

EXECUTIVE NOTE

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

S.S.I. 2008/55

The above statutory instrument is made in exercise of the powers conferred by sections 57(3), 60(3) and 86(2) of the Adult with Incapacity (Scotland) Act 2000⁽¹⁾ (the 2000 Act) and of all other powers enabling them to do so. The instrument is subject to negative resolution procedure and comes into force on 1st April 2008.

Policy Objective

The Adult Support and Protection (Scotland) Act 2007 (the 2007 Act) made a number of changes to Part 6 of the 2000 Act including the creation of a simplified renewal process for guardianships. These Regulations make changes to Regulations 3, 4, 5 and 6 of and the Schedules to the Adults with Incapacity (Reports in Relation to Guardianship and Intervention Orders) (Scotland) Regulations 2002 (the 2002 Regulations) (<http://www.opsi.gov.uk/legislation/scotland/ssi2002/20020096.htm>) to change existing, and to create new, forms to support the simplified renewal process for guardianships introduced by section 60(3) of the 2007 Act.

Background

Part 6 of the 2000 Act provides for the granting, renewal and termination of guardianship orders to safeguard the welfare and/or financial affairs of an adult who lacks the capacity to do so for him/herself. The 2007 Act made a number of changes in relation to Part 6 including introducing a simplified renewal process.

The new renewal process requires only one medical report (2 are required at present) which will be the existing report for renewal (at Schedule 1 of the 2002 Regulations) with some modifications to take account of changes introduced by the 2007. The changes to the report require to be prescribed in regulations.

The forms to be completed by a mental health officer (MHO), or the Chief Social Work Officer (CSWO) depending on the circumstances, for the new renewal process for a welfare guardianship (Schedules 3 & 4 of these Regulations) are significantly shorter than those currently required and address the issues of the general appropriateness of continuing the guardianship and the suitability of the applicant to continue as guardian. These forms require to be prescribed in regulations.

For simplified renewal of financial guardianships there is a new requirement for a report by the Public Guardian (Schedule 5 of the Regulations) which gives an opinion on the

(1) 2000 asp 4 as amended by the Adult Support 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.

applicant's conduct as guardian and his or her suitability to continue as guardian. This replaces the current requirement for a report from someone with sufficient knowledge to comment on the appropriateness of the order sought and the suitability of the person nominated in the application to be appointed. The Public Guardian's report requires to be prescribed in regulations.

Further changes to the reports are required to take account of the concept of 'named person' introduced by the Mental Health (Care and Treatment) (Scotland) Act 2003. The Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 inserted 'named person' in sections 1(4)(b) (those whose views should be taken into account in determining whether an intervention is to be made) and 73(5) (those to whom intimation of an application for recall should be given) of the 2000 Act.

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 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. Some minor adjustments were suggested to the forms and which we have considered and some of which we have incorporated.

Financial Effects

The simplified renewal process should result in a saving (time and cost) to individuals, carers and families. The shorter reports by Mental Health Officers/Chief Social Work Officers may result in a saving to local authorities. There is likely to be a reduction in the cost to applicants for renewal of financial guardianships because it will no longer be necessary to obtain a report from a person who has sufficient knowledge to give an opinion on the general appropriateness of the order sought and on the suitability of the individual nominated as guardian

There will be a cost to the Public Guardian to produce the report but this will be negligible. The form will be able to be electronically generated and will provide an opinion on the conduct of the guardianship to date and the continuing suitability of the guardian from the Public Guardian's supervision of the guardian.

There will also be a cost for adjustments to the Public Guardian's computer system. However this will be minimal and will be absorbed within a wider package of changes relating to amendments to the 2000 Act.

Regulatory Impact Assessment (RIA) - Attached at Annex B

The Regulation creating the Public Guardian's report for renewal of financial guardianship was an element in a partial RIA which focussed on whether forms had been created which satisfied the terms of the legislation and which created the minimum burden on those who complete or process the forms or pay attendant costs - see Paragraphs 38 -51 in the RIA at Annex B. No comments were received on this aspect of the RIA.

