

2008 No. 55

ADULTS WITH INCAPACITY

**The Adults with Incapacity (Reports in Relation to Guardianship
and Intervention Orders) (Scotland) Amendment Regulations
2008**

Made - - - - *20th February 2008*

Laid before the Scottish Parliament *21st February 2008*

Coming into force - - *1st April 2008*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 57(3), 60(3) and 86(2) of the Adults with Incapacity (Scotland) Act 2000^(a) and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Adults with Incapacity (Reports in Relation to Guardianship and Intervention Orders) (Scotland) Amendment Regulations 2008 and come into force on 1st April 2008.

Amendment of the Adults with Incapacity (Reports in Relation to Guardianship and Intervention Orders) (Scotland) Regulations 2002

2.—(1) The Adults with Incapacity (Reports in Relation to Guardianship and Intervention Orders) (Scotland) Regulations 2002^(b) are amended as follows.

(2) In regulation 3 after “section 57(3)(a)” insert “, or, as the case may be, section 60(3)(a)(c).”.

(3) In regulation 4 substitute for “in relation to an application for” with “in respect of applications for a category (a) or (c) order below, or by a mental health officer under section 60(3)(b) in respect of an application for a category (b) order below”.

(4) In regulation 5 substitute for “in relation to an application for” with “in respect of applications for a category (a) or (c) order below, or under section 60(3)(b) in respect of an application for a category (b) order below”.

(5) In regulation 6 substitute for “in relation to an application for” with “in respect of applications for a category (a) or (c) order below, or by the Public Guardian under section 60(3)(c) in respect of an application for a category (b) order below”.

(6) In Schedule 1—

(a) for “section 57(3)(a)” where it first appears substitute “sections 57(3)(a) and 60(3)(a)”;.

^(a) 2000 asp 4, as amended by the Adult Support and Protection (Scotland) Act 2007 (asp 10). See section 87(1) and (1A) for the definition of “prescribed” and section 86(1) as to the power to make regulations.

^(b) S.S.I. 2002/96.

^(c) Section 60(3) of the Adults with Incapacity (Scotland) Act 2000 was substituted by section 60(3) of Adult Support and Protection (Scotland) Act 2007.

- (b) for Part A substitute Schedule 1 to these Regulations;
 - (c) in Part C for the footnote for “mental disorder” substitute:–
 - “mental disorder has the meaning given to it in section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003, namely that it means any mental illness; personality disorder or learning disability however caused or manifested, but an adult is not mentally disordered by reason only of sexual orientation; sexual deviancy; transsexualism; transvestism; dependence on, or use of, alcohol or drugs; behaviour that causes, or is likely to cause, harassment, alarm or distress to any other person; or acting as no prudent person would act.”; and
 - (d) in the last sentence of Part C after “primary carer” insert “named person”.
- (7) In Schedules 2, 4, 5, 7, 8 and 10 in Parts D after paragraph 5 insert the text in Schedule 2 to these Regulations as paragraph 5A(a).
- (8) For Schedule 3 substitute Schedule 3 to these Regulations.
 - (9) For Schedule 6 substitute Schedule 4 to these Regulations.
 - (10) For Schedule 9 substitute Schedule 5 to these Regulations.

FERGUS EWING

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
20th February 2008

(a) The Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005/465, Schedule 1, paragraph 28(2) inserted “named person” in section 1(4) of the Adults with Incapacity (Scotland) Act 2000 as one of those persons whose views should be taken account of in determining if an intervention is to be made.

SCHEDULE 1

Regulation 2(6)(b)

Note: fill in Part A1 where the adult is examined in Scotland and Part A2 where the adult is examined outwith Scotland.

PART A1 DETAILS OF REPORT WRITER AND ADULT FOR EXAMINATIONS IN SCOTLAND

I (name)

being a medical practitioner with the following professional address:

(state full postal address for contact)

Telephone E-mail

[complete the following box if applicable(a); otherwise, delete]

and being approved by the Health Board/ by the State Hospital's Board for Scotland *(please delete one)*

for the purposes of section 22 of the Mental Health (Care and Treatment) (Scotland) Act 2003 as having special experience in the diagnosis and treatment of mental disorder,

hereby confirm that I examined and assessed the following adult ("the adult")

Name

Residing at (state full postal address)

Date of birth

On (give date of examination and assessment)

OR

(a) Where the incapacity is by reason of mental disorder, one of the medical practitioners must be approved for the purposes of section 22 of the 2003 Act as having special experience in the diagnosis and treatment of mental disorder (section 57(6B) of the Act).

