



Social Security Scotland
Tèarainteachd Shòisealta Alba

Client representative guidelines

Part 3: Power of Attorney

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Introduction

1. This chapter sets out the various types of Power Of Attorney that may be presented to Social Security Scotland by those purporting to have authority to act for an adult client. It describes how to verify whether the documents that give authority are genuine and empower a person to manage their Social Security Scotland benefits. It also describes how to handle a range of different situations that may arise in the course of applying for or receiving benefits, when a client has a Power of Attorney acting for them.

What is Power of Attorney

2. Power of attorney (PoA) is a witnessed legal agreement giving an adult (an attorney) legal authority to act or make decisions on another adult's behalf (the granter or donor). Anyone over the age of 16 in Scotland (or 18 in the rest of the UK), who is capable, can grant Power of Attorney to another adult or organisation.
3. The document sets out:
 - the names of the people or organisations (known as attorneys) the individual has chosen to act for them; and
 - where there is more than one attorney (joint attorneys) it also sets out whether they can act separately (severally) or must act together (jointly); and
 - the specific or general powers that they want them to have; and
 - when and under what circumstances the attorney is allowed to begin using their powers
4. This means that no two documents are necessarily the same. **It should never be assumed** that because the document is of a particular type that it grants the attorney the powers needed to apply for, receive, and manage benefits. Where a PoA is being used for the first time we must verify the powers held by the attorney.
5. A PoA can be granted for a limited period, or indefinitely, to:
 - an individual (sole attorney)
 - two or more individuals, (joint attorneys or substitute attorneys)
 - an organisation (see corporate/professional attorney)
6. PoA is put in place and can be used while the granter is capable of acting for themselves if they choose, but it is most commonly put in place as people get older, to deal with future circumstances where they expect that their capacity may deteriorate, for example with the onset of dementia.

Types of Power of Attorney

Power of Attorney in Scotland

7. There are four types of Power of Attorney that may be put in place in Scotland, only those that deal with financial matters can be used to deal with benefits administered by Social Security Scotland. They must also be worded in a way that it is clear that the granter intended to give the attorney the power to deal with their benefits. Further guidance on what to look for in a PoA document can be found later in this chapter.

General or Simple Power of Attorney

8. A general power of attorney is usually created by an adult who is still able to act for themselves, for a limited period of time, or for a specific reason. For example, someone might be going abroad and would like another person to be able to make decisions and deal with their affairs for them while they are away.
9. This type of Power of Attorney can only be used while the granter **is still capable of acting for themselves**. It is not registered with the Office of the Public Guardian Scotland. The granter can still act for themselves when it is in place.
10. Any general Power of Attorney granted on or after 2 April 2001 ceases to have effect when the granter becomes incapable of making the types of decisions described in the documents. This is because the granter of a general Power of Attorney cannot authorise another person to make decisions on their behalf where they themselves are incapable of making those decisions. If the granter wants the attorney's authority in respect of their finances to continue when they become incapable, the power of attorney must be a Continuing Power of Attorney under the Adults with Incapacity (Scotland) Act 2000 (see details below).

Section 18 Adults with Incapacity Scotland (Act) 2000

11. General Power of Attorneys created on or before 1 April 2001 automatically became Continuing/Welfare/Combined Power of Attorneys unless specifically stated in the document.

Continuing Power of Attorney

12. Continuing Power of Attorney can be put in place under the Adults with Incapacity (Scotland) Act 2000. It enables one or more attorneys to look after another person's property and financial affairs. This could include a wide range of powers such as the power to manage bank accounts, buy or sell property and claim benefits. The document itself may not list the specific tasks the person can complete for them but may grant a more general power in relation to all of their property and financial affairs.
13. A Continuing Power of Attorney can take effect straight away, so that someone can help manage financial affairs while the individual still has capacity, or the document might specify that some or all of the powers granted can only be used after the

individual is deemed incapable within the definition of the Adults with Incapacity (Scotland) Act 2000. The document will set out how the individual/granter wants it to be decided that they are “incapable”.

