

GUIDE TO POWER OF ATTORNEY IN SCOTLAND



POA Scotland

Power of Attorney for everyone
www.poascotland.co.uk

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WORDS YOU NEED TO KNOW

Attorney	this is the person the Granter appoints to act on behalf of the Granter
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Capacity / Capable	this is a term used by doctors and lawyers to refer to someone who is able to make decisions, act on decisions and remember decisions
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Granter	this is the person who makes the Power of Attorney. If you are planning to make a Power of Attorney you are the Granter
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Incapacity / Incapable	this is a term used by doctors and lawyers to refer to a person who is unable to make decisions, act on decisions or remember decisions
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POA	this is a shortened term for a Power of Attorney
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Substitute Attorney	this is the person you choose to be your Attorney if your first choice is unavailable
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IT ALL STARTS WITH YOU

Before we get into Powers of Attorney, let's start with you.

What did you do today? Maybe you got out of bed and made yourself a cup of tea, or coffee. Did you have a shower or do you have a bath at the end of the day?

Where did you go, to the shops or stay at home? Maybe you went to the bank to withdraw some money or pay a bill. Did you go to work or to the doctors or dentist? Did you drive or take the bus or train?

All of these daily activities require us to make decisions – tea or coffee, bus or train.

Now think about what would happen if you were to suffer a head injury or a stroke or if you were to be diagnosed with a condition which affected your ability to make decisions or remember things, such as dementia or Alzheimer's disease.

Who would help you make these everyday decisions if you were unable to do so?

You may have said your husband, wife or partner. You may have said your children, or your "next of kin".

Unfortunately, you would be wrong

Although you may want that person to make decisions for you, the law says they cannot unless you give them the written authority to do so in a POA.

That's why a POA is so important.

Read on to find out more about POA, or if you want to go ahead and make a POA, go to www.poascotland.co.uk.

ABOUT POWER OF ATTORNEY

What is a Power of Attorney?

A Power of Attorney (or POA) is a legal document in which you appoint someone to make decisions for you (or to help you make decisions) now or in the future.

The POA document will normally be around 10 pages long and it sets out who is to be your Attorney, when your Attorney can make decisions for you and what decisions they can make for you.

We like to think that a POA is like a house insurance policy, you set it up and hope you will never need it.

Types of Power of Attorney

In Scotland there are three types of POA.

- ✿ **Continuing Power of Attorney** – this covers all of your financial affairs. This can come into effect at any time you wish and will continue even if you become incapable.
- ✿ **Welfare Power of Attorney** – this covers your welfare, for example deciding where you live, your medical treatment and what you will wear. This can never be used unless you are incapable of making decisions.
- ✿ **General Power of Attorney** – this is a document which gives an Attorney the power to undertake specific actions usually for a specific period of time, for example to sell your house. At POA Scotland we do not offer General Powers of Attorney

We recommend you make both a Continuing and a Welfare POA which is contained in one document.

This gives you and your family **total peace of mind** that the people you trust most are helping you with your money and your health and welfare.

It also **saves you money** because it costs £81 to register each document with the Office of the Public Guardian. If you made two separate documents it would cost you £162 to register these documents.

Why do I need a Power of Attorney?

Remember back to Page 1 when we talked about the decisions, we all make on a daily basis?

The law in Scotland says that no one can make decisions for another person over the age of 16 without legal authority to do so. That law is contained in the Adults With Incapacity (Scotland) Act 2000.

This law says that to give another person (including your husband, wife partner or children) legal authority to make decisions on your behalf you must make a POA.

It means that your family cannot go to the bank and pay your bills or speak to doctors or other people on your behalf without a POA. This can cause problems and a lot of stress for the family if you ever become incapable.

So, you need a POA because the law says you do.

I have a Will why do I need a Power of Attorney?

There is a simple answer to this question, your Will only comes into effect on your death; whereas your POA only comes into effect when you are alive and comes to an end on your death.

We think a POA is even more important than a Will. This is because a POA says who is to make decisions for you while you are alive.

We all hope that we will live a long and healthy life, but any one of us may need support with decisions or become incapable at any time.

If I make a Power of Attorney will I lose control of my affairs?

The answer is no. You have control over all of your affairs unless and until you ask your Attorney to assist you. A POA allows you to have **complete control** over:

-  **Who** you would like to support you to make decisions or make decisions on your behalf in the event you need help in the future. That person or those people will be your Attorney(s). We explain later in this booklet what you need to think about when choosing your Attorney(s).