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
Sheriff's 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

**ADULTS WITH INCAPACITY (SCOTLAND)
ACT 2000**

**PROPOSALS FOR REGULATIONS TO
IMPLEMENT CHANGES CONTAINED IN THE
ADULT SUPPORT AND PROTECTION
(SCOTLAND) ACT 2007**

REGULATORY IMPACT ASSESSMENT

**SCOTTISH GOVERNMENT
FEBRUARY 2008**

ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

CONSULTATION ON PROPOSALS FOR REGULATIONS TO IMPLEMENT CHANGES CONTAINED IN THE ADULT SUPPORT AND PROTECTION (SCOTLAND) ACT 2007

REGULATORY IMPACT ASSESSMENT

Purpose and intended effect

Objectives

1. This Regulatory Impact Assessment (RIA) provides information in relation to three sets of Regulations which are necessary to implement changes to Parts 2, 3 and 6 of the Adults with Incapacity (Scotland) Act 2000 (the 2000 Act) contained in the Adult Support and Protection (Scotland) Act 2007 (the 2007 Act).

2. **Devolution:** The Regulations will only apply in Scotland.

Background

3. The 2000 Act provides for the protection and management of the property, financial affairs and personal welfare of adults who lack capacity to manage their own affairs because of mental disorder or inability to communicate. Part 1 of the 2000 Act contains a set of principles:

- There is to be no intervention in the affairs of an adult unless that intervention will benefit the adult and the benefit cannot be achieved without the intervention
- Any intervention will be the least restrictive option in relation to the freedom of the adult
- The adult's past and present wishes must be taken into account
- There must be consultation with a range of relevant others.

4. Part 2 provides a system for registration of powers of attorney which are to commence or continue in the event of the granter's losing capacity in relation to those matters covered in the power of attorney. Part 3 provides for the legal authority to access and manage the day to day finances of someone who lacks the ability to do so for themselves. Part 6 allows any person with an interest in the affairs of an adult to apply to the sheriff for an intervention or guardianship order to manage the adult's financial affairs or welfare when s/he lacks capacity to do so.

5. To ascertain the extent to which the 2000 Act was meeting its objectives of protecting and supporting adults with incapacity, their families and carers, the Scottish Executive commissioned a two year consultancy in 2002 to monitor implementation of the Act. The project report, published in October 2004, highlighted a number of changes needed to streamline the processes and to improve accessibility. The former Justice 2 Committee of the Scottish Parliament also monitored the implementation of the Act and took evidence from stakeholders on its operation. Based on the report and evidence, the Scottish Executive carried out a written consultation on proposed changes (August – November 2005) and there were additional key stakeholder consultation events. Changes based on monitoring and consultation were brought forward in the 2007 Act. The changes are designed to simplify and streamline the protections under the 2000 Act and schemes for the management of the affairs of those who lack capacity to do so themselves and also to improve access to them. The changes were subjected to Parliamentary scrutiny during the passage of the 2007 Act.

Regulations

6. The 2007 Act received Royal Assent on 21 March 2007. Regulations were required to make a number of the changes to the 2000 Act operational. The Regulations were the subject of a 12 week public consultation (16 August to 8 November 2007).

7. The Regulations which are the subject of this RIA prescribe forms. The partial RIA contained within the consultation package focused on whether we had created forms which satisfy the terms of the legislation and, which would create the minimum burden on those who complete or process the forms or pay attendant costs. There were no policy considerations. The legislation has been scrutinised and made by Parliament.

8. This RIA deals with the following three provisions in the draft Regulations that were contained within the consultation paper:

- The Adults with Incapacity (Certificates in Relation to Powers of Attorney) (Scotland) Regulations 2008 Regulation 2 and Schedule 1 which provides the single certificate to support registration of a power of attorney which contains both welfare and financial powers.
- The Adults with Incapacity (Certificates in Relation to Powers of Attorney) (Scotland) Regulations 2008 Regulation 3 and Schedule 2 prescribing the form of the certificate which will be required to accompany revocation of a power of attorney confirming that the person revoking understands the nature and extent of the revocation. It will also prescribe the other classes of persons who can sign a certificate to support revocation.
- The Adults with Incapacity (Reports in Relation to Guardianship and Intervention Orders) (Scotland) Amendment Regulations 2008 Regulation 2(10) and Schedule 5 setting out the form which the Public Guardian will issue to support an application for renewal of financial guardianship.

