Agents, Appointees, Attorneys and Deputies Guide (AAADG)

June 2012 amendment package

1. The Agents, Appointees, Attorneys and Deputies Guide is now the responsibility of the Decision Making and Appeals (Leeds) (Part of Feedback, Legislation and Decision Making). This amendment package brings the guide up to date with current legislation.

2. This amendment package affects parts 3, 4 and 5 and also inserts Appendix 21.

3. This amendment package is issued in PDF format only,

   **Note:** When printing PDF packages set the print properties to Duplex/Long Edge in order to produce double-sided prints.

4. Remove the sheets in the left hand column and insert new sheets in the right hand column.
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Guardian appointed on or after 1 April 2002

The Adults with Incapacity (Scotland) Act 2000

3053 The Adults with Incapacity (Scotland) Act 2000 provides that the courts can appoint welfare guardians or financial guardians to deal with the affairs of the customer. Welfare Guardians will not usually be given powers to deal with the financial affairs of the customer.

3054 If you receive a request from someone who claims to have been made the customer’s Guardian ask to see both the “interlocutor” and the Certificate of Registration. The “interlocutor” is the court document which specifies the powers that have been granted to the guardian. The Certificate of Registration is issued by the OPG to show that the guardianship order has been registered with them.

3055 Where more than one person has been appointed by the OPG all those named must have a Certificate of Registration. Check the proceedings began on or after 31 March 2002.

3056 In all cases where it is clear that the guardianship order includes the power to administer the financial affairs of the customer, do not take any appointee action. The guardian is authorized to deal with the customer’s social security affairs. See also para. 3010.

3057 Guardianship Orders should be sent to:
Information Management, Devolution and Governance, Devolution Team
Silvan House, 2nd Floor
231 Corstorphine Road
Edinburgh
EH12 7AT

Tel: 0131 310 1161

E-mail: The address is listed on the GAL as DWP Devolution Policy Team

Courier: Edinburgh Information and Devolution Policy

3058 If Information Management, Devolution and Governance, Devolution Team confirm that the Guardian has authority to handle the social security benefit affairs of the customer, see Creating an OP/COP relationship in Part six of the guide.
Intervention Orders

3059 The Adults with Incapacity (Scotland) Act 2000 also gives the courts power to impose intervention orders. These are intended as a temporary measure in relation to a specific act or decision on behalf of the customer in order to protect their interests.

It should be noted that an Intervention Order, even where it includes authority to manage benefit payments, does not take priority over an appointment made by the Secretary of State. They can operate simultaneously. In practice you should consider whether this would be the best approach for the customer. As the Intervention Order is likely to cover all the customer’s financial affairs and not just benefits, then if there is an existing appointment you may want to consider revoking it. This will require careful consideration and discussion with all parties.

3060 The length of time the intervention order is in force, and the powers specified in the order will determine whether the Department needs to take any action.

3061 Intervention Orders should be sent to Information Management, Devolution and Governance, Devolution Team. See para 3057 for details.

3062 Issue any claim forms and record the following:

1. details of the PAB;
2. whether the appointment is of Guardian, Curator Bonis or Tutor;
3. the number and date of the order of appointment;
4. the receipt and disposal of the OB if appropriate.

Forward a copy of the appointment to all other appropriate benefit sections.

3063 If the powers of appointment are limited and/or it is not clear whether the person is appointed to deal with Social Security matters, refer the case to the supervisor or team leader to consider referral to Information Management, Devolution and Governance, Devolution Team for normal appointee action.

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Attorney – England and Wales

4050 A PoA is a formal instrument by which one person (a donor) empowers another (a donee, who is the attorney) to act on his behalf either generally or in specific circumstances.

4051 A PoA can be granted under:

- The Power of Attorney Act 1971 (This is a general PoA)
- The Enduring Power of Attorney Act 1985 (The power to make an EPoA was revoked 1.10.07 – see para 4111)
- The Mental Capacity Act 2005. (A LPA is made under this Act)

4052 Whichever Act a PoA is granted under, the attorney can be given:

- **general** powers to handle all the customer's affairs, that is, both in relation to financial matters and personal welfare - see Responsibilities of an attorney in this part of the guide
- **specific** powers to handle some of the customer's affairs - see Power of attorney granted with specific powers in this part of the guide and/or
- powers for a **limited period**, eg while the customer is ill or abroad - see Power of attorney granted for a limited period

4053 The Secretary of State can accept a PoA as a valid authority to manage the social security benefit affairs of the customer under certain circumstances.

4054 A PoA can be granted to:

- an individual
- two or more individuals, i.e. joint attorneys, see Two or more attorneys

  or

- an organization, see Professional attorneys.

### Verifying the attorney is empowered

4055 If you receive a claim or enquiry from any person(s) or organization stating that they are the customer's attorney(s) and that they wish to act for the customer, ask to see the PoA document.
To be acceptable, a PoA document must:

a) be signed by:
   - the customer, whose signature must be countersigned by a witness or
   - someone acting under the customer's direction and in the customer's presence, whose signature must be countersigned by two witnesses and

b) give the attorney's:
   - name
   - address and

c) include the words:
   - 'signed and sealed' if the PoA was completed before 31 July 1990 or
   - 'signed as a deed' if the PoA was completed on or after 31 July 1990

d) in the case of PoA under the 1971 Act, it must make reference to that Act.

e) in the case of an LPA, and a registered EPoA, you should see:
   - OPG validated stamp at the bottom of the front page
   - same stamp on all other pages (not necessarily at the bottom)
   - top left corner of front page: reference number and date of registration.

If presented with form LPA004 this of itself is not acceptable. It is an information only form. You must see the original or copied LPA.

There is a template, provided by both the 1971 Act and the 1985 Act, which the vast majority use, see Appendices 9 - 11 in this part of the guide.

