

# Department for Work and Pensions

ADJUDICATION AND CONSTITUTIONAL ISSUES DIVISION

## **Agents, Appointees, Attorneys and Receivers Guide (AAARG)**

### **May 2007 amendment package**

1. The Agents, Appointees, Attorneys and Receivers Guide is now the responsibility of Adjudication and Constitutional Issues Division (ACI). This amendment package brings the guide up to date with current legislation.
2. This amendment package affects 'About this guide', 'Abbreviations', Main Contents, Parts 1, 2, 3, 4, 5, 6, 7, 8 and 9.

3. This amendment package is issued in PDF format only,

**Note:** When printing PDF packages set the print properties to Duplex/Long Edge in order to produce double-sided prints.

4. Copies of this amendment package can be purchased from Corporate Document Services (0113 399 4040). For DWP customers this will be chargeable to your own cost centre. You can also access the AAARG and individual amendment packages via the DWP website at [www.dwp.gov.uk/advisers/index.asp](http://www.dwp.gov.uk/advisers/index.asp).
5. The AAARG can be accessed on the DWP Intranet. On the homepage click "Delivery", "Benefit guidance", "DWP Forms and Guidance Gateway".
6. Remove the sheets in the left hand column and insert new sheets in the right hand column.

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About this guide (4 pages)  
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### **Part three – Curator bonis, Tutor and Guardian (Scotland)**

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## About this guide

### Purpose of the guide

This guide:

- promotes consistent procedures for dealing with agents, appointees, attorneys, receivers and third parties
- does not provide any detailed information about the method of payment. See Methods of Payment Policy on the COBAP website.  
<http://intranlink/1/corp/sites/finance/fsd/cbandmp/index.asp>

### Who should read this guide

This guide is for all staff within:

- Department for Work and Pensions (DWP)
- Social Security Agency (Northern Ireland) - (SSA(NI))
- Veterans Agency (VA)

### Other Guides

Throughout the Agents, Appointees, Attorneys and Receivers Guide there is reference to various other guides, these being:

CAPS Personal Details User Guide

CAPS Technical Guide

CAPS Management Guide.

It should be noted that these guides are for **DWP internal use only** and therefore may not be accessible on the internet.

## Layout of the guide

| This guide has eight parts:

- Part one**      Other Payees
- Part two**      Receiver (England and Wales)
- Part three**    Curator bonis, Tutor and Guardian (Scotland)
- Part four**     Attorney
- Part five**     Appointee
- Part six**      Action following verification of a PAB/COP
- Part seven**    Split Payment Payee
- Part eight**    Collection of payment by a 3rd party

## Method of payment

| The normal method of payment is Direct Payment into a bank, building society or other provider's account. Cheque payments are available for those customers unable to be paid by Direct Payment. See Methods of Payment Policy on the COBAP website.  
<http://intraLink/1/corp/sites/finance/fsd/cbandmp/index.asp>

## Data Protection and handling customer information

All data collected and retained for DWP use must conform to the Data Protection Act (DPA) 1998. The purpose of the Act is to protect the rights of individuals, about whom personal data is obtained, recorded, held or disclosed.

Data which, on its own or combined with other information or opinion, can identify a person is called 'personal data'. All data collected, used, recorded and stored/held, either clerically or electronically, must comply with the requirements of the DPA 1998 i.e. it must be:

- processed fairly and lawfully;
- not used for any purpose other than the purpose for which it was supplied;
- adequate, relevant and not excessive;

- accurate and up to date;
- kept for no longer than necessary;
- held securely.

All departmental guidance and procedures should comply with the above principles. (For further advice please refer to the *Data Protection Policy* link on the Departmental Intranet site.)

Under section 123 of the Social Security (Administration) Act 1992 it is an offence for anyone who is or has been employed in social security administration or adjudication to disclose information obtained in the course of their employment without lawful authority. For further advice refer to the Personal Information Policy (PIP).

Individuals have the right to see most of the personal data the DWP holds about them. Their request must be made in writing and, on receipt, is referred to as a Subject Access Request (SAR). All SARs should be referred to the Data Protection Officer to process and consider.



## Comments on layout and design

To: Quentin Chu  
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My comments about the layout and design of the Agents, Appointees, Attorneys and Receivers Guide are:

### ***Layout***

(sequence, contents, index, etc)

### ***Design***

(headings, flowcharts, tables, etc)

### ***Style***

(Plain English)

Signed: ..... Date: .....

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## Comments on technical content

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## Abbreviations

### A

**AA** Attendance Allowance

**AHA** Area Health Authority

### C

**CB** Curator Bonis

**ChB** Child Benefit

**CCC** Customer Conversion Centre

**CH** Care Home

**COI** Corporate Organization Identifier

**COP** Corporate Other Payee

**CP** Court of Protection

**CRN** Child Reference Number

### D

**DAP** Death Arrears Payee

**DDPU** Departmental Data Protection Unit

**DLA** Disability Living Allowance

**DP** Direct Payment

**DPA** Data Protection Act

**DPO** Data Protection Officer

**DWP** Department for Work and Pensions

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Abbreviations

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E - O

**E**

**EEA** European Economic Area

**EPoA** Enduring Power of Attorney

**G**

**GA** Guardian's Allowance

**H**

**HA** Health Authority

**HB** Health Board

**I**

**IMP** Information Management Policy

**IOP** Instrument of Payment

**IPC** International Pension Centre

**L**

**LA** Local Authority

**M**

**MOP** Method of Payment

**N**

**NH** Nursing Home

**NINO** National Insurance Number

**O**

**OP** Other Payee

**OPG** The Office of the Public Guardian

## **P**

**PA** Permanent Agent

**PAB** Personal Acting Body

**PDCS** Personal Details Computer System

**PGO** Public Guardianship Office

**PO** Post Office®

| **POca** Post Office® Card Account

**PoA** Power of Attorney

## **R**

**RCH** Residential Care Home

## **S**

**SAR** Subject Access Request

**S of S** Secretary of State

**SPP** Split Payment Payee

**SSA(NI)** Social Security Agency (Northern Ireland)

## **T**

| **T** Tutor

## **V**

| **VA** Veterans Agency



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## Part one – Other Payees

### Introduction

- 1000 A customer may require someone to collect or receive payments on their behalf. This may be at their request or an arrangement that is made for them.
- 1001 | Anyone who collects or receives payments on behalf of the customer in these circumstances becomes known as an OP.
- 1002 As well as being an individual, an OP can be an organization such as a LA or NH. In these circumstances the OP is referred to as a COP.
- 1003 | PDCS must hold an account for both the customer and the OP before payment can be made.
- 1004 - 1005
- 1006 | In order to record the OP on PDCS you must have a NINO for the OP (but see 1009 below for COP) or, exceptionally when the OP is aged under 16, a CRN.
- 1007 | The only OP types who can be under 16 are agents. (Please note that Permanent Agents must be over 16. Where a CRN is used to identify such OPs, it must not be referred to as a NINO until it is entered on the National Insurance Recording System which usually takes place at age 15 years and 9 months.
- 1008 If the OP does not quote the NINO/CRN, you should trace it using existing business procedures. For more information, refer to your existing business procedures.
- 1009 | However, if you are recording a COP on PDCS, you are recording details of an organization. The use of a NINO/CRN would be inappropriate in these circumstances See para 1176 et seq.

1010 – 1049



## **Making changes to the Other Payee's PDCS account**

1050 | Any changes to personal details including bank, building society or Post Office® details should be recorded in the relevant PDCS/CPCS dialogues.

1051-1099



## Types of Other Payees

1100 These are the types of OPs:

- Receiver
- Controller
- curator bonis
- guardian
- tutor
- attorney
- appointee
- parent/guardian
- alternative payee
- DAP
- SPP



## Third Party Payees

1101 Under Direct Payments customers who can manage their own affairs but are unable to go to the bank, building society or Post Office® may be able to arrange for a person they know and trust to have access to the account where the benefits are paid. (See *Collection of Payment by an individual 3rd party* in *Part eight* of this guide).

1102 - 1049



## Personal Acting Bodies and Corporate Other Payees

### Personal Acting Body

- 1150 A PAB is a named person appointed to look after all or some aspects of a customer's affairs.
- 1151 A PAB can be appointed by:
- the courts to administer all aspects or specified aspects of a customer's affairs **or**
  - an officer (acting on behalf of the Secretary of State) to administer all aspects of a customer's affairs relating to benefits, pensions and allowances
- 1152 The following OP types are known as PABs:
- **receiver** – appointed by the Court of Protection in England and Wales
  - **controller** – appointed by the Office of Care and Protection in Northern Ireland
  - **guardian** – appointed by a court in Scotland on or after 01.04.2002
  - **curator bonis** – appointed by a court in Scotland before 01.04.2002
  - **tutor** – appointed by a court in Scotland before 01.04.2002
  - **attorney** – appointed by the customer and legally supported
  - **appointee** – appointed by an officer acting on behalf of the Secretary of State
  - **parent/guardian** – only used for Disability Living Allowance (DLA) and by the veteran's Agency (VA).
- 1153 In the above list only receiver and those appointed by the court in Scotland have a higher status than a DWP appointee for payment of benefit.

Example

If the customer has a PAB whose status appears above 'appointee' in the above list, an officer (acting on behalf of the Secretary of State) **cannot** usually authorize an appointee to administer the customer's affairs relating to benefits, pensions and allowances. The only exception is when the existing PAB no longer has authority to act, or the Department has received written confirmation that the PAB no longer wants to act on the customer's behalf.

1154 The customer's PAB is responsible for reporting all changes in:

- the customer's circumstances **and**
- their own circumstances that the Department may require, eg a change of name or address or change of account.

1155 - 1169

## Corporate Other Payee

1170 A COP is not a named individual, but an organization appointed to act for a customer, eg:

- a LA
- CH
- an AHA **or**
- a firm of solicitors.

**Note:** This list is not exhaustive.

1171 COPs are dealt with in the same way as PABs, eg treat a receiver acting for an organization in the same way you would treat a receiver who is an individual.

1172 | The following OP types can be COPs:

- **receiver** – appointed by the CP in England and Wales
- **controller** – appointed by the Office of Care and Protection in Northern Ireland
- **attorney** – appointed by the customer and legally supported
- **appointee** – appointed by an officer acting on behalf of the Secretary of State.

| 1173

I 1174

1175 **It is important to determine whether an individual is acting in a personal or a professional capacity (e.g. an accountant or a solicitor acting for a family member).**

1176 If the individual is acting in a personal capacity, use his or her NINO as an identifier.

1177 If the individual is acting as an employee of a Corporate Organization, use PDCS to trace for an existing Corporate Organization ID. If there is no trace, use PD385 to create a new record. PDCS will generate a unique 6 digit ID for the organization.

**Note:** A Corporate Organisation can only have one corporate ID. If you discover that they have more than one then action needs to be taken to rationalise the position. You may want to discuss with the organisation which number they want to use. You should use form CAPS22 from the PD User Guide to alert Pensions IS/IT Directorate to the problem.

1178 In no circumstances should the individuals' NINO be used, nor should any attempt be made to trace it.

1179 Although an individual authorized by the COP's organization will usually act on behalf of the organization to complete forms and collect payments, you **must** record the organization as the COP, **not the individual**.

**Example**

The LA's Finance Director Peter Jones is the person who actually acts for all the customers for whom the LA is the COP.

Despite this, **do not** record the COP as 'Peter Jones' or 'Finance Director'. The correct COP is the LA, e.g. 'Leeds City Council'.

For more information, see Action following verification of a PAB/COP in Part six of this guide.

1180 If the individual is acting as an employee of a Corporate Organization, the organization must provide him or her with a letter of authority confirming that the individual is acting on their behalf. Form BF57 includes a certificate for completion by the organization at Part 4 - **see Appendix 2**.

1181 - 1189

## Receiver

1190 A receiver is appointed by the Court of Protection in England or Wales to act on the customer's behalf to deal with all their financial affairs. Once appointed they may act on the customer's behalf in all their dealings with the Department without appointment by the Secretary of State.

1191 If you receive a claim or enquiry from a person who claims to have been appointed as a customer's receiver, see *Receiver (England and Wales)* in *Part two* of this guide.

