Status: *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

SCOTTISH STATUTORY INSTRUMENTS

2002 No. 97

ADULTS WITH INCAPACITY

The Adults with Incapacity (Recall of Guardians' Powers) (Scotland) Regulations 2002

Made - - - -	*5th March 2002*
Laid before the Scottish Parliament - - - -	*7th March 2002*
Coming into force - -	*1st April 2002*

The Scottish Ministers, in exercise of the powers conferred by sections 73(5), (7) and (10) and 86(2) of the Adults with Incapacity (Scotland) Act 2000(**1**) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Adults with Incapacity (Recall of Guardians' Powers) (Scotland) Regulations 2002 and shall come into force on 1st April 2002.

Interpretation

2 Any reference in these Regulations–

(a) to a numbered section is a reference to the section bearing that number in the Adults with Incapacity (Scotland) Act 2000; and

(b) to a numbered Schedule is a reference to the Schedule bearing that number in these Regulations.

Applications for recall

3. An application under section 73(3) for recall of a guardian's powers–

(a) by the Mental Welfare Commission shall be in the form set out in Schedule 1; or

(b) by the local authority shall be in the form set out in Schedule 2,

and, where the person making the application considers that the adult is no longer incapable, shall be accompanied by a medical report in the form set out in Schedule 3.

(**1**) 2000 asp 4; see section 87(1) for the definition of "prescribed" and section 86(1) as to the power to make regulations.

Intimation of application to recall or intention to recall by the Mental Welfare Commission

4. An intimation by the Mental Welfare Commission under section 73(5) of–

(a) an application for recall of a guardian's powers; or

(b) their intention at their own instance to recall the powers of a guardian,

shall be in the form set out in Schedule 4.

Intimation of application to recall or intention to recall by the local authority

5. An intimation by the local authority under section 73(5) of–

(a) an application for recall of a guardian's powers; or

(b) its intention at its own instance to recall the powers of a guardian,

shall be in the form set out in Schedule 5.

Period for objection to recall

6. A person may object under section 73(5) to the recall of a guardian's powers within 21 days of receipt of intimation of the application for recall, or intention to recall, by the Mental Welfare Commission or local authority, as the case may be.

Intimation of a decision by the Mental Welfare Commission to refuse recall

7. Where the Mental Welfare Commission proposes to refuse an application for recall under section 73(7), the intimation of that decision shall be in the form set out in Schedule 6.

Intimation of a decision by the local authority to refuse recall

8. Where the local authority proposes to refuse an application for recall under section 73(7), the intimation of that decision shall be in the form set out in Schedule 7.

Period for objection to decision as to recall

9. A person may object under section 73(7) to the decision by the Mental Welfare Commission or local authority, as the case may be, to refuse an application for recall of a guardian's powers within 21 days of receipt of intimation of that decision.

Form for recording decision by the Mental Welfare Commission

10. A decision by the Mental Welfare Commission to–

(a) recall the powers of a guardian under section 73(6);

(b) refuse an application to recall such powers; or

(c) remit, or not remit, the decision on recall to the sheriff under section 73(8),

shall be in the form set out in Schedule 8.

Form for recording decision by the local authority

11. A decision by the local authority to–

(a) recall the powers of a guardian under section 73(6);

(b) refuse an application to recall such powers; or

(c) remit, or not remit, the decision on recall to the sheriff under section 73(8),

shall be in the form set out in Schedule 9.

Notification of decisions

12.—(1) Where the Mental Welfare Commission decides to recall the powers of a guardian they shall send a copy of the form provided for at regulation 10 above to the applicant, the local authority and the Public Guardian.

(2) Where the local authority decides to recall the powers of a guardian it shall send a copy of the form provided for at regulation 11 above to the applicant, the Mental Welfare Commission and the Public Guardian.

St Andrew's House,
Edinburgh
5th March 2002

JAMES R WALLACE
A member of the Scottish Executive

SCHEDULE 1 Regulation 3(a)

Application to Mental Welfare Commission for recall of powers of a guardian relating to personal welfare

AWI[11]
ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000
Section 73(3)

PART A PERSON MAKING THE APPLICATION

(Give your full name and name of local authority for whom you are acting in this case if applicable or provide details of your interest in the personal welfare of the adult.)

