



Information for Attorneys

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

Principles of the Act

The Act sets out the following principles which you must follow when deciding whether to act or when to use the powers granted to you:

- **Benefit** - no action should be taken unless it will benefit the adult (granter)
- **Minimum intervention** - any action taken should be the minimum necessary to achieve the purpose and should be the option that restricts the adult's freedom as little as possible
- **Take account of the wishes of the adult** - 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 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 document.



Substitute Attorney?

- If you are a substitute attorney, you will only be able to act if a sole attorney can no longer 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.

When can you start acting?

The granter may have appointed you as a continuing attorney and/or a welfare attorney. The information below 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, Dept 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.

Duplicate copies of the certificate of registration

The granter, sender or an attorney can request a duplicate copy of the certificate of registration from us. The duplicate copy will always incorporate a copy of the registered PoA. We charge a fee for this service. To request a duplicate copy please 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

For information on current fees, please see the fees section of our website or contact us.

Record keeping

When acting as an attorney you must keep records of how you use your powers.

A continuing attorney must keep the granter's financial affairs separate from their own records, as they may be requested at a future point. Further guidance on record keeping can be found in the Code of Practice for Continuing and Welfare Attorneys.

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. You can use our form 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 copy of death certificate)
- you are a continuing attorney and either you or the granter have been declared bankrupt or either of you are subject to a Trust Deed
- you and the granter are married or are civil partners and then divorce or separate.
- Any other event which results in the termination of the PoA

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 Trust Deed.

The Code of Practice provides guidance in this respect, as there are other circumstances that can bring powers to an end.

Further information & guidance

Codes 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.

They are available to view or download from the Scottish Government website: <http://www.gov.scot/Resource/0048/00489797.pdf> or a hard copy may be obtained by telephoning 0131 244 3581.

Welfare attorneys

The social work department at the local authority 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 0131 313 8777.

General information

We can provide advice and guidance to continuing attorneys on the exercise of their powers. However, the advice that we can give is limited as we are not legally qualified.

If legal advice or financial advice is required you should consult a solicitor or financial adviser.

Office of the Public Guardian (Scotland)

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