Integrated Financial Arrangements Ltd
A firm authorised and regulated by the Financial Conduct Authority

For adviser use only

Power of Attorney and Deputyships

User guide

1. Introduction

This user guide aims to explain the different types of Power of Attorney ("PoA"), and help clients and their advisors understand how to put a PoA in place with Transact.

Please familiarise yourself with this information to help us ensure that we work together as effectively as possible.

2. What is a Power of Attorney?

A PoA is a legal document that lets an individual (the 'donor') appoint one or more people ('attorneys') to help them make decisions or to make decisions on their behalf. It also provides the donor with control over what happens if they can no longer make their own decisions (e.g. they 'lack mental capacity'). For this reason the creation of a PoA is a key area of financial planning for many individuals, especially as they age.

Whilst there are two broad categories of PoA, this document only discusses the types of power relating to the donor's property and financial affairs as this is relevant to an individual's Transact Portfolio. In this category the most commonly encountered are a Lasting PoA in England and Wales and a Continuing PoA in Scotland.

2.1 Lasting and Continuing Powers of Attorney

Lasting PoAs and Continuing PoAs are the most commonly encountered PoA documents, and have a set form issued by the Government for ease of drafting. They provide the appointed attorney(s) with the authority to act for the donor in their personal capacity. The attorney(s) authority can be limited by the donor within the document. The donor can also specify whether the power is to come into force immediately or only after they lose the capacity to act for themselves.

In order for a Lasting PoA to be valid, it must be registered with the Office of the Public Guardian (OPG). Similarly, the Continuing PoA must be registered with the Scottish Public Guardian for it to be valid. It should be noted that in both cases the appointed attorney(s) require the donor's consent to act while the donor retains capacity.

2.2 Enduring Powers of Attorney

The authority conferred under an Enduring Power is functionally identical to that conferred under a Lasting PoA for our purposes. These powers were the predecessor of Lasting PoAs and no new Enduring Powers have been created since 1 October 2007 in England, Wales or Scotland. However, they are still used in Northern Ireland.

An Enduring Power is valid from the date of signature and does not need to be registered with the OPG until such time as the donor loses the capacity to act for themselves.

2.3 Deputyship Court Orders

If an individual loses mental capacity and does not have an appropriate PoA in place, an application can be made by their relatives to the Court of Protection for a Deputyship Order. Should that application be successful, the Court will appoint an individual or entity to administer the individual's affairs on their behalf.

A deputy is similar to an attorney in that they can make decisions on the individual's behalf, but a deputy's powers are generally far more restricted. Additionally, the court decides who should be appointed as deputy rather than the individual themselves. As the Court will often appoint a professional deputy to act, this can come with both increased costs and administration.

2.4 "Section 25" Powers of Attorney

This refers to a PoA drafted under the requirements of section 25 of the Trustee Act 1925. Such a power permits an individual to delegate their non-personal authority, meaning the attorney can act for the donor in their capacity as a trustee, executor or director (as defined in the document). Such a power is valid for a maximum of 12 months from the date of execution and will generally specify strict limits on the power of the attorney(s).

2.5 Corporate Power of Attorney

A subset of a section 25 power, a Corporate PoA is used by a company to provide another company or individual(s) the authority to act on its behalf in certain corporate matters. Any limitations to this authority would be specified within the document and any such power would also have an expiration date of up to 12 months as above.

2.6 "Section 10" General Powers of Attorney

These powers are drafted under the requirements of section 10 of the Powers of Attorney Act 1971. Such a power provides the appointed attorney(s) with absolute authority to act for the client in their personal capacity. This authority is wider than that conferred by a Lasting PoA and comes without the requirement for the attorney(s) to act only with the donor's permission while they retain capacity. Should the donor lose the capacity to act for themselves the power is revoked.

2.7 Limited Powers of Attorney

These powers take a similar form to a section 10 power but limit the authority of the attorney(s) to a specific range of actions and/or to dealing with specific assets (such as land) held by the donor. As with a section 10 power, a limited power is revoked by the donor's loss of capacity.

