



# 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*

#### **73 Recall of powers of guardian**

- (1) The Public Guardian, at his own instance or on an application by any person (including the adult himself) claiming an interest in the property and financial affairs of an adult in respect of whom a guardian has been appointed, may recall the powers of a guardian relating to the property or financial affairs of the adult if it appears to him that—
  - (a) the grounds for appointment of a guardian with such powers are no longer fulfilled; or
  - (b) the interests of the adult in his property and financial affairs can be satisfactorily safeguarded or promoted otherwise than by guardianship.
- (2) Where the Public Guardian recalls the powers of a guardian under subsection (1) he shall—
  - (a) enter prescribed particulars in the register maintained by him under section 6(2)(b)(iv);
  - (b) notify the adult, the guardian and the local authority.
- (3) The Mental Welfare Commission or the local authority in whose area an adult in respect of whom a guardian has been appointed habitually resides <sup>F1</sup>..., at their own instance or on an application by any person (including the adult himself) claiming an interest in the personal welfare of the adult, may recall the powers of a guardian relating to the personal welfare of the adult if it appears to them that—
  - (a) the grounds for appointment of a guardian with such powers are no longer fulfilled; or

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*Changes to legislation: There are currently no known outstanding effects for the Adults with Incapacity (Scotland) Act 2000, Section 73. (See end of Document for details)*

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- (b) the interests of the adult in his personal welfare can be satisfactorily safeguarded or promoted otherwise than by guardianship.
- [<sup>F2</sup>(3A) The Mental Welfare Commission may recall the powers of a guardian under subsection (3) only if those powers were granted in a case where the adult's incapacity is by reason of, or reasons which include, mental disorder.]
- (4) Where the Mental Welfare Commission or the local authority recall the powers of a guardian under subsection (3) they shall notify the other and the Public Guardian who shall—
    - (a) enter prescribed particulars in the register maintained by him under section 6(2)(b)(iv);
    - (b) notify the adult and the guardian.
  - (5) The Public Guardian, Mental Welfare Commission or local authority, as the case may be, shall—
    - (a) where acting on an application, on receipt of the application in the prescribed form intimate it;
    - (b) where acting at his or their own instance, intimate the intention to recall the powers of a guardian,

to the adult, his nearest relative, his primary carer<sup>F3</sup>, his named person] and any person who he or they consider has an interest in the recall of the powers and advise them of the prescribed period within which they may object to such recall; and he or they shall not recall the powers without affording to any objector an opportunity of being heard.
  - (6) Having heard any objections as mentioned in subsection (5) the Public Guardian, Mental Welfare Commission or local authority may recall the powers of a guardian.
  - (7) Where the Public Guardian, Mental Welfare Commission or local authority proposes or propose to refuse the application he or they shall intimate the decision to the applicant and the adult and advise them of the prescribed period within which they may object to the refusal; and he or they shall not refuse the application without affording to the applicant or the adult, if he objects, an opportunity of being heard.
  - (8) The Public Guardian, Mental Welfare Commission or local authority may at his or their own instance or at the instance of an applicant or of any person who objects to the recall of the powers of the guardian remit the matter for determination by the sheriff whose decision shall be final.
  - (9) A decision of—
    - (a) the Public Guardian, Mental Welfare Commission or local authority to recall the powers of a guardian under subsection (6);
    - (b) the Public Guardian, Mental Welfare Commission or local authority to remit or not to remit the matter to the sheriff under subsection (8),

may be appealed to the sheriff, whose decision shall be final, and the decision of the Public Guardian, Mental Welfare Commission or local authority as to the recall of the powers of a guardian shall remain in force pending the final determination of the appeal.
  - (10) The Scottish Ministers may prescribe the forms and procedure for the purposes of any recall of guardianship powers by the Mental Welfare Commission or the local authority.

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**Changes to legislation:** There are currently no known outstanding effects for the Adults with Incapacity (Scotland) Act 2000, Section 73. (See end of Document for details)

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[<sup>F4</sup>(11) Section 73A modifies the application of this section in relation to the recall by a local authority of guardianship powers held by their chief social work officer.]

**Textual Amendments**

- F1** Words in s. 73(3) repealed (1.4.2008) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), **ss. 60(11)(a)**, 79(3); S.S.I. 2008/49, art. 2(1)
- F2** S. 73(3A) inserted (1.4.2008) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), **ss. 60(11)(b)**, 79(3); S.S.I. 2008/49, art. 2(1)
- F3** Words in s. 73(5) inserted (27.9.2005) by [The Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 2, **Sch. 1 para. 28(8)**
- F4** S. 73(11) inserted (1.4.2008) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), **ss. 60(11)(c)**, 79(3); S.S.I. 2008/49, art. 2(1)

**Changes to legislation:**

There are currently no known outstanding effects for the Adults with Incapacity (Scotland) Act 2000, Section 73.