



# Adults with Incapacity (Scotland) Act 2000

2000 asp 4

## PART 6 **S**

### INTERVENTION ORDERS AND GUARDIANSHIP ORDERS

#### *Joint and substitute guardians*

#### 62 **Joint guardians** **S**

- (1) An application may be made to the sheriff—
  - (a) by two or more individuals seeking appointment, for their appointment as joint guardians to an adult; or
  - (b) by an individual seeking appointment, for his appointment as an additional guardian to an adult jointly with one or more existing guardians.
- (2) Joint guardians shall not be appointed to an adult unless—
  - (a) the individuals so appointed are parents, siblings or children of the adult; or
  - (b) the sheriff is satisfied that, in the circumstances, it is appropriate to appoint as joint guardians individuals who are not related to the adult as mentioned in paragraph (a).
- (3) Where an application is made under subsection (1)(a), sections 58 and 59 shall apply for the purposes of the disposal of that application as they apply for the disposal of an application under section 57.
- (4) In deciding if an individual is suitable for appointment as additional guardian under subsection (1)(b), the sheriff shall have regard to the matters set out in section 59(3) to (5).
- (5) Where the sheriff appoints an additional guardian under this section, the sheriff clerk shall send a copy of the order appointing him to the Public Guardian who shall—
  - (a) enter prescribed particulars in the register maintained by him under section 6(2) (b)(iv) of this Act;

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*Changes to legislation:* There are currently no known outstanding effects for the Adults with Incapacity (Scotland) Act 2000, Cross Heading: Joint and substitute guardians. (See end of Document for details)

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- (b) when satisfied that the additional guardian has found caution [<sup>F1</sup>or given other security] if so required, issue a certificate of appointment to the additional guardian and a new certificate of appointment to the existing guardian;
  - (c) notify the adult and 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.
- (6) Joint guardians may, subject to subsection (7), exercise their functions individually, and each guardian shall be liable for any loss or injury caused to the adult arising out of—
- (a) his own acts or omissions; or
  - (b) his failure to take reasonable steps to ensure that a joint guardian does not breach any duty of care or fiduciary duty owed to the adult,
- and where more than one such guardian is so liable they shall be liable jointly and severally.
- (7) A joint guardian shall, before exercising any functions conferred on him, consult the other joint guardians, unless—
- (a) consultation would be impracticable in the circumstances; or
  - (b) the joint guardians agree that consultation is not necessary.
- (8) Where joint guardians disagree as to the exercise of their functions, either or both of them may apply to the sheriff for directions under section 3.
- (9) Where there are joint guardians, a third party in good faith is entitled to rely on the authority to act of any one or more of them.

#### Textual Amendments

**F1** Words in s. 62(5)(b) inserted (1.4.2008) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), ss. 60(5), 79(3); S.S.I. 2008/49, art. 2(1)

## 63 Substitute guardian **S**

- (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>F2</sup>may] require an

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- individual appointed as substitute guardian to find caution [<sup>F3</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 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>F4</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

- F2** 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\(1\)](#)
- F3** 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\(1\)](#)
- F4** 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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