

How would I set up a Power of Attorney?

The first step is to discuss it with someone you would trust to act on your behalf should the need arise. The person would have to agree to be your Attorney and you need to be sure that they know and understand your wishes and how the Power of Attorney would be used.

A solicitor will be able to advise you and draft a Power of Attorney document.

Once your Power of Attorney is drafted, you will need to be interviewed by a solicitor or doctor who will assess if you fully understand what you are doing. If they are satisfied that you do, they will sign a certificate confirming this.

What happens to my Power of Attorney once it has been signed?

It must be registered with the Office of the Public Guardian. The deed and the registration form, signed by your Attorney, and the registration fee must be sent to the Office of the Public Guardian. Once the deed is registered, you or your solicitor will be sent a certificate.

The financial powers can be effective immediately the deed is registered or when you have lost your capacity. Welfare powers are only effective once you lose capacity.

To revoke a Power of Attorney you must give written notice to the Office of the Public Guardian. Your solicitor can advise you.

The Office of The Public Guardian registers continuing and/or welfare powers of attorney under the terms of the Adults with Incapacity (Scotland) Act 2000.

www.publicguardian-scotland.gov.uk

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Powers of Attorney promotion: participating solicitors

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Power of Attorney could be vital for your family

If someone close to you loses capacity to take decisions due to illness or an accident you can't take decisions on their behalf.

DO YOU HAVE THE POWER?



DUMFRIES AND GALLOWAY
Health and Social Care

www.dumgal.gov.uk 030 33 33 3001

Until **30 June 2017**, a range of solicitors across the region is working with Dumfries and Galloway Health and Social Care Partnership to offer a 10% discount on the fees for drawing up Powers of Attorney. In certain circumstances, you might qualify for legal aid to assist with costs.



What is Power of Attorney?

A Power of Attorney is a written, legal document giving someone authority to make decisions or take action on your behalf.

You choose the person or people that you want to act as your Attorney and the powers you want them to have.

There are 2 types of Power of Attorney:

- Continuing – for decisions about your property and finances
- Welfare – for decisions about your health and welfare

In the event of your incapacity (being unable to act on your own behalf), a Power of Attorney should ensure that your financial affairs and personal welfare can be dealt with or protected by the person that you choose.

What is incapacity?

Incapacity means that you're no longer able to manage your own affairs. This could be due to an accident or illness, for example dementia or a stroke. You might have no capacity or you could still have some capacity.

The Adults with Incapacity (Scotland) Act 2000 sets out situations in which you could be regarded as being incapable of:

- Making decisions
- Acting on decisions
- Communicating decisions, verbally or in writing
- Remembering decisions
- Communicating due to a physical disability

Is a Power of Attorney only for elderly people?

No, anyone aged 16 or over can grant a Power of Attorney – accidents or illness can strike at any age. The sooner a Power of Attorney is set up the better.

Can't my husband/wife/partner/children just make decisions for me?

No-one has an automatic right to do this. There must be a legal document appointing your chosen person as your Attorney. If there isn't, no-one has legal authority to act on your behalf. If you haven't granted a Power of Attorney and you lose capacity, in most cases, an application to a court would be needed to appoint someone as your guardian.

Is a Power of Attorney only for wealthy people?

No, it's not just about money and property, it lets you plan who should decide welfare and financial issues for you.

Who should I appoint as my Attorney?

You can appoint anyone you wish, such as a family member, friend, solicitor or another professional advisor.

Your attorney must be aged 16 or over and, if granting continuing powers, must not be currently bankrupt.

It's up to you whether you have separate people or the same person to be financial and welfare Attorney.

You can appoint more than one Attorney in case your Attorney is unable to act for any reason.

What if I appoint my husband/wife/partner/friend and our relationship changes?

Unless the Power of Attorney document specifically states otherwise, your spouse's powers to act on your behalf would cease when you formally separate or divorce.

As long as you have capacity, you can revoke the powers granted in your Power of Attorney.

How will my Attorney know my wishes if I lose capacity?

You should discuss your chosen powers with your Attorney and make sure that they know what decisions/actions you want to be taken on your behalf if you lose capacity.

What should I include in a Power of Attorney?

A Power of Attorney can cover both property/finances and welfare or you can have separate documents for each.

Property and financial provisions can include the power to buy and sell heritable property (such as your house); operate bank accounts; and claim and receive pensions, benefits, and allowances.

Welfare provisions can include the power to decide where you live; access your personal information; and consenting or withholding consent to medical treatment.

Depending on your circumstances, there are many other powers that can be included if you wish.

If you're granting powers that will only be used when you lose capacity, you'll need to set out how your incapacity is to be determined, such as by a doctor.