**High level guidance to accompany the provisions relating to adults lacking capacity in The Coronavirus (Scotland) Act 2020**

The Act makes changes that affect adults lacking capacity. They are found in Schedule 3, Part 2.

**Easement of local authority requirements under s.13ZA of the Social Work (Scotland) Act in order to provide community care services, including moving the adult to residential accommodation, to protect vulnerable adults.**

*Section 11(1) amends s.13ZA of the Social Work (Scotland) Act 1968 in two ways*:

1. It removes the requirement of the local authority to take into account the past and present wishes of the adult, and the views of any interested party when taking any steps to help an adult lacking capacity benefit from a community care service. A community care service includes moving the adult to residential accommodation.
2. It allows the local authority to take the above steps, even if there is a guardian, power of attorney or intervener appointed with relevant powers, or if there is an application being made to appoint a guardian, power of attorney or intervener with the relevant powers.

This allows local authorities to take immediate steps to safeguard the health and welfare of vulnerable adults. This in particular includes moving the adult from acute hospital wards to residential care, or other appropriate accommodation, where there may be a deprivation of the adult’s liberty in order to protect them from the risk of infection.

This is one of the few provisions that will come into force when and if Ministers approve its use by invoking regulations. This will be strictly only when evidenced as being absolutely necessary. These provisions can come into force at different times geographically to address need.

**Amendments to extension of time limits in Adults with Incapacity (Scotland) Act to help protect vulnerable adults**

*Section 11(2) amends s.58A of the Criminal Procedure (Scotland) Act 1995:*

If a person is convicted of an offence in the high court or sheriff court, then the court has the option to place the person under a welfare guardianship order. This order continues in force for a period of 3 years or such other period (including an indefinite period) as the court may determine.

The amendment ensures that during the period of crisis when the provisions are in force, the guardianship does not expire and require a renewal to be made, with the accompanying work that would entail. This ensures that professionals are not taken away from the urgent work they are required to undertake during the crisis and that the adult still has someone to look after their welfare.

The provisions therefore ‘stop the clock’ on the period of the guardianship, whilst the provisions are in force, but the guardian is still able to exercise their powers. This will mean that when the provisions are switched off when the crisis has subsided, then whatever time was left on the guardianship when the provisions were switched on will remain. This doesn’t apply to indefinite orders and doesn’t affect any other reason by which the order could come to an end.

These provisions will come into force on Royal Assent.

*Section 11(3)(a) amends s.47 of the Adults with Incapacity (Scotland) Act 2000:*

s.47 allows a health professional of a prescribed class, to issue a certificate to an incapable adult for medical treatment for the specified period.

The amendment ensures that the certificate does not expire when the provision is in force during this time of crisis. It ensures that medical treatment can continue to be given to a vulnerable adult where this is required. This is intended to preserve the workload of health professionals for more urgent work.

The provisions therefore ‘stop the clock’ on the period of the certificate, whilst the provisions are in force. This will mean that when the provisions have expired whatever time was left on the certificate before the provisions were in force will return. This doesn’t affect any other reason a certificate may come to an end.

These provisions will come into force on Royal Assent.

*Section 11(3)(b) amends s.58 of the Adults with Incapacity (Scotland) Act 2000*

This affects guardianship orders granted by the Sheriff. Guardianship orders are granted for a period of 3 years or such other period (including an indefinite period) as the court may determine.

The amendment ensures that when these provisions are in force, the guardianship does not expire and require a renewal to be made, with the accompanying work that would entail. This is intended to preserve the work capacity of professionals for urgent work, whilst ensuring that the adult still has a guardian to look after their welfare.

The provisions therefore ‘stop the clock’ on the period of the guardianship, whilst the provisions are in force, but the guardian is still able to use their powers. This will mean that when the provisions have expired, whatever time was left on the guardianship order before the provisions were in force will return. This does not apply to indefinite orders and doesn’t affect any other reason an order could come to an end.

These provisions will come into force on Royal Assent.

*Section 11(3)(c) amends s.60 of the Adults with Incapacity (Scotland) Act 2000*

This affects the renewal of guardianship orders granted by the Sheriff. The orders can be continued by the Sheriff for a period of 5 years or other such period (including an indefinite period) as the court may determine.

Renewals are affected in the same way as guardianship orders are as described in the previous paragraph.

These provisions will come into force on Royal Assent.

*Monitoring of use of provisions*

The Mental Welfare Commission have agreed to monitor the use of these emergency powers.

*Further Guidance*

More detailed guidance will be provided, in particular covering the amendments to s.13ZA.

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