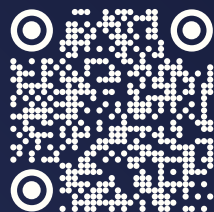


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Power of Attorney
FAQs



What is a Power of Attorney?

A Power of Attorney is a written, legal document giving someone else (your Attorney) authority to take actions or make decisions on your behalf (the granter). You choose the person(s) you want to act as your attorney and what powers you want the Attorney to have. A Power of Attorney is intended to ensure that your financial affairs and personal welfare can still be dealt with/protected in the event of you being unable to act on your own behalf.

What is incapacity?

If you lose capacity it means that you are no longer able to look after your own financial and personal affairs, perhaps due to illness e.g. dementia/stroke etc. The Adults with Incapacity (Scotland) Act 2000 sets out certain situations in which you could be deemed to be incapable. These are: -

- incapable of acting on decisions; or
- incapable of making decisions; or
- incapable of communicating decisions; or
- incapable of understanding decisions; or
- incapable of retaining the memory of decisions in relation to any particular matter due to mental disorder; or
- incapable of communicating due to physical disability.

Are Powers of Attorney not just for elderly people?

No - anyone over the age of 16 can grant a Power of Attorney. Accidents or illness can happen at any age. The sooner a Power of Attorney is completed, the better. The deed does not need to be registered straight away - it can be stored in your solicitor's safe and only registered when your attorneys require to commence acting.

Are Powers of Attorney not just for the wealthy?

No - a Power of Attorney is not just about looking after your financial affairs. It also allows you to choose who should decide personal welfare issues (e.g. where you live/who looks after you etc.).

I am married and have grown up children, surely my family can act for me and make decisions on my behalf?

No - no-one has an automatic right to do this. There must be a legal document by you appointing your chosen person/persons as your attorney. If no one is legally appointed by you to act, then they do not have authority to do so.

Who should I appoint as my Attorney?

You can appoint anyone you wish to be your attorney, e.g. a family member, friend, solicitor or other professional adviser. It is up to you whether you include the same person(s) as both financial and welfare attorneys, or if you have separate attorneys to carry out the different functions.

It is better to appoint more than one attorney in case your attorney is unable to act for any reason - you can appoint joint attorneys with similar or different powers, or one or more substitute attorneys to take the place of an attorney who dies, loses capacity or resigns.

What sorts of powers can be included in the Power of Attorney deed?

The deed can cover both financial and welfare provisions or you can have separate deeds to cover your financial affairs and welfare matters.

The financial provisions can include power to purchase and sell heritable property (i.e. your house), power to operate bank accounts, power to claim and receive all pensions, benefits, allowances, etc. There are many other powers which can be included or left out as appropriate, depending on your circumstances.

Welfare powers can include power to decide where you should live, to have access to your personal information, to consent or withhold consent to medical treatment. There are many other powers which can be included to ensure that all appropriate powers are available to meet your needs.



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

If the Power of Attorney is simply being used as a "rainy day" document and you do not need your attorney to exercise their powers immediately, it can simply be stored in a safe place, e.g. the safe at your solicitor's office, until it is required.

If you wish your attorney to act immediately, the document must be registered with The Office of the Public Guardian. The deed itself, together with a registration form signed by your attorney and the registration fee (currently £96) is sent to the Public Guardian and once the deed has been registered, the Office issues a certificate to your solicitor and to you.

Once the Power of Attorney has been registered the financial powers can be exercised as soon as you require your attorney to act for you, even if you still have capacity, but the welfare powers are only effective once you lose capacity, i.e. once you are no longer able to act on your own behalf.

What if I appoint my husband/wife as my attorney and then we split up?

Unless the Power of Attorney deed specifically provides otherwise, your spouse's powers to act on your behalf would cease upon your formal separation or divorce.

If my Power of Attorney is registered, can I still change my mind?

As long as you have capacity, you can revoke the powers granted in your Power of Attorney. To do so, you must give written notice to The Office of the Public Guardian.

How will my attorney know my feelings/wishes if I lose capacity?

You should discuss both the financial and welfare powers with your attorney and make sure that they know what decisions/actions you would wish to be taken on your behalf in the event of you losing capacity.

At TC Young, we provide our clients with a questionnaire which covers these practical matters and includes questions on the granter's views as to how they would like to be cared for if they become unwell; details of hobbies, activities and places they like to visit; and names of medical practitioners, dentist, optician, orthopedic practitioners. We encourage clients to complete the questionnaire so that their feelings on these practical matters are recorded. This document would be used by the attorney once they are required to act as the attorney must take into account the granter's past and present wishes.