



# Power of Attorney

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Plan your future with  
someone you trust

Put the future in your hands



## **Did You Know?**

Without Power of Attorney in place you or someone you love will spend on average four months longer in hospital if you lose capacity.



## INTRODUCTION

Did you know that if you become unable to make decisions for yourself because of illness or injury for example, no-one else can make decisions for you. Appointing someone you trust Power of Attorney allows that person to make decisions on your behalf.

Power of Attorney can cover your financial affairs (e.g. managing your bank account) and your welfare (e.g. deciding where you will live if you are no longer able to decide for yourself).

By taking action and appointing Power of Attorney, you will give yourself peace of mind and protect yourself and those closest to you by granting them legal powers to act on your behalf if something were to happen to you.

This booklet aims to help you start the conversation with a family member or someone close to you as a first step to Power of Attorney.

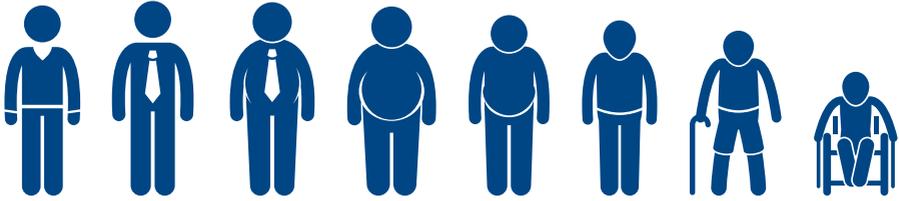
## WHAT IS A POWER OF ATTORNEY?

A Power of Attorney is a written, legal document giving someone else (your Attorney), authority to take actions or make decisions on your behalf (the granter). You choose the person(s) you want to act as your Attorney and what powers you want the Attorney to have. A Power of Attorney is intended to ensure that your financial affairs and personal welfare can still be dealt with/protected in the event of you being unable to act on your own behalf.

## WHO IS IT AIMED AT?

Anyone who could lose capacity to make their own decisions. If you lose capacity it means that you are no longer able to look after your own financial and personal affairs, perhaps due to illness e.g. dementia/stroke etc. The Adults with Incapacity (Scotland) Act 2000 sets out certain situations in which you could be deemed to be incapable. These are:

- ❖ incapable of acting on decisions
- ❖ incapable of making decisions
- ❖ incapable of communicating decisions
- ❖ incapable of understanding decisions
- ❖ incapable of retaining the memory of decisions in relation to any particular matter due to mental disorder
- ❖ incapable of communicating due to physical disability.



## ARE POWERS OF ATTORNEY NOT JUST FOR OLDER PEOPLE?

No - anyone over the age of 16 can grant a Power of Attorney. Accidents or illness can happen at any age. The sooner a Power of Attorney is completed and registered with the Office of the Public Guardian, the better.

## ARE POWERS OF ATTORNEY NOT JUST FOR THE WEALTHY?

No – a Power of Attorney is not just about looking after your financial affairs. It also allows you to choose who should decide personal welfare issues (e.g. where you live/who looks after you etc).

## **I AM MARRIED AND HAVE GROWN UP CHILDREN. SURELY MY FAMILY CAN ACT FOR ME AND MAKE DECISIONS ON MY BEHALF?**

No-one has an automatic right to do this. There must be a legal document by you appointing your chosen person/persons as your attorney. If no one is legally appointed by you to act, then no one has legal authority to do so.

### **WHAT SORTS OF POWERS CAN BE INCLUDED IN THE POWER OF ATTORNEY DEED?**

The deed can cover both financial and welfare provisions or you can have separate deeds to cover your financial affairs and welfare matters.

The financial provisions can include power to purchase and sell heritable property (i.e. your house), power to operate bank accounts, power to claim and receive all pensions, benefits, allowances, etc. There are many other powers which can be included or left out as appropriate, depending on your circumstances.

Welfare powers can include power to decide where you should live, to have access to your personal information, to consent or withhold consent to medical treatment. There are many other powers which can be included to ensure that all appropriate powers are available to meet your needs.

