



Adults with Incapacity (Scotland) Act 2000

2000 asp 4

PART 7

MISCELLANEOUS

87 Interpretation

(1) In this Act, unless the context otherwise requires—

“adult” shall be construed in accordance with section 1;

“continuing attorney” shall be construed in accordance with section 15;

“guardianship order” shall be construed in accordance with section 58;

“incapable” and “incapacity” shall be construed in accordance with section 1;

“intervention order” shall be construed in accordance with section 53;

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39), and references to a local authority shall be construed as references to the local authority for the area in which the adult resides;

“managers of an establishment” shall be construed in accordance with schedule 1;

“mental disorder” means mental illness (including personality disorder) or mental handicap however caused or manifested; but an adult shall not be treated as suffering from mental disorder by reason only of promiscuity or other immoral conduct, sexual deviancy, dependence on alcohol or drugs, or acting as no prudent person would act;

“Mental Welfare Commission” means the Mental Welfare Commission for Scotland continued in being by section 2 of the 1984 Act;

“nearest relative” means, subject to subsection (2), the person who would be, or would be exercising the functions of, the adult’s nearest relative under sections 53 to 57 of the 1984 Act if the adult were a patient within the meaning of that Act and notwithstanding that the person neither is nor was caring for the adult for the purposes of section 53(3) of that Act;

Status: This is the original version (as it was originally enacted).

“office holder”, in relation to a guardian, means the chief social work officer of the local authority;

“person claiming an interest” includes the local authority, the Mental Welfare Commission and the Public Guardian;

“power of attorney” includes a factory and commission;

“prescribe”, except for the purposes of anything which may be or is to be prescribed by the Public Guardian, means prescribe by regulations; and “prescribed” shall be construed accordingly;

“primary carer” in relation to an adult, means the person or organisation primarily engaged in caring for him;

“Public Guardian” shall be construed in accordance with section 6;

“State hospital” shall be construed in accordance with section 102 of the National Health Service (Scotland) Act 1978 (c. 29);

“substitute guardian” shall be construed in accordance with section 63;

“welfare attorney” shall be construed in accordance with section 16;

“withdrawer” shall be construed in accordance with section 26;

“the 1984 Act” means the Mental Health (Scotland) Act 1984 (c. 36).

(2) Where—

- (a) an adult has no spouse or has a spouse but subsection (3) applies; and
- (b) a person of the same sex as the adult—

- (i) is and has been, for a period of not less than 6 months, living with the adult in a relationship which has the characteristics, other than that the persons are of the opposite sex, of the relationship between husband and wife; or

- (ii) if the adult is for the time being an in-patient in a hospital, had so lived with the adult until the adult was admitted;

then that person shall be treated as the nearest relative.

(3) This subsection applies where the adult’s spouse is permanently separated from the adult, either by agreement or under an order of a court, or has deserted, or been deserted by, the adult for a period and the desertion persists.

(4) For the purposes of this Act, a person is bankrupt if his estate has been sequestrated for insolvency or he has granted a trust deed which has become a protected trust deed under Schedule 5 to the Bankruptcy (Scotland) Act 1985 (c. 66), or he has been adjudged bankrupt in England and Wales, or he has become bankrupt (however expressed) under the law of any other country.