

ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

EXPLANATORY NOTES

THE ACT

Part 7: Miscellaneous

Schedule 4: Continuation of Existing Curators, Tutors, Guardians and Attorneys Under This Act

431. **Paragraph 1** describes what happens on the “relevant dates” i.e. the dates on which provisions of the Act come into effect, of people who hold the offices of curator bonis, tutor-dative and tutor-at-law. Each of these office-holders will become a guardian to the adult concerned under the new legislation. Former curators bonis will have powers over the whole of the adult’s property and financial affairs as they did previously. Former tutors-dative will retain the powers that they were granted by the court when they were appointed; these are generally welfare powers, but it is possible for the court to confer financial powers. Former tutors-at-law will have powers over the adult’s finances and welfare.
432. **Paragraph 1** further provides that court proceedings for the appointment of a curator bonis, tutor-dative or tutor-at-law already underway when the provisions of the Act are enacted, should continue on the basis of the former law. The effect will be that a curator bonis, tutor-dative or tutor-at-law is appointed, rather than a guardian under the new statutory provisions.
433. **Paragraph 2** deals with the position of people appointed as guardians under the Mental Health (Scotland) Act 1984 when the guardianship provisions of the Act are enacted. They will continue to have the powers conferred on them: to require the adult to reside at a specified place, to require the adult to attend for treatment or training and to require access to be given to doctors, mental health officers and others.
434. **Paragraph 3** provides that any court proceedings in relation to existing office-holders other than their initial appointment, underway when the provisions of the Act are enacted should continue on the basis of the former law. This would apply, for instance, where there was an appeal against the appointment of an existing office-holder.
435. **Paragraph 4** deals with the position when the provisions of the Act are enacted of attorneys with financial or welfare powers that continue on the incapacity of the granter of the power. Such attorneys are to become continuing or welfare attorneys as defined in Part 2 of the Act. However, there is no requirement for the Public Guardian to register the power. There is no need for the documents conferring the power of the attorney to be in the form prescribed in the Act. The attorney does not need to keep records, nor notify the Public Guardian of changes of address, or of his or her proposed resignation.
436. **Paragraph 4** does, however, require continuing and welfare attorneys appointed before the Act to observe the general principles at section 1 and come under the general supervisory and investigative jurisdiction of the relevant statutory authority. The

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

statutory authority would investigate if a complaint was made about such an attorney and would supervise them if ordered to do so by the courts. The attorney's authority would terminate on his or her divorce from the grantor, unless the power of attorney provides otherwise.

437. [Paragraph 5](#) deals with the position, when the Act comes into force, of hospital managers who have been managing patients' money under section 94 of the 1984 Act. They may continue to do so, but will be subject to the new requirements imposed on managers in Part 4.
438. [Paragraph 6](#) sets out which provisions of the new legislation are to apply to former curators bonis, tutors-dative and tutors-at-law and Mental Health Act guardians, who have become guardians under the provisions of the legislation.
439. Sub-paragraph (2) provides that the court order appointing the office-holder is to have the same effect as the Public Guardian's certificate of appointment in authorising the guardian to manage the adult's property and financial affairs and receive payments due to the adult. These provisions would only apply where the guardian had the relevant powers over the adult's finances, by virtue of having been a curator or tutor.
440. Sub-paragraphs (3) and (4) deal with the renewal of existing office-holders' powers after the Act comes into force. Under sub-paragraph (3), the appointments of curator bonis, tutors-dative and tutors-at-law will have to be reconsidered by the court within 5 years. Guardians who were formally Mental Health Act guardians will have their appointment re-considered by the court at the periods set out in the 1984 Act: 6 months after appointment in the first instance and annually thereafter. At that point the court will consider the extent of the guardian's powers which need not be the same as the 3 powers formerly conferred on Mental Health Act guardians.
441. Sub-paragraph (6) provides that the Public Guardian may decide to what extent to apply the provisions of schedule 2: Management of Estate of Adult to existing office holders who become guardians under the provisions of the Act. This will, for example, allow the Public Guardian to require a former curator bonis to produce a management plan and accounts.
442. Sub-paragraph (8) clarifies that former office-holders who become guardians do not have to have their appointment registered by the Public Guardian, as do guardians appointed under the provisions of the Act.
443. [Paragraph 7](#) makes transitional arrangements for the period during which Parts 2, 3 and 4 of the Act will have been commenced but guardianship under Part 6 will not yet have come into force.