

*These notes relate to the Adults with Incapacity (Scotland)
Act 2000 (asp 4) which received Royal Assent on 9 May 2000*

ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

EXPLANATORY NOTES

THE ACT

Part 2: Continuing Powers of Attorney and Welfare Powers of Attorney

Section 23: Resignation of continuing or welfare attorney

94. This section provides that once a continuing or welfare power of attorney has been registered by the Public Guardian, according to section 19, the attorney must give notice of their intention to resign, in order to safeguard against any lapse in administering the granter's affairs.
95. Subsection (1) lists those who must be notified. This ensures that the granter, and key people looking after them are aware of the impending change. If necessary, a guardianship application could then be made. Notification also ensures that the Public Guardian can maintain the register of continuing and welfare attorneys accurately.
96. Subsection (2) provides that an attorney's resignation becomes effective 28 days after the Public Guardian receives written notice as above, unless the attorney was a joint attorney, or a substitute attorney was also appointed, in which case subsection (4) may apply. When the attorney's resignation is effective, the Public Guardian will record this in the register.
97. Subsection (4) waives the need to wait 28 days for the resignation of an attorney to be effective, where the Public Guardian has received notice that a remaining joint attorney, or substitute attorney is prepared to act. The resignation would then be effective from the date the Public Guardian receives such notice.