

*Status: Point in time view as at 01/04/2002.*

*Changes to legislation: There are currently no known outstanding effects for the Adults with Incapacity (Scotland) Act 2000. (See end of Document for details)*

VALID FROM 01/10/2003

## SCHEDULE 1

*(introduced by section 35)*

### MANAGERS OF AN ESTABLISHMENT

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## SCHEDULE 2

*(introduced by section 64)*

### MANAGEMENT OF ESTATE OF ADULT

#### *Management plan*

- 1 (1) A guardian with powers relating to the property and financial affairs of the adult shall, unless the sheriff otherwise directs, prepare a plan (a “management plan”), taking account of any directions given by the sheriff in the order appointing him, for the management, investment and realisation of the adult’s estate and for the application of the estate to the adult’s needs, so far as the estate falls within the guardian’s authority.
- (2) The management plan shall be submitted in draft by the guardian to the Public Guardian for his approval, along with the inventory of the adult’s estate prepared under paragraph 3, not more than one month, or such other period as the Public Guardian may allow, after the submission of the inventory.
- (3) The Public Guardian may approve the management plan submitted to him under subparagraph (2) or he may approve it with amendments and the plan as so approved or as so amended shall be taken account of by the guardian in the exercise of his functions in relation to the adult.
- (4) Before the management plan is approved, the guardian shall, unless the sheriff on appointing him has conferred wider powers, have power only to—
  - (a) ingather and take control of the assets of the adult’s estate so as to enable him, when the management plan has been approved, to intromit with them;
  - (b) make such payments as are necessary to provide for the adult’s day to day needs.
- (5) The Public Guardian may authorise the guardian to exercise any function within the scope of his authority before the management plan is approved, if it would be unreasonable to delay him exercising that function until the plan had been approved.
- (6) The guardian shall keep the management plan under review and shall put forward to the Public Guardian proposals for variation of it whenever it appears to him to be appropriate.
- (7) The Public Guardian—
  - (a) may at any time propose any variation to the management plan; and

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- (b) shall review the plan whenever the guardian submits his accounts for audit.
- (8) The Public Guardian shall notify the guardian of any variation which he proposes to make to the management plan and shall not make any such variation without affording the guardian an opportunity to object.
- (9) Having heard any objections by the guardian as mentioned in sub-paragraph (8) the Public Guardian may make the variation with or without amendment.

*Directions from sheriff*

- 2 Where the guardian disagrees with any decision made by the Public Guardian in relation to a management plan prepared under paragraph 1, he may apply to the sheriff for a determination in relation to the matter and the sheriff's decision shall be final.

*Inventory of estate*

- 3 (1) A guardian with powers relating to the property or financial affairs of the adult shall, as soon after his appointment as possible and in any event within 3 months of the date of registration of his appointment or such other period as the Public Guardian may allow, submit to the Public Guardian for examination and approval a full inventory of the adult's estate in so far as it falls within the scope of the guardian's authority, along with such supporting documents and additional information as the Public Guardian may require.
- (2) The inventory shall be in a form, and contain information, prescribed by the Public Guardian.
- (3) Errors in and omissions from the inventory which are discovered by the guardian after the inventory has been approved by the Public Guardian shall be notified by him to the Public Guardian within 6 months of the date of discovery or when submitting his next accounts to the Public Guardian, whichever occurs sooner.
- (4) The Public Guardian may dispense with the need for the guardian to submit an inventory under sub-paragraph (1) or may require the guardian to take such other action as he thinks appropriate in lieu of submitting an inventory.

*Money*

- 4 The guardian shall deposit all money received by him as guardian in a bank or a building society in an account in the name of the adult and shall ensure that all sums in excess of £500 (or such other sum as may be prescribed) so deposited shall earn interest.

*Powers relating to investment and carrying on of business by guardian*

- 5 (1) Subject to the following provisions of this paragraph, a guardian with powers relating to the property or financial affairs of the adult shall be entitled—
- (a) after obtaining and considering proper advice, to retain any existing investment of the adult;
- (b) to use the adult's estate to make new investments in accordance with the management plan prepared under paragraph 1 or with the consent of the Public Guardian.

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- (2) For the purpose of sub-paragraph (1)—
- (a) proper advice is the advice of a person [<sup>F2</sup>who has permission for the purposes of the Financial Services and Markets Act 2000 to advise on investments] who is not the guardian or any person who is an employer, employee or business partner of the guardian; and
  - (b) the advice must be given or subsequently confirmed in writing.

[<sup>F3</sup>(2A) Sub-paragraph (2) must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;
  - (b) any relevant order under that section; and
  - (c) Schedule 2 to that Act.]
- (3) The guardian shall keep every investment under review and in doing so shall have regard to the following principles—
- (a) that the investment must be prudent;
  - (b) that there must be diversification of investments; and
  - (c) that the investment must be suitable for the adult's estate.
- (4) The Public Guardian may at any time direct the guardian to realise any investment.
- (5) The guardian may, subject to any direction given by the Public Guardian, carry on any business of the adult.
- (6) Any decision by the Public Guardian—
- (a) under sub-paragraph (4) as to directing the guardian to realise investments;
  - (b) under sub-paragraph (5) as to giving directions to the guardian in carrying on the business of the adult,
- may be appealed to the sheriff, whose decision shall be final.

#### Textual Amendments

- F2** Words in *Sch. 2 para. 5(2)* substituted (1.12.2001) by *S.I. 2001/3649, art. 235(2)*  
**F3** *Sch. 2 para. 5(2A)* inserted (1.12.2001) by *S.I. 2001/3649, art. 235(3)*

#### *Purchase or disposal of accommodation*

- 6 (1) The guardian shall not, without the consent of the Public Guardian—
- (a) in principle; and
  - (b) to the purchase or selling price,
- purchase accommodation for, or dispose of any accommodation used for the time being as a dwelling house by, the adult.
- (2) On receipt of an application for consent in principle under sub-paragraph (1)(a) in the prescribed form, the Public Guardian shall intimate the application to the adult, his nearest relative, his primary carer and any person who the Public Guardian considers has an interest in the application and advise them of the prescribed period within which they may object to the granting of the application.
- (3) The Public Guardian shall remit any objection under sub-paragraph (2) for determination by the sheriff (whose decision shall be final) and—
- (a) if the sheriff upholds the objection, shall refuse the application;

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- (b) if the sheriff dismisses the objection, shall grant the application.
- (4) Where the Public Guardian proposes to refuse the application other than under sub-paragraph (3)(a) he shall intimate his decision to the applicant and advise him of the prescribed period within which he may object to the refusal; and he shall not refuse the application without affording the applicant, if he objects, an opportunity of being heard.
- (5) Having heard any objections as mentioned in sub-paragraph (4) or where there is no objection as mentioned in sub-paragraph (2), the Public Guardian may grant the application.
- (6) The Public Guardian may at his own instance or at the instance of any person who objects to the granting or refusal (other than a refusal under sub-paragraph (3)(a)) of the application remit the application to the sheriff for determination by the sheriff, whose decision shall be final.
- (7) If consent in principle to the purchase or disposal of the accommodation is given, the guardian shall apply to the Public Guardian for consent under sub-paragraph (1) (b) to the purchase or selling price.
- (8) A decision of the Public Guardian—
  - (a) to grant or to refuse (other than under sub-paragraph (3)(a)) an application; or
  - (b) to refuse to remit an application to the sheriff under sub-paragraph (6),
 may be appealed to the sheriff, whose decision shall be final.
- (9) A decision of the Public Guardian to give or to refuse consent under sub-paragraph (1)(b) shall be final.

