

# **ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000**

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## **EXPLANATORY NOTES**

### **THE ACT**

#### **Part 2: Continuing Powers of Attorney and Welfare Powers of Attorney**

##### ***Section 19: Registration of continuing or welfare power of attorney***

75. This section provides for a new statutory process under which continuing and welfare powers of attorney are to be recorded in public registers by the Public Guardian, so that information about the powers is openly available. Subsection (1) provides that continuing and welfare powers of attorney are only valid after registration.
76. Subsection (2) sets out the action required by the Public Guardian to register a continuing or welfare power of attorney. The Public Guardian must be sure that the nominated attorney is prepared to accept the appointment and will then enter the details of the granter and attorney in the public register.
77. Subsection (2)(b) provides for the Public Guardian to issue a certificate of registration, which the attorney may subsequently need to use to confirm that they are validly exercising their powers.
78. Subsection (2)(c) provides for the Public Guardian to inform the Mental Welfare Commission of every registered welfare power of attorney. This will allow monitoring of welfare attorneys by the Mental Welfare Commission.
79. Subsection (3) provides for so called “springing” powers of attorney. It allows documents conferring continuing or welfare powers of attorney to be sent to the Public Guardian, but registration to be postponed until after a specified event has occurred. This event could be the granter losing the capacity to manage his or her own affairs; however it could also be another trigger, such as moving out of their own home. It will be the Public Guardian’s duty to check that the event has occurred before registering the continuing or welfare power of attorney, thus allowing the power to be exercised.
80. Subsection (4) establishes that a copy of the continuing or welfare power of attorney, validated by the Public Guardian, will have the authority recorded in it, as intended by the granter.
81. Subsection (5) places a duty on the Public Guardian to inform the granter, by sending a copy of the document, when the continuing or welfare power of attorney is registered. The document conferring power of attorney may also specify up to two individuals or officials that must also be sent a copy of the power of attorney when the Public Guardian registers it. This could be used to ensure that a relative, for example, or the local authority social work department, were aware that the granter now had a continuing or welfare attorney acting for them.

*These notes relate to the Adults with Incapacity (Scotland)  
Act 2000 (asp 4) which received Royal Assent on 9 May 2000*

82. Subsection (6) allows appeals to the sheriff against the Public Guardian's decisions on whether an attorney accepts their appointment and on whether a springing event as at subsection (3) has occurred.