



Adults with Incapacity (Scotland) Act 2000

2000 asp 4

PART 6

INTERVENTION ORDERS AND GUARDIANSHIP ORDERS

Functions etc. of guardian

64 Functions and duties of guardian

- (1) Subject to the provisions of this section, an order appointing a guardian may confer on him—
- (a) power to deal with such particular matters in relation to the property, financial affairs or personal welfare of the adult as may be specified in the order;
 - (b) power to deal with all aspects of the personal welfare of the adult, or with such aspects as may be specified in the order;
 - (c) power to pursue or defend an action of declarator of nullity of marriage, or of divorce or separation in the name of the adult;
 - (d) power to manage the property or financial affairs of the adult, or such parts of them as may be specified in the order;
 - (e) power to authorise the adult to carry out such transactions or categories of transactions as the guardian may specify.
- (2) A guardian may not—
- (a) place the adult in a hospital for the treatment of mental disorder against his will; ^{F1} ...
 - (b) consent on behalf of the adult to any form of treatment [^{F2}in relation to which the authority conferred by section 47(2) does not apply by virtue of regulations made under section 48(2)] [^{F3};
 - (c) make, on behalf of the adult, a request under section 4(1) of the Anatomy Act 1984 (c. 14);
 - (d) give, on behalf of the adult, an authorisation under, or by virtue of, section 6(1), [^{F4}16F(1)(a),] 17, 29(1) or 42(1) of the Human Tissue(Scotland) Act 2006 (asp 4);

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- [^{F5}(da) withdraw an authorisation, on behalf of the adult, by virtue of section 6A(1) of that Act;
- (db) make, on behalf of the adult, an opt-out declaration by virtue of section 6B(1) of that Act;
- (dc) withdraw an opt-out declaration, on behalf of the adult, by virtue of section 6C(1) of that Act;] or
- (e) make, on behalf of the adult, a nomination under section 30(1) of that Act]
- (3) A guardian shall (unless prohibited by an order of the sheriff and subject to any conditions or restrictions specified in such an order) have power by virtue of his appointment to act as the adult's legal representative in relation to any matter within the scope of the power conferred by the guardianship order.
- (4) The guardian shall not later than 7 days after any change of his own or the adult's address notify the Public Guardian who shall—
- (a) notify the adult (in a case where it is the guardian's address which has changed), 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 of the change; and
 - (b) enter prescribed particulars in the register maintained by him under section 6(2)(b)(iv).
- (5) A guardian having powers relating to the property or financial affairs of the adult shall, subject to—
- (a) such restrictions as may be imposed by the court;
 - (b) any management plan prepared under paragraph 1 of schedule 2; or
 - (c) paragraph 6 of that schedule,
- be entitled to use the capital and income of the adult's estate for the purpose of purchasing assets, services or accommodation so as to enhance the adult's quality of life.
- (6) The guardian may arrange for some or all of his functions to be exercised by one or more persons acting on his behalf but shall not be entitled to surrender or transfer any part of them to another person.
- (7) The guardian shall comply with any order or demand made by the Public Guardian in relation to the property or financial affairs of the adult in so far as so complying would be within the scope of his authority; and where the guardian fails to do so the sheriff may, on the application of the Public Guardian, make an order to the like effect as the order or demand made by the Public Guardian, and the sheriff's decision shall be final.
- (8) An interim guardian appointed under section 57(5) having powers relating to—
- (a) the property or financial affairs of an adult shall report to the Public Guardian;
 - (b) the personal welfare of an adult shall report to the chief social work officer of the local authority,
- every month as to his exercise of those powers.
- (9) Where the chief social work officer of the local authority has been appointed guardian he shall, not later than 7 working days after his appointment, notify any person who received notification under section 58(7) of the appointment of the name of the officer responsible at any time for carrying out the functions and duties of guardian.

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- (10) If, in relation to the appointment of the chief social work officer as guardian, the sheriff has directed that that intimation or notification of any application or other proceedings should not be given to the adult, the chief social work officer shall not notify the adult under subsection (9).
- (11) The Scottish Ministers may by regulations define the scope of the powers which may be conferred on a guardian under subsection (1) and the conditions under which they shall be exercised.
- (12) Schedule 2 (which makes provision as to the guardian's management of the estate of an adult) has effect.

Textual Amendments

- F1** Word in s. 64(2)(a) repealed (1.9.2006) by [Human Tissue \(Scotland\) Act 2006 \(asp 4\)](#), **ss. 57(3)(a)**, 62; [S.S.I. 2006/251](#), **art. 3**
- F2** Words in s. 64(2)(b) substituted (5.10.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), **ss. 60(7)**, 79; [S.S.I. 2007/334](#), **art. 2(b)**, Sch. 2 (with savings in arts. 4-6)
- F3** S. 64(2)(c)-(e) inserted (1.9.2006) by [Human Tissue \(Scotland\) Act 2006 \(asp 4\)](#), **ss. 57(3)(b)**, 62; [S.S.I. 2006/251](#), **art. 3**
- F4** S. 64(2)(da)-(dc) inserted (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019 \(asp 11\)](#), **ss. 28(2)(b)(ii)**, 29(2); [S.S.I. 2021/108](#), reg. 2
- F5** Word in s. 64(2)(d) inserted (26.3.2021) by [Human Tissue \(Authorisation\) \(Scotland\) Act 2019 \(asp 11\)](#), **ss. 28(2)(b)(i)**, 29(2); [S.S.I. 2021/108](#), reg. 2

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