- ✿ **When** your Attorney(s) can make decisions for you. You can say that your Attorney(s) can only make decisions when you become incapable or you may want your Attorney(s) to help you when you are capable.
- ✿ **What** decisions you would like your Attorney(s) to support you with or to make on your behalf. Your POA made with POA Scotland includes all of the type of decision you will need.

What happens if I don't have a Power of Attorney?

If you don't have a POA and you lose capacity no one will have legal authority to deal with your money or make medical or other decisions for you.

That means no one (not even your husband, wife or partner or your children) can pay your bills, sell your house or give up your tenancy. No one will be able to speak to doctors or other care and medical professionals on your behalf.

If you don't have a POA the only way your family can obtain legal authority to make decisions for you is to apply to the court to become your guardian. If your family don't apply the local council must apply and that could mean someone you don't know will be making decisions for you.

Even if your family apply to become your guardian it is a difficult process which can take up to a year and cost over £5,000. It is much simpler to make a POA which you can do today at www.poascotland.co.uk

Take a look at Peter & Helen's story....

Peter and Helen had a happy family life until Peter had a car accident while driving to work. He was lucky to come out alive and suffered a serious head injury.

Unfortunately, it took many months before Peter could leave hospital. During that time important decisions had to be made about his care and Helen could not make these as Peter had not made a Power of Attorney.

Helen also needed to take over the family finances but could not access the bank account as it was in Peter's name.

The doctor's and bank told Helen she would need to apply to the Court to become Peter's guardian. This took 11 months and cost the family £5,000.



MAKING YOUR POWER OF ATTORNEY

How do I make my Power of Attorney?

That's easy, just go to www.poascotland.co.uk complete our questionnaire, pay the fee and print your POA.

If you need help in getting started, try completing the form at page 15.

When you have your printed POA the law says it must be signed in the presence of a doctor, a solicitor or an advocate (the Scottish equivalent of a Barrister). You should make an appointment to see your doctor or solicitor to sign your POA. They will go through the POA with you to make sure you understand the document and its effect and will sign the certificate at the end of your POA to confirm they have done this.

Unfortunately, we cannot offer a signing service at the moment but if you think such a service would help you and everyone in Scotland to make a POA, please let us know by sending an email to info@poascotland.co.uk

How much will my Power of Attorney cost?

At POA Scotland we have a simple pricing structure:

We will charge £90 to make your POA.

When you send your POA to the Office of the Public Guardian they will charge a fee of £81 – you may be entitled to an exemption from paying this fee

Your POA must be signed in the presence of your doctor or a solicitor** who may charge a fee.

*A portion of the fee is paid to [community.lawyer](#) who provide the technology to make the POA.

** The law says that only a doctor or solicitor can sign the certificate of capacity which we send to you along with your POA.

Who should be my Attorney?

Choosing your Attorney is **very important** and you should think very carefully about who you choose.

The law says your Attorney must be over the age of 16 and a financial (or Continuing) Attorney must not be currently bankrupt. If your Attorney has previously been bankrupt but is now discharged they may be your Attorney.

Other than these legal formalities anyone can be your Attorney. At POA Scotland we recommend you choose at least one Attorney and a substitute.

We recommend you choose the people you trust most to be your Attorneys. You should be confident your chosen Attorney(s)

- ❁ **Will always support you to make decisions for yourself**, it is important that your Attorney supports you as much as possible to make your own decisions. Therefore, it is best not to choose an Attorney who thinks they always know best and will stubbornly stick to their view even if you (or other people) disagree.

- ❁ **Will make the decisions you would make**, not the decisions they think are best for you. If you choose adult children to be your Attorney you should be very confident of this. With the best of intention, adult children will often do what they think is best for you rather than what you would want. It might mean they will have to make very difficult decisions about your care.

- ❁ **Have the skills required to be your Attorney**, a Continuing (or financial) Attorney will need to have the skills to manage your finances whether they are simple or complicated.

Therefore, you should choose the people who you know can manage money. It would not be fair to choose a Continuing Attorney who you know finds it difficult to manage money, that person may be a very good Welfare Attorney.

Equally, you should not choose a Welfare Attorney that you know would find it very difficult to make decisions about your care either because they always know best or they simply care too much about you to stand back and make what may be very difficult decisions about your care and welfare.

