



# Adults with Incapacity (Scotland) Act 2000

2000 asp 4

## PART 6 **S**

### INTERVENTION ORDERS AND GUARDIANSHIP ORDERS

#### *Guardianship orders*

#### 57 **Application for guardianship order** **S**

- (1) An application may be made under this section by any person (including the adult himself) claiming an interest in the property, financial affairs or personal welfare of an adult to the sheriff for an order appointing an individual or office holder as guardian in relation to the adult's property, financial affairs or personal welfare.
- (2) Where it appears to the local authority that—
  - (a) the conditions mentioned in section 58(1)(a) and (b) apply to the adult; and
  - (b) no application has been made or is likely to be made for an order under this section; and
  - (c) a guardianship order is necessary for the protection of the property, financial affairs or personal welfare of the adult,they shall apply under this section for an order.
- (3) There shall be lodged in court along with an application under this section—
  - (a) reports, in prescribed form, of an examination and assessment of the adult carried out not more than 30 days before the lodging of the application by at least two medical practitioners one of whom, in a case where the incapacity is by reason of mental disorder, must be [<sup>F1</sup>a relevant] medical practitioner <sup>F2</sup>. . . ;
  - (b) where the application relates to the personal welfare of the adult, a report, in prescribed form, from the mental health officer, (but where it is in jeopardy only because of the inability of the adult to communicate, from the chief social work officer), containing his opinion as to—

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- (i) the general appropriateness of the order sought, based on an interview and assessment of the adult carried out not more than 30 days before the lodging of the application; and
  - (ii) the suitability of the individual nominated in the application to be appointed guardian; and
  - (c) where the application relates only to the property or financial affairs of the adult, a report, in prescribed form, based on an interview and assessment of the adult carried out not more than 30 days before the lodging of the application, by a person who has sufficient knowledge to make such a report as to the matters referred to in paragraph (b)(i) and (ii).
- [<sup>F3</sup>(3A) Subsection (3B) applies where a report lodged under subsection (3)(a) relates to an examination and assessment carried out more than 30 days before the lodging of the application.
- (3B) Where this subsection applies, the sheriff may, despite subsection (3)(a), continue to consider the application if satisfied that there has been no change in circumstances since the examination and assessment was carried out which may be relevant to matters set out in the report.]
- (4) Where an applicant claims an interest in the personal welfare of the adult and is not the local authority, he shall give notice to the chief social work officer of his intention to make an application under this section and the report referred to in subsection (3) (b) shall be prepared by the chief social work officer or, as the case may be, the mental health officer, within 21 days of the date of the notice.
- (5) The sheriff may, on an application being made to him, at any time before the disposal of the application made under this section, make an order for the appointment of an interim guardian.
- (6) The appointment of an interim guardian in pursuance of this section shall, unless recalled earlier, cease to have effect—
- (a) on the appointment of a guardian under section 58; or
  - (b) at the end of the [<sup>F4</sup>effective period],
- whichever is the earlier.
- [<sup>F5</sup>(6A) The “effective period”, for the purposes of subsection (6), means—
- (a) the period of 3 months beginning with the date of appointment; or
  - (b) such longer period (not exceeding 6 months) beginning with that date as the sheriff may specify in the order.
- (6B) In subsection (3)(a), “relevant medical practitioner” means—
- (a) an approved medical practitioner;
  - (b) where the adult concerned is not present in Scotland, a person who—
    - (i) holds qualifications recognised in the place where the adult is present and has special experience in relation to the diagnosis and treatment of mental disorder which correspond to the qualifications and experience needed to be an approved medical practitioner; and
    - (ii) has consulted the Mental Welfare Commission for Scotland about the report concerned; or
  - (c) any other type of individual described (by reference to skills, qualifications, experience or otherwise) by regulations made by the Scottish Ministers.

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(6C) The Scottish Ministers shall consult the Mental Welfare Commission before making regulations under subsection (6B)(c).]

[<sup>F6</sup>(7) In subsection [<sup>F7</sup>(6B)], “approved medical practitioner” has the meaning given by section 22 of the 2003 Act.]

#### Textual Amendments

- F1** Words in s. 57(3)(a) substituted (1.4.2008) by Adult Support and Protection (Scotland) Act 2007 (asp 10), **ss. 60(1)(a), 79(3)**; S.S.I. 2008/49, art. 2(1)
- F2** Words in s. 57(3)(a) repealed (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), ss. 331, 333(2)-(4), **Sch. 5**; S.S.I. 2005/161, **art. 3**
- F3** S. 57(3A)(3B) inserted (1.4.2008) by Adult Support and Protection (Scotland) Act 2007 (asp 10), **ss. 60(1)(b), 79(3)**; S.S.I. 2008/49, art. 2(1)
- F4** Words in s. 57(6)(b) substituted (1.4.2008) by Adult Support and Protection (Scotland) Act 2007 (asp 10), **ss. 60(1)(c), 79(3)**; S.S.I. 2008/49, art. 2(1)
- F5** S. 57(6A)-(6C) inserted (1.4.2008) by Adult Support and Protection (Scotland) Act 2007 (asp 10), **ss. 60(1)(d), 79(3)**; S.S.I. 2008/49, art. 2(1)
- F6** S. 57(7) inserted (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), ss. 331, 333(2)-(4), **Sch. 4 para. 9(4)(b)**; S.S.I. 2005/161, **art. 3**
- F7** Word in s. 57(7) substituted (1.4.2008) by Adult Support and Protection (Scotland) Act 2007 (asp 10), **ss. 60(1)(e), 79(3)**; S.S.I. 2008/49, art. 2(1)