Name	
Local authority/ statement of interest	
Address	
Post Code	
Tel No	
E-mail	

PART B THE ADULT

This application is for recall of the powers of a guardian/guardians relating to the personal welfare of:

_____ (name)

of

(Give full name, address and date of birth of the adult or insert "as above" if adult is person making the application)

_____ (address including postcode)

_____ (DOB)

PART C DETAILS OF GUARDIANSHIP

(Insert date, court and court case number if known)	The guardianship order currently in force to which this application relates was made on: Court : Court case number:
(Insert name and address)	The guardianship order appointed the following person(s) as guardian(s) with powers relating to personal welfare: Name: Address: Post Code: Tel no: Fax No: e-mail address: **Note: If available please provide a copy of the guardianship order**

Where the chief social work officer was appointed guardian, the officer responsible under section 64(9) of the Act to carry out the functions and duties of guardian is:

(Insert name and contact details or delete as applicable)	Name: Address: Post Code: Tel no: Fax No: e-mail address:

The guardianship order also appointed the following person(s) as guardian(s) with powers relating to property or financial affairs:

(Insert details or delete as applicable)	Name(s): Address(es): Post Code Tel no: Fax No: e-mail address:

PART D GROUNDS ON WHICH RECALL IS SOUGHT

(Delete (a) or (b), unless both apply.)	I apply for the powers relating to personal welfare in the order described in Part C above to be recalled because: (a) the grounds for appointment of a guardian with such powers are no longer fulfilled (this could relate to either the adult's capacity or the adult's needs).
NB: the applicant must ensure that the doctor providing such a report is informed of the powers in the order.	(Explain why this is the case and, if applicable, attach a report by a medical practitioner stating that the adult is no longer incapable in relation to decisions about, or of acting to safeguard or promote his interests in his/her personal welfare, in relation to the matters covered in the guardianship order.)
(Describe alternatives proposed)	(b) the interests of the adult in his/her personal welfare can be satisfactorily safeguarded or promoted otherwise than by guardianship. (Describe the alternative means by which the adult's interests are to be safeguarded or promoted.)

PART E CONSULTATION

In making the application, I have consulted the following persons:

1. the adult

(State the past and present wishes and feelings of the adult about the proposed recall of guardianship, so far as you have been able to ascertain them. If you have not been able to ascertain the adult's wishes and feelings, please explain the barriers to this and explain the efforts you made to help the adult overcome these barriers.)

2. The nearest relative of the adult

Name:
Address

Relationship to adult:

(State the views of the nearest relative on the proposed recall if you have obtained these. Do you agree with these views? If you have not obtained these views, why was it not reasonable or practicable to do so?) Note: the nearest relative of the adult should not be consulted where an order to that effect has been made under section 4 of the Act.

3. The views of the primary carer of the adult

Name: Address	
Relationship to adult:	

(State the views of the primary carer on the proposed recall if you have obtained these. Do you agree with these views? If you have not obtained these views, why was it not reasonable or practicable to do so?)

4. The views of the guardian(s) at Part C

Name(s):	
Appointment e.g. financial guardian	

(State the views of any guardian named at Part (C) on the proposed recall if you have obtained these. Do you agree with these views? If you have not obtained these views, why was it not reasonable or practicable to do so?).

5. The views of any other relevant person including any other guardian, continuing or welfare attorney which have been made known to you and any person whom the sheriff has directed to be consulted

Name:
Address:

Connection to adult

(State the views of any other relevant person which have been made known to you and which are relevant to the proposed recall. Do you agree with these views?) (Continue on a separate sheet if there is more than one such person.)

PART F CONCLUSION

List any other matters which seem to you to be relevant.

