

Status: Point in time view as at 01/04/2002. This version of this schedule contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Adults with Incapacity (Scotland) Act 2000, SCHEDULE 5. (See end of Document for details)

SCHEDULE 5

(introduced by section 88(2))

MINOR AND CONSEQUENTIAL AMENDMENTS

General

- 1 With effect from the commencement of this paragraph any reference in any enactment or document to a curator bonis or a tutor or curator of a person of or over the age of 16 years shall be construed as a reference to a guardian with similar powers appointed to that person under this Act.

Defence Act 1842 (c.94)

- 2 (1) In section 15 of the Defence Act 1842—
- (a) after “nonage” in both places there shall be inserted “or mental incapacity”;
 - (b) “or not of whole mind” shall be repealed;
 - (c) for “out of prison, within this land, or of whole mind” there shall be substituted “within this land”.
- (2) In section 27 of that Act for “lunacy” there shall be substituted “mental incapacity”.

Judicial Factors Act 1849 (c.51)

- 3 In section 34A of the Judicial Factors Act 1849 for “recovery, death or coming of age of the ward” there shall be substituted “coming to an end of the situation giving rise to it”.

PROSPECTIVE

Improvement of Land Act 1864 (c.114)

- 4 ^{F1}

Textual Amendments

- F1** Sch. 5 para. 4 repealed (5.10.2007) by Adult Support and Protection (Scotland) Act 2007 (asp 10), ss. 77(2), 79, Sch. 2; S.S.I. 2007/334, art. 2(b), Sch. 2 (with savings in arts. 4-6)

Titles to Land (Consolidation) (Scotland) Act 1868 (c.101)

- 5 (1) In section 24 of the Titles to Land (Consolidation) (Scotland) Act 1868 for “mental disorder within the meaning of the Mental Health (Scotland) Act 1960” there shall be substituted “mental or other incapacity”.
- (2) In section 62 of that Act for “of insane mind” there shall be substituted “mental or other incapacity”.

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Judicial Factors (Scotland) Act 1889 (c.39)

- 6 (1) In section 2 of the Judicial Factors (Scotland) Act 1889 at the beginning there shall be inserted “Without prejudice to section 6(1) of the Adults with Incapacity (Scotland) Act 2000 (asp 4) (Accountant of Court to be Public Guardian)”.
- (2) In section 6 of that Act, in the proviso, after “apply to” there shall be inserted “guardians appointed under the Adults with Incapacity (Scotland) Act 2000 (asp 4), to”.

Heritable Securities (Scotland) Act 1894 (c.44)

- 7 In section 13 of the Heritable Securities (Scotland) Act 1894—
- (a) after “(b) trustees” there shall be inserted—
- “(c) the person entitled to act as the legal representative of any such person”;
- (b) “tutors, curators,” shall be repealed.

Commencement Information

- II** Sch. 5 para. 7 wholly in force at 1.4.2002; Sch. 5 para. 7 not in force at Royal Assent see s. 89(2); Sch. 5 para. 7 in force for specified purposes at 2.4.2001 by S.I. 2001/81, art. 2, Sch. 1; Sch. 5 para. 7 wholly in force at 1.4.2002 by S.S.I. 2001/81, art. 3, Sch. 2

National Assistance Act 1948 (c.29)

- 8 In section 49 of the National Assistance Act 1948 as it applies to Scotland—
- (a) immediately before “the council” where last occurring there shall be inserted “or applies for an intervention order or for appointment as a guardian under the Adults with Incapacity (Scotland) Act 2000 (asp 4)”;
- (b) immediately before “in so far as” there shall be inserted “or his functions under the intervention order or as guardian”.

Offices, Shops and Railway Premises Act 1963 (c.41)

- 9 In section 90(1) of the Offices, Shops and Railway Premises Act 1963 in the definition of “owner” for “, tutor or curator” there shall be substituted “or person entitled to act as legal representative of a person under disability by reason of nonage or mental or other incapacity”.

Commencement Information

- I2** Sch. 5 para. 9 wholly in force at 1.4.2002; Sch. 5 para. 9 not in force at Royal Assent see s. 89(2); Sch. 5 para. 9 in force for specified purposes at 2.4.2001 by S.S.I. 2001/81, art. 2, Sch. 1; Sch. 5 para. 9 wholly in force at 1.4.2002 by S.S.I. 2001/81, art. 3, Sch. 2

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Textual Amendments

- F2** Sch. 5 para. 10 repealed (1.4.2002) by 2001 asp 8, ss. 80(1), 81(2), Sch. 4; S.S.I. 2002/162, art. 2 (subject to arts. 3-13)

PROSPECTIVE

11 **F3**

Textual Amendments

- F3** Sch. 5 para. 11 repealed (1.4.2002) by 2001 asp 8, ss. 80(1), 81(2), Sch. 4; S.S.I. 2002/162, art. 2 (subject to arts. 3-13)

Medicines Act 1968 (c.67)

- 12 In section 72 of the Medicines Act 1968—
(a) in subsection (1) for “curator bonis” there shall be substituted “ guardian ”;
(b) in subsections (3)(d) and (4)(c) “curator bonis,” shall be repealed.

