Power of Attorney Guide

A Power of Attorney (POA) is a legal document whereby a person gives another person(s) the power to act on his behalf and in his name with regard to their financial affairs and/or their health and personal welfare.

The donor is the person who appoints another, or others, to act on his behalf or in his name. (In Scotland the term is grantor rather than donor).

An attorney is a person, or persons, who act on behalf of or in the name of the donor. The attorney must be at least 18 years old and not adjudged bankrupt. Attorneys can be appointed to act jointly, or jointly and severally (“jointly” means that all attorneys must sign or act together, whereas “jointly and severally” means that they can act together or separately).

There are significant differences between POA’s in England (and Wales) and Scotland, including different terminology.

The different types of POA and related documents are detailed below.

**ENGLAND AND WALES**

**Ordinary Power of Attorney (POA)**
- A POA is usually created for a set period of time in cases where the donor is going abroad or is unable to act for some other reason and wishes someone else to have the authority to act on his behalf. The authority granted can be general or limited to specific affairs.
- A POA will usually end either at a specified time or upon the request of the donor at any time using a Deed of Revocation and will automatically be revoked if the donor loses mental capacity or dies. There is no requirement for a POA to be registered.
- The attorney does not replace the donor, he only acts as the donor’s agent.
- A POA may specify what powers the attorney has and we will check to ensure that the actions the attorney is seeking to take are within the strict powers granted to him by the donor.
- A trustee can delegate his authority by a POA but such a POA must be time-limited for a period not exceeding one year from the date of the POA, and can have a time limit of less than one year.

**Enduring Power of Attorney (EPA)**
- The Mental Capacity Act 2005 replaced EPAs with Lasting Powers of Attorney from 1 October 2007. From this date it is no longer possible to create a new EPA.
- EPAs must be registered with the Office of Public Guardian when the donor can no longer manage their own affairs (or when they start to lose capacity). EPAs can be used before being registered so long as the donor retains the necessary mental capacity to manage their affairs. During this time the donor can still act in their own right, until the Power of Attorney is registered.
- Existing but un-registered EPAs can continue to be registered after 1 October 2007.
- The donor can limit the authority of the attorney, so we will check the document to ascertain the powers given.

**Lasting Power of Attorney (LPA)**
- LPAs were introduced by the Mental Capacity Act 2005 from 1 October 2007.
- A LPA can have powers either of Personal Welfare, or of Property & Affairs (the second of which would be what we would require in terms of dealing with our policies).
- Property & Affairs LPAs can be used while the donor still has capacity to manage their own property and affairs, so long as the donor does not specify otherwise in the LPA.
- A Personal Welfare LPA cannot be used unless it is registered with the Court of Protection.
- Once the donor has lost or started to lose mental capacity, a LPA cannot be used unless it is registered with the Court of Protection.

Continued overleaf
**Deed of Revocation**

A Deed of Revocation can be used to cancel:

- a POA, at any time after the Power has been granted;
- an EPA, at any time prior to registration of the Power and while the donor is still mentally capable; or
- a LPA, at any time while the donor still has mental capacity.

**SCOTLAND**

**General Power of Attorney (GPA)**

A Scottish GPA has the same features as a POA in England and Wales.

**Continuing Power of Attorney (CPA)**

- A CPA allows the grantor to appoint a legally authorised person to look after their property and financial affairs should they become incapable of doing so themselves at some point in the future. CPAs must contain a statement that clearly expresses the grantor’s intention that the Power will be a continuing one. If not, it will end on incapacity.
- A CPA must be registered to take effect.
- A CPA must contain a certificate, in a prescribed form, signed by a solicitor, confirming that:
  - he has interviewed the grantor immediately before the grantor signed the deed;
  - he is satisfied, either because of knowledge of the grantor or because of consultation with another person who has knowledge of the grantor, that at the time of signing the grantor understands its nature and extent; and
  - he has no reason to believe that the grantor is acting under undue influence.
- This certificate can be incorporated into the Power of Attorney or stapled to the document.
- A CPA may be revoked using a Deed of Revocation at any time, either before or after registration, while the grantor still has mental capacity or in the event they regain it.

**Welfare Power of Attorney (WPA)**

- A WPA allows a grantor to appoint attorneys to make decisions about the health and welfare of the donor in the event of mental incapacity. It may be revoked using a Deed of Revocation at any time, either before or after registration, while the grantor still has mental capacity or in the event they regain it.
- A WPA can only be used if both the WPA is registered and the grantor has lost mental capacity.
- A single Power of Attorney can be written to include both Continuing and Welfare powers.
- A WPA must contain a certificate, in a prescribed form, signed by a solicitor, confirming that:
  - he has interviewed the grantor immediately before the grantor signed the deed;
  - he is satisfied, either because of knowledge of the grantor or because of consultation with another person who has knowledge of the grantor, that at the time of signing the grantor understands its nature and extent; and
  - he has no reason to believe that the grantor is acting under undue influence.
- This certificate can be incorporated into the Power of Attorney or stapled to the document.

**Deed of Revocation**

A Deed of Revocation can be used to cancel:

- a GPA, at any time after the Power has been granted; or
- a CPA or WPA, at any time (either before or after registration) while the grantor still has mental capacity or in the event they regain it.