

FACTSHEET

Power of Attorney guidance notes

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This factsheet is written to accompany the Power of Attorney form, which is intended to help you manage your affairs during a period of imprisonment by appointing someone else to act as your representative. You can complete the attached Ordinary Power of Attorney (OPA) form easily and quickly – these guidance notes will help you to do so. Please make sure that you read these notes as you go through the form.

You should include as many details as possible as this will assist your attorney in conducting your affairs whilst you are in prison. The following table will help you in thinking about what to include in your OPA.

When to use an OPA	When NOT to use an OPA
<p>If you want someone else to do the following:</p> <ul style="list-style-type: none">• open or close a bank account;• sell or insure any of your belongings;• pay your rent and other household bills;• collect your benefits and/or tax credits;• read and deal with your post;• pay back any money you have borrowed;• get copies of your medical records; or• make gifts.	<p>If you <u>mainly</u> want to do any of the following:</p> <ul style="list-style-type: none">• write or change your will;• make arrangements for the care of your children, including agreeing to the adoption by or guardianship of any other person; or• sell or lease any property that you co-own or hold on trust.

If there is not enough room for you to explain what you would like to do in any Section of the document, you should continue on the continuation sheets provided and attach them securely to the back of the OPA. Any continuation sheet you use must be signed and witnessed.

If you make a minor mistake, you should correct it and clearly write your initials alongside the correction. When you are asked to strike through something, you must clearly put a line through the boxes or words to show that you are not using them and to prevent anyone else later filling it in.

Once you have completed the form, you must sign it and someone independent needs to witness you signing it.

Many authorities will recognise an OPA when it is shown to them, and will allow your nominated representative (known formally as your attorney) to do things on your behalf. It is possible that even with an OPA your nominated representative may not be allowed to do certain things. However, this will vary among the authorities and companies concerned.

You should not use this Ordinary Power of Attorney if you have been diagnosed as having, or if you think that you may develop, any mental illness or disease which may lead to mental incapacity.

This model power of attorney does not contain legal advice to you, and does not contain any financial, tax or other advice that might be relevant to your circumstances. This is because the circumstances of those helped by Prisoners Abroad vary substantially. If you need specific advice on the impact that a power of attorney might have on your personal circumstances or affairs, unfortunately Prisoners Abroad cannot provide that to you.

Prisoners Abroad does not accept any responsibility or liability at all arising from your use of the draft power of attorney: this includes all situations where the power of attorney is used, including for example where:

1. a mistake in the draft power of attorney later emerges
2. an attorney misuses the powers granted to them
3. you suffer loss because you incorrectly completed the power of attorney.

Guidance Notes

Note 1 Insert here the date on which you sign the OPA.

Note 2 You should fill in your details in this Section. The technical legal term for a person who completes a power of attorney is the “donor”. Should any person or organisation refer to the donor of the OPA, they will be speaking about you.

Note 3 Place a cross in the appropriate title box. If you choose other, please write your preferred title in the box provided. You must also enter your first, middle and last names. If you do not have a middle name, clearly draw a line through that box.

Note 4 If you are usually called by another name, or if you have been called by another name in the past (e.g. before you were married), you must write those names here.

Note 5 If you have a national insurance number card (Form RD3), you should enter the number here. If you do not have your number card readily available, your national insurance (NI) number will also be shown on your end of year statement of tax (P60), payslips or tax return. Your personal number is made up of a series of letters and numbers, for example QQ 12 34 56 A.

Note 6 If you have a medical card (FP4) or a NHS number card, you should enter the 10 digit number printed on it here.

Note 7 You should enter here the full address and postcode of the property where you normally lived prior to your being detained abroad. This should also be the address that any authority should have on file for you.

Note 8 You should enter the full address of any other property where you have lived during the last three years. If you have lived in any other properties during the last three years, please use the extra pages provided. Please also write down how long you lived at each.

Note 9 If you have not used any extra pages, clearly draw a line through this sentence.

Note 10 If a date has been set for your release from prison back to the UK, you should enter the date here. If you do not yet have a date for your release, you should clearly strike through the final sentence: *"I expect to be released from prison on..."*

Note 11 If you have been given an identification number by the prison, you should enter it here. If you have not been given one, place a cross in the box.

Note 12 You should enter the full name and address (including the country) of the prison where you are being held. This should also be completed if you would like any correspondence to be sent to you.

Place a cross in the appropriate title box. If you choose other, please write your preferred title in the box provided. You must also enter the first and last names of the person you wish to appoint to manage your affairs.

