
Changes to legislation: There are currently no known outstanding effects for the Adults with Incapacity (Scotland) Act 2000, Paragraph 6. (See end of Document for details)

SCHEDULE 4 CONTINUATION OF EXISTING CURATORS, TUTORS, GUARDIANS AND ATTORNEYS UNDER THIS ACT

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
- [^{F1}(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.]
- [^{F2}(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 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—

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- (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

- F1** 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)
- F2** 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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