

ADULTS WITH INCAPACITY

(SCOTLAND) ACT 2000

FACTSHEET NO. 5 -

Quick Guide For Registered and Licensed Medical Practitioners



What is a Power of Attorney (POA)?

A POA is a written document naming someone, known as an attorney, who can make decisions for another person. The document allows the attorney, to represent the granter of the POA in the eyes of the law. Once the document has been registered with the Public Guardian (Scotland) it will continue, should the granter become incapable.

A Continuing POA provides powers to deal with financial and property matters. A Welfare POA gives powers to make decisions in relation to welfare and healthcare matters. Since April 2001, over 170,000 powers of attorney have been registered with the Public Guardian.

Who can make a POA?

Anyone over the age of 16 years who has capacity can make a POA.

Why make a POA?

Once a person reaches the age of 16 years, no one (regardless of their relationship) has the automatic legal right to make decisions on their behalf.

A person who has been diagnosed or who has a family history of a debilitating illness may wish to consider making a POA which will continue or begin in the event of their incapacity. This would ensure that legal authority is in place should the time come when they can no longer make decisions about their own affairs.

A person may wish to be proactive and grant a POA as part of their financial or long term health care planning.

How is a registered and licensed medical practitioner involved when a POA is created?

As a registered and licensed medical practitioner you may be asked to sign a prescribed certificate to confirm a person has capacity to grant a POA. This certificate must form part of the POA document.

[This is known as SSI 2008 No.56 Schedule 1.](#)

In some instances you may be contacted by a family member who is concerned that their relative is requiring assistance in making decisions.

You may even be consulted by another registered and licensed medical practitioner or a solicitor because you know the person wishing to make the POA. The prescribed certificate process acts as a safeguard and confirms that the person has capacity to grant the POA.

Assessing Capacity

A person may have difficulty managing part of their financial and personal welfare affairs or making certain decisions, however there may be other areas of their life which they can manage with or without assistance. For example, a person may not be able to make decisions regarding managing their day to day finances however they may be able to decide where they would like to live.

You may wish to refer to the following documents for further information:

[GMC Consent Guidance: Assessing Capacity](#)

[Scottish Government - A Guide to Assessing Capacity](#)

[Scottish Government - Code of Practice for Attorneys \(annex 1\)](#)

When can an attorney start acting?

A continuing attorney can begin acting as soon as the document is registered with the Public Guardian. However some granters may wish for the attorney to begin acting only when they become incapable. If this is the case, this will be indicated in the document.

A welfare attorney can only act during periods of incapacity.

Can the POA be changed once it is registered?

Yes, it can be revoked or amended once it has been registered. However the granter must be interviewed by a prescribed person to confirm that s/he has capacity to take this action. As a registered and licensed medical practitioner you may be asked to interview the granter and complete the prescribed certificate.

[This is known as SSI 2008 No.56 Schedule 2.](#)

Is further information available?

Yes, further information is available from:

Office of the Public Guardian (Scotland)

Hadrian House

Callendar Business Park

Callendar Road

FALKIRK, FK1 1XR

- Telephone: 01324 678300
- Email: opg@scotcourts.gov.uk
- Website: www.publicguardian-scotland.gov.uk