

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

ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

EXPLANATORY NOTES

THE ACT

Part 6: Intervention Orders and Guardianship Orders

Guardianship orders

Section 59: Who may be appointed as guardian

250. This section sets out who the sheriff may appoint as a guardian to an adult and factors they should consider in making an appointment.
251. Subsection (1) establishes the categories of people suitable for appointment as guardians. The chief social work officer of the local authority can be appointed as an adult's guardian only with respect to their welfare. Otherwise, any individual whom the sheriff considers to be suitable and is willing can be appointed.
252. The chief social work officer of the local authority can be appointed as an adult's guardian only with respect to the adult's welfare. Subsection (2) clarifies that where a guardianship order is to relate to property, financial affairs and welfare, the chief social work officer may be appointed as a joint guardian with powers relating only to the adult's welfare.
253. Subsection (3) provides for the sheriff to ensure that an individual understands the adult's requirements, and a guardian's duties before appointing them.
254. Subsection (4) sets out the points that the sheriff should consider to assess the suitability of an individual to be appointed guardian. It is important that the guardian is easily and regularly accessible to the adult. Subsections (4)(c), (d) and (e) are important to prevent an appointment that fails to benefit the adult. These provisions are not intended to prevent close relatives or a person residing with an adult being appointed their guardian, as stated in subsection (5). Subsection (4)(f) allows the sheriff to take into account any other matter if appropriate.