



Appendix: Powers of Attorney

Welfare Power of Attorney (WPA)

A list of possible Welfare Powers you might want to delegate

1. To decide where my permanent place of residence should be
2. To decide what care and accommodation may be appropriate for me
3. To consent on my behalf to any medical treatment not specifically disallowed by the Act
4. To consent to any medical treatment or procedure or therapy of whatever nature my attorney may decide is for my benefit and provide access for that, or refuse such consent
5. To decide, alone or with others, on the level of care which I require
6. To take any legal action on my behalf involving my personal welfare
7. To make such decisions relating to my dress, diet and personal appearance as are appropriate
8. To make such decisions regarding my social and cultural activities
9. To exercise any rights of access I have in relation to personal data and records
10. To decide with whom I should or should not consort
11. To arrange for me to undertake work, education or training
12. To take me on holiday or authorise someone else to do so
13. My Attorney is to be reimbursed for any reasonable outlays or out of pocket expenses while acting on my behalf

MND Scotland is the working name of the Scottish Motor Neurone Disease Association, the only charity funding research and providing care and information for those affected by MND in Scotland.

Appendix 2

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Appendix 2

Continuing Power of Attorney (CPA)

A list of Possible Financial Powers you might want to delegate

1. To open, close, operate, any account containing my funds including those held in common with other persons.
2. 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.
3. To sign and endorse any cheques, deposits, receipts or bank drafts issued and to be issued in my name or made payable to me.
4. To sign and deliver deeds and documents.
5. To make all tax returns and adjust and settle any claim for tax.
6. To be allowed financial information concerning me.
7. To require disclosure to my attorney of any document or information regarding me, however confidential, including testamentary documents.
8. To pay my household expenses.
9. To effect, pay the premiums on, alter or surrender any insurance policy.
10. To buy, lease, sell and otherwise deal with any interest I may have in property of any kind or description and wherever situated.
11. To buy, sell or lease and otherwise deal with heritable property (land and buildings) on my behalf.
12. To borrow and grant security for any sum and to pay the interest and capital on any loan taken out by me or my Attorney on my behalf.
13. To receive or renounce any testamentary or other entitlements; to grant Deeds of Covenant or make any other provision for my estate; to set up any form of Trust.
14. To pay for private medical care and residential care costs.
15. To pay any debt or claim owing by or to me.
16. To raise, defend, compromise and settle any court action and enforce any decree.
17. To make, settle, compromise, discharge and refer to arbitration, any claim
18. To make gifts on behalf of me, including any limits on the size of such gifts or the potential recipients.
19. To run, sell or wind up any business belonging to me.

Appendix 2

20. To pay for me to go on holiday and for the expenses of any accompanying carer/carers.
21. To purchase out of my income or capital, a vehicle or any other equipment which may be required for my benefit.
22. To employ Bankers, Brokers, Solicitors Counsel, Accountants, Managers, Factors or Agents of any kind for the management of any of my affairs at the usual professional rate of payment.
23. To implement such tax planning or similar arrangements as my Attorney may deem suitable.
24. To incur expenditure on behalf of others as, in the judgement of my Attorney, acting reasonably, I myself would have done if consulted or able to be consulted; including (with prejudice to the generality of the foregoing) expenditure for any children or other dependants of mine.

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Appendix 2

WPA(1)

Welfare Power of Attorney (WPA) (one attorney appointed)

Appointment

I, _____, residing at _____, appoint _____, residing at _____ to be my Welfare attorney (my “Attorney”) in terms of section 16 of the Adults with Incapacity (Scotland) Act 2000 (which act and any subsequent amendment of that is referred to as the “Act”)

General Powers

In the event of my being incapable in terms of the Act in relation to decisions about my personal welfare, or in the event that my Attorney reasonably believes that that is the case, then my Attorney may make decisions on my behalf in relation to my personal welfare. I have considered how my incapacity will be determined.

My Attorney shall be subject to the requirements of the Act

Without prejudice to these general powers my Attorney shall have the powers set out in the following clauses

Particular Powers

My Attorney may

(See the list of welfare powers)

Appendix 2

Validity of decisions

All decisions which may be made and all documents which may be granted by my Attorney shall be equally valid and binding as if granted by me.