**Photocopies**

You can accept a photocopy of any PoA document provided it includes a declaration that it is a true and complete copy of the original signed by:

- the customer or
- a solicitor or
- a stockbroker.
Scanned PoAs

Where the PoA is received as a scanned document there is no need to print out and save as a hard copy. Instead, the person verifying the validity should note its acceptance in Notepad. The person should provide their name and the date.
Power of Attorney and Enduring Power of Attorney

Power of Attorney Act 1971

4100 A PoA granted under the above Act is an authority for the attorney to manage the financial affairs of the donor or customer. It is only valid if the customer is mentally capable. It therefore expires when the customer becomes mentally incapable. If the customer has mental capacity it can be a valid authority to act as long as it grants general authority and conforms to certain formalities.

Powers granted to the attorney under the Power of Attorney Act 1971

4101 If the PoA document states that the customer grants their attorney general powers under section 10 of the Power of Attorney Act 1971, the attorney is given full power to handle the financial affairs of the customer. The Secretary of State can accept this authority as sufficient to handle the benefit affairs of the donor, see Responsibilities of the attorney later in this section. An example of a general PoA issued under Section 10 of the Power of Attorney Act 1971 is shown at Appendix 11.

4102 However, when a PoA is made under the 1971 Act use of the template is not mandatory. A PoA can be created on a piece of paper as long as reference is made to the 1971 Act. For example it should state that it has been made “in accordance with the PoA Act 1971”.

4103 If you receive a general PoA document which does not include the wording shown in the example shown at Appendix 11 take a photocopy and refer it to:

Strategy DMA Policy
3rd Floor
Caxton House
London
SW1 9NA
Fax 020 7449 7347.
4104 If DMA Leeds reply stating that the PoA is:
  • acceptable, see Attorney empowered to act or
  • not acceptable, see Attorney not empowered to act.

4105 If the customer grants their attorney specific powers, the powers may or may not include the power to deal with Social Security benefit, see Power of attorney granted with specific powers.

4106 Because the customer still must have mental capacity to handle their own affairs for the PoA to be valid, the customer can still choose to handle their own affairs, see Customer has mental capacity in this part of the guide.

4107 - 4110

Enduring Power of Attorney Act 1985

4111 Unlike a PoA made under the Power of Attorney Act 1971, a PoA made under the Enduring Power of Attorney Act 1985 is intended to continue when the customer loses mental capacity. For the validity of an EPoA in Scotland, see para 4205 in this guide.

NB: The EPoA Act 1985 was repealed by the Mental Capacity Act 2005. However, existing EPoAs will continue to operate under Schedule 4 of the Mental Capacity Act. The paras below are retained because if we are presented with an EPoA registered before 1 October 2007 then the 1985 verification rules will still apply.

Powers granted under the Enduring Power of Attorney Act 1985

4112 If the customer grants their attorney general powers under the Enduring Power of Attorney Act 1985, the attorney has full power to act for the customer over all their financial affairs including social security benefits, see Responsibilities of an attorney in this part of the guide. The wording on the power will usually indicate whether the powers granted are general or specific, see Power of attorney granted with specific powers.

Checking the validity of a Power of Attorney made under the Enduring Power of Attorney Act 1985

4113 The Enduring Powers of Attorney Act 1985 came into force on 10 March 1986. The format and wording of an EPoA document can differ, depending on the date of issue. If the EPoA is signed before 31 July 1990 the document must comply with the regulations at that time. See Appendices 9 and 9a for further information.
Enduring Power of Attorney issued on or after 31 July 1990

The 1990 Regulations permit an EPoA issued on or after 31 July 1990 not to be sealed. These Regulations also allow the attorney to sign the document at the direction of the donor (customer), in line with the PoA Act 1971. The customer is not compelled to sign [a mark will be sufficient], provided that there are two witnesses.

An example of an EPoA issued under the 1990 Regulations is shown at Appendix 10.

Any failure to comply with the Regulations current when the power was executed will invalidate the document.

Any doubtful cases should be referred in writing or fax, to:

Strategy DMA Policy
3rd Floor
Caxton House
London
SW1 9NA
Fax 020 7449 7347.

EPoA and the Mental Capacity Act 2005

- It has not been possible to create an EPoA since 1 October. However, it is still possible to register an EPoA created before this date.

- If presented with an EPoA registered before 1 October then the standard EPoA verification rules apply - see para. 4113 et seq.

- If presented with an EPoA registered after 1 October then the LPA verification rules will apply - see para 4141 et seq.

Lasting Power of Attorney under the Mental Capacity Act 2005

An LPA is a new legal form, which from 1 October 2007 allows our customer to choose someone else to manage their affairs - see Appendix 15 for a specimen LPA.

There are two types of LPAs:

- a property and affairs LPA allowing the attorney to make decisions relating to financial and property matters. This can be used even if the customer still has capacity.
Part four

Attorney

- a personal welfare LPA allowing the attorney to make decisions regarding the customer’s health and personal welfare, such as where they should live or medical treatment received. **This can only be used when the customer does not have capacity.**

Note: An LPA cannot be used until it has been registered with the OPG.
Customer/Attorney presents a Lasting Power of Attorney

4141 Where the customer presents a LPA you need to check for two things:

1. That it has been registered with the OPG. You should see the following:
   i OPG validated stamp at the bottom of the page
   ii Same stamp on all other pages (not necessarily at the bottom)
   iii Top left hand corner of front page; reference number and date of registration.

2. That it gives authority over the customer’s finances. If it only gives authority over the customer’s personal welfare then it is of no use for benefit purposes. The person should be referred to the OPG – Tel: 0845 330 2900.

4142 Whilst the LPA may give authority over the person’s finances we should check that there are no restrictions on the payment of benefit to the attorney eg, that in respect of benefit the LPA is only to be used once capacity has been lost. [If such an LPA is presented it may suggest that the attorney is acting without the knowledge of the claimant, in which case it may cast doubt about the motivation of the attorney. Where this arises we should let the OPG know what has transpired].

If you are satisfied on both counts (in para 4141) then it can be accepted and benefit paid to the attorney.

Customer has capacity

4143 If the customer has capacity they must be reminded that whilst their benefit is paid to the person holding the power of attorney, they retain responsibility for telling us of any change in their circumstances – you should send the letters at Appendix 16.

