

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 74: Variation of guardianship order

359. Subsection (1) establishes that the sheriff has the authority to vary a guardianship order, or any related order. This would allow the sheriff, for example to alter the powers conferred on a guardian. Any interested party, including the adult, can apply to the sheriff for a variation to a guardianship order.
360. Subsection (2) provides for the sheriff to require caution to be found when varying any powers relating to an adult's property or financial affairs, in the same terms as it is required under section 58(6), when a guardian is appointed. This provides protection for an adult in a case where the variation has increased a guardian's responsibilities for the adult's property or financial affairs.
361. Subsection (3) provides for the sheriff to consider any previous orders, variations to orders or ancillary orders made under Part 6 of the Act when considering an application for a variation. This will ensure the sheriff is aware of past or existing orders, informing of what has been appropriate in the past and ensuring an informed decision is taken on this application.
362. Subsection (4) prohibits using section 74 to extend the powers of a welfare guardian to matters relating to property or financial affairs, or those of a financial guardian to welfare matters. A change as important as this should be made through a new application for a guardianship order under section 57.
363. Subsection (5) provides that the sheriff court will notify the Public Guardian of any variation to a guardianship order, allowing the public registers to be updated, the appropriate parties notified and a new certificate of appointment issued to the guardian.