Information on Part 6 of the Act – Intervention Orders and Guardianship

Adults with Incapacity
(Scotland) Act 2000
Introduction

The Adults with Incapacity (Scotland) Act 2000 ("the Act") introduces modern arrangements for making decisions on behalf of adults (aged 16 or over) who lack capacity to take some or all decisions for themselves, because of mental disorder or inability to communicate. Such a person is referred to in this leaflet as an "adult".

This leaflet is about seeking an intervention order or a guardianship order under Part 6 of the Act. It puts these measures in the wider context of the Act and gives a general idea of when you might want to seek such an order. For detailed information you would be best to read the code of practice for persons authorised under intervention orders and guardians\(^1\).

\(^1\) The Code of Practice can be obtained from the Scottish Executive Justice Department, Civil Law Division, Floor 2 West (Rear) St Andrew's House, Regent Road, Edinburgh EH1 3DG. Tel 0131 244 2193.
General principles

The Act provides various methods of intervening (that is, taking decisions or action) on behalf of an adult. Interventions can cover property and financial affairs, or personal welfare matters, including healthcare. When deciding whether to intervene you must always apply the following principles:

- Your intervention must be necessary and must benefit the adult;
- Your intervention must be the minimum necessary to achieve the purpose;
- You must take account of the adult’s present and past wishes and feelings (and you must try every possible means of communicating with the adult to find out what these are);
- You must take into account the views of the adult’s nearest relative and primary carer, and of any other person with powers to intervene in the adult’s affairs or personal welfare, or with an interest in the adult, so far as it is reasonable and practicable to do so;
- You must encourage the adult to use any skills he or she has.

You should also consider whether it would be possible to intervene without using the Act.
Interventions under Part 6 of the Act

To obtain authority to intervene on behalf of the adult in terms of Part 6 of the Act you should apply for an intervention order or a guardianship order. These are described in detail below.

**Intervention order**

You can apply to the local sheriff for an intervention order. This would normally be suitable where you have to deal with a single issue on behalf of an adult where the outcome can be predicted. This could, for example, be a financial or property transaction, or a legal action on behalf of an adult such as signing a document or going to court. The sheriff would have to be satisfied that the adult is incapable with regard to the matter in question, and that there is no other suitable means of dealing with the matter. Intervention orders will most commonly be suitable for financial and property matters, but they could also be suitable for some personal welfare matters, such as arranging for the adult to see a dentist. They can also cover both financial and welfare matters.
Guardianship order
You can apply to the local sheriff for a guardianship order. Guardianship can cover property and financial matters or personal welfare, or a combination of these. It is likely to be suitable where the adult has long-term needs in relation to these matters and has lost, or has never had, capacity to take decisions or action on these matters for him or herself. The sheriff would have to be satisfied that the adult is incapable with regard to the matters in question, and that there is no other suitable means of safeguarding or promoting the adult’s interests in these matters. For example, it might be appropriate to apply for guardianship where a person with serious learning disabilities reaches adulthood. It might also be suitable where someone has moderately or severely advanced dementia.

How do you decide if an intervention or guardianship order is needed?
You can consult your local authority social work department, a solicitor, the Public Guardian or the Mental Welfare Commission where the lack of capacity is as a result of mental disorder. You can also consult the Scottish Executive website: www.scotland.gov.uk/incapacity
This contains a copy of the Act, all the codes of practice and regulations made under it, and various leaflets. You can consult this information and browse through it, without having to download bulky documents.

You can also phone any of the organisations listed at the end of this leaflet.

**How do you go about getting an intervention or guardianship order?**

You will need two independent medical reports of incapacity, based on an examination and assessment of the adult carried out not more than 30 days before your application to the sheriff.

If the order relates to personal welfare matters, you will need a report from your local authority social work department. If it relates only to property or financial affairs, you will need a report from someone with sufficient knowledge to make such a report, such as a relative or carer or an independent professional such as an accountant or lawyer. You need to give the local authority 21 days notice of your intention to apply. You may find it helpful to discuss these timescales with the local authority.
Will it cost money to apply?

There will be a fee to the court for your application. There will be fees to the medical practitioners for providing reports of incapacity. There will be no fee to a local authority social work department, but there may be a fee to a person with sufficient knowledge to make a report on an application relating to financial affairs or property. You will be able to recoup the costs from the adult’s estate, provided you ask the sheriff to order this. Legal aid may be available, based on the adult’s means.

Who can be appointed under an intervention or guardianship order?

Any person, including a professional person, can be authorised under an intervention order. You can apply for an intervention order, but nominate someone else to be authorised, such as a lawyer, or social work officer, if you do not want to nominate yourself. It is also possible for someone else, say the local authority, to apply for the order, and nominate an individual or a local authority officer.
Any individual can be appointed a guardian, but where there is no-one willing to be appointed, and guardianship is necessary to safeguard an adult’s personal welfare, the chief social work officer of the local authority must be nominated. A private individual could be nominated as financial guardian, or a professional such as a solicitor, accountant or banker. A professional appointment may be preferable if the adult has a large estate and complex affairs.

