**ADULTS WITH INCAPACITY**

(SCOTLAND) ACT 2000

**Powers of Attorney**: **A guide for staff working in the financial sector**

**Who is this leaflet for?**

**This is for financial organisations that have been presented with a continuing power of attorney registered in Scotland, where a granter has given an attorney authority to deal with their financial affairs.**

**If you are unfamiliar with this process please contact your legal department or power of attorney team.**

**GLOSSARY**

**Public Guardian:** An officer of the Scottish Courts and Tribunals Service with statutory duties outlined in the Adults with Incapacity (Scotland) Act 2000.

**Continuing and / or Welfare Power of Attorney (PoA):** A legal document that gives legal authority to attorney/s to make decisions about the granter’s property, finances and/or welfare. The individual powers granted will be listed in the PoA document.

**Granter:** A person aged 16 or over that has granted a PoA, for advanced planning, while having capacity to do so.

**Continuing attorney**: A person given authority by the granter to make financial and property decisions for the granter.

**Continuing powers**: Financial or property related powers that will either begin while the granter retains capacity and continue if the granter loses capacity or begin on the granter losing capacity

**Certificate of registration:** A continuing and/or welfare PoA must be registered with the Public Guardian before it can be used. We check each PoA to ensure it meets the registration criteria set out in the Adults with Incapacity (Scotland) Act 2000. When we register a PoA a certificate of registration is issued along with a copy of the PoA. The certificate acts as proof that the PoA has been registered.

**What is a PoA?**

A PoA is a legal deed drawn up by a granter in order for them to make plans and provisions for their future if they are no longer able to make their own decisions. The PoA can cover welfare matters and financial matters.

**What does the certificate of registration look like?**

Prior to 1 July 2023 we issued two styles of certificates of registration; one with a red embossed seal and one with a crest watermark.

However on 1 July 2023 the red embossed style was withdrawn, and from this date onwards only the crest watermark style of certificate will be issued. Please note that certificates bearing the red embossed seal remain valid forms of legal authority and should be accepted when presented.

**What to look out for**

1. **Electronic submissions**

If the PoA was sent to us electronically the [certificate of registration](https://www.publicguardian-scotland.gov.uk/docs/librariesprovider3/general/pdf-documents/sample-epoar-certificatenew.pdf?sfvrsn=b18bf4e_1) will have the crest watermark as will all pages of the PoA document. The Public Guardian’s reference and page number will be printed on each page. All pages of the PoA will have a statement to be certified by either the granter, solicitor or stockbroker. You can verify the PoA is authentic by following the steps in the important notes section on the certificate of registration.

1. **Postal submissions**

If the PoA was sent to us in hard copy format via the postal service the [certificate of registration](https://www.publicguardian-scotland.gov.uk/docs/librariesprovider3/general/pdf-documents/sample-poa-manual-certnew.pdf?sfvrsn=9cf1526f_1) will have thecrest watermark. The crest will appear on the certificate and all pages of the PoA. All pages will be numbered. Please note that PoAs sent to us via the postal service do not require additional certification as we have seen the original deed and have a scanned image on file.

Verification codes are not provided for PoAs registered in Scotland. These only apply to Lasting PoAs registered with the Public Guardian for England & Wales.

**What is the difference between a Continuing and/or Welfare PoA and Lasting Power of Attorney (LPA)?**

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| **Continuing and/or welfare PoA** | **Lasting PoA** |
| * Provided for in the Adults with Incapacity (Scotland) Act 2000 legislation that covers Scotland only. * Continuing PoA can be used when the granter has mental capacity or it can begin at a later date e.g. if the granter loses mental capacity. You should refer to the PoA document to identify when the attorney can make decisions for the granter. * These are not template documents and each one will look different and be tailored to the granter’s requirements. Therefore it is important to see the registered PoA deed and the certificate of registration to identify the powers. * Attorneys must be over the age of 16 yrs. * Verification codes are not provided to view the PoA online. | * Provided for in the Mental Capacity Act 2005 and covers England and Wales. * Can be used when the donor has mental capacity if the donor consents or it can begin when the donor has lost mental capacity. * The PoA document is a set template. * Attorneys must be over the age of 18 yrs. * Verification codes are issued to view the PoA online. |

**Contact us**

Office of the Public Guardian (Scotland)

Hadrian House

Callendar Business Park

Callendar Road

Falkirk FK1 1XR

* Telephone: 01324 678300
* Email: [OPG@scotcourts.gov.uk](mailto:OPG@scotcourts.gov.uk)
* [www.publicguardian-scotland.gov.uk](http://www.publicguardian-scotland.gov.uk)
* X (formerly known as Twitter) : @OPGScotland

The Office of the Public Guardian is part of the Scottish Courts and Tribunals Service.

We welcome any feedback or comment you may have on the content of this factsheet