9. The other draft Regulations were technical or administrative and will replace or make minor adjustments to forms following the amendments to the 2000 Act and, also take account of the introduction of a 'named person' in the Mental Health (Care and Treatment) Act 2003.

Rationale for government intervention

10. The regulations which are the subject of this RIA are required by legislation to implement a number of the changes to the 2000 Act in the 2007 Act. If these Regulations are not put in place, the following improvements to the arrangements for powers of attorney and guardianship will not be able to be made:

- the reduced requirement for a single certificate to support the registration of powers of attorney containing both welfare and financial powers;
- the formalisation of the process for revocation of powers of attorney to protect vulnerable granters;
- the simplified process for renewal of financial guardianship orders which will save guardians, adults who lack capacity, their families and carers, professionals and the courts time and cost.

Risk assessment

11. The Regulations are critical to the implementation of changes to the 2000 Act. Without the Regulations, the changes in question will not be able to take effect, potentially denying appropriate protections to some of the most vulnerable members in our society.

Consultation

Within government

12. The Office of the Public Guardian (Scotland) (OPG) has been consulted.

Public consultation

13. A consultation began on 16 August 2007 on all of the draft Regulations required to implement the changes to the 2000 Act and on a partial RIA which related to three of these Regulations. There were 14 responses received - 2 from solicitors, 2 from the voluntary sector, 2 from the business and health sector respectively and 8 from local authorities. All responses were positive and a number of minor changes to forms for clarification were suggested. .

Certification where a power of attorney contains both continuing²and welfare powers

14. The Adults with Incapacity (Certificates in Relation to Powers of Attorney) (Scotland) Regulations 2001 (the 2001 Regulations) were made by Scottish Ministers, in exercise of the powers conferred by sections 15(3)(c) and 16(3)(c) of the 2000 Act. Under sections 15 and 16 respectively of the 2000 Act, individuals can grant a power of attorney to manage their financial affairs or personal welfare.

15. In order to grant a power of attorney an individual must be capable of understanding what s/he is doing and what the impact of granting the powers will be. All powers of attorney must therefore be supported by a certificate signed by a doctor, solicitor (clarified in the 2007 Act as a 'practising solicitor') or practising advocate stating that the granter understands the implications of what s/he is doing. A power of attorney cannot be registered with the OPG without a supporting certificate in the prescribed form. The purpose of the certificate is to protect the individual, particularly when s/he may be vulnerable or susceptible to pressures from others.

16. Currently, under sections 15(3) and 16(3), two separate supporting certificates are required for a power of attorney which contains both continuing and welfare powers. These certificates are prescribed in the 2001 Regulations. The requirement for two certificates is a frequent cause of mistakes with only one certificate being provided when the power of attorney is sent for registration. If only one supporting certificate is provided, the power of attorney cannot be registered by the OPG.

17. In 2006-07, 17,745 powers of attorney containing both welfare and financial powers were registered with the OPG, all of which required two certificates. There is currently a year on year increase in the numbers of powers of attorney registered with the OPG, including those which have both welfare and financial powers.

18. The Scottish Executive brought forward an amending provision in section 57(3) of the 2007 Act, inserting new section 16A in the 2000 Act, to the effect that only one certificate is required for powers of attorney which contain both continuing and welfare powers. That provision requires a form to be prescribed. We are bringing forward The Adults with Incapacity

² A continuing power of attorney contains powers in relation to the granter's property or financial affairs which are intended to continue, or start, to have effect on the granter's incapacity

(Certificates in Relation to Powers of Attorney) (Scotland) Regulations 2008 Regulation 2 and Schedule 1 which prescribes the new form.

19. In bringing forward this Regulation we have also taken the opportunity to review the existing forms and have created a single multi use form for all three registration situations – a continuing only power of attorney, a welfare only power of attorney or a power of attorney containing both welfare and financial powers. The form has a different layout from that in the existing Regulations but the information required is the same. The new layout has been designed, along with the move to a single multi-use form, to reduce the number of mistakes made in the preparation of these certificates. The 2001 Regulations will be revoked.

