

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

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## **EXPLANATORY NOTES**

### **THE ACT**

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

#### **Termination and variation of guardianship and replacement, removal or resignation of guardian**

##### ***Section 71: Replacement or removal of guardian or recall of guardianship by sheriff***

332. This section provides that the sheriff may order a guardian to be replaced, removed (where a substitute or joint guardian exists who would act or continue to act) or have their powers recalled (where a guardian is no longer required or appropriate).
333. Subsection (1) provides that the adult or any other interested party can make an application to the sheriff under this section. On granting any application, the court will notify the Public Guardian and the other statutory bodies, where appropriate.
334. Subsection (1)(a) provides for replacement where the application nominates another individual or office-holder to be appointed. Before appointing the new guardian, the sheriff must consider their suitability as set out in section 59.
335. Subsection (1)(b) allows a sheriff to remove a guardian from office, where another guardian exists who is prepared to act, or continue to act: either a substitute guardian, or a remaining joint guardian or joint guardians where the guardian being removed was a joint guardian. This would involve the sheriff deciding whether the application is justified and, if so, removing the powers of the existing guardian.
336. Subsection (1)(c) provides for a guardianship order to be recalled in situations where a guardian is no longer needed, for example, if the adult has recovered capacity, or another measure than guardianship would be more appropriate, for example, one or more intervention orders.
337. Subsection (2) provides for a new guardian appointed under this section to be required by the sheriff to find caution or insurance against liability. The sheriff will order that caution must be found by a guardian with powers relating to property or financial matters, unless the guardian proves unable to find caution, in which case, if the sheriff is satisfied that they are still suitable to be appointed, the requirement can be waived.
338. Subsection (3) sets out the actions of the Public Guardian on notification of a decision under subsection (1). The details of the sheriff's decision will be entered in the public register.
339. Subsection (3)(b) provides that when satisfied that any new guardian has found caution if required by the sheriff, the Public Guardian will issue a new certificate of

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

appointment. After issuing a certificate of appointment, the Public Guardian will notify the adult and relevant statutory authorities, according to subsection (3)(c).

340. Subsection (4) provides that the sheriff may recall a guardianship order under this section and make an intervention order. An intervention order may be the most appropriate replacement for guardianship, according to the minimum intervention principle in section 1.
341. Subsection (5) clarifies that foreign guardians may be replaced or removed, or have their powers recalled, by the sheriff under this section, if their appointment is recognised in Scotland.