

## EXECUTIVE NOTE

### **The Adults with Incapacity (Certificates in Relation to Powers of Attorney) (Scotland) Regulations 2008 S.S.I. 2008/56**

The above statutory instrument was made 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 (the 2000 Act) and of all other powers enabling Scottish Ministers to do so. The instrument is subject to negative resolution procedure and comes into force on 1st April 2008.

#### **Policy Objective**

These Regulations take account of changes made to the 2000 Act by the Adult Support and Protection (Scotland) Act 2007 (the 2007 Act) in relation to powers of attorney. They provide the mechanisms for the changes to become operational. They prescribe certificates to support registration and revocation of powers of attorney. They also prescribe the classes, in addition to practising solicitors, who can sign the certificates.

#### **Background**

Under sections 15 and 16 of the 2000 Act, individuals can grant a power of attorney to manage their financial affairs and/or safeguard their personal welfare.

##### *Registration of powers of attorney*

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 without a supporting certificate. The purpose of the certificate is to protect the individual, particularly when s/he may be vulnerable or susceptible to pressures from others.

Currently, under sections 15(3) and 16(3) of the 2000 Act two separate supporting certificates by an approved person are required for a power of attorney which contains both continuing<sup>1</sup> and welfare powers. This 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 Office of the Public Guardian. These certificates are currently prescribed in the Adults with Incapacity (Certificates in Relation to Powers of Attorney) (Scotland) Regulations 2001 (the 2001 Regulations) (<http://www.opsi.gov.uk/legislation/scotland/ssi2001/20010080.htm>)

New section 16A of the 2000 Act inserted by section 57(3) of the 2007 Act provides that only one certificate is required for registration of a power of attorney containing both welfare and continuing powers. The certificate requires to be prescribed.

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<sup>1</sup> 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

In prescribing this certificate we have taken the opportunity to review existing forms because we were advised by the Public Guardian that the reason for a significant number of the 25% of powers of attorney being rejected at registration is that the certificate has not been properly completed. We have created a single multi use certificate for use in all three registration situations – a continuing power of attorney only, a welfare power of attorney only or a power of attorney containing both welfare and continuing powers (Regulation 2 and Schedule 1). The information required is the same as that currently requested but it is hoped that the changed layout will make it easier to complete and result in fewer rejections. Regulation 5 revokes the 2001 Regulations which prescribe the current certificates.

#### *Revocation of powers of attorney*

Section 57(7) of the 2007 Act inserted new section 22A into the 2000 Act which provides for a formal process for revocation of powers of attorney. A revocation notice must be accompanied by a certificate confirming that the revoker understands the effect of what s/he is doing. As above, the purpose of the certificate is to protect the individual revoking the power of attorney, particularly when s/he may be vulnerable or susceptible to pressures from others. The certificate requires to be prescribed. Regulation 3 and Schedule 2 provide a certificate to accompany a revocation notice.

#### *Classes of persons who can sign the certificates*

Regulation 4 prescribes the classes, in addition to practising solicitors, of persons who may sign the certificates under these Regulations. It simply repeats the classes in the Adults with Incapacity (Certificates in Relation to Powers of Attorney) (Scotland) Regulations 2001 which are revoked by Regulation 5 except in relation to certificates signed before that date.

### **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. There were some suggestions for changes to improve the clarity of the forms which we have taken account of.

### **Financial Effects**

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 Office of the Public Guardian (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, thus reducing the administrative burden on the OPG.

This Regulation may result in a cost saving to individuals because it will no longer be necessary to produce two certificates where a power of attorney contains both welfare and financial powers.

The formalisation of the revocation 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.

The formalisation of the process and the requirement for a certificate may result in more individuals using professionals to submit revocations. Whilst this might be the case, these measures are designed to protect vulnerable individuals who may be susceptible to pressures from others.

Two respondents were concerned about the situation where a person is revoking a power of attorney and simultaneously registering a new power of attorney. They were concerned that there would be a charge for the completion and signing of a certificate to support each process and were seeking to have the certificates amalgamated. The legislation does not permit the amalgamation of the certificates.

### **Regulatory Impact Assessment (attached at Annex B)**

The consultation was accompanied by a partial RIA which asked 4 questions on costs of certificates in order to determine

- ◆ what, if any saving there might be in using a single certificate
- ◆ the additional cost of a certificate resulting from the formalisation of the revocation process.

Only two of the respondents commented on this aspect of the RIA and both sets of comments related to only one of the questions. One local authority suggested that having spoken to two GP practices that the cost for providing a certificate was between £20 and £100. The other response was that costs varied widely. It was pointed out that if an adult was known to a psychiatrist there might be no charge, if a solicitor asked for the certificate to be provided the charge would be £95 upwards and, in some areas where a local authority social work department asked for a certificate, they would not pay for it.

We received no further information on the costs of certificates and are therefore unable to expand further.

**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 continuing<sup>2</sup>and 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

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<sup>2</sup> 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**

Any queries about this RIA should be addressed to:

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Scottish Government  
February 2008