



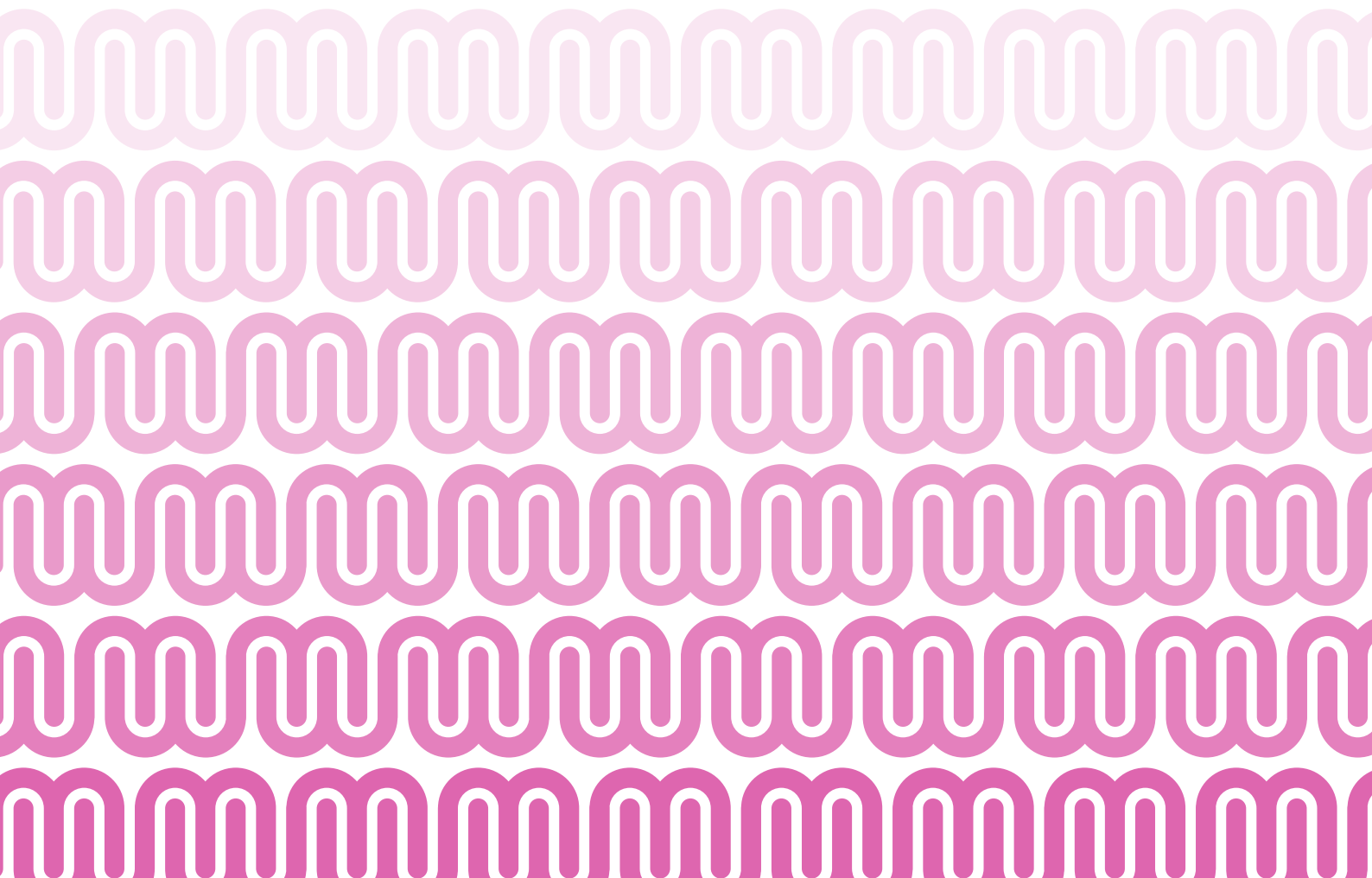
**mental welfare**  
commission for scotland

**QUICK GUIDE**

# **Power of Attorney** **for staff in hospitals** **and care homes**

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April 2021



# Our mission and purpose

## Our Mission

To be a leading and independent voice in promoting a society where people with mental illness, learning disabilities, dementia and related conditions are treated fairly, have their rights respected, and have appropriate support to live the life of their choice.