- ❁ **Be confident in dealing with other people on your behalf**, our Attorney will have to speak to many people about your finances, care and welfare. You should choose at least one Attorney who you are sure will be confident in doing this.

If you are a married couple, civil partners or living together, you might want to appoint each other to be your Attorney with your children or close family or friends as substitutes. This means that if either of you were to become incapable things would go on as normal.

If you are single, widowed or divorced you should also choose the people you trust most. That could be a family, friends or trusted professional.

How many Attorneys should I have?

At POA Scotland we recommend you have at least one Continuing and Welfare Attorney and one substitute. You can have as many Attorneys as you wish but if you prepare your POA with POA Scotland you have a maximum of three main Attorneys. More than this number can make coming to decisions difficult.

Does it cost extra if I have more than one Attorney?

No, you can have as many Attorneys up to a maximum of three continuing and three welfare attorneys.

Can I have different Attorneys for finances and welfare?

Yes, we all have different skills and it may be some of your chosen Attorney(s) may prefer to deal with just the finances or welfare.

This arrangement often works well for adult children where one or two deal with the finances and one or two deal with the welfare of an older parent.

Will my Attorneys always have to make decisions together?

You can specify that your Attorneys must always make decisions together or you can allow each of your Attorneys to make decisions alone, it's up to you.

At POA Scotland we recommend you allow each of your Attorneys to make decisions alone or together depending on the circumstances. This is because any one of your Attorneys may be on holiday or work and be unavailable when an urgent decision has to be made. If all of your Attorneys have to make a decision together this could delay important decisions being made about your health and welfare.

What should I allow my Attorney to do?

If you become incapable your Attorney will need to do everything you can do yourself.

At POA Scotland we have over 15 years' experience of making Powers of Attorney therefore, your POA will include everything your Attorney will need but if you want to give your Attorney special instructions you can do that.

When should my Power of Attorney come into effect?

The law says that your Welfare POA can only come into effect if you become incapable. It must also include your choice of how your incapacity is to be decided.

This gives you total control over your health and welfare unless you are incapable.

Your Continuing (financial) POA can come into effect at any time. That means your Attorney can help with your finances while you are still capable but would like your Attorney to help you.

At POA Scotland we recommend your Continuing POA comes into effect straight away provided you completely trust your Attorney. This is because you may become physically unwell but still be mentally capable. For example, you might have a fall and be in hospital.

Having your POA come into effect straight away allows your Attorney to make sure your bills are paid and everything is kept ticking over until you get home.

At POA Scotland we give you a choice of two ways your incapacity is to be decided: -

-  Your Attorney reasonably believes you are incapable – this means your Attorney will make the decision that you have lost capacity. This is the best choice if you trust your Attorney completely because it means your Attorney can start acting straight away. If you disagree with your Attorney, they will have to obtain a letter from a doctor that you are incapable; or
-  Your Attorney must provide a letter or a certificate from a doctor that you have lost capacity – if you include this then your Attorney must obtain the letter or certificate before making any decisions for you. This can delay decisions but may be the best choice if you think your Attorney might be hasty in deciding you have lost capacity.

Provided you completely trust your Attorney(s), we recommend you allow your Attorney to decide on your incapacity. This means your Attorney can start acting straight away and can make things easier.

What should I tell my Attorney(s)?

You should ask your Attorney(s) if they agree to be your Attorney. They will have to sign a form to confirm they agree to be your Attorney so it is helpful to let them know in advance.

It is part of the law that your Attorney must encourage you to make decisions for yourself and so far as is possible take into account your past and present wishes.

It is therefore very important you discuss with your Attorney what your wishes are and how you would like these to be carried out. You should let your Attorney know where they can find information about your finances and how you would like these to be looked after.

Your Attorney may be called upon to make difficult and sensitive decisions about your health and welfare. It is therefore very important you discuss with your Attorney: -

- ✿ What you would like to happen if you were unable to safely remain at home on your own

What you like to wear and eat

What activities you enjoy

What medical treatments you agree to and in what circumstances

Any other matter on which you have a strong opinion

Having this conversation and even writing a letter to your Attorney will help them make the decisions which are right for you and make their job easier. Don't assume your Attorney will know what you want, it is better to make your wishes clear.

How does my Power of Attorney come into effect?

Your POA will only come into effect when it is registered with the Office of the Public Guardian in Scotland. You can find out more about the Office of the Public Guardian in Scotland by visiting their website at www.publicguardian-scotland.gov.uk.

