



Adult Support and Protection (Scotland) Act 2007

2007 asp 10

PART 2

ADULTS WITH INCAPACITY

57 Powers of attorney

(1) Section 15 (continuing powers of attorney) of the 2000 Act is amended as follows—

- (a) after paragraph (b) of subsection (3) insert—
 - “(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;”
- (b) in subsection (3)(c)—
 - (i) leave out “a solicitor” and insert “a practising solicitor”,
 - (ii) in sub-paragraph (ii), for “other persons” substitute “another person”,
 - (iii) in sub-paragraph (ii), for “have” substitute “has”,
- (c) in subsection (4), for “A solicitor” substitute “A practising solicitor”,
- (d) after subsection (4) insert—

“(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.”

(2) Section 16 (welfare powers of attorney) of the 2000 Act is amended as follows—

- (a) after paragraph (b) of subsection (3) insert—
 - “(ba) states that the granter has considered how a determination as to whether he is incapable in relation to decisions about the matter to which the welfare power of attorney relates may be made for the purposes of subsection (5)(b);”
- (b) in subsection (3)(c)—

- (i) leave out “a solicitor” and insert “a practising solicitor”,
- (ii) in sub-paragraph (ii), for “other persons” substitute “another person”,
- (iii) in sub-paragraph (ii), for “have” substitute “has”,
- (c) in subsection (4), for “A solicitor” substitute “A practising solicitor”,
- (d) in subsection (6)(b), for “mentioned in section 48(1) or (2)” substitute “in relation to which the authority conferred by section 47(2) does not apply by virtue of regulations made under section 48(2)”.

(3) After section 16 of the 2000 Act insert—

“16A Continuing and welfare power of attorney: accompanying certificate

Where a document confers both—

- (a) a continuing power of attorney; and
- (b) a welfare power of attorney,

the validity requirements imposed by sections 15(3)(c) and 16(3)(c) may be satisfied by incorporating a single certificate which certifies the matters set out in those provisions.”.

(4) Section 19 (registration of powers of attorney) of the 2000 Act is amended as follows—

- (a) in subsection (2)(c), for “send a copy of it to” substitute “give notice of the registration of the document to both the local authority and”,
- (b) in subsection (5)—
 - (i) the word “and” which appears immediately after paragraph (a) is repealed,
 - (ii) after paragraph (b) insert—
 - “(c) where the document confers a welfare power of attorney and the local authority requests a copy of it, send such a copy to the local authority; and
 - (d) where the document confers a welfare power of attorney and the Mental Welfare Commission requests a copy of it, send such a copy to the Mental Welfare Commission.”.

(5) In section 20(3)(b)(iii) (notice of order: supervision etc) of the 2000 Act, the words from “(in” to “disorder)” are repealed.

(6) In section 22 (notice of changes) of the 2000 Act, the words “(in a case where the incapacity of the granter is by reason of, or reasons which include, mental disorder)”, where they occur in subsections (1) and (2), are repealed.

(7) After section 22 of the 2000 Act insert—

“22A Revocation of continuing or welfare power of attorney

- (1) The granter of a continuing or welfare power of attorney may revoke the power of attorney (or any of the powers granted by it) after the document conferring the power of attorney has been registered under section 19 by giving a revocation notice to the Public Guardian.

- (2) A revocation notice shall be valid only if it is expressed in a written document which—
- (a) is subscribed by the granter; and
 - (b) incorporates a certificate in the prescribed form by 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 another person (whom he names in the certificate) who has knowledge of the granter, that at the time the revocation is made the granter understands its effect;
 - (iii) he has no reason to believe that the granter is acting under undue influence or that any other factor vitiates the revocation of the power.
- (3) The Public Guardian, on receiving a revocation notice, shall—
- (a) enter the prescribed particulars of it in the register maintained by him under section 6(2)(b)(i) or (ii) as the case may be; and
 - (b) notify—
 - (i) the continuing or welfare attorney; and
 - (ii) where it is the welfare attorney who is notified, the local authority and the Mental Welfare Commission.
- (4) A revocation has effect when the revocation notice is registered under this section.
- (5) No liability shall be incurred by any person who acts in good faith in ignorance of the revocation of a power of attorney under this section. Nor shall any title to heritable property acquired by such a person be challengeable on that ground alone.”.
- (8) In section 23(3) (notice of resignation) of the 2000 Act, the words from “(in” to “disorder)” are repealed.
- (9) In section 87(1) (interpretation) of the 2000 Act, after the definition of “power of attorney” insert—
- ““practising solicitor” means a solicitor holding a practising certificate issued in accordance with Part 2 of the Solicitors (Scotland) Act 1980 (c. 46);”.