

Factsheet

Future planning: Managing my affairs

There may be a time when you have difficulty making certain decisions, and need someone to act or decide for you.

This factsheet explains how you can prepare for someone you trust to manage your money, or make decisions about your care and welfare in the way you would wish.



Call free on 0800 319 6789
Visit independentage.org

About Independent Age

No one should face financial hardship in later life.

Independent Age is a national charity providing support for older people facing financial hardship. We offer free impartial advice and information on what matters most: money, housing and care.

We financially support local community organisations across the UK through our grants programme. We campaign for change for older people struggling with their finances.

You can call us on freephone **0800 319 6789** (Monday to Friday, 8.30am to 5.30pm) or email helpline@independentage.org to arrange to speak to one of our advisers.

To donate or help support our work, please visit independentage.org/support-us.

In this factsheet, you'll find reference to our other free publications. You can order them by calling **0800 319 6789** or by visiting independentage.org/publications.

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1. Why plan for the future?

Thinking about how you would like to manage your affairs in the future is a way to stay in control of how your property, financial affairs, health and wellbeing are looked after.

By thinking about your future now, you can explore the different options available to you if your health changes. It is also useful to talk about your future with people you trust, because they can support you as you make these decisions.

This factsheet outlines your options if you are physically unable to manage your affairs – this could be because you are staying in hospital for a while, for example. It also tells you how to plan to manage your affairs if you lose mental capacity to make certain decisions.

‘Mental capacity’ means the ability to make a decision at the time it needs to be made. People can lose mental capacity because of a condition such as a mental health problem, dementia or a learning disability. It can also be caused by physical health problems, such as a stroke. Someone who lacks mental capacity cannot do one or more of these four things:

- understand the information needed to make a particular decision
- hold on to that information long enough to make the decision
- use or weigh up the information to make the decision
- communicate their decision.

For more information, see our factsheet
Future planning: Mental capacity.



To do

If you would like to talk to somebody about ways to manage your affairs in the future, contact our Helpline for free on **0800 319 6789** or email **helpline@independentage.org** to arrange to speak to an adviser.

2. Arranging for someone to manage your financial affairs on your behalf

If you have mental capacity and can make your own decisions, there are ways you can organise your financial affairs so you can manage them more easily.

Set up a direct debit or standing order

Setting up direct debits or standing orders on your bank account makes sure your bills, loans and subscriptions are paid on a regular basis without you needing to arrange this each time. This is a simple way of managing your finances without anyone else needing to get involved.

To set up a direct debit, contact the company that you are paying, and ask for a direct debit instruction form. You can sometimes set up a direct debit over the phone or online. The company should tell you in advance how much they'll take and when.

A standing order is an instruction you give to your bank to regularly pay out a fixed sum of money to another account. This may be helpful if you are paying a person or organisation on a regular basis – for example, if you give someone a regular amount of money to do your shopping. A standing order gives you more control than a direct debit because you can start, stop or change the payment whenever you want.

Give someone access to your bank account

You can instruct your bank or building society to give someone you trust access to your bank account – this is known as a third-party mandate. You can decide what you want them to be able to do, such as withdraw a maximum amount or check your balance. Speak to your bank about how to set up a third-party mandate – the bank may have a standard form for you to fill in. The mandate may become invalid if you lose mental capacity at any time after setting it up.

Your bank or building society may accept a letter from you asking them to allow someone you trust to have access to your account if you're unable to get to the bank – perhaps because you're in hospital. Ask your bank or building society if they offer this and, if so, how to organise it. However, because of the risk of fraud, some financial institutions may not accept a letter of authority and may ask you to set up a third-party mandate. This will allow someone to manage your day-to-day banking but not to close or open accounts, or apply for an overdraft in your name.



Important

Don't give anyone your own card and PIN for your bank account, or any other account. This would go against security rules and you might not be protected if money goes missing.

Set up a joint account

You can set up a joint bank account with another person to give them direct access to your money. Both of you will be given a debit card to withdraw money from the account. You must completely trust this person to follow your wishes, because they can legally withdraw all the money from the account without your permission. You may also be held liable for any debts the other person builds up on your joint account. Contact your bank if you would like to set up a joint account.



Good to know

If you lose mental capacity, the bank can decide to restrict the other person's use of your joint account unless an attorney, deputy or guardian can legally act on your behalf (for England and Wales, see [chapters 4](#) and [6](#); for Scotland, see [chapters 7](#) and [9](#)).