1192-1199

## Controller

1200 A controller is appointed by the Office of Care and Protection in Northern Ireland to act on the customer's behalf to deal with all their financial affairs. Controllers are only valid in Northern Ireland. Once appointed they may act on the customer's behalf in all their dealings with the Department without appointment by the Secretary of State.

1201 If you receive a claim or enquiry from a person who claims to have been appointed as a customer's controller, see your own business procedures.

1202-1209

## Guardian, CB & T

1210 A guardian curator bonis, or tutor with full powers is appointed by a court in Scotland to act on the customer's behalf to deal with all their financial affairs. Once appointed they may act on the customer's behalf in all their dealings with the Department without appointment by the Secretary of State.

1211 If you receive a claim or enquiry from a person who claims to have been appointed as a customer's guardian, curator bonis or tutor, see *Curator bonis, Tutor or Guardian (Scotland)* in *Part three* of this guide.

1212 The law in Scotland changed on 01 April 2002. From that date the terms 'Curator Bonis' and 'Tutor' are no longer used. Instead Guardians will be appointed. For full details see *Part three* of this guide.

1213 A curator bonis can still act for children under 16 in Scotland. When the customer reaches the age of 16 then the curator bonis will become the child's guardian.

1214 - 1219

## Attorney

1220 A PoA is a legal contract between the customer and a third party that allows the third party to act in the customer's affairs.

1221 The PoA can be granted to:

- an individual
- two or more individuals, i.e. joint attorneys **or**
- an organization.

1222 If you receive a claim or enquiry from a person who claims to have been appointed as a customer's attorney, see *Attorney* in *Part four* of this guide .

1223 - 1229

## Appointee

1230 An officer acting on behalf of the Secretary of State can authorize someone else to act on a customer's behalf if the customer is incapable of managing their own affairs. This is called an appointment to act and the person or organization appointed to act is called an appointee.

1231 Appointee action should only be authorized if a customer is incapable of managing their own affairs even if they require some support to do this, e.g. due to a mental or extreme physical disability they are unable to make a claim or continue to manage an existing claim. Appointee action is not appropriate for customers who are capable of dealing with their own affairs.

### Example

Appointee action is **not** appropriate if the customer merely needs someone to:

- collect their money from the bank, building society or Post Office® **or**
- help them to budget

1232 An appointee can be:

- an individual, e.g. a relative or friend **or**
- an organization, e.g. an LA or a NH.

1233 If someone requests appointee action and you are satisfied it may be appropriate, see *Appointee* in *Part five* of this guide.

1234 - 1239

## Parent/Guardian

- 1240 | A DLA or VA officer acting on behalf of the Secretary of State must authorize:
- in England or Wales, a parent or guardian to act on a child's behalf for the DLA
  - in Scotland, a guardian to act on a child's behalf for the DLA and/or War Pensions benefits only. The guardian is usually the child's parent.
- 1241 For guidance about authorizing a parent or guardian to act on a child's behalf, refer to your existing business procedures.
- 1242 - 1299

## Authorized Payees

1300 For PDCS purposes, the following OP types are known as authorized payees:

- Alternative Payee
- DAP
- SPP.

1301 After appointment, authorized payees can collect payments without any further authorization from the customer.

1302 - 1319

## Death Arrears Payee

1320 An officer acting on behalf of the Secretary of State can authorize a DAP to receive any payment outstanding after the customer's death. If the DAP is an organization or a representative of an organization acting in an official capacity, they are known as a corporate DAP.

1321 You **must** verify the customer's date of death **before** you authorize a DAP. For guidance on DAPs, see your existing business procedures and the *CAPS Personal Details User Guide*.

1322 - 1329

## Split Payment Payee

1330 An officer acting on behalf of the Secretary of State can authorize a SPP to receive part or all the customer's benefit.

1331 Consider authorizing an SPP if there is a need to protect the interests of the customer or members of their family. For more information about SPPs, see *Split Payment Payee* in *Part seven* of this guide.

1332 - 1349



## **Third Parties**

1350 If the customer is capable of managing their own affairs but needs someone to help them collect their benefit they can authorize someone they trust to help.

| See collection of payment by an individual third party in Part 8 of this guide.

## **Bank or building society accounts**

1351 | When the customer's benefit is paid directly into an account it may be possible for the customer to authorize a third party to access their account and collect their benefit for them. The precise arrangements will depend on the type of account they have and with which account provider. Customers should be told to contact their bank, building society or other account provider to check what arrangements are available.

## **Post Office® card accounts**

1352 If the customer is paid directly into a POca they can authorize someone they trust to have permanent access to their account. That person would be called a **Permanent Agent**. They would have their own card and PIN.

| 1353 - 1379

## **Signing Agent**

1380 | With the introduction of DP into an account Signing Agents are no longer appropriate.

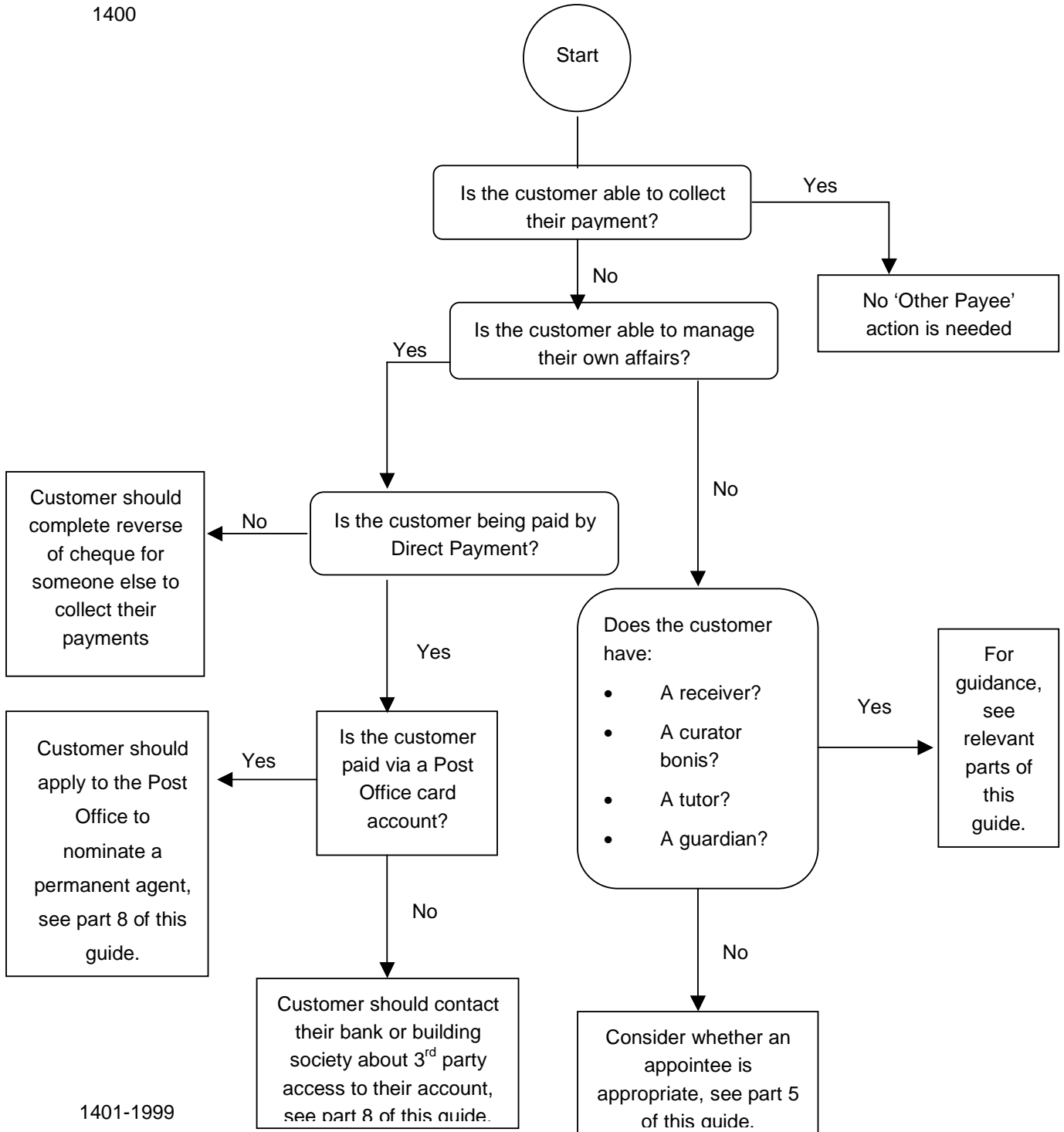
## **International Pension Centre**

1381 Where the customer wishes payment to be made to someone overseas please see further information about IPC (Y) agents in your own business guidance.

1382 - 1399

# Other Payee flowchart

1400



1401-1999



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# Part two – Receiver (England and Wales)

## Introduction

2000 When a customer is mentally incapable of managing their financial affairs and therefore incapable of authorizing another person to act on their behalf, an application can be made to the CP to either:

- appoint a receiver **or**
- issue a short order

2001 The application to the CP may be made by:

- a friend or relative
- the LA Social Services department **or**
- a solicitor or other professional receiver

**Note:** This list is not exhaustive.

2002 Whether the CP appoints a receiver or issues a short order depends on the person's assets. If the person has, or it is anticipated that, due to litigation or inheritance that they will have, assets of:

- £16, 000 or more, the court appoints a receiver under the Mental Health Act 1983, section 99(2) to act on behalf of the customer in all their financial affairs. If the person has no-one who is suitable and willing to be a receiver, the court appoints:
  - a professional receiver drawn from an accredited panel **or**
  - the PGO. For more information about the PGO, see *Public Guardianship Office appointed as receiver* in this part of the guide
- | • less than £16,000, the court issues a short order - this carries fewer powers than a full receivership. For more information about short orders, see Short orders issued by the CP in this part of the guide

2003 A receiver may be:

- an individual **or**
- an organization, eg the PGO or an LA

---

**Part two**

---

## Receiver

- 2004 **It is important to determine whether an individual is acting in a personal or a professional capacity.**
- 2005 If the receiver is acting in a personal capacity, use his or her NINO as an identifier.
- 2006 If the receiver is acting as an employee of a Corporate Organization, use PDCS to trace for an existing Corporate Organization ID. If there is no trace, use PD385 to create a new record. PDCS will generate a unique 6 digit ID for the organization.
- 2007 In no circumstances should the individuals' NINO be used, nor should any attempt be made to trace it.
- 2008 A receiver takes precedence over any other type of English or Welsh OP. For a full list of OPs, see *Part one* of this guide .
- 2009 If a receiver is appointed while another type of OP exists, the existing OP arrangement must be ended and replaced with the receiver.

**Example**

The customer has an appointee authorized by an officer acting on behalf of the Secretary of State to:

- receive the customer's payments **and**
- act on the customer's behalf in all their dealings with the Department

The CP subsequently appoints a receiver to act on the customer's behalf.

After verifying the change, you must terminate the appointeeship and record the receiver as the OP instead.

For more information, see *Changing the customer's OP/COP* in *Part six* of this guide.

2010-2049

## Verifying the Order of Appointment

### Receiver other than the Public Guardianship Office

2050 If you receive a claim or enquiry from any person or organization other than from the PGO stating that they are the customer's receiver, ask to see the court's Order of Appointment. The order appoints a receiver under the Mental Health Act 1983, section 99(2).

2051 If the order empowers the receiver to act in all matters or specifically in Social Security matters, the receiver can act on behalf of the customer without further authority from the Secretary of State.

If the receiver is a professional receiver they will always have the authority to act in all Social Security matters. This is the case even where the order of appointment makes no reference to Social Security or benefit.

2052 Exceptionally, if the powers of the Order of Appointment are limited, refer the case to the nominated/appropriate officer to consider appointee action. For information about authorizing an appointee, see *Appointee* in *Part five* of this guide.

2053 If the nominated/appropriate officer is unsure about whether the receiver is empowered to act on behalf of the customer for Social Security matters, get advice from the PGO by post or by telephone.