PART A2

DETAILS OF REPORT WRITER AND ADULT FOR EXAMINATIONS OUTWITH SCOTLAND

I (name)

being a medical practitioner with the following professional address:

(state full postal address for contact)

Telephone E-mail

having the following qualification and special experience in relation to the treatment of mental disorder:

and having consulted the Mental Welfare Commission(a) about this report (please tick box)

hereby confirm that I examined and assessed the following adult (“the adult”)

Name

Residing at (state full postal address)

Date of birth

On (give date of examination and assessment)

At (insert place and address of assessment)

(a) Postal address: The Mental Welfare Commission, Floor K, Argyle House, 3 Lady Lawson Street, Edinburgh, EH3 9SH. Telephone: 0131 222 6111. Website: www.mwscot.org.uk

SCHEDULE 2

Regulation 2(7)

5A

Name:

Relationship:

State

(a) the views of the adult's named person about the order sought if you have obtained these.

(b) do you agree with these views?

(c) if you have not obtained these views, why was it not reasonable or practicable to do so?

SCHEDULE 3

Regulation 2(8)

SCHEDULE 3

Regulation 4(b)

Mental Health Officer's report to accompany application for renewal of guardianship relating to personal welfare* personal welfare and property or financial affairs*

AWI[3] Adults with Incapacity (Scotland) Act 2000 Section 60(3)(b)

PART A AUTHOR OF THE REPORT

I []

(Give full name, local authority for whom you are acting in this case, and work address)

am a Mental Health Officer appointed by

[]

Address

[]

Tel No

[]

E-mail

[]

PART B THE ADULT

On

[]

(Give date of interview and assessment of the adult. Note: This must be carried out not more than 30 days before lodging of the application.)

I interviewed and assessed the adult who is the subject of this application

[]

(name)

Give full name, address and date of birth of the adult, as on the application)

[]

(address)

[]

(DOB)

* Delete the one which does not apply

PART C THE GUARDIAN

This report is written in relation to the application by the guardian

(state name of guardian. Where there are joint guardians give names of both/all)

to renew the guardianship granted on

(state date on which guardianship order made and dates of any subsequent renewals)

PART D APPROPRIATENESS OF CONTINUING THE GUARDIANSHIP

1. I have read the application, have taken note of the powers sought and the period of guardianship being applied for.

(please tick box)

AND

2.(a) I am of the opinion that it is appropriate to continue the guardianship having regard to the general principles set out in section 1 of the Adults with Incapacity (Scotland) Act 2000.

(please tick box).

OR

2.(b) I am of the opinion that it is not appropriate to continue the guardianship having regard to the general principles set out in section 1 of the Adults with Incapacity (Scotland) Act 2000.

(please tick box).

Comments (if any)

PART E GUARDIAN'S SUITABILITY

[Do not complete if the guardian is the Chief Social Work Officer.]

(If there are joint guardians with personal welfare powers please duplicate Part E and complete for each guardian)

Name of guardian:

I am satisfied, having regard to the factors set out in section 59(4) of the Adults with Incapacity (Scotland) Act 2000(a), that the guardian continues to be suitable to act as the adult's guardian.

(please tick box)

PART F Signed

Dated

(a) The factors set out in section 59(4) are:-
(a) the accessibility of the guardian to the adult and to his or her primary carer;
(b) the ability of the guardian to carry out the functions of guardian;
(c) any likely conflict of interest between the adult and the guardian;
(d) any undue concentration of power which is likely to arise in the guardian over the adult;
(e) any adverse effects which the continuation of the appointment of the guardian would have on the interests of the adult;
(f) any such other matters as appear appropriate.