Sign and date the form

Signed:

Date:

SCHEDULE 2 Regulation 3(b)

Application to local authority for recall of powers of a guardian relating to personal welfare

AWI[12]
ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000
Section 73(3)

PART A PERSON MAKING THE APPLICATION

(Give your full name and the name of the local authority for whom you are acting in this case if applicable or provide details of your interest in the personal welfare of the adult.[1])

Name	
Local authority/ statement of interest	
Address	
Post Code	
Tel No	
E-mail	

PART B THE ADULT

This application is for recall of the powers of a guardian/guardians relating to the personal welfare of:

_____ (name)

of

(Give full name, address and date of birth of the adult or insert "as above" if adult is person making application)

_____ (address including postcode)

_____ (DOB)

[1] Note that a local authority may not be asked to recall welfare powers conferred on its own chief social work officer. In such a case an application for recall should be made to the sheriff or to the Mental Welfare Commission.

PART C DETAILS OF GUARDIANSHIP

(Insert date,court and court case number if known)	The guardianship order currently in force to which this application relates was made on: Court: Court case number:
(Insert name and address)	The guardianship order appointed the following person(s) as guardian(s) with powers relating to personal welfare: Name: Address: Post Code: Tel no: Fax No: e-mail address: **Note: If available please provide a copy of the guardianship order**

The guardianship order also appointed the following person(s) as guardian(s) with powers relating to property or financial affairs:

(Insert details or delete as applicable)	Name(s): Address(es): Post Code: Tel no: Fax No: e-mail address:

PART D GROUNDS ON WHICH RECALL IS SOUGHT

(Delete (a) or (b), unless both apply.)	I apply for the powers relating to personal welfare in the order described in Part C above to be recalled because:
	(a) the grounds for appointment of a guardian with such powers are no longer fulfilled(this could relate to either the adult's capacity or the adult's needs).
NB: the applicant must ensure that the doctor providing such a report is informed of the powers in the order.	(Explain why this is the case and, if applicable, attach a report by a medical practitioner stating that the adult is no longer incapable in relation to decisions about, or of acting to safeguard or promote his interests in his/her personal welfare, in relation to the matters covered in the guardianship order.)
(Describe alternatives proposed)	(b) the interests of the adult in his/her personal welfare can be satisfactorily safeguarded or promoted otherwise than by guardianship. (Describe the alternative means by which the adult's interests are to be safeguarded or promoted).

PART E

CONSULTATION

In making the application, I have consulted as follows:

1. the adult

(State the past and present wishes and feelings of the adult about the proposed recall of guardianship, so far as you have been able to ascertain them. If you have not been able to ascertain the adult's wishes and feelings, please explain the barriers to this and explain the efforts you made to help the adult overcome these barriers.)

2. The nearest relative of the adult

Name:
Address:

Relationship to adult:

(State the views of the nearest relative on the proposed recall if you have obtained these. Do you agree with these views? If you have not obtained these views, why was it not reasonable or practicable to do so?) Note : the nearest relative of the adult should not be consulted where an order to that effect has been made under section 4 of the Act.

3. The views of the primary carer of the adult

Name: Address:	
Relationship to adult:	

(State the views of the primary carer on the proposed recall if you have obtained these. Do you agree with these views? If you have not obtained these views, why was it not reasonable or practicable to do so?)

4. The views of the guardian(s) at Part C

Name(s):	
Appointment e.g. financial guardian	

(Only complete if applicable.)
(State the views of any guardian(s) named at Part (C) on the proposed recall if you have obtained these. Do you agree with these views? If you have not obtained these views, why was it not reasonable or practicable to do so?)

5. The views of any other relevant person, including any other guardian, continuing attorney or welfare attorney which have been made known to you and any person whom the sheriff has directed to be consulted

Name: Address:	
Connection to adult:	

(State the views of any other relevant person which have been made known to you and which are relevant to the proposed recall. Do you agree with these views?) (Continue on a separate sheet if there is more than one such person.)

PART F CONCLUSION

List any other matters which seem to you to be relevant.

