



# 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*

#### **75 Resignation of guardian**

- (1) A joint guardian, or a guardian in respect of whom a substitute guardian has been appointed, may resign by giving notice in writing of his intention to do so to the Public Guardian 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.
- (2) The resignation of a guardian as mentioned in subsection (1)—
  - (a) shall not take effect unless—
    - (i) the remaining joint guardian is willing to continue to act; or
    - (ii) the substitute guardian is willing to act;
  - (b) shall take effect on the receipt by the Public Guardian of notice in writing under subsection (1) together with evidence as to the matters contained in paragraph (a)(i) or (ii).
- (3) On receiving notice in writing and evidence as mentioned in subsection (2)(b), the Public Guardian shall—
  - (a) enter prescribed particulars in the register maintained by him under section 6(2)(b)(iv);
  - (b) if satisfied that the substitute guardian has found caution if so required, issue him with a new certificate of appointment;
  - (c) issue a remaining joint guardian with a new certificate of appointment;
  - (d) notify the adult.

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*Status: This is the original version (as it was originally enacted).*

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- (4) A substitute guardian who has not subsequently become guardian by virtue of section 63 may resign by giving notice in writing to the Public Guardian and the local authority and (in the case mentioned in subsection (1)) the Mental Welfare Commission and the resignation shall take effect on the date of receipt of the notice by the Public Guardian; and on its becoming effective, the Public Guardian shall—
- (a) notify the guardian and the adult; and
  - (b) enter prescribed particulars in the register maintained by him under section 6(2)(b)(iv).
- (5) A guardian—
- (a) who has no joint guardian; or
  - (b) in respect of whom no substitute guardian has been appointed; or
  - (c) being a joint guardian or guardian in respect of whom a substitute has been appointed who cannot effectively resign by reason of subsection (2)(a)(i) or (ii),
- shall not resign until a replacement guardian has been appointed under section 71.