SCHEDULE 4

Regulation 2(9)

SCHEDULE 6

Regulation 5(b)

Chief Social Work Officer’s report to accompany application for renewal of guardianship relating to personal welfare* personal welfare and property or financial affairs*

AWI[6] ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000 Section 60(3)(b)

PART A AUTHOR OF THE REPORT

I

am the Chief Social Work Officer of

If there are any enquiries in connection with this report please contact

Address

Tel No E-mail

PART B THE ADULT

On (Give date of interview and assessment of the adult. Note: *This must be carried out not more than 30 days before lodging of the application.*)

The following adult who is the subject of this application was assessed (name)

of (address)
(Give full name, address and date of birth of the adult, as on the application)

(DOB)

* Delete the one which does not apply

PART C THE GUARDIAN

This report is written in relation to the application by the guardian

(state name of guardian. Where there are joint guardians give names of both/all)

to renew the guardianship granted on

(state date on which guardianship order made and dates of any subsequent renewals)

PART D APPROPRIATENESS OF CONTINUING THE GUARDIANSHIP

1. I have read the application, have taken note of the powers sought and the period of guardianship being applied for.

(please tick box)

AND

2.(a) I am of the opinion that it is appropriate to continue the guardianship having regard to the general principles set out in section 1 of the Adults with Incapacity (Scotland) Act 2000.

(please tick box).

OR

2.(b) I am of the opinion that it is not appropriate to continue the guardianship having regard to the general principles set out in section 1 of the Adults with Incapacity (Scotland) Act 2000.

(please tick box).

Comments (if any)

PART E GUARDIAN'S SUITABILITY

[Do not complete if the guardian is the Chief Social Work Officer.]

(If there are joint guardians with personal welfare powers please duplicate Part E and complete for each guardian)

Name of guardian:

I am satisfied, having regard to the factors set out in section 59(4) of the Adults with Incapacity (Scotland) Act 2000(a), that the guardian continues to be suitable to act as the adult's guardian.

(please tick box)

PART F Signed

Dated

(a) The factors set out in section 59(4) are:-
 (a) the accessibility of the guardian to the adult and to his or her primary carer;
 (b) the ability of the guardian to carry out the functions of guardian;
 (c) any likely conflict of interest between the adult and the guardian;
 (d) undue concentration of power which is likely to arise in the guardian over the adult;
 (e) any adverse effects which the continuation of the appointment of the guardian would have on the interests of the adult;
 (f) such other matters as appear appropriate.

SCHEDULE 5

Regulation 2(10)

SCHEDULE 9

Regulation 6(b)

Public Guardian’s report to accompany
application for renewal of guardianship relating to
property or financial affairs

AW1 [9]
ADULTS WITH INCAPACITY
(SCOTLAND) ACT 2000
Section 60(3)(c)

I

of the Office of the Public Guardian, Hadrian House, Callendar Business Park, Callendar Road, Falkirk, FK1 1XR,

Tel No

E-mail

having considered the guardianship
by

(insert name of guardian)

in relation to

(insert name of adult)

(state opinion as to (1) the
applicant’s conduct as the guardian
and (2) the suitability of the
applicant continuing as guardian)

Signed

Dated

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Adults with Incapacity (Reports in Relation to Guardianship and Intervention Orders) (Scotland) Regulations 2002 (“the 2002 Regulations”) and are in consequence of the commencement of section 60 of the Adult Support and Protection (Scotland) Act 2007 (asp 10) (“the 2007 Act”) which amends the provisions on guardianship orders in Part 6 of the Adults with Incapacity (Scotland) Act 2000 (asp 4) (“the Act”).

The amendments in paragraphs (2) to (6)(a) of regulation 2 reflect the new sub-section (3) in section 60 of the Act substituted by section 60(3) of the 2007 Act which provides for a simplified procedure for renewal of guardianship orders.

Regulation 2(6)(b) substitutes new Parts A1 and A2 in Schedule 1 to reflect the new sub-section (6B) of section 57 of the Act inserted by section 60(1)(b) of the 2007 Act, namely to provide for medical examinations to be carried out outwith Scotland.

Regulation 2(6)(c) substitutes an updated footnote for the definition of “mental disorder”.

Regulation 2(6)(d) inserts reference to the adult’s “named person” in the list of people that a medical practitioner may consult when forming his or her opinion as to the adult’s capacity.

Regulation 2(7) also inserts a new part in the forms in Schedule 2, 4, 5, 7, 8 and 10 requiring the applicant to obtain the views of the adult’s “named person”.

Regulations 2(8) and (9) substitute new Schedules 3 and 6 respectively to reflect the new section 60(3)(b) of the Act, namely the requirement for a report from the mental health officer where an application for renewal of guardianship order relates to the adult’s personal welfare.

Regulation 2(10) substitutes a new Schedule 9 to reflect the new section 60(3)(c) of the Act, namely the requirement for a report from the Public Guardian where an application for renewal of guardianship order relates to the adult’s property or financial matters.

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£3.00

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Printed in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, the Queen's Printer for Scotland