

SCOTTISH STATUTORY INSTRUMENTS

2002 No.

ADULT WITH INCAPACITY

The Adults with Incapacity (Recall of Guardians' Powers) (Scotland) Regulations 2002

Made 2002

Laid before the Scottish Parliament 2002

Coming into force 1 April 2002

The Scottish Ministers, in exercise of the powers conferred on them by sections 73(5), (7) and (10) and 86(2) of the Adults with Incapacity (Scotland) Act 2000^(a) and all other powers enabling them in that behalf, hereby make the following Regulations—

Citation and commencement

1. These Regulations may be cited as the Adults with Incapacity (Recall of Guardians' Powers) (Scotland) Regulations 2002 and shall come into force on 1st April 2002.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Adults with Incapacity (Scotland) Act 2000.

(2) Any reference in these Regulations—

- (a) to a numbered section is a reference to the section bearing that number in the Act; and
- (b) to a numbered Schedule is a reference to the Schedule bearing that number in these Regulations.

Applications for recall

3. An application to the Mental Welfare Commission for recall of a guardian's powers under section 73(3) shall be in the form set out in Schedule 1.

4. An application to the local authority for recall of a guardian's powers under section 73(3) shall be in the form set out in Schedule 2.

Intimation of application to recall or intention to recall

^(a) 2000 asp 4; see section 87(1) for the definition of “prescribed” and section 86(1) as to the power to make regulations.

5. An intimation by the Mental Welfare Commission under section 73(5) of-

- (a) an application for recall of a guardian's powers; or
- (b) it's intention at it's own instance to recall the powers of a guardian,

shall be in the form set out in Schedule 3.

6. An intimation by the local authority under section 73(5) of-

- (a) an application for recall of a guardian's powers; or
- (b) its intention at it's own instance to recall the powers of a guardian,

shall be in the form set out in Schedule 4.

7. The period within which a person may object under section 73(5) to the application or intention to recall a guardian's powers is the period of 21 days from receipt of intimation of the application for recall or intention to recall from the Mental Welfare Commission or local authority, as the case may be.

Intimation of a decision to refuse recall

8. Where the Mental Welfare Commission proposes to refuse an application for recall under section 73(7), the intimation of that decision shall be in the form set out in Schedule 5.

9. Where the local authority proposes to refuse an application for recall under section 73(7), the intimation of that decision shall be in the form set out in Schedule 6.

10. The period within which a person may object under section 73(7) to the decision by the Mental Welfare Commission or local authority, as the case may be, to refuse an application for recall of a guardian's powers is the period of 21 days from receipt of intimation of that decision from the Mental Welfare Commission or local authority, as the case may be.

Form for recording decision

11. A decision of the Mental Welfare Commission to-

- (a) recall the powers of a guardian under section 73(6); or
- (b) refuse an application to recall such powers; or
- (c) remit or not remit the decision on recall to the sheriff under section 73(8),

shall be in the form set out in Schedule 7.

12. A decision of the local authority to-

- (a) recall the powers of a guardian under section 73(6); or

- (b) refuse an application to recall such powers; or
- (c) remit or not remit the decision on recall to the sheriff under section 73(8),

shall be in the form set out in Schedule 8.

13. Where the decision taken is to recall the powers of a guardian a copy of the completed form as provided for by regulation 11 or regulation 12 shall be sent -

- (a) to the local authority, by the Mental Welfare Commission where the Mental Welfare Commission has decided to recall the powers of the guardian; or
- (b) to the Mental Welfare Commission, by the local authority where the local authority has decided to recall the powers of the guardian; and
- (c) to the Public Guardian, by either, the Mental Welfare Commission where the Mental Welfare Commission has decided to recall the powers of the guardian, or, the local authority where the local authority has decided to recall the powers of the guardian.

A member of the Scottish Executive

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