee will be charged for this.

The above documentation may be required by banks, etc. to prove that you have been appointed as attorney and have authority to carry out certain transactions on behalf of the granter.

Can I claim fees and expenses?

The granter may have provided in the POA document that you can receive expenses for acting as their attorney. This is a matter you may have discussed with the granter before accepting your appointment.

How long will the power of attorney last?

You will be the attorney until, for example, the granter recalls the document or you resign. The POA will also come to an end if the granter dies. It could well be that you do not actually start to exercise your powers before the POA ceases to have effect. The Code of Practice provides guidance in this respect, as there are other circumstances that can bring powers to an end.

Can a POA or any of the powers be cancelled?

Yes. Further information can be obtained by telephoning OPG or viewing Fact Sheet 2 on the POA section of our website. Alternatively, if the POA is to be amended, please contact OPG for guidance.

Need help or guidance on carrying out your powers?

The Code of Practice for Continuing & Welfare Attorneys can be downloaded from the Scottish Government website: <http://www.scotland.gov.uk/Resource/Doc/216725/0058106.pdf> Hard copies may be available by telephoning 0131 244 3581.

You can also contact the OPG for assistance where someone will be happy to assist you. However, if you require legal advice, you should contact your solicitor.