

Briefing for the Citizen Participation and Public Petitions Committee on petition PE2194: Amend the Adults with Incapacity (Scotland) Act to prevent abuse of power of attorney, lodged by Lesley E Roberts

Brief overview of issues raised by the petition

The current legal framework: an overview

A power of attorney (PoA) is a written document that gives legal authority to someone ('the attorney') to make decisions on someone else's behalf ('the granter'). The current legal framework is set out in Part 2 of the [Adults with Incapacity \(Scotland\) Act 2000](#) ('the 2000 Act'), as amended.

Under Part 2, the PoA must be made by the granter while that person still has capacity to make this decision. An attorney may exercise powers over property and finances (a 'continuing attorney'), welfare decisions (a 'welfare attorney'), or a combination of these.

The [Office of the Public Guardian \(Scotland\)](#) ('OPG') has a statutory role in relation to continuing attorneys and local authorities (and sometimes [the Mental Welfare Commission for Scotland](#) ('MWC')) have a role in relation to welfare attorneys. In addition, [the sheriff courts](#) have a range of statutory powers in relation to both types of attorneys.

However, [in contrast to the regulatory position with financial guardians under Part 6 of the 2000 Act](#), neither the OPG nor local authorities/the MWC carry out routine supervision of attorneys.

The OPG (for continuing attorneys) and local authorities (for welfare attorneys) can "receive and investigate complaints" relating to attorneys (sections 6(2)(a) and 10(1)(c)). However, in practice, [local authorities regularly receive complaints about financial issues](#), despite the distinct roles for the local authorities and the OPG set out in the 2000 Act.

Currently, a continuing attorney can only be supervised by the OPG, or a welfare attorney by a local authority, by order of the court (2000 Act, section 20(2)). Separately, [there are some attorneys who voluntarily agree to supervision, where complaints have arisen and been investigated](#).

Proposals for reform (including timescales)

Following an independent review of mental health legislation, [the final report of the Scottish Mental Health Law Review](#), commonly referred to as the 'Scott Review' after its chair, John Scott KC, was published in September 2022. This piece of work included elements that cover the 2000 Act.

Recommendation 13.3 of the Scott Review's [final report](#) is particularly relevant to the subject matter of the petition. For attorneys, it recommended that:

13.3.5: A comprehensive investigatory framework should be developed with OPG, Local authorities, the MWC [that is, [the Mental Welfare Commission for Scotland](#)] and Police Scotland and full and equal participation with persons with lived experience including unpaid carers.

13.3.6: Provision should be made in law for an attorney to be subject to supervision should an investigation determine this is required.

The Scottish Government published their [response to this final report](#) in June 2023, indicating its intention to take a staged approach to legislative reform. In September 2024's [Programme for Government](#), the Scottish Government announced new legislation to amend the 2000 Act.

On 2 May 2025, [the Scottish Government confirmed that the legislative proposals in this area had been delayed](#). Furthermore, the Government were planning to undertake further work, with “a view to bringing forward a future Bill early in the next parliamentary term.”

In April 2025, Paul O’Kane MSP lodged several parliamentary questions relating to continuing attorneys. One ([S6W-36453](#)) asked when the powers associated with PoAs were last reviewed. Two others ([S6W-36455](#) and [S6W-36456](#)) asked what assessment the Scottish Government has made of the adequacy of current rules for challenging potential abuses of PoAs.

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The purpose of this briefing is to provide a brief overview of issues raised by the petition. SPICe research specialists are not able to discuss the content of petition briefings with petitioners or other members of the public.

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