
SCOTTISH STATUTORY INSTRUMENTS

2014 No. 123

ADULTS WITH INCAPACITY

**The Adults with Incapacity (Supervision of
Welfare Guardians etc. by Local Authorities)
(Scotland) Amendment Regulations 2014**

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| <i>Made</i> | - - - - | <i>6th May 2014</i> |
| <i>Laid before the Scottish Parliament</i> | - - - - | <i>8th May 2014</i> |
| <i>Coming into force</i> | - - | <i>9th June 2014</i> |

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 10(3)(a) and (b) and 86(2) of the Adults with Incapacity (Scotland) Act 2000⁽¹⁾ and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Adults with Incapacity (Supervision of Welfare Guardians etc. by Local Authorities) (Scotland) Amendment Regulations 2014 and come into force on 9th June 2014.

Amendment of the Adults with Incapacity (Supervision of Welfare Guardians etc. by Local Authorities) (Scotland) Regulations 2002

2. The Adults with Incapacity (Supervision of Welfare Guardians etc. by Local Authorities) (Scotland) Regulations 2002⁽²⁾ are amended as follows.

3. In regulation 2(1) (duties of local authority)—

- (a) after “one year or more” insert “, subject to regulation 2A,”; and
- (b) for “six” in both places where it occurs substitute “twelve”.

4. Omit regulation 2(2) and substitute—

“(2) Where that guardian has been appointed for a period of less than one year the local authority shall arrange—

(1) 2000 asp 4.

(2) S.S.I. 2002/95; as amended by S.S.I. 2005/630.

- (a) for the adult and the guardian to be visited within 3 months of the guardianship order being granted; and
- (b) for the guardian to be contacted no less than 3 months before the expiry of the guardianship order in order to consider renewal of the order and other arrangements for the welfare of the adult.

(2A) For the purposes of paragraph (2), contact with the guardian may be by email, telephone or visit.”.

5. After regulation 2 insert—

“Variation or cessation of local authorities duties

2A.—(1) This regulation applies where a guardian with functions in relation to the personal welfare of an adult has been appointed for a period of one year or more, and the adult and the guardian have been visited within three months of the guardianship order being granted and at least once at an interval of not more than twelve months in accordance with regulation 2(1) (duties of local authorities).

(2) The local authority may decide to—

- (a) vary the arrangements for visits thereafter to the adult and guardian so that the intervals between visits are more than twelve months; or
- (b) cease visits to the adult or the guardian or both.

(3) The local authority must not decide in accordance with paragraph (2) where either the adult or the guardian objects to the proposed variation or cessation.

(4) Where a local authority decides in accordance with paragraph (2) it must notify the Mental Welfare Commission in the form prescribed in the Schedule to these Regulations.

(5) A local authority may decide, at any time after making a decision in accordance with paragraph (2), to—

- (a) vary the arrangements for visits so that the interval between visits is not more than twelve months, in accordance with regulation 2(1)(b); or
- (b) restart visits, where they have ceased.

(6) A local authority may decide in accordance with paragraph (5) of its own accord, or at the request of the adult or the guardian.”.

6. In regulation 3 (information to be provided)—

- (a) for “shall from time to time” in both places where it occurs substitute “must, on request by the local authority,”; and
- (b) omit “, as the local authority may reasonably require” in both places where it occurs.

7. After regulation 3 insert—

“3A. Nothing in regulation 3 (information to be provided) prevents—

- (a) a guardian providing to the local authority, without having been requested, any reports or other information which the guardian considers relevant to the personal welfare of the adult or the exercise by that guardian of that guardian’s power in relation to the personal welfare of the adult; and
- (b) a person authorised under an intervention order providing to the local authority, without having been requested, any reports or other information which the person considers relevant to the personal welfare of the adult or the exercise by that person of that person’s functions.”.

8. As the Schedule to the Adults with Incapacity (Supervision of Welfare Guardians etc. by Local Authorities (Scotland) Regulations 2002, insert—

“SCHEDULE

Regulation 2A

FORM OF NOTICE TO THE MENTAL WELFARE COMMISSION

To the Mental Welfare Commission:

Supervision of *[insert name and address of welfare guardian]* (“**the guardian**”) **who has been appointed as welfare guardian for** *[insert name, address and date of birth of adult to whom the welfare guardian has been appointed]* (“**the adult**”)

[Insert name of the local authority] (“the local authority”) has visited the adult and guardian within 3 months of the relevant guardianship order being granted, and then has visited the adult and guardian at least once at an interval of not more than 12 months.

The local authority has now decided to:

[delete (a), (b), (c) or (d)]

- (a) vary the interval between visits to the adult and guardian to be no more than *[insert the number of months, being more than 12 months]*
- (b) cease visits to the adult
- (c) cease visits to the guardian
- (d) cease visits to the adult and the guardian

The adult and guardian do not object to the decision. *[Give details of what has been done to inform the adult and guardian and what discussions have taken place.]*

[Complete where the decision is to vary the interval between visits]

The reasons for the local authority’s decision to vary the interval between visits are: *[insert a brief description of the current circumstances of the adult and guardian and what, if any, of these circumstances have changed since the application for guardianship was made]*

[Complete where the decision is to cease visits]

The reasons for the local authority’s decision to cease visits to the adult and/or the guardian are: *[insert a brief description of the current circumstances of the adult and guardian and what, if any, of these circumstances have changed since the application for guardianship was made]*

The local authority has provided information to the adult and guardian on how they can contact the local authority if either person wishes visits to the adult and/or the guardian to restart.

[Complete where the decision is to vary the interval between visits or to cease visits to the adult and/or the guardian]

Other relevant details, including any care managements arrangements which will continue are: *[insert any relevant details]*

The date(s) of last visit by the local authority to the adult, and visit or contact with the guardian are *[insert date(s)]*.

Date:

Signed on behalf of the local authority:

[insert name, job title and contact details]

Send a completed copy of this form

by email, from secure networks only, to the Mental Welfare Commission secure email address at MWC.TeamC@nhs.net

by post to:

The Mental Welfare Commission
Casework Manager, Team C
Thistle House
91 Haymarket Terrace
Edinburgh
EH12 5HE.

St Andrew's House,
Edinburgh
6th May 2014

R CUNNINGHAM
Authorised to sign by the Scottish Ministers

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Adults with Incapacity (Supervision of Welfare Guardians etc. by Local Authorities) (Scotland) Regulations 2002 (“the principal Regulations”).

Regulations 3 and 4 alter the interval, as set out in the principal Regulations, between visits with the adult and welfare guardian.

Regulation 5 inserts a process whereby a local authority may consider varying arrangements for visits or ceasing visits. Variation or cessation can only take place if the adult and the guardian do not object.

Where a local authority has decided to vary or cease visits the Mental Welfare Commission must be given notice of the variation or cessation in the form prescribed in the Schedule inserted into the principal Regulations.

Regulations 6 and 7 alter the circumstances under the principal Regulations in which information is to be provided by a welfare guardian or person authorised under an intervention order to a local authority.

Regulation 8 inserts a Schedule into the principal Regulations which prescribes the form of notice referred to in Regulation 5.