#### *Accounting and auditing*

- 7 (1) A guardian with powers relating to the property or financial affairs of the adult shall submit accounts in respect of each accounting period to the Public Guardian within one month from the end of the accounting period or such longer period as the Public Guardian may allow.
- (2) There shall be submitted with the accounts under sub-paragraph (1) such supporting documents as the Public Guardian may require, and the Public Guardian may require the guardian to furnish him with such information in connection with the accounts as the Public Guardian may determine.
- (3) For the purposes of this paragraph, the first accounting period shall commence with the date of appointment of the guardian and end at such date not later than 18 months after the date of registration of the guardian's appointment as the Public Guardian may determine; and thereafter each accounting period shall be a year commencing with the date on which the immediately previous accounting period ended.
- (4) Notwithstanding the foregoing provisions of this paragraph, the Public Guardian may at any time—
  - (a) give directions as to the frequency of accounting periods;
  - (b) dispense with the need for the submission of accounts by the guardian; or
  - (c) require the guardian to do anything which the Public Guardian thinks appropriate in lieu of submitting accounts.

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- (5) The accounts shall be in such form as is prescribed by the Public Guardian and different forms may be prescribed for different cases or descriptions of case.
- (6) Where the estate of the adult includes a business or an interest in a business that part of the accounts which relates to the business or to the interest in the business shall be accompanied by a certificate from such person and in such form as may be prescribed by the Public Guardian, certifying the accuracy of that part of the accounts.
- (7) The accounts submitted to the Public Guardian under sub-paragraph (1) (other than any part to which a certificate as mentioned in sub-paragraph (6) relates) shall be audited by the Public Guardian or by an accountant appointed by, and responsible to, the Public Guardian for that purpose.

#### *Approval of accounts*

- 8 (1) After the accounts of the guardian have been audited, the Public Guardian shall, if the accounts appear to him—
  - (a) to be a true and fair view of the guardian's management of the adult's estate, approve them and fix the remuneration (if any) due to the guardian;
  - (b) not to be a true and fair view of the guardian's management of the adult's estate, prepare a report as to the extent to which they do not represent such a true and fair view and adjusting the accounts accordingly.
- (2) The Public Guardian may approve the accounts, notwithstanding any minor inconsistencies or absence of full documentation in the accounts, if he is satisfied that the guardian acted reasonably and in good faith.
- (3) The Public Guardian shall send any report prepared by him under sub-paragraph (1) (b) to the guardian, who may object to anything contained in the report within 28 days of it being sent to him.
- (4) If no objection is taken to the report, the accounts as adjusted by the Public Guardian shall be regarded as approved by him.
- (5) Where any objection taken to the report cannot be resolved between the guardian and the Public Guardian, the matter may be determined by the sheriff on an application by the guardian, and the sheriff's decision shall be final.
- (6) Without prejudice to sub-paragraph (7), the guardian shall be liable to make good any deficiency revealed by the accounts as approved by the Public Guardian under sub-paragraph (1)(a).
- (7) Where a deficiency is revealed as mentioned in sub-paragraph (6), the Public Guardian may require the guardian to pay interest to the adult's estate on the amount of the deficiency at the rate fixed by Act of Sederunt as applicable to a decree of the sheriff in respect of the period for which it appears that the deficiency has existed.

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### SCHEDULE 3

*(introduced by section 85)*

#### JURISDICTION AND PRIVATE INTERNATIONAL LAW

##### **Commencement Information**

- II** Sch. 3 wholly in force at 4.11.2003; Sch. 3 not in force at Royal Assent see s. 89(2); Sch. 3 in force for specified purposes at 2.4.2001 by S.S.I. 2001/81, art. 2, Sch. 1; Sch. 3 in force in so far as not already in force at 4.11.2003 by S.S.I. 2003/516, art. 2

##### *General*

- 1 (1) The Scottish judicial and administrative authorities shall have jurisdiction to dispose of an application or other proceedings and otherwise carry out functions under this Act in relation to an adult if—
- (a) the adult is habitually resident in Scotland; or
  - (b) property which is the subject of the application or proceedings or in respect of which functions are carried out under this Act is in Scotland; or
  - (c) the adult, although not habitually resident in Scotland is there or property belonging to the adult is there and, in either case, it is a matter of urgency that the application is or the proceedings are dealt with; or
  - (d) the adult is present in Scotland and the intervention sought in the application or proceedings is of a temporary nature and its effect limited to Scotland.
- (2) As from the ratification date, the Scottish judicial and administrative authorities shall, in addition to the jurisdiction mentioned in sub-paragraph (1) in the circumstances set out therein, have the jurisdiction mentioned in that sub-paragraph in the following circumstances—
- (a) the adult—
    - (i) is a British citizen; and
    - (ii) has a closer connection with Scotland than with any other part of the United Kingdom; and
  - (b) Article 7 of the Convention has been complied with,
- or if the Scottish Central Authority, having received a request under Article 8 of the Convention from an authority of the State in which the adult is habitually resident and consulted such authorities in Scotland as would, under this Act, have functions in relation to the adult, have agreed to the request.
- (3) As from the ratification date, the provisions of the Convention shall apply to the exercise of jurisdiction under this schedule where the adult—
- (a) is habitually resident in a Contracting State other than the United Kingdom; or
  - (b) not being habitually resident in Scotland, is or has been the subject of protective proceedings in such a Contracting State.
- (4) As from the ratification date, any application made to a Scottish judicial or administrative authority under this Act which—
- (a) relates to an adult who is not habitually resident in Scotland; and
  - (b) does not require to be determined as a matter of urgency,

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shall be accompanied by information as to which State the adult habitually resides in and as to any other application relating to the adult which has been dealt with or is being made, or proceedings so relating which have been or are being brought, in any Contracting State other than the United Kingdom.

- (5) For the purposes of this paragraph, an adult—
- (a) whose habitual residence cannot be ascertained; or
  - (b) who is a refugee or has been internationally displaced by disturbance in the country of his habitual residence,
- shall be taken to be habitually resident in the State which he is in.

#### Commencement Information

**I2** Sch. 3 para. 1 wholly in force at 4.11.2003; Sch. 3 para. 1 not in force at Royal Assent see s. 89(2); Sch. 3 para. 1(1)(5) in force at 2.4.2001 by S.S.I. 2001/81, art. 2, Sch. 1; Sch. 3 para. 1 in force in so far as not already in force at 4.11.2003 by S.S.I. 2003/516, art. 2

#### Appropriate sheriff

- 2 (1) The sheriff having jurisdiction under this schedule to take measures is the sheriff in whose sheriffdom—
- (a) in relation to a case falling within paragraph 1(1)(a), the adult is habitually resident;
  - (b) in relation to a case falling within paragraph 1(1)(b), the property is located;
  - (c) in relation to a case falling within paragraph 1(1)(c), the adult or property belonging to the adult is present;
  - (d) in relation to a case falling within paragraph 1(1)(d), the adult is present.
- (2) The sheriff shall also have jurisdiction to vary or recall any intervention order or guardianship order made by him under this Act if no Contracting State other than the United Kingdom has, by way of its judicial or administrative authorities, jurisdiction; and—
- (a) no other court or authority has jurisdiction; or
  - (b) another court or authority has jurisdiction but—
    - (i) it would be unreasonable to expect an applicant to invoke it; or
    - (ii) that court or authority has declined to exercise it.
- (3) Notwithstanding that any other judicial or administrative authority has jurisdiction under sub-paragraph (1)(a) to take measures, a sheriff shall have jurisdiction to take measures if—
- (a) the adult is present in the sheriffdom; and
  - (b) the sheriff considers that it is necessary, in the interests of the adult, to take the measures immediately.
- (4) Where, by operation of paragraph 1, jurisdiction falls to be exercised by a sheriff but the case is one appearing to fall outside sub-paragraphs (1) and (2), the sheriff having jurisdiction is the Sheriff of the Lothians and Borders at Edinburgh.