Get someone else to collect your benefits

If your benefit is paid into a bank, building society or credit union account, contact your account provider to ask if they can let you name someone, such as a trusted relative or friend, to access your account on your behalf. You might have to fill in a third-party mandate form provided by your bank. This should be a temporary measure. If you need someone to permanently collect or manage your benefits for you, you could consider setting up an appointee (see below).

Set up an appointee to collect your benefits

An appointee can manage your benefits for you if you cannot manage them or act for yourself and haven't set up a power of attorney for property and financial affairs (see [chapter 4](#) or [7](#)). They can only manage your benefits.

If you live in England or Wales, the Department for Work and Pensions (DWP) will appoint someone, such as a close relative, to receive your benefits on your behalf. They may call or visit that person to check they are suitable.

If you live in Scotland, some benefits are now administered by Social Security Scotland. You will need to contact them directly if this is the case for your benefit ([0800 182 2222](tel:08001822222), mygov.scot/acting-on-behalf-of-someone-claiming-benefits).

Your appointee's responsibilities include:

- telling the benefits office about any changes that may affect how much you receive
- spending the benefits in your best interests
- paying back any overpaid benefits.

Access to Funds scheme

If you live in Scotland, you may also be able to use the Access to Funds scheme. This scheme allows another person, organisation or local authority to access your money if you can't manage it yourself anymore.

You can only use this scheme if you want someone else to manage simple parts of your finances, like paying your day-to-day expenses, paying off debts you already have or buying specific items.

To apply for access to funds, contact the Office of the Public Guardian (Scotland) (**01324 677140**, publicguardian-scotland.gov.uk/access-to-funds).



Good to know

If you already have an approved appointee for a benefit, you can ask your local council if that person can also be your appointee for Housing Benefit or Council Tax Support, if you claim these.



To do

If you want to become an appointee for a friend or relative, contact the relevant benefit helpline.

Attendance Allowance

Contact the Attendance Allowance helpline on **0800 731 0122**.

Disability Living Allowance

Contact the disability benefits helpline on **0800 731 0122** (if you were born on or before 8 April 1948) or **0800 121 4600** (if you were born after 8 April 1948).

State Pension

Contact your local pension centre or call the Pension Service on **0800 731 0469**.

Personal Independence Payment

Contact the Personal Independence Payment new claims line on **0800 917 2222**.

Adult Disability Payment (Scotland only)

Contact Social Security Scotland on **0800 182 2222**.

For more information about becoming an appointee, visit gov.uk/become-appointee-for-someone-claiming-benefits.

Most benefits in Scotland are still provided by the UK Government. For benefits provided by Social Security Scotland – for example, Adult Disability Payment and Carer Support Payment – visit mygov.scot/acting-on-behalf-of-someone-claiming-benefits.

3. How attorneys should make decisions

If you think you may need more help to manage your affairs in the future because your capacity to make decisions may change, you might want to think about appointing an attorney. A power of attorney is a legal document that lets you give someone you trust (the attorney) the authority to make certain decisions for you. You may need more than one type of attorney to cover the different decisions that you'd like them to make for you. There is more information about the different types of attorney across the UK in [chapters 4](#) and [7](#).

In England and Wales

For every type of power of attorney, an attorney must always make decisions in your best interests. The Mental Capacity Act Code of Practice says this means your attorney must:

- do everything they can to involve you in making a decision
- try to identify the things you would have taken into account when making a decision, such as your culture and any religious beliefs
- not make any assumptions about you simply based on your age, appearance, condition or behaviour
- consider whether you might regain the ability to make decisions for yourself
- consider any past and present views, beliefs and values that might influence a decision you would make
- if appropriate, consult others who are interested in your welfare – such as your friends and relatives or anyone caring for you – to see what you would have wanted
- look for options that restrict your rights the least.

If you want to read the whole code, visit gov.uk/government/publications/mental-capacity-act-code-of-practice.

In Scotland

In Scotland, the rules about how an attorney must act are written in the Code of Practice For Continuing and Welfare Attorneys. It sets out five principles for your attorney to follow when making a decision for you. Your attorney must:

1. make any decision for your benefit – and this decision must be the only way to achieve that benefit
2. make sure any decision restricts you as little as possible
3. think about all your wishes and preferences, and take them into account when they decide what to do – your attorney has to try their best to understand what your wishes are, by talking with you using any communication aids you may need, such as memory aids, pictures, sign language, or a speech and language therapist
4. ask people close to you – like your family, friends, carers or any other attorneys you have – what they think about any decision
5. help you use your skills to make decisions, or help you get new skills that will make it easier for you to make decisions.

