

# UK POWERS OF ATTORNEY



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# Understanding Powers of Attorney in England, Wales, and Scotland



A Power of Attorney (PoA) is a legal document that allows one person (the donor) to delegate authority to another person (the attorney) to act on their behalf in legal, financial, and medical matters. This is particularly useful for individuals who may become incapacitated or are frequently away and require assistance in managing their affairs.

A Power of Attorney ensures that a trusted individual can make decisions and carry out transactions in the donor's best interest, preventing legal and financial complications. Without a PoA, individuals may have to rely on court-appointed deputies, a process that can be costly and time-consuming, particularly in urgent situations such as accessing bank accounts, selling property, or making healthcare decisions.

## Types of Power of Attorney in England and Wales

- **General Power of Attorney**

A General Power of Attorney (GPA) grants the attorney broad authority to manage the donor's affairs, typically for a temporary period. However, it becomes invalid if the donor loses mental capacity.

- **Lasting Power of Attorney (LPA)**

A Lasting Power of Attorney (LPA) is a legally binding document that remains valid even if the donor loses mental capacity. It must be registered with the Office of the Public Guardian (OPG) before it can be used.

- There are two types of LPA:

- LPA for Property and Financial Affairs – Allows the attorney to manage bank accounts, pay bills, sell property, and make financial decisions.
- LPA for Health and Welfare – Grants authority over medical treatment, care arrangements, and life-sustaining treatment decisions.

- **Enduring Power of Attorney (EPA)**

EPAs were replaced by LPAs in 2007 but remain valid if signed before that date. Unlike LPAs, an EPA only needs to be registered with the OPG once the donor starts losing mental capacity.

## Powers of Attorney in Scotland

Scotland has its own framework for PoA, governed by the Adults with Incapacity (Scotland) Act 2000. There are three main types:

- Continuing Power of Attorney (CPA) – Allows attorneys to manage the donor's assets and continues even after the donor loses mental capacity.
- Welfare Power of Attorney (WPA) – Grants attorneys the ability to make decisions about medical treatment and care.
- General Power of Attorney – A temporary document used when the donor retains capacity but needs someone to act on their behalf.

All Scottish PoAs must be registered with the Office of the Public Guardian (Scotland) before they become valid.

## Legal Basis for Powers of Attorney in the UK

The legal framework for PoA in England and Wales is primarily based on:

- **Mental Capacity Act 2005** – Establishes the rules for creating LPAs and the duties of attorneys.
- **Powers of Attorney Act 1971** – Governs General Powers of Attorney.
- **Public Guardian Act 2000** – Provides oversight through the Office of the Public Guardian.

In Scotland, the key legislation is the **Adults with Incapacity (Scotland) Act 2000**, which regulates the creation and use of PoAs.

## Pitfalls and Risks of Power of Attorney

### 1. Risk of Abuse

Attorneys have significant control over a donor's affairs, which can lead to financial mismanagement or exploitation. To mitigate risks, donors should choose trustworthy attorneys and set clear limits in the PoA.

### 2. Invalidity Due to Incorrect Formalities

If a PoA is not signed, witnessed, or registered correctly, it may be deemed invalid. LPAs and Scottish PoAs must be registered before they can be used.

### 3. Court Intervention and Delays

Without a valid PoA, family members may need to apply for a Deputyship Order (England and Wales) or a Guardianship Order (Scotland) to manage the affairs of an incapacitated person. This process is costly, time-consuming, and requires ongoing court supervision.

### 4. Expiry and Revocation

A GPA is automatically revoked if the donor loses mental capacity. LPAs, CPAs, and WPAs remain valid unless revoked by the donor or canceled by the OPG due to misconduct.

## Conclusion

A Power of Attorney is a crucial legal tool for individuals who want to ensure that their financial, legal, and medical affairs are managed effectively in their absence or in case of incapacity. Without one, family members may face court intervention and delays, especially in urgent situations.

To ensure legal certainty, individuals should:

- Seek professional legal advice when drafting a PoA.
- Register LPAs and Scottish PoAs with the Office of the Public Guardian.
- Set clear limitations on the powers granted to attorneys.
- Regularly review and update their PoA to reflect changing circumstances.

By understanding the different types of PoA and their legal implications, individuals in England, Wales, and Scotland can safeguard their interests and ensure smooth management of their affairs in the future.