
Status: Point in time view as at 08/12/2014.

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SCHEDULE 4

(introduced by section 88(1))

CONTINUATION OF EXISTING CURATORS, TUTORS, GUARDIANS AND ATTORNEYS UNDER THIS ACT

Curators and tutors

- 1 (1) On the relevant date, any person holding office as curator bonis to an adult shall become guardian of that adult with power to manage the property or financial affairs of the adult.
- (2) Where a person—
 - (a) before the relevant date, holds office as curator bonis to a person who has not attained the age of 16 years and does not hold such office for the sole reason that the person has not attained the age of 16 years; or
 - (b) after the relevant date, is appointed as curator bonis to such a person,he shall become guardian of that person when that person attains the age of 16 years, with power to manage his property or financial affairs.
- (3) Where any proceedings for the appointment of a curator bonis to an adult have been commenced and not determined before the relevant date, they shall be determined in accordance with the law as it was immediately before that date; and any person appointed curator bonis shall become guardian of that adult with power to manage the property or financial affairs of the adult.
- (4) On the relevant date, any person holding office as tutor-dative to an adult shall become guardian of that adult and shall continue to have the powers conferred by the court on his appointment as tutor-dative.
- (5) Where any proceedings for the appointment of a tutor-dative to an adult have been commenced and not determined before the relevant date, they shall be determined in accordance with the law as it was immediately before that date; and any person appointed tutor-dative shall become guardian of that adult with such power to manage the property, financial affairs or personal welfare of the adult as the court may determine.
- (6) On the relevant date, any person holding office as tutor-at-law to an adult shall become guardian of that adult with power to manage the property, financial affairs or personal welfare of the adult.
- (7) Where any proceedings for the appointment of a tutor-at-law to an adult have been commenced and not determined before the relevant date, they shall be determined in accordance with the law as it was immediately before that date; and any person appointed tutor-at-law shall become guardian of that adult with power to manage the property, financial affairs or personal welfare of the adult.

Guardians

- 2 (1) On the relevant date, any person holding office as guardian of an adult under the 1984 Act shall become guardian of that adult under this Act and shall continue to have the powers set out in paragraphs (a) to (c) of section 41(2) of that Act notwithstanding the repeal of that section by this Act.

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- (2) Where any proceedings for the appointment of such a guardian of an adult have been commenced and not determined before the relevant date, they shall be determined in accordance with the 1984 Act as it was in force immediately before that date; and any person appointed guardian shall become guardian of that adult under this Act with the powers set out in the said paragraphs (a) to (c) of section 41(2) of the 1984 Act.

Proceedings relating to existing appointments

- 3 Where any proceedings in relation to the functions of an existing curator bonis, tutor-dative, tutor-at-law or guardian have been commenced and not determined before the relevant date, they shall be determined in accordance with the law as it was immediately before that date.

Attorneys

- 4 (1) On the relevant date, any person holding office as—
- (a) an attorney under a contract of mandate or agency with powers relating solely to the property or financial affairs of an adult shall become a continuing attorney under this Act;
 - (b) an attorney under a contract of mandate or agency with powers relating solely to the personal welfare of an adult shall become a welfare attorney under this Act;
 - (c) an attorney under a contract of mandate or agency with powers relating both to the property and financial affairs and to the personal welfare of an adult shall become a continuing attorney and a welfare attorney under this Act.
- (2) Where, under the provisions of a contract of mandate or agency executed before the relevant date, a person is appointed as an attorney after that date he shall be a continuing attorney, a welfare attorney or a continuing and welfare attorney, as provided for in sub-paragraph (1), under this Act.
- [^{F1}(3) Sections 6(2)(c)(i), 15, 19, 20(3)(a), 21, 22, and 23 shall not apply to persons who have become continuing attorneys by virtue of sub-paragraph (1)(a) or (c).
- (4) Sections 16(1) to (4) and (7), 19, 20(3)(a), 21, 22, and 23 shall not apply to persons who have become welfare attorneys by virtue of sub-paragraph (1)(b) or (c).]

Textual Amendments

- F1** Sch. 4 para. 4(3)(4) substituted (5.10.2007) for Sch. 4 para. 4(3)-(6) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), ss. 77(1), 79, [Sch. 1 para. 5\(h\)](#); S.S.I. 2007/334, [art. 2\(b\)](#), Sch. 2 (with savings in arts. 4-6)

Managers

- 5 (1) Any managers of a hospital who have received and hold money and valuables on behalf of any person under section 94 of the 1984 Act may continue to do so under this Act for a period not exceeding 3 years from the relevant date.
- (2) This Act applies to managers as mentioned in sub-paragraph (1) notwithstanding that no certificate has been issued under section 37 in respect of the owner of the money or valuables.

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Changes to legislation: There are currently no known outstanding effects for the Adults with Incapacity (Scotland) Act 2000, SCHEDULE 4. (See end of Document for details)

- (3) Sections 35 and 38 shall not apply in the case of managers who continue to hold money by virtue of sub-paragraph (1).
- (4) Where the managers have authority from the Mental Welfare Commission to hold and manage money and other property in excess of the aggregate value mentioned in section 39 they may do so in relation to the money and valuables of any person which they continue to hold under sub-paragraph (1).