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### Commencement Information

- I3** Sch. 3 para. 2 wholly in force at 4.11.2003; Sch. 3 para. 2 not in force at Royal Assent see s. 89(2); Sch. 3 para. 2(1)(3)(4) in force at 2.4.2001 by S.S.I. 2001/81, art. 2, Sch. 1; Sch. 3 para. 2 in force in so far as not already in force at 4.11.2003 by S.S.I. 2003/516, art. 2

### *Applicable law*

- 3 (1) The law applicable to anything done under this Act by a Scottish judicial or administrative authority in relation to an adult is the law of Scotland.
- (2) Sub-paragraph (1) does not prevent a Scottish judicial or administrative authority from applying the law of a country other than Scotland if, in circumstances which demonstrate a substantial connection with that other country and having regard to the interests of the adult, it appears appropriate to do so.
- (3) Such an authority shall, however, in the exercise of the powers conferred by section 18 of this Act, take into consideration to the extent possible the law which, as provided in paragraph 4, governs the power of attorney.
- (4) Where a measure for the protection of an adult has been taken in one State and is implemented in another, the conditions of its implementation are governed by the law of that other State.
- (5) Any question whether a person has authority by virtue of any enactment or rule of law to represent an adult shall be governed—
- (a) where such representation is for the purposes of the immediate personal welfare of the adult and the adult is in Scotland, by the law of Scotland; and
  - (b) in any other case, by the law of the country in which the adult is habitually resident.
- 4 (1) The law governing the existence, extent, modification and extinction of continuing or welfare powers of attorney (including like powers, however described) shall be that of the State in which the granter habitually resided at the time of the grant of these powers.
- (2) Where, however, the granter of such a power of attorney so provides in writing, the law so applicable shall instead be the law of a State—
- (a) of which the granter is a national;
  - (b) in which the granter was habitually resident before the grant; or
  - (c) in which the property of the granter is located.
- (3) The manner of exercise of such a power shall be governed by the law of the State in which its exercise takes place.
- (4) The law of a State may be applied under sub-paragraph (2)(c) above only in respect of the property referred to in that provision.
- (5) Nothing in sub-paragraphs (1) and (2) prevents the sheriff from exercising powers under section 20 of this Act if a power of attorney is not being exercised so as to safeguard the welfare or property of the granter.
- (6) It is not an objection to the validity of any contract or other transaction between a person acting or purporting to act as the representative of an adult and any other



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person that the person so acting or purporting to act was not entitled so to act under the law of a country other than the country where the contract or other transaction was concluded.

(7) Sub-paragraph (6) does not, however, apply where the other person knew or ought to have known that the entitlement so to act of the person acting or purporting to act as representative was governed by the law of that other country.

(8) Sub-paragraph (6) applies only if the persons entering into the contract or other transaction were, when they did so, both (or all) in the same country.

5        Nothing in this schedule displaces any enactment or rule of law which has mandatory effect for the protection of an adult with incapacity in Scotland whatever law would otherwise be applicable.

6        Nothing in this schedule requires or enables the application in Scotland of any provision of the law of a country other than Scotland so as to produce a result which would be manifestly contrary to public policy.

### *Recognition and enforcement*

7        (1) Any measure taken under the law of a country other than Scotland for the personal welfare or the protection of property of an adult with incapacity shall, if one of the conditions specified in sub-paragraph (2) is met, be recognised by the law of Scotland.

(2) These conditions are—

- (a) that the jurisdiction of the authority of the other country was based on the adult's habitual residence there;
- (b) that the United Kingdom and the other country were, when the measure was taken, parties to the Convention and the jurisdiction of the authority of the other country was based on a ground of jurisdiction provided for in the Convention.

(3) Recognition of a measure may, however, be refused—

- (a) if, except in a case of urgency—
  - (i) the authority which took it did so without the adult to whom it related being given an opportunity to be heard; and
  - (ii) these circumstances constituted a breach of natural justice;
- (b) if it would be manifestly contrary to public policy to recognise the measure;
- (c) if the measure conflicts with any enactment or rule of law of Scotland which is mandatory whatever law would otherwise be applicable;
- (d) if the measure is incompatible with a later measure taken in Scotland or recognised by the law of Scotland;
- (e) if the measure would have the effect of placing the adult in an establishment in Scotland and—
  - (i) the Scottish Central Authority has not previously been provided with a report on the adult and a statement of the reasons for the proposed placement and has not been consulted on the proposed placement; or
  - (ii) where the Authority has been provided with such a report and statement and so consulted, it has, within a reasonable time thereafter, declared that it disapproves of the proposed placement.

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**I4** Sch. 3 para. 7 wholly in force at 4.11.2003; Sch. 3 para. 7 not in force at Royal Assent see s. 89(2); Sch. 3 para. 7(1)(2)(a)(3)(a)-(d) in force at 2.4.2001 by S.S.I. 2001/81, art. 2, Sch. 1; Sch. 3 para. 7 in force in so far as not already in force at 4.11.2003 by S.S.I. 2003/516, art. 2

- 8 (1) A measure which is enforceable in the country of origin and which is recognised under paragraph 7 by the law of Scotland may, in accordance with rules of court, be registered.
- (2) A measure so registered shall be as enforceable as a measure having the like effect granted by a court in Scotland.
- 9 (1) For the purposes of recognition or enforcement of a measure taken outside Scotland in relation to an adult, findings of fact going to jurisdiction made by the authority taking the measure are conclusive of the facts found.
- (2) The validity or merits of a measure falling to be recognised by the law of Scotland by virtue of this schedule shall not be questioned in any proceedings except for the purposes of ascertaining its compliance with any provision of this schedule.
- 10 (1) The Scottish Ministers may, by order, provide for the recognition and enforcement of orders made and other measures taken by authorities in any part of the United Kingdom other than Scotland.
- (2) The provision so made shall accord no less recognition and secure that these orders and measures are no less enforceable than if they were measures which are recognised by the law of Scotland under paragraph 7.

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#### *Co-operation, avoidance of conflict of jurisdiction and compliance with the Convention*

- 11 (1) Her Majesty may by Order in Council confer on the Scottish Central Authority, and the Scottish judicial and administrative authorities such powers, and impose on them such duties additional, in each case, to those which they have under this Act, as are necessary or expedient to enable them to give effect in Scotland to the Convention on and after the ratification date.
- (2) An Order in Council under sub-paragraph (1) shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (3) A certificate delivered in pursuance of Article 38 of the Convention by a designated authority of a Contracting State other than Scotland shall be proof of the matters stated in it unless the contrary is proved.

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*General*

- 12 No provision of this schedule deriving from or giving effect to the Convention extends to any matter to which the Convention, by Article 4 thereof, does not apply.
- 13 Orders or regulations under this schedule shall be made by statutory instrument subject to annulment in pursuance of a resolution of the Scottish Parliament.
- 14 In this schedule—
- “the Convention” means the Hague Convention of 13 January 2000 on the International Protection of Adults; a “measure for the personal welfare or protection of the property” of an adult with incapacity includes any order, direction or decision effecting or relating to—
- (a) the determination of the incapacity and the institution of appropriate measures of protection;
  - (b) the placing of the adult under the protection of a judicial or administrative authority;
  - (c) guardianship, curatorship or analogous institutions;
  - (d) the appointment and functions of any person or body having charge of the adult’s person or property or otherwise representing the adult;
  - (e) the placement of the adult in an establishment or other place where the personal welfare of the adult is safeguarded;
  - (f) the administration, conservation or disposal of the adult’s property; or
  - (g) the authorisation of a specific intervention for the personal welfare or protection of the property of the adult; the “ratification date” means the date when the Convention is ratified as respects Scotland; the “Scottish Central Authority” means—
- (a) an authority designated under Article 28 of the Convention for the purposes of acting as such; or
  - (b) if no authority has been so designated any authority appointed by the Scottish Ministers for the purposes of carrying out the functions to be carried out under this schedule by the Scottish Central Authority;
- the “Scottish judicial and administrative authorities” means the courts having functions under this Act and the Public Guardian, the Mental Welfare Commission, local authorities and supervisory bodies.