Welfare Power of Attorney

14. Welfare Power of Attorney can be put in place under the Adults with Incapacity (Scotland) Act 2000. It enables one or more attorneys, to make decisions about another person’s health and welfare, but only when they are unable to do this themselves. Welfare powers could include decisions about where the person lives, how they dress, what they eat and medical treatment they receive. The document will set out how the person/granter wants it to be decided that they are “incapable”.
15. **A Welfare PoA can only be used after a person has become incapable of making decisions for themselves. It must be registered with the Office of the Public Guardian before it can be used but it does not usually give a person the legal authority to act for social security benefits. If submitted to Social Security Scotland, Welfare Power of Attorney documents should be scrutinised closely to see if they include financial powers.**

Combined Continuing and Welfare Power of Attorney

16. Combined Continuing and Welfare Power of Attorney can be put in place under the Adults with Incapacity (Scotland) Act 2000. It enables one or more attorneys to look after another person’s financial affairs and make health and welfare decisions. The attorney can use the powers that relate to the person’s finances while they are still capable, if the granter chooses, but they cannot make decisions about welfare until the person is no longer able to make those decisions for themselves. The document will set out how the person/granter wants it to be decided that they are “incapable”.
17. **Combined Continuing and Welfare PoA can be used to manage social security benefits as long as the document grants either a specific power or a more general power which would include benefits. It must be registered with the Office of the Public Guardian Scotland.**

Power of Attorney from other parts of the UK

18. A non-Scottish PoA can be used in Scotland in relation to an adult over the age of 18, without having to be registered with the Office of the Public Guardian (Scotland).
19. When an adult has lost capacity these should instead be registered with the Office of the Public Guardian for England and Wales or the Northern Ireland Office of Care and Protection (OCP). They may be worded differently or written in a different style to PoA commonly used in Scotland, so it is important that they are thoroughly checked. For example the person granting the power is referred to as the ‘donor’.

England and Wales

20. In England and Wales, there are several types of Power of Attorney that can be put in place by a person aged 18 or over:

Ordinary Power of Attorney (OPA)

21. Ordinary Power of Attorney is similar to a General/Simple Power Attorney in Scotland. It covers financial decisions and can only be used while the donor (granter) is still capable of making their own decisions. It does not need to be registered with the Office of the Public Guardian (Scotland), but if it is to be used to apply for and manage Social Security Scotland benefits, it must include general or specific powers that would include claiming and managing benefits. The donor can still act for themselves when it is in place.

Lasting Power of Attorney (LPA)

22. Lasting PoA (LPA) may be put in place under [the Mental Capacity Act 2005](#).

Property and Financial Affairs Lasting Power of Attorney

23. A Property and Financial LPA gives one or more attorneys the power to make financial and property-related decisions on another person's behalf and is similar to Continuing PoA in Scotland. With the donor's permission, the Property and Financial Affairs LPA can be used as soon as it is registered with the Office of the Public Guardian for England and Wales. Like a Continuing PoA in Scotland it must also give the attorney powers to make decisions if the donor loses their mental capacity.

Health and Welfare Lasting Power of Attorney

24. The Health and Welfare LPA gives one or more attorneys the power to make to make decisions regarding the donor's personal welfare and is similar to Welfare Power Attorney in Scotland. A Health and Welfare LPA only comes into effect if the donor loses the mental capacity to make their own decisions and on its own **does not give a person the legal authority to act for devolved Scottish social security benefits.**

25. **To be used when a donor has lost capacity Lasting Power of Attorney must be registered with the Office of the Public Guardian for England and Wales. It does not need to be registered with the Office of the Public Guardian (Scotland), but if it is to be used to apply for and manage devolved benefits in Scotland, it must include a general, or specific power that would include claiming and managing benefits.**

Enduring Power of Attorney (EPA)

26. Enduring Power of Attorney (made under the Enduring Power of Attorney Act 1985) was replaced by Lasting Power of Attorney in England and Wales in October 2007.

An EPA can no longer be created but if one was made before this date it could still be valid. An EPA can only covers money and property affairs and, and unless specified can be used from the date it is signed and witnessed.

27. If it is to be used to apply for and manage devolved benefits in Scotland, it must include a general, or specific powers that would include claiming and managing benefits. The donor can act for themselves when it is in place, up until the point that they are no longer capable. The attorney must then register it with the Office of the Public Guardian (England and Wales).

