

ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

EXPLANATORY NOTES

THE ACT

Part 6: Intervention Orders and Guardianship Orders

Joint and substitute guardians

Section 63: Substitute guardian

272. This section provides for the appointment of a substitute guardian who will replace the original guardian if they die, or have to stop acting. For example, this might be particularly relevant where a guardian is elderly: the guardian may themselves lose capacity.
273. Subsection (1) states that the sheriff can, on application, appoint a substitute guardian who meets the same criteria that govern the appointment of the original guardian, that is to say, those in section 59.
274. Subsection (3) provides that a substitute guardian's appointment expires at the same time as the appointment of the original guardian. At that point, the need for guardianship will be reviewed by the court and renewed provision for a substitute guardian can be made in any resulting guardianship order.
275. Subsection (4) establishes that an application for the appointment of a substitute guardian can be made at the same time as the appointment of the original guardian or later. This allows a substitute to be appointed when the circumstances of the original guardian alter. Alternatively, a suitable individual who was not eligible at the time of the original application may apply, for example, if a child of the adult concerned reaches adulthood.
276. Subsection (5) requires a person appointed as substitute guardian to find caution or insurance against liability. Where the substitute guardian's powers will relate to property or financial affairs, caution will be required by the sheriff unless the substitute guardian is unable to get such insurance, in which case, if the sheriff is still satisfied that the person is appropriate for appointment, the requirement can be waived.
277. Subsection (6) establishes that when a substitute guardian replaces an original guardian, they should be referred to as the "original guardian" for the purposes of this section, to allow for the appointment of a replacement substitute guardian.
278. Subsection (7) states that when a substitute guardian is appointed, other than in the original guardianship order, it is the duty of the court to notify the Public Guardian. The Public Guardian must notify those listed in subsection (7)(b), and record the appointment of the substitute guardian in the public register.

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

279. Subsection (8) states the duties of a substitute guardian on the death or incapacity of the original guardian. They must notify the Public Guardian, providing a death certificate where the original guardian has died. The substitute guardian must also state at this stage whether they will accept the appointment as guardian. This means that even if the substitute guardian does not wish to accept the appointment, it is still their duty to inform the Public Guardian if the original guardian can no longer act by reason of incapacity or death.
280. Subsection (9) provides for the Public Guardian to authorise the substitute guardian to act in the place of the original guardian, after notification under subsection (8) has occurred. The new guardian's details will be entered in the public register, a certificate will be issued and the adult and the appropriate statutory bodies will be notified.
281. Subsection (10) establishes that the scope of a substitute guardian's powers is the same as those of the original guardian, unless the sheriff has specified otherwise.