



# Adults with Incapacity (Scotland) Act 2000

2000 asp 4

## PART 2

### CONTINUING POWERS OF ATTORNEY AND WELFARE POWERS OF ATTORNEY

#### **20 Powers of sheriff**

- (1) An application for an order under subsection (2) may be made to the sheriff by any person claiming an interest in the property, financial affairs or personal welfare of the granter of a continuing or welfare power of attorney.
- (2) Where, on an application being made under subsection (1), the sheriff is satisfied that the granter is incapable in relation to decisions about, or of acting to safeguard or promote his interests in, his property, financial affairs or personal welfare insofar as the power of attorney relates to them, and that it is necessary to safeguard or promote these interests, he may make an order—
  - (a) ordaining that the continuing attorney shall be subject to the supervision of the Public Guardian to such extent as may be specified in the order;
  - (b) ordaining the continuing attorney to submit accounts in respect of any period specified in the order for audit to the Public Guardian;
  - (c) ordaining that the welfare attorney shall be subject to the supervision of the local authority to such extent as may be specified in the order;
  - (d) ordaining the welfare attorney to give a report to him as to the manner in which the welfare attorney has exercised his powers during any period specified in the order;
  - (e) revoking—
    - (i) any of the powers granted by the continuing or welfare power of attorney; or
    - (ii) the appointment of an attorney.
- (3) Where the sheriff makes an order under this section the sheriff clerk shall send a copy of the interlocutor containing the order to the Public Guardian who shall—
  - (a) enter prescribed particulars in the register maintained by him under section 6(2)(b)(i) or (ii) as the case may be;

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*Status: This is the original version (as it was originally enacted).*

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- (b) notify—
  - (i) the granter;
  - (ii) the continuing or welfare attorney;
  - (iii) where it is the welfare attorney who is notified, the local authority and (in a case where the incapacity of the granter is by reason of, or reasons which include, mental disorder) the Mental Welfare Commission;
  - (iv) where the sheriff makes an order under subsection (2)(c), the local authority.

(4) A decision of the sheriff under subsection (2)(a) to (d) shall be final.

(5) In this section any reference to—

- (a) a continuing power of attorney shall include a reference to a power (however expressed) under a contract, grant or appointment governed by the law of any country, relating to the granter's property or financial affairs and having continuing effect notwithstanding the granter's incapacity;
- (b) a welfare power of attorney shall include a reference to a power (however expressed) under a contract, grant or appointment governed by the law of any country, relating to the granter's personal welfare and having effect during the granter's incapacity,

and "continuing attorney" and "welfare attorney" shall be construed accordingly.