

**ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000**  
**Consultation on draft regulations – to be returned by 8 November 2007**  
Ref: [www.scotland.gov.uk/Publications/2007/08/10111218/0](http://www.scotland.gov.uk/Publications/2007/08/10111218/0)

West Dunbartonshire Council welcomes the opportunity to comment on the draft regulations.

As stated in the covering letter 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 are necessary to implement the changes.

We 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) Certificate**

The proposed Certificate format is well laid out and will be less confusing for professionals and individuals than the previous certificates.

The Council supports the change to a single certificate.

It is not possible to comment on the costs involved of completing the certificate within the West Dunbartonshire Council area. Two GP Practices were canvassed.

GP Practice A currently charges between £20 and £40 dependant on the number of certificates signed.

GP Practice B currently charges between £20 -£100 dependent on how well the patient is known to the Doctor.

**Section 22(2) (b) Certificate**

The Council supports the introduction of a certificate to support a revocation notice but would wish to make the following observation.

While acknowledging that the changes propose to protect those who have fluctuating capacity and vulnerable adults susceptible to undue influence, it may be that an adult wishes to revoke a Power of Attorney for various reasons, e.g. in order to appoint another preferred individual or the inability of the existing Attorney to act through illness.

It is anticipated that there will be a fee for signing the certificate of revocation. In some cases the adult will then require another S15 (3) (c) and / or S16 (3) (c) certificate should they wish to appoint someone else. The powers may or may not be the same as a previous Power of Attorney. It is hoped that Certifiers asked to sign both certificates would not charge twice but may do so nevertheless. Evidence of this would be that GP Practice A, mentioned above, charges for the number of certificates signed.

West Dunbartonshire Council would welcome a Schedule 1 certificate added to the revocation certificate, [perhaps after section 4] which can be left blank if not required, so that the Certifier can tick that he/ she is signing either a revocation notice or a revocation and a power of attorney certificate. The rationale for this is that the Council appreciates that some individuals may be put off by the cost of changing their Attorney as there are also other associated costs such as the fee to the Public Guardian for registering a new Power of Attorney. As a result individuals may not take appropriate action to update their Power of Attorney which could result in additional costs to the public purse at a later date should Welfare Guardianship be required.

- **The Adults with Incapacity (Accounts and Funds) (Scotland) Regulations 2008**

. The Medical Form seems clear and the Council has no comments on this.

- **The Adults with Incapacity (Recall of Guardian's Powers) (Scotland) Amendment Regulations 2008**

No comments

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

West Dunbartonshire welcomes the simplified forms relating to the renewal of guardianship.

We believe that the requirement for a report from the Public Guardian in respect of renewal of financial guardianship is appropriate. We suggest; where is a joint welfare and financial guardianship, that, in addition to the Mental Health Officer report, the Public Guardian should also make comment on the conduct of the existing order. The reasoning for this is that the Public Guardian has knowledge of the conduct of guardians who hold joint orders as well those who have property and finance powers only.

We note that the form for the Mental Health Officer and Chief Social Work Officer report provides a tick box to agree that it is appropriate to continue the guardianship but there is no tick box to disagree. There is also a tick box to agree that the guardian continues to be suitable but not one to disagree. We believe that the Mental Health Officer report should provide space to disagree and space to provide comment on the reasons for this opinion, rather than leave an unchecked box. In comparison the Public Guardian form asks for an opinion on the conduct and the suitability of the applicant continuing as guardian and allows for free text.

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

No comments

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

No comments

- **Partial Regulatory Impact assessment**

No comments

**Other relevant comments**

- We suggest that where the changes to the prescribed form require the writer to state the views of the adult's named person, this should read, "named person, if any", as some people do not have anyone who can undertake this role.
- At present when the Office of the Public Guardian receives a request to change the existing Attorney to a named substitute, the Public Guardian may write and ask the substitute if they are willing to act as Attorney. After receiving confirmation the Public Guardian makes the change to their records and notifies the Local Authority and Mental Welfare Commission but we were advised that it is a matter for individual officers if confirmation is sent to the Grantor that the changes have been recorded. The Act appears to be silent on this matter. We believe that the Office of the Public

Guardian procedures should require confirmation to the Grantor that changes have been recorded following the substitution of an Attorney. This ensures that the record is accurate and may avoid any later confusion should there be a simple error such as the letter to the Public Guardian going missing.

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