



# Adults with Incapacity (Scotland) Act 2000

2000 asp 4

## PART 6

### INTERVENTION ORDERS AND GUARDIANSHIP ORDERS

#### *Joint and substitute guardians*

#### **63 Substitute guardian**

- (1) In any case where an individual is appointed as guardian under section 58 the sheriff may, on an application, appoint to act as guardian in the event of the guardian so appointed becoming unable to act any individual or office holder who could competently be appointed by virtue of section 59.
- (2) In this Act an individual appointed under section 58 and an individual or office holder appointed under this section are referred to respectively as an “original guardian” and a “substitute guardian”.
- (3) The appointment of a substitute guardian shall be for the same period as the appointment of the original guardian under section 58(4).
- (4) An application for appointment as a substitute guardian may be made at the time of the application for the appointment of the original guardian or at any time thereafter.
- (5) In making an order appointing an individual as substitute guardian with powers relating to the property or financial affairs of the adult the sheriff [<sup>F1</sup>may] require an individual appointed as substitute guardian to find caution [<sup>F2</sup>or to give such other security as the sheriff thinks fit].
- (6) Subsection (1) shall apply to an individual who, having been appointed as a substitute guardian subsequently, by virtue of this section, becomes the guardian as it applies to an individual appointed under section 58 and, for this purpose, any reference in this section to the “original guardian” shall be construed accordingly.
- (7) Where the sheriff appoints a substitute guardian (other than a substitute guardian appointed in the same order as an original guardian) under subsection (1), the sheriff

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*Changes to legislation: There are currently no known outstanding effects for the Adults with Incapacity (Scotland) Act 2000, Section 63. (See end of Document for details)*

- clerk shall send a copy of the interlocutor containing the order appointing the substitute guardian 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, the original guardian and the local authority and (in a case where the adult’s incapacity is by reason of, or by 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.
- (8) On the death or incapacity of the original guardian, the substitute guardian shall, without undue delay, notify the Public Guardian—
- (a) of the death or incapacity (and where the original guardian has died, provide the Public Guardian with documentary evidence of the death); and
  - (b) whether or not he is prepared to act as guardian.
- (9) The Public Guardian on being notified under subsection (8) shall, if the substitute guardian is prepared to act—
- (a) enter prescribed particulars in the register maintained by him under section 6(2)(b)(iv);
  - (b) when satisfied that the substitute guardian has found caution [<sup>F3</sup>or given other security] if so required, issue the substitute guardian with a certificate of appointment;
  - (c) notify the adult, the original guardian, the local authority and (in a case where the adult’s incapacity is by reason of, or by 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 that the substitute guardian is acting.
- (10) Unless otherwise specified in the order appointing him, the substitute guardian shall have the same functions and powers as those exercisable by the original guardian immediately before the event mentioned in subsection (1).

#### **Textual Amendments**

- F1** Words in s. 63(5) substituted (1.4.2008) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), ss. [60\(6\)\(a\)\(i\)](#), 79(3); S.S.I. 2008/49, art. 2(1)
- F2** Words in s. 63(5) inserted (1.4.2008) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), ss. [60\(6\)\(a\)\(ii\)](#), 79(3); S.S.I. 2008/49, art. 2(1)
- F3** Words in s. 63(9)(b) inserted (1.4.2008) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), ss. [60\(6\)\(b\)](#), 79(3); S.S.I. 2008/49, art. 2(1)

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