



# Adults with Incapacity (Scotland) Act 2000

2000 asp 4

## PART 2

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

#### 15 Creation of continuing power of attorney

- (1) Where an individual grants a power of attorney relating to his property or financial affairs in accordance with the following provisions of this section that power of attorney shall, notwithstanding any rule of law, continue to have effect in the event of the granter's becoming incapable in relation to decisions about the matter to which the power of attorney relates.
- (2) In this Act a power of attorney granted under subsection (1) is referred to as a "continuing power of attorney" and a person on whom such power is conferred is referred to as a "continuing attorney".
- (3) A continuing 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 continuing power;
  - <sup>F1</sup>(ba) where the continuing power of attorney is exercisable only if the granter is determined to be incapable in relation to decisions about the matter to which the power relates, states that the granter has considered how such a determination may be made;]
  - (c) incorporates a certificate in the prescribed form by [<sup>F2</sup>a practising 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 [<sup>F3</sup>another person] (whom he names in the certificate) who [<sup>F4</sup>has] knowledge of the granter, that at the time the

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*Changes to legislation: There are currently no known outstanding effects for the Adults with Incapacity (Scotland) Act 2000, Section 15. (See end of Document for details)*

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continuing 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) [<sup>F5</sup>A practising 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.

[<sup>F6</sup>(5) It is declared that the rule of law which provides that an agent's authority ends in the event of the bankruptcy of the principal or the agent applies, and has applied since subsection (1) came into force, in relation to continuing powers of attorney.]

#### Textual Amendments

- F1** S. 15(3)(ba) inserted (5.10.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), [ss. 57\(1\)\(a\)](#), 79; S.S.I. 2007/334, [art. 2\(b\)](#), Sch. 2 (with savings in arts. 4-6)
- F2** Words in s. 15(3)(c) substituted (5.10.2007) by virtue of [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), [ss. 57\(1\)\(b\)\(i\)](#), 79; S.S.I. 2007/334, [art. 2\(b\)](#), Sch. 2
- F3** Words in s. 15(3)(c)(ii) substituted (1.4.2008) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), [ss. 57\(1\)\(b\)\(ii\)](#), 79(3); S.S.I. 2008/49, art. 2(1)
- F4** Word in s. 15(3)(c)(ii) substituted (1.4.2008) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), [ss. 57\(1\)\(b\)\(iii\)](#), 79(3); S.S.I. 2008/49, art. 2(1)
- F5** Words in s. 15(4) substituted (5.10.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), [ss. 57\(1\)\(c\)](#), 79; S.S.I. 2007/334, [art. 2\(b\)](#), Sch. 2 (with savings in arts. 4-6)
- F6** S. 15(5) inserted (5.10.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), [ss. 57\(1\)\(d\)](#), 79; S.S.I. 2007/334, [art. 2\(b\)](#), Sch. 2 (with savings in arts. 4-6)

**Changes to legislation:**

There are currently no known outstanding effects for the Adults with Incapacity (Scotland) Act 2000, Section 15.