Sign and date the form

Signed:

Date:

SCHEDULE 3 Regulation 3

Report of capacity to accompany applications to the Mental Welfare Commission or local authority under section 73(3) of the Act for recall of powers of a guardian relating to personal welfare

AWI[13]
Adults with Incapacity (Scotland) Act 2000
Section 73(3)

PART A DETAILS OF REPORT WRITER AND ADULT

I [ ] (name)

being a medical practitioner with the following professional address:

[ ] (state full postal address for contact)

Telephone [ ] E-mail [ ]

hereby confirm that I examined and assessed the following adult ("the adult")

Name [ ]

Residing at [ ] (state full postal address)

Date of birth [ ]

On [ ] (give date of examination and assessment)

PART B DETAILS OF APPLICATION

Name of applicant or person requesting report

Date of application (if known)

PART C FINDINGS OF EXAMINATION AND ASSESSMENT

On the basis of my examination and assessment I am of the opinion that the adult named in Part A is no longer incapable in relation to decisions about, or of acting to safeguard or promote his/her interests in his/her personal welfare in relation to the matters covered in the guardianship order. The reason for my opinion is given below.

Please indicate the findings of your examination and assessment, so far as they relate to the adult's capacity in relation to the matters which are the subject of the guardianship order.

Please indicate the extent to which you have been able to communicate with the adult,

Please indicate the extent to which you have been able to consult the nearest relative, primary carer, and anyone else having an interest in, or knowledge of, the adult.

Signed

Date

SCHEDULE 4

Regulation 4

Intimation by Mental Welfare Commission of
(i) application or
(ii) intention to recall powers of a guardian relating to personal welfare

AWI[14]

ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

Section 73(5)

PART A PERSONS TO WHOM THIS INTIMATION IS ADDRESSED

(Insert details of those listed in section 73(5) of the Act – see notes on Part A, at end of form.)

Name	
Status under section 73(5)	
Address	

Name	
Status under section 73(5)	
Address	

Name	
Status under section 73(5)	
Address	

PART B

PERSON WHO IS THE SUBJECT OF THE APPLICATION OR INTENTION TO RECALL ("THE ADULT")

This intimation is in respect of the powers relating to personal welfare conferred on the guardian(s) of:

	(name)
(Give full name, address and date of birth of the adult, as on the application)	(address)
	DOB

PART C

DETAILS OF GUARDIANSHIP

The guardian(s) with powers relating to the personal welfare of the adult is/are:

Name(s):

Address(es):

Note: If available please provide a copy of the guardianship order

PART D APPLICATION RECEIVED OR INTENTION TO RECALL

(Delete (a) or (b))

(a) The Mental Welfare Commission has received an application for recall of the powers relating to personal welfare conferred on the guardian(s) of the adult named in Part B. The application was made by:

(Insert details of applicant)

Name:

Address:

The application was made on:

Date:

The reason(s) why the application was made is (are):

OR

(b) The Mental Welfare Commission, acting at its own instance intends to recall the powers relating to personal welfare conferred on the guardian(s) of the adult named in Part B.

The reason(s) why it is intended to recall the powers are:

PART E OBJECTIONS TO RECALL

You may object to recall of the powers relating to personal welfare conferred on the guardian(s) of the adult named in Part B.

Objections must be made within 21 days of the date of receipt of this form. Objections must be made in writing, and should be sent to:

Name:

Address:

Tel No:

e-mail address:

Fax:

NOTES ON PART A

Under section 73(5) of the Adults with Incapacity (Scotland) Act 2000, the following should receive intimation of applications for recall or the intention of the Mental Welfare Commission to recall the powers of a guardian relating to personal welfare:

(a) the adult, unless the sheriff has determined under section 11(1) of the Act that he/she should not be so notified;

(b) the adult's nearest relative as defined in the Act. The nearest relative should not receive intimation of this form, however, where a court has made an order to that effect under section 4 of the Act;

(c) the adult's primary carer;

(d) any guardian(s) with powers relating to personal welfare (unless an application for recall has been received from that person);

(e) any person who the Mental Welfare Commission considers has an interest in the recall of the powers.

SCHEDULE 5

Regulation 5

Intimation by local authority of
(i) application or
(ii) intention to recall powers of a guardian relating to personal welfare

AWI[15]
ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000
Section 73(5)

PART A PERSONS TO WHOM THIS INTIMATION IS ADDRESSED

(Insert details of those listed in section 73(5) of the Act – see notes on Part A, at end of form.)

