

EXECUTIVE NOTE

THE ADULTS WITH INCAPACITY (ELECTRONIC COMMUNICATIONS) (SCOTLAND) ORDER 2008 SSI/2008/380

This Order is made in exercise of the powers conferred on the Scottish Ministers by sections 8 and 9 of the Electronic Communications Act 2000, with the consent of the Secretary of State. The instrument is subject to affirmative resolution Parliamentary procedure.

Policy Objectives

The Order will allow the Public Guardian to receive and process powers of attorney in electronic format.

The Adults with Incapacity (Scotland) Act 2000 (the “Act”) came into force on 2 April 2001 and created a new public body, the Public Guardian. The Public Guardian is an officer of the Scottish Court Service having a supervisory and investigatory role in relation to the property or financial affairs of adults with incapacity. Powers of attorney which are granted and intended to continue during periods when an adult is incapable are regulated and require to be registered with the Office of the Public Guardian (OPG) before the powers can be used.

Section 19 of the Act requires the original document which contains such a power of attorney to be sent to the Public Guardian. It accordingly excludes the use of electronic communications in registering powers of attorney.

OPG continually seeks to make its administrative processes more accessible to service users. OPG is committed to providing service users with a speedy efficient service with minimal waste. This will be enhanced by allowing POA documents to be transmitted and processed electronically, if the senders wish to do so.

The Order ensures that the Public Guardian retains the discretion to accept (or refuse to accept) POAs sent for registration. Accordingly OPG can seek further details from senders of POAs, control the format of the electronic copy supplied, and approve those who can send electronic copies.

Consultation

The OPG has identified several solicitors’ firms who regularly submit POAs for registration. Discussions have taken place with the top six, all of whom have indicated support and willingness to participate in a pilot enabling POA documents to be transmitted electronically.

Financial Effects

There will be no additional financial impact on the Scottish Government. The administration costs of the Public Guardian are met by the Scottish Court Service. It is anticipated that there may be small savings.

The Office of the Public Guardian
September 2008