3. Online validation of Powers of Attorney

Where possible, it's both quicker and easier to validate a PoA online. Currently this option is only available for Lasting PoAs in England and Wales registered on or after 1 January 2016, and Scottish PoAs issued through the Electronic Power of Attorney Registration (EPOAR) service. If we can validate the PoA online, we will not require a certified copy.

The process for arranging online validation is as below:

For England and Wales:

- The attorney or donor will need to register their details via: www.gov.uk/use-lasting-power-of-attorney.
- Once registered they will be able to generate an "LPA Access Code" (this is 13 characters long, starts with a V and takes the form V-AB12-CD34-EF56).

- This code can then be sent to Transact via secure message on Transact Online or clearly included on a cover letter (along with the donor's full name and portfolio number, or upload reference) if included with a newly submitted portfolio application. This access code will allow us to view a summary of the power.
- If any of the attorneys do not have their own portfolio with Transact, a Portfolio Application Supplement (T048) form will be required, in line with normal practice.
- We do not require sight of the physical PoA document at any time.

For Scotland:

- The attorney or donor should check how the PoA was registered. Examples of physical and online registration certificates are included in appendixes A and B in this document.
    - Appendix A is issued where the document has been registered physically, meaning no electronic summary exists. It will therefore need to be certified as described in Section 4 of this user guide.
    - Appendix B shows that the document has been registered through EPOAR and can be validated online.
- Where the document has been registered through EPOAR (Appendix B) a copy of the PoA must be uploaded via Transact Online. There is no requirement for this to be certified. We use the information on the certificate to verify the content via the EPOAR service and add the attorney(s).
- If any of the attorneys do not have their own Portfolio with Transact, a Portfolio Application Supplement (T048) form will be required, in line with normal practice.

4. Certification requirements

Where a PoA cannot be validated online, it will be necessary to certify the PoA document in line with the below certification requirements. The certification requirements of a PoA document is mandated by statute and all versions of PoA documents and Deputyship orders must adhere to the requirements outlined below.

- The certification must have been completed within the 12 months prior to our receipt of the document. If the certification is older than this we will require the document to be re-certified before submission.
- To certify a PoA or Deputyship Order, the certifier must write the following text:
- At the bottom of every page:
    - "I certify this is a true and complete copy of the corresponding page of the original."

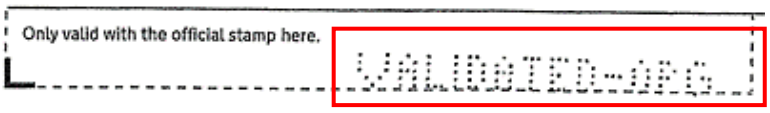
And additionally, on the final page:

    - "I certify this is a true and complete copy of the original."
- The certification wording for the final page should be added to the last numbered page of the Power or Deputyship, and not to a continuation sheet or blank page. Any continuation sheet used should be inserted at the relevant point in the document rather than at the end, and certified in the same way as every other page.
- If the document consists of a single page (as will often be seen with section 10 or section 25 powers), we will only require the 'final page' wording on that page.
- The certifier must sign and date the certification(s) on every page.
- The certifier's name, job title, employer name, and employer address should be included as part of the certification on each page, but we will not reject if only included on the first or last page.
- The certification must be completed by the same person throughout and can only be performed by specific individuals, namely:
    - An FCA approved Financial Adviser

- A Solicitor
- A Notary Public
- The donor, if they still have mental capacity.

Where such an individual (other than the donor) is involved in the establishment of the PoA they should not certify the document as this could be considered a conflict of interest. In this case we would be unable to accept that certification even if otherwise correct.

- The certification can either be wet-signed or signed electronically. If electronically signed, this still needs to be an accurate representation of the certifier's signature and needs to be done via hand (e.g. using a stylus) as opposed to being typed. After the document has been certified, it should be uploaded to Transact Online to be reviewed before being accepted. We do not need to receive a physical copy at any point.
- For a Lasting PoA to be valid it must have been registered with the OPG. We require the "Validated - OPG" stamp (example below) to be included and visible at the bottom of each page.