4144 You must also tell the attorney that they should inform us when capacity is lost. This is an important consideration should any overpayment subsequently arise. (If you are dealing with the attorney directly then you can tell them verbally; if not then you should write to them. You should make a note of having done this.)

Customer does not have capacity

4145 Where the customer has lost capacity it is important that the attorney understands the requirement to let us know about any change in the customer’s and their own circumstances.
Two or more attorneys

4150 The customer can authorize more than one attorney to act over their affairs.

Power of Attorney document allows attorneys to act separately

4151 Where the customer appoints two or more attorneys jointly and the PoA document authorizes them to act separately, the document will state that the attorneys are authorized to act “jointly and severally”. (for LPAs you may see the words “together and independently”, this has the same meaning as “jointly and severally”). You can pay benefit to whichever attorney makes the application, provided the PoA document meets the other requirements.

Power of Attorney document does not allow attorneys to act separately

4152 If the customer authorizes two or more attorneys but does not authorize them to act separately the document will not authorize them to act “jointly and severally” but will only authorize them to act “jointly”. (For LPAs you may see the word “together”, this is the same meaning as “jointly”). Any application must be made jointly and signed by all parties. All payments in respect of the customer must also be paid jointly to the attorneys. Because CIS only allows you to input one PAB, a joint attorney case would have to be maintained clerically.

Either attorney declines to act on the customer’s behalf

4153 When the customer appoints two or more attorneys jointly and the PoA document does not authorize them to act separately, but one or more then decline to act on the customer’s behalf, there are only two options available:

- make payment direct to the customer or
- if the customer is mentally incapable, refer the case to the nominated/appropriate officer to consider appointee action. For information about authorizing an appointee, see Part five of this guide

You cannot make payment to only one attorney under a joint PoA.
Suspicion of fraud or mismanagement by the attorney - unregistered Enduring Power of Attorney or Power of Attorney

4165 If the customer is able to manage their own affairs but we have accepted an EPoA or PoA and there is evidence that the attorney is mismanaging the customer's benefit affairs, the Secretary of State should consider paying the benefit to the customer. This should only be done after careful consideration of the evidence. You should follow the steps above at 4164 although as the document has not been registered you do not have to contact the OPG.

Professional attorneys

4166 It is important to determine whether an individual is acting in a personal or professional capacity.

4167 If the Attorney is acting in a personal capacity, use his or her NINO as an identifier. Please note there is no obligation for the attorney to provide these details. If they object, explain that, because of the way benefits are administered i.e. departmental computer systems that rely on NINO identification, it will ease the handling of the claim and the payment of benefit if they provide their NINO or enough information for their NINO to be traced. If they continue to object the only option is to handle the claim clerically.

4168 If the Attorney is acting as an employee of a Corporate Organization, use CIS to trace for an existing Corporate Organization ID. If there is no trace, use PD385 to create a new record. CIS will generate a unique 6 digit ID for the organization. In no circumstances should an individual’s NINO be used, nor should any attempt be made to trace it.

Attorney empowered to act

4169 After you verify the attorney is empowered to act on the customer’s behalf for Social Security benefits, pensions and/or allowances, see Creating an OP/COP relationship in Part six of this guide.

4170 In law a PoA, EPoA or LPA is not a higher authority than an appointee for social security purposes, but where a valid PoA, EPoA or LPA exists we would respect this and the attorney would normally be accepted to act for benefit purposes, unless there is a reason to believe that the attorney is unsuitable, e.g. there are grounds to suspect fraud, mismanagement or neglect.
**Attorney not empowered to act**

4180 If the attorney is not empowered to act on behalf of the customer for Social Security purposes:

<table>
<thead>
<tr>
<th>Step</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>inform the attorney they cannot act for the customer for Social Security purposes</td>
</tr>
<tr>
<td>2</td>
<td>if you are made aware that the customer is mentally incapable, refer the case to the nominated/appropriate officer to consider appointee action - see Part five of this guide.</td>
</tr>
</tbody>
</table>

4181 Where you receive a PoA drawn up abroad either for a claimant who lives abroad or one who lives in this country, you should contact IPC for further Advice.

4182 - 4189
Attorney - Scotland

4190 In Scotland, a PoA is an appointment of agent by deed by which one person (the customer) gives another person(s) or organization (the attorney) authority over their affairs.

4191 A PoA can be granted to:

- an individual
- two or more individuals, ie joint attorneys or
- an organization.

4192 A PoA granted:

- prior to 2 April 2001 does not lapse when the customer becomes incapable of managing their own affairs unless the PoA deed specifically so provides
- on or after 2 April 2001, lapses when a customer becomes incapable of managing their own affairs unless it is a "continuing power". If it is a continuing PoA certain conditions are required to be met, including registration with the OPG prior to any use of the PoA. For more information about continuing PoAs and these circumstances see the Adults with Incapacity (Scotland) part of the guide.

For an example of a PoA issued in Scotland prior to 2.4.2001, see Appendix 12. For example of one issued after 2.4.2001, see Appendix 13.

4193 The attorney can be given:

- full powers to deal with all the customer’s affairs
- specific powers to handle some of the customer’s affairs, and/or
- PoA for a limited period, eg while the customer is ill or abroad.

For more information, see Powers granted to an attorney in the Scotland section of this part of the guide.

Incapable in this context means mentally incapable or unable to communicate by reason of incapacity.

Power of Attorney made under the Power of Attorney Act 1971

4194 A Power of Attorney made under the Power of Attorney Act 1971 is not a valid authority to act for benefits for customers who live in Scotland.
Electronic Power of Attorney Registration – EPOAR (from May 2012)

An ‘EPOAR’ allows users to upload power of attorney deeds in PDF format for transmission to the Office of the Public Guardian. Staff at the Office of the Public Guardian will check the submitted power of attorney deed to ensure that it meets statutory validity requirements before registering it within their existing computer system. (An example of an EPOAR certificate can be seen at Appendix 21)

EPOAR Certificate of Registration - validation

After registration has occurred, a certificate of registration will be generated and transmitted back to EPOAR in PDF format. The user will thereafter be able to access EPOAR to print out a hard copy. The certificate of registration issued under EPOAR will have the following features:

- There will be no embossed red seal on the certificate. The wording on the certificate will state this.
- The certificate and accompanying deed will carry a watermark.
- Each page will be numbered, e.g. 1 of 7, 2 of 7 etc.
- The OPG reference number and unique certificate number will appear on every page.
- The certificate will detail how to verify registration and who to contact if there are concerns about its authenticity.
- It will state that a copy of the principal document is as valid as the original in accordance with S3 of the Powers of Attorney Act 1971.

