SCOTTISH STATUTORY INSTRUMENTS

2002 No. 97

ADULTS WITH INCAPACITY

The Adults with Incapacity (Recall of Guardians' Powers) (Scotland) Regulations 2002

Made - - - -	*5th March 2002*
Laid before the Scottish Parliament - - - -	*7th March 2002*
Coming into force - -	*1st April 2002*

The Scottish Ministers, in exercise of the powers conferred by sections 73(5), (7) and (10) and 86(2) of the Adults with Incapacity (Scotland) Act 2000(**1**) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Adults with Incapacity (Recall of Guardians' Powers) (Scotland) Regulations 2002 and shall come into force on 1st April 2002.

Interpretation

2. Any reference in these Regulations–

(a) to a numbered section is a reference to the section bearing that number in the Adults with Incapacity (Scotland) Act 2000; and

(b) to a numbered Schedule is a reference to the Schedule bearing that number in these Regulations.

Applications for recall

3. An application under section 73(3) for recall of a guardian's powers–

(a) by the Mental Welfare Commission shall be in the form set out in Schedule 1; or

(b) by the local authority shall be in the form set out in Schedule 2,

and, where the person making the application considers that the adult is no longer incapable, shall be accompanied by a medical report in the form set out in Schedule 3.

(**1**) 2000 asp 4; see section 87(1) for the definition of "prescribed" and section 86(1) as to the power to make regulations.

Intimation of application to recall or intention to recall by the Mental Welfare Commission

4. An intimation by the Mental Welfare Commission under section 73(5) of–

(a) an application for recall of a guardian's powers; or

(b) their intention at their own instance to recall the powers of a guardian,

shall be in the form set out in Schedule 4.

Intimation of application to recall or intention to recall by the local authority

5. An intimation by the local authority under section 73(5) of–

(a) an application for recall of a guardian's powers; or

(b) its intention at its own instance to recall the powers of a guardian,

shall be in the form set out in Schedule 5.

Period for objection to recall

6. A person may object under section 73(5) to the recall of a guardian's powers within 21 days of receipt of intimation of the application for recall, or intention to recall, by the Mental Welfare Commission or local authority, as the case may be.

Intimation of a decision by the Mental Welfare Commission to refuse recall

7. Where the Mental Welfare Commission proposes to refuse an application for recall under section 73(7), the intimation of that decision shall be in the form set out in Schedule 6.

Intimation of a decision by the local authority to refuse recall

8. Where the local authority proposes to refuse an application for recall under section 73(7), the intimation of that decision shall be in the form set out in Schedule 7.

Period for objection to decision as to recall

9. A person may object under section 73(7) to the decision by the Mental Welfare Commission or local authority, as the case may be, to refuse an application for recall of a guardian's powers within 21 days of receipt of intimation of that decision.

Form for recording decision by the Mental Welfare Commission

10. A decision by the Mental Welfare Commission to–

(a) recall the powers of a guardian under section 73(6);

(b) refuse an application to recall such powers; or

(c) remit, or not remit, the decision on recall to the sheriff under section 73(8),

shall be in the form set out in Schedule 8.

Form for recording decision by the local authority

11. A decision by the local authority to–

(a) recall the powers of a guardian under section 73(6);

(b) refuse an application to recall such powers; or

(c) remit, or not remit, the decision on recall to the sheriff under section 73(8),

shall be in the form set out in Schedule 9.

Notification of decisions

12.—(1) Where the Mental Welfare Commission decides to recall the powers of a guardian they shall send a copy of the form provided for at regulation 10 above to the applicant, the local authority and the Public Guardian.

(2) Where the local authority decides to recall the powers of a guardian it shall send a copy of the form provided for at regulation 11 above to the applicant, the Mental Welfare Commission and the Public Guardian.

St Andrew's House,Edinburgh
5th March 2002

JAMES R WALLACE
A member of the Scottish Executive

SCHEDULE 1 Regulation 3(a)

Application to Mental Welfare Commission for recall of powers of a guardian relating to personal welfare

AWI[11]
ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000
Section 73(3)

PART A PERSON MAKING THE APPLICATION

(Give your full name and name of local authority for whom you are acting in this case if applicable or provide details of your interest in the personal welfare of the adult.)

Name

Local authority/ statement of interest

Address

Post Code

Tel No

E-mail

PART B THE ADULT

This application is for recall of the powers of a guardian/guardians relating to the personal welfare of:

(name)

of

(Give full name, address and date of birth of the adult or insert "as above" if adult is person making the application)

(address including postcode)

(DOB)

PART C DETAILS OF GUARDIANSHIP

(Insert date, court and court case number if known)	The guardianship order currently in force to which this application relates was made on: Court : Court case number:
(Insert name and address)	The guardianship order appointed the following person(s) as guardian(s) with powers relating to personal welfare: Name: Address: Post Code: Tel no: Fax No: e-mail address: **Note: If available please provide a copy of the guardianship order**

Where the chief social work officer was appointed guardian, the officer responsible under section 64(9) of the Act to carry out the functions and duties of guardian is:

(Insert name and contact details or delete as applicable)	Name: Address: Post Code: Tel no: Fax No: e-mail address:

The guardianship order also appointed the following person(s) as guardian(s) with powers relating to property or financial affairs:

(Insert details or delete as applicable)	Name(s): Address(es): Post Code Tel no: Fax No: e-mail address: