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Part four – Attorney

This Part describes:

- how to recognize a PoA that is a valid authority for social security benefits
- the types of PoA available
- the authority that can be granted by a PoA
- when the Secretary of State is able to accept a PoA for social security benefit purposes

Introduction

4000 Because the law relating to attorneys in England and Wales is different to the law in Scotland, this part is divided into guidance for:

- England and Wales, see *Attorney – England and Wales* in this part of the guide **and**
- Scotland, see *Attorney – Scotland* in this part of the guide.

4001 - 4049

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- The Enduring Power of Attorney Act 1985 (The power to make an EPoA was revoked 1.10.07 – see para 4111)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.

Part four

Attorney

- 4056 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.

- 4057 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

- 4058 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

4059 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.

4060 - 4068

OVERSEAS ATTORNEYS

PoA drawn up abroad

4069 Where you receive a PoA drawn up overseas you should seek advice from IPC.

Capable customer with an existing attorney moves overseas and wants attorney (who is staying in GB) to retain their role

4070 No change in existing arrangement.

Attorney moving abroad, customer remaining in GB but wants attorney to retain role

4071 Only issue here is how the customer will access benefit if paid to the attorney. Assume they will sort this out.

4072 - 4099

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

4114 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.

4115 An example of an EPoA issued under the 1990 Regulations is shown at Appendix 10.

4116 Any failure to comply with the Regulations current when the power was executed will invalidate the document.

4117 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.

4118 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.

4119 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.**

or

- 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.

4120

Responsibilities of an attorney

- 4121 These may include:
- making a claim to benefit, including completing and signing any claim forms
 - collecting/receiving benefit payments
 - reporting changes in the circumstances of the person they represent.
 - where there is more than one attorney acting for a claimant, the department's computer systems allow us only to enter one name – the "lead attorney", who will receive all letters/notifications and generally be the first point of contact. The lead attorney must then keep the other attorneys updated on these events.
- 4122 It must be remembered that where the customer retains full capacity and so is able to manage their affairs, then in law there is no duty on their attorney to disclose a change in the customer's circumstances. This is the case even where the attorney is receiving the benefit. The onus to disclose remains with the customer.
- 4123 This only changes where the customer loses mental capacity. They cannot be expected to report any changes. If there is a registered EPoA or LPA the responsibility will fall to the attorney. It is important that this duty is explained to the attorney at the point he takes over responsibility for managing the customer's benefit.
- 4124 If the customer has an EPoA, the attorney must inform this Department straightaway if the customer loses mental capacity. This is because the power to act ceases at that point unless the EPoA is registered with the CP. (See *EPoA registered with the Court of Protection* in this part of the guide.)
- 4125 Once an LPA is registered then unlike an EPoA the attorney does not have to take any further action once the customer loses capacity. The authority of the LPA just continues. However, for our purposes it is important that we know that the customer has lost capacity – as explained in 4125 the responsibility for reporting changes transfers. So when setting up payment to the attorney he should be told to inform us should the customer lose capacity.

Customer/Attorney presents an Enduring Power of Attorney

4126 Where **the** customer presents an **unregistered** EPoA, the first step is to satisfy yourself that the customer is mentally capable and understands what they are doing. This is a sensitive area because in submitting an unregistered EPoA the customer is saying that they are mentally capable but has agreed that someone else should manage their benefit. If they were not capable then the authority would not be valid until it is registered with the CP. If you are satisfied that the customer is capable, then accept the EPoA. Remind the customer that they retain responsibility for reporting any change in their circumstances - *you should send the letters at Appendix 16* . And that they should let the attorney know that he must let us know if the customer loses capacity.

4127 You should treat each case on its merits. Your step by step approach should be:

Step	Action
1	Check the claim history. Is there anything on file about the claimant's mental health? Is there anything else about the case, the attorney, or the witness to the power, which raises doubts?
2	If there is anything which raises doubt as to the capacity of the customer or the authority for the attorney to act then you should arrange to visit the customer or ask for medical evidence Note: Before taking this action you should explain to the customer and the attorney why you are taking this action. This will involve explaining that you do not doubt the suitability of the attorney but it is that the Secretary of State is discharging his legal duty to ensure that benefit is properly paid. The Secretary of State is not looking to interfere in the relationship between the attorney and customer.
3	If there is no doubt, then you must accept that the customer is mentally capable and accept the EPoA.
4	Remind the attorney that they must contact us if the customer loses their capacity to act.
5	You should also let the attorney know that, although the benefit will be paid to them, the customer retains responsibility for reporting any change in their circumstances. This is an important consideration.

Part four

Attorney

4128 If the EPoA is accepted and payment is to be made to the attorney, they would have to be set up as the PAB on CIS – see para. 4166. Once that is done everything will go to the attorney. However, as the customer retains responsibility for disclosing changes, it is essential that they continue to receive any benefit correspondence.

4129 An unregistered EPoA is not valid in Scotland until it has been registered with the CP.

4130 - 4134

Customer with an Enduring Power of Attorney loses capacity

4135 To continue after the customer has lost mental capacity, the EPoA must be registered with the CP. The CP will then oversee how the attorney manages the financial affairs of the customer and investigate any complaints.

4136 An EPoA registered with the CP will have the CP stamp on the first page and on all subsequent pages - see Appendix 14.

4137 If the customer is not capable of managing their own affairs and the attorney has not applied to have the EPoA registered, the attorney does not have the authority to handle the benefit affairs of the customer. The powers are suspended.

4138 If this is the situation, you should explain the options to the attorney:

- to register the EPoA with the CP. They can do this by contacting tel 0845 330 2900 **or**
- that they could become the customer's appointee for benefit purposes.

Note: Explain that if it is the intention to register benefit will not be paid until proof of the application is received. If there is no intention to register but the attorney wishes to become an appointee, refer the case to a nominated officer to consider appointee action.

4139 Whatever the outcome, follow the instructions in Part 6 of the guide

4140

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.

4146 - 4149

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.
Please also see para 4121, bullet

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.

4154 - 4159

Power of attorney granted with specific powers

- 4160 If you receive a PoA granting specific powers and the attorney is enquiring about **payment** of benefit rather than a **claim** for benefit, make sure the PoA document includes one or more of the following acceptable forms of wording:
- '———to receive and give valid receipt for any money or property due owing or belonging to me on any account whatsoever'
 - '———to ask demand recover and receive and if need be sue for ———all moneys and all other ———personal property and effects of me and the Granter ———For me in my name to sign ———and give effectual receipts releases acquittances and discharges for all property or moneys to be received in manner aforesaid'
 - 'Power ———to execute documents of all kinds ———and to manage my property of whatsoever kind and wheresoever situate'
 - '———all my present and future affairs and concerning all my present and future property rights and interests real and personal and whether joint or several all of which I hereby place in the unrestricted power and discretion of my Attorney ———' **or**
 - 'To demand and sue for enforce payment of and receive and give discharge for all money and securities for money ———and other personal estate whatsoever now belonging due owing or deliverable or hereafter to belong or to become due owing or deliverable to me ———'.
- 4161 The only way to make payments in these circumstances would be to pay direct into a bank or building society account or to make clerical payments.

Power of attorney granted for a limited period

- 4162 If a customer grants a PoA for a limited period, you must note the end date to make sure the customer's attorney is reviewed, ie to establish if the customer intends to extend the PoA.
- 4163 If the PoA is not extended beyond the expiry date, take action to end the attorney relationship. For more information, see *Ending an OP/COP relationship* in Part six of this guide.

Suspicion of fraud or mismanagement by the Attorney - registered Power of Attorney

4164 If the customer is not able to manage their own affairs, there is an EPoA or LPA and there is evidence that the attorney is mismanaging the customer's benefit affairs the Secretary of State can make someone an appointee. However this should only be done after careful consideration of the evidence and after having spoken to the OPG. Consider very carefully if it is appropriate to make another person the appointee. **Note:** If the allegation is made by telephone, it is important that a record of the call is made.

Example:

The LA contacts the Department to explain that the customer's CH fees are not being paid. They have serious concerns regarding the attorney's management of the customer's financial affairs. They intend to alert the CP to their concerns, see *Enduring Power of Attorney registered with the Court of Protection* in this part of the guide.

Step	Action
1	Gather evidence that the attorney has been mismanaging the financial affairs of the customer.
2	Contact the OPG and alert them to the situation. Tel: 0845 330 2900. If you are of the view that the evidence clearly shows mismanagement, then you should make this point firmly. If you are also of the opinion that no further benefit should be paid to the attorney pending the OPG doing its own investigation you should say so. Remember that the Secretary of State has responsibility for the payment of benefit and he can withhold payment even where there is a court registered EPoA or LPA in existence.
3	If you decide that payment should be withheld, you must write to the attorney to let him know the situation. There is a draft letter at Appendix 6 that you could use.
4	Allow two weeks to respond.

5	If there is no reply, then you will need to consider an alternative method of payment. Given that the customer is incapable this could only be making someone an appointee. If there is someone then take normal appointee action. If there is not, you will have to contact social services. They may not act as the appointee but should be able to put you in touch with a local support service.
6	If the attorney replies and disputes the allegations, consider his reasons. If you accept them then take no further action. Let him know what you have decided and remind him of his responsibilities
7	If not satisfied, then you should arrange to interview the attorney as quickly as possible to discuss the situation. If you decide finally that no further payment should be made then write to the attorney and take appointee action as per para 5. At the same time let the OPG know what you have done. The attorney's redress in these circumstances would be Judicial Review.
8	If it transpires that the OPG absolves the attorney of mismanagement then you may be asked to revoke any other person appointed at step 5. You should do so.

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.

4171 - 4179

Attorney not empowered to act

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

Step	Action
1	inform the attorney they cannot act for the customer for Social Security purposes
2	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.

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)

- 4195 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

- 4196 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

- 4197 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 the 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

OVERSEAS ATTORNEY

PoA drawn up abroad

4206 Where you receive a PoA drawn up overseas you should seek advice from IPC.

4207

Capable customer with an existing attorney moves overseas and wants attorney (who is staying in GB) to retain their role

4208 No change in existing arrangement.

Attorney moving abroad, customer remaining in GB but wants attorney to retain role

4209 Only issue here is how the customer will access benefit if paid to the attorney. Assume they will sort this out.

4210 - 4211

Adults with Incapacity (Scotland) Act 2000

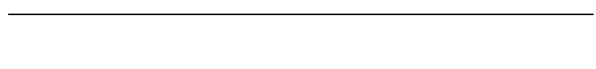
4212 Following the introduction of the Adults with Incapacity (Scotland) Act, Continuing PoAs granted on or after the 2 April 2001 are only valid, regardless of whether the customer is capable or incapable, **if** all the following conditions are met:

- the PoA is contained in a written document, signed by the customer **and**
- the PoA document includes a statement clearly expressing the customer's intention that the PoA should continue after they become incapable **and**
- the PoA document includes a certificate in a specified form signed by a solicitor, practicing advocate or registered medical practitioner, stating that they:
 - interviewed the customer immediately before the deed was signed
 - are satisfied, either from their own knowledge of the customer or after consultation with other named person(s) who know the customer, that the customer understands the nature and extent of the deed **and**
 - have no reason to believe the customer is acting under undue influence or any other factor which would render the deed invalid **and**
- the deed is registered with the OPG (the attorney will have received a copy of the deed with a certificate of registration).

An example of registered Continuing PoA is at Appendix 13.

4213 If a PoA is drawn up after 2.4.2001 in the old format, this is considered a **non-continuing** PoA. This would be valid while the customer retained capacity to manage their own affairs but would become invalid if the customer lost capacity to manage their own affairs.

4214 - 4219



Position in the order of authority

4220 In law a PoA or Continuing PoA is not a higher authority than an appointee for social security purposes, but where a valid PoA or Continuing PoA 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 PoA or Continuing PoA is unsuitable, e.g. there are grounds to suspect fraud, mismanagement or neglect.

4221 If an OP with a higher authority, eg guardian, curator bonis or tutor is already acting on behalf of the customer you cannot accept the attorney as the customer's OP.

4222 - 4229



Responsibilities of an attorney

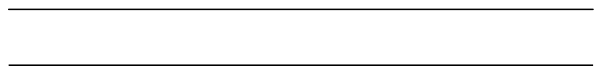
4230 If a customer grants full powers to their attorney, the attorney is empowered to act on the customer's behalf in all their financial affairs. This includes

- making a claim to benefit(s), including completing and signing any claim forms
- collecting/receiving benefit payments **and**
- reporting changes in circumstance.

4231 The attorney is also responsible for reporting any changes in their own circumstances that the Department may require, eg a change of name or address or change of account.

4232 If a PoA does not grant full powers, it will need to be established what powers have been granted. These might include power to receive benefit, to claim benefit, or both.

4233 - 4239



Powers granted to an attorney

Full powers

4240 If the customer grants their attorney powers to manage their estate/affairs, the attorney receives full power on behalf of the customer to handle their business and financial affairs.

This includes:

- making a new claim to Social Security benefits when there is no existing claim **or**
- making a claim for payment of Social Security benefits when there is an existing claim made by the customer and payment is due/already being made.

4241 - 4249

Specific powers

4250 If the customer grants their attorney specific powers, the powers may include the power to:

- make a claim for benefit **or**
- receive payment of benefit **or**
- both make a claim for and receive benefit.