Note 13 **Note:** Although this document appoints someone to act as your "attorney", that does not mean that you are appointing them as your lawyer or legal representative in any court case. The word "attorney" simply means here someone who represents you in carrying out your instructions – in this case, to do with your personal and financial affairs – until such time as you decide to end the arrangement (see further Note 38 below). The person you appoint could be a lawyer if you wish, but it does not have to be.

Note: You should appoint someone that you trust to act in your and your family's best interests in your absence. You should not appoint a bankrupt, an infant or anyone suffering from a mental disorder. You should check with the person you would like to appoint as your attorney that they agree to act as your attorney before completing this section.

Note 14 You should enter the full address (including postcode) of the person you wish to appoint as your attorney.

By signing this OPA, you are granting your attorney the ability to do almost everything you could do. If you would like to restrict what powers your attorney has while this document is in force, you can do so by clearly writing out those restrictions in Section 5 (for example, if you do not want your attorney to be able to see your medical records, you should put a line clearly through 4.28 to 4.30 and also write in the text box in Section 5 “*my attorney may not apply for access to my medical records*”).

Note 15

Section 4 contains a list of specific things that you may want your attorney to do for you. You must tick all of those that you want your attorney to do.

Note 16 If you do not want to give your attorney any particular power in this Section 4, you should clearly strike through the paragraphs relating to that power and write a restriction into Section 5 preventing your attorney from exercising that power.

Your account number is usually 8 digits and will be shown on your cheque book, bank statements or debit card. Please include any zeros, for example: 00123456. If your account number is longer than 8 digits, please enter it under “*roll number*”. You should enter all hyphens and slashes as they appear in your roll number, putting them in their own box.

Note 17

If you have more than one bank/building society account, you should use the extra pages provided. If you do not want your attorney to operate some or all of your bank accounts you should clearly write in Section 5 which bank accounts may not be operated.

Note 18

If you have not used any extra pages, clearly strike through this sentence.

If you are entitled to child benefits, you should enter your child benefits number here. This number can be found on any letters sent to you by HMRC relating to your benefits. If you are not entitled to receive child benefits, draw a line through the whole of 4.7.

Your tax reference number will be shown on your tax return or payslips. If you have not been given one, draw a line through the whole of 4.8.

This paragraph gives your attorney authority to repay any of your loans or other debts. This will enable your attorney to repay any bank overdrafts and any monies spent on debit, credit, store or any other charge card. It will also allow your attorney to continue to repay the capital and interest on your existing mortgage.

This paragraph gives your attorney authority to manage your property in any way he or she thinks fit. This includes the ability to buy, sell, rent or hire, insure, mortgage or remortgage any property in your name.

Note 22 **Note:** If you own property or have a mortgage jointly with another person, or you hold property on trust for another person, including your husband/wife, civil partner, partner or children, then an OPA like this one cannot be used in relation to that property.

This paragraph will enable your attorney to renegotiate the terms and conditions of any existing mortgage relating to property which you alone own and which you do not hold on trust for another person.

The details of your mortgage will be shown on your annual mortgage statement.

The details of your local authority will be shown on your annual council tax bill.

If you are entitled to housing benefits, you should enter your housing benefits number here. This number can be found on your

Note 26 Benefits Decision Notice or any letters sent to you by your local authority relating to your benefits. If you are not entitled to receive housing benefits, draw a line through the whole of 4.18.

Note 27 This number will be shown on your annual council tax bill.

If you are renting a property privately, you should enter the full address (including postcode) of that property here. If you have been given a reference number for the property by your landlord or estate agent, you should also enter that number in the box provided. You should also complete 4.23 of the OPA (see Note 29

Note 28 below).

For council housing, you should draw a line through the whole of 4.22 and 4.23 and use the section above named “*Local authority*”.

If you own your own property, you should draw a line through the whole of 4.22 and 4.23.

You should enter the name and full address (including postcode) of your landlord here. If you do not know your landlord’s name and/or address and your property is managed by an estate agent, you should enter the details of the estate agent instead. You

Note 29 should also enter the details of the bank/building society account into which you pay your rent. If the account number is longer than 8 digits, please enter it under “*roll number*”. You should enter all zeros, hyphens and slashes as they appear in your account/roll number, putting them in their own box.

Note 30 The details of your utility provider and reference number should be found on your bill.

Note 31 This number will be shown on your current licence.

This paragraph gives your attorney authority to request to view or receive copies of those parts of your health records to which you would have access. There may be a charge for being given access to your records (currently up to a maximum of £50), and this may be payable in advance.

