

ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

FACTSHEET NO. 1 -

How to register a Continuing or Welfare Power of Attorney (POA)



All POAs that are to either begin or continue in the event of incapacity must be registered with the OPG before they can be used. This applies to all POAs granted on or after 2 April 2001.

What documentation should be sent to OPG?

The following documents should be sent to OPG along with the registration fee:

- The original POA document, which must be a valid document as set out in sections 15 (3) and 16 (3) of the Act.
- The required certificate (statutory instrument No. 56, Schedule 1) must be incorporated in the POA. The certificate may be completed by either a registered and licensed medical doctor, a practising solicitor or a practising member of the Faculty of Advocates.
- A completed registration form which has been signed by the attorney(s).

Information regarding the current registration fee can be found on our website or by calling the OPG. Cheques should be made payable to “Scottish Court Service”.

What happens once the documentation is sent to OPG?

On receipt of the documentation, it will be checked and if it meets with the registration requirements, the OPG will issue a copy of the document along with a certificate of registration to the sender. If it has been specified in the POA document, the OPG will send a copy of the POA to the two specified persons. Where a welfare attorney has been appointed the Public Guardian shall give notice of the registration of the POA to both the local authority and the Mental Welfare Commission. The Public Guardian will also add the relevant information to the public register he has to maintain in terms of the Act.

Circumstances that prevent a continuing / welfare POA being registered

The POA will not be registered by the Public Guardian when: -

- There is a statement included in the POA that it shall not be registered until such time as a specific date or event has passed and the Public Guardian is not satisfied that such a date or event has passed (this is known as a springing clause).
- The Public Guardian is not satisfied that the attorney named is prepared to carry out his duties.

Further Information

Further information and guidance is available from the staff at OPG. However, if you require legal advice, you may wish to contact a legal adviser.

Office of the Public Guardian (Scotland)
Hadrian House
Callendar Business Park
Callendar Road
FALKIRK, FK1 1XR

DX: 550360 Falkirk 3
LP: LP-17 Falkirk

- Telephone: 01324 678300
- Fax: 01324 678301
- Email: opg@scotcourts.gov.uk
- Website: www.publicguardian-scotland.gov.uk