

# **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 77: Termination of authority to intervene and guardianship on death of adult***

375. Subsection (1) states that when the adult dies, any existing intervention order or guardianship order is terminated. For example, this means that a guardian with powers over an adult's property and financial affairs could not continue to act after the adult's death. This is essential because such an action could not benefit the adult. The situation with respect to the adult's estate should be the same as if a person with no guardian had died.
376. Subsections (2), (3) and (4) allow those who work with guardians and the guardian themselves to carry out valid transactions without having to double check that a guardianship is still valid, unless there is a particular reason to doubt it. For example, if a third party were aware that an application to remove the guardian was pending in the court, they should confirm with the guardian that their appointment was still valid. These provisions apply similarly to people authorised to act under intervention orders.
377. Subsection (2) provides that a guardian or person authorised under an intervention order who acts in good faith, carrying out their functions, when their authority has actually terminated, including through the death of the adult, should be entitled so to act.
378. Subsection (3) protects third parties who deal with those whose authority has ended, providing they are unaware of the termination of authority.
379. Subsection (4) provides specific protection where heritable property has changed hands after the authority of a person authorised to intervene or a guardian has come to an end, provided there was no other fault in the transaction.
380. Subsection (5) provides that foreign guardians are to be treated in the same way under this section as guardians appointed in Scotland.