When you prepare your POA with POA Scotland we provide you with all of the forms you need and instructions on how to register your POA with the Office of the Public Guardian.

We will send you instructions for both postal and online registration along with your POA. When your POA is registered with the Office of the Public Guardian in Scotland it has come into effect unless you have said that it only comes into effect when your Attorney provides a letter or certificate from a doctor to say you have lost capacity.

USING YOUR POWER OF ATTORNEY

We hope you will never need to use your POA but it is helpful to know what you and your Attorney(s) need to do if it has to come into effect.

What should I do when I receive my registered Power of Attorney?

If you have registered your POA by post the Office of the Public Guardian will return your registered POA to you in the post. As soon as you receive your registered POA you should put it in a safe place and let your Attorney know where it is.

If you have registered your POA electronically the Office of the Public Guardian will return your registered POA by email. You should **print at least one copy of this immediately, sign each page on the bottom and complete the date and your details on the last page to confirm it is a true copy of the original**. It can be helpful to print several copies and sign all copies. You should keep the signed document(s) in a safe place and let your Attorney know where it is.

You do not need to give your Attorney your registered POA document until the time when you would like your Attorney to act on your behalf.

Who should I tell that I have made a Power of Attorney?

You should tell your close family and friends that you have made a POA, who you have appointed as your Attorney and why. This will help them understand and respect your thoughts and wishes.

If you have told your close friends and family and your Attorney needs to act for you in the future, they can support your Attorney because they know that is your choice.

What to do with your registered Power of Attorney

What your Attorney will need to do with the registered POA depends on who asks for it.

Doctor – your Attorney should take the POA to your GP and let the doctor or staff take a copy of the document to hold on your medical records

Hospital – if you are in hospital your Attorney should take the POA and let the staff copy the POA. If you move wards it may be helpful to take it to the new ward and let the staff there copy the POA

Social work – your Attorney should let any social work staff take a copy of the POA

Bank – all of your Attorneys should attend at a bank branch with your POA and identification documents for themselves such as their passport/driving licence and utility bill/bank statement. Each bank will have its own procedures but your Attorney(s) may be asked to complete a form. When the procedures have been completed your Attorney(s) will be provided with their own bank cards and be able to create, cancel or amend direct debits and standing orders

Utility providers – most utility providers will accept a copy of your POA and your Attorney should arrange to send a copy to them

DWP/Pension Service – your Attorney should send an original POA to the DWP and/or Pension Service to ensure they can deal with your benefits and pension

Other organisations – all organisations will have their own procedures for registering a POA and your Attorney should contact them to ask about the correct procedure

How long does my Power of Attorney last?

Your POA will last until you bring it to an end by revoking it or on your death. Where you appoint your husband, wife or civil partner as your Attorney and you divorce or end your civil partnership, their appointment as your Attorney will automatically come to an end.

Who makes sure my Attorney is doing the right thing?

The Office of the Public Guardian in Scotland has produced a Code of Practice for Continuing and Welfare Attorneys. This can be obtained from the Office of the Public Guardian in Scotland or downloaded from their website at <https://www.gov.scot/publications/code-practice-continuing-welfare-attorneys-second-edition-updated-february-2018/>.

Your Attorney is required by law to keep your money separate from their own and to keep a record of everything they do for you. You can ask to see these records at any time. If you are not happy with what your Attorney is doing you can revoke the POA.

If you have lost capacity and you are unable to check what your Attorney is doing then The Office of the Public Guardian in Scotland are responsible for supervising Continuing (financial) Attorneys and the local authority in which you live are responsible for supervising Welfare Attorneys.

If anyone has a concern about what your Attorney is doing, they can raise that issue with The Office of the Public Guardian or social work department of your local authority.

I have property abroad can I use my POA abroad?

That will depend on the law of the country in which you have property. Your Attorney should check in that country if the POA which you have made in Scotland will be recognised in that country. If it is recognised, most countries will ask for a certified translation of the POA where the language of that Country is not English. Even if the language of the country is English it is likely they will ask for the POA to be certified by the Foreign and Commonwealth Office.

I have made a POA abroad can I use this in Scotland?

The POA which you have made abroad must be registered with the Office of the Public Guardian in Scotland. If it is in a foreign language you should contact the Office of the Public Guardian in Scotland to ensure you comply with their requirements but it is likely you will be required to obtain a translation by a certified translator if the POA is not in English.

How do I stop the Power of Attorney?

