

# **ADULT SUPPORT AND PROTECTION (SCOTLAND) ACT 2007**

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## **EXPLANATORY NOTES**

### **THE ACT – AN OVERVIEW**

#### **Part 2**

#### **Adults With Incapacity**

#### ***Sections 59 and 60 – Intervention orders and guardianship orders***

131. These sections amend provisions in Part 6 of the 2000 Act which makes provision for intervention orders and guardianship orders.
132. **Sections 59(1)(a)** and **60(1)** amend sections 53 and 57 of the 2000 Act respectively to provide that:-
- (a) where a medical report is lodged in an application for an intervention order or a guardianship order it shall be valid even where the medical examination of the adult has been carried out more than 30 days previously, provided that the sheriff is satisfied that the adult's condition is unlikely to have improved since the examination was carried out;
  - (b) Scottish Ministers may prescribe in regulations, following consultation with the Mental Welfare Commission, persons (i.e. medical practitioners) who can complete reports to accompany applications for guardianship and intervention orders; and
  - (c) where an adult is not living in Scotland and is the subject of an application for an intervention order or guardianship order, he or she may be examined by a medical practitioner in the country where he or she lives provided that practitioner holds recognised qualifications, has special experience in relation to mental disorders and has consulted the Mental Welfare Commission about the report.
133. **Sections 59(1)(b)** and (c) and **60(2), (4), (5), (6), (9), (13)** and **(14)** amend sections 53 and 57 to dispense with the requirement for caution in intervention orders and guardianship orders relating to property or financial affairs. Whether or not to impose caution in such circumstances is left instead to the sheriff's discretion. These sections provide that the sheriff may permit the Public Guardian to accept other forms of security instead of caution.
134. **Section 59(2)** amends sections 53 to provide for notification to the Public Guardian by the person authorised under the intervention order of a change in his or her or the adult's address within 7 days of such a change. Provision for such notification by guardians is already made in section 64(4) of the 2000 Act.

135. **Sections 59(3) and 60(15)** insert new sections 56A and 75A which provide for notification to the Public Guardian of the death of a person authorised to intervene or death of a guardian by his or her personal representatives.
136. **Section 60(3)** inserts new subsections (3) and (3A) into section 60 to provide a simplified procedure for renewal which can be dealt with by the sheriff on the basis of an application form. Section 60(3)(a) provides that the application must be supported by a medical report completed not more than 30 days before the application. Section 60(3)(b) provides for one other report to support the application either from a mental health officer, or the chief social work officer where the adult is unable to communicate, where the application relates to the adult's welfare or from the Public Guardian if it relates to the adult's property or financial affairs. Section 60(3A) provides, as for guardianship applications, that where the reason for incapacity is mental disorder, the medical report, or one of them, must be carried out by a relevant medical practitioner.
137. **Section 60(1)(d)** amends section 57 to provide that sheriffs may grant interim guardianships for 3 months (as previously) or for a longer period up to a maximum of 6 months.
138. **Section 60(8)** amends section 70 (non-compliance with decisions of guardian with welfare powers) to remove the unintended effect that a warrant may be issued for the adult's removal from his or her place of residence where a third party has refused to comply with the guardian's decision. It also inserts a new subsection to provide that the sheriff may, on cause shown, disapply the intimation requirement and the corresponding right to object within a prescribed period. The reason for this is that in urgent cases a delay of the prescribed period of 21 days can prove detrimental to the welfare of the adult concerned.
139. **Section 60(10)** amends section 72(1) to provide that where the guardianship order has expired the Public Guardian may grant a discharge to a financial guardian in respect of the former guardian's actings and intromissions with the estate of the adult.
140. **Section 60(11)** inserts a new subsection (3A) in section 73 to provide that the Mental Welfare Commission may recall guardianships relating to personal welfare only in those cases where incapacity relates to a mental disorder and not, as at present, all guardianships relating to personal welfare. Section 60(12) inserts new section 73A which allows local authorities to recall welfare guardianships where the Chief Social Work Officer is the guardian. Under section 73A(2) the proposed recall must be intimated to the Public Guardian and the Mental Welfare Commission in addition to the adult and other persons who have an interest. If any objections are received, the local authority may not recall the guardianship and must remit the matter to the sheriff for a decision.
141. **Section 60(16)** inserts a new section 79A which allows a guardianship order to be applied for in the three month period prior to an individual's sixteenth birthday and for that order to come into effect on the individual's sixteenth birthday. The new provision is to provide continuing protection for young adults who lack capacity. Previously an application could not be made for an individual until s/he reached sixteen. These guardianship orders will be subject to the other provisions which currently apply to guardianship orders.
142. **Section 60(17)** inserts new sub-paragraph (3A) into paragraph 6 of schedule 4 to provide for the reconsideration under the 2000 Act of the appointments of all welfare and financial guardians who became such by virtue of being curators bonis, tutors dative or tutors at law prior to the coming into effect of Part 6 of the 2000 Act and of the appointment of joint guardians to these transitional guardians. The amendment provides that these guardianships will cease unless there is an application for renewal within two years of the commencement of this subsection (or, where the guardian was previously curator bonis to a person under 16 years, within 2 years of the person becoming sixteen, if that is a longer period). Subsection (12) also inserts the new sub-paragraph (3B) to

*These notes relate to the Adult Support and Protection (Scotland)  
Act 2007 (asp 10) which received Royal Assent on 21 March 2007*

provide that new sub-paragraph (3A) does not prevent early termination of guardianship under the terms of the Act, e.g. where guardianship is recalled. New sub-paragraph (3C) provides for additional guardians to be subject to the requirements of the new sub-paragraph (3A). New sub-paragraphs (3D) and (3E) provide that the Public Guardian or the local authority must take reasonable steps to notify transitional guardians of the requirement to renew their guardianships, if appropriate.