Note 32

You should include any place where you have had a medical examination or been treated. You should also write the name and address of your doctor, and any other place where you think records about your health may be stored.

Note 33

Your attorney may only lawfully make reasonable gifts to people who are related to or connected with you on special occasions (such as birthdays and Christmas) when you would usually have given a gift. If you wish to place any restrictions on when or to whom your attorney may make a gift, you should explain this in Section 5. If you would like to give any guidance to your attorney in relation to the making of gifts, you should write this in Section 6.

Note 34

This paragraph gives your attorney the power to receive information from any person and to discuss your personal affairs with them. Your attorney may also read and act on any post, faxes, telephone calls and e-mails that are addressed to you. This section is important because it allows your attorney to communicate on your behalf. If you would like to limit this power so that your attorney may only discuss and/or communicate about your affairs with a list of people you have selected, please write this down clearly in Section 5. But you should be careful that you do not stop your attorney from dealing with all those people that your attorney will need to deal with in order to carry out your wishes in the rest of this document.

Note 35

You must tick either the “Yes” or the “No” box. If you do not wish to place any restrictions and/or conditions on your attorney, you should tick the “No” box and clearly strike through the rest of this section.

A condition is something which your attorney must do, whereas a restriction is something they must not do. If you place any restrictions and/or conditions on the decisions your attorney can make or the matters which they can deal with, these must be followed by your attorney.

Note 36

If you choose the “Yes” box, you must specify in the large text box what restrictions and/or conditions you want to put in place. You can limit the powers of your attorney in any way you want to, but you should be careful that any restrictions and/or conditions that you describe here will not prevent your attorney doing things that you want them to. This box could be used, for example, to prevent your attorney from making gifts of above a certain value or selling your home.

If you would like your attorney to be able to have access to your will and any codicil you have made, you will need to write that in this box. Your attorney is not able to change the provisions of your will.

Note 37

This section allows you to give your attorney any guidance as to how you would like them to act. Before taking any decisions, your attorney should consider the guidance you have given in this box, but they do not always have to follow it.

If you do not wish to give your attorney any guidance, clearly draw a line through this section.

Note 38

This paragraph means that when you wish this OPA to stop having effect, you must sign another document called a “*Deed of revocation*” and send it to your attorney to end their powers formally. You will also need to write to your bank, building society, doctor and any other person who has dealt with your attorney to inform them that the OPA is no longer in force.

Note 39

This means that you must accept and repeat (if necessary) anything done by your attorney which this document appears to allow (i.e. anything not restricted by Section 5 or by law), even if some irregularity means that your attorney did not formally have the power to perform such actions.

Note 40

This paragraph is included so that even though signed abroad, the document can comply with the formalities of English law and be legally binding here.

Note 41

You must sign the document or make your mark in this box. “*Signed as a deed and duly delivered*” are legal formalities; they just mean that you need to sign and date the document.

Note 42

Your signature must be witnessed. The witness must sign this box and enter their full name and address (including postcode).

Your witness must be at least 18 years of age and must not be your attorney named in Section 2 or any person named or referred to in Sections 5 or 6. Your witness should be someone who you trust to make sure that you are signing the document of your own free will and that you have not been tricked into signing it.

Note: Your witness should ideally be someone in a position of responsibility. That person (who will sign the document as a witness in their personal, not their official, capacity) could be, for example, your prison governor, prison guard, prison doctor, prison social worker, solicitor, advocate, religious celebrant, charity worker or consular official.

If you are unable to find someone in a position of responsibility who you trust and who is willing to act as your witness, or if you would prefer not to ask an official, you can instead ask an adult friend (including a fellow prisoner) to act as your witness.

Note 42
continued

If, at a later date, your signature on the OPA is challenged in court, your witness might be called upon to testify that they saw you sign the document, that you did so of your own free will and that you were not tricked into doing so. As a prisoner may find it difficult to attend court to testify, and as a judge might be more likely to believe an official than a fellow prisoner even if they could attend, you should, wherever possible, choose as your witness someone in a position of responsibility who you trust.

The information provided in this factsheet is intended for information purposes only. It is not intended to constitute, nor does it constitute legal advice. Prisoners Abroad recommend that professional legal advice should always be sought. The information contained in this factsheet is subject to change and may not be up-to-date or accurate. Prisoners Abroad gives no warranty and makes no representation regarding the accuracy or completeness of the information provided. Prisoners Abroad will not be held responsible for any loss or damage arising from the use of the information provided.

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