



Adults with Incapacity (Scotland) Act 2000

2000 asp 4

PART 2

CONTINUING POWERS OF ATTORNEY AND WELFARE POWERS OF ATTORNEY

16 Creation and exercise of welfare power of attorney

- (1) An individual may grant a power of attorney relating to his personal welfare in accordance with the following provisions of this section.
- (2) In this Act a power of attorney granted under this section is referred to as a “welfare power of attorney” and an individual on whom such power is conferred is referred to as a “welfare attorney”.
- (3) A welfare power of attorney shall be valid only if it is expressed in a written document which—
 - (a) is subscribed by the granter;
 - (b) incorporates a statement which clearly expresses the granter’s intention that the power be a welfare power to which this section applies;
 - [^{F1}(ba) states that the granter has considered how a determination as to whether he is incapable in relation to decisions about the matter to which the welfare power of attorney relates may be made for the purposes of subsection (5)(b);]
 - (c) incorporates a certificate in the prescribed form by [^{F2}a practising solicitor] or by a member of another prescribed class that—
 - (i) he has interviewed the granter immediately before the granter subscribed the document;
 - (ii) he is satisfied, either because of his own knowledge of the granter or because he has consulted [^{F3}another person] (whom he names in the certificate) who [^{F4}has] knowledge of the granter, that at the time the welfare power of attorney is granted the granter understands its nature and extent;
 - (iii) he has no reason to believe that the granter is acting under undue influence or that any other factor vitiates the granting of the power.

Changes to legislation: There are currently no known outstanding effects for the Adults with Incapacity (Scotland) Act 2000, Section 16. (See end of Document for details)

- (4) [^{F5}A practising solicitor] or member of another prescribed class may not grant a certificate under subsection (3)(c) if he is the person to whom the power of attorney has been granted.
- (5) A welfare power of attorney—
- (a) may be granted only to an individual (which does not include a person acting in his capacity as an officer of a local authority or other body established by or under an enactment); and
 - (b) shall not be exercisable unless—
 - (i) the granter is incapable in relation to decisions about the matter to which the welfare power of attorney relates; or
 - (ii) the welfare attorney reasonably believes that sub-paragraph (i) applies.
- (6) A welfare attorney may not—
- (a) place the granter in a hospital for the treatment of mental disorder against his will; ^{F6} ...
 - (b) consent on behalf of the granter to any form of treatment [^{F7}in relation to which the authority conferred by section 47(2) does not apply by virtue of regulations made under section 48(2)]^{F8};
 - (c) make, on behalf of the granter, a request under section 4(1) of the Anatomy Act 1984 (c. 14);
 - (d) give, on behalf of the granter, an authorisation under, or by virtue of, section 6(1), [^{F9}16F(1)(a),] 17, 29(1) or 42(1) of the Human Tissue(Scotland) Act 2006 (asp 4);
 - [^{F10}(da) withdraw an authorisation, on behalf of the granter, by virtue of section 6A(1) of that Act;
 - (db) make, on behalf of the granter, an opt-out declaration by virtue of section 6B(1) of that Act;
 - (dc) withdraw an opt-out declaration, on behalf of the granter, by virtue of section 6C(1) of that Act;] or
 - (e) make, on behalf of the granter, a nomination under section 30(1) of that Act]
- (7) A welfare power of attorney shall not come to an end in the event of the bankruptcy of the granter or the welfare attorney.
- (8) Any reference to a welfare attorney—
- (a) in relation to subsection (5)(b) in a case where the granter is habitually resident in Scotland; and
 - (b) in subsection (6),
- 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 personal welfare and having effect during the granter's incapacity.

Textual Amendments

- F1** S. 16(3)(ba) inserted (5.10.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), [ss. 57\(2\)\(a\)](#), 79; [S.S.I. 2007/334](#), [art. 2\(b\)](#), Sch. 2 (with savings in arts. 4-6)
- F2** Words in s. 16(3)(c) substituted (5.10.2007) by virtue of [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), [ss. 57\(2\)\(b\)\(i\)](#), 79; [S.S.I. 2007/334](#), [art. 2\(b\)](#), Sch. 2 (with savings in arts. 4-6)

Changes to legislation: There are currently no known outstanding effects for the Adults with Incapacity (Scotland) Act 2000, Section 16. (See end of Document for details)

- F3** Words in s. 16(3)(c)(ii) substituted (1.4.2008) by Adult Support and Protection (Scotland) Act 2007 (asp 10), **ss. 57(2)(b)(ii)**, 79(3); S.S.I. 2008/49, art. 2(1)
- F4** Word in s. 16(3)(c)(ii) substituted (1.4.2008) by Adult Support and Protection (Scotland) Act 2007 (asp 10), **ss. 57(2)(b)(iii)**, 79(3); S.S.I. 2008/49, art. 2(1)
- F5** Words in s. 16(4) substituted (5.10.2007) by Adult Support and Protection (Scotland) Act 2007 (asp 10), **ss. 57(2)(c)**, 79; S.S.I. 2007/334, **art. 2(b)**, Sch. 2 (with savings in arts. 4-6)
- F6** Word in s. 16(6)(a) repealed (1.9.2006) by Human Tissue (Scotland) Act 2006 (asp 4), **ss. 57(2)(a)**, 62; S.S.I. 2006/251, **art. 3**
- F7** Words in s. 16(6)(b) substituted (5.10.2007) by Adult Support and Protection (Scotland) Act 2007 (asp 10), **ss. 57(2)(d)**, 79; S.S.I. 2007/334, **art. 2(b)**, Sch. 2 (with savings in arts. 4-6)
- F8** S. 16(6)(c)-(e) and preceding word inserted (1.9.2006) by Human Tissue (Scotland) Act 2006 (asp 4), **ss. 57(2)(b)**, 62; S.S.I. 2006/251, **art. 3**
- F9** Word in s. 16(6)(d) inserted (26.3.2021) by Human Tissue (Authorisation) (Scotland) Act 2019 (asp 11), **ss. 28(2)(a)(i)**, 29(2); S.S.I. 2021/108, reg. 2
- F10** S. 16(6)(da)-(dc) inserted (26.3.2021) by Human Tissue (Authorisation) (Scotland) Act 2019 (asp 11), **ss. 28(2)(a)(ii)**, 29(2); S.S.I. 2021/108, reg. 2

Changes to legislation:

There are currently no known outstanding effects for the Adults with Incapacity (Scotland) Act 2000, Section 16.