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## SCHEDULE 4

*(introduced by section 88(1))*

### CONTINUATION OF EXISTING CURATORS, TUTORS, GUARDIANS AND ATTORNEYS UNDER THIS ACT

#### *Curators and tutors*

- 1 (1) On the relevant date, any person holding office as curator bonis to an adult shall become guardian of that adult with power to manage the property or financial affairs of the adult.
- (2) Where a person—
  - (a) before the relevant date, holds office as curator bonis to a person who has not attained the age of 16 years and does not hold such office for the sole reason that the person has not attained the age of 16 years; or
  - (b) after the relevant date, is appointed as curator bonis to such a person,
 he shall become guardian of that person when that person attains the age of 16 years, with power to manage his property or financial affairs.
- (3) Where any proceedings for the appointment of a curator bonis to an adult have been commenced and not determined before the relevant date, they shall be determined in accordance with the law as it was immediately before that date; and any person appointed curator bonis shall become guardian of that adult with power to manage the property or financial affairs of the adult.
- (4) On the relevant date, any person holding office as tutor-dative to an adult shall become guardian of that adult and shall continue to have the powers conferred by the court on his appointment as tutor-dative.
- (5) Where any proceedings for the appointment of a tutor-dative to an adult have been commenced and not determined before the relevant date, they shall be determined in accordance with the law as it was immediately before that date; and any person appointed tutor-dative shall become guardian of that adult with such power to manage the property, financial affairs or personal welfare of the adult as the court may determine.
- (6) On the relevant date, any person holding office as tutor-at-law to an adult shall become guardian of that adult with power to manage the property, financial affairs or personal welfare of the adult.
- (7) Where any proceedings for the appointment of a tutor-at-law to an adult have been commenced and not determined before the relevant date, they shall be determined in accordance with the law as it was immediately before that date; and any person appointed tutor-at-law shall become guardian of that adult with power to manage the property, financial affairs or personal welfare of the adult.

#### *Guardians*

- 2 (1) On the relevant date, any person holding office as guardian of an adult under the 1984 Act shall become guardian of that adult under this Act and shall continue to have the powers set out in paragraphs (a) to (c) of section 41(2) of that Act notwithstanding the repeal of that section by this Act.

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- (2) Where any proceedings for the appointment of such a guardian of an adult have been commenced and not determined before the relevant date, they shall be determined in accordance with the 1984 Act as it was in force immediately before that date; and any person appointed guardian shall become guardian of that adult under this Act with the powers set out in the said paragraphs (a) to (c) of section 41(2) of the 1984 Act.

*Proceedings relating to existing appointments*

- 3 Where any proceedings in relation to the functions of an existing curator bonis, tutor-dative, tutor-at-law or guardian have been commenced and not determined before the relevant date, they shall be determined in accordance with the law as it was immediately before that date.

*Attorneys*

- 4 (1) On the relevant date, any person holding office as—
- (a) an attorney under a contract of mandate or agency with powers relating solely to the property or financial affairs of an adult shall become a continuing attorney under this Act;
  - (b) an attorney under a contract of mandate or agency with powers relating solely to the personal welfare of an adult shall become a welfare attorney under this Act;
  - (c) an attorney under a contract of mandate or agency with powers relating both to the property and financial affairs and to the personal welfare of an adult shall become a continuing attorney and a welfare attorney under this Act.
- (2) Where, under the provisions of a contract of mandate or agency executed before the relevant date, a person is appointed as an attorney after that date he shall be a continuing attorney, a welfare attorney or a continuing and welfare attorney, as provided for in sub-paragraph (1), under this Act.
- (3) For the purposes of their application to persons who have become continuing attorneys by virtue of sub-paragraph (1)(a) or (c), the following provisions shall have effect as modified or disapplied by sub-paragraph (3).
- (4) Sections 6(2)(c)(i), 15, 19, 20(3)(a), 21, 22 and 23 shall not apply.
- (5) For the purposes of their application to persons who have become welfare attorneys by virtue of sub-paragraph (1)(b) or (c) the following provisions shall have effect as modified or disapplied by sub-paragraph (5).
- (6) Sections 16(1) to (4) and (7), 19, 20(3)(a), 21, 22 and 23 shall not apply.

VALID FROM 01/10/2003

*Managers*

- 5 (1) Any managers of a hospital who have received and hold money and valuables on behalf of any person under section 94 of the 1984 Act may continue to do so under this Act for a period not exceeding 3 years from the relevant date.

*Status: Point in time view as at 01/04/2002.*

*Changes to legislation: There are currently no known outstanding effects for the*  
*Adults with Incapacity (Scotland) Act 2000. (See end of Document for details)*

- (2) This Act applies to managers as mentioned in sub-paragraph (1) notwithstanding that no certificate has been issued under section 37 in respect of the owner of the money or valuables.
- (3) Sections 35 and 38 shall not apply in the case of managers who continue to hold money by virtue of sub-paragraph (1).
- (4) Where the managers have authority from the Mental Welfare Commission to hold and manage money and other property in excess of the aggregate value mentioned in section 39 they may do so in relation to the money and valuables of any person which they continue to hold under sub-paragraph (1).

*Application of Act to persons who become guardians by virtue of this schedule*

- 6 (1) For the purposes of their application to persons who have become guardians by virtue of this schedule, the following provisions shall have effect as modified or disapplied by this paragraph.
  - (2) In section 67(2) the reference to the certificate of appointment issued under section 58 shall be construed as a reference to the order of the court appointing the person as curator bonis, tutor-dative, tutor-at-law or guardian under the 1984 Act, as the case may be.
  - (3) Section 60 shall apply to a person who has become a guardian to an adult by virtue of this schedule and who was a curator bonis, tutor dative or tutor-at-law to that adult; and, for the purpose of that application, for the reference in section 60(1) to a period in respect of which a guardianship order has been made or renewed there shall be substituted a reference to the period of 5 years from the relevant date or (in the case of a curator bonis who has under paragraph 1(2), became guardian to a person on his attaining the age of 16 years) from the date on which the person attained the age of 16 years.
  - (4) Section 60 shall not apply to a person who has become a guardian to an adult by virtue of this schedule and who was a guardian of that adult under the 1984 Act, in which case the powers shall continue until such time as they would have continued had he not become a guardian by virtue of this schedule to this Act.
  - (5) In sections 68(2) and (3) and 76 the references to the chief social work officer of the local authority shall be construed as including references to the local authority.
  - (6) Schedule 2 shall apply only—
    - (a) in a case where; and
    - (b) to the extent that,
 the Public Guardian has determined that it should apply.
  - (7) Any determination by the Public Guardian under sub-paragraph (6), or a decision by him not to make such a determination, may be appealed to the sheriff, whose decision shall be final.
  - (8) No reference in this Act to registration shall have effect in relation to any person who becomes a guardian by virtue of this schedule.

*Status: Point in time view as at 01/04/2002.*

*Changes to legislation: There are currently no known outstanding effects for the Adults with Incapacity (Scotland) Act 2000. (See end of Document for details)*

### Transitional Provisions

- 7 Until Part 6 comes into force—
- (a) the references in section 23(1)(c) to a guardian shall be omitted;
  - (b) in section 31(7), the reference in paragraph (a) to the appointment of a guardian shall be construed as a reference to the appointment of a curator bonis or tutor-dative or tutor-at-law with powers relating to the funds or accounts in question and paragraph (b) shall be omitted;
  - (c) in section 34(1), the reference in paragraph (a) to a guardian shall be construed as a reference to a curator bonis or tutor-dative or tutor-at-law with powers relating to the funds or account in question and paragraph (b) shall be omitted;
  - (d) in section 46(1), the reference in paragraph (a) to a guardian shall be construed as a reference to a curator bonis or tutor-dative or tutor-at-law with powers relating to the matter and paragraph (b) shall be omitted.

