



# 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, Section 62. (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.

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**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)

**Changes to legislation:**

There are currently no known outstanding effects for the Adults with Incapacity (Scotland) Act 2000, Section 62.