Name	
Status under section 73(5)	
Address	

Name	
Status under section 73(5)	
Address	

Name	
Status under section 73(5)	
Address	

PART B

PERSON WHO IS THE SUBJECT OF THE APPLICATION OR INTENTION TO RECALL ("THE ADULT")

This intimation is in respect of the powers relating to personal welfare conferred on the guardian(s) of:

	(name)
(Give full name, address and date of birth of the adult, as on the application)	(address)
	DOB

PART C

DETAILS OF GUARDIANSHIP

The guardian(s) with powers relating to the personal welfare of the adult is/are:

Name(s):

Address(es):

Note: If available please provide a copy of the guardianship order

PART D APPLICATION RECEIVED OR INTENTION TO RECALL

(Delete (a) or (b))
(Insert name of local authority)

(a) _____has received an application for recall of the powers relating to personal welfare conferred on the guardian(s) of the adult named in Part B. The application was made by:

(Insert details of applicant)

Name:

Address:

The application was made on:

Date:

The reasons why the application was made is (are):

OR

(Insert name of local authority)

(b) _____acting at its own instance intends to recall the powers relating to personal welfare conferred on the guardian(s) of the adult named in Part B.

The reason(s) why it is intended to recall the powers is (are):

PART E OBJECTIONS TO RECALL

You may object to recall of the powers relating to personal welfare conferred on the guardian(s) of the adult named in Part B.

Objections must be made within 21 days of the date of receipt of this form. Objections must be made in writing, and should be sent to:

Name:

Address:

Tel No:

e-mail address:

Fax:

NOTES ON PART A

Under section 73(5) of the Adults with Incapacity (Scotland) Act 2000, the following should receive intimation of applications for recall or the intention of the Mental Welfare Commission to recall the powers of a guardian relating to personal welfare:

(a) the adult, unless the sheriff has determined under section 11(1) of the Act that he/she should not be so notified;

(b) the adult's nearest relative as defined in the Act. The nearest relative should not receive intimation of this form, however, where a court has made an order to that effect under section 4 of the Act;

(c) the adult's primary carer;

(d) any guardian(s) with powers relating to personal welfare (unless an application for recall has been received from that person);

(e) any person who the Mental Welfare Commission considers has an interest in the recall of the powers.

SCHEDULE 6 Regulation 7

Intimation by Mental Welfare Commission of proposal to refuse application for recall of powers of a guardian relating to personal welfare

AWI[16]

ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

Section 73(7)

PART A PERSON WHO IS THE SUBJECT OF THE APPLICATION TO RECALL ("THE ADULT")

This intimation is in respect of the powers relating to personal welfare conferred on the guardian(s) of:

(Give full name, address and date of birth of the adult, as on the application)

	(name)
	(address)
	(DOB)

PART B PERSONS TO WHOM THIS INTIMATION IS ADDRESSED

(a) Adult (see details above) unless the sheriff has determined under section 11(1) of the Act that he/she should not be so notified;
(b) the person who submitted the application for recall. Name : Address:

PART C DETAILS OF GUARDIANSHIP

The guardian(s) with powers relating to the personal welfare of the adult is/are: Name(s): Address(es):

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PART D REASONS FOR PROPOSAL TO REFUSE APPLICATION FOR RECALL

(Insert details of applicant)

The Mental Welfare Commission has received an application for recall of the powers relating to personal welfare conferred on the guardian(s) of the adult named in Part B. The application was made by:

Name:

Address:

The application was made on:

Date:

The reason(s) why it is proposed to refuse the application for recall is (are):

PART E OBJECTIONS TO REFUSAL TO RECALL

You may object to the proposed refusal to recall the powers relating to personal welfare conferred on the guardian(s) of the adult named in Part B.

