

2008 No. 380

**ADULTS WITH INCAPACITY
ELECTRONIC COMMUNICATIONS**

**The Adults with Incapacity (Electronic Communications)
(Scotland) Order 2008**

Made - - - - *30th October 2008*

Coming into force *31st October 2008*

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 8 and 9 of the Electronic Communications Act 2000^(a) and all other powers enabling them to do so.

They consider that authorisation by this Order of the use of electronic communications or electronic storage for the purpose of the registration of powers of attorney is such that the extent to which records of things done for that purpose will be available will be no less satisfactory in cases where use is made of electronic communications or electronic storage than in other cases.

The Secretary of State has consented to the making of the Order in accordance with section 9(7)(c) of that Act.

In accordance with section 9(4) and (7)(d) of that Act, a draft of the Order has been laid before and approved by resolution of the Scottish Parliament:

Citation, commencement and extent

1.—(1) This Order may be cited as the Adults with Incapacity (Electronic Communications) (Scotland) Order 2008 and comes into force on the day after the day on which it is made.

(2) It extends to Scotland only.

^(a) 2000 c.7 (“the 2000 Act”). By virtue of the modifications for Scotland in section 9(7) of the 2000 Act, the reference to the appropriate Minister in section 8 is to be read as a reference to the Secretary of State, and the powers of the Secretary of State may be exercised by the Scottish Ministers, with the consent of the Secretary of State. Section 15 contains a definition of “enactment” relevant to the exercise of the powers in this Order.

Electronic registration of powers of attorney

2. After section 19 (registration of continuing or welfare power of attorney) of the Adults with Incapacity (Scotland) Act 2000(a), insert—

“19A. Electronic copies

- (1) The Public Guardian may, for the purposes of section 19—
 - (a) accept a copy of a document conferring a power of attorney sent electronically, instead of the original, to the Public Guardian’s email address, and
 - (b) register the copy document accordingly.
- (2) The Public Guardian may refuse to accept a copy document unless it is—
 - (a) sent by such person or type of person, and
 - (b) received in such format,

as the Public Guardian may from time to time direct.

This subsection does not limit the Public Guardian’s general discretion to accept a copy document in pursuance of subsection (1).

(3) References in this Part to documents registered (or sent for registration) under section 19 include references to copy documents registered (or sent) in pursuance of subsection (1).”.

FERGUS EWING

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
30th October 2008

I consent

ANN MCKECHIN

Parliamentary Under Secretary of State

20th October 2008

(a) 2000 asp 4, amended by the Adult Support and Protection (Scotland) Act 2007 (asp 10).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order enables the Public Guardian to accept for registration under section 19 of the Adults with Incapacity (Scotland) Act 2000 (“the Act”) a copy of a continuing or welfare power of attorney sent by email (incorporating accompanying certificates and statements), instead of the principal document.

This is achieved by inserting section 19A into the Act (article 2). Section 19A allows the Public Guardian to decide whether or not to accept the electronic copy power of attorney, which must also be from approved persons and in the format required by direction by the Public Guardian from time to time.

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