



# Adults with Incapacity (Scotland) Act 2000

2000 asp 4

## PART 6

### INTERVENTION ORDERS AND GUARDIANSHIP ORDERS

#### *Guardianship orders*

#### **58 Disposal of application**

- (1) Where the sheriff is satisfied in considering an application under section 57 that—
  - (a) 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
  - (b) 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.

*Status: Point in time view as at 30/09/2021.*

*Changes to legislation: There are currently no known outstanding effects for the Adults with Incapacity (Scotland) Act 2000, Section 58. (See end of Document for details)*

- (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 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>F1</sup>may] require an individual appointed as guardian to find caution [<sup>F2</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>F3</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**

- F1** 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)
- F2** 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)
- F3** 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)

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