2054 To contact the PGO by post:

Step	Action
1	draft a letter: <ul style="list-style-type: none"><li>quoting the customer reference number <b>and</b></li><li>detailing the point in doubt</li></ul>
2	photocopy the Order of Appointment
3	send the letter and photocopy to: Public Guardianship Office Archway Tower 2 Junction Road London N19 5SZ

2055 To contact the PGO by telephone, ring their helpline number:  
PGO Helpline 0845 330 2900

2056-2059

## Receiver is the Public Guardianship Office

- 2060 If the PGO is appointed as a customer's receiver by the CP, general powers will always be granted, ie authority to handle all the customer's financial affairs.
- 2061 The PGO will usually write to the DWP advising them of the appointment with a copy of the order and to enquire about benefits in payment, They may also make a claim for benefits at the same time.
- 2062 On initial claims, the PGO sends the Department a:
- letter giving details about the customer and the customer's circumstances **and**
  - copy of the current Order of Appointment
- 2063 On existing claims, the PGO sends the Department a:
- letter advising that they have been appointed receiver for the customer **and**
  - copy of the Order of Appointment
- 2064 If you are unsure or require more information, contact the PGO by post or by telephone (see paragraphs 2054 and 2055).

2065-2099

## Responsibilities of a receiver

- 2100 If the CP empowers a receiver to act in all matters, or specifically Social Security matters, the receiver becomes fully responsible for the customer's financial affairs. This includes:
- claiming benefit(s), including completing and signing any claim forms
  - collecting/receiving benefit payments **and**
  - reporting any changes in circumstance

- 2101 A receiver is also responsible for reporting changes in their own circumstances that the Department requires, eg a change of address or change of account.

2102-2148

## Receivers under Scottish Law

- 2149 A receiver cannot be appointed in Scotland, however if a customer moves to Scotland there is provision under Section 110(1) of The Mental Health Act 1983 for a reciprocal agreement with Scotland. A receiver who has been appointed to act will continue to do so in relation to property and affairs in Scotland provided a guardian, curator bonis or tutor has not been appointed in Scotland.



## **After you verify the Order of Appointment**

2150 After you verify that the CP has appointed the receiver to act on behalf of the customer, see *Action following verification of a PAB/COP* in *Part six* of this guide.

2151-2199



## Short orders issued by the Court of Protection

2200 In addition to its powers to appoint receivers, the CP has powers to provide for administering people's financial affairs under the Mental Health Act 1983, sections 95 and 96. This includes directing someone other than a receiver about the management of a person's property through the issue of a short order.

2201 Normally a short order will not allow the holder to access the customer's benefits and so an appointee will be required. However, if the order grants a general power over all the customer's financial affairs we can pay benefit to the holder. No need to take appointee action.

2202-2999



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# Part three – Guardian, Curator Bonis & Tutor, Scotland

## Introduction

3000 When a customer is incapable of managing their affairs and therefore incapable of appointing another person to act on their behalf, an application can be made to the court in Scotland to appoint a guardian, curator bonis or tutor.

3001 A court will grant a guardian or curator bonis full powers to act in all matters.

3002 A court decree may grant a tutor:

- full powers to act in all matters or specifically all Social Security matters **or**
- limited powers which will not include the power to act on behalf of the customer in relation to property or Social Security matters

3003 A guardian, curator bonis or tutor appointment is always made in favour of an individual. The person to whom a guardian, curator bonis or tutor is appointed is the customer.

3004 A guardian, curator bonis or tutor with full powers to act on the customer's behalf, takes precedence over any other type of Scottish OP.

3005 A curator bonis or tutor appointed for an adult must have been appointed, or the court proceedings started, on or before 31 March 2002.

3006 On or after 1 April 2002, guardians are appointed for adults instead. The OPG will issue a Certificate of Registration.

3007 All existing curator bonis' or tutors appointed for an adult before this date will automatically become guardians from 1 April 2002, although they will retain their original powers under the old law.

3008 If a customer moves to Scotland from England and Wales there is provision under Section 110(1) of the Mental Health Act 1983 for a reciprocal agreement with Scotland. A receiver who has been appointed to act will continue to do so in relation to property and benefit affairs in Scotland provided a curator bonis has not been appointed in Scotland (see *Receiver* in *Part two* of this guide).

3009

## Position in the order of authority

- | 3010 A guardian, curator bonis or tutor granted full powers to manage all of the customer's affairs in Scotland has the same authority as a receiver in England/Wales.
- | 3011 If a guardian, curator or tutor with full powers is appointed while another type of OP of an equal or lower authority exists, the existing OP arrangements must be ended and replaced with the guardian, curator bonis or tutor. For a full list of OPs, see *Part one* of this guide.

### Example

The customer has an appointee authorized by an officer acting on behalf of the Secretary of State.

A court in Scotland subsequently appoints a guardian to act on the customer's behalf.

After verifying the court decree appointing the guardian, you must terminate the appointeeship and record the guardian as the OP instead.

For more information, see *Changing the customer's OP/COP* in *Part six* of this guide.

3012-3049

## Verifying the Evidence of Appointment

- 3050 If you receive a claim or enquiry from any person stating that they are the customer's guardian, curator bonis or tutor, ask to see evidence of the appointment. If such evidence empowers the person to act in all matters, or specifically in Social Security matters, they may act on behalf of the customer. Evidence of appointment will normally mean a court order.
- 3051 If a curator bonis, tutor or other guardian has been appointed to act on behalf of a customer, they may do so without further authority from the Secretary of State.
- 3052 If, exceptionally, the powers contained in the decree are limited, refer the case to the nominated / appropriate officer to consider appointee action. For information about authorizing an appointee, see *Appointee* in *Part five* of this guide.



## **Guardian appointed on or after 1 April 2002**

### **The Adults with Incapacity (Scotland) Act 2000**

- 3053 The Adults with Incapacity (Scotland) Act 2000 provides that the courts can appoint welfare guardians or financial guardians to deal with the affairs of the customer. Welfare Guardians will not usually be given powers to deal with the financial affairs of the customer.
- 3054 If you receive a request from someone who claims to have been made the customer's guardian ask to see both the "interlocutor" and the Certificate of Registration. The "interlocutor" is the court document which specifies the powers that have been granted to the guardian. The Certificate of Registration is issued by the OPG to show that the guardianship order has been registered with them.
- 3055 Where more than one person has been appointed by the OPG all those named must have a Certificate of Registration. Check the proceedings began on or after 31 March 2002.
- 3056 In all cases where it is clear that the guardianship order includes the power to administer the financial affairs of the customer, do not take any appointee action. The guardian is authorized to deal with the customer's social security affairs. See also para. 3010.
- 3057 **Guardianship Orders should be sent to:**  
**Adjudication and Constitutional Issues Scotland (ACIS)**  
**Room D311**  
**Argyle House**  
**Edinburgh**
- 3058 If ACIS confirm that the guardian has authority to handle the social security benefit affairs of the customer, see *Creating an OP/COP relationship* in *Part six* of the guide.

## Intervention Orders

3059 The Adults with Incapacity (Scotland) Act 2000 also gives the courts power to impose intervention orders. These are intended as a temporary measure in relation to a specific act or decision on behalf of the customer in order to protect their interests.

It should be noted that an Intervention Order, even where it includes authority to manage benefit payments, does not take priority over an appointment made by the Secretary of State. They can operate simultaneously. In practice you should consider whether this would be the best approach for the customer. As the Intervention Order is likely to cover all the customer's financial affairs and not just benefits, then if there is an existing appointment you may want to consider revoking it. This will require careful consideration and discussion with all parties.

3060 The length of time the intervention order is in force, and the powers specified in the order will determine whether the Department needs to take any action.

3061 Intervention Orders should be sent to ACIS. See *para 3057* for details.

3062 Issue any claim forms and record the following:

1. details of the PAB;
2. whether the appointment is of guardian, curator bonis or tutor,;
3. the number and date of the order of appointment;
4. the receipt and disposal of the OB if appropriate.

Forward a copy of the appointment to all other appropriate benefit sections.

3063 If the powers of appointment are limited and/or it is not clear whether the person is appointed to deal with Social Security matters, refer the case to the supervisor or team leader to consider referral to ACIS for normal appointee action.

3064 - 3099

## Responsibilities of a curator bonis, tutor or guardian

- | 3100 If the court empowers a guardian/curator bonis/tutor to act in all matters, or specifically all Social Security matters, the guardian/curator bonis/tutor becomes fully responsible for the customer's financial affairs. This includes:
- claiming benefit/s, including completing and signing any claim forms
  - collecting/receiving benefit payments **and**
  - reporting any changes in circumstance
- | 3101 A guardian, curator bonis or tutor is also responsible for reporting changes in their own circumstances that the Secretary of State may require, eg a change of address or change of account.

3102-3149



## **After you verify the Evidence of Appointment**

- I 3150 After you verify that the court has appointed the guardian/curator bonis/tutor to act on behalf of the customer, see *Action following verification of a PAB/COP* in *Part six* of this guide.

3151-3999



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## Part four – Attorney

This Part describes:

- how to recognize a PoA that is a valid authority for social security benefits
- the types of PoA available
- the authority that can be granted by a PoA
- when the Secretary of State is able to accept a PoA for social security benefit purposes

### Introduction

4000 Because the law relating to attorneys in England and Wales is different to the law in Scotland, this part is divided into guidance for:

- England and Wales, see *Attorney – England and Wales* in this part of the guide **and**
- Scotland, see *Attorney – Scotland* in this part of the guide.

4001 - 4049



## Attorney – England and Wales

4050 The PoA is a legal document (a deed) in which a person (the donor) gives authority to another person (the donee or the attorney) to deal with his financial affairs.

4051 A PoA can be granted under:

- The Power of Attorney Act 1971
- The Enduring Power of Attorney Act 1985.

4052 Whichever Act a PoA is granted under, the attorney can be given:

- **general** powers to handle all the customer's affairs - see *Responsibilities of an attorney* in this part of the guide
- **specific** powers to handle some of the customer's affairs - see *Power of attorney granted with specific powers* in this part of the guide and/or
- PoA for a **limited period**, eg while the customer is ill or abroad - see *Power of attorney granted for a limited period*

4053 The Secretary of State can accept a PoA as a valid authority to manage the social security benefit affairs of the customer under certain circumstances.

4054 A PoA can be granted to:

- an individual
  - two or more individuals, i.e. joint attorneys, see *Two or more attorneys*
- or**
- an organization, see *Professional attorneys*.

### Verifying the attorney is empowered

4055 If you receive a claim or enquiry from any person(s) or organization stating that they are the customer's attorney(s) and that they wish to act for the customer, ask to see the PoA document.

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**Part four**

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## Attorney

- 4056 To be acceptable, a PoA document must:
- a) be signed by:
    - the customer, whose signature must be countersigned by a witness **or**
    - someone acting under the customer's direction and in the customer's presence, whose signature must be countersigned by two witnesses **and**
  - b) give the attorney's:
    - name
    - address **and**
  - c) include the words:
    - 'signed and sealed' if the PoA was completed before 31 July 1990 **or**
    - 'signed as a deed' if the PoA was completed on or after 31 July 1990
- 4057 There is a template, provided by both the 1971 Act and the 1985 Act, which the vast majority use, see *Power of Attorney and Enduring Power of Attorney* in this part of the guide.

## Photocopies

- 4058 You can accept a photocopy of any PoA document provided it includes a declaration that it is a true and complete copy of the original signed by:
- the customer **or**
  - a solicitor **or**
  - a stockbroker.
- 4059 The declaration must appear at the end of the page, or at the end of each page if the PoA document has more than one page.

Otherwise you must ask to see the original document.

4060 – 4068

## OVERSEAS ATTORNEYS

### PoA drawn up abroad

4069 Where you receive a PoA drawn up abroad either for a claimant who lives abroad or one who lives in this country, you should not accept it. Instead, you should advise the would-be attorney to obtain a UK PoA issued under the 1971 Act or The EPoA Act 1985. This will slow down the processing of the case but will ensure that payments will be made in compliance with UK law. If you have doubts you should contact, Lyndon Walters, ACI.

4070 If it appears that the claimant is incapable of managing their affairs and so it is too late for a new PoA to be put in place, you should consider whether an appointee is appropriate. You should find out if there is a relative/friend willing to so act or you should approach social services or Social Work Department in Scotland”.

