

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

---

## **EXPLANATORY NOTES**

### **THE ACT**

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

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

##### ***Section 70: Non-compliance with decisions of guardian with welfare powers***

324. This section sets out the measures a welfare guardian can take to ensure that certain decisions are implemented.
325. Subsection (1) provides for where the adult or another person does not comply with a reasonable decision by the welfare guardian. The guardian can apply to the sheriff for an order or warrant to make the adult or another person comply with their decision. The sheriff would have to be satisfied that the order would benefit the adult, that the adult or other person could reasonably be expected to obey the decision and it was the only reasonable way of achieving that benefit.
326. Subsection (1)(a) provides for the sheriff to issue an order specifically instructing the adult or a third party to implement the guardian's decision.
327. Subsection (1)(b) provides for situations where the adult does not comply with the decision of the welfare guardian as to where they are to live. In this case, the sheriff can issue a warrant for a police officer to arrest the adult and remove them to the place that the guardian requires. Section 117 of the Mental Health (Scotland) Act 1984 sets out a similar provision for removal to a place of safety of a mentally disordered adult who is being ill-treated or is unable to care for himself.
328. Subsection (2) provides for cases where a third party has refused to comply with a decision of a welfare guardian. The guardian may apply to the sheriff, who can make an order to the third party, where the guardian's decision is justified and it is reasonable to expect the third party to comply with the decision.
329. Subsection (3) provides for the court to notify any persons against whom the order or warrant is made, including the adult concerned, that an application has been made. They must be given a prescribed period to object, and any objections must be heard, before any order or warrant is granted. However, the sheriff is not bound to take objections into account in deciding to grant the application.
330. Subsection (5) permits a constable executing a warrant granted according to subsection (1)(b) to use reasonable force if required. The constable must be accompanied by the guardian, or another person authorised by the guardian.

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

331. Subsection (6) provides that a foreign welfare guardian whose appointment is recognised in Scotland, shall have the same rights and restrictions under this section as a welfare guardian appointed in Scotland.