



# Adults with Incapacity (Scotland) Act 2000

2000 asp 4

## PART 1

### GENERAL

#### *The Public Guardian*

#### **6 The Public Guardian and his functions**

- (1) The Accountant of Court shall be the Public Guardian.
- (2) The Public Guardian shall have the following general functions under this Act—
  - (a) to supervise any guardian or any person who is authorised under an intervention order in the exercise of his functions relating to the property or financial affairs of the adult;
  - (b) to establish, maintain and make available during normal office hours for inspection by members of the public on payment of the prescribed fee, separate registers of—
    - (i) all documents relating to continuing powers of attorney governed by the law of Scotland;
    - (ii) all documents relating to welfare powers of attorney governed by the law of Scotland;
    - (iii) all authorisations [<sup>F1</sup>relating to intromission] with funds under Part 3;
    - (iv) all documents relating to guardianship orders under Part 6;
    - (v) all documents relating to intervention orders under Part 6,in which he shall enter any matter which he is required to enter under this Act and any other matter of which he becomes aware relating to the existence or scope of the power, authorisation or order as the case may be;
  - (c) to receive and investigate any complaints regarding the exercise of functions relating to the property or financial affairs of an adult made—
    - (i) in relation to continuing attorneys;
    - (ii) concerning intromissions with funds under Part 3;

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*Changes to legislation:* There are currently no known outstanding effects for the Adults with Incapacity (Scotland) Act 2000, Cross Heading: The Public Guardian. (See end of Document for details)

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- (iii) in relation to guardians or persons authorised under intervention orders;
  - (d) to investigate any circumstances made known to him in which the property or financial affairs of an adult seem to him to be at risk;
  - [<sup>F2</sup>(da) to take part as a party in any proceedings before a court or to initiate such proceedings where he considers it necessary to do so to safeguard the property or financial affairs of an adult who is incapable for the purposes of this Act;]
  - (e) to provide, when requested to do so, a guardian, a continuing attorney, a withdrawer or a person authorised under an intervention order with information and advice about the performance of functions relating to property or financial affairs under this Act;
  - (f) to consult the Mental Welfare Commission and any local authority on cases or matters relating to the exercise of functions under this Act in which there is, or appears to be, a common interest.
- (3) In subsection (2)(c) any reference to—
- (a) a guardian shall include a reference to a guardian (however called) appointed under the law of any country to, or entitled under the law of any country to act for, an adult during his incapacity, if the guardianship is recognised by the law of Scotland;
  - (b) a continuing attorney shall include a reference to a person granted, under a contract, grant or appointment governed by the law of any country, powers (however expressed), relating to the granter’s property or financial affairs and having continuing effect notwithstanding the granter’s incapacity.
- [<sup>F3</sup>(4) In subsection 2(f), where a function under this Act is delegated by a local authority to a person in pursuance of an integration scheme prepared under section 1 or 2 of the Public Bodies (Joint Working) (Scotland) Act 2014, the reference to a local authority includes a reference to that person.]

#### Textual Amendments

- F1** Words in s. 6(2)(b)(iii) substituted (5.10.2007) by [Adult Support and Protection \(Scotland\) Act 2007](#) (asp 10), ss. 77(1), 79, [Sch. 1 para. 5\(a\)](#); S.S.I. 2007/334, [art. 2\(b\)](#), Sch. 2 (with savings in arts. 4-6)
- F2** S. 6(2)(da) inserted (5.10.2007) by [Adult Support and Protection \(Scotland\) Act 2007](#) (asp 10), [ss. 67, 79](#); S.S.I. 2007/334, [art. 2\(b\)](#), Sch. 2 (with savings in arts. 4-6)
- F3** S. 6(4) inserted (1.4.2015) by [The Public Bodies \(Joint Working\) \(Scotland\) Act 2014](#) (Consequential Modifications and Saving) Order 2015 (S.S.I. 2015/157), art. 1(1), [sch. para. 4\(2\)](#)

#### Commencement Information

- I1** S. 6 wholly in force at 1.4.2002; s. 6 not in force at Royal Assent see s. 89(2); s. 6(1)(2)(b)(i)-(iii)(c) (i)(ii)(d)(e) in force for specified purposes and 6(2)(f) and (3)(b) wholly in force at 2.4.2001 by S.S.I. 2001/81, [art. 2](#), [Sch. 1](#); s. 6 in force in so far as not already in force at 1.4.2002 by S.S.I. 2001/81, [art. 3](#), [Sch. 2](#)

## 7 The Public Guardian: further provision

- (1) The Scottish Ministers may prescribe—
- (a) the form and content of the registers to be established and maintained under section 6(2)(b) and the manner and medium in which they are to be established and maintained;

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**Changes to legislation:** *There are currently no known outstanding effects for the Adults with Incapacity (Scotland) Act 2000, Cross Heading: The Public Guardian. (See end of Document for details)*

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- (b) the form and content of any certificate which the Public Guardian is empowered to issue under this Act;
  - (c) the forms and procedure for the purposes of any application required or permitted to be made under this Act to the Public Guardian in relation to any matter;
  - (d) the evidence which the Public Guardian shall take into account when deciding under section 11(2) whether to dispense with intimation or notification to the adult.
- (2) The Public Guardian may charge the prescribed fee for anything done by him in connection with any of his functions under this Act and he shall not be obliged to act until such fee is paid.
- (3) Any certificate which the Public Guardian issues under this Act shall, for the purposes of any proceedings, be conclusive evidence of the matters contained in it.

**Changes to legislation:**

There are currently no known outstanding effects for the Adults with Incapacity (Scotland) Act 2000, Cross Heading: The Public Guardian.