

Power of Attorney

A guide to why you might want one



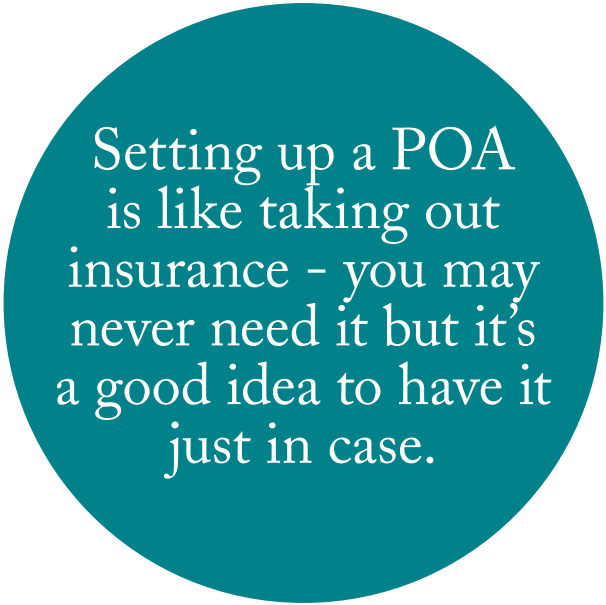
There may come a time when you no longer want or are able to make financial or other decisions for yourself. A Power of Attorney (POA) enables you to give one or more trusted friends or family members the legal authority to make decisions on your behalf. The POA lists all the specific powers you wish these people (your attorneys) to have.

A POA is not just for older and wealthier people – anyone can benefit from having one. Imagine a situation where your health failed suddenly or you had a serious accident and were unable to make decisions. Having a POA in place would help your relatives immensely at a difficult time.

Why have a Power of Attorney?

If you don't have a POA in place and you lose the ability to make your own decisions, your family or friends would have to go to court to get authority to make decisions on your behalf. This can be a costly, complicated and time consuming process. It is easier if you have already set up a POA that can be used.

Setting up a POA is like taking out insurance – you may never need it but it's a good idea to have it just in case.

A teal circle containing the text: "Setting up a POA is like taking out insurance - you may never need it but it's a good idea to have it just in case." The text is white and centered within the circle.

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Power of Attorney in England and Wales

In England and Wales there are two main types of POA:

- a property and financial affairs Lasting Power of Attorney and
- a health and welfare Lasting Power of Attorney.

The person who makes the Lasting Power of Attorney (LPA) is called the donor and those who act for them are attorneys.

A property and financial affairs LPA covers all aspects of someone's financial well-being. An attorney could find themselves making or helping the donor to make decisions regarding their bills, savings and property. They could find themselves managing the donor's bank accounts, making gifts on their behalf or even selling property. The donor can choose when the property and financial LPA can be used and how. For example, you can give your attorney authority to start making decisions for you right away, at a particular time for a set period, or only once you're no longer able to make decisions yourself.

With a health and welfare LPA the attorney makes or helps the donor to make decisions around how they are cared for. This could include anything from where they live, how they are cared for and even the day to day things such as what they eat. If you need extra support – for instance carers to come in during the day – then this would fall under the remit of a health and welfare LPA. Such arrangements can also contain information regarding whether you would receive or reject particular types of treatment and the person acting as an attorney must ensure they understand your wishes. A health and welfare LPA only takes effect once you're no longer able to make decisions yourself.

3 steps to making a LPA

1

Choose your attorney/s.

If someone agrees to be your attorney they must keep records of all the important decisions they make for you.



2

Fill in the relevant forms and get them signed and properly witnessed.



3

Register your LPA and pay the registration fee.



You must have mental capacity at the time you set up the LPA and, to make sure no-one has forced you into signing an LPA, when you complete the forms you will appoint a person to be a certificate provider. This is someone who confirms you know what you're signing and understand the powers it will give your attorneys.

As another safeguard, you can name people who should be informed when an application is made to register your LPA. These should be people who have your best interests at heart and who would speak up to object to the registration if they have any concerns.

You can either pay a solicitor to fill in the forms for you, complete the forms online yourself, download the forms and complete them by hand or ask for the forms to be sent to you by post by phoning 0300 456 0300.

An LPA can only be used once it's been registered with the Office of the Public Guardian. The donor or attorneys can apply to register the LPA (if the attorneys apply to register it, the donor will be notified and can object if they want to).

You have to pay a fee to register each LPA application unless you receive certain state benefits. If you are on a low income (below £12,000) you only pay half the fee. If you think you may be entitled to a fee reduction or waiver you'll need to complete form LPA120A.

It currently takes 8 to 10 weeks for the registration process to take place providing no mistakes are made on the form.

FEE

To register each LPA application

REDUCED OR NO FEE

Low income (below £12,000)
or certain state benefits



8-10 WEEKS
REGISTRATION PROCESS

Power of Attorney in Scotland

In Scotland there are three main types of POA. These are:

- Continuing POA which allows your attorneys to make decisions for you about your money and/or property. This can include paying bills or managing your savings and investments or arranging repairs to your home or buying/selling property.
- Welfare POA which covers your health or personal welfare. This can include choosing where you live, what you eat and who you see as well as what medical treatment you receive.
- Combined POA which enables your attorneys to make both financial and welfare decisions for you.

To make a POA:

- Choose your attorney/s – you can have as little as one attorney up to as many as you choose. Your attorneys must confirm they are willing to act for you. Your attorneys must keep records of their actions.
- Draft a POA (unlike in England and Wales you can't just fill in the relevant forms). Most solicitors can help you do this and will give you legal advice. If you don't want to use a solicitor, other professionals can draft the POA for you. You can draw up your own POA if you want and some stationery shops sell POA packs which can be used. But if you do this make sure you look at the guidance available on the Office of the Public Guardian website to avoid any costly mistakes.
- Have your POA properly witnessed. You will need to be interviewed by either a solicitor or medical practitioner to assess that you fully understand what you are doing. If they are satisfied with this, they will complete and sign a certificate confirming this.
- Register your POA with the Office of the Public Guardian (Scotland) and pay the registration fee (depending on your circumstances you may be exempt from this). Your solicitor may do this for you or you can do it yourself. It's likely to take more than 30 working days to process a postal application. If you submit the documents electronically the process is often quicker.

Power of Attorney in England and Wales

Two main types:

Property and financial affairs LPA



Health and welfare LPA



Power of Attorney in Scotland

Three main types:

Continuing POA

Allows your attorneys to make decisions for you about your money and/or property



Welfare POA

Covers your health or personal welfare



Combined POA

Enables your attorneys to make both financial and welfare decisions for you



Where to find out more

England and Wales

You can find out more about LPAs at:

gov.uk/power-of-attorney

You can use the government's online service to create your LPA at:

lastingpowerofattorney.service.gov.uk/home

You can download the LPA forms to complete by hand at:

gov.uk/government/publications/make-a-lasting-power-of-attorney

Find out about the role of an attorney at:

gov.uk/lasting-power-attorney-duties

To claim a reduction in the LPA registration fee:

[gov.uk/government/publications/power-of-attorney-fees](https://www.gov.uk/government/publications/power-of-attorney-fees)

Scotland

You can find out more about POAs at:

Office of the Public Guardian Scotland

publicguardian-scotland.gov.uk/power-of-attorney

mygov.scot

mygov.scot/power-of-attorney/setting-up-a-power-of-attorney/

To claim a reduction in the POA registration fee:

publicguardian-scotland.gov.uk/meta1/fee-exemption

Your notes



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