Options

Option 1: Do nothing

20. This option would involve not commencing section 57(3) of the 2007 Act. This would mean that it would not be possible to use a single certificate to register powers of attorney containing both welfare and financial powers.

Option 2: Make Regulations prescribing a single certificate

21. The legislation requires the certificate to be prescribed. Regulations prescribing the single certificate will give effect to the change in the 2007 Act.

Sectors affected

22. This change will affect all granters of powers of attorney containing both welfare and continuing powers, the professionals involved in drafting them (in cases where professionals have been engaged) and the Office of the Public Guardian.

Benefit

Option 1: Do nothing

23. There would be no benefit from this option. Those seeking registration of powers of attorney with both continuing and welfare powers would need to continue to produce two certificates to support the process.

Option 2: Make Regulations prescribing a single certificate

24. Prescribing a single certificate will reduce the bureaucracy of registration of powers of attorney with both welfare and financial powers. It will lessen the burden on those who sign certificates and will reduce the number of items which the OPG will have to process. As failure to provide two certificates is one of the main reasons for rejection of powers of attorney for registration, it is hoped that the use of a single certificate will result in fewer rejections. The move to a single multi-use certificate was widely welcomed by all respondents. Two respondents suggested a minor change in relation to wording at Box 4 in Schedules 1 and 2 for clarification.

Costs

Option 1: Do nothing

25. There would be no change in the cost to those seeking registration of powers of attorney.

Option 2: Make Regulations prescribing a single certificate

26. This Regulation may result in a cost saving to individual. In addition, fewer rejections would reduce the administrative burden on the OPG.

In order to determine whether there would be a cost saving to an individual we asked the following questions:

Question 1

What is the average cost of a certificate to support registration of a power of attorney

- (a) by a practising solicitor**
- (b) by a practising advocate**
- (c) by a medical practitioner**

Question 2

What is the cost of providing 2 certificates to support registration where a power of attorney contains both welfare and financial powers

- (a) by a practising solicitor**
- (b) by a practising advocate**
- (c) by a medical practitioner**

Question 3

What is the anticipated cost of providing a new single certificate to support registration where a power of attorney contains both welfare and financial powers

- (a) by a practising solicitor**
- (b) by a practising advocate**
- (c) by a medical practitioner**

We received 2 responses to Question 1. One local authority suggested, having canvassed two GP practices, that the cost currently for providing a certificate was between £20 and £100. The other response reported that costs varied widely. It pointed out that if an adult was known to the medical practitioner (the specific example given was a psychiatrist) then there might be no charge, that if a solicitor asked for the certificate to be provided the charge would be £95 upwards and that in some areas where a local authority social work department asked for a certificate, they would not pay for it. No other respondents were able to provide estimated costs therefore we have no further information on this and are unable to expand.

Certification of revocation of powers of attorney

27. Until the commencement of new section 22A in the 2000 Act, inserted by section 57(7) of the 2007 Act, revocation of powers of attorney is dealt with under the common law. Currently the individual simply informs the Public Guardian of the revocation. Revocation of powers of attorney will in future be dealt with under new section 22A. Written notice of revocation of part or the whole of a power of attorney must be sent to the Public Guardian and must incorporate a certificate by a practising solicitor or a member of a prescribed class stating that s/he interviewed the granter immediately before the document was signed, that the granter understands the effect of the revocation and was not under undue influence. The certificate will protect those who have fluctuating capacity or who are vulnerable and susceptible to undue influence by others. New section 22A requires the form to be prescribed. The Adults with Incapacity (Certificates in Relation to Powers of Attorney) (Scotland) Regulations 2008 Regulation 3 and Schedule 2

prescribe the certificate which will accompany revocation of a power of attorney. The Regulations also provide for the classes of those, other than practising solicitors, who can sign the supporting certificate. The classes are the same as those for certification for registration of powers of attorney.