### Capable customer with an existing attorney moves overseas and wants attorney (who is staying in GB) to retain their role

4071 No change. Note that customer retains responsibility for reporting changes.

### Attorney moving abroad, customer remaining in GB but wants attorney to retain role.

4072 Only issue here is how the customer will access benefit if paid to the attorney. Assume they will sort this out.

### Power of attorney presented by GB customer, attorney lives abroad

4073 Provided the Power meets UK law – see above – then can be processed. Only issue would be customer access to the account.

### Overseas customer becomes incapable and presents PoA drawn up overseas

4074 This would not be acceptable. As it would be too late to draw up an EPoA and get it registered, the only option would be to make an appointment. Discuss with IPC.

4075 – 4099



## Power of Attorney and Enduring Power of Attorney

### Power of Attorney Act 1971

- 4100 A PoA granted under the above Act is an authority for the attorney to manage the financial affairs of the donor or customer. **It is only valid if the customer is mentally capable. It therefore expires when the customer becomes mentally incapable.** If the customer has mental capacity it can be a valid authority to act as long as it grants general authority and conforms to certain formalities.

### Powers granted to the attorney under the Power of Attorney Act 1971

- 4101 If the PoA document states that the customer grants their attorney general powers under section 10 of the Power of Attorney Act 1971, the attorney is given full power to handle the financial affairs of the customer. The Secretary of State can accept this authority as sufficient to handle the benefit affairs of the donor, see *Responsibilities of the attorney* later in this section. An example of a general PoA issued under Section 10 of the Power of Attorney Act 1971 is shown at Appendix 11.
- 4102 However, when a PoA is made under the 1971 Act use of the template is not mandatory. A PoA can be created on a piece of paper as long as reference is made to the 1971 Act. For example it should state that it has been made “in accordance with the PoA Act 1971”.
- 4103 If you receive a general PoA document which does not include the wording shown in the example shown at Appendix 11 take a photocopy and refer it to:

ACI Division  
2nd Floor Adelphi  
London  
Fax 020 7962 8541

- 4104 If ACI reply stating that the PoA is:
- acceptable, see Attorney empowered to act **or**
  - not acceptable, see Attorney not empowered to act
- 4105 If the customer grants their attorney specific powers, the powers may or may not include the power to deal with Social Security benefit, see *Power of attorney granted with specific powers*.
- 4106 Because the customer still must have mental capacity to handle their own affairs for the PoA to be valid, the customer can still choose to handle their own affairs, see Customer has mental capacity in this part of the guide.

4107 - 4110

## **Enduring Power of Attorney Act 1985**

- 4111 Unlike a PoA made under the Power of Attorney Act 1971, a PoA made under the Enduring Power of Attorney Act 1985 is intended to **continue when the customer loses mental capacity**. For the validity of an EPoA in Scotland, see para 4205 in this guide.

### **Powers granted under the Enduring Power of Attorney Act 1985**

- 4112 If the customer grants their attorney general powers under the Enduring Power of Attorney Act 1985, the attorney has full power to act for the customer over all their financial affairs including social security benefits, see *Responsibilities of an attorney* in this part of the guide. The wording on the power will usually indicate whether the powers granted are general or specific, see *Power of attorney granted with specific powers*.

### **Checking the validity of a Power of Attorney made under the Enduring Power of Attorney Act 1985**

- 4113 The Enduring Powers of Attorney Act 1985 came into force on 10 March 1986. The format and wording of an EPoA document can differ, depending on the date of issue. If the EPoA is signed before 31 July 1990 the document must comply with the regulations at that time. See Appendices 9 and 9a for further information.

## Enduring Power of Attorney issued on or after 31 July 1990

- 4114 The 1990 Regulations permit an EPoA issued on or after 31 July 1990 not to be sealed. These Regulations also allow the attorney to sign the document at the direction of the donor (customer), in line with the PoA Act 1971. The customer is not compelled to sign [a mark will be sufficient], provided that there are two witnesses.
- 4115 An example of an EPoA issued under the 1990 Regulations is shown at Appendix 10.
- 4116 Any failure to comply with the Regulations current when the power was executed will invalidate the document.
- 4117 Any doubtful cases should be referred in writing or fax, to:

ACI Division  
2nd Floor  
The Adelphi  
London  
Fax 020 7962 8541

4118 - 4120



## Responsibilities of an attorney

4121 These may include:

- making a claim to benefit, including completing and signing any claim forms
- collecting/receiving benefit payments
- reporting changes in the circumstances of the person they represent

4122 It must be remembered that, subject to what is said below, where the customer retains full capacity and so is able to manage their affairs, then in law a PoA does **not** impose a duty on the attorney to disclose a change in the customer's circumstances. This is the case even where the attorney is receiving the benefit. The onus to disclose remains with the customer.

4123 The exception to the above is where the customer has lost mental capacity. Where this is the case they cannot be expected to report any changes. If there is a registered EPoA the responsibility will fall to that person. It is important that this duty is explained to the attorney at the point he takes over responsibility for managing the customer's benefit.

4124 If the customer has an EPoA, the attorney must inform this Department straightaway if the customer loses mental capacity. This is because the power to act ceases at that point unless the EPoA is registered with the CP. (See *EPoA registered with the Court of Protection* in this part of the guide.)



## Customer/Attorney presents an Enduring Power of Attorney

- 4125 Where **the** customer presents an **unregistered** EPoA, the first step is to satisfy yourself that the customer is mentally capable and understands what they are doing. This is a sensitive area because in submitting an unregistered EPoA the customer is saying that they are mentally capable but has agreed that someone else should manage their benefit. If they were not capable then the authority would not be valid until it is registered with the CP. If you are satisfied that the customer is capable, then accept the EPoA. Remind the customer that they retain responsibility for reporting any change in their circumstances. And that they should let the attorney know that he must let us know if the customer loses capacity.
- 4126 Where **the attorney** presents an **unregistered** EPoA, the first step is for the Secretary of State to satisfy himself that the customer is mentally capable and understands what they are doing. This is a sensitive area because in submitting an unregistered EPoA the attorney is saying that the customer is mentally capable but has agreed that they should manage the benefit for the customer. If the customer was not capable then the authority would not be valid and the attorney would be misrepresenting the customer's true condition.
- 4127 You should treat each case on its merits. Your step by step approach should be:

Step	Action
1	Check the claim history. Is there anything on file about the claimant's mental health? Is there anything else about the case, the attorney, or the witness to the power, which raises doubts?
2	If there is anything which raises doubt as to the capacity of the customer or the authority for the attorney to act then you should arrange to visit the customer or ask for medical evidence <b>Note:</b> Before taking this action you should explain to the customer and the attorney why you are taking this action This will involve explaining that you do not doubt the suitability of the attorney but it is that the Secretary of State is discharging his legal duty to ensure that benefit is properly paid. The Secretary of State is not looking to interfere in the relationship between the attorney and customer.

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**Part four**

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## Attorney

3	If there is no doubt, then you must accept that the customer is mentally capable and accept the EPoA.
4	Remind the attorney that they must contact us if the customer loses their capacity to act.
5	You should also let the attorney know that, although the benefit will be paid to them, the customer retains responsibility for reporting any change in their circumstances. This is an important consideration.

4128 If the EPoA is accepted and payment is to be made to the attorney, they would have to be set up as the PAB on PDCS. Once that is done everything will go to the attorney. However, as the customer retains responsibility for disclosing changes, it is essential that they continue to receive any benefit correspondence.

4129 | An unregistered EPoA is not valid in Scotland until it has been registered with the CP.

4130 - 4134

### **Customer with an Enduring Power of Attorney loses mental capacity**

4135 To continue after the customer has lost mental capacity, the EPoA must be registered with the CP. The CP will then oversee how the attorney manages the financial affairs of the customer and investigate any complaints.

4136 An EPoA registered with the CP will have the CP stamp on the first page and on all subsequent pages.

4137 If the customer is not capable of managing their own affairs and the attorney has not applied to have the EPoA registered, the attorney does not have the authority to handle the benefit affairs of the customer. The powers are suspended.

4138 If this is the situation, you should explain the options to the attorney:

- to register the EPoA with the CP. They can do this by contacting tel 0845 330 2900 **or**
- that they could become the customer's appointee for benefit purposes.

**Note:** Explain that if it is the intention to register benefit who will not be paid until proof of the application is received. If there is no intention to register but the attorney wishes to become an appointee, refer the case to a nominated officer to consider appointee action..

4139 Whatever the outcome, follow the instructions in Part 6 of the guide

4140 - 4149

## **Two or more attorneys**

4150 The customer can authorize more than one attorney to act over their affairs.

### **Power of Attorney document allows attorneys to act separately**

4151 Where the customer appoints two or more attorneys jointly and the PoA document authorizes them to act separately, the document will state that the attorneys are authorized to act “jointly and severally”. You can pay benefit to whichever attorney makes the application, provided the PoA document meets the other requirements.

### **Power of Attorney document does not allow attorneys to act separately**

4152 If the customer authorizes two or more attorneys but does not authorize them to act separately the document will not authorize them to act “jointly and severally” but will only authorize them to act “jointly”. Any application must be made jointly and signed by all parties. All payments in respect of the customer must also be paid jointly to the attorneys. Because PDCS only allows you to input one PAB, a joint attorney case would have to be maintained clerically.

### **Either attorney declines to act on the customer’s behalf**

4153 When the customer appoints two or more attorneys jointly and the PoA document does not authorize them to act separately, but one or more then decline to act on the customer’s behalf, there are only two options available:

- make payment direct to the customer **or**
- if the customer is mentally incapable, refer the case to the nominated/appropriate officer to consider appointee action. For information about authorizing an appointee, see Part five of this guide

You cannot make payment to only one attorney under a joint PoA.

4154 - 4159



## Power of attorney granted with specific powers

4160 If you receive a PoA granting specific powers and the attorney is enquiring about **payment** of benefit rather than a **claim** for benefit, make sure the PoA document includes one or more of the following acceptable forms of wording:

- '——to receive and give valid receipt for any money or property due owing or belonging to me on any account whatsoever'
- '——to ask demand recover and receive and if need be sue for——all moneys and all other——personal property and effects of me and the Granter——For me in my name to sign——and give effectual receipts releases acquittances and discharges for all property or moneys to be received in manner aforesaid'
- 'Power——to execute documents of all kinds——and to manage my property of whatsoever kind and wheresoever situate'
- '——all my present and future affairs and concerning all my present and future property rights and interests real and personal and whether joint or several all of which I hereby place in the unrestricted power and discretion of my Attorney——' **or**
- 'To demand and sue for enforce payment of and receive and give discharge for all money and securities for money——and other personal estate whatsoever now belonging due owing or deliverable or hereafter to belong or to become due owing or deliverable to me——'.

4161 The only way to make payments in these circumstances would be to pay direct into a bank or building society account or to make clerical payments.



## **Power of attorney granted for a limited period**

- 4162 If a customer grants a PoA for a limited period, you must note the end date to make sure the customer's attorney is reviewed, ie to establish if the customer intends to extend the PoA.
- 4163 If the PoA is not extended beyond the expiry date, take action to end the attorney relationship. For more information, see *Ending an OP/COP relationship* in Part six of this guide.



## Suspicion of fraud or mismanagement by the Attorney - registered Power of Attorney

4164 If the customer is not able to manage their own affairs, there is an EPoA and there is evidence that the attorney is mismanaging the customer's benefit affairs the Secretary of State can make someone an appointee. However this should only be done after careful consideration of the evidence and after having spoken to the PGO. Consider very carefully if it is appropriate to make another person the appointee. **Note:** If the allegation is made by telephone, it is important that a record of the call is made.

### Example:

The LA contacts the Department to explain that the customer's CH fees are not being paid. They have serious concerns regarding the attorney's management of the customer's financial affairs. They intend to alert the CP to their concerns, see *Enduring Power of Attorney registered with the Court of Protection* in this part of the guide.

Step	Action
1	Gather evidence that the attorney has been mismanaging the financial affairs of the customer.
2	Contact the CP and alert them to the situation. Tel: 0945 330 900. If you are of the view that the evidence clearly shows mismanagement, then you should make this point firmly. If you are also of the opinion that no further benefit should be paid to the attorney pending the CP doing its own investigation you should say so. Remember that the Secretary of State has responsibility for the payment of benefit and he can withhold payment even where there is a court registered EPoA in existence.
3	If you decide that payment should be withheld, you must write to the attorney to let him know the situation. There is a draft letter at Appendix 6 that you could use.
4	Allow two weeks to respond.