## **Did You Know?**

Every year around 2000 people of all ages will be admitted to hospitals in Scotland with severe traumatic brain injury, as a result of which they will lose capacity for at least a period of time.



## WHO SHOULD I APPOINT AS MY ATTORNEY?

You can appoint anyone you wish to be your attorney, e.g. a family member, friend, solicitor or other professional adviser. It is up to you whether you include the same person(s) as both financial and welfare attorneys, or if you have separate attorneys to carry out the different functions.

It is better to appoint more than one attorney in case your attorney is unable to act for any reason – you can appoint joint attorneys with similar or different powers, or one or more substitute attorneys to take the place of an attorney who dies, loses capacity or resigns.

### WHAT HAPPENS TO MY POWER OF ATTORNEY ONCE IT HAS BEEN SIGNED?

The document must be registered with The Office of the Public Guardian. The deed itself, together with a registration form signed by your attorney and the registration fee (currently £70) is sent to the Public Guardian and once the deed has been registered, the Office issues a certificate to your solicitor and to you.

Once the Power of Attorney has been registered, the financial powers can be used immediately, if this is required. However the welfare powers are only effective once you lose capacity, i.e. once you are no longer able to act on your own behalf.

## **WHAT IF I APPOINT MY HUSBAND/WIFE AS MY ATTORNEY AND THEN WE SPLIT UP?**

Unless the Power of Attorney deed specifically provides otherwise, your spouse's powers to act on your behalf would cease upon your formal separation or divorce.

### **IF MY POWER OF ATTORNEY IS REGISTERED, CAN I STILL CHANGE MY MIND?**

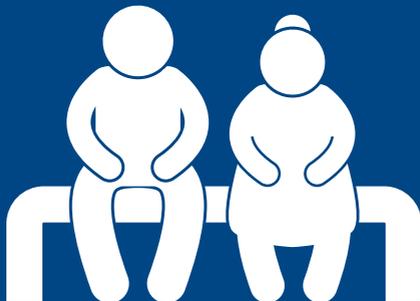
As long as you have capacity, you can revoke the powers granted in your Power of Attorney. To do so, you must give written notice to The Office of the Public Guardian.

## **HOW WILL MY ATTORNEY KNOW MY FEELINGS/WISHES IF I LOSE CAPACITY?**

You should discuss both the financial and welfare powers with your attorney and make sure that they know what decisions/actions you would wish to be taken on your behalf in the event of you losing capacity.

## **Did You Know?**

Those on low incomes or benefits, especially older people, are entitled to have all or part of their Power of Attorney paid for. That's just over a quarter of the adult population.



## GETTING LEGAL SUPPORT FOR POWER OF ATTORNEY

Legal help is important in preparing a Power of Attorney. Most law firms will be able to prepare and complete a Power of Attorney, sign the relevant certification form, and register the Power of Attorney with the Office of the Public Guardian for their clients. In addition law firms will provide advice to attorneys and to people granting powers of attorney – on the legal effects of the document, how it may be used, and what the duties of attorneys are.

If you wish to complete a Power of Attorney or get legal advice about one you can contact your own solicitor or a local solicitor of your choice. All solicitors will quote fees if requested prior to commencement of any work. Not all solicitors do work under the Legal Aid scheme and if this is important you should check this before instructing any law firm.

## LEGAL AID – THE “ADVICE AND ASSISTANCE” SCHEME (AA)

Powers of Attorney (and other legal documents) can be completed under this scheme. Where a person qualifies, the work can be wholly or partly paid for by the Scottish Legal Aid Board.

Assessment is quick and easy and would take an experienced solicitor no more than 5 minutes with a client to establish eligibility. Application by the solicitor for the client is on-line and provided clients can show proof of income and assets at a first meeting, legal aid grant is almost immediate.

The scheme is relatively generous to pensioners and it is estimated that up to 30% of pensioners may qualify for AA, lower for other groups. The main thing is that it is quite straightforward and simple to find out if you qualify – do not be afraid to ask.

