

Status: Point in time view as at 02/04/2001. This version of this schedule contains provisions that are not valid for this point in time.
Changes to legislation: There are currently no known outstanding effects for the Adults with Incapacity (Scotland) Act 2000, SCHEDULE 3. (See end of Document for details)

SCHEDULE 3
(introduced by section 85)
JURISDICTION AND PRIVATE INTERNATIONAL LAW

Commencement Information

- II** Sch. 3 wholly in force at 4.11.2003; Sch. 3 not in force at Royal Assent see s. 89(2); Sch. 3 in force for specified purposes at 2.4.2001 by S.S.I. 2001/81, art. 2, Sch. 1; Sch. 3 in force in so far as not already in force at 4.11.2003 by S.S.I. 2003/516, art. 2

General

- 1 (1) The Scottish judicial and administrative authorities shall have jurisdiction to dispose of an application or other proceedings and otherwise carry out functions under this Act in relation to an adult if—
- (a) the adult is habitually resident in Scotland; or
 - (b) property which is the subject of the application or proceedings or in respect of which functions are carried out under this Act is in Scotland; or
 - (c) the adult, although not habitually resident in Scotland is there or property belonging to the adult is there and, in either case, it is a matter of urgency that the application is or the proceedings are dealt with; or
 - (d) the adult is present in Scotland and the intervention sought in the application or proceedings is of a temporary nature and its effect limited to Scotland.
- (2) As from the ratification date, the Scottish judicial and administrative authorities shall, in addition to the jurisdiction mentioned in sub-paragraph (1) in the circumstances set out therein, have the jurisdiction mentioned in that sub-paragraph in the following circumstances—
- (a) the adult—
 - (i) is a British citizen; and
 - (ii) has a closer connection with Scotland than with any other part of the United Kingdom; and
 - (b) Article 7 of the Convention has been complied with,
- or if the Scottish Central Authority, having received a request under Article 8 of the Convention from an authority of the State in which the adult is habitually resident and consulted such authorities in Scotland as would, under this Act, have functions in relation to the adult, have agreed to the request.
- (3) As from the ratification date, the provisions of the Convention shall apply to the exercise of jurisdiction under this schedule where the adult—
- (a) is habitually resident in a Contracting State other than the United Kingdom; or
 - (b) not being habitually resident in Scotland, is or has been the subject of protective proceedings in such a Contracting State.
- (4) As from the ratification date, any application made to a Scottish judicial or administrative authority under this Act which—
- (a) relates to an adult who is not habitually resident in Scotland; and
 - (b) does not require to be determined as a matter of urgency,

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shall be accompanied by information as to which State the adult habitually resides in and as to any other application relating to the adult which has been dealt with or is being made, or proceedings so relating which have been or are being brought, in any Contracting State other than the United Kingdom.

- (5) For the purposes of this paragraph, an adult—
- (a) whose habitual residence cannot be ascertained; or
 - (b) who is a refugee or has been internationally displaced by disturbance in the country of his habitual residence,

shall be taken to be habitually resident in the State which he is in.

Commencement Information

I2 Sch. 3 para. 1 wholly in force at 4.11.2003; Sch. 3 para. 1 not in force at Royal Assent see s. 89(2); Sch. 3 para. 1(1)(5) in force at 2.4.2001 by S.S.I. 2001/81, art. 2, Sch. 1; Sch. 3 para. 1 in force in so far as not already in force at 4.11.2003 by S.S.I. 2003/516, art. 2

Appropriate sheriff

- 2 (1) The sheriff having jurisdiction under this schedule to take measures is the sheriff in whose sheriffdom—
- (a) in relation to a case falling within paragraph 1(1)(a), the adult is habitually resident;
 - (b) in relation to a case falling within paragraph 1(1)(b), the property is located;
 - (c) in relation to a case falling within paragraph 1(1)(c), the adult or property belonging to the adult is present;
 - (d) in relation to a case falling within paragraph 1(1)(d), the adult is present.
- (2) The sheriff shall also have jurisdiction to vary or recall any intervention order or guardianship order made by him under this Act if no Contracting State other than the United Kingdom has, by way of its judicial or administrative authorities, jurisdiction; and—
- (a) no other court or authority has jurisdiction; or
 - (b) another court or authority has jurisdiction but—
 - (i) it would be unreasonable to expect an applicant to invoke it; or
 - (ii) that court or authority has declined to exercise it.
- (3) Notwithstanding that any other judicial or administrative authority has jurisdiction under sub-paragraph (1)(a) to take measures, a sheriff shall have jurisdiction to take measures if—
- (a) the adult is present in the sheriffdom; and
 - (b) the sheriff considers that it is necessary, in the interests of the adult, to take the measures immediately.
- (4) Where, by operation of paragraph 1, jurisdiction falls to be exercised by a sheriff but the case is one appearing to fall outside sub-paragraphs (1) and (2), the sheriff having jurisdiction is the Sheriff of the Lothians and Borders at Edinburgh.