To read the whole code, visit

gov.scot/publications/code-practice-continuing-welfare-attorneys-second-edition-updated-february-2018/documents.

If you have been granted power of attorney and want advice about how you should and shouldn't act, contact the:

- Office of the Public Guardian (OPG) (**0300 456 0300**, gov.uk/opg), which is for England and Wales
- Office of the Public Guardian (Scotland) (**01324 678398**, publicguardian-scotland.gov.uk) in Scotland.



Important

The OPG Scotland can only offer advice to attorneys who have control over property or finances, not control over welfare. If you're worried about the welfare of someone who does not have mental capacity, contact the Mental Welfare Commission for Scotland (**0800 389 6809**, mwscot.org.uk) or your local council's social care department (mygov.scot/social-services).

For more information about mental capacity and making decisions for other people, read our factsheet **Future planning: Mental capacity**.

Reporting concerns about an attorney or deputy

If you're worried that someone making decisions for you isn't doing their job properly, contact the OPG (**0115 934 2777**, gov.uk/report-concern-about-attorney-deputy) or the OPG Scotland (**01324 678398**, publicguardian-scotland.gov.uk/power-of-attorney/registration/concern-about-continuing-attorneys).

If you feel serious financial, physical or other forms of abuse are taking place, you should contact the police in an emergency or if a crime has happened. You can also contact the council's adult social services department and ask to speak to the safeguarding adults team. Read our guide **Staying in control** for more information on safeguarding.

4. Power of attorney in England and Wales

In England and Wales there are different types of power of attorney, including:

- lasting power of attorney (LPA)
- enduring power of attorney (EPA)
- general power of attorney.

For any of these, you can specify in the agreement exactly what decisions your attorney can or can't make on your behalf. This may be important if there is the potential for disagreements between family members or friends as to what decision might be in your best interests. You can also write down any important preferences or instructions to help the attorney carry out their role.

You, your attorney and a witness will all need to sign the form. You'll also need a 'certificate provider' to confirm that you understand the power of attorney agreement and haven't been put under any pressure to set it up. The certificate provider should be someone you know well or a professional, such as your GP or a solicitor.

The job of the certificate provider is to make sure that you know what you are agreeing to, and that you aren't being forced or pressured into agreeing to it. To be sure that they are doing this properly, they:

- must not be involved in your application other than certifying it
- can't be related to you or your attorney(s)
- must have known you well for at least two years.

What is an LPA?

An LPA gives someone you trust the legal power to help you deal with your affairs, or make decisions for you in the future, if you lose mental capacity. LPAs have replaced EPAs, although you can still use an EPA in some circumstances (see [page 18](#)).

There are two types of LPA:

- **Property and financial affairs** – which lets the attorney make decisions about your money and property. This could include managing your bank account, paying bills, collecting benefits or pensions, or selling your house. It can be used as soon as it is registered, with your permission. Your attorney must keep their own money separate and keep accounts of how they use your money.
- **Health and welfare** – which lets the attorney make decisions about your personal welfare, care and healthcare. This could include decisions about your daily routine – such as washing, dressing or eating – medical care, moving into a care home or receiving life-sustaining treatment. It can only be used when you are unable to make your own decisions.

You can have the same attorney for both types of LPA, but you have to apply on different forms to set up each one.

Both types of LPA need to be registered with the Office of the Public Guardian (OPG) (**0300 456 0300**, gov.uk/opg) before the documents can legally be used.

The OPG produces a leaflet called *What happens when I can no longer make decisions for myself?*, which explains the benefits of setting up an LPA (gov.uk/government/publications/who-needs-a-lasting-power-of-attorney).



Good to know

If you don't arrange an LPA and you lose mental capacity, someone must apply to the Court of Protection and pay a fee to appoint a deputy to look after your interests – see [page 24](#).

Who can be my attorney?

Your attorney can be given complete authority over your financial affairs and your personal welfare, so it's important that you choose someone you feel you can trust completely to make decisions in your best interests.