## **“PRIVATE” FEES- I.E. THOSE CHARGED IF LEGAL AID IS NOT AVAILABLE**

Firms of solicitors do not all have the same fees – but every law firm will quote fee levels before work starts. Most law firms will have fixed fees for this type of work, so you will know the total fee due at the outset. This would generally only be subject to variation if some special complexity arose, which is rare.

### **CONTACTING A LEGAL PROFESSIONAL**

Legal firms are listed in numerous local directories. Many of these directories state the type of work the law firm does and their website address. Again, the website will usually state the work types covered by the firm and whether or not the law firm provides assistance under the Legal Aid Scheme.

To find a local law firm you can also contact the Law Society of Scotland 0131 226 7411. To find a local law firm registered to do Legal Aid contact the Scottish Legal Aid Board on 0845 122 8686.

## USEFUL CONTACTS

To get advice on solicitors in your area

- ❖ The Law Society:  
[www.lawscot.org.uk](http://www.lawscot.org.uk)  
Tel: 0131 226 7411

To enquire about financially assisted legal support  
(subject to status)

- ❖ The Scottish Legal Aid Board:  
[www.slab.org.uk](http://www.slab.org.uk)  
Tel: 0845 122 8686

To get advice on Power of Attorney

- ❖ Office of the Public Guardian  
[www.publicguardian-scotland.gov.uk/contact\\_us.asp](http://www.publicguardian-scotland.gov.uk/contact_us.asp)  
Tel: 01324 678300

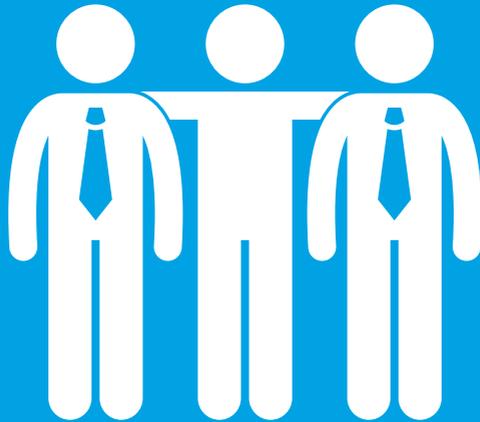
To get advice on the Power of Attorney campaign

- ❖ Start the Conversation website:  
[www.mypowerofattorney.org.uk](http://www.mypowerofattorney.org.uk)

## OTHER CONTACTS

- ❖ Alzheimer Scotland:  
[www.alzscot.org](http://www.alzscot.org)  
Tel: 0131 2431453
- ❖ 24 hour freephone Dementia Helpline:  
0808 808 3000
- ❖ Chest, Heart and Stroke Scotland Telephone:  
[www.chss.org.uk](http://www.chss.org.uk)  
Tel: 0131 661 7730
- ❖ The Silver Line Scotland, helpline for older people  
<http://www.thesilverline.org.uk> 0800 4 70 80 90

NHS Lanarkshire would like to thank NHS Greater Glasgow & Clyde and Glasgow City Council for their cooperation with this booklet.



## **Did You Know?**

You can grant power of attorney to anyone over 16 - a friend, family member, neighbour or even a professional you trust.



[www.patientopinion.org.uk](http://www.patientopinion.org.uk)

**NHS Lanarkshire** - for local services and the latest health news visit [www.nhslanarkshire.org.uk](http://www.nhslanarkshire.org.uk)  
NHS Lanarkshire General Enquiry Line: 08453 130 130

**NHS inform** - The national health information service for Scotland. [www.nhsinform.co.uk](http://www.nhsinform.co.uk)  
Tel No: 0800 22 44 88

If you need this information in another language or format, please contact the NHS Lanarkshire General Enquiry Line on 08453 130 130 or e-mail [info2@lanarkshire.scot.nhs.uk](mailto:info2@lanarkshire.scot.nhs.uk)

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