

PE2061/I: Require solicitors to ensure capacity of vulnerable individuals by having a medical professional co-sign legal documents

Office of the Public Guardian written submission, 4 December 2024

I refer to the above petition to which I respond on behalf of the Scottish Courts and Tribunals Service (SCTS) and in particular the Office of the Public Guardian (OPG).

The provisions for Powers of Attorney, Guardianships and Intervention Orders and Access to Funds authorisations under the Adults with Incapacity (Scotland) Act 2000 (“2000 Act”) already provide for the submission of medical certification/ medical reports as part of those processes for consideration by the judiciary/ OPG.

The SCTS nor the OPG would provide comment on matters of policy, however we note that the proposals may have an impact for the signing of legal documents such as a testamentary writing or in the situation referred specifically to by the petitioner.

Any change in policy approach may also impact on the matters we have set out above under the 2000 Act. However, it is not entirely clear what role the courts or OPG would have for example in a scenario where the OPG had no locus where no individual(s) had been appointed to manage the financial and property affairs of adults who lack the capacity to do so for themselves or where for example medical approval/ certification of a “vulnerable” testator would be required before making or changing a Will.

On the basis of the above, if any policy changes were proposed, we would be content to work with policy colleagues and other stakeholders to ensure effective implementation. We hope this assists.