

ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000
CONSULTATION ON DRAFT REGULATIONS
RESPONSE BY INVERCLYDE COUNCIL

Inverclyde Council welcomes the opportunity to comment on the draft regulations.

As stated in the covering letter from Frances McQueen, the regulations are largely technical and administrative and support the legislative changes to the 2000 Act agreed by parliament. The Council recognises that the regulations form part of the implementation process and would offer the following comments:

The Adults with Incapacity (Certificates in relation to Powers of Attorney) (Scotland) Regulations 2008

Sections 15(3)(c) and 16(3)(c)

Inverclyde Council supports the proposal to make a regulation to introduce single, multi use certificate.

It is the Council's view that the format of a single certificate is clear and well laid out and will be less confusing in terms of completion.

Section 22(2)(b) certificate

Inverclyde Council supports the proposal to make a regulation prescribing a certificate to support a revocation notice in relation to a Power of Attorney.

Currently, the granter only has to send written notification to the Public Guardian where they are wishing to revoke a grant of Power of Attorney. This arrangement could leave a vulnerable adult open to abuse and exploitation as there is no way of verifying this written notification or ensuring that the adult fully understands the decision they are making and that the decision to revoke was not made under duress. The introduction of the certificate will ensure the adult is more adequately protected when making this decision to revoke.

Comments on Regulatory Impact Assessment

The RIA highlights that there will be a financial cost to the granter in terms of obtaining a certificate to support a revocation of a Power of Attorney and states that the cost should be no more than those incurred in making a grant of a Power of Attorney. However presumably in most cases the adult will then require another certificate should they wish to appoint someone else. If a certifier is asked to sign both certificates, presumably they would be able to levy two charges. The RIA does not specifically highlight this.

These additional financial costs could be disadvantageous to vulnerable adults particularly as there appears to be a variation in the fees which different groups of prescribed persons may charge for signing a certificate. It is the Council's view therefore that there is a risk of an adult revoking a grant and choosing not to make a further nomination because of the additional cost.

While the Council acknowledges that the changes are aimed at protecting those who have fluctuating capacity and vulnerable adults susceptible due to undue influence, it could be the case that an adult wishes to change the Power of Attorney, but wishes to make no changes to the powers being granted. The assessment by the prescribed person of the adult's capacity to revoke a grant and make a new nomination is likely to be done simultaneously and other than in cases where the granter wishes to make a variation to the powers, it is likely to involve little additional time commitment.

Inverclyde Council would propose therefore that there would be benefit in having one certificate to revoke and re-nominate where the adult wishes to change the attorney, but not vary the powers. This would reduce the financial cost to the adult in terms of the fees for certification and registration with the Public Guardian; reduce the time commitment for prescribed persons who would only have one certificate to sign, and the time commitment for the Public Guardian who would only have to process one set of paperwork.

The Adult with Incapacity (Accounts and Funds) (Scotland) Regulations 2008

Inverclyde Council supports the introduction of these regulations.

It is the Council's view that the medical form to accompany an application is clear and fit for purpose.

It is felt to be appropriate and necessary for the Public Guardian to be provided with the information in order to maintain adequate records and fulfil their monitoring role.

Inverclyde Council support the regulation to prescribe a 21 day period to allow for objections, where the Public Guardian has advised of the intention to refuse an application. The 21 day timescale appears reasonable, and mirrors the timescale for notifications for objections in relation to other interventions under the act.

The Adult with Incapacity (Recall) of Guardians' Powers) (Scotland) Amendment Regulations 2008

Inverclyde Council supports the making of these regulations which will allow the schedule 1 to include a statement highlighting that the Mental Welfare Commission is no longer able to recall welfare powers in relation to cases where a Guardianship order is made in relation to and adult whose incapacity is due to communication difficulties.

Inverclyde Council supports the proposed regulation to allow the schedules to be varied to include a section which will record the views of the adult's named person. This acknowledges the status of a named person (where appointed), and provides opportunity for consultation undertaken with them in respect of this matter, to be reflected in the schedules.

The Adults with Incapacity (Reports in Relation to Guardianship and Intervention Orders) (Scotland) Amendment Regulations 2008

In principle, Inverclyde Council welcomes the simplified forms relating to the renewal of guardianship and particularly the new requirement for a report from the Public Guardian in respect of renewal of financial guardianship. It would be the Council's view that this requirement is applied to the renewal of all financial guardianships, so that the revised regulations (3 & 4) would pertain to the renewal of welfare guardianship only, and not to the renewal of welfare and financial guardianship. Cognizance of the fact the Public Guardian is the most appropriate person to comment on the performance of a financial guardian at the point of renewal, is as important where guardians have a combination of powers, as opposed to those who have only powers in relation to property and finance.

The provision of a report by the Public Guardian allows an expert opinion to be given on both the applicant's previous performance as a financial guardian, and their continuing suitability. This opinion would be based on factual evidence gathered from the Public Guardian exercising their supervisory functions in respect of the guardian during the operation of the order. The Council notes that the schedule permits the Public Guardian to reflect his opinion in some detail via a text box. The Council notes that the same provision to be able to elaborate on their opinion is not provided to a Mental Health Officer or Chief Social Work Officer in relation to the renewal of a welfare guardianship order.

Inverclyde Council wishes to express some concern regarding the layout of schedules 3 and 6 which prescribe the reports by a Mental Health Officer or Chief Social Work Officer in relation to the renewal of welfare guardianship orders. The format of these schedules only allows the Mental Health Officer or Chief Social Work Officer to express their view that it is appropriate to continue the order and the continuing suitability of the guardian, via a tick box. It is the Council's view that the omission of a tick box allowing the Mental Health Officer or Chief Social Work Officer to clearly express disagreement regarding the continuation of the order and the suitability of the guardian requires to be rectified.

Inverclyde Council would also wish to propose that as well the tick box options, there is also a text box which allows the Mental Health Officer or Chief Social Work Officer to elaborate on their opinion which would be based on evidence gathered during the period of the order in relation to the local authority carrying out its functions, particularly in relation to the supervision of private welfare guardians.

The provision of a text box in these schedules would make the format similar to the schedule for a renewal of financial guardianship in terms of the information provided. The consequential benefit to the adult in both instances would be that the Sheriff would have more detailed information on which to base his decision about renewal.

**The Adult Support and Protection (Scotland) Act 2007 (Adults with Incapacity)
(Consequential and Supplementary Provisions) Order 2008**

Inverclyde Council is in agreement with the terms of these provisions. We feel no need to make further comments.

**The Adults with Incapacity (Public Guardian's Fees) (Scotland) Amendment
Regulations 2008**

Inverclyde Council is in agreement with the terms of these regulations. We feel no need to make further comments