

ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

EXPLANATORY NOTES

THE ACT

Part 6: Intervention Orders and Guardianship Orders

Functions etc. of guardian

Section 66: Gifts

295. There is no implied power for a guardian to make gifts out of the adult's estate. Subsection (1) states that guardians with powers over an adult's property and financial affairs cannot make gifts on the adult's behalf unless the Public Guardian has authorised the gifts.
296. Subsection (2) provides for the Public Guardian to authorise specific gifts to be made, or give general authorisation for a particular type of gift. For example, the Public Guardian could authorise a series of birthday presents of specified value to be made to specified people.
297. Subsection (3) provides for the Public Guardian to inform the persons listed in this subsection, who have an interest in the adult and their estate, about applications by the guardian to make gifts. They will be given a period in which to object to the gift being granted. If any objections are made, the Public Guardian is required to hear these objections, before making a decision.
298. Subsection (4) allows the Public Guardian to make an exception to the requirement for intimation, where he thinks that the value of the gift is not significant.
299. Subsection (6) says that where the Public Guardian is considering refusing an application, the guardian must be told and has the right to be heard by the Public Guardian before a final decision is made.
300. Subsection (7) establishes that the Public Guardian may refer an application to make a gift to the sheriff for a decision, at his own instigation or that of the guardian or any person objecting to authorising the gift. This would allow the sheriff rather than the Public Guardian to make the decision.
301. Subsection (8) provides for decisions of the Public Guardian to be appealed to the sheriff. There is no further appeal against decisions of the sheriff.