

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

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

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## **EXPLANATORY NOTES**

### **THE ACT**

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

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

##### ***Section 73: Recall of powers of guardianship***

348. This section provides for the Public Guardian, Mental Welfare Commission or local authority to recall, or in other words terminate, the powers of a guardian, either on application or at their own instance.
349. Subsection (1) establishes that the Public Guardian can recall a guardian's property or financial powers. Any person claiming an interest, including the adult, may apply to the Public Guardian for a recall.
350. The Public Guardian can recall the powers of a guardian on either of two grounds: firstly, that the reasons for appointing a guardian no longer apply, for example, where the adult has regained capacity. Secondly, that another and less intrusive measure than guardianship would be as satisfactory, for example, an intervention order, or access to the adult's funds under Part 3 of the Act.
351. Subsection (2) provides for the Public Guardian to update the public register and notify the adult and other interested parties where he has recalled the powers of a guardian.
352. Subsection (3) establishes that the Mental Welfare Commission or the local authority can recall welfare guardianship powers on the same grounds provided at subsection (1). This can be done at their own instigation, for example, where an adult has no other interested person prepared to apply; or where another party claiming an interest in any of the adult's affairs, including the adult themselves, has applied to them. The relevant local authority is the one in which the adult lives. Where the chief social work officer of the local authority has been appointed guardian, welfare powers cannot be recalled by the local authority. If a local authority thinks that powers conferred on their chief social work officer should be recalled, they can apply to the Mental Welfare Commission under this section.
353. Subsection (4) provides for the Public Guardian to be informed of recall of guardians' powers under subsection (3), to allow the update of the public registers, and to notify the adult and guardian. The local authority and Mental Welfare Commission must notify each other of recalls that they make.
354. Subsection (5) provides for the Public Guardian, Mental Welfare Commission or local authority to notify the adult and other interested parties, as listed, when considering recalling a guardians' powers, either at their own instance, or on application from a

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third party. All parties notified will be given a prescribed period to lodge objections, and no recall will be made without giving an objector an opportunity of being heard.

355. Subsection (7) provides that where the Public Guardian, Mental Welfare Commission or local authority intend to refuse an application for recall, they will inform the applicant and the adult and give a prescribed period in which they can object. The application will not be refused until any objections have been heard.
356. Subsection (8) allows the Public Guardian, Mental Welfare Commission or local authority to choose to, or on the request of an applicant or any person objecting to recall, decide to, remit the matter to the sheriff.
357. Subsection (9) provides for appeals to the sheriff against decisions by the Public Guardian, local authority and Mental Welfare Commission on recall or to remit or not to remit an application to the sheriff. The sheriff's decision is final and cannot be appealed against. While an appeal to the sheriff is in progress, the decision on the application to recall will remain in force.
358. Subsection (10) gives the Scottish Ministers the power to make regulations prescribing the procedures for recall by the Mental Welfare Commission or the local authority. Such a power exists in relation to recall by the Public Guardian under section 7.