Adults with Incapacity (Scotland) Act 2000

2000 asp 4

PART 6

INTERVENTION ORDERS AND GUARDIANSHIP ORDERS

Intervention orders

53 Intervention orders

(1) The sheriff may, on an application by any person (including the adult himself) claiming an interest in the property, financial affairs or personal welfare of an adult, if he is satisfied that the adult is incapable of taking the action, or is incapable in relation to the decision about his property, financial affairs or personal welfare to which the application relates, make an order (in this Act referred to as an "intervention order").

(2) In considering an application under subsection (1), 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 it appears to the local authority that—

(a) the adult is incapable as mentioned in subsection (1); and

(b) no application has been made or is likely to be made for an order under this section in relation to the decision to which the application under this subsection relates; and

(c) an intervention 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.

(4) **[**[F1]Subsections (3), (3A), (3B) and (4) of section 57**]** shall apply to an application under this section and, for this purpose, for the reference to the individual or office holder nominated for appointment as guardian there shall be substituted a reference to a person nominated in such application.

(5) An intervention order may—

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(a) direct the taking of any action specified in the order;

(b) authorise the person nominated in the application to take such action or make such decision in relation to the property, financial affairs or personal welfare of the adult as is specified in the order;

(6) Where an intervention order directs the acquisition of accommodation for, or the disposal of any accommodation used for the time being as a dwelling house by, the adult, the consent of the Public Guardian as respects the consideration shall be required before the accommodation is acquired or, as the case may be, disposed of.

(7) In making or varying an intervention order the sheriff may, [F2]... in the case of an intervention order relating to property or financial affairs [F2]...

(a) [F2]. . . . . .

(b) [F2]. . . . . .

require the person authorised under the order to find caution **[**[F3]or to give such other security as the sheriff thinks fit**]**.

(8) The sheriff may, on an application by—

(a) the person authorised under the intervention order; or

(b) the adult; or

(c) any person claiming an interest in the property, financial affairs or personal welfare of the adult,

make an order varying the terms of, or recalling, the intervention order or any other order made for the purposes of the intervention order.

(9) Anything done under an intervention order shall have the same effect as if done by the adult if he had the capacity to do so.

(10) Where an intervention order is made, the sheriff clerk shall forthwith send a copy of the interlocutor containing the order to the Public Guardian who shall—

(a) enter in the register maintained by him under section 6(2)(b)(v) such particulars of the order as may be prescribed; [F4]...

[[F5](aa) when satisfied that the person authorised under the order has found caution or given other security if so required, issue a certificate of appointment to the person; and**]**

(b) notify the adult, the local authority and (in a case where the adult's incapacity is by reason of, or reasons which include, mental disorder and the intervention order relates to the adult's personal welfare or factors which include it) the Mental Welfare Commission **[**[F6]of the terms of the interlocutor**]**.

(11) A transaction for value between a person authorised under an intervention order, purporting to act as such, and a third party acting in good faith shall not be invalid on the ground only that—

(a) the person acted outwith the scope of his authority;

(b) the person failed to observe any requirement, whether substantive or procedural, imposed by or under this Act or by the sheriff or by the Public Guardian; or

(c) there was any irregularity whether substantive or procedural in the authorisation of the person.

(12) A person authorised under an intervention order may recover from the estate of the adult the amount of such reasonable outlays as he incurs in doing anything directed or authorised under the order.

(13) Where a third party has acquired, in good faith and for value, title to any interest in heritable property from a person authorised under an intervention order that title shall not be challengeable on the ground only—

(a) of any irregularity of procedure in the making of the intervention order; or

(b) that the person authorised under the intervention order has acted outwith the scope of the authority.

(14) Sections 64(2) and 67(3) and (4) shall apply to an intervention order as they apply to a guardianship order and, for this purpose, for any reference to a guardian there shall be substituted a reference to the person authorised under the order.