Northern Ireland

28. In Northern Ireland, the two types of Power of Attorney that are available are a General Power of Attorney (GPA) and an Enduring Power of Attorney (EPA). They can only be made by a person who is aged 18 or over with capacity.

General Power of Attorney

29. General Power of Attorney in Northern Ireland is similar to General Power of Attorney in Scotland and Ordinary Power of Attorney in England and Wales. It can only be used while the donor still has the mental capacity to make their own decisions. It does not need to be registered with the Office of the Public Guardian (Scotland) but if it is to be used to apply for and manage devolved benefits in Scotland, it must include a general or specific powers that would include claiming and managing benefits.

Enduring Power of Attorney

30. An Enduring PoA in Northern Ireland, made under the Enduring Powers of Attorney (Northern Ireland) Order 1987 can continue to be used when the donor becomes incapable of managing their finances. Steps must be taken by the attorney to register the Enduring PoA with the Northern Ireland Office of Care and Protection (OCP) for it to continue to be used. It does not need to be registered with the Office of the Public Guardian (Scotland) but if it is to be used to apply for and manage devolved benefits in Scotland, it must include general, or specific powers that would include claiming and managing benefits.

Power of Attorney from outside of the UK

31. Interpretation of Scottish legislation¹ by the Public Guardian (Scotland) suggests a non-Scottish Power of Attorney is valid in Scotland. It is not necessary for a non-Scottish Power of Attorney to be endorsed/registered for use in Scotland.

¹ https://www.publicguardian-scotland.gov.uk/docs/librariesprovider3/general/text-documents/60-register-of-international-measures.doc?sfvrsn=c89046d2_4

32. This means that if you receive a PoA drafted outside the UK it does not need to have been registered with the Office of the Public Guardian (Scotland). However it may have been registered with the equivalent body in that country. You must still check that it is authentic and grants the relevant powers to claim and receive the granter's benefits. Where the document is in any language other than English you should ask the attorney to provide either the original document or a certified copy of the original document, and a certified translation.
33. You should then seek advice. See operational guidance for how to escalate for advice from Scottish Government Legal Division.

Attorney and client live in different countries

34. A client and their Attorney may live in different countries, as this is private arrangement between them it is for them to consider how the attorney will be able to carry out the responsibilities to report changes in the client's circumstances, and to ensure the benefit paid is spent in their interests.

Verifying the attorney is empowered

35. It is important that when someone presents to Social Security Scotland as an attorney, and wants to use the powers they have been granted, that we verify their authority to act before setting them up on SPM.
36. If you receive a claim or enquiry from any person(s) or organization, stating that they are the client's attorney and that they wish to act for them, you should check to see if they already appear on DWP systems.
37. If they are already recorded on the DWP system as a 'Limited' or 'Enduring' Power of Attorney for the client this indicates that it has already checked the documents and accepted that the attorney is empowered to act in relation to social security benefits. As long as the authority is up to date you can use the information from DWP to set them up in SPM. You may need further information from the PoA about payment details and about whether the client still has capacity see' [Client still able to act for themselves](#)'.
38. If they are not already on DWP systems you will need to see the documents to check whether the attorney is empowered to act for the client.
39. If a new attorney is set up on SPM while an ongoing benefit (e.g. SCP, CDP, ADP) is in payment we must send them a copy of the client's notification of entitlement. This will tell them what the client is entitled to and what changes of circumstances must be reported to Social Security Scotland. See operational guidance for '**Change of responsible person**'.

Verifying documents are genuine

Hard Copies

40. To verify hard copy Power of Attorney documents you must request to see:

- the original signed PoA (this must be checked, copied and returned to the attorney by registered post) ; **or**
- a certified photocopy of any PoA document, which includes a declaration at the end of each page that says: “I certify this page to be a true and complete copy of the corresponding page of the original Instrument.” It should also have a statement at end of the complete copy which says: “I certify the foregoing reproduction to be a true and complete copy of the original Instrument.” The wording may have slight variations but the meaning should be the same .²
- It should be signed by:
 - the client (at a time when they had capacity); **or**
 - a solicitor; **or**
 - a stockbroker; **or**
- A print out of a PoA that was registered electronically and certified by a solicitor, stockbroker or an ‘authorised person’ for the purposes of the Legal Services Act 2007. The Public Guardian’s crest will appear on the certificate and on each page of the pdf of the PoA document. Each page will also be numbered, and contain the Public Guardian’s reference and a unique certificate number.