## 58 Disposal of application **S**

- (1) Where the sheriff is satisfied in considering an application under section 57 that—
- the adult is incapable in relation to decisions about, or of acting to safeguard or promote his interests in, his property, financial affairs or personal welfare, and is likely to continue to be so incapable; and
  - no other means provided by or under this Act would be sufficient to enable the adult’s interests in his property, financial affairs or personal welfare to be safeguarded or promoted,
- he may grant the application.
- (2) In considering an application under section 57, the sheriff shall have regard to any intervention order or guardianship order which may have been previously made in relation to the adult, and to any order varying, or ancillary to, such an order.
- (3) Where the sheriff is satisfied that an intervention order would be sufficient as mentioned in subsection (1), he may treat the application under this section as an application for an intervention order under section 53 and may make such order as appears to him to be appropriate.
- (4) Where the sheriff grants the application under section 57 he shall make an order (in this Act referred to as a “guardianship order”) appointing the individual or office holder nominated in the application to be the guardian of the adult for a period of 3 years or such other period (including an indefinite period) as, on cause shown, he may determine.
- (5) Where more than one individual or office holder is nominated in the application, a guardianship order may, without prejudice to the power under section 62(1) to appoint

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joint guardians, appoint two or more guardians to exercise different powers in relation to the adult.

- (6) In making a guardianship order relating to the property or financial affairs of the adult the sheriff [<sup>F8</sup>may] require an individual appointed as guardian to find caution [<sup>F9</sup>or to give such other security as the sheriff thinks fit].
- (7) Where the sheriff makes a guardianship order the sheriff clerk shall forthwith send a copy of the interlocutor containing the order to the Public Guardian who shall—
- (a) enter prescribed particulars of the appointment in the register maintained by him under section 6(2)(b)(iv);
  - (b) when satisfied that the guardian has found caution [<sup>F10</sup>or given other security] if so required, issue a certificate of appointment to the guardian;
  - (c) notify the adult of the appointment of the guardian; and
  - (d) notify the local authority and (in a case where the incapacity of the adult is by reason of, or reasons which include, mental disorder and the guardianship order relates to the adult's personal welfare or factors which include it) the Mental Welfare Commission of the terms of the interlocutor.

#### Textual Amendments

- F8** Words in s. 58(6) substituted (1.4.2008) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\), ss. 60\(2\)\(a\)\(i\), 79\(3\); S.S.I. 2008/49, art. 2\(1\)](#)
- F9** Words in s. 58(6) inserted (1.4.2008) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\), ss. 60\(2\)\(a\)\(ii\), 79\(3\); S.S.I. 2008/49, art. 2\(1\)](#)
- F10** Words in s. 58(7)(b) inserted (1.4.2008) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\), ss. 60\(2\)\(b\), 79\(3\); S.S.I. 2008/49, art. 2\(1\)](#)

## 59 Who may be appointed as guardian **S**

- (1) The sheriff may appoint as guardian—
- (a) any individual whom he considers to be suitable for appointment and who has consented to being appointed;
  - (b) where the guardianship order is to relate only to the personal welfare of the adult, the chief social work officer of the local authority.
- (2) Where the guardianship order is to relate to the property and financial affairs and to the personal welfare of the adult and joint guardians are to be appointed, the chief social work officer of the local authority may be appointed guardian in relation only to the personal welfare of the adult.
- (3) The sheriff shall not appoint an individual as guardian to an adult unless he is satisfied that the individual is aware of—
- (a) the adult's circumstances and condition and of the needs arising from such circumstances and condition; and
  - (b) the functions of a guardian.
- (4) In determining if an individual is suitable for appointment as guardian, the sheriff shall have regard to—
- (a) the accessibility of the individual to the adult and to his primary carer;
  - (b) the ability of the individual to carry out the functions of guardian;
  - (c) any likely conflict of interest between the adult and the individual;

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- (d) any undue concentration of power which is likely to arise in the individual over the adult;
  - (e) any adverse effects which the appointment of the individual would have on the interests of the adult;
  - (f) such other matters as appear to him to be appropriate.
- (5) Paragraphs (c) and (d) of subsection (4) shall not be regarded as applying to an individual by reason only of his being a close relative of, or person residing with, the adult.

