

ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

EXPLANATORY NOTES

THE ACT

Part 6: Intervention Orders and Guardianship Orders

Guardianship orders

Section 60: Renewal of guardianship order by sheriff

- 255. Subsection (1) provides that at any point before a guardianship order expires, a renewal application can be made, and that this will have the effect of continuing the period of guardianship until the renewal has been decided. For example, if a renewal was requested a week before the guardianship order expired and it took six weeks for the sheriff to make a decision, the guardianship would continue uninterrupted until that decision was made.
- 256. Subsection (2) provides that it is the duty of the local authority to apply for the renewal of a guardianship order where nobody else does, and that in such a case the guardianship order will continue until the application has been determined. This protects the adult against a lapse in their protection.
- 257. Subsection (3) provides that an application to renew a guardianship order should require the same reports on the incapacity of the adult as the original order required, as set out in section 57. This means that a sheriff will be fully informed as to the current state of the adult's incapacity, and whether a guardianship order is still appropriate, and, where an individual is the guardian, whether they are still a suitable person to act.
- 258. Subsection (4) provides for sheriffs to follow the same procedure for disposing of renewal applications as other applications, as described in section 58.
- 259. Subsection (4)(b) provides for the renewal of a guardianship application to normally be for 5 years, as opposed to the 3 years suggested for an initial appointment. The sheriff may, however, set another period where appropriate – this could be short if the adult's condition was subject to change, or indefinite where no improvement was expected.
- 260. Subsection (5) applies to cases where the sheriff refuses to renew the guardianship order. In this case it is the duty of the court to inform the Public Guardian, who must record this in the public register, and notify the adult and the appropriate statutory bodies.