41. The documents should be sent to a specific PO Box to ensure they are authenticated scanned and returned to the sender. See operational guidance [‘Overview of how to verify a power of attorney document’](#).

Capacity

Client still able to act for themselves

42. Where the client retains full capacity they can still act for themselves, even although they have empowered someone else to do so.

43. This is an important factor should any overpayment later arise. You should write to both the client and the attorney to explain that the PoA must advise Social Security Scotland if the client later becomes incapable of acting for themselves. If you are

² [Section 3 - Powers of Attorney Act 1971](#)

dealing with the attorney directly then you can also tell them verbally and make a note of having done this.

Client no longer able to act for themselves

44. Only some types of PoA can continue to be used after a client is unable to act for themselves.

- A General/Simple PoA granted on or after 2 April 2000 cannot continue to be used when a client has become incapable of acting for themselves.
- An Enduring PoA from England or Northern Ireland must be registered when the client becomes incapable of acting for themselves.
- A Continuing or Lasting PoA is usually registered soon after it is made and the attorney does not have to take any further action when the client becomes incapable of acting for themselves, their authority simply continues.

45. When they become incapable of acting for themselves the client can no longer be expected to report any changes in their circumstances. If there is a registered attorney, empowered to act after the client becomes incapable of acting for themselves, the responsibility will fall to them. It is important that this duty is explained to the attorney at the point they take over responsibility for managing the client's benefit.

46. Where:

- a new attorney; or
- an existing attorney who had up until now been acting for client who was capable

makes us aware the client has become incapable of acting for themselves, and we have confirmed they have the power to act on their behalf, we should:

- write to them to confirm that they are now responsible for their Social Security Scotland benefits;
- will receive all correspondence from us from now on; and
- now have a duty to report changes.

How to confirm a PoA has been registered if the client becomes incapable of acting for themselves

47. Where an attorney is seeking to use their powers after the client has become incapable of acting for themselves, the PoA document should be accompanied by confirmation it has been registered with the supervisory body in the country in which it was created.

Registration in Scotland

48. To use a Continuing or Combined Power of Attorney made in Scotland under the Adults with Incapacity (Scotland) Act 2000 it must have been registered with the OPG Scotland. The PoA should be registered soon after it is made and once registered the details of it will be added to the public register. They will issue certain documentation to confirm registration either electronically or by post to the sender.
49. General PoAs granted pre 2 April 2000 (pre-commencement) are converted into continuing / welfare / combined PoAs by operation of the Act and do not need to be registered.

Electronic Power of Attorney Registration(EPOAR) online facility(since May 2012)

50. Since May 2012 it has been possible to register a PoA created under the Adults with Incapacity (Scotland) Act 2000 electronically. Once registered, the OPG Scotland will send the original sender of the document (usually a solicitor) a certificate signed by the Public Guardian and copy of the PoA document (in PDF format) will be available to them to download and access electronically.
51. The Public Guardian's crest will appear on the certificate and on each page of the pdf of the PoA document. Each page will also be numbered, and contain the Public Guardian's reference and a unique certificate number.
52. Before the attorney can use the printed copy of the PoA pdf it must be certified by the granter, a solicitor, stockbroker or an 'authorised person' for the purposes of the Legal Services Act 2007.
53. A sample of this document can be found in operational guidance at '[Mailroom guidance for processing legal acting body documents](#)'
54. Electronically registered PoAs also appear on the public register. An excerpt of the public register can be checked through the OPG(S)'s public website at: <https://epoar.publicguardian-scotland.gov.uk/Public/Home/VerifyRegistration> .
55. This will only show general information about the nature of the PoA not the full text of the document.
56. To verify Electronic Power of Attorney Registration you will need to have the following information from the PoA document:
- Sigma Case Reference (reference number that can be found on the OPG registration certificate)
 - Granter's first name
 - Granter's surname
57. Ordinary and General powers of attorney are not registered or held electronically by the OPG Scotland neither are those made under the law of a country other than Scotland.

