

ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

EXPLANATORY NOTES

THE ACT

Part 6: Intervention Orders and Guardianship Orders

Joint and substitute guardians

Section 62: Joint guardians

262. This section allows for two or more individuals to be appointed as joint guardians to an adult.
263. Subsection (1) sets out the two manners in which joint guardians might be appointed – either by an initial application by more than one individual, or by adding a further individual to act jointly with the existing guardian or guardians.
264. Subsection (2) states that normally joint guardians will only be appointed where they are close relatives of the adult, namely parents, siblings or children. Only where the sheriff is satisfied that there is a particular need, would individuals who are not relatives of the adult be appointed as joint guardians.
265. Subsection (3) provides that the appointment of joint guardians will follow the same steps as appointing a single guardian. The sheriff will have the same options to dispose of applications as are detailed in section 58 and will use the same criteria to decide whether to appoint the applicants, as described in section 59.
266. Subsection (4) provides for the application of an individual to be an additional guardian to act alongside the existing guardian. The sheriff must be satisfied, using the criteria described at section 59(2) to (4), that the individual is suitable to be appointed as guardian of the adult concerned.
267. Subsection (5) provides the procedure for notification of the appointment of an additional guardian. The sheriff court will inform the Public Guardian of the appointment, who will enter the details in his register, and, when the new appointee has obtained insurance against liability if required, will issue a certificate of appointment. The existing guardian will be issued with a new certificate of appointment, which will indicate the joint guardianship.
268. Subsection (6) states that joint guardians can, subject to the requirements of subsection (7), act individually. Joint guardians are however liable for damage due to their acts or omissions, as a single guardian would be, and also for that caused by their fellow joint guardian, where they have failed to take reasonable steps to prevent it. In the case where two or more joint guardians are liable for loss or injury caused to the adult concerned, their liability is joint and several. For example, if one of the joint guardians, entered into a financial arrangement on behalf of the adult, all of the joint guardians could be liable if the arrangement turned out to have been incompetent.

*These notes relate to the Adults with Incapacity (Scotland)
Act 2000 (asp 4) which received Royal Assent on 9 May 2000*

269. Subsection (7) places a duty on joint guardians to consult each other before acting. This consultation can be waived if it is impractical. For example, one of the joint guardians could freely act if the other was abroad and out of ready communication. It can also be waived by agreement of the joint guardians. For example, two joint guardians might agree that only one would be involved in the adult's everyday finances.
270. Subsection (8) provides for recourse to the sheriff court if joint guardians cannot agree.
271. Subsection (9) establishes that third parties when dealing with a joint guardian can, unless they know anything to the contrary, rely on the authority of one of the guardians as they would on a single guardian, without seeking further confirmation.