5. Helpful tips

- To delegate authority for Trust or Corporate matters, a specific type of power which adheres to specific drafting requirements is needed. A Lasting PoA, for example, can never be used to delegate the donor's powers when acting as a trustee.
- Where a PoA specifies that it is to take effect only after the donor's loss of capacity to act for themselves we will need a letter from a medical professional evidencing that loss of capacity.
- If the donor no longer has capacity, or otherwise wants their attorney(s) to manage their portfolio going forwards, the mailing address for the portfolio can be updated via Transact Online. We will not automatically update the mailing address when registering the power.
- In the event an attorney no longer wishes to act, if the PoA has been registered through the OPG, they will need to inform them of this change and the PoA document will be amended by the OPG and reissued. This new document will clearly indicate that the individual is no longer able to act on the donor's behalf and should be certified in the same way as outlined above before being submitted to us. Similarly, if a deputy no longer wishes to act, they will need to refer back to the Court of Protection for a new deputy to be appointed and a new document will be issued to reflect that.
- If an attorney dies their Death Certificate or Grant of Probate must be submitted to us so that we can update our records and remove them from the client's Portfolio.
- Where the donor dies the PoA becomes invalid and their attorney(s) no longer have authority to act on the portfolio.
- We will only accept a certified copy of a copy of a PoA where the client's portfolio is to remain open following registration. We will otherwise require a certified copy of the original.
- In all instances each of a client's attorneys will need to pass our Anti-Money Laundering (AML) checks. As always, if our electronic checks fail we will require physical AML documentation. If the donor has an Offshore Bond within their Portfolio physical AML documentation will be required in all instances. Please refer to the 'Transact Document Certification Guidance Including Anti-Money Laundering Requirements (UK)' document to determine what documents are acceptable.

6. Background

In compiling this user guide we have taken guidance from the following sources:

- The UK Government website[1]
- The Power of Attorney Act 1971[2].

Whilst the certification requirement section of this guide has specific wording, we are happy to accept wording that matches either of these sources.

[1] www.gov.uk/power-of-attorney/certify

[2] www.legislation.gov.uk/ukpga/1971/27/section/3

Appendix

Figure A



Office of the
Public Guardian (Scotland)

ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

CERTIFICATE OF REGISTRATION OF POWER OF ATTORNEY

Certificate Number 1041232/2021/1
Case Reference Number PG/T/1/2021/1

I hereby certify that the attached Power of Attorney granted by

Test Person on 25 August 2021 appointing Test Person

has been registered with the Office of the Public Guardian in terms of the Adults with Incapacity (Scotland) Act 2000 Section 19.