EPOAR – Ability to Verify Registrations On-line

The EPOAR site will include a facility which will allow you when presented with an electronically produced certificate of registration to verify its detail.

By entering search data taken from the certificate, the user will be able to confirm and match the following:

- Granter’s full name.
- Date the power of attorney deed was signed by the granter.
• Name of principal attorney(s).
• The nature of the powers e.g. continuing/welfare or both.
• Registration status, e.g. registered/revoked/terminated.
• Public Guardian’s reference number.

If there remain doubts as to the authenticity of the certificate, contact:
OPG(Scotland), Tel: 01324 678300

Other Points to Note

4198 The use of electronic submission is not mandatory. The clerical power of attorney registration service will continue with the usual verification.

Ordinary and general powers of attorney are not affected nor are powers of attorney made under the law of a country other than Scotland.

Copies

4199 A copy should have a Certificate at the end of each page which says: “I certify this page to be a true and complete copy of the corresponding page of the original Instrument.” and

A Certificate at then end of the complete copy which says: “I certify the foregoing reproduction to be a true and complete copy of the original Instrument.”

The person making the above statement must be a solicitor, an authorised person or a stockbroker.

4200 - 4205
heritable, movable, real and personal, of what kind so ever and wherever situate which I could have done myself if personally acting, and in particular, without prejudice to the foregoing generality——’

– ‘———with full power to do everything regarding my estate and affairs which I could do or could have done myself without limitation by reason of anything herein contained and without prejudice to the foregoing generality———’ or

– ‘To claim and receive on my behalf all pensions, benefits, allowances, services, financial contributions, repayments, rebates, and the like, to which I may be entitled or for which I may be entitled to apply. To complete and submit all forms, give any necessary undertakings, make any relevant appeals and generally do anything else necessary or appropriate in connection therewith, and that as regards all periods past current or future.’

**Power of Attorney document does not satisfy the Scottish requirement**

4276 If you receive a PoA or a document which does not satisfy the wording requirements at paragraph 4275, it may still be legally valid. In these circumstances, a copy of the document should be taken and referred for advice to:

Information – Management, Devolution and Governance, Devolution Team
Silvan House
2nd Floor
231 Corstorphine Road
Edinburgh
EH12 7AT

Tel: 0131 310 1161

E-mail: Our address is listed in the GAL as DWP Devolution Policy Team

Courier: Edinburgh Information and Devolution Policy

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Organization already acts as appointee for other customers

5221 If the organization already acts as appointee for other customers, the appointeeship can be authorized immediately after:

- your visit (if this has been appropriate – see below) to the customer confirms their incapacity to manage their own affairs and
- an authorized representative of the organization has:
  - completed form BF56 to show the organization’s (not the representative’s) details and
  - stamped form BF56 with the organization’s official stamp.
  - (Occasionally the corporate appointee may not have an organisation stamp. This does not invalidate the application. You should check our system to confirm that the applicant does indeed act as an appointee. If that is confirmed, and there is nothing to suggest that the latest application is other than genuine, then it can be accepted.)

Organization does not already act as appointee for other customers

5222 If an organization does not already act as an appointee for other customers, a visit must be made to:

- decide that the customer needs an appointee – but see below
- discuss the roles and responsibilities of an appointee, and
- make clear that, as an appointee, the organization is responsible for making sure that any of their representative(s) authorized to collect the customer’s payments are acting in the customer’s best interest.

5223 Note: When an organization is applying to become an appointee they must authorize an employee to complete form BF56 on their behalf.

5224 On being appointed by the Secretary of State, the organization must also complete the certificate at part 4 of form BF57, or provide the employee with a similar letter of authority.

Organization submits medical evidence with application

5225 If the application is accompanied by medical evidence then a visit to the customer may not be necessary. The evidence must unequivocally indicate that the customer is incapable of
managing their benefit affairs. The evidence should come from a professional who knows the customer and is in a position to comment on their condition eg a GP, consultant, psychiatrist. If there is any doubt then you should either clarify with the Organization and/or seek advice from the department’s doctors. You should err on the side of caution and visit if you believe that is the only means of removing any doubt.

5226 The organization will need to provide the employee with a letter of authority authorizing that person to act.

**Someone other than authorized person contacts the department on behalf of COP**

5227 If a call is received from someone who states they are calling on behalf of a corporate appointee you should apply the ‘implicit consent’ rules – see the Working with Representatives Guide.

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# Secretary of State's decision on the application

## Appointment to act not approved

5350 If the officer acting on behalf of the Secretary of State decides not to authorize an application:

<table>
<thead>
<tr>
<th>Step</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Notify the prospective appointee that their application was unsuccessful – if you have your own letter then continue to use it otherwise there is a letter at Appendix 18</td>
</tr>
<tr>
<td>2</td>
<td>Keep a record of the reason for the non-approval and file with the customer’s clerical papers</td>
</tr>
</tbody>
</table>

5351 If no one else was nominated to act, see *Appointee needed but no one nominated* in this part of the guide.

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## Appointment to act approved

5360 If the officer acting on behalf of the Secretary of State authorizes an application:

<table>
<thead>
<tr>
<th>Step</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Complete form BF56 at ‘FOR OFFICIAL USE ONLY’ and keep it with the customer’s clerical papers</td>
</tr>
<tr>
<td>2</td>
<td>See Action following verification of a PAB/COP in Part six of this guide.</td>
</tr>
</tbody>
</table>

## Handling a phone call from the appointee

5361 If the appointee contacts the department you should think carefully before engaging with him. This person has an appointee who is supposed to act on his behalf. The customer should have mental health problems which means he cannot manage his benefit award and in general should have little or no understanding of the benefit system and his own benefits.
However, the Mental Capacity Act says that those with third party help should still be involved in decision making where that is appropriate eg they have a good day. Of course, it is likely to be difficult to decide whether the contact is being made on a good day. All you can do is listen to what is being said and make a judgement.