Recall

This welfare power of attorney shall remain in existence until it is recalled by me in writing or until my death.

Testing Clause

This document is executed as follows:-

Signature of Witness

Signature of Granter

Full name of witness (print)

(Address of witness)

Date of signing

Place of signing

SAMPLE NOT FOR USE

Appendix 2

CWPA(3)

Continuing and Welfare Power of Attorney (CWPA) (one attorney appointed + substitute)

Appointment

I, _____, residing at _____, appoint _____, residing at _____ whom failing _____ residing at _____ to be my continuing attorneys (my “Attorney”) in terms of section 15 of the Adults with Incapacity (Scotland) Act 2000 (which act and any subsequent amendment of that is referred to as the “Act”)

I appoint the said _____ whom failing _____ to be my welfare attorneys in terms of section 16 of the Act.

My continuing attorneys and my welfare attorneys are each referred to as my Attorney.

General Powers

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 to do everything regarding my estate which I could do for myself and that without limitation by reason of anything contained in this power of attorney or otherwise.

In the event of my being incapable in terms of the Act to decisions about my personal welfare, or in the event that my attorney reasonably believes that that is the case, then my attorney may make decisions on my behalf in relation to my personal welfare. I have considered how my incapacity will be determined.

My attorney shall be subject to the requirements of the Act.

Without prejudice to these general powers my Attorney shall have the set powers set out in the following clauses.

Particular Financial Powers

My Attorney may

(See list of financial powers)

Particular welfare powers

My attorney may:-

(See list of welfare powers)

Appendix 2

Validity of documents

All decisions which may be made and all documents which may be granted by my Attorney to whatever person or persons shall be equally valid and binding as if granted by me.

Recall

The continuing and welfare power of attorney shall remain in existence until it is recalled by me in writing or until my death.

Testing Clause

This document is executed as follows:-

Signature of Witness

Signature of Granter

Full name of witness (print)

(Address of witness)

Date of signing

Place of signing

SAMPLE NOT FOR USE

Appendix 2

SCHEDULE 1

Regulation 2

CERTIFICATE UNDER SECTIONS 15(3)(c) AND/OR 16(3)(c) OF THE ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000 TO BE INCORPORATED IN A DOCUMENT GRANTING A POWER OF ATTORNEY

1. This certificate is incorporated in the document subscribed by

Insert name of granter

2. On

Insert date subscribed

3. That confers a

Tick appropriate box – tick one box only

- Continuing power of attorney (i.e. confers property or financial powers only)

- Welfare power of attorney (i.e. confers welfare powers only)

- Combined power of attorney (i.e. confers both property or financial and welfare powers)

4. Appointing as Attorney(s)

Insert name(s) of Attorney(s)

Appendix 2

5. Declaration of Certifier

Note: any person signing this certificate should not be the person to whom this power of attorney has been granted.

I certify that

- 1 I interviewed the granter ***immediately*** before he/she subscribed
. this power of attorney;

- 2 I am satisfied that, at the time this power of attorney was granted,
. the granter understood its nature and extent; and

I have satisfied myself of this:

Please tick appropriate box. (Both may apply but one must apply)

(a) because of my own knowledge of the granter;

and/or

(b) because I have consulted the following person who has
knowledge of
the granter on the matter

*Insert name, address and relationship with granter, of
person consulted*

- 3 I have no reason to believe the granter was acting under undue
. influence or that any other factor vitiates the granting of this power
of attorney.

Signed:

Print name:

Profession:

Address:

.....

.....

Date:

Appendix 2

SCHEDULE 2 Regulation 2

CERTIFICATE UNDER SECTIONS 15(3)(c) AND/OR 16(3)(c) OF THE ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000 TO BE INCORPORATED IN A DOCUMENT GRANTING A POWER OF ATTORNEY

1. This certificate is incorporated in the document subscribed by

Insert name of granter

2. On

Insert date subscribed

3. That confers a

Tick appropriate box – tick one box only

- Continuing power of attorney (i.e. confers property or financial powers only)

- Welfare power of attorney (i.e. confers welfare powers only)

- Combined power of attorney (i.e. confers both property or financial and welfare powers)

4. Appointing as Attorney(s)

Insert name(s) of Attorney(s)

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5. Declaration of Certifier

Note: any person signing this certificate should not be the person to whom this power of attorney has been granted.