Your attorney could be a family member, friend, spouse, partner or a professional such as a solicitor. A solicitor can charge a fee to take on this role.

An attorney must be over 18 and have the mental capacity to make their own decisions. Your attorney won't get any money for their role, unless they're a professional, but they can claim back limited expenses, such as postage, certain travel costs or photocopying costs. They should keep receipts and invoice you.

You may wish to appoint more than one person as an attorney. If you do this, you will have to say whether your attorneys can:

- make decisions on their own
- make some decisions on their own and others together, or
- must all agree on a decision.

If you decide that your attorneys must act jointly on a decision, they must all agree – otherwise the decision cannot be made.

How do I set up an LPA?

You need to complete an official form from the OPG and send it to be registered. It can take up to 20 weeks to register an LPA. You will need to complete separate forms if you decide to set up both an LPA for property and financial affairs and an LPA for health and welfare.

You can specify exactly what decisions your attorney can or can't make on your behalf in your LPA form – although keep in mind that, if you have multiple attorneys, you can't ask a specific attorney to do a specific act. This may be important if there is the potential for disagreements between family members or friends as to what decision might be in your best interests.

You can write down any important preferences or instructions to help the attorney carry out their role. You can also name 'people to notify', who will be told when the LPA is registered.

You, your attorney and a witness will all need to sign the form. When you create an LPA, you also need someone to act as a certificate provider. You need a certificate provider to confirm that you understand the LPA and haven't been put under any pressure to set it up.

Finding a certificate provider

A family member cannot be a certificate provider. The certificate provider should be someone you know well or a professional, such as your GP or a solicitor. They must have known you for at least two years.

The role of the certificate provider is to confirm that:

- you (the donor) understand the LPA at the time that it was created
- there is no fraud or undue pressure on the donor to make an LPA, and
- there is no other reason that an LPA cannot be executed.

Your certificate provider must not be:

- an attorney or replacement attorney named in the LPA or any other LPA or EPA you have
- a member of your family or of one of the attorneys' families, including husbands, wives, civil partners, in-laws and step-relatives
- your unmarried partner, boyfriend or girlfriend, or your attorney's (whether or not they live at the same address)
- your or your attorney's business partner

- your or your attorney's employee
- an owner, manager, director or employee of the care home where you live.

Lasting power of attorney fees

It costs £82 to register each LPA.

You may be able to pay a reduced fee (remission) or not pay a fee at all (exemption). This is if you're on a low income or receiving certain benefits like Pension Credit, Housing Benefit or Council Tax Support.

You (or the person applying on your behalf) will need to send proof of your income. You'll also need to send copies of letters from your benefit provider showing you were receiving the benefit(s) at the time you applied to register.

You can also get 50% off the fees if you earn less than £12,000 a year, before taxes. You will need to be able to give evidence that you qualify for these reductions with your LPA form.

To apply for a remission or exemption, you must:

- fill in form LPA120A and sign the declaration
- gather supporting evidence
- send the OPG form LPA120A and your evidence along with your LPA or EPA forms when you apply to register.

For more information about reduced fees, visit gov.uk/government/publications/power-of-attorney-fees.



Good to know

The LPA forms can be filled in online, or you can download all the relevant forms – and guides on completing an LPA – from the OPG website (gov.uk/power-of-attorney/make-lasting-power).

The OPG also has detailed guides to help people who have been appointed as attorneys under an LPA, or who are thinking of taking on the role (gov.uk/government/publications/how-to-be-an-attorney).

What happens to existing EPAs?

LPAs have replaced EPAs.

An EPA allows an attorney to make financial decisions for someone who couldn't make such decisions. It can also be used while someone still has mental capacity, as long as they have given their permission to the attorney. You can no longer set up a new EPA but, if you already have one set up correctly, it remains valid. Alternatively, you can choose to cancel your EPA and set up an LPA for property and financial affairs.

If you have set up an EPA and you lose mental capacity, your attorney must register the EPA with the OPG to start using it, or to continue using it if they already had your permission to start using it. It costs £82 to register an EPA, unless you are on a low income or on certain benefits. You can find out more at gov.uk/enduring-power-attorney-duties/register-an-enduring-power-of-attorney or contact the OPG (0300 456 0300).



To do

If you have an EPA set up, you may also wish to set up an LPA for health and welfare to give someone the authority to make decisions about your health and care.

