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ADW/EB

5th November 2007

Ms Kirsty Robertson,
Civil Justice, Law Reform and International Division,
Scottish Executive,
2 West, St Andrew's House,
Regent Road,
Edinburgh EH1 3DG.

Dear Ms Robertson,

Adults with Incapacity (Scotland) Act 2000
Consultation on draft regulations

I duly received with thanks Frances MacQueen's circular of 16th August 2007 and am grateful for the opportunity to comment on the draft regulations.

I have the following comments, derived from practical experience, on the proposed forms of certificate set out in the Schedules to the proposed "The Adults with Incapacity (Certificates in relation to Powers of Attorney) (Scotland) Regulations 2008".

Regarding the form of certificate in Schedule 1, at item 4 the instruction in italics is not sufficiently clear as to precisely what is required. I would suggest that a better instruction would read as follows: "*Insert name of attorney. If more than one, insert name of each and mark against each name "single", "joint", "substitute", or "joint substitute" as appropriate*". I envisage that "single" would be appropriate where there is a single first attorney, together with one or more substitutes. An alternative formulation might be: "*Insert name(s) of attorney(s), indicating against each "single", "joint", "substitute", "joint substitute", as appropriate*". Where there are joint attorneys and/or joint substitutes, there will often be three or four names altogether, therefore the box should be larger.

The form of certificate in Schedule 2 covers revocation of either the entire Power of Attorney or specific powers granted in it, but does not cover revocation of the appointment of one or more individual attorneys named in the power. That does require to be covered. At item 4, the same comments apply as for item 4 of the draft certificate in Schedule 1.

My only other comments are on the style of certificate by the Public Guardian in Schedule 5 to the proposed "The Adults with Incapacity (Reports in relation to Guardianship and Intervention Orders) (Scotland) Amendment Regulations 2008". I would suggest that after the "opinion" box it would be helpful to have a further box: "where appropriate, state here any reasons for the opinion, or other relevant comments". In some cases this would enable the Public Guardian to provide reasons and/or comments which ought reasonably to be made available to the sheriff in determining the application (or, perhaps, in determining whether to dispense with a hearing).

Yours sincerely,



Adrian D. Ward