



Information for Attorneys – Duties

We have now registered the power of attorney (PoA) in which you were appointed as an attorney.

A certificate of registration has been issued to the person who sent us the PoA for registration. This certificate confirms that the PoA is valid and registered under the terms of the Adults with Incapacity (Scotland) Act 2000. A copy of the PoA document is attached to the certificate. This document acts as proof of the authority you have been granted. Therefore when you start using your powers you should provide this to the relevant authorities as it outlines the specific powers you have been granted.

Your duties

Attorney declaration

Being appointed as an attorney is a position of trust and you must not take advantage of that position. If you are called upon to take up your role as attorney:

- **You must ensure that every measure is taken to support the granter of the PoA to make their own decision on any matter, or otherwise to allow them to exercise their legal capacity.**
- **You must ensure that any decision made on behalf of the granter respects their rights, will and preferences and takes account of any known wishes and feelings, past or present.**
- **You will have and maintain communication with relevant parties and take account of their views.**
- **You will act within the scope of the powers granted to you.**
- **You must keep records of how you use your powers - see the Code of Practice for Continuing and Welfare Attorneys for further guidance.**

Continuing attorneys must keep the granter's financial affairs separate from their own as records may be requested at a future point. The Code of Practice provides more guidance on this matter.

Principles of the Act

The Act sets out principles that you must consult and respect when deciding whether to act or when using the powers granted to you:

1. **Benefit** - no action should be taken unless it will benefit the granter.
2. **Minimum intervention** - any action taken should be the minimum necessary to achieve the purpose and should be the option that restricts the granter's freedom as little as possible.
3. **Take account of the wishes of the adult** - respect the granter's rights, will and preferences.
4. **Consultation with relevant others** – seek the views of the granter, nearest relative, primary carer, guardian, attorney and take account of their views.
5. **Encourage the adult to exercise skills** – the adult should be encouraged, where possible, to exercise their skills in as far as they are capable concerning their financial affairs, property and personal welfare.

Types of appointment

Sole or joint attorney

You might be appointed as a joint attorney and could be required to make decisions with other attorneys, or perhaps you have been appointed as a sole attorney. The details of your appointment will be stated in the PoA document.

Check your PoA for the list of powers granted to you, as you could have authority to carry out all or only some of the powers in the PoA.

Substitute attorney

If you are a substitute attorney, you will only be able to act if a sole attorney is no longer able to act or if they resign from their appointment.

Once we are notified that the sole attorney is no longer able to act, we will write to you to confirm that you are willing to act.

Next steps

The granter may have appointed you as a continuing attorney and/or a welfare attorney. The information which follows provides guidance as to what you might need to do next.

Continuing attorneys

When can continuing attorneys start acting?

- The PoA will state when you can start using the financial and /or property related powers given to you. Your authority could start right away or at a later date e.g. in the event of incapacity.
- Refer to the PoA or any instruction given by the granter to identify how their incapacity is to be determined.

Your powers

- These will be stated in the PoA. You only have the powers that are written in the PoA. For example, the power to make gifts can only be used if it's specifically mentioned in the PoA document.

Telling authorities about your authority

- When you are ready to start acting contact the appropriate authorities and institutions e.g. banks, Department of Work and Pensions, investment managers.
- You may be asked to prove you have authority. The certificate and copy PoA we issue is proof of this.

Welfare attorneys

When can welfare attorneys start acting?

- You can only start using the personal welfare powers when the granter becomes incapable.
- Refer to the PoA or any instruction given by the granter to identify how their incapacity is to be determined.

Your powers

- These will be stated in the PoA. You only have the powers that are written in the PoA.

Telling authorities about your authority

- You should tell relevant organisations such as the granter's medical practice, dental surgery, care home or hospital staff that you have been granted PoA.
- You may be asked to prove you have authority. The certificate and copy PoA we issue is proof of this.

Requesting duplicate copies of the certificate of registration

The granter, sender or an attorney can request a duplicate copy of the certificate of registration. The duplicate incorporates a copy of the registered PoA.

If the original PoA documentation was sent to us:

- By post – write to us and quote the PG case reference number (if known), and/or tell us the full name, address and date of birth of the granter. We charge a fee for providing the duplicate copy and certificate. Contact us to find out our current fees and payment methods.
- Electronically (via our electronic registration facility known as EPOAR) – please contact the person who sent the documentation to us. They have an electronic copy of the registered PoA document and certificate which can be downloaded and printed. Remember that each page of the documentation will need to be signed by either the granter, a Scottish solicitor with a practising certificate or by a stockbroker.

How long will the PoA last?

Your appointment as attorney will continue until:

- the granter revokes/cancels the PoA
- you resign
- the granter dies

The PoA will also come to an end if you are a continuing attorney and either you or the granter are declared bankrupt or if either of you are subject to a Protected Trust Deed. The Code of Practice provides guidance in this respect as there are other circumstances that can bring powers to an end.

Your duty to tell us about changes

Attorneys should notify us by email or letter if:

- You or the granter of the PoA change name or address – a form is available from the website to tell us about a change of address.
- You decide to resign.
- The granter of the PoA should die (please enclose a copy of the death certificate).
- You are a continuing attorney and either you or the granter has been declared bankrupt.
- You are a continuing attorney and a Protected Trust Deed has been granted to either you or the granter.

Further information & guidance

Code of Practice

It is strongly recommended that attorneys have access to a copy of the Code of Practice for Continuing and Welfare Attorneys to refer to for guidance and information. This can be viewed or downloaded from the Scottish Government website or a hard copy may be obtained by telephoning 0131 244 3581.

Welfare attorneys

The social work department at the local authority in your area and the Mental Welfare Commission (MWC) can provide information and guidance with regard to carrying out welfare decisions. Contact details for the local authority in your area will be detailed in the local telephone directory. The MWC can be contacted by phoning 0800 389 6809.

General information

We can provide advice and guidance to continuing attorneys on the exercise of their powers. However, we cannot provide legal or financial advice. Please consult a solicitor or financial adviser for this type of advice.

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