Sheriff Courts (Scotland) Act 1971 (c.58)

- 13 In section 32(1) of the Sheriff Courts (Scotland) Act 1971 after paragraph (j) there shall be inserted—
“(k) prescribing the procedure to be followed in appointing a person under section 3(4) of the Adults with Incapacity (Scotland) Act 2000 (asp 4) and the functions of such a person.”.

Land Registration (Scotland) Act 1979 (c.33)

- 14 In section 12(3) of the Land Registration (Scotland) Act 1979 after paragraph (k) there shall be inserted—
“(kk) the loss is suffered by an adult within the meaning of the Adults with Incapacity (Scotland) Act 2000 (asp 4) because of the operation of sections 22, 49, 60, 70 or 71A of that Act, or by any person who acquires any right, title or interest from that adult;”.

Solicitors (Scotland) Act 1980 (c.46)

- 15 In section 18(1) of the Solicitors (Scotland) Act 1980—
(a) in paragraph (a) “or becomes subject to guardianship” shall be repealed;
(b) for paragraph (b) there shall be substituted—
“(b) a guardian is appointed to a solicitor under the Adults with Incapacity (Scotland) Act 2000 (asp 4);”.

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Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c.55)

- 16 In group C of Part I of Schedule 1 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 for paragraphs (b) and (c) there shall be substituted—
- “(b) persons for the time being subject to guardianship under the Adults with Incapacity (Scotland) Act 2000 (asp 4).”.

Mental Health (Scotland) Act 1984 (c.36)

- 17 (1) In section 3 of the Mental Health (Scotland) Act 1984—
- (a) in subsection (1) “guardianship or” shall be repealed;
 - (b) in subsection (2) in paragraph (b) “or who are subject to guardianship” shall be repealed.
- (2) In section 5(2) of that Act “and the guardian of any person subject to guardianship under this Act” shall be repealed.
- (3) In section of that Act—
- (a) in subsection (1) for “either by the nearest relative of the patient or by a mental health officer” there shall be substituted “ by the nearest relative of the patient, by a mental health officer, or by a guardian or welfare attorney of the patient who has powers to do so ”;
 - (b) in subsection (2) after “relative” there shall be inserted “ , guardian or welfare attorney, as the case may be, ”;
 - (c) in subsection (3) after “relative” in both places there shall be inserted “ , guardian or welfare attorney, as the case may be, ”;
 - (d) in subsection (4) after “patient” where second occurring there shall be inserted “ or by a guardian or welfare attorney of the patient ”;
 - (e) in subsection (5)(b) after “relative” there shall be inserted “ and any guardian or welfare attorney . ”.
- (4) In section 20(1)(a) of that Act for or his nearest “relative” there shall be substituted “ , his nearest relative, guardian or welfare attorney, as the case may be ”.
- (5) In section 21(2)(b) of that Act—
- (a) after “relative” where first occurring there shall be inserted “ , guardian or welfare attorney, as the case may be ”;
 - (b) after “relative” where second and third occurring there shall be inserted “ guardian or welfare attorney ”.
- (6) In section 22(4)(c) of that Act after “relative” there shall be inserted “ and any guardian or welfare attorney ”.
- (7) In section 24 of that Act—
- (a) in subsection (2) after “relative” there shall be inserted “ , of any guardian or welfare attorney who has powers to do so, ”;
 - (b) in subsection (5) after “relative” there shall be inserted “ and any guardian or welfare attorney ”.
- (8) In section 26 of that Act—
- (a) in subsection (1)(b) after “patient” there shall be inserted “ by any guardian or welfare attorney of the patient who has power so to consent, ”;