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**Part four**

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## Attorney

<b>5</b>	If there is no reply, then you will need to consider an alternative method of payment. Given that the customer is incapable this could only be making someone an appointee. If there is someone then take normal appointee action. If there is not, you will have to contact social services. They will not act as the appointee but should be able to put you in touch with a local support service.
<b>6</b>	If the attorney replies and disputes the allegations, consider his reasons. If you accept them then take no further action. Let him know what you have decided and remind him of his responsibilities
<b>7</b>	If not satisfied, then you should arrange to interview the attorney as quickly as possible to discuss the situation. If you decide finally that no further payment should be made then write to the attorney and take appointee action as per para 5. At the same time let the PGO know what you have done. The attorney's redress in these circumstances would be Judicial Review.
<b>8</b>	If it transpires that the CP absolves the attorney of mismanagement then you may be asked to revoke any other person appointed at step 5. You should do so.

## Suspicion of fraud or mismanagement by the attorney - unregistered Enduring Power of Attorney or Power of Attorney

- 4165 If the customer is able to manage their own affairs but we have accepted on EPoA or PoA and there is evidence that the attorney is mismanaging the customer's benefit affairs, the Secretary of State should consider paying the benefit to the customer. This should only be done after careful consideration of the evidence. You should follow the steps above although as the document has not been registered you will not require to inform the PGO.

### Professional attorneys

- 4166 **It is important to determine whether an individual is acting in a personal or professional capacity.**
- 4167 If the Attorney is acting in a personal capacity, use his or her NINO as an identifier. Please note there is no obligation for the attorney to provide these details. If they object, explain that that, because of the way benefits are administered i.e. departmental computer systems that rely on NINO identification, 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 the only option is to handle the claim clerically.
- 4168 If the Attorney is acting as an employee of a Corporate Organization, use PDCS to trace for an existing Corporate Organization ID. If there is no trace, use PD385 to create a new record. PDCS will generate a unique 6 digit ID for the organization. In no circumstances should an individual's NINO be used, nor should any attempt be made to trace it.

### Attorney empowered to act

- 4169 After you verify the attorney is empowered to act on the customer's behalf for Social Security benefits, pensions and/or allowances, see *Creating an OP/COP relationship* in *Part six* of this guide.
- 4170 In law a PoA or EPoA is not a higher authority than an appointee for social security purposes, but where a valid PoA or EPoA exists we would respect this and the attorney would normally be accepted to act for benefit purposes, unless there is a reason to believe that the attorney is unsuitable, e.g. there are grounds to suspect fraud, mismanagement or neglect.

4171 - 4179

**Attorney not empowered to act**

4180 If the attorney is not empowered to act on behalf of the customer for Social Security purposes:

<b>Step</b>	<b>Action</b>
<b>1</b>	inform the attorney they cannot act for the customer for Social Security purposes
<b>2</b>	if you are made aware that the customer is mentally incapable, refer the case to the nominated/appropriate officer to consider appointee action - see Part five of this guide.

4181 - 4199

## Attorney – Scotland

4200 In Scotland, a PoA is an appointment of agent by deed by which one person (the customer) gives another person(s) or organization (the attorney) authority over their affairs.

4201 A PoA can be granted to:

- an individual
- two or more individuals, ie joint attorneys **or**
- an organization.

4202 A PoA granted:

- **prior to 2 April 2001** does not lapse when the customer becomes incapable of managing their own affairs unless the PoA deed specifically so provides
- **on or after 2 April 2001**, lapses when a customer becomes incapable of managing their own affairs unless it is a "continuing power. If it is a continuing PoA certain conditions are required to be met, including registration with the OPG prior to any use of the PoA. For more information about continuing PoAs and these circumstances see the *Adults with Incapacity (Scotland)* part of the guide.

For an example of a PoA issued in Scotland prior to 2.4.2001, see Appendix 12. For example of one issued after 2.4.2001, see Appendix 13.

4203 The attorney can be given:

- full powers to deal with all the customer's affairs
- specific powers to handle some of the customer's affairs, **and/or**
- PoA for a limited period, eg while the customer is ill or abroad.

For more information, see *Powers granted to an attorney* in the Scotland section of this part of the guide.

Incapable in this context means mentally incapable or unable to communicate by reason of incapacity.

## Power of Attorney made under the Power of Attorney Act 1971

4204 A Power of Attorney made under the Power of Attorney Act 1971 is not a valid authority to act for benefits for customers who live in Scotland.

## | Enduring Power of Attorney Act 1985

- 4205 Unlike in England and Wales where an EPoA is valid before it is registered with the CP, in Scotland it must be registered with the CP for it to be valid.

## OVERSEAS ATTORNEY

### PoA drawn up abroad

4206 Where you receive a PoA drawn up abroad either for a claimant who lives abroad or one who lives in this country, you should not accept it. Instead, you should advise the would-be attorney to obtain a UK PoA issued under the 1971 Act or The EPoA Act 1985. This will slow down the processing of the case but will ensure that payments will be made in compliance with UK law. If you have doubts you should contact, Lyndon Walters, ACI.

4207 If it appears that the claimant is incapable of managing their affairs and so it is too late for a new PoA to be put in place, you should consider whether an appointee is appropriate. You should find out if there is a relative/friend willing to so act or you should approach social services or Social Work Department in Scotland.“

### Capable customer with an existing attorney moves overseas and wants attorney (who is staying in GB) to retain their role

4208 No change. Note that customer retains responsibility for reporting changes.

### Attorney moving abroad, customer remaining in GB but wants attorney to retain role

4209 Only issue here is how the customer will access benefit if paid to the attorney. Assume they will sort this out.

### Power of attorney presented by GB customer, attorney lives abroad

4210 Provide the Power meets UK law – see above – then can be processed. Only issue would be customer access to the account.

### Overseas customer becomes incapable and presents PoA drawn up overseas

4211 This would not be acceptable. As it would be too late to draw up an EPoA and get it registered, the only option would be to make an appointment. Discuss with IPC.



## | Adults with Incapacity (Scotland) Act 2000

4212 | Following the introduction of the Adults with Incapacity (Scotland) Act, Continuing PoAs granted on or after the 2 April 2001 are only valid, regardless of whether the customer is capable or incapable, **if** all the following conditions are met:

- the PoA is contained in a written document, signed by the customer **and**
- the PoA document includes a statement clearly expressing the customer's intention that the PoA should continue after they become incapable **and**
- the PoA document includes a certificate in a specified form signed by a solicitor, practicing advocate or registered medical practitioner, stating that they:
  - interviewed the customer immediately before the deed was signed
  - are satisfied, either from their own knowledge of the customer or after consultation with other named person(s) who know the customer, that the customer understands the nature and extent of the deed **and**
  - have no reason to believe the customer is acting under undue influence or any other factor which would render the deed invalid **and**
- the deed is registered with the OPG (the attorney will have received a copy of the deed with a certificate of registration).

An example of registered Continuing PoA is at Appendix 13.

4213 | If a PoA is drawn up after 2.4.2001 in the old format, this is considered a **non-continuing** PoA. This would be valid while the customer retained capacity to manage their own affairs but would become invalid if the customer lost capacity to manage their own affairs.

| 4214 - 4219



## **Position in the order of authority**

- 4220 In law a PoA or Continuing PoA is not a higher authority than an appointee for social security purposes, but where a valid PoA or Continuing PoA exists we would respect this and the attorney would normally be accepted to act for benefit purposes, unless there is a reason to believe that the PoA or Continuing PoA is unsuitable, e.g. there are grounds to suspect fraud, mismanagement or neglect.
- 4221 | If an OP with a higher authority, eg guardian, curator bonis or tutor is already acting on behalf of the customer you cannot accept the attorney as the customer's OP.

4222 - 4229



## **Responsibilities of an attorney**

4230 If a customer grants full powers to their attorney, the attorney is empowered to act on the customer's behalf in all their financial affairs. This includes

- making a claim to benefit(s), including completing and signing any claim forms
- collecting/receiving benefit payments **and**
- reporting changes in circumstance.

4231 The attorney is also responsible for reporting any changes in their own circumstances that the Department may require, eg a change of name or address or change of account.

4232 If a PoA does not grant full powers, it will need to be established what powers have been granted. These might include power to receive benefit, to claim benefit, or both.

4233 - 4239



## Powers granted to an attorney

### Full powers

4240 If the customer grants their attorney powers to manage their estate/affairs, the attorney receives full power on behalf of the customer to handle their business and financial affairs. This includes:

- making a new claim to Social Security benefits when there is no existing claim **or**
- making a claim for payment of Social Security benefits when there is an existing claim made by the customer and payment is due/already being made.

4241 - 4249

### Specific powers

4250 If the customer grants their attorney specific powers, the powers may include the power to:

- make a claim for benefit **or**
- receive payment of benefit **or**
- both make a claim for and receive benefit.

For more information, see *Responsibilities of an attorney* in the Scotland section of this part of the guide.

4251 - 4259

## Power of attorney granted for a limited period

4260 If a customer grants a PoA for a limited period, you must note the end date to make sure the customer's attorney is reviewed, ie to establish if the customer intends to extend the PoA.

4261 If the PoA is not extended beyond the expiry date, take action to end the attorney relationship. For more information, see *Ending an OP/COP relationship* in Part six of this guide.

4262 – 4269



## Verifying the attorney is empowered

4270 If you receive a claim or enquiry from any person(s) or organization stating that they are the customer's attorney(s), ask to see the PoA document to verify that they have been granted PoA. If the PoA is dated on or after 2 April 2001 and the customer is mentally incapable or unable to communicate, the only acceptable evidence is a copy as returned by the Public Guardian together with his Certificate of Registration.

## Photocopies

4271 You can accept a photocopy of the PoA document **provided** it includes a declaration that it is a true copy of the original signed by:

- the customer **or**
- a solicitor **or**
- a stockbroker.

For deeds registered in Scotland on or after 2 April 2001 they must bear the stamp of the OPG and have a certificate of registration.

4272 The declaration must appear at the end of the document.

4273 If the original deed is drawn up before 2 April 2001 and has been registered in the Books of Council and Session, a copy issued by the Registers of Scotland is acceptable provided it bears their official stamp.

## Checking the power of attorney document is acceptable

4274 If the PoA was executed:

- **before** 1 August 1995, the customer **must** have signed the PoA document in front of two witnesses **or**
- **on** or **after** the 1 August 1995, the customer need only have signed the document in front of one witness.

4275 The Testing Clause (which appears above the signatures and after the words '**In witness whereof**')

- **must** include the:
  - full name and address of (both) witness(es) **and**
  - place and date of signing, and
- **may** contain the name of the customer, but may state only 'signed by me——'.

## Acceptable wording for powers of attorney

4276 In all cases, make sure the PoA document includes one or more of the following acceptable forms of wording - note the distinction between those that only apply to the receiving of Social Security benefits and those that apply to both the receiving of **and the claiming of** Social Security benefits:

- these two clauses only extend to the receiving of, not the claiming of, Social Security benefits:
  - '——to receive and give valid receipt for any money or property due owing or belonging to me on any account whatsoever'
  - 'To demand and sue for enforce payment of and receive and give discharge for——all money and securities for money——and other personal estate whatsoever now belonging due owing or deliverable or hereafter to belong or to become due owing or deliverable to me ——'
- these five clauses extend to both the receiving of, and the 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.’

### **Power of attorney document does not satisfy the Scottish requirement**

4277 If you receive a PoA or a document which does not satisfy the wording requirements at paragraph 4276, it may still be legally valid. In these circumstances, a copy of the document should be taken and referred for advice to:

ACIS  
Room D311  
Argyle House  
Edinburgh

Fax: 0131 222 5364

4278 - 4289



## Two or more attorneys

### Power of Attorney document allows attorneys to act separately

- 4290 If the customer appoints two or more attorneys jointly and the PoA document authorizes them to act separately, you can pay benefit to whichever attorney makes the application, provided the PoA document meets the other requirements. For more information about the other requirements, see *Verifying the attorney is empowered* in the Scotland section of this part of the guide.