## Our Purpose

We protect and promote the human rights of people with mental illness, learning disabilities, dementia and related conditions.

## Our Priorities

To achieve our mission and purpose over the next three years we have identified four strategic priorities.

- To challenge and to promote change
- Focus on the most vulnerable
- Increase our impact (in the work that we do)
- Improve our efficiency and effectiveness

## Our Activity

- Influencing and empowering
- Visiting individuals
- Monitoring the law
- Investigations and casework
- Information and advice

## What is a Power of Attorney?

A power of attorney document is drawn up by an adult, giving specific powers to someone they trust to make decisions or take actions on their behalf. This person is called their attorney.

The powers granted can be financial and property matters (called a continuing power of attorney) or welfare matters (welfare power of attorney). The document must be registered with the Office of the Public Guardian before it can be used.

Someone can only make a power of attorney (POA) **when they have capacity to understand what it means** to grant these powers.

Someone granted a continuing POA can use it as soon as it is registered, unless the POA says otherwise. A welfare POA can only be used for decisions the person has lost capacity to take him or herself. Some POAs say that the attorney can only use their powers after a specific event, such as an assessment by a doctor to say the person has lost capacity.

## Powers of Attorney Checklist

### When someone is thinking of signing a power of attorney (POA)

- ✓ They must agree to and understand the powers they are granting and how they might be used.
- ✓ They should know and trust the person or people they want to grant powers to.
- ✓ If they want, they can say in the power of attorney document that a doctor has to assess their capacity before any of the powers can be used.
- ✓ The document must be certified by either a doctor or a solicitor.
- ✓ The doctor or solicitor should interview the person on their own and must be sure that they fully understand the powers they are granting, and they are not being unduly influenced by anyone.
- ✓ If you are concerned about the way a POA was granted, you or your manager should tell the Office of the Public Guardian as soon as possible.

### If there is a power of attorney in place for someone you work with

- ✓ Ask for a copy of the POA document and note what powers it covers.
- ✓ Confirm that the POA document is registered with the Office of the Public Guardian. The attorney should have this registration.
- ✓ Check whether the POA document requires a medical certificate of incapacity before the powers can be operated by the attorney. If so, you or your manager should check the certificate of incapacity to make sure that the attorney is legally authorised to act for the person.
- ✓ Clarify with the attorney if anyone else has also been appointed as a joint attorney and if they know about how the attorney plans to use their powers.
- ✓ Consult the attorney about how and when they want to use their powers and make sure this is clear in the person's records so all staff are aware of this.
- ✓ If you are concerned about how a welfare POA is exercising his/her powers, contact the local authority social work service.
- ✓ If you are concerned about how an attorney is managing someone's property or finances, contact the Office of the Public Guardian.
- ✓ The attorney does not have the power to force the person to do anything where they object or seem unwilling. Contact the local authority social work unit if you have concerns.
- ✓ If a welfare attorney has powers to consent to medical treatment, the doctor should consult the attorney on any proposed treatment. It is a good idea for the attorney to talk to the doctor about how they want this to work in practice. For example they may be happy for some treatment to be adjusted without being consulted every time (such as pain relief) but want to be consulted about bigger issues (such as operations). Even where someone has an attorney (or guardian) with powers to consent to treatment, the doctor must also complete a 'Section 47' certificate.

## What is a Guardian?

A guardian is someone appointed by the court after an adult has lost capacity to make their own decisions, because welfare or financial decisions or both need to be taken on their behalf.

A welfare guardian can be an individual, such as a relative or close friend, or the Chief Social Work Officer. The guardianship order will say which decisions and/or actions the welfare guardian can take on behalf of the person with incapacity. The guardian is appointed by the sheriff court. The application includes reports from two doctors (one a psychiatrist) and a mental health officer (a specially-trained social worker). The reports say why the person needs a guardian and whether the person asking to be guardian is suitable.

Similarly a financial guardian may be appointed on application to the sheriff court. The guardian may be a relative or a lawyer or accountant.

You may also find [Common Concerns with Power of Attorney](#) useful.

## The principles of the Adults with Incapacity (Scotland) Act 2000

Any action taken on behalf of an adult should reflect these principles:

- be of benefit to the adult;
- be the least restrictive thing to do in the circumstances;
- take the past and present wishes and feelings of the adult into account;
- take the views of the nearest relative and the primary carer (as well as other relevant people) into account; and
- encourage the adult to use his/her existing skills.



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