General/ordinary and limited powers of attorney

You can set up a general power of attorney if you need someone to act for you for a temporary period. This could be, for example, while you're in hospital or unable to take care of things because of ill health or if you're out of the country for some time. It's valid only while you have mental capacity. This is sometimes called an ordinary power of attorney.

A general power of attorney allows one or more people you trust, like a relative, friend or neighbour, to deal with your affairs. They can deal with things like money, finances and property. You are known as the donor and the person you appoint to manage your financial affairs is the attorney.

You can let your attorney manage your affairs with no restrictions or give them specific powers. This is sometimes called a limited power of attorney. For example, you could state whether you will only let your attorney:

- sell your property on your behalf
- have access to your bank account
- make payments for you
- withdraw money from your account
- set up or cancel direct debits from your account
- sign cheques on your behalf.

You must have mental capacity to set up a general or limited power of attorney, because you will need to decide how your attorney deals with your affairs and be able to supervise their actions.

You can remove the attorney's powers if you think they're not managing your money in your best interests, or you no longer need their help. It's best to do this with a written statement called a letter or deed of revocation. You may want to get legal help to do this. Tell your attorney and any relevant banks and financial organisations that you're ending the power of attorney and note it on the power itself.

How do I set up a general or limited power of attorney?

A general power of attorney can be set up using basic wording specified in the Powers of Attorney Act 1971. It's important to get the wording right when setting up a limited power of attorney, so you may want to ask a solicitor or another adviser – such as at your local Citizens Advice – to write the document for you.

You don't need to register a general or limited power of attorney with the OPG or Court of Protection. It can be used once the document has been set up properly and signed.



To do

To find a legal representative at your local Citizens Advice (if they have one), contact:

- England – **0800 144 8848**
- Scotland – **0800 028 1456**
- Wales – **0800 702 2020**
- **citizensadvice.org.uk**.

You might be able to get free initial legal advice through a Law Works legal advice clinic (**lawworks.org.uk**), or from the Disability Law Service (**020 7791 9800**, **dls.org.uk**).

To find a solicitor in your local area, contact the Law Society (**020 7320 5650**, **solicitors.lawsociety.org.uk**) or Law Society Scotland (**0131 226 7411**, **lawscot.org.uk**).



Good to know

A general or limited power of attorney becomes invalid if you lose mental capacity. If you want someone to be able to act as your attorney both now (with your permission) and in the future if you lose mental capacity, you could set up an LPA for property and financial affairs instead (see [page 14](#)). An LPA must be arranged while you still have capacity to make the decision.

If you would like to find out more about mental capacity, read our factsheet [Future planning: Mental capacity](#).

5. Ending or changing a lasting or enduring power of attorney in England and Wales

If you still have mental capacity, you can end your lasting power of attorney (LPA). You can only change your LPA in certain ways – for example, if you want to add another attorney, you need to end your LPA and make a new one.

You can end an enduring power of attorney (EPA) but you can't make changes to it – you'll need to cancel it and set up an LPA instead, if you have mental capacity.

Ending or changing an LPA

To end an LPA, you'll need to send a written statement called a deed of revocation to the Office of the Public Guardian (OPG), along with the original LPA. You'll need to use specific wording for it. Once you've ended your LPA, you'll need to make a new LPA and send it to the OPG with new fees.

The government website has detailed information about this (gov.uk/power-of-attorney/end) or you can call the OPG (0300 456 0300).

If you want to change your LPA by removing someone from it, you can make a partial deed of revocation. Again, you'll need to include specific information when writing this (gov.uk/power-of-attorney/end).

Send your completed deed with the original registered LPA to the OPG. You'll also need to inform your attorney that you're ending the LPA.

Your attorney can also end an LPA by stating that they no longer wish to carry out the role. To do this, they have to complete a form and send it to you, the OPG and any other attorneys involved (gov.uk/government/publications/disclaim-a-lasting-power-of-attorney).

Ending an EPA

If you still have mental capacity, you can cancel an EPA before it is registered by the OPG. Details of how to do this can be found at gov.uk/use-or-cancel-an-enduring-power-of-attorney or by calling the OPG (**0300 456 0300**). Your attorney can also end their role in an EPA by stating that they no longer wish to carry out the role.

Your registered EPA can only be revoked if the Court of Protection confirms the revocation. There are two forms to fill in and a fee of £371 for this. You may not have to pay if you're on a low income or on certain benefits.