If the questions being asked are neutral as to their impact on the benefit and you judge that no harm can be done by answering them, then you should engage with the customer. You should note that the discussion took place. There is no need to inform the appointee.

However, and regardless of whether you think this is a good day, if the customer has contacted us to report a change then, whilst you can note it, you must not act on it. You must confirm it with the appointee; of course, this should be done immediately.

All that said, before starting any conversation you must still ask the security questions. If there are no problems with these and then the subsequent discussion is equally untroubled, you may want to consider whether the customer needs an appointee.
Revoking an appointment

5400 There are four circumstances where an appointment can be revoked:

• if the appointee does not act appropriately within the terms under which the appointment was granted, an officer acting on behalf of the Secretary of State can revoke their authority

• if there is sufficient evidence that the customer is capable of acting for themselves and does not need an appointee to act for them over their benefit affairs – see also 5402 below.

• where the appointee himself becomes incapable. Where the Secretary of State is satisfied that this is the case - standard evidence considerations apply - he should take normal action to appoint a replacement.

• where the appointee no longer wishes to continue. Hopefully he will provide a replacement otherwise we will have to contact social services.

Note 1: Revocation may arise as a consequence of the Appointee Review process. This is the process whereby the Secretary of State carries out a post-appointment check to ensure that an appointee is still needed. If you are revoking because the customer says he holds a power of attorney authority you must make sure that you see a valid power before you revoke the appointeeship – see Part 4.

Note 2: If an appointee fails to claim a benefit when he would normally be expected to, eg fails to make a renewal claim for DLA, this needs to be investigated before any decision is made in relation to the benefit entitlement. We must not simply terminate entitlement.

Note 3: When allegations of abuse are received it is essential that we react quickly. If there is abuse then any delay will compound the problem. The Secretary of State needs to be seen to be taking any allegations seriously. His responsibility is to ensure that the benefit being paid to the appointee is being used for the benefit of the customer and if that is in question then he needs to take appropriate action.

Revoking the appointment because the appointee is not acting in the best interest of the customer

5401 If there is evidence that the appointee is not acting in the best interests of the customer follow the procedures below:

<table>
<thead>
<tr>
<th>Step</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>discuss the case with the nominated/appropriate officer – do not revoke the appointment without their approval. In this circumstance if you know other benefits are in payment you should also alert the appropriate section.</td>
</tr>
</tbody>
</table>
1A If it is agreed by the nominated/appropriate officer that the evidence of mismanagement is overwhelming, then there is no need to follow the process set out in the steps below. Instead payment of benefit should be stopped immediately whilst the case is further investigated. The Secretary of State must act quickly and be seen to be so doing to prevent any further loss of benefit to the customer. Although it is not possible to 'define' these cases - each case must be considered on its merits - it is likely that the evidence would have come eg from social services, a LA or police adult protection team.

2 If 1A does not apply, if the nominated/appropriate officer agrees, interview the appointee (and the customer if needed), to explain the situation

3 If you cannot contact the appointee for interview write to the appointee explaining that we are considering revoking the appointment – if you have your own letter for this purpose then you should continue to use it otherwise there is a draft letter at Appendix 18.

4 Allow the appointee two weeks to respond

5 If there has been no response within that time then, unless there are grounds for extending this period, you will have no option but to stop payment and revoke the appointment – go to step 8

6 If the appointee is available for interview show the appointee the notes printed on the back of form BF57. An example of form BF57 and the Aide Memoire at appendix 5

7 If the appointee responds in writing and you are satisfied that he should be allowed to continue in his role then you must re-send him the Aide Memoire at append 5. If you are not satisfied, and interviewing him is still not an option, then you will have no option but to stop payment and revoke the appointment – go to step 8.

If the appointee has been interviewed and you are satisfied that he should continue, then you should contact him to let him know, sending him the Aide-Memoire at the same time. If you are not satisfied then revoke the appointment and stop payment – go to step 8
record your reason(s) for revoking the appointee's authority and keep it with the customer's clerical papers

recall the IOP, if appropriate

end the OP/COP relationship(s) in CIS.

The revoking of the appointee should broadcast across the benefit systems; however, if you are aware of any other benefit in payment then you should also notify that benefit directly. This includes the LA if HB is in payment and HMRC if tax credits are in payment. You can do this by phone, e-mail – **for HMRC you should contact** [Pauline.fitzgerald@hmrc.gsi.gov.uk](mailto:Pauline.fitzgerald@hmrc.gsi.gov.uk) or by sending a copy of the BF58 – you should make a note that this has been done.

send for form BF58 to the ex-appointee - An example of form BF58 is shown at Appendix 3

if a customer still needs an appointee and another person has been nominated, take appropriate action as shown in this part of the guide

if no one else has been nominated, see **Appointee needed but none nominated** in this part of the guide

Finally, you should consider whether you need to alert others to the abuse (see also 16 below). By 'others' we mean LA Adult Services, the OPG or the police. Not all revocations will warrant such referral but at the forefront of your thinking must be the necessity to prevent the appointee having the opportunity to commit acts of further abuse.

It is not possible to provide a definitive list but the type of case which is likely to warrant such action could include: the appointee works in a care environment where he/she has contact with other vulnerable adults; the amount of money being misused is such that the police should be involved.

If you already have arrangements/partnership agreements in place for making referrals then these should, of course, continue.
There are judgements to be made but if in doubt about whether to make a referral you should discuss with your manager. Legal Group, DMA Policy would also be happy to advise.

16 We are often asked to revoke an appointment because care home fees have not been paid. Once you are satisfied that this is the case then you should take normal revoking action. The replacement appointee is likely to be the LA. There will be no need to visit the customer or the LA; we can accept a BF56 through the post. You may be asked at the same time to take action in relation to the unpaid fees. There is nothing for you to do. If the LA wish to pursue the matter they will need to take action directly against the appointee. If the matter escalates we can cooperate in the investigation but we would not instigate the same.