You can stop the POA at any time by revoking it. You can revoke the appointment of any one or more of your Attorneys or you can revoke the entire POA.

You need to write to your Attorney(s) to let them know that you have revoked the POA and send the revocation to the Office of the Public Guardian who will write to you to confirm when the revocation has been registered.

Can my Attorney resign?

Your Attorney can resign but they must write to you, the Public Guardian, any joint or substitute Attorney and your primary carer (if you are incapable) giving notice they wish to resign.

MAKE YOUR POA

Use this form to help you capture the details for your POA then go to www.poascotland.co.uk to make your POA. If you have any questions drop us an email at info@poascotland.co.uk

YOUR DETAILS			
YOUR FULL NAME			
YOUR ADDRESS			
YOUR DATE OF BIRTH			
YOUR ATTORNEY'S DETAILS			
FIRST ATTORNEY'S FULL NAME			
FIRST ATTORNEY'S ADDRESS			
WHAT IS YOUR FIRST ATTORNEY TO DO?	Finances only	Welfare only	Finances & Welfare
SECOND ATTORNEY'S FULL NAME			
SECOND ATTORNEY'S ADDRESS			
WHAT IS YOUR SECOND ATTORNEY TO DO?	Finances only	Welfare only	Finances & Welfare
THIRD ATTORNEY'S FULL NAME			
THIRD ATTORNEY'S ADDRESS			
WHAT IS YOUR THIRD ATTORNEY TO DO?	Finances only	Welfare only	Finances & Welfare
WOULD YOU LIKE YOUR ATTORNEYS TO MAKE DECISIONS INDIVIDUALLY OR TOGETHER?	Individually	Always together	If you say your Attorney(s) are always to make decisions together this can cause difficulties if one Attorney is unavailable for example on holiday. We recommend you choose individually unless there is a good reason they should always be together.

WOULD YOU LIKE A SUBSTITUTE ATTORNEY?			
FIRST SUBSTITUTE ATTORNEY'S FULL NAME			
FIRST SUBSTITUTE ATTORNEY'S ADDRESS			
WHAT IS THIS ATTORNEY TO DO?	Finances only	Welfare only	Finances & Welfare
SECOND SUBSTITUTE ATTORNEY'S FULL NAME			
SECOND SUBSTITUTE ATTORNEY'S ADDRESS			
WHAT IS THIS ATTORNEY TO DO?		Welfare only	Finances & Welfare
THIRD SUBSTITUTE ATTORNEY'S FULL NAME			
THIRD SUBSTITUTE ATTORNEY'S ADDRESS			
WHAT IS THIS ATTORNEY TO DO?	Finances only	Welfare only	Finances & Welfare
WHEN WOULD YOU LIKE YOUR FINANCIAL POWERS TO COME INTO EFFECT?			
IMMEDIATELY		We recommend you choose this if you trust your Attorney(s). It means your Attorney(s) can assist if you are physically unable but mentally capable for example if you are in hospital.	
ONLY WHEN I BECOME INCAPABLE		If you choose this your Attorney(s) will be unable to assist if you are physically unable but mentally capable for example if you are in hospital.	
WHO WOULD YOU LIKE TO DECIDE IF YOU ARE NOT CAPABLE TO MANAGE YOUR AFFAIRS			
ONLY A DOCTOR CAN DECIDE		If you choose this your Attorney(s) must provide a letter from a doctor before helping you.	
I TRUST MY ATTORNEY(S) TO DECIDE		We recommend you choose this if you trust your Attorney(s). It means your Attorney(s) can help you straight away. If you disagree your Attorney(s) would need to obtain a letter from a doctor saying you are incapable.	

USEFUL CONTACTS

The Office of the Public Guardian in Scotland

Hadrian House
Callendar Business Park
Callendar Road
Falkirk
FK1 1XT

Telephone
General Enquiries 01324 678 300
POA Enquiries 01324 678 398

Email OPG@scotcourts.gov.uk

Website www.publicguardian-scotland.gov.uk

The Mental Welfare Commission for Scotland

Thistle House
91 Haymarket Terrace
Edinburgh
EH12 5HE

Telephone 0800 389 6809

Email enquiries@mwscot.org.uk

Website www.mwscot.org.uk

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We are grateful to Community.Lawyer for their vision and support in creating POA Scotland. A portion of the fee which you are charged by POA Scotland is paid to Community.Lawyer for the use of the technology and to support their ongoing work.