## 60 **Renewal of guardianship order by sheriff** **S**

- (1) At any time before the end of a period in respect of which a guardianship order has been made or renewed, an application may be made to the sheriff under this section by the guardian for the renewal of such order, and where such an application is so made, the order shall continue to have effect until the application is determined.
- (2) Where it appears to the local authority that an application for renewal of a guardianship order under subsection (1) is necessary but that no such application has been made or is likely to be made, they shall apply under subsection (1) for the renewal of such an order and, where such an application is so made, the order shall continue to have effect until the application is determined.
- [<sup>F11</sup>(3) There must be lodged in court along with an application under this section—
- (a) at least one report, in the prescribed form, of an examination and assessment of the adult carried out by a medical practitioner not more than 30 days before the lodging of the application;
  - (b) where the application relates to the adult's personal welfare, a report, in the prescribed form, from the mental health officer (but where it is in jeopardy only because of the adult's inability to communicate, from the chief social work officer), containing the officer's opinion as to—
    - (i) the general appropriateness of continuing the guardianship, based on an interview and assessment of the adult carried out not more than 30 days before the lodging of the application; and
    - (ii) the suitability of the applicant to continue to be the adult's guardian; and
  - (c) where the application relates to the adult's property or financial affairs, a report from the Public Guardian, in the prescribed form, containing the Public Guardian's opinion as to—
    - (i) the applicant's conduct as the adult's guardian; and
    - (ii) the suitability of the applicant to continue to be the adult's guardian.
- (3A) In a case where the incapacity is by reason of mental disorder—
- (a) where a single report is lodged under subsection (3)(a), the related examination and assessment must be carried out by a relevant medical practitioner;
  - (b) where 2 or more reports are so lodged, at least one of the related examinations and assessments must be carried out by a relevant medical practitioner.
- “Relevant medical practitioner” has the same meaning in this subsection as it has in section 57(3)(a) (see definition in section 57(6B)).]

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(4) Section 58 shall apply to an application under this section as it applies to an application under section 57; and for the purposes of so applying that section—

- (a) references to the making of a guardianship order and the appointment of a guardian (however expressed) shall be construed as references to, respectively, the renewal of the order and the continuation of appointment;
- (b) for subsection (4) there shall be substituted—

“(4) Where the sheriff grants an application under section 60, he may continue the guardianship order for a period of 5 years or for such other period (including an indefinite period) as, on cause shown, he may determine.”.

[<sup>F12</sup>(4A) A sheriff may determine an application made under this section without hearing the parties.]

(5) Where the sheriff refuses an application under this section, the sheriff clerk shall forthwith send a copy of the interlocutor containing the refusal to the Public Guardian who shall—

- (a) enter prescribed particulars in the register maintained by him under section 6(2)(b)(iv); and
- (b) notify the adult and the local authority and (in a case where the adult’s incapacity is by reason of, or reasons which include, mental disorder and the guardianship order relates to the adult’s personal welfare or factors which include it) the Mental Welfare Commission.

#### Textual Amendments

**F11** S. 60(3)(3A) substituted for s. 60(3) (1.4.2008) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), **ss. 60(3)(a)**, 79(3); S.S.I. 2008/49, art. 2(1)

**F12** S. 60(4A) inserted (1.4.2008) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), **ss. 60(3)(b)**, 79(3); S.S.I. 2008/49, art. 2(1)

## 61 Registration of guardianship order relating to heritable property **S**

- (1) This section applies where the sheriff makes a guardianship order which vests in the guardian any right of the adult to deal with, convey or manage any interest in heritable property which is recorded or is capable of being recorded in the General Register of Sasines or is registered or is capable of being registered in the Land Register of Scotland.
- (2) In making such an order the sheriff shall specify each property affected by the order, in such terms as enable it to be identified in the Register of Sasines or, as the case may be, the Land Register of Scotland.
- (3) The guardian shall, after finding caution [<sup>F13</sup>or giving other security] if so required, forthwith apply to the Keeper of the Registers of Scotland for recording of the interlocutor containing the order in the General Register of Sasines or, as the case may be, registering of it in the Land Register of Scotland.
- (4) An application under subsection (3) shall contain—
  - (a) the name and address of the guardian;

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- (b) a statement that the guardian has powers relating to each property specified in the order;
  - (c) a copy of the interlocutor.
- (5) Where the interlocutor is to be recorded in the General Register of Sasines, the Keeper shall—
- (a) record the interlocutor in the Register; and
  - (b) endorse the interlocutor to the effect that it has been so recorded.
- (6) Where the interlocutor is to be registered in the Land Register of Scotland, the Keeper shall update the title sheet of the property to show the interlocutor.
- (7) The guardian shall send the endorsed interlocutor or, as the case may be, [<sup>F14</sup>an extract of the updated title sheet] to the Public Guardian who shall enter prescribed particulars of it in the register maintained by him under section 6(2)(b)(iv).

#### Textual Amendments

- F13** Words in s. 61(3) inserted (1.4.2008) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), [ss. 60\(4\)](#), 79(3); S.S.I. 2008/49, art. 2(1)
- F14** Words in s. 61(7) substituted (8.12.2014) by [Land Registration etc. \(Scotland\) Act 2012 \(asp 5\)](#), [ss. 122, 123](#), [sch. 5 para. 38\(3\)](#) (with s. 121, sch. 4 paras. 13, 16); S.S.I. 2014/127, art. 2

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