

# **ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000**

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## **EXPLANATORY NOTES**

### **THE ACT**

#### **Part 6: Intervention Orders and Guardianship Orders**

##### **Guardianship orders**

##### *Section 57: Application for guardianship order*

230. This section sets out how applications can be made for guardianship orders, who may apply for an order and what documents must accompany applications.
231. Subsection (1) establishes that an application to the sheriff for a guardianship order can be made by anyone with an interest, including the adult. The application can be made about any or all aspects of the property, financial affairs or personal welfare of the adult concerned.
232. Subsection (2) places a duty upon the local authority to apply for a guardianship order under certain circumstances, where it appears that an order is necessary but nobody else is applying for one. In assessing whether the order is required, there must be no other lesser measure that could safeguard the adult's interests sufficiently. A guardianship order would only be appropriate where no other measures were possible or sufficient, for example, an intervention order.
233. Subsection (3) establishes the evidence which must accompany an application for guardianship. Evidence is required in relation to the incapacity of the adult, the need for a guardianship order and the suitability of the person nominated in the order.
234. Subsection (3)(a) requires assessment of the adult concerned to be by two medical practitioners. Their examinations must have been within the 30 days prior to making the application, which ensures recent and specific assessments.
235. Where mental disorder is being assessed, one of the medical practitioners must be approved under section 20 of the Mental Health (Scotland) Act. Section 20 doctors are approved by Health Boards as having special experience in the diagnosis or treatment of mental disorder. They are mainly psychiatrists but may include other medical practitioners who have the necessary special experience.
236. Where the guardianship application covers any aspect of the personal welfare of the adult, subsection (3)(b) requires a report from the mental health officer of the relevant local authority on the appropriateness of the order sought. Where the incapacity of the adult is due only to an inability to communicate, the report is the responsibility of the chief social work officer. Again the report must be based on a recent assessment. The opinion of the mental health officer or chief social work officer is also sought on the suitability of the nominated guardian.

*These notes relate to the Adults with Incapacity (Scotland)  
Act 2000 (asp 4) which received Royal Assent on 9 May 2000*

237. Subsection (3)(c) provides for a similar report to (3)(b) where a guardian with powers covering only property or financial affairs is sought. The report must be from somebody with sufficient knowledge of the adult and the applicant. This may be a social worker, but might also be a relative, carer or professional involved with the adult. They will assess whether guardianship is an appropriate order to make, and the nominated guardian is suitable, by interviewing the adult concerned. Again the assessment must be carried out in the 30 days prior to lodging the application.
238. Subsection (4) requires an individual when applying for a guardianship order covering welfare matters, to inform the chief social work officer of his intention. The chief social work officer or mental health officer, as the case may be, will then be obliged to make their report within 21 days, ensuring that the report will be available for the application to proceed.
239. Subsection (5) establishes that the sheriff may, in the period between receiving an application for a guardianship order, and deciding whether to grant the order, appoint an interim guardian. This measure might be required if the property or financial affairs of the adult required urgent administration, or the adult needed someone to take welfare decisions on their behalf before an order could be granted.
240. Subsection (6) limits the period of the appointment of an interim guardian to until a guardian has been appointed, or three months from the date of appointment, or any earlier date on which the sheriff recalls it. This ensures that interim guardians do not have authority for extended periods, as they would not have been subject to the full scrutiny required to protect adults on the appointment of a guardian.