Other ways a power of attorney can end

Your power of attorney will end automatically if you die. It may also end if your attorney dies, loses mental capacity or is found to have abused their power, depending on whether there are other attorneys who can still act.

For an EPA or a property and financial affairs LPA, the power of attorney will end if you or your only attorney become bankrupt.

For a registered LPA or EPA, if you are the attorney for someone who has died, inform the OPG (**0300 456 0300**) of the death. You'll need to send them the power of attorney document and all certified copies.

If more than one attorney was appointed to make decisions jointly and one attorney decides to stop acting, the remaining one can no longer continue acting as an attorney, unless specified in the LPA.

6. What happens in England and Wales if someone has lost capacity but not set up a power of attorney?

If someone has already lost mental capacity but hasn't set up an enduring (EPA) or lasting power of attorney (LPA), the Court of Protection can appoint a deputy to make decisions on their behalf.

The Court of Protection

The Court of Protection can make decisions about the property, financial affairs and/or healthcare and personal welfare of adults who lack capacity. It can:

- decide whether someone has the capacity to make a particular decision
- make decisions about financial and/or welfare matters for people who lack capacity
- appoint a deputy to make decisions for someone lacking capacity
- monitor how a deputy or attorney carries out their duties, and remove them if they fail to fulfil their duties
- hear cases where there are objections to registering an LPA or EPA and decide whether or not an LPA or EPA is valid
- protect people from abuse.

The court must follow the principles set out in the Mental Capacity Act 2005 and make decisions in the person's best interests (see [chapter 3](#)).

What does a deputy do?

You can apply to the Court of Protection to be a deputy for someone who has lost mental capacity. A deputy is usually a relative or friend of the person, but professionals such as solicitors or council representatives can also apply.

A deputy has a similar role to an attorney. You might be responsible for property and financial decisions, and/or health and welfare decisions. If you want to be a deputy for finances as well as for health and welfare, keep in mind that you will have to apply twice. There is a charge for each role.

You'll get a court order that says what you can and cannot do, and you must make sure that you follow the five main principles of the Mental Capacity Act Code of Practice (see our factsheet **Future planning: Mental capacity**). You will be supervised by the Office of the Public Guardian, and you'll have to write and submit an annual report explaining the decisions you've made as a deputy.

Your duty stops when the person has died or if you stand down. You won't have any involvement with the deceased person's estate.



The Court of Protection may not appoint a deputy for health and welfare because decisions about care and treatment can usually be made through the best interests decision-making process (see **chapter 3**).

Call the Court of Protection's helpline on **0300 456 4600** or visit **gov.uk/government/publications/court-of-protection-personalwelfare-application-cop-gn4** if you're not sure whether to apply – if you're turned down, you won't get your fee back.



Good to know

The Court of Protection can also make one-off decisions about someone's welfare, or property and affairs. This usually happens where there is a major disagreement about a serious decision for someone who has lost mental capacity, which cannot be solved any other way.

Applying to become a deputy

You will need to complete a number of forms when applying to become a deputy. This will include an Assessment of Capacity form, which requires a professional – such as a GP, psychiatrist or social worker – to conduct a capacity assessment for the person you would like to become a deputy for.

You'll also need to formally notify the person you're applying to be a deputy for and anyone you think might have an interest in making decisions for that person – such as their relatives – about your application.

Finally, you will be asked to pay a £371 application fee when you apply to the Court of Protection. You'll need to pay the fee twice if you're applying to be both types of deputy.

If the Court of Protection decides to hold a hearing for your case – for example, because they need more information before making you a deputy – you'll need to pay another £494. Supervision fees will be required every year – these range between £35 and £320 depending on the level of supervision. If you're a new deputy, you'll also have to pay a £100 assessment fee.

If you're applying for a deputyship for property and financial affairs, you can usually claim back the application and supervision fees from the funds of the person whose deputy you're applying to be. Their finances can be assessed and they may qualify for help to pay all or some of the fees, if their savings or income are low or if they receive certain benefits.

If you're applying for a deputyship for health and welfare, your finances can be assessed and you may be entitled to help with application fees in the same circumstances.



If you are acting as a deputy, you will have to make all your decisions according to the principles set out in the Mental Capacity Act Code of Practice (see [chapter 3](#)).