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Commencement Information

- I3** Sch. 3 para. 2 wholly in force at 4.11.2003; Sch. 3 para. 2 not in force at Royal Assent see s. 89(2); Sch. 3 para. 2(1)(3)(4) in force at 2.4.2001 by S.S.I. 2001/81, art. 2, Sch. 1; Sch. 3 para. 2 in force in so far as not already in force at 4.11.2003 by S.S.I. 2003/516, art. 2

Applicable law

- 3 (1) The law applicable to anything done under this Act by a Scottish judicial or administrative authority in relation to an adult is the law of Scotland.
- (2) Sub-paragraph (1) does not prevent a Scottish judicial or administrative authority from applying the law of a country other than Scotland if, in circumstances which demonstrate a substantial connection with that other country and having regard to the interests of the adult, it appears appropriate to do so.
- (3) Such an authority shall, however, in the exercise of the powers conferred by section 18 of this Act, take into consideration to the extent possible the law which, as provided in paragraph 4, governs the power of attorney.
- (4) Where a measure for the protection of an adult has been taken in one State and is implemented in another, the conditions of its implementation are governed by the law of that other State.
- (5) Any question whether a person has authority by virtue of any enactment or rule of law to represent an adult shall be governed—
- (a) where such representation is for the purposes of the immediate personal welfare of the adult and the adult is in Scotland, by the law of Scotland; and
 - (b) in any other case, by the law of the country in which the adult is habitually resident.
- 4 (1) The law governing the existence, extent, modification and extinction of continuing or welfare powers of attorney (including like powers, however described) shall be that of the State in which the granter habitually resided at the time of the grant of these powers.
- (2) Where, however, the granter of such a power of attorney so provides in writing, the law so applicable shall instead be the law of a State—
- (a) of which the granter is a national;
 - (b) in which the granter was habitually resident before the grant; or
 - (c) in which the property of the granter is located.
- (3) The manner of exercise of such a power shall be governed by the law of the State in which its exercise takes place.
- (4) The law of a State may be applied under sub-paragraph (2)(c) above only in respect of the property referred to in that provision.
- (5) Nothing in sub-paragraphs (1) and (2) prevents the sheriff from exercising powers under section 20 of this Act if a power of attorney is not being exercised so as to safeguard the welfare or property of the granter.
- (6) It is not an objection to the validity of any contract or other transaction between a person acting or purporting to act as the representative of an adult and any other

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person that the person so acting or purporting to act was not entitled so to act under the law of a country other than the country where the contract or other transaction was concluded.

- (7) Sub-paragraph (6) does not, however, apply where the other person knew or ought to have known that the entitlement so to act of the person acting or purporting to act as representative was governed by the law of that other country.
- (8) Sub-paragraph (6) applies only if the persons entering into the contract or other transaction were, when they did so, both (or all) in the same country.
- 5 Nothing in this schedule displaces any enactment or rule of law which has mandatory effect for the protection of an adult with incapacity in Scotland whatever law would otherwise be applicable.
- 6 Nothing in this schedule requires or enables the application in Scotland of any provision of the law of a country other than Scotland so as to produce a result which would be manifestly contrary to public policy.