Postal registration

58. Once registered, an embossed certificate signed by the Public Guardian (Scotland) with a red seal, along with a paper copy of the PoA will be sent in the post to the person who registered the documents. The original PoA document will be also be returned to them.
59. If you have any doubt about the authenticity of a Continuing PoA document you should contact the Office of the Public Guardian Scotland – see operational guidance [‘Verifying a power of attorney with the Office of the Public Guardian or equivalent body’](#).
60. If documents are suspected as fraudulent or have been altered you should also consider whether they should be referred to [fraud](#).

Registration in England and Wales

61. Lasting Power of Attorney (LPA) made in England or Wales must be registered with the Public Guardian before it can be used. Original LPA documents will be validated using holographic stickers which have been designed so that if they are removed or tampered with they will deface the form and invalidate it.
62. If the LPA was registered after 17 July 2020 you may be able to use the online service to:
- view a summary of a lasting power of attorney (LPA)
 - check whether an LPA is valid
 - check who the attorneys are on an LPA
63. You’ll need the LPA access code which you get from the donor or an attorney named on the LPA.
64. The online service can be found at: <https://www.gov.uk/view-lasting-power-of-attorney>

Registration in Northern Ireland

65. When it has been registered an Enduring PoA made in Northern Ireland will be stamped as being registered and will carry the seal of the Court. An application may be made for a search to be made of the register to identify if it has been registered.
66. Requests for searches are not accepted by telephone. Applications to the Court or enquiries should be made by post, email, telephone to:

**The Office of Care and Protection
Royal Courts of Justice
Patients Section
Chichester Street
Belfast
BT1 3JF**

Email: ocp@courtsni.gov.uk

What to look for in a PoA document

67. Power of attorney documents are bespoke arrangements between the granter and the attorney and no two are necessarily the same. So it is important that we check the attorney is empowered to manage the client's benefits.

68. The Office of the Public Guardian (Scotland) will have checked the validity of any document before registering it, and as such any documents registered with the OPG can be assumed to be valid.

69. A Continuing PoA document made in Scotland is usually:

- signed by the client,
- countersigned by a witness, and
- must incorporate a certificate (by someone other than the attorney), that the granter understood the powers they were granting and were not under undue influence

It specifies :

- the attorney's name address; and
- includes wording that grants a general power or specific powers (that for Social Security Scotland's purposes would include claiming and receiving benefits; and
- how their incapacity should be determined where the authority of the attorney commences on incapacity

Acceptable wording in powers of attorney

70. In all cases, check the PoA document includes an acceptable form of words to ensure that it empowers the attorney to claim and receive Social Security benefits. There may be cases where the document only allows them to claim, or receive benefits, or does not empower them at all, even though it may allow them to deal with other aspects of the client's finances or welfare.

71. Common forms of wording in a Continuing Power of Attorney in Scotland are:

General Power:

- "My Attorney may manage my whole affairs as my Attorney thinks fit and shall have full power for me and in my name or in his/her own name as my attorney and do everything regarding my estate which I could do for myself and without limitation by reason of anything contained in this power of attorney or otherwise."

or

- "the whole powers in relation to my property and financial affairs which can competently be granted upon a continuing attorney, without limitation".

Particular Financial Powers:

- “To claim and receive on my behalf all pensions, benefits, allowances, services, financial contributions , repayments, rebates and the like to which I may be entitled.”

72. You may see other more complex variations in older PoA documents or from different parts of the UK that extend to both receiving, and claiming of social security benefits:

- ‘with full powers to do everything which I could or can do myself, including without prejudice to the foregoing generality.’
- ‘Power—to execute and deliver documents of all kinds—and to manage my property of whatsoever kind and wheresoever situate’
- ‘—with full power to my Attorney to act for me, either in my own name, or in the name of my Attorney and to do everything regarding my affairs and my estates, heritable, movable, real and personal, of what kind so ever and wherever situate which I could have done myself if personally acting, and in particular, without prejudice to the foregoing generality——’
- ‘ ——with full power to do everything regarding my estate and affairs which I could do or could have done myself without limitation by reason of anything herein contained and without prejudice to the foregoing generality——’ or
- ‘ To claim and receive on my behalf all pensions, benefits, allowances, services, financial contributions, repayments, rebates, and the like, to which I may be entitled or for which I may be entitled to apply. To complete and submit all forms, give any necessary undertakings, make any relevant appeals and generally do anything else necessary or appropriate in connection therewith, and that as regards all periods past current or future.’