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- (b) in subsection (4)(b) after “relative” where first occurring there shall be inserted “ and any guardian or welfare attorney ” and after “relative” where second occurring there shall be inserted “ , guardian or welfare attorney, as the case may be ”.
- (9) In section 26A of that Act—
 - (a) in subsection (4) after “relative” there shall be inserted “ or any guardian or welfare attorney who has powers to do so ”;
 - (b) in subsection (6)(b) after “relative” where first occurring there shall be inserted “ and any guardian or welfare attorney ” and after “relative” where second occurring there shall be inserted “ , guardian or welfare attorney, as the case may be ”.
- (10) In section 29 of that Act—
 - (a) in subsection (2) after “relative” there shall be inserted “ , to any guardian or welfare attorney ”;
 - (b) in subsection (4) after “relative” there shall be inserted “ , guardian or welfare attorney ”;
- (11) In section 30(5) of that Act after “relative” there shall be inserted “ and any guardian or welfare attorney of his ”.
- (12) In section 31B(3) of that Act after “relative” there shall be inserted “ , and any welfare attorney, ”.
- (13) In section 33(5) of that Act for “or by the nearest relative” there shall be substituted “ , by the nearest relative or by any guardian or welfare attorney who has powers to do so ”.
- (14) In section 34 of that Act—
 - (a) in subsection (1) after “relative” wherever occurring there shall be inserted “ , or guardian or welfare attorney with powers to do so ”
 - (b) in subsection (2) after “relative” where first occurring there shall be inserted “ , guardian or welfare attorney, as the case may be ” and after “relative” where second occurring there shall be inserted “ , guardian or welfare attorney ”
 - (c) in subsection (2) after “relative” there shall be inserted “ or by any guardian or welfare attorney ”.
- (15) In section 35 of that Act—
 - (a) in subsection (1) for “or his nearest relative or both” there shall be substituted “ , his nearest relative, his guardian or his welfare attorney or all of them ”;
 - (b) in subsection (3) after “relative” there shall be inserted “ or by any guardian or welfare attorney ”.
- (16) In section 35B of that Act—
 - (a) in subsection (3)(a) after “patient” where first occurring there shall be inserted “ or any guardian of the patient ” and after “relative” there shall be inserted “ and any welfare attorney of the patient ”;
 - (b) in subsection (4) after “relative” there shall be inserted “ and any welfare attorney of the patient, ”.
- (17) In section 35C of that Act—

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- (a) in subsection (3)(b)(i) after “patient” where first occurring there shall be inserted “ or any guardian of the patient ”and after “relative” there shall be inserted “ and any welfare attorney of the patient ”;
 - (b) in subsection (4) after “relative” there shall be inserted “and any welfare attorney of the patient ”.
- (18) In section 35D of that Act—
- (a) in subsection (1)(a) after “patient” where first occurring there shall be inserted “ or any guardian of the patient ”and after “relative” there shall be inserted “ and any welfare attorney of the patient ”;
 - (b) in subsection (2) after “relative” there shall be inserted “and any welfare attorney of the patient ”.
- (19) In section 35E of that Act—
- (a) in subsection (3)(a) after “patient” where first occurring there shall be inserted “ or any guardian of the patient ”and after “relative” there shall be inserted “ and any welfare attorney of the patient ”;
 - (b) in subsection (4)(a) after “patient” where first occurring there shall be inserted “ or any guardian of the patient ”and after “relative” there shall be inserted “ and any welfare attorney of the patient ”;
 - (c) in subsection (5) after “relative” there shall be inserted “and any welfare attorney of the patient ”.
- (20) In section 35G of that Act—
- (a) in subsection (2)(a) at the beginning there shall be inserted “ any guardian of the patient, and ”and after “relative” there shall be inserted “ and any welfare attorney of the patient ”;
 - (b) in subsection (3) after “relative” there shall be inserted “ and any welfare attorney of the patient ”
- (21) In section 35I of that Act—
- (a) in subsection (2)(a) after “patient” where first occurring there shall be inserted “ or any guardian of the patient ”and after “relative” there shall be inserted “ and any welfare attorney of the patient ”;
 - (b) in subsection (3) after “relative” there shall be inserted “ and any welfare attorney of the patient ”;
 - (c) in subsection (5)(a) at the beginning there shall be inserted “ any guardian of the patient, and ”and after “relative” there shall be inserted “and any welfare attorney of the patient”
- (22) In section 55(3) of that Act for “apart from section 41(2) of this Act” there shall be substituted “but for the appointment of a guardian under the Adults with Incapacity (Scotland) Act 2000 (asp 4)”.
- (23) In section 95 of that Act—
- (a) in subsection (1) after “tutor” there shall be inserted “, guardian”;
 - (b) in subsection (2) after “tutor” there shall be inserted “, guardian”.
- (24) In section 125(1) of that Act—

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- (a) for the definition of “application for admission” and “guardianship application” there shall be substituted—

“application for admission has the meaning assigned to it by section 18 of this Act”;

- (b) in the appropriate place, there shall be inserted—

“guardian includes a guardian (however called) appointed under the law of any country to, or entitled under the law of any country to act for an adult during his incapacity, if the guardianship is recognised by the law of Scotland;”;

“welfare attorney includes a person granted, under a contract, grant or appointment governed by the law of any country, powers (however expressed) relating to the granter’s personal welfare and having effect during the granter’s incapacity;”.

