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

74 Variation of guardianship order

(1) The sheriff, on an application by any person (including the adult himself) claiming an interest in the property, financial affairs or personal welfare of the adult, may vary the powers conferred by the guardianship order and may vary any existing ancillary order.

(2) In varying powers relating to the property or financial affairs of the adult conferred by the guardianship order or in varying any ancillary order in relation to such powers the sheriff **[**[F1]may**]** require the guardian to find caution **[**[F2]or to give such other security as the sheriff thinks fit**]**.

(3) In considering an application under subsection (1), the sheriff shall have regard to any intervention order or guardianship order which may have been previously made in relation to the adult or any other order varying such an order, and to any order ancillary to such an order.

(4) Notwithstanding subsection (1), an application which seeks to vary the powers conferred by a guardianship order or to vary an ancillary order so that—

(a) a guardian, appointed only in relation to the personal welfare of an adult, shall be appointed also or instead in relation to the property or financial affairs of the adult; or

(b) a guardian, appointed only in relation to the property or financial affairs of an adult, shall be appointed also or instead in relation to the personal welfare of the adult;

shall be made under section 57.

(5) Where the sheriff varies the powers conferred by a guardianship order or varies an ancillary order under this section, the sheriff clerk shall send a copy of the interlocutor containing the order to 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 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; and

(c) if he is satisfied that the guardian has caution **[**[F3]or other security**]**, if so required, which covers the varied order, issue a new certificate of appointment where necessary.

Textual Amendments

F1 Words in s. 74(2) substituted (1.4.2008) by Adult Support and Protection (Scotland) Act 2007 (asp 10), **ss. 60(13)(a)(i)**, 79(3); S.S.I. 2008/49, art. 2(1)

F2 Words in s. 74(2) inserted (1.4.2008) by Adult Support and Protection (Scotland) Act 2007 (asp 10), **ss. 60(13)(a)(ii)**, 79(3); S.S.I. 2008/49, art. 2(1)

F3 Words in s. 74(5)(c) inserted (1.4.2008) by Adult Support and Protection (Scotland) Act 2007 (asp 10), **ss. 60(13)(b)**, 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 74.