Revoking an appointment – request received from the customer

5402 Whilst it should be the appointee who reports an improvement in the customer’s condition, if the customer themselves reports this and asks that they become responsible for their benefits, take the following action:

i. Refer the case for a visit to the customer as a matter of priority;

ii. At the same time send the letter below to the appointee (or ask the benefit section to issue the letter urgently).

iii. If the appointee agrees that the customer is capable then no visit will be needed. Just arrange for payment(s) to be made in the name of the customer (Note: the customer will need to complete DP GEN with their account details).

iv. If the appointee contests our proposed action make a note of what is said and pass this through to the appropriate visiting service. They will decide how to use the information at the visit. At this time do not interfere with any benefit payments.

v. At the end of the visit the visiting officer will make a recommendation.
THE LETTER

Dear

You currently act as the appointee for …

He/She contacted us on … to say that he/she no longer requires you to act as his/her appointee. He/she says that he/she is now capable of managing his/her benefit affairs.

If someone is able to manage their own benefits then the Secretary of State must revoke any existing appointment.

We now intend to visit [name] to confirm that he/she is indeed capable of managing his/her own benefit. The visit will take place within the next few weeks.

However, if you feel that [name] is now capable of managing their benefits a visit will not be required. Please let us know either by letter or call the above number.

If you do not feel this is correct you can make representations about this by contacting us as above. We will still need to visit in order to assess his/her capacity to manage but will take into account anything you have told us when making our decision.

Yours sincerely
Case conferences

5403 It is not unusual for the department to be invited to a case conference involving LA, the police and other voluntary groups to discuss individual cases concerning vulnerable adults. The official departmental line is that we should be wary of attending. The reason for this is that you are likely to be asked for personal information about a customer but any disclosure to a third party should be in response to a direct request from that third party. Providing information at a conference cannot meet that requirement as it is may be the case that there is justification for disclosure to some of the parties present – they could individually justify a request and disclosure - but not all. So any attendance would involve a data protection risk. But it is not ruled out. You just need to be aware of who is attending and be very careful in what you disclose.
Revoking a corporate appointee

5404 If you become aware of mismanagement by or allegations are made against a corporate appointee, you should contact:

Strategy (DMA Policy)
3rd Floor
Caxton House
London
SW1H 9NA
Tel: 0207 449 7347

5405 If you have evidence that the Care Home in Scotland has been mismanaging the affairs of the customer, refer the case to:

Information Management
Devolution and Governance
Devolution Team
Silvan House
2nd Floor
231 Carstorphine Road
Edinburgh
EH12 7AT
Fax: 0131 301 1161

E-mail: The address is listed in the GAL as DWP Devolution Policy Team
Courier: Edinburgh Information and Devolution Policy

Obtaining consent for the release of medical information when a customer has an appointee

5406 i Customer has mental impairment

Appointee can give consent (under normal consent rules).

ii Customer has physical impairment

KEY POINT: In this circumstance the appointee can never give consent on behalf of the customer.
Options available:

1. The customer can sign or make a mark on a paper consent declaration.

2. If the customer is unable to sign or make a mark he can give verbal consent. This can be given face to face or by telephone. If by phone, there are strict protocols which must be observed. These are:
   - it must be established beyond doubt that it is the customer who is speaking
   - there must be a full, written record of the conversation. This will detail the steps taken to confirm identification; and it will confirm that the customer understood that he was giving consent to the disclosure of information
   - under no circumstances must the customer be put under pressure to give consent if he is unwilling to do so for whatever reason (consent given under duress is not valid consent). If the customer declines to give consent this must be recorded.

3. Finally, whatever form is being used to make the request it must state that the customer has given verbal consent.

Jobseekers Allowance/ESA customer with appointee

5407 You must always deal with the appointee in the first instance when considering conditionality operational matters eg arranging interviews. The onus is on the appointee to ensure that the customer is aware of interview times etc.

You can discuss conditionality matters with the appointee but you must not make a determination or decision eg imposing a sanction, without involving the customer. The latter must be at formal conditionality interviews.

The appointee cannot satisfy conditionality on behalf of the customer.

The customer and appointee must attend for signing;

Given the nature of these benefits the capacity of the customer should always be under review. You must not allow the appointeeship to continue because it is convenient for the customer.

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This power of attorney has been registered with The Office of the Public Guardian in terms of s19A of the Adults with Incapacity (Scotland) Act 2000

Certificate No: 1041048/2012/17
Case Ref: PG/O/2/2012/10

OFFICE OF THE PUBLIC GUARDIAN (SCOTLAND)

CERTIFICATE OF REGISTRATION OF POWER OF ATTORNEY

This certificate confirms that the power of attorney granted by Alfie O'Neill on 01 May 2012 appointing Ellie O'Neill has been registered with the Office of the Public Guardian.

Sandra M'Donald
Public Guardian
Hadrian House, Callendar Business Park, Falkirk, FK1 1XR,
Tel: 01324 678 300
www.publicguardian-scotland.gov.uk
18 May 2012

Important notes

- This certificate relates only to the power of attorney registered with the Public Guardian bearing the identical certificate and case reference numbers
- This certificate has been issued electronically and does not have an embossed or adhesive seal
- Please keep this certificate and related power of attorney document in a safe place
- If this certificate is found please return it to the Public Guardian
- This certificate can be verified at: https://epoa.publicguardian-scotland.gov.uk
- Copies of this document certified on each page in accordance with S.3 of the Powers of Attorney Act 1971 are as valid as the original document
POWER OF ATTORNEY

By

SAMPLE PERSON 1

in favour of

Her Attorney

Whom failing

Her Substitute Attorney

2012

We Are Solicitors
123 The Road
Anywhere
Town
G45 4FT
Tel: 01234 56789 Fax: 01234 56790
CONTINUING and WELFARE POWER OF ATTORNEY
by SAMPLE PERSON1