Powers granted to an attorney

Full powers

73. If the client grants their attorney general powers to manage their estate/affairs, the attorney receives full power on behalf of the client to handle their business and financial affairs.

74. This means the PoA has the same powers to act in relation to their benefits as the client.

Specific powers

75. If the client grants their attorney specific powers, the powers may include the power to:

- make an application/claim for benefit; or
- receive payment of benefit; or
- both

76. If a PoA is extremely specific and empowers the Attorney only to carry out select aspects of social security related tasks, seek advice (see operational guidance on the process for escalating to Scottish Government Legal Division).

Power of attorney granted for a limited period

77. If a client grants a PoA for a limited period, we should note the end date to check with the client whether they will renew the powers, i.e. to establish if the client intends to extend the PoA or allow it to expire see '[Setting up a review date for a power of attorney](#)'. They can only do this where they are still capable of acting for themselves at the point it expires.

78. If the PoA is extended you should verify this by asking to see the original documents or certified documents as if it were a new PoA.

79. If the PoA is not extended beyond the expiry date, take action to end the attorney relationship on SPM. For more information, see '[If a power of attorney relationship ends](#)'.

Attorney not empowered to act for social security benefits

80. If you receive a PoA or a document which does not appear to satisfy the wording requirements it may still be legally valid. In these circumstances, a copy of the document should be referred for advice before formally advising the PoA that they do not have the authority to act for the client in relation to their benefits. See operational guidance on how to see advice on the content of legal documents.

Multiple attorneys

81. The client can authorise more than one attorney to act over their affairs at any one time.

Power of Attorney document allows attorneys to act separately

82. If the client appoints two or more attorneys jointly and the PoA document authorises them to act separately, you can pay benefit to whichever attorney makes the application (the lead attorney), provided the PoA document meets the other requirements. For more information about the other requirements, see 'Verifying the attorney is empowered'.

Power of Attorney document includes more than one attorney but does not allow them to act separately

83. If the client appoints two or more attorneys jointly and the PoA document does not authorise them to act separately, any application must be made jointly and signed by all parties. All payments in respect of the client must also be paid into an account agreed by the them jointly.

Attorney declines to act on the client's behalf

84. When the client appoints two or more attorneys jointly and the PoA document does not authorise them to act separately, a problem arises if one or more then decline to act on the client's behalf. You cannot make payment to only one attorney in such a joint attorneyship. Explain to the party who is not agreement that Social Security Scotland can still proceed to put in place an appointee for the client(which could be the willing attorney).

85. If they remain unwilling:

- If the client is still able to act for themselves they may still manage their own benefits and you can make payment direct to them
- if the client is unable to act for themselves, consider [referring to Local Delivery for appointee action](#) on the basis that there is an acting body but they are not willing to act.

Substitute/replacement attorney

86. A PoA document may also include a substitute or replacement attorney. A substitute attorney can act if an original attorney is no longer able to act or if they resign from their appointment.

87. If the OPG (Scotland) is notified that a PoA can no longer act they will write to the substitute attorney to confirm whether they are willing to act, issue a registration certificate and update the Public Register. It is the responsibility of the resigning attorney or the new attorney to update Social Security Scotland.

Client revokes PoA

88. If a client is able to act for themselves and contacts us to tell us they have revoked a PoA this should be removed from the SPM allowing them to do so. You should ask them to provide new payment details.

89. However, this is a relatively unusual scenario and there is always a possibility that the client may actually lack insight into their own capabilities or that someone is attempting fraudulent activity. If the PoA was a Continuing PoA i.e of the type which could be used after the client is unable to act for themselves, you should check if it

has also been revoked with the OPG (Scotland) or the relevant authority for the country in which it was made. You should always ID&V the client thoroughly, in all cases you would expect them to be able to tell you the identity of the of the PoA being revoked.

