

EXECUTIVE NOTE

The Adult Support and Protection (Scotland) Act 2007 (Adults with Incapacity) (Consequential Provisions) Order 2008 S.S.I. 2008/50

The above statutory instrument was made in exercise of the powers conferred by section 76(1) (a) of the Adult Support and Protection (Scotland) Act 2007(1) (the 2007 Act) and of all other powers enabling them to do so. The instrument is subject to negative resolution procedure and will come into force on 1st April 2008.

Policy Objective

These are consequential modifications which are required as a result of changes made to the Adults with Incapacity (Scotland) Act 2000 (the 2000 Act) by the Adult Support and Protection (Scotland) Act 2007.

Background

Part 3 of the 2000 Act allows for an application to the Public Guardian for authority to intromit with the funds of an adult who lacks capacity to meet his or her day to day living expenses. The scheme has not been used as much as anticipated. To improve accessibility and flexibility, new Part 3 of the 2000 Act was inserted by section 58 of the 2007 Act. New Part 3 provides for a wider range of applications, including for authority to fundholders to release information about an adult's funds and also to open an account in the adult's name.

Regulation 2 amends to the Civil Legal Aid (Scotland) Regulations 2002 and is required to provide for legal aid for the extended range of applications under Part 3 of the 2000 Act which may be remitted to the sheriff.

Regulation 3 revokes the Adults with Incapacity (Countersignatories of Applications for Authority to Intromit) (Scotland) Regulations 2001 (as amended) which are no longer be required also as a result of the changes to Part 3 of the 2000 Act (see also The Adults with Incapacity (Accounts and Funds) (Scotland) Regulations 2008 and Executive Note).

Consultation

Key stakeholders were invited to comment on the draft Regulations. A list is attached at Annex A. The consultation was also available on the Scottish Government website. The consultation was launched on 16 August and closed on 8 November 2007. There were 14 responses – 2 from solicitors, 2 from the voluntary sector, 7 from local authorities and 3 from professional bodies.

The responses were generally positive. No comments were made on, and no changes were suggested to, these Regulations.

Regulatory Impact Assessment

None required as no impact on business.

(1) 2007 asp 10.

Financial Effects

The purpose of the amendments is to ensure consistency and fairness rather than to encourage, or in anticipation of, a significant number of appeals against decisions. In light of that, and given the small number of cases supported by Legal Aid under the previous scope for appeals, the impact on the Legal Aid Fund is anticipated to be negligible.

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Civil and International Justice

Consultation Recipient List

Local Authority Chief Executives
Local Authority Directors of Social Work
Local Authority Adults with Incapacity Coordinators
CoSLA
ADSW
Office Of the Public Guardian
Mental Welfare Commission for Scotland
Carers Scotland
Scottish Carers Alliance
Princess Royal Trust for Carers
Coalition of Carers
Crossroads Scotland
Shared Care Scotland
Advocates Library
Commission For Racial Equality- Scotland
Equal Opportunities Commission
Citizens Advice Scotland
Scottish Council for Voluntary Organisations
NSF Scotland
FAIR (Family Advice & Information Resource)
Advocard
Advocacy Information and Management Services Ltd.
Advocacy Safeguards Agency
Drumchapel Law & Money Advice Centre
Mental Health Advocacy Project
Scottish Independent Advocacy Alliance
VOCAL Carers Advocacy and Counselling Service
The Building Societies Association
Post Office Ltd
The Committee of Scottish Clearing Bankers
Co-operative Bank plc
Scottish Association Of Care Homes
Scottish Federation of Housing Associations
Dundee North Law Centre
Paisley Law Centre
Castlemilk Law Centre
East End Community Law Centre
Legal Services Agency Ltd
Ethnic Minorities Law Centre
SALC
West Dumbarton Law Centre
Govan Law Centre
Law Society of Scotland
Sheriffs' Association

Scottish Law Commission
Scottish Legal Aid Board
Scottish Law Agents Society
Help the Aged
Age Concern Scotland
Scottish Pensioners' Forum
Scottish Pensions Association
Scottish Older People's Advisory Group
ENABLE
Scottish Society for Autism
Down's Syndrome Scotland
National Autistic Society
PAMIS
Garvald Centre (Edinburgh)
Quarriers
ELCAP
Scottish Consortium for Learning Disability
Disability Centre for Independent Living
Scottish Disability Equality Forum
Headway Scotland
Chest, Heart, Stroke Scotland
Disability Rights Commission Office for Scotland
Scottish Head Injuries Forum
Capability Scotland
Scottish Association of Mental Health
Turning Point Scotland
The Richmond Fellowship Scotland
Mental Health Foundation
Manic Depression Fellowship Scotland
Alzheimer Scotland-Action on Dementia
Dementia Services Development Centre
Vulnerable Adults Alliance Scotland
Scottish Development Centre for Mental Health
Penumbra
Scottish Huntington's Association
SACRO
Depression Alliance Scotland
Scottish Dementia Working Group
Neurological Alliance Scotland
Royal College of Physicians and Surgeons Glasgow
Royal College of Psychiatrists
British Geriatrics Society
General Medical Council
Royal College of Physicians of Edinburgh
British Medical Association
Scottish General Practitioners Committee
Royal College of General Practitioners
BASW
Scottish Consumer Council
Society of Will Writers

Justice Committee of the Scottish Parliament
Health Committee of the Scottish Parliament
Adrian Ward