Objections must be made within 21 days of the date of receipt of this form. Objections must be made in writing, and should be sent to:

Name:

Address:

Tel No:
e-mail address:
Fax:

SCHEDULE 7 Regulation 8

Intimation by local authority of proposal to refuse application for recall of powers of a guardian relating to personal welfare

AWI[17]

ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

Section 73(7)

PART A PERSON WHO IS THE SUBJECT OF THE APPLICATION TO RECALL ("THE ADULT")

This intimation is in respect of the powers relating to personal welfare conferred on the guardian(s) of:

(Give full name, address and date of birth of the adult, as on the application)

	(name)
	(address)
	(DOB)

PART B PERSONS TO WHOM THIS INTIMATION IS ADDRESSED

(a) Adult (see details above) unless the sheriff has determined under section 11(1) of the Act that he/she should not be so notified;
(b) the person who submitted the application for recall. Name : Address:

PART C DETAILS OF GUARDIANSHIP

The guardian(s) with powers relating to the personal welfare of the adult is/are: Name(s): Address(es):

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PART D REASONS FOR PROPOSAL TO REFUSE APPLICATION FOR RECALL

(Insert name of local authority)

_____has received an application for recall of the powers relating to personal welfare conferred on the guardian(s) of the adult named in Part B. The application was made by:

(Insert details of applicant)

Name:

Address:

The application was made on:

Date:

The reason(s) why it is proposed to refuse the application for recall is (are):

PART E OBJECTIONS TO REFUSAL TO RECALL

You may object to the proposed refusal to recall the powers relating to personal welfare conferred on the guardian(s) of the adult named in Part B.

Objections must be made within 21 days of the date of receipt of this form. Objections must be made in writing, and should be sent to:

Name:

Address:

Tel No:
e-mail address:
Fax:

SCHEDULE 8 Regulation 10

Decision by Mental Welfare Commission on recall of powers of a guardian relating to personal welfare

AWI[18]
ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000
Section 73(6)

PART A ADULT UNDER GUARDIANSHIP

This decision concerns the powers of a guardian/guardians relating to the personal welfare of:

[ ] (name)

of

(Give full name, address and date of birth of the adult under guardianship)

[ ] (address)

[ ] (DOB)

PART B DETAILS OF GUARDIANSHIP

(Insert date, court and court case number if known)

The guardianship order currently in force to which this application relates was made on:
Court:
Court case number:

(Insert name and address)

The guardianship order appointed the following person(s) as guardian(s) with powers relating to personal welfare:

Name:
Address:

PART C APPLICATION FOR RECALL

Delete part C if not applicable

	The Mental Welfare Commission has received an application for recall of the powers relating to personal welfare conferred on the guardian(s) named in Part B.
(Insert details of applicant)	The application was made by: Name Address:
(Insert details from application)	The capacity in which the applicant claimed an interest in the adult's personal welfare was:
	The application was made on: (date)

PART D CONFIRMATION OF INTIMATIONS TO POTENTIAL OBJECTORS

	I confirm that the application OR the Mental Welfare Commission's intention to recall the personal welfare powers at Part B was intimated to:
(Insert names and details of those who received intimations under sections 73(5) and (7) of the Act)	

PART E

OBJECTIONS RECEIVED

(Insert details of objections including name of objector(s) and capacity in which he/she/they objected)

The following objections to recall were received:

PART F DECISION

Please delete those sections (a) – (d) which are not applicable.

The decision of the Mental Welfare Commission is as follows:-

(a) to recall the personal welfare powers of the guardian(s) named at Part B in relation to the adult named at Part A.

The decision was made because either (i) or (ii) or both are applicable (delete as necessary)
(i) the grounds for appointment of the guardian with personal welfare powers named at Part B are no longer fulfilled
(ii) the interests of the adult named at Part A in his/her personal welfare can be satisfactorily safeguarded or promoted otherwise than by guardianship

(b) to refuse to recall the personal welfare powers at Part B of the guardian(s) of the adult at Part A.

The decision was made because either (i) or (ii) or both are applicable (delete as necessary)
(i) the grounds for appointment of a guardian with the personal welfare powers at Part B are still fulfilled
(ii) the interests of the adult at Part A in his/her personal welfare cannot be satisfactorily safeguarded or promoted otherwise than by guardianship

(c) to remit to the sheriff the decision on recall of the personal welfare powers of the guardian(s)named at Part B in relation to the adult named at Part A

Insert the reasons why the decision at (c) was made

(d) not to remit to the sheriff the decision on recall of the personal welfare powers of the guardian(s) named at Part B in relation to the adult named at Part A where the issue of remit has been considered.