7. Power of attorney in Scotland

Like in England and Wales, if you live in Scotland you can set up a power of attorney to help manage your affairs. This is a legal document that allows people you trust to make decisions for you if you are unable to make them. All power of attorney agreements must be made while you still have capacity.

In Scotland, there are three types of power of attorney:

1. continuing power of attorney, which gives powers to deal with your money and property
2. welfare power of attorney, which gives powers to make decisions around your health or personal welfare
3. combined power of attorney, so your attorney can make decisions about your money and property, and health and welfare.

If you set up a continuing power of attorney and a welfare power of attorney, you can appoint different people to act as your attorney for each type. You can also appoint more than one attorney for each role – for example, you could have two people acting as your welfare power of attorney.

A continuing power of attorney can be used to help you with financial or property matters before you lose capacity, but decisions about your welfare cannot be made until you are no longer able to make them yourself.

How to set up a power of attorney

To set up a power of attorney, you have to get a power of attorney agreement drafted and send it to the Office of the Public Guardian (Scotland) (OPG Scotland) to be registered.

The OPG Scotland won't write a power of attorney agreement for you, and doesn't have a set form for it. You will have to draft it yourself. Most legal advisers, and other advisers like your local Citizens Advice, will be able to help you write your power of attorney so that it can be registered without needing to be changed. To find a solicitor who can help you, go to lawscot.org.uk.

When you're happy with it, you can send your power of attorney agreement to the OPG Scotland. You can send it:

- online – at publicguardian-scotland.gov.uk/power-of-attorney/epoar/submitting-a-power-of-attorney
- by post – send your signed power of attorney agreement, certificate of capacity and registration form to Office of the Public Guardian, Hadrian House, Callendar Business Park, Callendar Road, Falkirk FK1 1XR.



To do

To find out more, visit publicguardian-scotland.gov.uk/power-of-attorney.

Power of attorney fees

When you set up a power of attorney, you usually have to pay around £85 to the OPG Scotland. However, you won't have to pay if you or your partner get:

- Income-related Employment and Support Allowance
- the Guarantee Credit part of Pension Credit only, not the Savings Credit part

- Scottish Welfare Fund payments – the Crisis Grant or Community Care Grant if granted within a three-month period before the fee due date.

Even if you do not fit into these specific categories, you can still apply for a fee exemption, but you will need to provide more evidence of why you don't have to pay. Visit publicguardian-scotland.gov.uk/meta1/fee-exemption for more information.

The Scottish Legal Aid Board also has information about how to get help with paying these fees, and can help you find a legal aid solicitor if you qualify. To find out more, visit slab.org.uk/new-to-legal-aid/eligibility-estimators/estimator-civil-legal-aid or call **0131 226 7061**.

8. Ending or changing a power of attorney in Scotland

If you still have mental capacity, you can change or end your power of attorney.

Changing your power of attorney

You can only make simple amendments to your power of attorney agreement. Simple amendments are straightforward changes that do not change the actual instructions in the power of attorney document. These can include the names, addresses or dates of birth of either you or your attorney, or your contact details. Simple amendments do not cost anything to make.

Since 30 October 2023 you can no longer make full deed amendments, or significant changes that would mean you needed a new certificate of registration. If you wish to make significant changes to your agreement, then you will need to submit a new power of attorney application and end your current one (see [page 32](#)).

If you are making changes to your agreement, you need to tell the Office of the Public Guardian (Scotland) (OPG Scotland) in writing, by email (OPG@scotcourts.gov.uk) or letter addressed to Office of the Public Guardian, Hadrian House, Callendar Business Park, Callendar Road, Falkirk FK1 1XR. You will need to include the reference number for the power of attorney you are changing – this should be on the original letter confirming that your power of attorney has been registered. If you can't find that, you need to provide your name, address and date of birth instead.

Ending your power of attorney

A power of attorney agreement can end for different reasons:

- the death of the granter (you) or attorney
- the attorney does not want to act on behalf of the granter anymore
- bankruptcy
- the granter gets capacity again.

You can also cancel or revoke your power of attorney just because you want to.

You need to provide different evidence, depending on the reason you are ending your power of attorney agreement. The OPG Scotland has detailed information about this at publicguardian-scotland.gov.uk/power-of-attorney/registration/cancelling-your-poa.

You can contact the OPG Scotland (OPG@scotcourts.gov.uk, **01324 678398**) to ask for help with what to do. It should not cost anything to end your power of attorney, unless you've paid for a solicitor to help you.

