



# 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;
  - (c) incorporates a certificate in the prescribed form by a 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 other persons (whom he names in the certificate) who have 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.
- (4) A 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—

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*Status: This is the original version (as it was originally enacted).*

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- (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; or
  - (b) consent on behalf of the granter to any form of treatment mentioned in section 48(1) or (2).
- (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.