Insert the reasons why the decision at (d) was made

Local Authority and Public Guardian hereby notified in terms of section 73(4) of the Act.

Signed Date
On behalf of the Mental Welfare Commission.

SCHEDULE 9 Regulation 11

Decision by local authority on recall of powers of a guardian relating to personal welfare

AWI[19]
ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000
Section 73(6)

PART A ADULT UNDER GUARDIANSHIP

This decision concerns the powers of a guardian/guardians relating to the personal welfare of:

[ ] (name)

of

(Give full name, address and date of birth of the adult under guardianship)

[ ] (address)

[ ] (DOB)

PART B DETAILS OF GUARDIANSHIP

(Insert date, court and court case number if known)

The guardianship order currently in force to which this application relates was made on:
Court:
Court case number:

(Insert name and address)

The guardianship order appointed the following person(s) as guardian(s) with powers relating to personal welfare:

Name:
Address:

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PART C APPLICATION FOR RECALL

Delete part C if not applicable

(Insert name of local authority)

_____ has received an application for recall of the powers relating to personal welfare conferred on the guardian(s) named in Part B.

(Insert details of applicant)

The application was made by:

Name

Address:

(Insert details from application)

The capacity in which the applicant claimed an interest in the adult's personal welfare was:

The application was made on: (date)

PART D CONFIRMATION OF INTIMATIONS TO POTENTIAL OBJECTORS

(Insert names and details of those who received intimations under sections 73(5) and (7) of the Act)

I confirm that the application OR the authority's intention to recall the personal welfare powers at Part B was intimated to:

PART E

OBJECTIONS RECEIVED

(Insert details of objections including name of objector(s) and capacity in which he/she/they objected)

The following objections to recall were received:

PART F DECISION

Please delete those sections (a) – (d) which are not applicable.

The decision of the local authority is as follows:-

(a) to recall the personal welfare powers of the guardian(s) named at Part B in relation to the adult named at Part A.

The decision was made because either (i) or (ii) or both are applicable (delete as necessary)
(i) the grounds for appointment of the guardian with personal welfare powers named at Part B are no longer fulfilled
(ii) the interests of the adult named at Part A in his/her personal welfare can be satisfactorily safeguarded or promoted otherwise than by guardianship

(b) to refuse to recall the personal welfare powers at Part B of the guardian(s) of the adult at Part A.

The decision was made because either (i) or (ii) or both are applicable (delete as necessary)
(i) the grounds for appointment of a guardian with the personal welfare powers at Part B are still fulfilled
(ii) the interests of the adult at Part A in his/her personal welfare cannot be satisfactorily safeguarded or promoted otherwise than by guardianship

(c) to remit to the sheriff the decision on recall of the personal welfare powers of the guardian(s)named at Part B in relation to the adult named at Part A.

Insert the reasons why the decision at (c) was made

(d) not to remit to the sheriff the decision on recall of the personal welfare powers of the guardian(s) named at Part B in relation to the adult named at Part A where the issue of remit has been considered.

Insert the reasons why the decision at (d) was made

Mental Welfare Commission and Public Guardian hereby notified in terms of section 73(4) of the Act.

Signed Date
On behalf of the local authority.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe the forms to be completed in relation to applications to, and decisions of, the Mental Welfare Commission and local authorities in relation to recall of the powers of guardians under section 73 of the Adults with Incapacity (Scotland) Act 2000 (regulations 3 to 5, 7, 8, 10 and 11 and Schedules 1 to 9).

The regulations provide that the period within which a person may object to the recall of a guardian's powers, or to the decision of the Mental Welfare Commission or the local authority as to the recall of those powers, shall be 21 days (regulations 6 and 9).

Regulation 12 provides that the Mental Welfare Commission or a local authority shall notify each other, the applicant and the Public Guardian of any decision to recall the powers of a guardian.