

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

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## **EXPLANATORY NOTES**

### **THE ACT**

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

##### **Guardianship orders**

##### ***Section 58: Disposal of application***

241. This section sets out how the sheriff will deal with an application for a guardianship order and the process of notification of such an order.
242. Subsection (1)(a) requires the sheriff to ascertain that the adult's incapacity relates to the powers proposed for the guardian, and that the incapacity is likely to continue. Subsection (1)(b) ensures that the principle of least intervention is adhered to and a guardian is only appointed where no other available measure would sufficiently safeguard or promote the adult's interests.
243. Subsection (2) ensures that a sheriff shall consider any previous orders relating to the adult made under Part 6 of the Act when considering an application for a guardianship order. This will avoid conflicting orders being made and inform the sheriff about measures that have been taken in the past.
244. Subsection (3) allows the sheriff to decide that an intervention order would be more appropriate than guardianship and to treat the original application as an application for an intervention order. This will avoid the delay of having to reapply for an intervention order, and the sheriff having to consider the case twice.
245. Subsection (4) provides that the sheriff will normally appoint a guardian for 3 years, but has discretion to vary this, including making the appointment indefinite.
246. Subsection (5) provides that two or more guardians may be appointed jointly with separate powers, for example, one for welfare matters and one for financial matters. This is different to the provision at section 62 for guardians to be appointed to exercise the same powers jointly.
247. Subsection (6) provides that the sheriff shall order a person granted a guardianship order relating to property or financial affairs 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 require caution to be found unless the person appointed as guardian proves unable to find caution, in which case, if the sheriff is satisfied that the person is still suitable to be appointed as guardian, the sheriff can waive the requirement.
248. Subsection (7) states that it is the court's duty to inform the Public Guardian of a guardianship order. It also sets out the duties of the Public Guardian on receiving

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

notification of the guardianship order. The details must be entered in the public register, and when satisfied that the guardian has found insurance against liability, if the sheriff has required it, the Public Guardian will issue a certificate to the guardian, giving him authority to act.

249. Subsections (7)(c) and (d) provide for the Public Guardian to notify the appointment of a guardian to the adult and the appropriate statutory bodies. The terms of the interlocutor, that is to say, the details of the appointment, must be notified to the statutory bodies.