### Power of Attorney document does not allow attorneys to act separately

- 4291 If the customer appoints two or more attorneys jointly and the PoA document does not authorize them to act separately, any application must be made jointly and signed by all parties. All payments in respect of the customer must also be paid jointly to the attorneys.

### Either attorney declines to act on the customer's behalf

- 4292 When the customer appoints two or more attorneys jointly and the PoA document does not authorize them to act separately, a problem arises if one or more then decline to act on the customer's behalf. You cannot make payment to only one attorney in such a joint attorneyship.

- 4293 In these circumstances:

- make payment direct to the customer **or**
- if the customer is mentally incapable, refer the case to the nominated/appropriate officer to consider appointee action. For information about authorizing an appointee, see *Appointee* in Part five of this guide.

4294 - 4299



## Attorney not empowered to act

4300 If the attorney is not empowered to act on behalf of the customer for Social Security purposes:

Step	Action
1	inform the attorney they cannot act for the customer for Social Security purposes
2	if the customer is incapable, refer the case to the nominated/appropriate officer to consider appointee action. For more information about authorizing an appointee, see <i>Appointee</i> in Part five of this guide

4301 - 4309



## **Attorney empowered to act**

4310 After you verify the attorney is empowered to act on the customer's behalf for Social Security benefits, pensions and/or allowances, see *Action following verification of a PAB/COP* in Part six of this guide.

4311 - 4999



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**Part five**

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## Part five – Appointee

### Introduction

- 5000 An officer of grade EO (Executive Officer) or above acting on behalf of the Secretary of State can authorize someone else to act on a customer's behalf **only** if the customer is incapable of managing their own affairs. This is called an appointment to act and the person or organization appointed to act is called an appointee. An appointment must never be made because it is 'convenient' either for the Secretary of State or the would-be appointee.
- 5001 An appointment to act can only be made in favour of a person aged 18 or over.
- 5002 At any one time, there must only be **one** appointee acting on the customer's behalf for **all** benefits administered by the Department.
- 5003 An appointee can be an:
- individual, e.g. a friend or relative **or**
  - organization or representative of an organization, e.g.:
    - a limited company
    - a firm
    - the AHA
    - the LA
    - a solicitor **or**
    - the matron of a CH or NH
- Note:** This list is not exhaustive.
- 5004 An appointment to act is made under Regulation 33 of the Claims and Payments Regulations 1987.
- 5005 An officer of grade EO or above acting on behalf of the Secretary of State can also revoke an appointeeship under Regulation 33 of the Claims and Payments Regulation if the appointee is not acting in the customer's best interests.
- 5006 **It is important to determine whether an individual is acting in a personal or a professional capacity.**
- 5007 If the appointee is acting in a personal capacity, use his or her NINO as an identifier.
- 5008 If the appointee is acting as an employee of a Corporate Organization, use PDCS to trace for an existing Corporate Organization ID. If there is no trace, use PD385 to create a new record. PDCS will generate a unique 6 digit ID for the organization.

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**Part five**

## Appointee

5009 Each office should retain a list of registered care homes and the registered person who is appointed to act.

### **When appointee action is not appropriate**

5010 An appointee is not appropriate if the customer already has an OP of an equal or higher authority. These are:

- receivers appointed by the CP in England and Wales
- controllers appointed by the Office of Care and Protection in Northern Ireland
- guardian appointed by a court in Scotland
- curators bonis appointed by a court in Scotland
- tutors appointed by a court in Scotland
- appointees previously authorized by an officer acting on behalf of the Secretary of State
- parent/guardian - only used for DLA (appointee action not applicable if child under 16).

5011 The exceptions to this rule are when:

- the existing OP no longer has authority to act, e.g. the Secretary of State has revoked an existing appointeeship **or**
- written confirmation has been received that the existing OP no longer wants to act (note that court appointments can only be revoked by the court itself)
- there is an attorney acting for the customer but there is sufficient evidence that they are no longer acting in the best interest of the customer. (Please see Suspicion of fraud or mismanagement by the attorney in Part four of this guide)
- an attorney is newly registered but agrees to become the appointee instead - see para 4138 in this guide

5012 An appointee is not appropriate if the customer is simply unable to get to the bank, building society or post office. Nor is it appropriate simply because the customer no longer wishes to manage their own affairs.

## **Managers of Care Homes in Scotland**

5013 Under the Adults with Incapacity (Management of Resident's Finances) (Scotland) Act 2000 managers of care homes can manage the financial affairs of residents of their care homes where the adult has mental incapacity. However that authority does not extend to social security benefits. Therefore the Department would need to consider appointee action if there was no other person of a higher authority already acting over the customer's social security benefit affairs.

5014 - 5049



## Responsibilities of an appointee

5050 If an officer acting on behalf of the Secretary of State authorizes an appointee, the appointee becomes fully responsible for acting on the customer's behalf in all the customer's dealings with the Department. This includes:

- claiming benefit/s, including completing and signing any claim forms
- collecting/ receiving benefit payments **and**
- reporting changes in circumstances.

5051 The appointee is also responsible for reporting any changes in their own circumstances that the Department may require, e.g. a change of name or address or change of account.



## Obtaining consent for the release of medical information when a customer has an appointee

5052 i Customer has mental impairment

Appointee can give consent (under normal consent rules).

ii Customer has physical impairment

**KEY POINT:** In this circumstance the appointee can never give consent on behalf of the customer.

**Options available:**

1. The customer can sign or make a mark on a paper consent declaration.
2. If the customer is unable to sign or make a mark he can give verbal consent. This can be given face to face or by telephone. If by phone, there are strict protocols which **must** be observed. These are:
  - it must be established beyond doubt that it is the customer who is speaking
  - there must be a full, written record of the conversation. This will detail the steps taken to confirm identification; and it will confirm that the customer understood that he was giving consent to the disclosure of information
  - under no circumstances must the customer be put under pressure to give consent if he is unwilling to do so for whatever reason (consent given under duress is not valid consent). If the customer declines to give consent this must be recorded.
3. Finally, whatever form is being used to make the request *must* state that the customer has given *verbal* consent.

5053 - 5099



## Request for an appointee received

5100 A request for an appointment to act may be made by:

- the person or organization wishing to become the appointee **or**
- someone acting on the customer's behalf stating that an appointee is needed

5101 If you receive a request from someone wanting to be the customer's appointee, or a person acting on the customer's behalf states an appointee is needed:

Step	Action
1	Access PDCS and check if the customer already has an OP of a higher authority acting on their behalf
2	if you find that there is: <ul style="list-style-type: none"><li>• no OP acting for the customer, see Considering the need for an appointee in this part of the guide</li><li>• an OP of an equal or higher authority already acting for the customer, tell the enquirer:<ul style="list-style-type: none"><li>– they cannot be the appointee (if the enquiry is from someone asking about being the customer's appointee) <b>or</b></li><li>– an appointee is not required (if the request is from a person acting on behalf of the customer).</li></ul></li></ul>

### Local Authority appointee

5102 If you are approached by someone who says that they have been appointed by the LA to act for the claimant then, provided this is confirmed, you can accept the person as an appointee for benefit purposes. There is no need to interview the person or visit the customer. However, you must ask the person to complete and sign a BF56 (can be done by post); in Part 7 you should write "LA approved appointment". You must send a BF57 confirming the appointment.

**Re: confirmation.** The LA should have given the appointee written proof of his appointment. Failing that, you must contact the LA.

5103 - 5149



## Considering the need for an appointee

5150 Before an appointee to act can be authorized, the:

- customer must be visited by a visiting officer to make sure:
  - they are incapable of managing their affairs **and**
  - an appointee **is** required **and**
- prospective appointee (if one has been nominated) must be interviewed to make sure they are suitable and willing to act.

5151 **Note:** Although the customer and the prospective appointee can be visited at the same time, ideally they should be interviewed separately. This is to make sure that the customer is not under any pressure from the prospective appointee. However, in exceptional cases, if you believe that it would cause less stress to the customer, you can permit the prospective appointee to remain during their interview. But, you must ensure that they do not answer the questions or try to influence your decision on the customer's ability to manage their own affairs.

5152 **Note:** If the request to be the appointee comes from someone already appointed under reg 43 of the Claims and Payments Regulations, that is, they are acting for a child u/16 who is now approaching their 16th birthday, then it will not be inappropriate to interview the child and existing appointee together. It may be helpful to have another adult present but this is not essential. Do not delay the process to try and arrange this.

5153 **Remember:** **An appointment must never be made because it is 'convenient' either for the Secretary of State or the prospective appointee. The customer must, because of mental incapacity (or exceptionally severe physical disability), be incapable of managing their affairs. If challenged we must be able to justify our decision to make an appointment. And at all times we must be able to provide the necessary paperwork to show that we followed departmental procedures.**

5154 - 5159

## Completing the appointee application form

5160 When considering an appointment to act, form BF56 must be completed.

Form BF56 Part:

- **1-6** is completed when the prospective appointee is visited/interviewed

- **7** is completed when the prospective appointee and the customer have been visited and a decision made on the application
- **8** is given to the appointee.

5161 For an example of form BF56, see Appendix 1.

5162 - 5169

## **Visiting the customer**

5170 Appointee action should only be taken where the customer is incapable of managing their affairs. This will usually be because the customer is mentally incapable but, exceptionally, may also be appropriate when the customer is physically disabled, eg if they have suffered a severe stroke.

5171 The purpose of the visit to the customer is to enable the visiting officer to make an independent assessment of their ability to manage their financial affairs and, more specifically, their ability to understand how to make and manage a claim to benefit. The visiting officer must assess whether the customer shows comprehension of the rights and responsibilities of making the claim.

5172 If the customer is physically disabled, the visiting officer must assess whether the disability is such that they are incapable of managing their own affairs, eg if the customer can understand and sign a claim form (even if it has to be completed for them), they may only require an agent to help with the collection of payments.

5173 - 5179

## **Assessing the customer's capabilities**

5180 When assessing the customer's capabilities:

- assume they are capable until they demonstrate otherwise
- focus on the customer's abilities to understand and function in making particular decisions, e.g.:
  - can they pay bills?
  - do they know what income they have?
- it may be helpful to have an independent person who is familiar with the customer present at the interview, eg a family member or social worker

- if the customer lives in a RCH or NH, do not assume they are incapable – they may be quite capable of managing their affairs
- if the customer has lost the ability to communicate, eg because of a stroke, do not assume they are incapable. Make every effort to find out their views and wishes by all possible means
- record the details of the visit and the assessment of the customer's ability to act in their own right.

### **Doubt over the customer's capabilities**

5181 If the visiting officer does not feel certain about the customer's capabilities to handle their own affairs, ask the prospective appointee to provide evidence to support the application to act as the customer's appointee. This could be supporting evidence from a suitably qualified professional person who has a personal knowledge of the customer, e.g. a social worker, community psychiatric nurse or general practitioner will be acceptable.

If you are uncertain about the medical evidence you can ask the department's Health and Welfare Division for advice.

5182 If for some reason the prospective appointee cannot help, then you will have to take the initiative and write to the person who you think is best placed to help. But, whilst you can request medical evidence or information from any medical or other professional involved with the customer eg the customer's doctor, the person approached is under no obligation to provide the information. If you cannot obtain any supporting evidence you will have to make a decision on the balance of probability.



## Physical Disability - special circumstance

- 5183 If the customer is mentally capable but is severely disabled making an appointment is not precluded. This is likely to be a rare event but cannot be ruled out. In particular, if the disablement prevents the customer from signing or making a mark then an appointment will be needed to enable claims etc to be made.

For example: advanced motor neurone diseases where the customer experiences extreme physical difficulties in making and managing written or teleclaims to benefit; Parkinson's disease where the customer still has mental capacity but is not longer physically able to write or telephone; customer who has suffered a severe stroke which impairs their ability to write or telephone.

## Customer in hospital

- 5184 If you receive a request from an appointee for someone in hospital, do not assume that the customer is incapable of managing their own affairs simply because they are in hospital.
- 5185 If the prospective appointee has provided medical evidence this should be considered and a decision made as to whether it supports making an appointment without any further evidence being needed. If no evidence is provided or it is inconclusive, you should either arrange to visit the customer or, if this is deemed inappropriate (bearing in mind that the customer is in hospital), ask the prospective appointee to obtain the evidence or try and obtain the evidence yourself - see next para.
- 5186 You can request medical evidence or information as to the customer's capabilities direct from the hospital or any medical or other professional involved with the customer eg their doctor. However, the person approached is under no obligation to provide that information. If writing, apart from explaining why you are writing, the key question to be asked could be:

"Do you think that the claimant is mentally capable of managing their affairs? Please give brief reasons."

