



Adults with Incapacity (Scotland) Act 2000

2000 asp 4

PART 6

INTERVENTION ORDERS AND GUARDIANSHIP ORDERS

Guardianship orders

57 Application for guardianship order

- (1) An application may be made under this section by any person (including the adult himself) claiming an interest in the property, financial affairs or personal welfare of an adult to the sheriff for an order appointing an individual or office holder as guardian in relation to the adult's property, financial affairs or personal welfare.
- (2) Where it appears to the local authority that—
 - (a) the conditions mentioned in section 58(1)(a) and (b) apply to the adult; and
 - (b) no application has been made or is likely to be made for an order under this section; and
 - (c) a guardianship order is necessary for the protection of the property, financial affairs or personal welfare of the adult,they shall apply under this section for an order.
- (3) There shall be lodged in court along with an application under this section—
 - (a) reports, in prescribed form, of an examination and assessment of the adult carried out not more than 30 days before the lodging of the application by at least two medical practitioners one of whom, in a case where the incapacity is by reason of mental disorder, must be [^{F1}a relevant] medical practitioner ^{F2} . . . ;
 - (b) where the application relates to the personal welfare of the adult, a report, in prescribed form, from the mental health officer, (but where it is in jeopardy only because of the inability of the adult to communicate, from the chief social work officer), containing his opinion as to—

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- (i) the general appropriateness of the order sought, based on an interview and assessment of the adult carried out not more than 30 days before the lodging of the application; and
 - (ii) the suitability of the individual nominated in the application to be appointed guardian; and
 - (c) where the application relates only to the property or financial affairs of the adult, a report, in prescribed form, based on an interview and assessment of the adult carried out not more than 30 days before the lodging of the application, by a person who has sufficient knowledge to make such a report as to the matters referred to in paragraph (b)(i) and (ii).
- [^{F3}(3A) Subsection (3B) applies where a report lodged under subsection (3)(a) relates to an examination and assessment carried out more than 30 days before the lodging of the application.
- (3B) Where this subsection applies, the sheriff may, despite subsection (3)(a), continue to consider the application if satisfied that there has been no change in circumstances since the examination and assessment was carried out which may be relevant to matters set out in the report.]
- (4) Where an applicant claims an interest in the personal welfare of the adult and is not the local authority, he shall give notice to the chief social work officer of his intention to make an application under this section and the report referred to in subsection (3) (b) shall be prepared by the chief social work officer or, as the case may be, the mental health officer, within 21 days of the date of the notice.
- (5) The sheriff may, on an application being made to him, at any time before the disposal of the application made under this section, make an order for the appointment of an interim guardian.
- (6) The appointment of an interim guardian in pursuance of this section shall, unless recalled earlier, cease to have effect—
- (a) on the appointment of a guardian under section 58; or
 - (b) at the end of the [^{F4}effective period],
- whichever is the earlier.
- [^{F5}(6A) The “effective period”, for the purposes of subsection (6), means—
- (a) the period of 3 months beginning with the date of appointment; or
 - (b) such longer period (not exceeding 6 months) beginning with that date as the sheriff may specify in the order.
- (6B) In subsection (3)(a), “relevant medical practitioner” means—
- (a) an approved medical practitioner;
 - (b) where the adult concerned is not present in Scotland, a person who—
 - (i) holds qualifications recognised in the place where the adult is present and has special experience in relation to the diagnosis and treatment of mental disorder which correspond to the qualifications and experience needed to be an approved medical practitioner; and
 - (ii) has consulted the Mental Welfare Commission for Scotland about the report concerned; or
 - (c) any other type of individual described (by reference to skills, qualifications, experience or otherwise) by regulations made by the Scottish Ministers.

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(6C) The Scottish Ministers shall consult the Mental Welfare Commission before making regulations under subsection (6B)(c).]

[^{F6}(7) In subsection [^{F7}(6B)], “approved medical practitioner” has the meaning given by section 22 of the 2003 Act.]

Textual Amendments

- F1** Words in s. 57(3)(a) substituted (1.4.2008) by Adult Support and Protection (Scotland) Act 2007 (asp 10), **ss. 60(1)(a), 79(3)**; S.S.I. 2008/49, art. 2(1)
- F2** Words in s. 57(3)(a) repealed (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), ss. 331, 333(2)-(4), **Sch. 5**; S.S.I. 2005/161, **art. 3**
- F3** S. 57(3A)(3B) inserted (1.4.2008) by Adult Support and Protection (Scotland) Act 2007 (asp 10), **ss. 60(1)(b), 79(3)**; S.S.I. 2008/49, art. 2(1)
- F4** Words in s. 57(6)(b) substituted (1.4.2008) by Adult Support and Protection (Scotland) Act 2007 (asp 10), **ss. 60(1)(c), 79(3)**; S.S.I. 2008/49, art. 2(1)
- F5** S. 57(6A)-(6C) inserted (1.4.2008) by Adult Support and Protection (Scotland) Act 2007 (asp 10), **ss. 60(1)(d), 79(3)**; S.S.I. 2008/49, art. 2(1)
- F6** S. 57(7) inserted (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), ss. 331, 333(2)-(4), **Sch. 4 para. 9(4)(b)**; S.S.I. 2005/161, **art. 3**
- F7** Word in s. 57(7) substituted (1.4.2008) by Adult Support and Protection (Scotland) Act 2007 (asp 10), **ss. 60(1)(e), 79(3)**; S.S.I. 2008/49, art. 2(1)

Changes to legislation:

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