

ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

EXPLANATORY NOTES

THE ACT

Part 6: Intervention Orders and Guardianship Orders

Termination and variation of guardianship and replacement, removal or resignation of guardian

Section 72: Discharge of guardian with financial powers

342. This section provides for the Public Guardian to discharge a guardian with financial powers, following that guardian's recall, resignation, removal, replacement or death, or the death of the adult concerned. This gives a guardian, or after the guardian's death, their representative, an exoneration from any future challenge relating to their handling of the adult's financial affairs.
343. Subsection (1) establishes that under all the circumstances listed, the Public Guardian may, on application from the former guardian, or his representative where the former guardian has died, grant a discharge. This would cover all of the former guardian's activities in managing the adult's affairs.
344. Subsection (2) provides that when the Public Guardian receives an application for the discharge of a former guardian, he will notify the people stated, and give them a period in which to object. Where objections are made, the Public Guardian must give the objector an opportunity to be heard.
345. Subsection (4) states that where the Public Guardian is considering refusing an application for discharge, he must notify the former guardian or his representative. They will be given time to object to this decision and only after hearing their objections can the Public Guardian refuse the application.
346. Subsection (5) provides for the Public Guardian to remit an application for discharge to the sheriff for a decision. He may do this at the request of the applicant or any person objecting to the granting of the application, or at his own discretion.
347. Subsection (6) concerns appeals against decisions of the Public Guardian. These can be made to the sheriff on three counts: the Public Guardian's decision to grant or refuse the discharge, or to grant or refuse the application, or to refuse to remit the application to the sheriff. In each case, the decision of the sheriff cannot be appealed against.