Options

Option 1: Do nothing

28. This option would involve not commencing section 57(7) of the 2007 Act. This would mean that it would not be possible to use the formalised revocation procedure.

Option 2: Make Regulations prescribing a certificate to support a revocation notice

29. The legislation requires the certificate to support a revocation notice to be prescribed. Regulations prescribing the certificate will give effect to the change in the 2007 Act which creates a formal revocation process for powers of attorney.

Sectors and groups affected

30. Certification of revocation of powers of attorney will impact on individuals who wish to revoke a power of attorney in whole or in part. The OPG will have to process the certificates but this will not result in significant administrative costs as it is already processing revocations. Since 2001, almost 98,000 powers of attorney have been registered with the OPG which has dealt with a total of 1118 revocations.

31. We have no way of knowing how many of the powers of attorney which are registered are operational and by implication which might or might not be subject to change in the future. Welfare powers of attorney can only come into effect on the granter's incapacity and financial powers of attorney can either start or continue on incapacity. Clearly where the granter has lost capacity, the power of attorney will not be subject to change by the granter. There is no requirement for the attorney to notify the Public Guardian when s/he begins to exercise the authority following the adult's loss of capacity. We therefore cannot provide figures for those powers of attorney which may be capable of being revoked.

Benefits

Option 1: Do nothing

32. There would be no benefit from this option. Those revoking powers of attorney will not have the benefit of the protection offered by the new process.

Option 2: Make Regulations prescribing a certificate to support a revocation notice

33. Prescribing the certificate will allow new section 22A to come into effect providing the protections for granters as approved by Parliament and outlined above. It will also offer the Public Guardian certainty when a revocation notice is sent to her. The information required in the certificate will mirror that already required for registration of powers of attorney and will therefore be familiar to those who will be signing the certificate.

Costs

Option 1: Do nothing

34. Individuals revoking powers of attorney would not have to bear the cost of providing a certificate but this should be set alongside the potential financial harm which could be suffered by a vulnerable adult who revokes a power of attorney as a result of pressure from others without understanding the effect of what s/he is doing.

Option 2: Make Regulations prescribing a certificate to support a revocation notice

35. In terms of individuals there will be a fee for preparation of a certificate. The fee for the certificate should be no more than that for the certificate required to accompany the registration of a power of attorney (*we asked for further information at question 4*) because the process of revocation and the certificate mirror that for registration. The information in the certificate will be confined to the terms of what is required by the legislation. Practitioners are already familiar with the information required to complete the certificate.

36. The formalisation of the process and the requirement for a certificate may result in more individuals using professionals to submit revocations. Currently, most revocations come directly from the granter.

37. The formalisation of the process will result in a small additional cost to the OPG to adjust the computer system to incorporate the certificate. However, this cost will be subsumed into the recurrent costs of modifying the OPG's computer system.

In order to determine the amount for preparation of a certificate we asked the following questions:

Question 4

What is the anticipated/projected cost of a certificate to support revocation of a power of attorney

- (a) by a practising solicitor**
- (b) by a practising advocate**
- (c) by a medical practitioner**

There was no direct response in relation to the question asked and so we are unable to expand further.

Renewal of guardianship

38. Section 60(3) of the 2007 Act inserts new sections 60(3) and (3A) into the 2000 Act to provide a simplified procedure for renewal of guardianship which can be dealt with by the sheriff on the basis of an application without a hearing. Currently if a guardian is seeking reappointment / renewal the supporting reports for the application process are the same as those for the initial appointment – 2 medical reports and a further report from either a mental health officer, Chief Social Work Officer or a person with sufficient knowledge to make a report, depending on the powers sought and the cause of the adult's condition. The new process will require one medical report, a report by a mental health officer or the Chief Social Work Officer where welfare powers are sought and a report by the Public Guardian where it is renewal of financial guardianship. The new process should save cost and time. It is less onerous than the current process, while still providing safeguards.

39. We are bringing forward Regulations which prescribe the forms to support a simplified process to renew guardianships. The forms are set out in The Adults with Incapacity (Reports in

Relation to Guardianship and Intervention Orders) (Scotland) Amendment Regulations 2008. These Regulations are part of the consultation and comments are invited on them in that exercise.