9. What happens in Scotland if someone has lost capacity but not set up a power of attorney?

If someone has lost capacity and hasn't set up any kind of power of attorney, the local Sheriff Court can appoint a 'guardian' to make decisions for that person. They can also grant an intervention order for someone to make a one-off decision to make a specific thing happen. You can find your local Sheriff Court at scotcourts.gov.uk/the-courts/gazetteer.

Guardianship orders

Guardianship orders allow someone to make decisions for a person who has lost capacity on an ongoing basis. You can appoint more than one guardian at a time. They are often granted for three years, but can be granted for longer if needed. The type of decisions they can make are called 'powers' and can be:

- financial powers to make decisions about money and property
- welfare powers to make decisions about someone's welfare
- a combination of financial and welfare powers.

To become a guardian, you have to apply to the Sheriff Court. Anyone can apply to become a guardian, as long as they have an interest in the person who has lost capacity. It is usually a family member, carer or professional person like a solicitor or accountant. Sometimes, the person applying for the guardianship order is the chief social work officer of the local authority.

Your application to the Sheriff Court will be by something called a 'summary application'. Most people get a legal professional to help them with this. To find a solicitor who can help you, go to lawscot.org.uk. If you are worried about money, the Scottish Legal Aid Board (**0131 226 7061**, slab.org.uk) might be able to help cover the cost of this.

You'll also need to formally notify the person you're applying to be a guardian for and anyone you think might have an interest in making decisions for that person – such as their relatives – about your application. This is often managed by a solicitor.



Good to know

If you are thinking of becoming a financial guardian, you will have extra administrative responsibilities to the Office of the Public Guardian (Scotland). To find out more about this, visit publicguardian-scotland.gov.uk/guardianship-orders/about-guardianship-orders/duties-as-a-guardian.

Intervention orders

Like a guardianship order, an intervention order is granted by the local Sheriff Court, to allow someone to act for someone who has lost capacity. The difference is that intervention orders only allow that person to make a one-off decision or action. This can be something like signing legal documents or selling someone's house.

More than one person can be nominated for this role. It is often a family member or carer, but can also be a professional, such as a solicitor or social worker. As with the guardianship order, you will have to submit a summary application to the court, and it is often recommended that you get legal advice to do this.

You'll also need to formally notify the person you're applying to be an intervener for and anyone you think might have an interest in making decisions for that person – such as their relatives – about your application. A solicitor would usually do this.

If you are acting as a guardian or intervener, you will have to make all your decisions according to the principles set out in the Adults with Incapacity (Scotland) Act. Contact our Helpline for advice (**0800 319 6789**) or seek legal advice (see [chapter 10](#)).

10. Useful contacts

If you're unsure about anything you have read in this factsheet, call our Helpline to arrange to speak to one of our advisers (**0800 319 6789**).

- To find out about someone else managing your benefits, contact The Pension Service (**0800 731 0469**, gov.uk/contact-pension-service).
- To find a solicitor and set up a guardianship, contact:
 - The Law Society of England and Wales (**020 7320 5650**, solicitors.lawsociety.org.uk)
 - Law Society of Scotland (**0131 226 7411**, lawscot.org.uk).
- If you're worried about the finances or property of someone who does not have mental capacity, contact:
 - Office of the Public Guardian (in England and Wales) (OPG) (**0300 456 0300**, gov.uk/government/organisations/office-of-the-public-guardian)
 - Office of the Public Guardian (Scotland) (OPG Scotland) (**01324 678398**, publicguardian-scotland.gov.uk).
- If you're worried about the welfare of someone who does not have mental capacity, contact:
 - OPG (details above)
 - Mental Welfare Commission for Scotland (**0800 389 6809**, mwcscot.org.uk) or your local council's social care department (mygov.scot/social-services).



Good to know

The OPG Scotland is a separate organisation from the OPG, which is for England and Wales. This means it can't offer advice about things like lasting powers of attorney (**chapter 4**) or deputyship (**chapter 6**).

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The sources used to create this publication are available on request. Contact us using the details below.

Thank you

Independent Age would like to thank those who shared their experiences as this information was being developed, and those who reviewed the information for us. Our special thanks go to the Office of the Public Guardian (in England and Wales) and the Office of the Public Guardian (Scotland) for their support to produce this factsheet.

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