Textual Amendments

F1 Words in s. 53(4) substituted (1.4.2008) by Adult Support and Protection (Scotland) Act 2007 (asp 10), **ss. 59(1)(a)**, 79(3); S.S.I. 2008/49, art. 2(1)

F2 Words in s. 53(7) repealed (1.4.2008) by Adult Support and Protection (Scotland) Act 2007 (asp 10), **ss. 59(1)(b)(i)**, 79(3); S.S.I. 2008/49, art. 2(1)

F3 Words in s. 53(7) inserted (1.4.2008) by Adult Support and Protection (Scotland) Act 2007 (asp 10), **ss. 59(1)(b)(ii)**, 79(3); S.S.I. 2008/49, art. 2(1)

F4 Word in s. 53(10) repealed (1.4.2008) by Adult Support and Protection (Scotland) Act 2007 (asp 10), **ss. 59(1)(c)(i)**, 79(3); S.S.I. 2008/49, art. 2(1)

F5 S. 53(10)(aa) inserted (1.4.2008) by Adult Support and Protection (Scotland) Act 2007 (asp 10), **ss. 59(1)(c)(ii)**, 79(3); S.S.I. 2008/49, art. 2(1)

F6 Words in s. 53(10)(b) inserted (1.4.2008) by Adult Support and Protection (Scotland) Act 2007 (asp 10), **ss. 59(1)(c)(iii)**, 79(3); S.S.I. 2008/49, art. 2(1)

54 Records: intervention orders

A person authorised under an intervention order shall keep records of the exercise of his powers.

55 Notification of change of address

After particulars relating to an intervention order are entered in the register under section 53 the person authorised under the intervention order shall **[**[F7], not later than 7 days after any change of the person's or the adult's address, notify the Public Guardian of the change who**]** shall enter prescribed particulars in the register maintained by him under section 6(2)(b)(v) and notify the local authority and (in a case where the adult's incapacity is by reason of, or reasons which include, mental disorder and the intervention order relates to the adult's personal welfare or factors which include it) the Mental Welfare Commission.

Textual Amendments

F7 Words in s. 55 substituted (5.10.2007) by Adult Support and Protection (Scotland) Act 2007 (asp 10), **ss. 59(2)**, 79; S.S.I. 2007/334, **art. 2(b)**, Sch. 2 (with savings in arts. 4-6)

56 Registration of intervention order relating to heritable property

(1) This section applies where the sheriff makes an intervention order which vests in the person authorised under the order any right 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 person authorised under the order shall 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, for registering of it in the Land Register of Scotland.

(4) An application under subsection (3) shall contain—
- (a) the name and address of the person authorised under the order;
- (b) a statement that the person authorised under the order 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 it.

(7) The person authorised under the order shall send the endorsed interlocutor or, as the case may be, **[**[F8]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)(v).

Textual Amendments

F8 Words in s. 56(7) substituted (8.12.2014) by Land Registration etc. (Scotland) Act 2012 (asp 5), ss. 122, 123, **sch. 5 para. 38(2)** (with s. 121, sch. 4 paras. 13, 16); S.S.I. 2014/127, art. 2

[[F9]56A Death of person authorised to intervene

Where a person authorised under an intervention order dies, the person's personal representatives shall, if aware of the existence of the authority, notify the Public Guardian who shall—
- (a) notify—
  - (i) the adult;
  - (ii) the local authority; and
  - (iii) in a case where the adult's incapacity is by reason of, or reasons which include, mental disorder and the intervention order relates to the adult's personal welfare or factors including it, the Mental Welfare Commission; and

(b) enter prescribed particulars in the register maintained under section 6(2)(b)(v).**]**

Textual Amendments

F9 S. 56A inserted (5.10.2007) by Adult Support and Protection (Scotland) Act 2007 (asp 10), **ss. 59(3)**, 79; S.S.I. 2007/334, **art. 2(b)**, Sch. 2 (with savings in arts. 4-6)

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