Commencement Information

- I3** Sch. 5 para. 17 partly in force; Sch. 5 para. 17 not in force at Royal Assent see s. 89(2); Sch. 5 para. 17(3)-(21)(24)(b) in force for specified purposes at 2.4.2001; Sch. 5 para. 17(1)(2) in force and Sch. 5 para. 17(3)-(21)(24) in force in so far as not already in force at 1.4.2002 by S.S.I. 2001/81, arts. 2, 3, Schs. 1, 2; Sch. 5 para. 17(23) in force at 1.10.2003 by S.S.I. 2003/267, art. 2(2)(d)

Insolvency Act 1986 (c.45)

- 18 In section 390(4)(c) of the Insolvency Act 1986 at the end there shall be added “or has had a guardian appointed to him under the Adults with Incapacity (Scotland) Act 2000 (asp 4).”.

Legal Aid (Scotland) Act 1986 (c.47)

- 19 In section 36(3) of the Legal Aid (Scotland) Act 1986, after paragraph (b) there shall be inserted—
“(bb) is concerned as claiming or having an interest in the property, financial affairs or personal welfare of an adult under the Adults with Incapacity (Scotland) Act 2000 (asp 4);”.

Financial Services Act 1986 (c.60)

- 20 In section 45(1)(d) of the Financial Services Act 1986 at the end there shall be added “or when acting in the exercise of his functions as Public Guardian under the Adults with Incapacity (Scotland) Act 2000 (asp 4);”.

Access to Health Records Act 1990 (c.23)

- 21 In section 3 of the Access to Health Records Act 1990, in subsection (3) after paragraph (e) there shall be inserted—
“(ee) where the record is held in Scotland and the patient is incapable, within the meaning of the Adults with Incapacity (Scotland) Act 2000 (asp 4) in relation to making or authorising the application, any person entitled to act on behalf of the patient under that Act.”.

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Child Support Act 1991 (c.48)

- 22 In section 50 of the Child Support Act 1991 in subsection (8)(c) for paragraphs (i) and (ii) there shall be substituted “a guardian or other person entitled to act on behalf of the person under the Adults with Incapacity (Scotland) Act 2000 (asp 4).”.

Commencement Information

- I4** Sch. 5 para. 22 wholly in force at 1.4.2002; Sch. 5 para. 22 not in force at Royal Assent see s. 89(2); Sch. 5 para. 22 in force for specified purposes at 2.4.2001 by S.S.I. 2001/81, art. 2, Sch. 1; Sch. 5 para. 22 wholly in force at 1.4.2002 by S.S.I. 2001/81, art. 3, Sch. 2

Social Security Administration Act 1992 (c.5)

- 23 In section 123 of the Social Security Administration Act 1992 in subsection (10) (c) for paragraphs (i) and (ii) there shall be substituted “a guardian or other person entitled to act on behalf of the person under the Adults with Incapacity (Scotland) Act 2000 (asp 4).”.

Commencement Information

- I5** Sch. 5 para. 23 wholly in force at 1.4.2002; Sch. 5 para. 23 not in force at Royal Assent see s. 89(2); Sch. 5 para. 23 in force for specified purposes at 2.4.2001 by S.S.I. 2001/81, art. 2, Sch. 1; Sch. 5 para. 23 wholly in force at 1.4.2002 by S.S.I. 2001/81, art. 3, Sch. 2

Health Service Commissioners Act 1993 (c.46)

- 24 In section 7A of the Health Service Commissioners Act 1993 after “patients)” there shall be inserted “ or ”, “or 50 (orders discharging patients from guardianship)” shall be repealed, and at the end there shall be inserted “ or section 73 of the Adults with Incapacity (Scotland) Act 2000 (asp 4) ”.

Clean Air Act 1993 (c.11)

- 25 In section 64 of the Clean Air Act 1993 in subsection (1) in the definition of “owner” for “tutor or curator” there shall be substituted “ or person entitled to act as the legal representative of a person under disability by reason of nonage or mental or other incapacity ”.