For more information, see *Responsibilities of an attorney* in the Scotland section of this part of the guide.

4251 - 4259

Power of attorney granted for a limited period

4260 If a customer grants a PoA for a limited period, you must note the end date to make sure the customer's attorney is reviewed, ie to establish if the customer intends to extend the PoA.

4261 If the PoA is not extended beyond the expiry date, take action to end the attorney relationship. For more information, see *Ending an OP/COP relationship* in Part six of this guide.

4262 - 4269

Verifying the attorney is empowered

- 4270 If you receive a claim or enquiry from any person(s) or organization stating that they are the customer's attorney(s), ask to see the PoA document to verify that they have been granted PoA. If the PoA is dated on or after 2 April 2001 and the customer is mentally incapable or unable to communicate, the only acceptable evidence is a copy as returned by the Public Guardian together with his Certificate of Registration.

Photocopies

- 4271 You can accept a photocopy of the PoA document **provided** it includes a declaration that it is a true copy of the original signed by:

- the customer **or**
- a solicitor **or**
- a stockbroker.

For deeds registered in Scotland on or after 2 April 2001 they must bear the stamp of the OPG and have a certificate of registration.

- 4272 If the original deed is drawn up before 2 April 2001 and has been registered in the Books of Council and Session, a copy issued by the Registers of Scotland is acceptable provided it bears their official stamp.

Checking the power of attorney document is acceptable

- 4273 If the PoA was executed:

- **before** 1 August 1995, the customer **must** have signed the PoA document in front of two witnesses **or**
- **on** or **after** the 1 August 1995, the customer need only have signed the document in front of one witness.

4274 The Testing Clause (which appears above the signatures and after the words '**In witness whereof**')

- **must** include the:
 - full name and address of (both) witness(es) **and**
 - place and date of signing, and
- **may** contain the name of the customer, but may state only 'signed by me——'.

Acceptable wording for powers of attorney

4275 In all cases, make sure the PoA document includes one or more of the following acceptable forms of wording - note the distinction between those that only apply to the receiving of Social Security benefits and those that apply to both the receiving of **and the claiming of** Social Security benefits:

- these two clauses only extend to the receiving of, not the claiming of, Social Security benefits:
 - '——to receive and give valid receipt for any money or property due owing or belonging to me on any account whatsoever'
 - 'To demand and sue for enforce payment of and receive and give discharge for——all money and securities for money——and other personal estate whatsoever now belonging due owing or deliverable or hereafter to belong or to become due owing or deliverable to me ——'
- these five clauses extend to both the receiving of, and the claiming of, Social Security benefits:
 - 'with full powers to do everything which I could or can do myself, including without prejudice to the foregoing generality.'
 - 'Power——to execute and deliver documents of all kinds——and to manage my property of whatsoever kind and wheresoever situate'
 - '——with full power to my Attorney to act for me, either in my own name, or in the name of my Attorney and to do everything regarding my affairs and my estates,

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

4277 - 4289

Two or more attorneys

Power of Attorney document allows attorneys to act separately

- 4290 If the customer appoints two or more attorneys jointly and the PoA document authorizes them to act separately, you can pay benefit to whichever attorney makes the application, provided the PoA document meets the other requirements. For more information about the other requirements, see *Verifying the attorney is empowered* in the Scotland section of this part of the guide.

Power of Attorney document does not allow attorneys to act separately

- 4291 If the customer appoints two or more attorneys jointly and the PoA document does not authorize them to act separately, 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.

Either attorney declines to act on the customer's behalf

- 4292 When the customer appoints two or more attorneys jointly and the PoA document does not authorize them to act separately, a problem arises if one or more then decline to act on the customer's behalf. You cannot make payment to only one attorney in such a joint attorneyship.

- 4293 In these circumstances:
- 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 *Appointee* in Part five of this guide.

4294 - 4299

Attorney not empowered to act

4300 If the attorney is not empowered to act on behalf of the customer for Social Security purposes:

Step	Action
1	inform the attorney they cannot act for the customer for Social Security purposes
2	if the customer is incapable, refer the case to the nominated/appropriate officer to consider appointee action. For more information about authorizing an appointee, see <i>Appointee</i> in Part five of this guide

4301 - 4309

Attorney empowered to act

4310 After you verify the attorney is empowered to act on the customer's behalf for Social Security benefits, pensions and/or allowances, see *Action following verification of a PAB/COP* in Part six of this guide.

4311 - 4999