Application of Act to persons who become guardians by virtue of this schedule

- 6 (1) For the purposes of their application to persons who have become guardians by virtue of this schedule, the following provisions shall have effect as modified or disapplied by this paragraph.
 - (2) In section 67(2) the reference to the certificate of appointment issued under section 58 shall be construed as a reference to the order of the court appointing the person as curator bonis, tutor-dative, tutor-at-law or guardian under the 1984 Act, as the case may be.
 - (3) Section 60 shall apply to a person who has become a guardian to an adult by virtue of this schedule and who was a curator bonis, tutor dative or tutor-at-law to that adult; and, for the purpose of that application, for the reference in section 60(1) to a period in respect of which a guardianship order has been made or renewed there shall be substituted a reference
 - [^{F2}(a) in the case of a curator bonis who, under paragraph 1(2), became guardian to a person on the person attaining the age of 16 years, to the period of 2 years from the later of the following dates—
 - (i) the date on which section 60(17) (which amends this paragraph) of the Adult Support and Protection (Scotland) Act 2007 (asp 10) came into force;
 - (ii) the date on which the person attained the age of 16 years,
 - (b) in any other case, to the period of 2 years from the date on which section 60(17) (which amends this paragraph) of the Adult Support and Protection (Scotland) Act 2007 (asp 10) came into force.]
- [^{F3}(3A) A person who has become a guardian to an adult by virtue of this schedule and who was a curator bonis, tutor dative or tutor-in-law to that adult shall cease to be authorised to act as that adult's guardian—
 - (a) where the person does not apply for renewal of guardianship within the 2 year period set by sub-paragraph (3), on the expiry of that period;
 - (b) where—
 - (i) the person applies for such a renewal within that period; and
 - (ii) the sheriff refuses the application,on the date of refusal;
 - (c) where—
 - (i) the person applies for such a renewal within that period; and
 - (ii) the sheriff grants the application,in accordance with the provisions of this Act.
- (3B) Sub-paragraph (3A) does not prevent the authority of a guardian of the type mentioned in that sub-paragraph from being terminated (by virtue of the terms on

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which the guardian is authorised to act or sections 71, 73, 75 or 79A) earlier than the date on which it would otherwise terminate by operation of that sub-paragraph.

(3C) Where—

- (a) a person (“G”) who was a curator bonis, tutor dative or tutor-at-law to an adult becomes the adult's guardian by virtue of this schedule; and
- (b) another person is appointed under section 62 as an additional guardian to the adult before G's appointment as guardian has been renewed in accordance with the provisions of this Act,

subsection (3A) applies in relation to the additional guardian as it applies in relation to G.

(3D) The Public Guardian must take reasonable steps to give notice of the effect of sub-paragraph (3A) to any person who—

- (a) is a guardian to an adult by virtue of this schedule;
- (b) was a curator bonis to that adult; and
- (c) has not applied for renewal of guardianship.

(3E) A local authority must take reasonable steps to give notice of the effect of sub-paragraph (3A) to any person who—

- (a) is a guardian to an adult residing within the local authority's area by virtue of this schedule;
- (b) was a tutor dative or tutor-in-law to that adult; and
- (c) has not applied for renewal of guardianship.]

(4) Section 60 shall not apply to a person who has become a guardian to an adult by virtue of this schedule and who was a guardian of that adult under the 1984 Act, in which case the powers shall continue until such time as they would have continued had he not become a guardian by virtue of this schedule to this Act.

(5) In sections 68(2) and (3) and 76 the references to the chief social work officer of the local authority shall be construed as including references to the local authority.

(6) Schedule 2 shall apply only—

- (a) in a case where; and
- (b) to the extent that,

the Public Guardian has determined that it should apply.

(7) Any determination by the Public Guardian under sub-paragraph (6), or a decision by him not to make such a determination, may be appealed to the sheriff, whose decision shall be final.

(8) No reference in this Act to registration shall have effect in relation to any person who becomes a guardian by virtue of this schedule.

Textual Amendments

F2 Words in Sch. 4 para. 6(3) substituted (5.10.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), **ss. 60(17)(a)**, 79; S.S.I. 2007/334, **art. 2(b)**, Sch. 2 (with savings in arts. 4-6)

F3 Sch. 4 para. 6(3A)-(3E) inserted (5.10.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), **ss. 60(17)(b)**, 79; S.S.I. 2007/334, **art. 2(b)**, Sch. 2 (with savings in arts. 4-6)

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Transitional Provisions

- 7 Until Part 6 comes into force—
- (a) the references in section 23(1)(c) to a guardian shall be omitted;
 - (b) in section 31(7), the reference in paragraph (a) to the appointment of a guardian shall be construed as a reference to the appointment of a curator bonis or tutor-dative or tutor-at-law with powers relating to the funds or accounts in question and paragraph (b) shall be omitted;
 - (c) in section 34(1), the reference in paragraph (a) to a guardian shall be construed as a reference to a curator bonis or tutor-dative or tutor-at-law with powers relating to the funds or account in question and paragraph (b) shall be omitted;
 - (d) in section 46(1), the reference in paragraph (a) to a guardian shall be construed as a reference to a curator bonis or tutor-dative or tutor-at-law with powers relating to the matter and paragraph (b) shall be omitted.

Commencement Information

- II** Sch. 4 para. 7 partly in force; Sch. 4 para. 7 not in force at Royal Assent see s. 89(2); Sch. 4 para. 7(a)-(c) in force at 2.4.2001 by S.S.I. 2001/81, art. 2, Sch. 1

Interpretation

- 8 In this schedule the “relevant date” in relation to any paragraph in which it appears means the date of coming into force of that paragraph.

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