Criminal Procedure (Scotland) Act 1995 (c.46)

- 26 (1) In section 57 of the Criminal Procedure (Scotland) Act 1995—
- (a) in subsection (2)(c) for first “person” there shall be substituted “ person’s personal welfare ”;
 - (b) in subsection (4) after “58(1),” there shall be inserted “ 58(1A), ”;
 - (c) at the end there shall be added—

“(6) Section 58A of this Act shall have effect as regards guardianship orders made under subsection (2)(c) of this section.”.
- (2) In section 58 of that Act—
- (a) for subsection (1) there shall be substituted—

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“(1) Where a person is convicted in the High Court or the sheriff court of an offence, other than an offence the sentence for which is fixed by law, punishable by that court with imprisonment, and the court—

- (a) is satisfied on the written or oral evidence of two medical practitioners (complying with section 61 of this Act) that the grounds set out in section 17(1) of the Mental Health (Scotland) Act 1984 apply in relation to the offender;
- (b) is of the opinion, having regard to all the circumstances including the nature of the offence and the character and antecedents of the offender and to the other available methods of dealing with him, that the most suitable method of disposing of the case is by means of an order under this subsection,

the court may, subject to subsection (2) below, by order authorise his admission to and detention in such hospital as may be specified in the order.

(1A) Where a person is convicted as mentioned in subsection (1) above and the court is satisfied—

- (a) on the evidence of two medical practitioners (complying with section 61 of this Act and with any requirements imposed under section 57(3) of the Adults with Incapacity (Scotland) Act 2000 (asp 4)) that the grounds set out in section 58(1)(a) of that Act apply in relation to the offender;
- (b) that no other means provided by or under this Act would be sufficient to enable the offender’s interests in his personal welfare to be safeguarded or promoted,

the court may, subject to subsection (2) below, by order place the offender’s personal welfare under the guardianship of such local authority or of such other person approved by a local authority as may be specified in the order.”;

- (b) in subsections (2), (3) and (10) for “subsection (1)” there shall be substituted “subsection (1) or (1A) ”;
- (c) in subsections (5) and (7) after “subsection (1)” there shall be inserted “ or paragraph (a) of subsection (1A), ”;
- (d) for subsection (6) there shall be substituted—

“(6) An order placing a person under the guardianship of a local authority or of any other person (in this Act referred to as “a guardianship order”) shall not be made under this section unless the court is satisfied—

- (a) on the report of a mental health officer (complying with any requirements imposed by section 57(3) of the Adults with Incapacity (Scotland) Act 2000 (asp 4)) giving his opinion as to the general appropriateness of the order sought, based on an interview and assessment of the person carried out not more than 30 days before it makes the order, that it is necessary in the interests of the personal welfare of the person that he should be placed under guardianship;
- (b) that any person nominated to be appointed a guardian is suitable to be so appointed;

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- (c) that the authority or person is willing to receive that person into guardianship; and
- (d) that there is no other guardianship order, under this Act or the Adults with Incapacity (Scotland) Act 2000 (asp 4), in force relating to the person.”;
- (e) at the end there shall be added—
 - “(11) Section 58A of this Act shall have effect as regards guardianship orders made under subsection (1) of this section.”.

(3) After section [F⁴60A] of that Act there shall be inserted—

Intervention orders

The court may instead of making a hospital order under section 58(1) of this Act or a guardianship order under section 57(2)(c) or 58(1A) of this Act, make an intervention order [F⁶(as defined in section 53(1) of the Adults with Incapacity (Scotland) Act 2000 (asp 4)] where it considers that it would be appropriate to do so.”.

- (4) In section 61 of that Act—
- (a) in subsection (1), for “and 58(1)(a)” there shall be substituted “, 58(1)(a) and 58(1A)(a)”;
 - (b) in subsection (2), after “section 58(1)(a)” there shall be inserted “ or 58(1A)(a)”;
 - (c) in subsection (3) for “and 58(1)(a)” there shall be substituted “, 58(1)(a) and 58(1A)(a)”.

Textual Amendments

- F4** Words in Sch. 5 para. 26(3) substituted (1.10.2001) by 2001 asp 8, s. 79, Sch. 3 para. 23(7)(a); S.S.I. 2001/304, art. 2(b)(d)
- F5** Word in Sch. 5 para. 26(3) substituted (1.10.2001) by 2001 asp 8, s. 79, Sch. 3 para. 23(7)(b); S.S.I. 2001/304, art. 2(b)(d)
- F6** Words in Sch. 5 para. 26(3) inserted (1.10.2001) by 2001 asp 8, s. 79, Sch. 3 para. 23(7)(c); S.S.I. 2001/304, art. 2(b)(d)

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