#### Commencement Information

- I5** Sch. 4 para. 7 partly in force; Sch. 4 para. 7 not in force at Royal Assent see s. 89(2); Sch. 4 para. 7(a)-(c) in force at 2.4.2001 by S.S.I. 2001/81, art. 2, Sch. 1

### Interpretation

- 8 In this schedule the “relevant date” in relation to any paragraph in which it appears means the date of coming into force of that paragraph.

## SCHEDULE 5

*(introduced by section 88(2))*

### MINOR AND CONSEQUENTIAL AMENDMENTS

#### General

- 1 With effect from the commencement of this paragraph any reference in any enactment or document to a curator bonis or a tutor or curator of a person of or over the age of 16 years shall be construed as a reference to a guardian with similar powers appointed to that person under this Act.

#### Defence Act 1842 (c.94)

- 2 (1) In section 15 of the Defence Act 1842—
- (a) after “nonage” in both places there shall be inserted “or mental incapacity”;
  - (b) “or not of whole mind” shall be repealed;
  - (c) for “out of prison, within this land, or of whole mind” there shall be substituted “within this land”.
- (2) In section 27 of that Act for “lunacy” there shall be substituted “mental incapacity”.

*Status: Point in time view as at 01/04/2002.*

*Changes to legislation: There are currently no known outstanding effects for the  
 Adults with Incapacity (Scotland) Act 2000. (See end of Document for details)*

*Judicial Factors Act 1849 (c.51)*

- 3 In section 34A of the Judicial Factors Act 1849 for “recovery, death or coming of age of the ward” there shall be substituted “ coming to an end of the situation giving rise to it ”.

PROSPECTIVE

*Improvement of Land Act 1864 (c.114)*

- 4 **No commentary item could be found for this reference c19656141.** . . . . .

*Titles to Land (Consolidation) (Scotland) Act 1868 (c.101)*

- 5 (1) In section 24 of the Titles to Land (Consolidation) (Scotland) Act 1868 for “mental disorder within the meaning of the Mental Health (Scotland) Act 1960” there shall be substituted “ mental or other incapacity ”.
- (2) In section 62 of that Act for “of insane mind” there shall be substituted “ mental or other incapacity ”.

*Judicial Factors (Scotland) Act 1889 (c.39)*

- 6 (1) In section 2 of the Judicial Factors (Scotland) Act 1889 at the beginning there shall be inserted “Without prejudice to section 6(1) of the Adults with Incapacity (Scotland) Act 2000 (asp 4) (Accountant of Court to be Public Guardian)”.
- (2) In section 6 of that Act, in the proviso, after “apply to” there shall be inserted “ guardians appointed under the Adults with Incapacity (Scotland) Act 2000 (asp 4), to ”.

*Heritable Securities (Scotland) Act 1894 (c.44)*

- 7 In section 13 of the Heritable Securities (Scotland) Act 1894—
- (a) after “(b) trustees” there shall be inserted—
- “(c) the person entitled to act as the legal representative of any such person”;
- (b) “tutors, curators,” shall be repealed.

**Commencement Information**

**16** [Sch. 5 para. 7](#) wholly in force at 1.4.2002; [Sch. 5 para. 7](#) not in force at Royal Assent see [s. 89\(2\)](#); [Sch. 5 para. 7](#) in force for specified purposes at 2.4.2001 by [S.I. 2001/81, art. 2](#), [Sch. 1](#); [Sch. 5 para. 7](#) wholly in force at 1.4.2002 by [S.S.I. 2001/81, art. 3](#), [Sch. 2](#)

*National Assistance Act 1948 (c.29)*

- 8 In section 49 of the National Assistance Act 1948 as it applies to Scotland—



*Status: Point in time view as at 01/04/2002.*

*Changes to legislation: There are currently no known outstanding effects for the Adults with Incapacity (Scotland) Act 2000. (See end of Document for details)*

- (a) immediately before “the council” where last occurring there shall be inserted “ or applies for an intervention order or for appointment as a guardian under the Adults with Incapacity (Scotland) Act 2000 (asp 4) ”;
- (b) immediately before “in so far as” there shall be inserted “ or his functions under the intervention order or as guardian ”.

*Offices, Shops and Railway Premises Act 1963 (c.41)*

9 In section 90(1) of the Offices, Shops and Railway Premises Act 1963 in the definition of “owner” for “, tutor or curator” there shall be substituted “ or person entitled to act as legal representative of a person under disability by reason of nonage or mental or other incapacity ”.

**Commencement Information**

**I7** Sch. 5 para. 9 wholly in force at 1.4.2002; Sch. 5 para. 9 not in force at Royal Assent see s. 89(2); Sch. 5 para. 9 in force for specified purposes at 2.4.2001 by S.S.I. 2001/81, art. 2, Sch. 1; Sch. 5 para. 9 wholly in force at 1.4.2002 by S.S.I. 2001/81, art. 3, Sch. 2

PROSPECTIVE

10 F4 .....

**Textual Amendments**

**F4** Sch. 5 para. 10 repealed (1.4.2002) by 2001 asp 8, ss. 80(1), 81(2), Sch. 4; S.S.I. 2002/162, art. 2 (subject to arts. 3-13)

PROSPECTIVE

11 F5 .....

**Textual Amendments**

**F5** Sch. 5 para. 11 repealed (1.4.2002) by 2001 asp 8, ss. 80(1), 81(2), Sch. 4; S.S.I. 2002/162, art. 2 (subject to arts. 3-13)

*Medicines Act 1968 (c.67)*

12 In section 72 of the Medicines Act 1968—

- (a) in subsection (1) for “curator bonis” there shall be substituted “ guardian ”;
- (b) in subsections (3)(d) and (4)(c) “curator bonis,” shall be repealed.

*Sheriff Courts (Scotland) Act 1971 (c.58)*

13 In section 32(1) of the Sheriff Courts (Scotland) Act 1971 after paragraph (j) there shall be inserted—

*Status: Point in time view as at 01/04/2002.*

*Changes to legislation: There are currently no known outstanding effects for the Adults with Incapacity (Scotland) Act 2000. (See end of Document for details)*

- “(k) prescribing the procedure to be followed in appointing a person under section 3(4) of the Adults with Incapacity (Scotland) Act 2000 (asp 4) and the functions of such a person.”.

*Land Registration (Scotland) Act 1979 (c.33)*

- 14 In section 12(3) of the Land Registration (Scotland) Act 1979 after paragraph (k) there shall be inserted—
- “(kk) the loss is suffered by an adult within the meaning of the Adults with Incapacity (Scotland) Act 2000 (asp 4) because of the operation of sections 22, 49, 60, 70 or 71A of that Act, or by any person who acquires any right, title or interest from that adult;”.

*Solicitors (Scotland) Act 1980 (c.46)*

- 15 In section 18(1) of the Solicitors (Scotland) Act 1980—
- (a) in paragraph (a) “or becomes subject to guardianship” shall be repealed;
- (b) for paragraph (b) there shall be substituted—
- “(b) a guardian is appointed to a solicitor under the Adults with Incapacity (Scotland) Act 2000 (asp 4);”.

*Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c.55)*

- 16 In group C of Part I of Schedule 1 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 for paragraphs (b) and (c) there shall be substituted—
- “(b) persons for the time being subject to guardianship under the Adults with Incapacity (Scotland) Act 2000 (asp 4).”.