Is the appointee acting in a personal or professional capacity?

90. It is important to determine whether an attorney is acting in a personal or professional capacity.

Acting in a personal capacity

91. If the attorney is acting in a personal capacity e.g they are friend or family member of the client, use their National Insurance Number(NINO) as an identifier - if they have one.

92. Please note there is no obligation for the attorney to provide these details. If they object, explain that, because of the way benefits are administered it will ease the handling of the claim and the payment of benefit if they provide their NINO or enough information for their NINO to be traced. If they continue to object or do not have a NINO the only option is to to record them as we might an organisation acting as a PoA.

Professional or corporate attorney

93. If the attorney is acting in a professional capacity or as an employee of an organisation never record their own personal details i.e. NINO, date of birth, or home address, check thoroughly whether the organisation is already acting for another client of Social Security before creating a new record. This is to avoid duplicate records due to mismatches in spelling or ordering of the organisation's details.

94. After you verify the attorney is empowered to act on the client's behalf for Social Security benefits see operational guidance for adding or amending a corporate client representative on a client's record in SPM.

Attorney not empowered to act

95. If the Power of Attorney document does not empower the attorney to act on behalf of the client for social security benefits:

- tell the attorney they cannot act for the client for social security purposes and remove them from SPM if they have already been set up
- if the client is still capable of acting for themselves ask them to verify the contents of the application and complete the declaration - make any payments directly to them or to their chosen bank account

- if the client is no longer capable of acting for themselves refer to the guidance for making a referral to Local Delivery, to consider putting in place an appointee. Discuss with the attorney whether they, or someone else, would be willing and suitable to act as the appointee.

Hierarchy of authority to act

96. Where a client has granted another person power of attorney which includes the authority to deal with their social security benefits, Social Security Scotland can only put in place an appointee if that attorney is not willing to act for the client. Where a Guardianship order has been put in place by a court the Guardian's authority takes precedence over both an attorney and an appointee.

Hierarchy
Guardian or Intervener with financial powers
Power of Attorney with financial powers
Social Security Scotland Appointee

Impact of client granting Power of Attorney on other relationship types on SPM

97. Where an attorney presents valid PoA documents after the client is incapable of acting for themselves, all other relationship types recorded on SPM (except for current Guardian or Intervener) must be ended.
98. If the client had given explicit consent for a third party representative to act for them in relation to any aspect of their benefits, this will become null and void and representative should be removed. The PoA may choose to give explicit consent for that same person or organisation to represent them, but this will require fresh consent.
99. Where an attorney takes over managing a client's benefits when recurring benefits are in payment, they should be sent a duplicate notification of entitlement to ensure they understand what benefits are in payment and their responsibilities to report changes of circumstances. Future payments should be made to the bank account the attorney instructs. See operational guidance.

Impact of a Guardianship Order on an existing Power of Attorney

100. If a client has already granted PoA to person, and at a later date a Guardianship order is made by the courts that grants the same financial power to manage benefits to a person or organisation, the PoA relationship should be ended on SPM and the Guardian should be set up.

101. Unless the Guardian and PoA are the same person or organisation, any explicit consent they had given for a third party representative to assist them with their application or entitlements will become null and void and the relationship should be ended on SPM. The Guardian may choose to give explicit consent for that same person or organisation to provide representation to them, but this will require fresh consent.

Client has a PoA showing on DWP systems but has completed an application themselves

102. Before we can continue to process the application we must first find out whether the client is still capable of acting for themselves.

103. If the PoA is already showing on DWP systems this tells us that original/certified documents have been seen by DWP, and they have confirmed there is an attorney with the power to act for social security benefits. However it does not tell us whether the client is, or is not able to act for themselves.

- If the client is capable of acting for themselves, they can make an application in their own right and this can be processed as normal. Do not set up the attorney on SPM.
- If the client is incapable of acting for themselves you should check whether the PoA has been registered with the Office of the Public Guardian or relevant authority. If we do not already hold a copy you should ask to see the proof of registration or where possible check online. See "Confirming a PoA has been registered" in this guidance.

104. If the PoA is registered you can set them up on SPM. They can then withdraw or continue with the application. To continue they must first confirm the information provided within it is correct and complete, and make the formal declaration.