Recognition and enforcement

- 7 (1) Any measure taken under the law of a country other than Scotland for the personal welfare or the protection of property of an adult with incapacity shall, if one of the conditions specified in sub-paragraph (2) is met, be recognised by the law of Scotland.
- (2) These conditions are—
- (a) that the jurisdiction of the authority of the other country was based on the adult's habitual residence there;
- (b) that the United Kingdom and the other country were, when the measure was taken, parties to the Convention and the jurisdiction of the authority of the other country was based on a ground of jurisdiction provided for in the Convention.
- (3) Recognition of a measure may, however, be refused—
- (a) if, except in a case of urgency—
- (i) the authority which took it did so without the adult to whom it related being given an opportunity to be heard; and
- (ii) these circumstances constituted a breach of natural justice;
- (b) if it would be manifestly contrary to public policy to recognise the measure;
- (c) if the measure conflicts with any enactment or rule of law of Scotland which is mandatory whatever law would otherwise be applicable;
- (d) if the measure is incompatible with a later measure taken in Scotland or recognised by the law of Scotland;
- (e) if the measure would have the effect of placing the adult in an establishment in Scotland and—
- (i) the Scottish Central Authority has not previously been provided with a report on the adult and a statement of the reasons for the proposed placement and has not been consulted on the proposed placement; or
- (ii) where the Authority has been provided with such a report and statement and so consulted, it has, within a reasonable time thereafter, declared that it disapproves of the proposed placement.

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I4 Sch. 3 para. 7 wholly in force at 4.11.2003; Sch. 3 para. 7 not in force at Royal Assent see s. 89(2); Sch. 3 para. 7(1)(2)(a)(3)(a)-(d) in force at 2.4.2001 by S.S.I. 2001/81, art. 2, Sch. 1; Sch. 3 para. 7 in force in so far as not already in force at 4.11.2003 by S.S.I. 2003/516, art. 2

- 8 (1) A measure which is enforceable in the country of origin and which is recognised under paragraph 7 by the law of Scotland may, in accordance with rules of court, be registered.
- (2) A measure so registered shall be as enforceable as a measure having the like effect granted by a court in Scotland.
- 9 (1) For the purposes of recognition or enforcement of a measure taken outside Scotland in relation to an adult, findings of fact going to jurisdiction made by the authority taking the measure are conclusive of the facts found.
- (2) The validity or merits of a measure falling to be recognised by the law of Scotland by virtue of this schedule shall not be questioned in any proceedings except for the purposes of ascertaining its compliance with any provision of this schedule.
- 10 (1) The Scottish Ministers may, by order, provide for the recognition and enforcement of orders made and other measures taken by authorities in any part of the United Kingdom other than Scotland.
- (2) The provision so made shall accord no less recognition and secure that these orders and measures are no less enforceable than if they were measures which are recognised by the law of Scotland under paragraph 7.

VALID FROM 04/11/2003

Co-operation, avoidance of conflict of jurisdiction and compliance with the Convention

- 11 (1) Her Majesty may by Order in Council confer on the Scottish Central Authority, and the Scottish judicial and administrative authorities such powers, and impose on them such duties additional, in each case, to those which they have under this Act, as are necessary or expedient to enable them to give effect in Scotland to the Convention on and after the ratification date.
- (2) An Order in Council under sub-paragraph (1) shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (3) A certificate delivered in pursuance of Article 38 of the Convention by a designated authority of a Contracting State other than Scotland shall be proof of the matters stated in it unless the contrary is proved.

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VALID FROM 04/11/2003

General

- 12 No provision of this schedule deriving from or giving effect to the Convention extends to any matter to which the Convention, by Article 4 thereof, does not apply.
- 13 Orders or regulations under this schedule shall be made by statutory instrument subject to annulment in pursuance of a resolution of the Scottish Parliament.
- 14 In this schedule—
- “the Convention” means the Hague Convention of 13 January 2000 on the International Protection of Adults; a “measure for the personal welfare or protection of the property” of an adult with incapacity includes any order, direction or decision effecting or relating to—
- (a) the determination of the incapacity and the institution of appropriate measures of protection;
 - (b) the placing of the adult under the protection of a judicial or administrative authority;
 - (c) guardianship, curatorship or analogous institutions;
 - (d) the appointment and functions of any person or body having charge of the adult’s person or property or otherwise representing the adult;
 - (e) the placement of the adult in an establishment or other place where the personal welfare of the adult is safeguarded;
 - (f) the administration, conservation or disposal of the adult’s property; or
 - (g) the authorisation of a specific intervention for the personal welfare or protection of the property of the adult; the “ratification date” means the date when the Convention is ratified as respects Scotland; the “Scottish Central Authority” means—
- (a) an authority designated under Article 28 of the Convention for the purposes of acting as such; or
 - (b) if no authority has been so designated any authority appointed by the Scottish Ministers for the purposes of carrying out the functions to be carried out under this schedule by the Scottish Central Authority;
- the “Scottish judicial and administrative authorities” means the courts having functions under this Act and the Public Guardian, the Mental Welfare Commission, local authorities and supervisory bodies.

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