*Mental Health (Scotland) Act 1984 (c.36)*

- 17 (1) In section 3 of the Mental Health (Scotland) Act 1984—
- (a) in subsection (1) “guardianship or” shall be repealed;
- (b) in subsection (2) in paragraph (b) “or who are subject to guardianship” shall be repealed.
- (2) In section 5(2) of that Act “and the guardian of any person subject to guardianship under this Act” shall be repealed.
- (3) In section of that Act—
- (a) in subsection (1) for “either by the nearest relative of the patient or by a mental health officer” there shall be substituted “ by the nearest relative of the patient, by a mental health officer, or by a guardian or welfare attorney of the patient who has powers to do so ”;
- (b) in subsection (2) after “relative” there shall be inserted “ , guardian or welfare attorney, as the case may be, ”;
- (c) in subsection (3) after “relative” in both places there shall be inserted “ , guardian or welfare attorney, as the case may be, ”;
- (d) in subsection (4) after “patient” where second occurring there shall be inserted “ or by a guardian or welfare attorney of the patient ”;
- (e) in subsection (5)(b) after “relative” there shall be inserted “ and any guardian or welfare attorney . ”.

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*Status: Point in time view as at 01/04/2002.*

*Changes to legislation: There are currently no known outstanding effects for the Adults with Incapacity (Scotland) Act 2000. (See end of Document for details)*

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- (4) In section 20(1)(a) of that Act for or his nearest “relative” there shall be substituted “, his nearest relative, guardian or welfare attorney, as the case may be”.
- (5) In section 21(2)(b) of that Act—
  - (a) after “relative” where first occurring there shall be inserted “, guardian or welfare attorney, as the case may be”;
  - (b) after “relative” where second and third occurring there shall be inserted “guardian or welfare attorney”.
- (6) In section 22(4)(c) of that Act after “relative” there shall be inserted “ and any guardian or welfare attorney”.
- (7) In section 24 of that Act—
  - (a) in subsection (2) after “relative” there shall be inserted “, of any guardian or welfare attorney who has powers to do so,”;
  - (b) in subsection (5) after “relative” there shall be inserted “ and any guardian or welfare attorney”.
- (8) In section 26 of that Act—
  - (a) in subsection (1)(b) after “patient” there shall be inserted “ by any guardian or welfare attorney of the patient who has power so to consent,”;
  - (b) in subsection (4)(b) after “relative” where first occurring there shall be inserted “ and any guardian or welfare attorney” and after “relative” where second occurring there shall be inserted “, guardian or welfare attorney, as the case may be”.
- (9) In section 26A of that Act—
  - (a) in subsection (4) after “relative” there shall be inserted “ or any guardian or welfare attorney who has powers to do so”;
  - (b) in subsection (6)(b) after “relative” where first occurring there shall be inserted “ and any guardian or welfare attorney” and after “relative” where second occurring there shall be inserted “, guardian or welfare attorney, as the case may be”.
- (10) In section 29 of that Act—
  - (a) in subsection (2) after “relative” there shall be inserted “, to any guardian or welfare attorney”;
  - (b) in subsection (4) after “relative” there shall be inserted “, guardian or welfare attorney”;
- (11) In section 30(5) of that Act after “relative” there shall be inserted “ and any guardian or welfare attorney of his”.
- (12) In section 31B(3) of that Act after “relative” there shall be inserted “, and any welfare attorney,”.
- (13) In section 33(5) of that Act for “or by the nearest relative” there shall be substituted “, by the nearest relative or by any guardian or welfare attorney who has powers to do so”.
- (14) In section 34 of that Act—
  - (a) in subsection (1) after “relative” wherever occurring there shall be inserted “, or guardian or welfare attorney with powers to do so”

*Status: Point in time view as at 01/04/2002.*

*Changes to legislation: There are currently no known outstanding effects for the Adults with Incapacity (Scotland) Act 2000. (See end of Document for details)*

- (b) in subsection (2) after “relative” where first occurring there shall be inserted “ , guardian or welfare attorney, as the case may be ”and after “relative” where second occurring there shall be inserted “ , guardian or welfare attorney ”
  - (c) in subsection (2) after “relative” there shall be inserted “ or by any guardian or welfare attorney ”.
- (15) In section 35 of that Act—
- (a) in subsection (1) for “or his nearest relative or both” there shall be substituted “ , his nearest relative, his guardian or his welfare attorney or all of them ”;
  - (b) in subsection (3) after “relative” there shall be inserted “ or by any guardian or welfare attorney ”.
- (16) In section 35B of that Act—
- (a) in subsection (3)(a) after “patient” where first occurring there shall be inserted “ or any guardian of the patient ”and after “relative” there shall be inserted “ and any welfare attorney of the patient ”;
  - (b) in subsection (4) after “relative” there shall be inserted “ and any welfare attorney of the patient, ”.
- (17) In section 35C of that Act—
- (a) in subsection (3)(b)(i) after “patient” where first occurring there shall be inserted “ or any guardian of the patient ”and after “relative” there shall be inserted “ and any welfare attorney of the patient ”;
  - (b) in subsection (4) after “relative” there shall be inserted “and any welfare attorney of the patient ”.
- (18) In section 35D of that Act—
- (a) in subsection (1)(a) after “patient” where first occurring there shall be inserted “ or any guardian of the patient ”and after “relative” there shall be inserted “ and any welfare attorney of the patient ”;
  - (b) in subsection (2) after “relative” there shall be inserted “and any welfare attorney of the patient ”.
- (19) In section 35E of that Act—
- (a) in subsection (3)(a) after “patient” where first occurring there shall be inserted “ or any guardian of the patient ”and after “relative” there shall be inserted “ and any welfare attorney of the patient ”;
  - (b) in subsection (4)(a) after “patient” where first occurring there shall be inserted “ or any guardian of the patient ”and after “relative” there shall be inserted “ and any welfare attorney of the patient ”;
  - (c) in subsection (5) after “relative” there shall be inserted “and any welfare attorney of the patient ”.
- (20) In section 35G of that Act—
- (a) in subsection (2)(a) at the beginning there shall be inserted “ any guardian of the patient, and ”and after “relative” there shall be inserted “ and any welfare attorney of the patient ”;
  - (b) in subsection (3) after “relative” there shall be inserted “ and any welfare attorney of the patient ”

*Status: Point in time view as at 01/04/2002.*

*Changes to legislation: There are currently no known outstanding effects for the Adults with Incapacity (Scotland) Act 2000. (See end of Document for details)*

- (21) In section 35I of that Act—
- (a) in subsection (2)(a) after “patient” where first occurring there shall be inserted “ or any guardian of the patient ” and after “relative” there shall be inserted “ and any welfare attorney of the patient ”;
  - (b) in subsection (3) after “relative” there shall be inserted “ and any welfare attorney of the patient ”;
  - (c) in subsection (5)(a) at the beginning there shall be inserted “ any guardian of the patient, and ” and after “relative” there shall be inserted “and any welfare attorney of the patient”
- (22) In section 55(3) of that Act for “apart from section 41(2) of this Act” there shall be substituted “but for the appointment of a guardian under the Adults with Incapacity (Scotland) Act 2000 (asp 4)”.
- (23) In section 95 of that Act—
- (a) in subsection (1) after “tutor” there shall be inserted “, guardian”;
  - (b) in subsection (2) after “tutor” there shall be inserted “, guardian”.
- (24) In section 125(1) of that Act—
- (a) for the definition of “application for admission” and “guardianship application” there shall be substituted—

“application for admission has the meaning assigned to it by section 18 of this Act”;
  - (b) in the appropriate place, there shall be inserted—

“guardian includes a guardian (however called) appointed under the law of any country to, or entitled under the law of any country to act for an adult during his incapacity, if the guardianship is recognised by the law of Scotland;”;

“welfare attorney includes a person granted, under a contract, grant or appointment governed by the law of any country, powers (however expressed) relating to the granter’s personal welfare and having effect during the granter’s incapacity;”.