Public Guardian's Signature

Public Guardian
25 August 2021

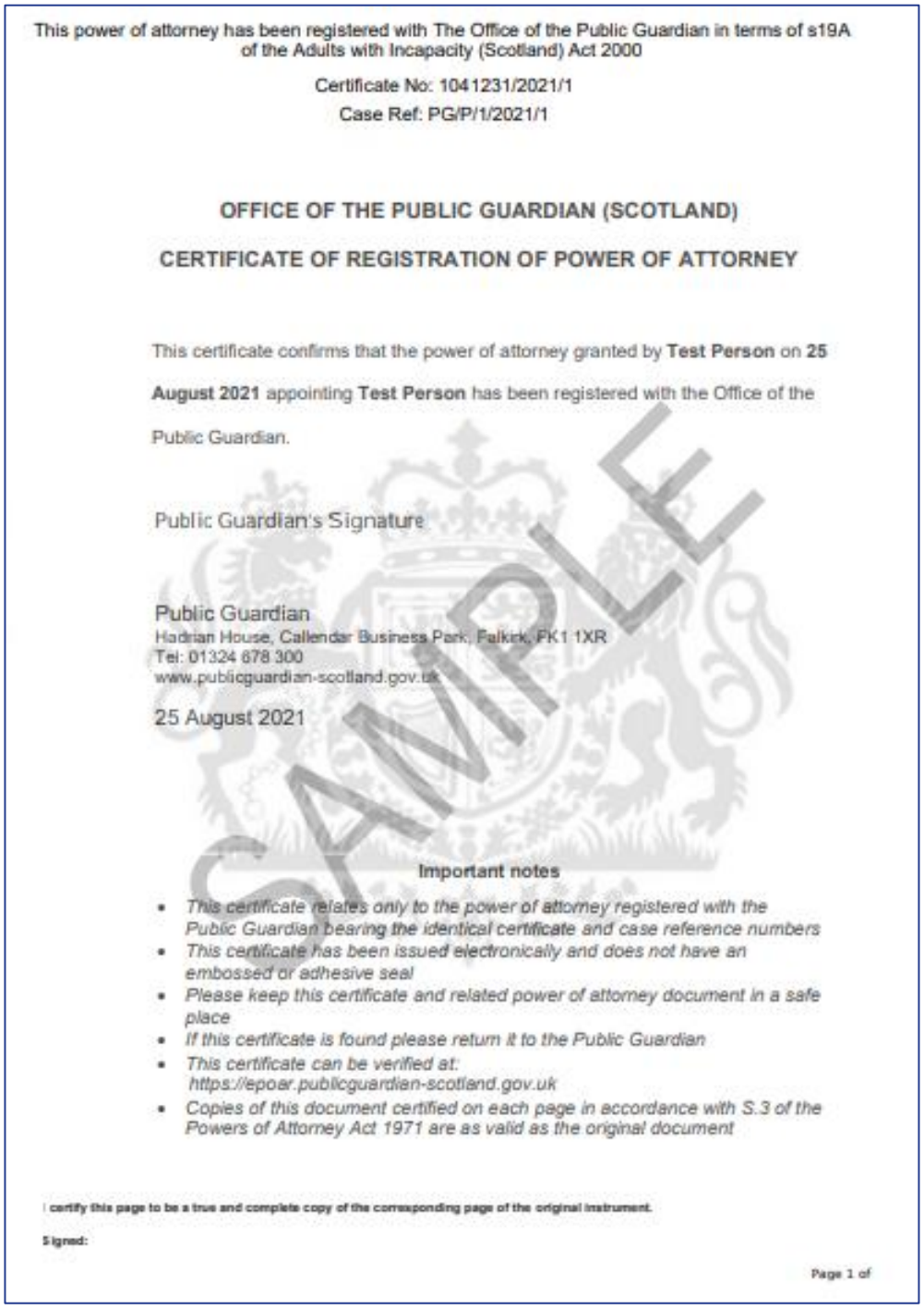
This seal appears red on the original and all bound pages are embossed

Please keep this certificate and attached document in a safe place
If this Certificate is found please return it to the Public Guardian

The Office of the Public Guardian Scotland, Hadrian House
Callendar Business Park, Falkirk, FK1 1XR

SAMPLE

Figure B



This power of attorney has been registered with The Office of the Public Guardian in terms of s19A of the Adults with Incapacity (Scotland) Act 2000

Certificate No: 1041231/2021/1

Case Ref: PG/P/1/2021/1

OFFICE OF THE PUBLIC GUARDIAN (SCOTLAND)

CERTIFICATE OF REGISTRATION OF POWER OF ATTORNEY

This certificate confirms that the power of attorney granted by **Test Person** on **25 August 2021** appointing **Test Person** has been registered with the Office of the Public Guardian.

Public Guardian's Signature

Public Guardian
Hadrian House, Callendar Business Park, Falkirk, FK1 1XR
Tel: 01324 678 300
www.publicguardian-scotland.gov.uk

25 August 2021

SAMPLE

Important notes

- *This certificate relates only to the power of attorney registered with the Public Guardian bearing the identical certificate and case reference numbers*
- *This certificate has been issued electronically and does not have an embossed or adhesive seal*
- *Please keep this certificate and related power of attorney document in a safe place*
- *If this certificate is found please return it to the Public Guardian*
- *This certificate can be verified at: https://epoar.publicguardian-scotland.gov.uk*
- *Copies of this document certified on each page in accordance with S.3 of the Powers of Attorney Act 1971 are as valid as the original document*

I certify this page to be a true and complete copy of the corresponding page of the original instrument.

Signed:

Page 1 of

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