

ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

EXPLANATORY NOTES

THE ACT

Part 2: Continuing Powers of Attorney and Welfare Powers of Attorney

Section 20: Powers of sheriff

83. This section outlines the powers that sheriffs will have in relation to continuing and welfare attorneys.
84. Subsection (1) establishes the right to apply for an order from the sheriff. Anyone who claims an interest in the property, financial affairs or welfare of an adult who has granted a continuing or welfare power of attorney can apply. This provides a forum for interested parties to express their concerns about the attorney.
85. Subsection (2) limits the sheriff's power to intervene to cases where the granter has lost capacity and it is necessary to promote or safeguard the adult's interests. If a granter still has the capacity to supervise the attorney, it would be unnecessary to give the sheriff authority over that arrangement, as the granter can supervise their own affairs.
86. Subsections (2)(a), (b), (c) and (d) set out what orders the sheriff can make to safeguard the granter's interests. The sheriff may order a continuing attorney to be supervised by the Public Guardian, or a welfare attorney to be supervised by the local authority. The sheriff may order a continuing attorney to submit accounts for audit by the Public Guardian. These accounts may be requested for any period when the attorney has acted, even while the granter retained legal capacity, to allow an overall picture of the attorney's management of the granter's estate. The sheriff may also ask a welfare attorney for a report on the exercising of their powers.
87. Subsection (2)(e) gives the sheriff the right to make an order revoking any of the powers the attorney is allowed to exercise, or to terminate their appointment. The Act does not, however, allow the court to vary the attorney's powers, since this would run counter to the granter's original intention.
88. Subsection (3) provides for the communication of any order the sheriff has made to the Public Guardian. The Public Guardian will record the order in his register and notify those listed in subsection (3)(b).
89. Subsection (4) states that the decision of the sheriff to order Public Guardian or local authority supervision of an attorney or requiring accounts or reports from a welfare attorney or that such an order is not required, is final.
90. Subsection (5) provides for the court to make orders as in this section to apply to foreign, as well as Scottish, continuing and welfare attorneys. This provides safeguards for granters who live or are present in Scotland, but who have appointed an attorney under the law of another country.