Client has a PoA showing on DWP systems/SPM but a different third party has completed the application

105. If an application is received from someone other than the client, or the lead PoA who is already on SPM, we must find out whether the person who completed it has the legal authority to do so. They may be one of the other joint attorneys named on the PoA document, or a new Guardian.

106. If the person who has completed the form states that they have a Guardianship order see "Impact of a Guardianship Order on an existing Power of Attorney".

107. If the person who has completed the form has no authority to act on behalf of the client you should reject the claim under Section 38(5) of the Social Security (Scotland) Act 2018*.

108. The PoA(standing in the shoes of the client) must be notified that something purporting to be an application on behalf of the client by someone without authority was received and rejected, the reasons for that, and their right to appeal under section 61.

** this does not apply to Best Start Foods or Job Start Payment*

Attorney cannot be reached by phone, or correspondence is returned by Royal Mail and/or payments bounce

109. If the client is capable of acting for themselves and it is possible to contact them, make enquiries about the status of the attorney. It may be necessary to remove the PoA and to start making payments to the client. If the client can't be contacted consider suspending ongoing payments.
110. If an attorney cannot be reached and the client is believed to lack capacity, you should check the PoA document to see whether there are other named attorneys who can be contacted to clarify whether there has been a change in the lead attorney's circumstances. You can also contact the OPG (Scotland) or relevant authority to establish whether the PoA is still registered or if another PoA or Guardian has been put in place. If you are unable to establish that the named attorney on SPM is still acting for the client you should consider suspending ongoing payments until the situation can be clarified and alert the Office of the Public Guardian(Scotland) (see detailed guidance on suspension).

PoA documents seem to have been tampered with or fake, or another person is impersonating the court appointed acting body

111. There may be circumstances where a person tries to use a genuine court order to impersonate the named person or organisation who is genuinely appointed to act for the client. Someone may also present doctored or fake documents in order to access a client's benefits.
112. If you have doubts about whether someone presenting as having been appointed by a court does have those powers, or if you have tried to verify a court order and have been unable to do so and suspect that it may be false or you should not set them up on SPM. No changes should be made to the location of any payments until the authority to act is verified. Consider whether they should be referred to [Fraud](#).

Attorney dies

113. If you find out that someone who holds a Power of Attorney and is set up on SPM to act for the client has died, you should suspend payments immediately on the basis that they are no longer able to receive the payments see (detailed guidance on suspension). If we hold a copy of the PoA document you should check whether there are other named attorneys or a replacement or substitute attorney. Where there is a 'substitute' attorney the OPG(Scotland) will need to contact them to check their

willingness to act. If they are willing they will issue a new certificate of registration and update the Public Register.

114. If there is no obvious replacement attorney and the client is incapable, a court order is likely to be required for another person to take over managing the client's benefits. This may take several months to be put in place so consider whether to make a referral to Local Delivery to put in place an appointee in the interim period.
115. You may need to liaise with the OPG (Scotland) or others to find out whether another person has been identified as the likely replacement. If so they may be the most likely candidate to become the client's appointee in the interim.
116. Where an attorney dies but the client is still capable of acting for themselves the attorney should be removed from SPM and the client reinstated.

Client with an attorney dies

117. When a client dies, the authority of anyone who was acting on their behalf while they were alive ends. While that person or organisation may also be their executor, or be in charge of making their funeral arrangements, the rules about who can deal with the client's application or receive any arrears due to them when they died are completely separate. See *Client Representative Guidelines Part 5.3 Executors and appointees for the deceased*.

Overpayment made to a client with an attorney

118. The Adults with Incapacity (Scotland) Act 2000 specifies that no liability shall be incurred by a continuing attorney, or equivalent authority from any other country, for any breach of any duty of care or fiduciary duty owed to the adult if they have:
- acted reasonably and in good faith and in accordance with the principles of the 2000 Act; or
 - failed to act and the failure was reasonable and in good faith and in accordance with the principles of the 2000 Act.

Section 82, Adults with Incapacity (Scotland) Act 2000

119. Where an overpayment is incurred in respect of a client with a PoA see detailed guidance on overpayment recovery.