

POLICY NOTE

THE ADULTS WITH INCAPACITY (SUPERVISION OF WELFARE GUARDIANS ETC. BY LOCAL AUTHORITIES) (SCOTLAND) AMENDMENT REGULATIONS 2014

S.S.I. 2014/ 123

The above instrument was made in exercise of the powers conferred by sections 10(3)(a) and (b) and 86(2) of the Adults with Incapacity (Scotland) Act 2000 (“the 2000 Act”). The instrument is subject to negative resolution procedure.

Policy Objectives

Under section 10(3) of the 2000 Act, Scottish Ministers can make regulations about the supervisory functions carried out by local authorities in relation to welfare guardians and persons appointed under intervention orders. Regulations were made under section 10(3) in 2002 – the Adults with Incapacity (Supervision of Welfare Guardians etc by Local Authorities) (Scotland) Regulations 2002 (SSI 2002/95; “the principal Regulations”).

The principal Regulations were amended in 2005 to reduce the supervision requirements on local authorities where a guardian has been appointed for more than 1 year. Originally, local authorities had to arrange visits of the adult and guardian every 3 months. This requirement was changed to every 6 months. This change came about as a consequence of work carried out jointly by Alzheimer Scotland – Action on Dementia and the Scottish Development Centre for Mental Health to monitor the implementation of the 2000 Act and make recommendations on issues which might need to be addressed. The changes in 2005 were intended to address the concerns expressed by the Association of Directors of Social Work and guardians that the 3-monthly requirement was intrusive and unnecessary.

The Scottish Government and the Mental Welfare Commission consider that the principal Regulations still place too great a burden on local authorities; are not risk-based; and do not necessarily best meet the needs of the adult. Amendments to the principal Regulations are, therefore, being made in this instrument to allow more flexibility in the frequency of visits, in response to the circumstances of individual adults, so that local authority resources may be targeted to safeguard the most vulnerable.

The amendments will:-

- Extend the interval for on-going supervisory visits to adults and welfare guardians, where a guardian has been appointed for more than 1 year from 6 months to 12 months;
- Provide local authorities with a power to vary or cease the 12 monthly visits to adults and/or welfare guardians, where a guardian has been appointed for more than 1 year, following the first 12 month review and subject to certain safeguards including the agreement of both the adult and the guardian;
- Prescribe the form of notification a local authority must send to the Mental Welfare Commission when it has decided to vary or cease visits;

- Alter the intervals and nature of visits to adults and welfare guardians, where the guardian has been appointed for less than 1 year. Currently the requirement is to visit within 14 days before or after the midpoint of the appointment and within 14 days of the end of the appointment. This will change to a visit to the adult and guardian within 3 months of the guardianship order being granted, and contact with the guardian no less than 3 months before the end of the appointment .
- Alter the circumstances in which information must be provided by a welfare guardian or person authorised under an intervention order to a local authority, and enable a guardian or person authorised under an intervention order from volunteering relevant information to the local authority;

Specifically, the changes will support the overall policy aim of providing some flexibility to local authorities in relation to visiting adults with incapacity and their guardians. This will enable local authorities to adopt a risk based approach and to target their resources to where they are most needed. These proposed changes will build on the amendments made in 2005.

The proposals in the instrument are supported on the basis that the current minimum of 6 months is often both onerous for the local authority and intrusive for the guardian. The facility to extend the interval between visits will also provide helpful flexibility and enable proportionate risk management, enabling resources to be better targeted.

Appropriate levels of safeguarding are put in place by the instrument, with the involvement of the welfare guardian and the adult in the local authority's decision making process about extension of the intervals for visits or cessation of visits. If the adult or the welfare guardian does not agree to the change proposed by the local authority the issue cannot be taken any further. In addition the instrument provides that the Mental Welfare Commission will be provided by the local authority with a record of the decision and the reasons for it, which will allow them to raise any issues of concern with the local authority should they consider it necessary. The Mental Welfare Commission will be issuing guidance to assist local authorities complete the form of notification.

None of these proposed changes should prevent a local authority from arranging visits to the adult or welfare guardian more frequently than the interval set down in the principal Regulations – the principal Regulations set down the minimum supervisory requirements.

In terms of the requirement for the guardian or person authorised under an intervention order to provide information when requested by the local authority, the proposed changes in the instrument will promote a partnership approach between the guardian and local authority; provide greater clarity for guardians as to their responsibilities and strengthen the local authority's ability to require information to be provided; and importantly, complement the risk based approach to intervals between visits, as if the frequency of visits decrease, the sharing of information becomes more important.

Consultation

These proposals were considered at a Focus Group meeting arranged by the Mental Welfare Commission and the Scottish Government at the end of May 2012 and attended by representatives from local authorities and a number of voluntary sector organisations supporting adults with incapacity.

A formal consultation took place between May and August 2013 with 19 respondents. The proposals were generally supported although some concerns were expressed about the power to dispense with annual visits

Financial Effects

No additional costs will fall on the Scottish Government or local government. The amendments to the principal Regulations provide for a more flexible and risk based approach to supervisory visits on behalf of local authorities to adults and their welfare guardians. They should therefore enable local authorities to better target their available resources and operate more effectively within the limits of their workforce capacity.

Equality Impact Assessment

An equality impact assessment has been produced in connection with these proposals and was published as part of the consultation paper. The assessment concludes that it is not foreseen that the proposals would impact on any particular group more than any other.

Scottish Government Civil Law and Legal System Division
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