Appointment
I Sample Person 1 residing at ............... CONSIDERING that I am desirous of appointing a suitable person or persons to manage my affairs, and in the event of my being incapable in terms of the Act aforesaid to take decisions about my personal welfare and having confidence in the persons aforesaid DO HEREBY APPOINT MY ATTORNEY, residing with me at .......... whom failing, MY SUBSTITUTE ATTORNEY residing at .............., as my Continuing Attorney and also as my Welfare Attorney (and all hereinafter referred to as "my Attorney", the singular including the plural where the context so requires) in terms of Sections 15 and 16 of The Adults With Incapacity (Scotland) Act 2000 (which Act and any subsequent amendment thereof is referred to as "the Act") and that with effect from the date of these presents and that on the following terms and conditions:

Continuing Powers

(One) My Attorney shall have the following Powers ("the Powers"):  

1. To open, operate, overdraw and close any account in my name at any bank, building society or other institution, and to operate on, overdraw and close any existing such account in my name.

2. To execute and deliver deeds and documents including, without prejudice to the said generally, Dispositions, Leases or Standard Securities in respect of any heritable property belonging to me, or in which I may have an interest.

3. To maintain, and to pay any expense in connection with me and my property, including property owned by me or jointly by me with others.
This power of attorney has been registered with The Office of the Public Guardian in terms of s19A of the Adults with Incapacity (Scotland) Act 2000

Certificate No: 1041048/2012/17
Case Ref: PG/O/2/2012/10

4. To deposit for safe custody in any bank or other depository any property or document and to withdraw any property or document deposited by me or on my account. To effect, pay the premiums on, alter or surrender any insurance policy of any description, and to effect any new insurances of any description which my Attorney may, in his sole discretion, consider appropriate.

6. To take possession etc and complete my title to, any interest in property, whether heritable or moveable, and whether solely or by me jointly with others or held in the name of a nominee for me.

7. To make, settle, compromise, discharge and refer to arbitration, and raise, defend, compromise, appeal and settle any court action or petition in which I have or may have an interest (including any proceedings under any statutory provision and without prejudice to the said generality The Adults With Incapacity (Scotland) Act 2000 and the Matrimonial Homes (Scotland) Act 1981 as amended and any re-enactment or restatements thereof), to enforce any decree in respect of any claim and to appear for me on my behalf before any Court, Tribunal, Arbitration, Commission or Committee of Parliament, whether in Scotland or elsewhere.

8. To make tax returns and settle, adjust and compromise and claim for tax or any tax refund.

9. To operate, sell, liquidate or wind up any business which I may own, to employ or appoint or continue to employ or appoint any person (including my Attorney) in any capacity in relation to that business, to pay or to continue to pay such salary or other remuneration as my Attorney may consider appropriate, and to delegate the operation or running of any part of that business.

10. To examine, query and adjust and settle all accounts between me and any other person, to pay any sum which my Attorney is satisfied is due to me and information, and to disclose such information as is hereinbefore detailed in such circumstances as my Attorney may consider to be in my interests.

17. To borrow and grant security for any sum, binding me and my Executors or Personal Representatives jointly and severally in that regard, and that on such terms and conditions as my Attorney may deem appropriate including the granting of security therefore over any part of my property whether heritable or moveable, real or personal.

18. To claim and receive any social security or other benefits, allowances, pensions, rebates or services to which I may be entitled or for which I may become entitled, to make application, to complete and submit all necessary forms, applications or otherwise, to give any necessary undertaking, to lodge and carry through any relevant appeal and generally to do anything which my Attorney may consider to be required or to be appropriate relative thereto and that as regards any period whether past, present or future and to demand, sue for and recover all debts, claims and sums of money or property due or which may become due to me or be eligible by me on any account or in any manner of way and to give time for payment of any debt or claim and to grant receipts or discharges therefore; Any persons paying money or transferring property to my Attorney shall not be concerned with the application thereof by my Attorney.

19. To make such arrangements as my Attorney considers appropriate for the management of my estate, including arrangements which will subsist after the
termination, for any reason or cause of the powers hereby granted; to engage in Inheritance Tax planning on my behalf including without prejudice to the said generality to make gifts of my property and assets of whatever nature and wheresoever situated to my spouse (if any) or to any of my children or remoter issue, or to any Charity or Organisation to whom I may have made previous such gifts as also to any Trust established for the administration of my affairs; To make gifts to or disposals into any Trust created by me or in which I am one of the Seniors; To establish any Trust (including a Discretionary Trust) for the benefit of any of the foregoing persons or bodies and where appropriate in

the judgement of my Attorney to pay any tax chargeable or arising in respect of any such gifts; And I hereby declare that in relation to the exercise by my Attorney of the powers granted in this Clause, I acknowledge that I have been made aware of the “guiding” principles for the workings of an Attorney detailed in Section 1 of the Act and I hereby acknowledge that all steps taken by my Attorney in exercise of the powers immediately hereinbefore granted are acknowledged by me to be for my benefit in terms of Principle 1 of said Section.

20. To make payments of an alimentary nature to or on behalf of my spouse (if any) or to or on behalf of any of my children or remoter issue as my Attorney in his or her sole discretion shall consider to be reasonable.

21. To grant on my behalf any consent or renunciation of any right or interest which I may have (including without prejudice to the said generality any Deed of Variation under Section 142 of The Inheritance Tax Act 1984 and any amendment or restatement of the same, of any power of appointment, interest in possession or liferent, or other such interest as also in terms of The Matrimonial Homes (Family Protection) (Scotland) Act 1981, as amended, or any statutory restatement or re-enactment thereof including any Declaration under The Family Law (Scotland) Act 2006 as also any Affidavit required under the said legislation) and that in such terms and conditions or on such basis as my Attorney may, in his sole discretion, see fit in the furtherance of my interests, to grant any Stamp Duty, Land Tax, Land Transaction Return on my behalf.

