

2008 No. 56

ADULTS WITH INCAPACITY

The Adults with Incapacity (Certificates in Relation to Powers of Attorney) (Scotland) 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 7(1)(c), 15(3)(c), 16(3)(c) and 22A(2)(b) of the Adults with Incapacity (Scotland) Act 2000(a) and all other powers enabling them to do so.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Adults with Incapacity (Certificates in Relation to Powers of Attorney) (Scotland) Regulations 2008 and come into force on 1st April 2008.

(2) In these Regulations—

“the Act” means the Adults with Incapacity (Scotland) Act 2000;

“the 2001 Regulations” means the Adults with Incapacity (Certificates in Relation to Powers of Attorney) (Scotland) Regulations 2001(b).

Certificates for use in connection with continuing and welfare powers of attorney and revocation notices

2. For the purposes of sections 15(3)(c) and 16(3)(c) of the Act, the certificate to be incorporated in a written document granting a continuing power of attorney, or a welfare power of attorney, or both, shall be in the form set out in Schedule 1.

3. For the purposes of section 22A(2)(b) of the Act, the certificate to be incorporated in a notice revoking part or all of a continuing power of attorney, or a welfare power of attorney, or both, shall be in the form set out in Schedule 2.

Classes of persons for the purposes of sections 15(3)(c), 16(3)(c) or 22A(2)(b) of the Act

4. For the purposes of sections 15(3)(c), 16(3)(c) and 22A(2)(b) of the Act, the following classes are prescribed:—

- (a) practising members of the Faculty of Advocates; and
- (b) registered medical practitioners.

(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 “prescribe” and section 86(1) as to power to make regulations.
(b) S.S.I. 2001/80.

Revocation and savings

5.—(1) Subject to paragraph (2) the 2001 Regulations are revoked.

(2) The 2001 Regulations continue to have effect on or after 1st April 2008 in relation to certificates signed before that date.

St Andrew's House,
Edinburgh
20th February 2008

FERGUS EWING
Authorised to sign by the Scottish Ministers

SCHEDULE 1

Regulation 2

CERTIFICATE UNDER SECTIONS 15(3)(c) AND/OR 16(3)(c) OF
THE ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000 TO BE
INCORPORATED IN A DOCUMENT GRANTING A POWER OF
ATTORNEY

1. This certificate is incorporated in the document subscribed by

Insert name of granter

--

2. On

Insert date subscribed

--

3. That confers a

Tick appropriate box – tick one box only

<input type="checkbox"/> • Continuing power of attorney (i.e. confers property or financial powers only)
<input type="checkbox"/> • Welfare power of attorney (i.e. confers welfare powers only)
<input type="checkbox"/> • Combined power of attorney (i.e. confers both property or financial and welfare powers)

4. Appointing as Attorney(s)

Insert name(s) of Attorney(s)

--

5. Declaration of Certifier

Note: any person signing this certificate should not be the person to whom this power of attorney has been granted.

I certify that

1. I interviewed the granter ***immediately*** before he/she subscribed this power of attorney;
2. I am satisfied that, at the time this power of attorney was granted, the granter understood its nature and extent; and

I have satisfied myself of this:

Please tick appropriate box. (Both may apply but one must apply)

(a) because of my own knowledge of the granter;

and/or

(b) because I have consulted the following person who has knowledge of the granter on the matter

Insert name, address and relationship with granter, of person consulted

3. I have no reason to believe the granter was acting under undue influence or that any other factor vitiates the granting of this power of attorney.

Signed:

Print name:

Profession:

Address:

.....

.....

Date:

SCHEDULE 2

Regulation 3

CERTIFICATE UNDER SECTION 22A(2)(b) OF THE ADULTS WITH
INCAPACITY (SCOTLAND) ACT 2000 TO BE INCORPORATED IN
NOTICE REVOKING A POWER OF ATTORNEY

1. This certificate is incorporated in the revocation notice subscribed by

Insert name of granter

--

2. On

Insert date subscribed

--

3. That revokes

(tick the appropriate box to indicate what is being revoked)

<input type="checkbox"/> All powers granted in the power of attorney or <input type="checkbox"/> Specific powers granted in the power of attorney (which power or powers have been specified in the revocation notice of which this forms part)
--

4. In relation to

Insert name(s) of Attorney(s) whose powers are being revoked

--

5. Declaration of Certifier

Note: any person signing this certificate should not be the person to whom the power of attorney was granted.

I certify that

1. I interviewed the granter *immediately* before he/she subscribed this revocation notice;
2. I am satisfied that, at the time this revocation notice was subscribed, the granter understood its effect; and

I have satisfied myself of this:

Please tick appropriate box. (Both may apply but one must apply)

(a) because of my own knowledge of the granter;

and/or

(b) because I have consulted the following person who has knowledge of the granter on the matter

Insert name, address and relationship with granter, of person consulted

3. I have no reason to believe the granter was acting under undue influence or that any other factor vitiates this revocation.

Signed:

Print name:

Profession:

Address:

.....

.....

Date:

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe certificates for use in connection with the grant of continuing and welfare powers of attorney and the revocation thereof under sections 15, 16 and 22A of the Adults with Incapacity (Scotland) Act 2000 (“the Act”). The certificates are set out as Schedules to these Regulations. The changes are in consequence of the coming into force of amendments to sections 15(3) and 16(3) and the insertion of new sections 16A and 22A in the Act by section 57 of the Adult Support and Protection (Scotland) Act 2007 (asp 10).

Regulation 2 and Schedule 1 prescribe the certificate for granting a continuing or welfare power of attorney or both (new section 16A of the Act provides for a single certificate where a document confers both a continuing and welfare power of attorney).

Regulation 3 and Schedule 2 prescribe the certificate for revoking a power of attorney (new section 22A of the Act provides for the revocation of a power of attorney to incorporate a certificate in the prescribed form).

Regulation 4 prescribes the classes of persons, in addition to practising solicitors, who may issue a certificate under sections 15, 16 or 22A.

Regulation 5 revokes the Adults with Incapacity (Certificate in Relation to Powers of Attorney) (Scotland) Regulations 2001 and saves the effect of those Regulations with regard to certificates signed before 1st April 2008.

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The Adults with Incapacity (Certificates in Relation to Powers
of Attorney) (Scotland) Regulations 2008

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