40. The requirement for the Public Guardian to provide a report to support renewal of financial guardianships is new. The form of the report by the Public Guardian which is prescribed in Regulation 2(10) and Schedule 5 of The Adults with Incapacity (Reports in Relation to Guardianship and Intervention Orders) (Scotland) Amendment Regulations 2008 is the subject of this RIA.

Options

Option 1: Do nothing

41. This option would involve not commencing section 60(3)(c) of the 2007 Act. This would mean that the new simplified renewal process for financial guardianship would not be available.

Option 2: Making Regulations prescribing the report by the Public Guardian

42. Prescribing the report by the Public Guardian will give full effect to section 60(3) of the 2007 Act and provide the mechanisms for the simplified renewal process for all guardianships.

Sectors and groups affected

43. This is a new requirement on the Public Guardian.

44. All adults who lack capacity and for whom a guardianship order has been granted which requires to be renewed, their guardians, families and carers will be affected. The process is designed to save them time and money.

45. Since 2002 there have been 1945 financial or joint welfare and financial guardianships granted. A significant number of these could benefit from the new simplified process, although some of these may have been indefinite grants and in other cases the adults' estates may no longer require financial guardianship.

Benefits

Option 1: Do nothing

46. There would be no benefit from this option. Those renewing financial guardianships would not be able to access the simplified renewal process which is designed to take a shorter time than the current process.

Option 2: Make Regulations prescribing the report by the Public Guardian for renewal of financial guardianships

47. Prescribing the Public Guardian's report along with the others will allow the new renewal process to become operational. The new system for renewal of financial guardianship will be speedier and significantly less onerous because it will not be necessary, as at present, to seek a report from someone with sufficient knowledge to comment on the appropriateness of the order sought and the suitability of the person nominated in the application to be appointed. Without the Regulation, the new provision cannot be used. The existing system would prevail and the benefits which the new system should bring would not be delivered.

Costs

Option 1: Do nothing

48. There would be no reduction in cost for those seeking renewal of financial guardianships. There would be no cost to the Public Guardian.

Option 2: Make Regulations prescribing the report by the Public Guardian for renewal of financial guardianships

49. There will be a cost to the Public Guardian to produce the report but this will be negligible. The form will be able to be electronically generated and will provide an opinion on the conduct of the guardianship to date and the continuing suitability of the guardian from the Public Guardian's supervision of the guardian.

50. There will also be a cost for adjustments to the Public Guardian's computer system. However this will be minimal and will be absorbed within a wider package of changes relating to amendments to the 2000 Act.

51. There is likely to be a reduction in the cost to applicants for renewal of financial guardianships because it will no longer be necessary to obtain a report from a person who has sufficient knowledge to give an opinion on the general appropriateness of the order sought and on the suitability of the individual nominated as guardian.

The Small Firms' Impact Test

52. The Regulations which are the subject of this RIA will not impact on small firms or micro-businesses.

Test run of business forms

53. No business forms will be created in the proposed Regulations.

Competition assessment

54. These Regulations will not impact on business therefore there will be no impact on competition.

Consultation

55. The changes to the 2000 Act were developed following extensive consultation. The partial RIA and the draft Regulations to which it relates (which are required to bring three of the changes into effect) were produced for comment. It was distributed to a range of key stakeholders.

56. It was also available on the Scottish Government website consultations page.

Implementation and delivery plan

57. There is no implementation and delivery plan. The draft regulations allow changes to the 2000 Act become operational. The changes themselves were based on evidence gathered through

the monitoring of the implementation of the 2000 Act and informed by further consultation to streamline the 2000 Act.

Post Implementation Review

58. The legislation and RIA will be kept under review through the Office of the Public Guardian (Scotland) which is responsible for registering powers of attorney, determining applications under Part 3 of the Act, registering guardianship and intervention orders and supervision of financial guardianships.

Summary and recommendations

59. It is recommended that the regulations are taken forward. They are critical to the implementation of changes to the 2000 Act and without them, these changes will not be able to take effect, potentially denying appropriate protections to some of the most vulnerable members in our society.

Contact

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