

# **ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000**

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## **EXPLANATORY NOTES**

### **THE ACT**

#### **Part 6: Intervention Orders and Guardianship Orders**

##### **Functions etc. of guardian**

##### ***Section 67: Effect of appointment and transactions of guardian***

302. This section makes various provisions about the exercise of a guardian's powers.
303. Subsection (1) clarifies that the adult may not enter into transactions on matters within the guardian's authority and any decision of the adult on such a matter is invalid. For example, if a guardian was appointed with powers over the adult's property, the adult could not sell their house. However, the guardian may choose to delegate to the adult if the terms of their appointment allow this.
304. The appointment of a guardian does not imply that the adult loses capacity in an area that the guardianship order does not cover. In particular, the appointment of a guardian need not affect the adult's legal capacity to make a will, or enter into a valid marriage.
305. Subsection (2) provides that the certificate of appointment that a financial guardian receives from the Public Guardian, gives the guardian authority to manage the adult's moveable and immovable property and to receive any relevant payments due to the adult.
306. Subsection (3) establishes that a welfare guardian can act even when the adult is outside Scotland.
307. Subsection (4) deals with the liability of a guardian. Guardians are not personally liable for transactions where it is made clear that they are acting as guardian, and within the scope of their authority. In those circumstances, the guardian is a representative of the adult and the adult's estate is liable. If, however, the guardian has not made it clear that they are acting as guardian, then they are personally liable. However, where their actions are within the authority granted them, they can be reimbursed for costs incurred in this way, from the adult's estate. This provision is necessary to ensure that guardians are not deterred from carrying out their duties because they might unintentionally fail to clarify their authority to a third party.
308. Subsection (4)(b) provides that the guardian is personally liable if they act outwith the scope of their authority.
309. Subsection (5) provides for the validity of the adult's actions, where the guardian delegated matters under section 64(1)(e), despite the adult's incapacity, but provided that the third party involved is aware that the guardian has delegated to the adult.

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

- 310. Subsection (6) provides protection for third parties who enter into transactions for value and in good faith with a guardian, for example, by buying something belonging to the adult. That transaction will not be invalidated because the guardian has acted outwith their authority, incorrectly or was appointed invalidly. Without this protection, third parties might be reluctant to deal with guardians.
- 311. Subsection (7) provides that where the appointment of a foreign welfare guardian is recognised in Scotland, they are covered by subsections (3) and (4).