If you are already using a form to request such information, you can continue to do so.

If the information provided is inconclusive or no reply is received, then you should ask the prospective appointee to obtain further information.

**Initiating appointee action when customer is in hospital**

<b>Step</b>	<b>Action</b>
1	Where appropriate arrange to visit the prospective appointee and the customer and assess the customer's capabilities. See Visiting the customer and Assessing the customer's capabilities in this part of the guide.
2	If a visit to the customer is inappropriate arrange to interview the prospective appointee. If the request is to change the appointee, an interview may not be appropriate. See 'Changing an appointee in this Part'.
3	Establish the nature of the customer's incapacity at interview
4	Assess the prospective appointee's suitability to act at interview and complete sections 1-6 of the BF56. See <i>If an individual is the prospective appointee</i> in this part of the guide.
5	Where appropriate make that person the appointee. You should also consider whether you need to review any benefit in payment as result of this change.
6	Arrange that the appointee inform the Department when the customer comes out of hospital. Try to get a discharge date.
7	Make a note on the file to follow up the case should the appointee fail to inform the Department.
8	When the customer comes out of hospital make arrangements to check whether they still require an appointee. This could be a visit and/or discussion with the appointee. You should also consider whether you need to review any benefit in payment as result of this change.
9	If an appointee is no longer required revoke the arrangement. See <i>Revoking an appointment</i> in this part of the guide.

## Guidance for the Interviewing Officer

### Restrictions on residential care home or nursing home staff (CH/NH)

- 5200 If the prospective appointee is connected with the customer's CH/NH, there are restrictions on their appointment. **Do not** authorize as the appointee:
- a member of staff at the customer's CH/NH (other than the warden or matron) **unless** they are a relative/friend of the customer. If you decide to authorize a member of staff who is also a relative or friend as the customer's appointee, you **must** inform the CH/NH manager
  - the warden, proprietor matron or trustee of the customer's CH/NH **merely for the administrative convenience of the home**. You should establish whether a friend or relative is willing and suitable to act on the customer's behalf
  - the matron or warden of the home **until** enquiries have been made to establish whether the organization or owner, eg the LA, would be willing to act as the appointee.
- 5201 Where the organization becomes the appointee, the proprietor, warden or matron may still collect benefits on their behalf, provided they are authorized to do so by the organization. The organization should complete the certificate at Part 4 of form BF57, or provide a similar letter of authority.

5202 - 5209

### If an individual is the prospective appointee

- 5210 | If an individual is the prospective appointee, you may interview them:
- in your office
  - at their home **or**
  - if the prospective appointee is a proprietor, trustee, warden or matron, at the CH/NH

**Note:** This list is not exhaustive.

- 5211 | When interviewing the prospective appointee:

Step	Action
1	<p>if the relationship of the prospective appointee to the customer is not known, this needs to be established. The issue here is that if there is a family member, next-of-kin or executor and none of these are aware that a third party is seeking to become the appointee, we will need to clarify the situation.</p> <p>You should ask the prospective appointee if he knows of any next-of-kin, family member, executor</p> <p>- if he does not then unless you have reason to doubt him the interview should proceed</p> <p>- if he does or you doubt his answer, then further enquiries should be made. That said, the issue of delay needs to be considered. If the prospective appointee cannot provide contact details, we do not hold anything on file and there is no obvious other way of obtaining the information, then you should not delay the process further. This will have to be the case even where you doubt his answer.</p>
2	<p>Once you have established the relationship and are happy to proceed with the interview, the next step is to decide on their suitability to act as the appointee. You should start this part of the interview by asking about the existing relationship. Type of question you would ask:</p> <ul style="list-style-type: none"><li>• what dealings do they already have with the customer's finances?</li><li>• what arrangements, if any, have they made to pay the customer's bills eg; utilities, rent, mortgage etc.</li><li>• do they have access to the customer's bank account?</li><li>• what will be their day to day involvement with the customer?</li></ul> <p>The answers should help inform your decision.</p>
3	<p>make sure the prospective appointee:</p> <ul style="list-style-type: none"><li>• understands the roles and responsibilities of an appointee <b>and</b></li><li>• is willing and able to accept and fulfil the duties</li></ul>
4	<p>explain the methods of payment options (ie that the normal method of payment is by Direct Payment) and that payments can only be made into an account in the appointee's name. Then note form BF56 with the prospective appointee's preferred method of payment option. (Note if the appointee does not have a suitable account then tell him that he should contact us immediately he has the account details.)</p>

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<b>5</b>	tell the prospective appointee the Secretary of State can revoke appointeeships if an appointee does not act in the customer's best interest
<b>6</b>	make sure the prospective appointee reads the form and reads and signs the declaration
<b>7</b>	if the decision is made:
<b>8</b>	give part 8 of form BF56 to the prospective appointee
<b>9</b>	keep a record of your decision and file with the customer's clerical records
<b>10</b>	if the decision is made: <ul style="list-style-type: none"><li>• not to appoint the prospective appointee, see Appointment to act not approved in this part of the guide <b>or</b></li><li>• to appoint the prospective appointee, see Appointment to act approved in this part of the guide</li></ul>

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5212 - 5219

## If an organization is the prospective appointee

5220 If an organization is the prospective appointee, eg a LA or AHA, action depends on whether the organization is:

- already acting as an appointee for other customers **or**
- not already acting as an appointee for other customers.

## Organization already acts as appointee for other customers

| 5221 If the organization already acts as appointee for other customers, the appointeeship can be authorized immediately after:

- your visit (if this has been appropriate) to the customer confirms their incapacity to manage their own affairs **and**
- an authorized representative of the organization has:
  - completed form BF56 to show the organization's (not the representative's) details **and**
  - stamped form BF56 with the organization's official stamp.

## Organization does not already act as appointee for other customers

5222 If an organization does not already act as an appointee for other customers, a visit must be made to:

- discuss the roles and responsibilities of an appointee, **and**
- make clear that, as an appointee, the organization is responsible for making sure that any of their representative(s) authorized to collect the customer's payments are acting in the customer's best interest.

| 5223 **Note:** When an organization is applying to become an appointee they must authorize an employee to complete form BF56 on their behalf.

| 5224 On being appointed by the Secretary of State, the organization must also complete the certificate at part 4 of form BF57, or provide the employee with a similar letter of authority.

## Authorized person within corporate body changes

5225 When the authorized signatory for a corporate body changes it may not be necessary to carry out a separate interview with the new person. A form BF56 should be completed by the new

authorized signatory. You should satisfy yourself that the new person understands their role and responsibilities. If there is any doubt then you should take whatever steps necessary to explain their role eg face to face interview or phone discussion.

5226 The organization will need to provide the employee with a letter of authority authorizing that person to act.

5227 If a call is received from someone who states they are calling on behalf of a corporate appointee ie from a house manager, psychiatric nurse etc. take the following action:

1. Ask them for the corporate ID number of their organisation.
2. Ask them for their head office address (it is this postcode that the corporate ID will refer to)
3. Ask them for the contact name or position held of the person responsible for the organisation at head office.

All of this information can be verified via PD153.

Once it is accepted that the ID of the person calling is correct, the enquiry can be dealt with.

5228 - 5249



## Prospective appointee lives outside your office area

5250 If the prospective appointee lives outside your office area:

<b>Step</b>	<b>Action</b>
<b>1</b>	find out which benefit office deals with the prospective appointee's address
<b>2</b>	send that office a minute that includes: <ul style="list-style-type: none"><li>• details of your customer and prospective appointee <b>and</b></li><li>• a request that they arrange for the prospective appointee to be interviewed and, if the prospective appointee is approved, that a claim form is completed on behalf of the customer where appropriate.</li></ul>

5251 - 5299



## **Appointee needed but no one nominated**

5300 If a visiting officer decides a customer needs an appointee but no one has been nominated, make attempts to identify a suitable person, e.g.:

- a spouse
- a relative or close friend
- an organization, e.g. a LA or AHA **or**
- the proprietor of a CH/NH, but only if no other suitable person is found.

I 5301 If a suitable person is not available, the visiting officer must inform the customer's local social services and the relevant benefit section.



## Changing an appointee

- I 5302 If the current appointee no longer wishes to act and nominates another person or organization to act, it is not always necessary to visit the customer unless there is a reason to do so. The prospective appointee should be visited and the form BF56 completed as normal. If the prospective appointee is already acting as an appointee, whether as an individual or corporate appointee, it is unlikely that a visit/interview will be required. But you will still need to ask them to complete a form BF56.

5303 - 5349



## Secretary of State's decision on the application

### Appointment to act not approved

5350 If the officer acting on behalf of the Secretary of State decides not to authorize an application:

Step	Action
1	notify the prospective appointee that their application was unsuccessful
2	keep a record of the reason for the non-approval and file with the customer's clerical papers

5351 If no one else was nominated to act, see *Appointee needed but no one nominated* in this part of the guide.

5352 - 5359

### Appointment to act approved

I 5360 If the officer acting on behalf of the Secretary of State authorizes an application:

Step	Action
1	complete form BF56 at 'FOR OFFICIAL USE ONLY' and keep it with the customer's clerical papers
2	if the appointee is from a registered care home notify the LA using draft letter DL IS 215. An example of draft letter DL IS 215 is shown at Appendix 4
3	keep the customer account and clerical papers at the office in the area where the customer lives
4	see Action following verification of a PAB/COP in Part six of this guide.

5361 - 5399



## Revoking an appointment

5400 There are three circumstances where an appointment can be revoked:

- if the appointee does not act appropriately within the terms under which the appointment was granted, an officer acting on behalf of the Secretary of State can revoke their authority
- if there is sufficient evidence that the customer is capable of acting for themselves and does not need an appointee to act for them over their benefit affairs.
- where the appointee himself becomes incapable. Where the Secretary of State is satisfied that this is the case - standard evidence considerations apply - he should take normal action to appoint a replacement.

## Revoking the appointment because the appointee is not acting in the best interest of the customer

5401 If there is evidence that the appointee is not acting in the best interests of the customer follow the procedures below:

<b>Step</b>	<b>Action</b>
<b>1</b>	discuss the case with the nominated/appropriate officer – do not revoke the appointment without their approval
<b>1A</b>	If it is agreed by the nominated/appropriate officer that the evidence of mismanagement is overwhelming, then there is no need to follow the process set out in the steps below. Instead payment of benefit should be stopped immediately whilst the case is further investigated. The Secretary of State must act quickly and be seen to be so doing to prevent any further loss of benefit to the customer. Although it is not possible to 'define' these cases - each case must be considered on its merits - it is likely that the evidence would have come eg from social services, a LA or police adult protection team.
<b>2</b>	If the nominated/appropriate officer agrees, interview the appointee (and the customer if needed), to explain the situation
<b>3</b>	if you cannot contact the appointee for interview write to the appointee explaining that we are considering revoking the appointment.

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**Part five**

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## Appointee

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<b>4</b>	Allow the appointee two weeks to respond.
<b>5</b>	If there has been no response within that time go to step <b>8</b>
<b>6</b>	if the appointee is available for interview show the appointee the notes printed on the back of form BF57. An example of form BF57 is shown at Appendix 2
<b>7</b>	If the appointee states they are willing to administer the benefit in a satisfactory manner, consider a trial period If the trial is: <ul style="list-style-type: none"><li>• satisfactory, consider continuing the appointeeship <b>or</b></li><li>• unsatisfactory, go to step <b>8</b></li></ul>
<b>8</b>	record your reason(s) for revoking the appointee's authority and keep it with the customer's clerical papers
<b>9</b>	recall the IOP, if appropriate
<b>10</b>	end the OP/COP relationship(s) in PDCS.
<b>11</b>	if another benefit is being paid and that benefit is not CAPS compliant, notify the appropriate benefit section.
<b>12</b>	send for form BF58 to the ex-appointee, An example of form BF58 is shown at Appendix 3
<b>13</b>	if a customer still needs an appointee and another person has been nominated, take appropriate action as shown in this part of the guide
<b>14</b>	if no one else has been nominated, see <i>Appointee needed but none nominated</i> in this part of the guide

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5402 If an officer of the Department is satisfied that the customer is capable of managing their own affairs they can revoke the arrangement at any time. Follow steps **8 - 14** above.