I certify that

- 1 I interviewed the granter ***immediately*** before he/she subscribed
. this power of attorney;

- 2 I am satisfied that, at the time this power of attorney was granted,
. the granter understood its nature and extent; and

I have satisfied myself of this:

Please tick appropriate box. (Both may apply but one must apply)

(a) because of my own knowledge of the granter;

and/or

(b) because I have consulted the following person who has
knowledge of
the granter on the matter

*Insert name, address and relationship with granter, of
person consulted*

- 3 I have no reason to believe the granter was acting under undue
. influence or that any other factor vitiates the granting of this power
of attorney.

Signed:

Print name:

Profession:

Address:

.....

.....

Date:

Appendix 2

SCHEDULE 3

Regulation 2

CERTIFICATE UNDER SECTIONS 15(3)(c) AND/OR 16(3)(c) OF THE ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000 TO BE INCORPORATED IN A DOCUMENT GRANTING A POWER OF ATTORNEY

1. This certificate is incorporated in the document subscribed by

Insert name of granter

2. On

Insert date subscribed

3. That confers a

Tick appropriate box – tick one box only

- Continuing power of attorney (i.e. confers property or financial powers only)
- Welfare power of attorney (i.e. confers welfare powers only)
- Combined power of attorney (i.e. confers both property or financial and welfare powers)

4. Appointing as Attorney(s)

Insert name(s) of Attorney(s)

Appendix 2

5. Declaration of Certifier

Note: any person signing this certificate should not be the person to whom this power of attorney has been granted.

I certify that

1. I interviewed the granter *immediately* before he/she subscribed this power of attorney;
2. I am satisfied that, at the time this power of attorney was granted, the granter understood its nature and extent; and

I have satisfied myself of this:

Please tick appropriate box. (Both may apply but one must apply)

(a) because of my own knowledge of the granter;

and/or

(b) because I have consulted the following person who has knowledge of the granter on the matter

Insert name, address and relationship with granter, of person consulted

3. I have no reason to believe the granter was acting under undue influence or that any other factor vitiates the granting of this power of attorney.

Signed:

Print name:

Profession:

Address:

.....

.....

Date:

Appendix 2

Power of Attorney Checklist – From 01/04/08

POWER OF ATTORNEY DOCUMENT	✓
Power of Attorney is dated and signed by granter	
Incorporates a statement clearly expressing granter's intention that the power is continuing and/or welfare	
Where welfare powers are granted – a statement is incorporated stating the granter has considered how their incapacity will be determined	
Where financial powers are granted that are to start only on the granter's incapacity - a statement is incorporated stating the granter has considered how their incapacity will be determined	
If copies are to be sent to specified individuals, this is stated within the document	
Nothing in the document prevents registration (no springing clause)	
If power of attorney revokes previous powers of attorney, a certificate in terms of SSI 56/2008 Schedule 2 is enclosed.	
PRESCRIBED CERTIFICATE	✓
Certificate is in prescribed form (SSI 56/2008) Schedule 1. <i>N.B. If conferring welfare and financial powers, a single certificate may be incorporated.</i>	
Granter's name is entered and matches name on document	
Date granter subscribed the power of attorney document is entered on certificate	
Attorney(s) name(s) entered and this matches name(s) on document	
At least 1 box ticked at section 5(2). Either (a) or (b) or both	
Where appropriate, details of anyone else consulted is entered at (b). <i>N.B. It is preferred that the nominated attorney is not the person consulted due to the potential conflict of interest</i>	
Certificate signed by a practising Scottish solicitor, medical practitioner or legal advocate	
Certifier details completed in full	
Certifier is not the person granted power of attorney	
REGISTRATION FORM	✓
Registration form is completed	
Attorney(s) have signed confirming they are willing to act.	
REGISTRATION FEE	✓
Correct fee enclosed – refer to OPG website	
Cheque made out to 'The Scottish Court Service'	
<i>NB: Failure to submit a valid document will lead to its rejection.</i>	

Appendix 2

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