#### Commencement Information

- 18** Sch. 5 para. 17 partly in force; Sch. 5 para. 17 not in force at Royal Assent see s. 89(2); Sch. 5 para. 17(3)-(21)(24)(b) in force for specified purposes at 2.4.2001; Sch. 5 para. 17(1)(2) in force and Sch. 5 para. 17(3)-(21)(24) in force in so far as not already in force at 1.4.2002 by S.S.I. 2001/81, arts. 2, 3, Schs. 1, 2; Sch. 5 para. 17(23) in force at 1.10.2003 by S.S.I. 2003/267, art. 2(2)(d)

#### *Insolvency Act 1986 (c.45)*

- 18 In section 390(4)(c) of the Insolvency Act 1986 at the end there shall be added “or has had a guardian appointed to him under the Adults with Incapacity (Scotland) Act 2000 (asp 4).”.

*Status: Point in time view as at 01/04/2002.*

*Changes to legislation: There are currently no known outstanding effects for the Adults with Incapacity (Scotland) Act 2000. (See end of Document for details)*

*Legal Aid (Scotland) Act 1986 (c.47)*

19 In section 36(3) of the Legal Aid (Scotland) Act 1986, after paragraph (b) there shall be inserted—

“(bb) is concerned as claiming or having an interest in the property, financial affairs or personal welfare of an adult under the Adults with Incapacity (Scotland) Act 2000 (asp 4);”.

*Financial Services Act 1986 (c.60)*

20 In section 45(1)(d) of the Financial Services Act 1986 at the end there shall be added “or when acting in the exercise of his functions as Public Guardian under the Adults with Incapacity (Scotland) Act 2000 (asp 4);”.

*Access to Health Records Act 1990 (c.23)*

21 In section 3 of the Access to Health Records Act 1990, in subsection (3) after paragraph (e) there shall be inserted—

“(ee) where the record is held in Scotland and the patient is incapable, within the meaning of the Adults with Incapacity (Scotland) Act 2000 (asp 4) in relation to making or authorising the application, any person entitled to act on behalf of the patient under that Act.”.

*Child Support Act 1991 (c.48)*

22 In section 50 of the Child Support Act 1991 in subsection (8)(c) for paragraphs (i) and (ii) there shall be substituted “a guardian or other person entitled to act on behalf of the person under the Adults with Incapacity (Scotland) Act 2000 (asp 4).”.

**Commencement Information**

**I9** Sch. 5 para. 22 wholly in force at 1.4.2002; Sch. 5 para. 22 not in force at Royal Assent see s. 89(2); Sch. 5 para. 22 in force for specified purposes at 2.4.2001 by S.S.I. 2001/81, art. 2, Sch. 1; Sch. 5 para. 22 wholly in force at 1.4.2002 by S.S.I. 2001/81, art. 3, Sch. 2

*Social Security Administration Act 1992 (c.5)*

23 In section 123 of the Social Security Administration Act 1992 in subsection (10) (c) for paragraphs (i) and (ii) there shall be substituted “a guardian or other person entitled to act on behalf of the person under the Adults with Incapacity (Scotland) Act 2000 (asp 4).”.

**Commencement Information**

**I10** Sch. 5 para. 23 wholly in force at 1.4.2002; Sch. 5 para. 23 not in force at Royal Assent see s. 89(2); Sch. 5 para. 23 in force for specified purposes at 2.4.2001 by S.S.I. 2001/81, art. 2, Sch. 1; Sch. 5 para. 23 wholly in force at 1.4.2002 by S.S.I. 2001/81, art. 3, Sch. 2

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*Status: Point in time view as at 01/04/2002.*

*Changes to legislation: There are currently no known outstanding effects for the Adults with Incapacity (Scotland) Act 2000. (See end of Document for details)*

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*Health Service Commissioners Act 1993 (c.46)*

- 24 In section 7A of the Health Service Commissioners Act 1993 after “patients)” there shall be inserted “ or ”, “or 50 (orders discharging patients from guardianship)” shall be repealed, and at the end there shall be inserted “ or section 73 of the Adults with Incapacity (Scotland) Act 2000 (asp 4) ”.

*Clean Air Act 1993 (c.11)*

- 25 In section 64 of the Clean Air Act 1993 in subsection (1) in the definition of “owner” for “tutor or curator” there shall be substituted “ or person entitled to act as the legal representative of a person under disability by reason of nonage or mental or other incapacity ”.

*Criminal Procedure (Scotland) Act 1995 (c.46)*

- 26 (1) In section 57 of the Criminal Procedure (Scotland) Act 1995—
- (a) in subsection (2)(c) for first “person” there shall be substituted “ person’s personal welfare ”;
  - (b) in subsection (4) after “58(1),” there shall be inserted “ 58(1A), ”;
  - (c) at the end there shall be added—

“(6) Section 58A of this Act shall have effect as regards guardianship orders made under subsection (2)(c) of this section.”.

- (2) In section 58 of that Act—

- (a) for subsection (1) there shall be substituted—

“(1) Where a person is convicted in the High Court or the sheriff court of an offence, other than an offence the sentence for which is fixed by law, punishable by that court with imprisonment, and the court—

- (a) is satisfied on the written or oral evidence of two medical practitioners (complying with section 61 of this Act) that the grounds set out in section 17(1) of the Mental Health (Scotland) Act 1984 apply in relation to the offender;
- (b) is of the opinion, having regard to all the circumstances including the nature of the offence and the character and antecedents of the offender and to the other available methods of dealing with him, that the most suitable method of disposing of the case is by means of an order under this subsection,

the court may, subject to subsection (2) below, by order authorise his admission to and detention in such hospital as may be specified in the order.

- (1A) Where a person is convicted as mentioned in subsection (1) above and the court is satisfied—

- (a) on the evidence of two medical practitioners (complying with section 61 of this Act and with any requirements imposed under section 57(3) of the Adults with Incapacity (Scotland) Act 2000 (asp 4)) that the grounds set out in section 58(1)(a) of that Act apply in relation to the offender;

*Status: Point in time view as at 01/04/2002.*

*Changes to legislation: There are currently no known outstanding effects for the Adults with Incapacity (Scotland) Act 2000. (See end of Document for details)*

- (b) that no other means provided by or under this Act would be sufficient to enable the offender's interests in his personal welfare to be safeguarded or promoted,
- the court may, subject to subsection (2) below, by order place the offender's personal welfare under the guardianship of such local authority or of such other person approved by a local authority as may be specified in the order.”;
- (b) in subsections (2), (3) and (10) for “subsection (1)” there shall be substituted “ subsection (1) or (1A) ”;
- (c) in subsections (5) and (7) after “subsection (1)” there shall be inserted “ or paragraph (a) of subsection (1A), ”;
- (d) for subsection (6) there shall be substituted—
- “(6) An order placing a person under the guardianship of a local authority or of any other person (in this Act referred to as “a guardianship order”) shall not be made under this section unless the court is satisfied—
- (a) on the report of a mental health officer (complying with any requirements imposed by section 57(3) of the Adults with Incapacity (Scotland) Act 2000 (asp 4)) giving his opinion as to the general appropriateness of the order sought, based on an interview and assessment of the person carried out not more than 30 days before it makes the order, that it is necessary in the interests of the personal welfare of the person that he should be placed under guardianship;
- (b) that any person nominated to be appointed a guardian is suitable to be so appointed;
- (c) that the authority or person is willing to receive that person into guardianship; and
- (d) that there is no other guardianship order, under this Act or the Adults with Incapacity (Scotland) Act 2000 (asp 4), in force relating to the person.”;
- (e) at the end there shall be added—
- “(11) Section 58A of this Act shall have effect as regards guardianship orders made under subsection (1) of this section.”.
- (3) After section [F60A] of that Act there shall be inserted—

### **Intervention orders**

The court may instead of making a hospital order under section 58(1) of this Act or a guardianship order under section 57(2)(c) or 58(1A) of this Act, make an intervention order [F8(as defined in section 53(1) of the Adults with Incapacity (Scotland) Act 2000 (asp 4)] where it considers that it would be appropriate to do so.”.

