

ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

EXPLANATORY NOTES

THE ACT

Part 6: Intervention Orders and Guardianship Orders

Functions etc. of guardian

Section 64: Functions and duties of guardian

282. Subsection (1) defines the powers that a guardian may be given by the order of the sheriff court appointing them. Powers may be granted over specific aspects of the property, financial affairs and the personal welfare of the adult. Alternatively, the guardian may be given power over all areas of personal welfare, all of the adult's property and finances, or both.
283. Subsection (1)(c) allows the guardian to be given the power to act in relation to a declarator of nullity of marriage, divorce or separation in the adult's name. This power has to be specifically set out in the guardianship order.
284. Subsection (1)(e) provides for the guardian to authorise the adult to control certain parts of his affairs, for example, small amounts of money. This agrees with the general principles outlined in section 1 of encouraging the adult to use their existing skills and develop new skills, and being the least restrictive measure to the adult's freedom.
285. Subsection (2) provides that a guardian cannot authorise the detention of an adult in a hospital for the treatment of mental disorder, nor can they consent to any of the excepted treatments for which specific provisions are made under section 48.
286. Subsection (3) allows a guardian to act as the legal representative of the adult, where the matter relates to an area within the guardian's powers, unless the court has specifically ruled this out. For example, the guardian might instruct a solicitor on the adult's behalf.
287. Subsection (5) allows a financial guardian to use the adult's estate, both their income and capital, including any savings or investments of the adult, as set out in the Act. The purpose must be to enhance the adult's quality of life. This is subject to any conditions the court has imposed, the management plan required at schedule 2, and the provisions for buying and selling property also in that schedule.
288. Subsection (6) allows a guardian to delegate duties to other people, for example, to give a primary carer funds to manage day to day expenses. However, the guardian cannot transfer powers conferred by the guardianship order to another person. This means that the guardian remains responsible for all areas covered by the order, until their appointment is terminated.
289. Subsection (7) gives the Public Guardian the general function of supervising and directing financial guardians. This would, for example, allow the Public Guardian to

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

require a guardian to desist from using the adult's funds in a particular way. The Public Guardian may apply to the sheriff for an order where the guardian has not complied with an order issued by him.

290. Subsection (8) safeguards an adult who has an interim guardian with welfare or financial powers. Monthly reports must be made by the interim guardian to allow extra supervision of the exercise of interim guardianship powers since they were appointed without the safeguards required when a permanent guardian is appointed. These reports will be made to the local authority in the case of welfare powers and the Public Guardian in the case of financial powers.
291. Subsection (9) applies where the chief social work officer has been appointed as an adult's guardian. It is likely that another official will actually exercise the day to day responsibilities of the guardian, and this provision ensures that those who would be informed about guardianship are informed quickly of who the nominated official is at any particular point.
292. Subsection (11) provides for the scope and conditions of a guardian's powers to be prescribed in Regulations.
293. Subsection (12) provides for schedule 2, which gives detailed conditions for guardians managing aspects of the estate of an adult, to take effect.