



Adults with Incapacity (Scotland) Act 2000

2000 asp 4

PART 6

INTERVENTION ORDERS AND GUARDIANSHIP ORDERS

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

71 Replacement or removal of guardian or recall of guardianship by sheriff

- (1) The sheriff, on an application made to him by an adult subject to guardianship or by any other person claiming an interest in the adult's property, financial affairs or personal welfare, may—
- (a) replace a guardian by an individual or office holder nominated in the application if he is satisfied, in relation to an individual, that he is suitable for appointment having regard to the matters set out in section 59(3) to (5);
 - (b) remove a guardian from office if he is satisfied—
 - (i) that there is a substitute guardian who is prepared to act as guardian; or
 - (ii) in a case where there are joint guardians, that the remaining guardian is or remaining guardians are prepared to continue to act; or
 - (c) recall a guardianship order or otherwise terminate a guardianship if he is satisfied—
 - (i) that the grounds for appointment of a guardian are no longer fulfilled; or
 - (ii) that the interests of the adult in his property, financial affairs or personal welfare can be satisfactorily safeguarded or promoted otherwise than by guardianship,and where an application under this subsection is granted, the sheriff clerk shall send a copy of the interlocutor to the Public Guardian.
- (2) In making an order replacing a guardian by an individual with powers relating to the property or financial affairs of the adult or removing a guardian from office where

Status: Point in time view as at 01/04/2002. This version of this provision has been superseded.

Changes to legislation: There are currently no known outstanding effects for the Adults with Incapacity (Scotland) Act 2000, Section 71. (See end of Document for details)

there is a substitute guardian with such powers prepared to act as guardian, the sheriff shall, except where—

- (a) the individual or substitute guardian is unable to find caution; but
- (b) the sheriff is satisfied that nevertheless he is suitable to be appointed guardian or substitute guardian, as the case may be,

require an individual appointed as guardian or the substitute guardian to find caution.

(3) The Public Guardian on receiving a copy of the interlocutor under subsection (1) shall—

- (a) enter prescribed particulars in the register maintained by him under section 6(2)(b)(iv);
- (b) where the sheriff—
 - (i) replaces the guardian by the individual or office holder nominated in the application, when satisfied that, in the case of an individual, the individual has found caution if so required, issue him with a certificate of appointment;
 - (ii) removes a guardian from office and a substitute guardian is prepared to act, when satisfied that the substitute guardian has found caution if so required, issue the substitute guardian with a certificate of appointment;
 - (iii) removes a joint guardian from office and there is a joint guardian who is prepared to continue to act, issue a remaining joint guardian with a new certificate of appointment;
- (c) notify the adult and 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 including it) the Mental Welfare Commission.

(4) Where the sheriff recalls the guardianship order he may at the same time make an intervention order.

(5) In this section any reference to a guardian shall include a reference to a guardian (however called) appointed under the law of any country to, or entitled under the law of any country to act for, an adult during his incapacity, if the guardianship is recognised by the law of Scotland; and “guardianship order” shall be construed accordingly.

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