- (4) In section 61 of that Act—
- (a) in subsection (1), for “and 58(1)(a)” there shall be substituted “ , 58(1)(a) and 58(1A)(a) ”;
- (b) in subsection (2), after “section 58(1)(a)” there shall be inserted “ or 58(1A)(a) ”; and



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- (c) in subsection (3) for “and 58(1)(a)” there shall be substituted “, 58(1)(a) and 58(1A)(a)”.

#### Textual Amendments

- F6** Words in [Sch. 5 para. 26\(3\)](#) substituted (1.10.2001) by [2001 asp 8, s. 79, Sch. 3 para. 23\(7\)\(a\)](#); [S.S.I. 2001/304, art. 2\(b\)\(d\)](#)
- F7** Word in [Sch. 5 para. 26\(3\)](#) substituted (1.10.2001) by [2001 asp 8, s. 79, Sch. 3 para. 23\(7\)\(b\)](#); [S.S.I. 2001/304, art. 2\(b\)\(d\)](#)
- F8** Words in [Sch. 5 para. 26\(3\)](#) inserted (1.10.2001) by [2001 asp 8, s. 79, Sch. 3 para. 23\(7\)\(c\)](#); [S.S.I. 2001/304, art. 2\(b\)\(d\)](#)

## SCHEDULE 6

*(introduced by section 88(3))*

### REPEALS

#### Commencement Information

- I11** [Sch. 6](#) partly in force; [Sch. 6](#) not in force at Royal Assent see [s. 89\(2\)](#); [Sch. 6](#) in force for specified purposes at 2.4.2001 and 1.4.2002 respectively by [S.S.I. 2001/81, arts. 2, 3, Schs. 1, 2](#) (as amended by [S.S.I. 2002/172, art. 2](#)); [Sch. 6](#) in force for further specified purposes at 1.10.2003 by [S.S.I. 2003/267, art. 2\(2\)](#)

#### Enactment

Curators Act 1585 (c.25(S))  
Judicial Factors Act 1849 (12 & 13 Vict. c.51)

#### Extent of Repeal

The whole Act.

In section 1, “and curator bonis” and the words from “the word “tutor”” to “Act 1960” where second occurring.

In section 7, the words from “and if any factor” to “not subject to appeal”.

In section 10, “tutors and curators”.

Section 25(1).

Section 26.

In section 27, “or Court of Exchequer, as the case may be,” and “tutors and curators”.

Section 28.

In section 31, “tutor or curator” and “or curator bonis”.

In section 32, “tutor or curator”.

In section 33, “tutor or curator”.

In section 34, “tutor, or curator”.

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	In section 34A, “tutors and curators” and “tutory or curatory”.
	In section 36, “tutories, and curatories”.
	In section 37, “tutor, or curator”.
	In section 40, the words from “and the manner of applying” to “curators” where first occurring and “tutors, and curators,”.
Improvement of Land Act 1864 (27 & 28 Vict. c.114)	In section 24, “tutors,” “curators,” “tutor,” and “curator,”.
Titles to Land (Consolidation) (Scotland) Act 1868 (31 & 32 Vict. c.101)	In section 3 in the definition of “judicial factor”, “or curators bonis”.
Judicial Factors (Scotland) Act 1880 (43 & 44 Vict. c.4)	In section 3, “a curator bonis”.
Judicial Factors (Scotland) Act 1889 (52 & 53 Vict. c.39)	In section 13, “tutor, curator” in both places.
Heritable Securities (Scotland) Act 1894 (57 & 58 Vict. c.44)	In section 13, “tutors, curators”.
Trusts (Scotland) Act 1921 (11 & 12 Geo.5 c.58)	In section 2 in each of the definitions of “trust” and “trust deed” the words “tutor, curator, guardian or” and in the definition of “trustee” the words “tutor, curator, guardian”; in the definition of “judicial factor” the words “or curator”; the definitions of “curator”, “tutor” and “guardian”.
U.S.A. Veterans’ Pensions Act 1949 (12 & 13 Geo.6 c.45)	In section 1(4), “tutor, factor loco tutoris,” and “curator bonis or”.
Medicines Act 1968 (c.67)	In section 72(3)(d) and (4)(c), “curator bonis,”.
Solicitors (Scotland) Act 1980 (c.46)	In section 18(1)(a), “or becomes subject to guardianship”.
Mental Health Act 1983 (c.20)	In section 110, in subsection (1) “curator bonis, tutor or”; in subsection (2) “curator bonis, tutor, or”.
Mental Health (Scotland) Act 1984 (c.36)	In section 3 in subsection (1) “guardianship or”; in subsection (2)(b), “or who are subject to guardianship”.
	In section 5(2) “or subject to guardianship under the following provisions of this Act”.
	In section 7(1)(b), “under the following provisions of this Act”.
	In section 10(1)(b) “the following provisions of this Act or under”.
	In section 29 in subsection (1), paragraphs (b) and (c) and “or” which precedes them; in

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subsection (2), “or, as the case may be, by the local authority concerned”; in subsection (3), paragraph (b).

Sections 36 to 52.

In section 53(3), “or his reception into guardianship”.

Section 55(3).

In section 57(4), “or subject to guardianship” and “or so subject” wherever occurring.

In section 59, subsections (1)(b) and (2) and in subsection (3), “or 44”.

Section 61.

In section 76(1) paragraph (b) and “, a guardianship order”.

In section 77, in subsection (1) “or subject to guardianship” and “or, as the case may be, for receiving him into guardianship”; subsection (3).

In section 78, in subsection (1), “or reception into guardianship”; in subsection (2), “or his reception into guardianship”.

In section 80(1), “or subject to guardianship” and “or, as the case may be, for receiving him into guardianship”.

Section 84(4).

In section 87(1), “or subject to guardianship” and “or placed under guardianship.”

In section 92, subsection (1) and in subsection (2)(a), “or subject to guardianship thereunder”.

Sections 93 and 94.

In section 105(2), “subject to his guardianship under this Act or otherwise”.

In section 107(1)(b), “subject to his guardianship under this Act or is otherwise”.

In section 108(1)(a), “or being subject to guardianship”.

In section 110 in subsection (1), “, or in the case of a patient subject to guardianship, the local authority concerned”, “or subject to guardianship”, “or guardianship” in both places, “or his reception into guardianship”; in subsection (4), “or, as the case may be,

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	the local authority concerned in relation to a patient subject to guardianship as aforesaid".
	In section 112, "or his reception into guardianship".
	In section 113(1), "or for reception into guardianship".
	In section 119, "guardianship under this Act".
	In section 121 in subsection (1)(b), "or subject to guardianship", "or 44"; in subsection (2), "or subject to guardianship", "or 44", "and subsection (2) of the said section 44"; in subsection (6), the words from "(in the case of" where first occurring to "guardianship)", "or section 44", "respectively", "or the said section 44 (as the case may be)".
	In section 125 in subsection (4), "or subject to guardianship"; in subsection (5), "or received, or liable to be received, into guardianship", "(other than under Part V thereof)", "or received or liable to be received into guardianship".
Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c.40)	Section 71.
Criminal Procedure (Scotland) Act 1995 (c.46)	In section 59(2), "or section 39".
	In section 61(1), "or section 39".
	In section 230(1), "or 39".
	In schedule 4, in paragraph 2(1)(b), "or 39".

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