

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 75: Resignation of guardian

364. This section sets out the procedure for a guardian to resign. To protect the adult from an interval in which no guardian is acting, resignation cannot become effective until the appropriate notifications and appointment of another guardian have been completed.
365. Subsection (1) establishes that a joint guardian, or a guardian where a substitute guardian has been appointed, may resign by notifying the Public Guardian, the local authority and, where appropriate, the Mental Welfare Commission.
366. Subsection (2) qualifies subsection (1) with the provision that resignation shall not be effective unless the remaining guardian, whether joint or substitute, is willing to act under the new circumstances. If this is the case, the resignation is effective from the time the Public Guardian has received the written resignation of the guardian, and evidence that the substitute or remaining joint guardian is prepared to act.
367. Subsection (3) provides for the Public Guardian, to update the public registers, issue a new certificate of appointment and notify the adult and others of the new arrangement. In the case of a remaining joint guardian, the Public Guardian will already be satisfied that they have caution (insurance against liability) where required, and can issue a new certificate straight away. A substitute guardian will not have required caution before; however the sheriff will have made a decision to require caution or not when they were appointed, and if it was required, they must now demonstrate they have caution before a certificate of appointment can be issued.
368. Subsection (4) provides for substitute guardians, who have not been called upon to act, to resign. This will not affect an adult's affairs and is therefore effective simply by notifying the Public Guardian, local authority and, where appropriate, the Mental Welfare Commission, in writing. The Public Guardian will notify the guardian and the adult, and update the public register.
369. Subsection (5) covers the circumstances in which a guardian wishes to resign but no substitute or joint guardian is available to take over. Subsection (5)(c) includes guardians where the remaining joint guardian or substitute guardian is unwilling to act. Resignation will only be effective after a replacement guardian has been appointed, using section 71. Therefore a guardian seeking to resign with no joint or substitute guardian willing to act could apply to the sheriff under this section, but would also have to ensure that an application for a replacement guardian was made.