

## EXECUTIVE NOTE

### **THE ADULTS WITH INCAPACITY (COUNTERSIGNATORIES OF APPLICATIONS FOR AUTHORITY TO INTROMIT)(SCOTLAND) AMENDMENT REGULATIONS 2005 SSI/2005/631**

1. The above statutory instrument was made in exercise of powers conferred by section 26(1)(c) of the Adults with Incapacity (Scotland) Act 2000 (the 2000 Act). The instrument is subject to negative resolution procedure.

#### **Policy Objective**

2. The instrument extends the classes of countersignatories who can countersign applications under Part 3 of the 2000 Act.

#### **Background**

3. Part 3 of the 2000 Act provides for individuals to apply to the Public Guardian for authority to intromit with the funds of an adult to meet the living expenses of that adult. Under section 26 (1)(c) of Part 3 of the Act an application form for authority to intromit with funds requires to be countersigned by a member of such a class of persons as is prescribed. The list of classes of countersignatories is set out in Scottish Statutory Instrument 2001 No. 78: The Adults with Incapacity (Countersignatories of Applications for Authority to Intromit) (Scotland) Regulations 2001.

4. The countersignatory must declare that he (or she)

- has known the applicant for at least two years
- knows the adult
- does not fall into the excepted categories
- believes the information in the application to be true
- believes that the applicant is a fit and proper person to intromit with the adult's funds.

5. The policy rationale for identifying the classes of persons who could countersign applications was to ensure that the person occupied a position of responsibility and standing in the community and would have something to lose by making a false statement.

6. The consultancy project which monitored the implementation of the Act identified that less use has been made of Part 3 of the Act than was anticipated. One issue which the project identified was that the existing range of signatories is too narrow and is not accessible to many people. The Office of the Public Guardian carried out a wider review of Part 3 which revealed that as a result of the narrowness of the current range of countersignatories, there have been cases where it has been impossible to find a countersignatory who knows both the applicant and the adult, thus depriving an adult with incapacity of the benefit of this part of the legislation.

#### **Consultation**

7. We issued a consultation paper on 9 July 2004 which sought views on the existing range of classes of countersignatories as set out in Scottish Statutory Instrument 2001 No. 78:

The Adults with Incapacity (Countersignatories of Applications for Authority to Intromit) (Scotland) Regulations 2001 and on proposed extensions in the following terms:

**Do you agree that the existing range of countersignatories is too narrow and that the Regulations should be amended to add to the prescribed list?**

We included a list of possible extensions and sought comments. We also asked consultees to suggest further categories.

8. The consultation was sent to Directors of Social Work, The Office of the Public Guardian, Mental Welfare Commission, Law Society of Scotland, Alzheimer Scotland, ENABLE, Capability Scotland, Citizens Advice Scotland, The Scottish Huntington's Association, Headway Scotland Development Office, Scottish Carers Alliance, The Scottish Independent Advocacy Agency, VOCAL, PAMIS and was posted on the Scottish Executive website.

9. The consultation responses agreed that the range of countersignatories was too narrow. A number of additional categories were suggested.

10. Any additional classes must be able to be defined in a way which is appropriate for legislation. The key difficulty has been that whilst a number of classes have been identified very few could be defined in a way which would lend itself to inclusion in legislation. This has resulted in a limited number of classes which can be added. However, the Executive is proposing wider changes to this part of the Act itself which should, in due course, lead to more flexible arrangements for countersigning applications. This is therefore a stop-gap measure to increase the range of countersignatories in accordance with the current requirement for 'prescribed classes'.

11. The additional definable classes are as follows.

- **Social workers**
- **Dentists**
- **Pharmacists**
- **Opticians/optometrists**
- **Allied health professionals:** including Occupational Therapists, Physiotherapists, Speech and Language Therapists, Chiropodists.

### **Financial Effects**

12. It is not anticipated that extending the range of countersignatories to Part 3 applications will give rise to extra expense for individuals.