22. Generally to do everything with regard to my estate and affairs which I could have done myself without limitation by reason of anything herein contained or any incapacity on my part whether mental or physical, occurring after the date of the granting of these presents, it being my intention that the Powers shall subsist and remain in full force and effect notwithstanding incapacity as defined by the Act on my part.
Welfare Powers

23. To have the following powers, but only once I have become incapable as defined in terms of Section 1 (5) of the Act, either a certificate or written statement granted by a medical practitioner that I am no longer capable of looking after or dealing with my own affairs (and without prejudice to the foregoing generality, in relation to the various matters immediately hereinafter referred to) or alternatively where my Attorney reasonably believes that I am incapable as so defined, being a sufficient and appropriate determination of my incapacity in terms of the said Section, namely:

(a) To decide what care, services and accommodation may be appropriate for me, including power to decide where I should reside (whether permanently or otherwise) and to return me to my place of residence should I leave the same without consent of my Attorney;

(b) To consent to any medical or dental treatment, care or procedure or therapy of whatever nature my Attorney may decide is for my benefit and may provide access for that, or may refuse such consent;

(c) To decide with whom I should consort and to make decisions about my dress, diet and personal appearance;

(d) To make decisions or arrangements regarding my taking part in educative or social activities, holidays, travel and other pastimes including the nature, length or extent of my involvement or participation therein including as to whether I should work and to what extent and on what terms and conditions;

(e) To exercise any rights of access which I may have in relation to personal data and records, and power to disclose or release such information where my Attorney considers this to be in my best interests and then subject to such conditions as to such disclosure or release as my Attorney may require in my interests.

(f) To take, pursue, continue, defend or settle any proceedings, legal, administrative or otherwise on my behalf in relation to my personal welfare and the above matters hereinbefore detailed before any court, Commission, Tribunal, Inquiry, Appellate body or otherwise;

(g) To pay for holidays for me and one or more of my carers so far as my Attorney in his or her sole discretion may consider appropriate;

(h) To pay for items (including a motor car) or service which, in the sole opinion of my Attorney is for my benefit, the said power shall include power to pay for, repair, improve or replace any such item or service;

(i) The right to open, read and deal with any mail or other communications (electronic or otherwise) addressed to or received by me on my behalf;

(j) The right to exercise on my behalf all rights, privileges and powers competent to me under statute or statutory instrument or similar subsidiary legislation and which relate to my welfare;
This power of attorney has been registered with The Office of the Public Guardian in terms of s19A of the Adults with Incapacity (Scotland) Act 2000

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(k) Generally to provide me with care, support and guidance, my Attorney being the sole judge as to what may be required in the foregoing connection.

(Two) My Attorney shall be entitled to exercise the Powers until my Attorney receives actual written Notice of Recall of his or her appointment in terms hereof, such notice complying with Section 22 of the Act as amended by The Adult Support and Protection (Scotland) Act 2007: declaring that my Attorney shall incur no liability for his or her actings on my behalf allowing revocation in terms of said Section 22 as amended in respect of any period during which my Attorney is unaware of such revocation and prior to notification thereof to him or her as required by said Section 22 as amended, provided always that during such period my Attorney is unaware of such revocation and prior to notification thereof to him or her as required by said Section 22 as amended, my Attorney acts in good faith and in compliance with the Guiding Principles detailed in the Act as amended; Further Declaring that the recall by me of the appointment hereunder of either of the foregoing persons shall not affect the rights of the other to act or to continue to act hereunder unless the relevant notice shall otherwise specified.

(Three) All acts and deeds granted by my Attorney in exercise of the Powers shall be as binding upon me as if they were my acts or deeds granted by me.

(Four) My Attorney shall not be personally liable for acts and omissions as Attorney unless he or she is shown to have been wilfully and grossly negligent and in particular my Attorney shall not be liable for depreciation of investments made in virtue of this Power of Attorney or in terms hereof.

(Five) My Attorney (whether acting as Continuing or Welfare Attorney or both) shall be bound by acceptance hereof to account to me for intimations in virtue hereof and to make payment to me of whatever balance may be due to me after deduction of any remuneration for services including remuneration on the appropriate scale for any professional services rendered and all charges and expenses upon being relieved of all obligations and liabilities undertaken or incurred on my behalf. Further declaring that my Attorney shall incur no responsibility whatever on account of or in respect of the actings, intimations and management of any Bankers, Brokers or other Agents employed in terms of the Powers: IN WITNESS WHEREOF this deed is subscribed by me at......, on the Date in the presence of the following witness:

Witness: ___________________________ Signature: ___________________________
Name: _______________________________ Place: ___________________________
Address: ____________________________
Date: ________________________________
This power of attorney has been registered with The Office of the Public Guardian in terms of s19A of the Adults with Incapacity (Scotland) Act 2000

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CERTIFICATE UNDER SECTIONS 15(3) AND/OR 16(3)(c) OF THE ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000 TO BE INCORPORATED IN A DOCUMENT GRANTING A POWER OF ATTORNEY

1. This certificate is incorporated in the document subscribed by

Insert name of grantor .............

2. On _______________________
Insert date subscribed

3. That confers a

Tick the appropriate box — tick one box only
   Continuing power of attorney (i.e. confers property or financial powers only)
   Welfare power of attorney (i.e. confers welfare powers only)
   Combined power of attorney (i.e. confers both property or financial and welfare powers)

4. Appointing as Attorney(s)
Insert name(s) of Attorney’s
   ................................ whom failing .............

5. Declaration of Certifier
Note: Any person signing this certificate should not be the person to whom this Power of Attorney has been granted.

I certify that:

I interviewed the grantor immediately before he/she subscribed this power of attorney.
This power of attorney has been registered with The Office of the Public Guardian in terms of s19A of the Adults with Incapacity (Scotland) Act 2000

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2. I am satisfied that, at the time this power of attorney was granted, the granter understood its nature and extent, and

I have satisfied myself of this:
(a) Because of my own knowledge of the granter.
(b) Because I have consulted the following person who has knowledge of the granter on the matter

address and relationship with granter of person consulted

3. I have no reason to believe the granter was acting under undue influence or that any other factor vitiates the granting of this power of attorney.

Signed .........................

Print Name.............................................
Profession ..............................................
Address: ...................................................
Date: ......................................................