## **Evidence of mismanagement**

- 5403 If you receive evidence from an outside body such as social services, the LA, the CH, the National Care Standards Commission or the Care Commission in Scotland that an appointee is not acting in the best interest of the customer, refer the case to a nominated officer to investigate the complaint and consider revoking the appointment, see Revoking the appointment because the appointee is not acting in the best interest of the customer.

## **Mismanagement by Care Home**

- 5404 If you have evidence that the Care Home in England or Wales has been mismanaging the benefit affairs of the customer, refer the case to:

Adjudication and Constitutional Issues (ACI)  
Second Floor  
The Adelphi  
London  
WC2N 6HT  
Fax: 020 7962 8541

- 5405 If you have evidence that the Care Home in Scotland has been mismanaging the affairs of the customer, refer the case to:

Adjudication and Constitutional Issue Scotland (ACIS)  
Room D311  
Argyle House  
Edinburgh  
Fax: 0131 222 5364

5406 - 5449



## Death of the customer

5450 You may need to appoint someone to proceed with the claim if the customer dies before action on their claim is decided and the:

- person acting on their behalf is unwilling to proceed with the claim **or**
- prospective appointee's application is not authorized.

5451 For more information, see your existing procedures.



## Overseas appointees

- 5452 The rationale behind making someone an appointee is that they will have daily or regular contact with the customer. That within reason their expenditure of the customer's benefit is done in response to their knowledge and observation of ongoing needs. Clearly this becomes problematical when the appointee and/or the customer live overseas. In none of the following scenarios are we prevented in law from making an appointment or continuing to pay an appointee, but we should be wary of doing so in each case.

### **Customer with an existing appointee moves overseas and appointee (who is staying in GB) indicates that he wants to retain the role**

- 5453 You should discuss the position with the appointee. Find out how he intends to fulfil his role. Is there someone near to where the customer is moving who could take on the role? If not, then really there is nothing we can do. If yes, see paragraph 8 below.

### **Appointee is moving abroad, customer remaining in GB**

- 5455 If appointee wishes to remain the appointee discuss how he intends to fulfil his role. Is there someone who will have daily/regular contact with the customer who can/is willing to take on the role. Would it be better to involve social services? Failing someone else taking on the role, the latter option is better than paying an appointee who lives abroad.

### **Application from would-be appointee who lives abroad, customer in GB**

- 5456 Unlike paragraph 6 above, where there is already an appointee, we should be very slow to make a new appointee in this circumstance. We should find out if there is a friend/relative who could so act; failing that social services should be approached.

**Overseas customer becomes incapable and needs an appointee-would-be appointee lives overseas (near customer)**

5457 As best we can we still need to follow the normal process. IPC will need to be involved. You must not take any short cuts, that is, not involve IPC, because it will speed up the payment process.

5458 - 5999

# Contents

## **Part six – Action following verification of a PAB/COP**

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# Part six – Action following verification of a PAB/COP

## Introduction

6000 When you have verified that an OP or COP is authorized to act on behalf of the customer for Social Security benefits, subsequent action is the same irrespective of whether the OP/COP is:

- a receiver
- a controller
- a guardian
- a curator bonis
- a tutor
- an attorney
- an appointee

See *Part one paragraphs 1150 - 1180* for further information on OP/COPs.

6001 **Note:** This part only applies to the OP types listed above.

6002 **It is important to determine whether an individual is acting in a personal or a professional capacity (eg an accountant acting for a family member).**

6003 If the OP is acting in a personal capacity, use his or her NINO as an identifier.

6004 If the OP is acting as an employee of a Corporate Organization, use PDCS to trace for an existing Corporate Organization ID. If there is no trace, use PD385 to create a new record. PDCS will generate a unique 6 digit ID for the organization

6005 In no circumstances should the individuals' NINO be used, nor should any attempt be made to trace it.

6006 – 6049



## Creating an OP/COP relationship

6050 When you have verified that an OP or COP is authorized to act for the customer:

Step	Action
1	if you are dealing with: <ul style="list-style-type: none"> <li>• a new claim, make sure the OP/COP has completed and signed a claim form on the customer's behalf <b>or</b></li> <li>• an existing claim, use your existing business procedures to recall the customer's IOP</li> </ul>
2	if you are recording an: <ul style="list-style-type: none"> <li>• individual, go to <b>step 3 or</b></li> <li>• organization, eg a LA, go to <b>step 4</b></li> </ul>
3	record the individual's details by tracing/creating an OP account on PDCS. Then go to <b>step 5</b>
4	record the organization's details by tracing/creating a COP account on PDCS
5	if appropriate, photocopy the Order of Appointment, Power of Attorney or Evidence of Appointment, note the photocopy that the original document has been seen by the DWP, sign and date it then file with the customer's clerical papers
6	if the OP/COP is an appointee, file the original form BF56 with the customer's clerical papers
7	if another benefit is in payment, forward a copy of the Order of Appointment, Power of Attorney, form BF56 or Evidence of Appointment to the appropriate benefit section(s)
8	if appropriate, return the original document to the OP/COP
9	send form BF57 to the OP/COP – an example of form BF57 is shown at Appendix 2
10	use your existing business procedures to make payment to the OP/COP

6051 - 6099



## Ending an OP/COP relationship

6100 You may need to end the relationship between a customer and their OP/COP when:

- the OP dies
- the customer dies
- the OP/COP is no longer authorized to act on the customer's behalf
- the OP/COP no longer wants to act on the customer's behalf **or**
- an OP/COP with a higher authority is appointed

6101 To end an OP/COP relationship:

<b>Step</b>	<b>Action</b>
<b>1</b>	use your existing business procedures to recall the IOP, if appropriate
<b>2</b>	end the OP/COP relationship in PDCS
<b>3</b>	if another benefit is being paid notify the appropriate section If another benefit is being paid, notify the appropriate section
<b>4</b>	send form BF58 to the OP/COP. An example of form BF58 is shown at Appendix 3
<b>5</b>	if the OP is an appointee who is the registered person at a RCH/NH, send draft letter DLIS 216 to the LA's Registration Officer. An example of draft letter DLIS 216 is shown at Appendix 8

6102 - 6149



## Changing the customer's OP/COP

6150 You may need to change the customer's OP/COP when:

- an OP/COP with a higher authority is appointed
- the existing OP/COP no longer wants to act on the customer's behalf **or**
- the customer no longer needs an OP/COP

**Note:** This list is not exhaustive.

6151 The procedures for changing an OP/COP are the same as for creating and ending an OP/COP relationship. To change the customer's OP/COP, follow the procedures shown in this part of the guide at:

- Creating an OP/COP relationship **and**
- Ending an OP/COP relationship

6152 - 6999



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## **Part seven – Split Payment Payee**

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## Part seven – Split Payment Payee

### Introduction

7000 An officer acting on behalf of the Secretary of State can, under Regulation 34 of the Claims and Payments Regulations, authorize someone else to receive payment on a customer's behalf if this would protect the interests of the customer and/or their dependants. The person (or representative of an organization) authorized to act is called an SPP. The SPP must be aged 18 or over.

7001 The Secretary of State has the discretion to authorize that part or all of the customer's benefit/pension/allowance is paid to the SPP.

7002 You may need to consider authorizing an SPP if:

- someone who lives with or is in contact with the customer notifies you that the customer is mismanaging their benefit and asks for help
- the customer has a partner (this also means after 5 December 2005, a partner living together as a civil partner)/children and is temporarily away from home **or**
- the customer cannot or will not budget for their own or their family's normal needs, and by splitting payments you will protect the interests of the customer and/or their dependants

**Note:** This list is not exhaustive.

7003 An SPP can be:

- an individual, the customer's partner (this also means after 5 December 2005, a partner living together as a civil partner), relative or friend **or**
- exceptionally a social worker or youth worker etc. **Please note:** A split payment payee must be somebody who has an ongoing interest in the customer's welfare and cannot be a Corporate Organization such as a LA or NH

7004 If you authorize an SPP, the:

- customer remains responsible for notifying all changes in their own or the assessment unit's circumstances, even though some or all their benefit is paid to another person **and**

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**Part seven**

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## Split payment payee

- the SPP is responsible for reporting any changes in their own circumstances that the Department requires, e.g. a change in their name or address

7005 See your relevant business guidance for further information on action required for Split Payment Payments.

7006 - 7049

## Recording the SPP's details

7050 To record the SPP's details:

<b>Step</b>	<b>Action</b>
<b>1</b>	use your existing business procedures to recall the IOP
<b>2</b>	record the SPP's details on PDCS
<b>3</b>	use your existing business procedures to make payments to the SPP, and the customer if appropriate
<b>4</b>	use your existing business procedures to send any relevant notifications to the SPP and the customer

7051 - 7099



## Ending the split payment arrangement

7100 Once the decision has been made to end the split payment arrangement, record the end on PDCS.

7101 - 7999



# Contents

## **Part eight - Collection of payment by an individual 3rd party**

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## Part eight – Collection of payment by an individual 3rd party

### Introduction

- 8000 This part describes how someone else can collect benefits when the customer **can manage their own** affairs but is not always able to collect their payment.

### Direct Payment

- 8001 Direct Payment into an account is the normal way state pensions and benefits are paid. Some customers may be unable to collect their benefit in person, for example customers who are unable to leave the house without assistance. They may need alternative arrangements on either a temporary or permanent basis. Some of the options available for those customers paid by Direct Payment are:

### Third Party Access

- 8002 It is usually possible for someone to legitimately access the customer's account with their permission. The precise arrangements will depend on the type of account they have and with which account provider. Customers should contact their bank, building society or other account provider to check what arrangements are available. Customers should be made aware that third party access may take some time to set up.

**On no account should the customer disclose their PIN (Personal Identification Number) number to a third party in order for them to access their account.**

### Payment into a joint account

- 8003 Customers may have a joint account with a person acting on their behalf for benefit purposes, or they may have a joint account with a wife, husband or partner. This arrangement can avoid the need for the customers to operate an account themselves and gives the additional account holder the access to manage all aspects of the account on the customer's behalf. Provision of a card and PIN to both account holders allows easy access to the account.

## **Standing Order to a third party account**

- 8004 If the account provides this facility, the customer can arrange for a Standing Order to be set up. This is an automatic transfer of a fixed amount of money to someone else's account, on a regular basis (e.g. weekly or 4 weekly).

## **Emergency arrangements**

- 8005 In an emergency situation where a customer is temporarily indisposed, the customer could provide the third party with a cheque. Banks or building societies may accept a signed letter of authority requesting that a third party be able to make a withdrawal from the account.

## **Post Office® card account**

- 8006 Customers who are receiving their payment through a Post Office card account can apply for one other person to be given permanent access to their account. A Permanent Agent can be nominated by the customer on an application form available from the Post Office.

The Permanent Agent will be issued with their own card and PIN which will allow them limited access to the customer's account enabling them to withdraw the customer's money at the Post Office counter (this includes obtaining balance queries at Post Office counters). The Permanent Agent does not have any other access to the account. They are unable to discuss the account with the Post Office Customer Service Helpline or request action on the customers behalf.

The customer only authorizes the Permanent Agent to collect payments on their behalf. The customer remains responsible for notifying the Department about all changes in their own circumstances and continues to have access to their account by their own card and PIN.

## **Customers not paid by Direct Payment**

8007 If a customer is unable or unwilling to be paid by Direct Payment, the Department will ensure that they still receive their benefit/pension by issuing a cheque payment.

Cheques below a certain value will be uncrossed and can be cashed at a Post Office or paid into a bank account. Higher value cheques will be crossed and must be paid into a bank account.

For customers who rely on other people or different carers to collect their money for them, there is a facility on the back of the cheque for the customer to authorize someone else to cash the cheque on their behalf.”

The person who is actually cashing the cheque will also need to sign a declaration on the back of the cheque to indicate they are cashing it on behalf of the customer. The person cashing the cheque will need to produce evidence of both the customer’s identity and their own.

8008 - 8999