It is possible for the sheriff to appoint two or more people as joint guardians, and to appoint a substitute guardian who would take over if the first guardian can no longer act.

**What if no-one is willing to be appointed?**

The local authority must apply for guardianship where it is necessary and no-one else is doing so. As indicated above, the chief social work officer can be appointed guardian in respect of personal welfare but the chief social work officer cannot be appointed to deal with property or financial affairs. If no-one is willing to be appointed guardian to deal with property and financial affairs, you can get advice from the Office of the Public Guardian or a voluntary organisation which offers a trustee service for adults with incapacity. However, if after seeking this advice no-one is willing to apply, the local authority has a duty to make the application and to identify someone prepared to take on the role of financial guardian. It is also possible that the adult’s affairs could be satisfactorily dealt with by intervention orders or measures outwith the Act.
Can a person authorised under an intervention order or a guardian be paid?

Payment will not normally be permitted for guardians exercising welfare powers. Professional people exercising guardianship powers over property or financial affairs can claim a fee. There is no provision for payment to any person acting under an intervention order.

How are the adult’s interests protected?

The report which the court receives will examine the appropriateness of the order sought and the suitability of the person nominated. The court can ask for evidence and further reports on these matters.

All intervention orders and guardianship orders are registered with the Public Guardian. The Public Guardian supervises the exercise of powers over financial affairs and property and will normally require financial guardians to submit regular accounts. The local authority social work department supervises welfare guardians. Those exercising welfare powers under an intervention order will be supervised if the sheriff so orders. The appropriate authority will investigate complaints against persons exercising powers under intervention or guardianship orders and powers can be modified or revoked.
What does the code of practice cover?

The code of practice sets out the legal requirements for intervention orders and guardianship orders to be made. It gives guidance on how to decide whether an order is needed, and which order is needed. It makes suggestions on the types of powers that could be included in an order. It tells you how to go about applying and getting the necessary reports. It gives guidance on how to exercise your powers once you have them, and on keeping records. It explains how supervision works and what will happen if things go wrong. It explains what you need to do if there is a change of circumstances, and how to go about renewing your powers when the order is nearing the end of its term. Lastly, it explains what happens if the adult no longer requires a guardian and your powers need to be recalled.
Copies of the code of practice can be obtained from the Scottish Executive Justice Department at the following address:

**Civil Law Division**  
Floor 2 West (Rear)  
St Andrew’s House  
Regent Terrace  
Edinburgh EH1 3DG  
Tel: 0131 244 2193

Or can be downloaded from the website

[www.scotland.gov.uk/justice/incapacity](http://www.scotland.gov.uk/justice/incapacity)

**Other ways that people can make decisions for an adult**

There is a separate leaflet which provides general information on other ways that people can make decisions for an adult under this Act. This is available from the NHS Helpline on 0800 22 44 88.
USEFUL CONTACTS

The Office of the Public Guardian
Hadrian House
Callendar Business Park
Callendar Road
Falkirk FK1 1XR
01324 678300
www.publicguardian-scotland.gov.uk

The Mental Welfare Commission for Scotland
Argyle House
3 Lady Lawson Street
Edinburgh EH3 9SH
0131 222 6111
www.mwcscot.org.uk

The Social Work Service of your local authority – see local telephone directory for address

Alzheimer Scotland – Action on Dementia
22 Drumsheugh Gardens
Edinburgh EH3 7RN
0131 243 1453
www.alzscot.org
Dementia Helpline
Freephone 0808 808 3000

ENABLE
6th Floor
7 Buchanan Street
Glasgow G1 3HL
0141 226 4541

Scottish Association for Mental Health
Cumbrae House
15 Carlton Court
Glasgow G5 9JP
Tel: 0141 568 7000
www.samh.org.uk

ASCS – Advice Service
Capability Scotland
11 Ellersley Road
Edinburgh EH12 6HY
0131 313 5510
www.capability-scotland.org.uk

Sense Scotland
5th Floor
45 Finnieston Street
Glasgow G3 8JU
Tel: 0141 564 2444
www.sensescotland.org.uk

Citizens Advice Bureau
Address in your local phone book or from
Citizen’s Advice Scotland
26 George Square
Edinburgh EH8 9LD
0131 667 0156
www.cas.org.uk

Criminal Injuries Compensation Board
Tay House
300 Bath Street
Glasgow G2 4LN
0141 331 2726
www.cica.gov.uk

Royal College of Speech and Language Therapists
2 White Hart Yard
London SE1 1NX
Tel : 020 7378 1200