

# **ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000**

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## **EXPLANATORY NOTES**

### **THE ACT**

#### **Part 6: Intervention Orders and Guardianship Orders**

##### **Intervention orders**

##### *Section 53: Intervention orders*

207. This section gives the sheriff the power to make one-off intervention orders, which govern a specific action or decision which an adult lacks the capacity to make. An order can be made relating to the adult's property, financial affairs or personal welfare. It is envisaged that intervention orders will be used for a wide variety of matters, including giving consent on behalf of an adult to a transaction, or signing a document. It is intended that an intervention order would be sufficient to overcome particular problems without having to impose continuous management on an adult with incapacity, and that more than one intervention order can be granted at any one time. The sheriff will also be able to make interim orders under section 3(2).
208. Subsection (1) establishes that anyone claiming an interest, including the adult, can apply for an intervention order.
209. Subsection (2) ensures that a sheriff shall consider any other orders relating to the adult made under Part 6 of the Act when considering an application for an intervention order. This will avoid conflicting orders being made and inform the sheriff about measures that have been taken in the past.
210. Subsection (3) places a duty upon the local authority to apply for an intervention order relating to a particular decision, under circumstances where it appears that an order is necessary but nobody else is applying for one. This means that where an intervention order exists, for example, to sell the adult's house, the local authority could still apply for an order relating to a welfare decision where they felt that nobody else was going to apply. However, if another party was in the process of applying for an order concerning this welfare decision, the local authority should not apply.
211. Subsection (4) provides that the court should have the same reports before it when considering applications for intervention orders as it does when considering guardianship orders.
212. Subsection (6) requires the Public Guardian to consent to the price before accommodation for the adult is bought or sold, under an intervention order. This is the same provision in respect of the actual price as for disposing or buying accommodation under a guardianship order under schedule 2, paragraph 6. In this case, the sheriff has already consented when granting the intervention order to the sale or purchase taking place, so the Public Guardian's consent in principle is not required.

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Act 2000 (asp 4) which received Royal Assent on 9 May 2000*

213. Subsection (7) provides for the sheriff, when making or varying an intervention order, to order the person authorised under the order to provide caution or insurance against liability. This is to protect the adult from any mishandling of their affairs, ensuring that recourse to compensation is possible. The sheriff will order that caution must be found by anyone acting under an order about property or financial matters, unless the person authorised proves unable to find caution, in which case, if the sheriff is satisfied that the person is still suitable to be authorised under the order, the requirement can be waived.
214. Subsection (8) provides that an intervention order can be altered or revoked by the sheriff. The person authorised under the intervention order, the adult, or any interested party can apply to the sheriff.
215. Subsection (10) provides that it is the duty of the court to notify the Public Guardian of all intervention orders. The Public Guardian will enter the details of the order in the public register, and inform the adult concerned, the local authority, and where the intervention order concerns welfare matters, the Mental Welfare Commission.
216. Subsection (11) provides protection for third parties who enter into a transaction with a person authorised under an intervention order, providing that these transactions should not be invalidated by problems in the person's authority under an intervention order. Transactions of this kind will not be invalid due to the person acting outwith the scope of their authority, not observing requirements of the Act, or because of an irregularity in their appointment. Without this protection, third parties might be reluctant to deal with those acting under intervention orders.
217. Subsection (12) allows for the outlays made in carrying out the directions or duties of an intervention order to be recovered from the adult's estate. For example, this means that the outlays involved in selling the adult's house, as directed by an intervention order, could be recovered.
218. Subsection (13) provides protection for third parties who acquire heritable property from a person authorised under an intervention order, preventing their title to the property being challenged by an irregularity in the person's appointment, or because they acted outwith their authority. It ensures that there is no greater risk or disincentive for a third party in acquiring heritable property from a person authorised under an intervention order than from any other person.
219. Subsection (14) provides for sections 64(2) and 67(3) and (4) to apply to intervention orders. Therefore an intervention order may not direct the detention of an adult in a hospital for the treatment of mental disorder, or consent to any of the excepted treatments provided under section 48. An intervention order relating to the adult's personal welfare can be exercised whether or not the adult is in Scotland at the relevant time, and the personal liability of a person authorised under an intervention order is limited in the same way as a guardian's personal liability.

***Section 54: Records: intervention orders***

220. This section requires a person authorised under an intervention order to keep a record of their actions. The code of practice for persons authorised under intervention orders will include information on record-keeping.

***Section 55: Notification of change of address***

221. This section provides for the Public Guardian to be notified by the person granted the intervention order of any change of their address or that of the adult, and for the appropriate statutory authorities to be notified by the Public Guardian.

***Section 56: Registration of intervention order relating to heritable property***

222. This section applies when an intervention order is made concerning an adult's heritable property, that is property which is or could be recorded or registered in the General

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Register of Sasines or Land Register of Scotland respectively. This would include an adult's house and any land or second home that they owned. The provisions are required so that any conveyancing search of the Registers would reveal the existence of the intervention order for the purposes of transactions with the property.

223. The Register of Sasines, established in 1617, is a register of title deeds to land. The Land Register of Scotland, a map-based and computerised register, established in 1979, is progressively replacing the Register of Sasines. When property changes hands, these registers are examined to ensure that the purchaser obtains a valid title. They provide the same check on who has the title to a particular property. The Land Register is being extended across Scotland in stages. A property whose title was previously recorded in the Register of Sasines will fall to be registered in the Land Register on the first occasion it changes hands after the county in which it is situated becomes operational in the Land Register. If the Keeper of the Registers is satisfied with the state of the title when the property is registered, then he will issue a fully indemnified Land Certificate.
224. Subsection (2) states that an order including powers over heritable property must specify the property in detail.
225. Subsection (3) provides that persons authorised under intervention orders including any rights to deal with, sell or manage an interest in heritable property must record their appointment in the Register of Sasines or Land Register of Scotland, as appropriate.
226. Subsection (4) sets out the information required in the application, including critical details of the powers conferred by the court, for example, the power to sell the property.
227. Subsection (5) states the procedure for recording the intervention order in the Register of Sasines.
228. Subsection (6) states the procedure for recording the intervention order in the Land Register of Scotland. The title sheet of each property over which the person authorised under an intervention order has been granted powers will be amended to show the authority conferred by the court.
229. Subsection (7) provides for the person authorised under an intervention order to send to the Public Guardian the proof of his registration in relation to the heritable property concerned, either the endorsed interlocutor if recorded in the Register of Sasines, or the Land Certificate if registered in the Land Register of Scotland. The Public Guardian will record these particulars in the public register.