



Guidance on the wording in Powers of Attorney

How the Public Guardian will interpret words and phrases

The [Adults with Incapacity \(Scotland\) Act 2000](#) (the 2000 Act) creates the Office of the Public Guardian in Scotland, and gives the Public Guardian various functions, including to register powers of attorney that are to come into effect or continue in the event of incapacity.

The Public Guardian is aware of a number of instances where uncertainty has been caused by the way in which certain powers of attorney have been drafted, in particular where there is more than one attorney appointed and what is to happen if an attorney resigns, loses capacity or dies.

Questions have arisen as to the operation of such powers of attorney, and also in which circumstances they come to an end. This is a particular issue where the power of attorney becomes operational and the granter no longer has capacity, meaning it cannot be amended to accurately reflect the granter's intention.

In light of this, and the aforementioned statutory function, the following guidance outlines how the Office of the Public Guardian (OPG) will treat such powers of attorney.

1. Powers of attorney which are silent as to whether attorneys are appointed on a joint or joint and several basis

The Public Guardian recommends that all powers of attorney expressly specify if attorneys are appointed on a joint or joint and several basis. Where powers of attorney do not specify this (for example, appointing "*Person A and Person B to be my continuing attorneys in terms of section 15 of the Adults with Incapacity (Scotland) Act 2000*"), the Public Guardian will interpret the appointment as being a joint appointment and not as a joint and several appointment.

2. The effect of death or incapacity on joint appointments

Where attorneys are appointed jointly (either expressly, or as a result of a power of attorney being silent as to the nature of an appointment as described above), the Public Guardian takes the position that the power of attorney continues to be valid, and the remaining attorneys can continue to act in that capacity where an attorney dies or becomes incapable themselves.

3. The effect of resignation on joint appointments

The Public Guardian will take the position that a joint attorney can continue to act after another attorney has resigned if evidence that the remaining attorney is willing to do so accompanies the notice of resignation.

4. Powers of attorney with wording “... *or the survivor*”

The Public Guardian will interpret powers of attorney which appoint more than one attorney “*or the survivor*” (or with equivalent wording) as meaning “*or the survivor as attorneys*” in the absence of additional wording indicating otherwise. This means that the power of attorney will continue to be valid upon the death, incapacity, or resignation of an attorney.

5. Powers of Attorney with wording “... *each of them alone and to the survivor*”

The Public Guardian will interpret powers of attorney which appoint more than one attorney “*each of them alone or the survivor*” (or equivalent wording) as appointing attorneys jointly and severally in the absence of additional wording indicating otherwise. This means that: (i) there is more than one attorney; (ii) each can make decisions individually; and (iii) in line with the above, the power of attorney will continue to be valid upon the death, incapacity, or resignation of an attorney.

6. Application of guidance

For the avoidance of doubt, this guidance applies to both powers of attorney which the Public Guardian has registered and those to be registered in the future. The Public Guardian will apply any provisions or policies relating to the registration, operation and termination of powers of attorney in line with the above guidance.

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