

ADULTS WITH INCAPACITY

(SCOTLAND) ACT 2000

FACTSHEET NO. 4 – Frequently Asked Questions



Why should I grant and register my Power of Attorney (POA) now ?

There are various reasons as to why it would be beneficial for you to grant and register a POA straight away. Below are listed some of the benefits the Public Guardian considers important,

- Granting a POA provides a safeguard for you if your capacity becomes impaired in relation to the powers granted.
- You will be able to choose the person who you want to make any welfare and/or financial decisions on your behalf and to consider how your incapacity should be determined if you appear unable to make decisions to which the powers granted relate.
- An attorney has no authority to act until the document conferring the POA has been registered.
- If you grant and register a POA with the Public Guardian, it will be checked to ensure that it is valid in accordance with section 15 or 16 of the Act. Once registered the continuing financial powers can be used, if desired. However, a welfare attorney may only act when you become incapable in relation to the powers granted.
- If you grant the POA now, but do not wish it to be registered until you lose capacity or until a specific event occurs, the document may not meet the registration criteria when it is sent to the Public Guardian for registration and therefore could not be used, in which case you will no longer have control over who acts on your behalf.

Is it possible to register the POA once it has been granted even although it may not be used until a specified date or event takes place?

Yes, you can register a POA even if it contains a date or specifies an event which means that the powers specified in the POA cannot be used with immediate effect.

How long does a POA last ?

A POA will generally last indefinitely, although there are circumstances when they will cease to have effect. These are detailed in the Code of Practice for Continuing and Welfare powers of attorney issued by the Scottish Government. A copy can be downloaded from www.scotland.gov.uk/justice/incapacity or a hard copy may be obtained by telephoning 0131 244 3581.

What happens if my attorney resigns ?

Resignation of attorney will take effect from the date the Public Guardian receives notification from the attorney. If a substitute attorney was mentioned in the POA document, confirmation from the substitute that he/she is willing to act will be required before they can act on your behalf. The OPG will contact the substitute guardian to seek the necessary confirmation. If however, where there is no mention of a substitute attorney and you are still capable of doing so; you will have to create a new POA document.

My POA is registered in England. I now reside in Scotland, do I need to grant a new POA?

No you do not have to grant a new POA just because you have moved to Scotland. The POA does not need to be registered with the Public Guardian in Scotland. If you require clarification of this matter please telephone the OPG for further information/guidance.

If I grant and register a POA, who should keep the certificate of registration issued by the OPG ?

The certificate should be kept by the attorney in a safe place.

Further Information

Further information and guidance is available from the staff at OPG. However, if you require legal advice, you may wish to contact a legal adviser.

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