

By Community for Community Series

Guardianship / Power of Attorney

What are Guardianship Orders?

Guardianship requests are applications made to a court and approved by a Sheriff, once approved become a Guardianship Order. A Guardianship Order appoints an individual to make decisions on behalf of an adult with incapacity who is unable to make decisions about their financial matters and or welfare matters for themselves. It is important to recognise that in making such decisions one must include and support this individual in making them.

It has to be appreciated that ensuring that you have the power to look after a someone who is unable to look after themselves can in itself, be a stressful time.

It is suggest that you seek the guidance and services of a suitably qualified and/or experienced solicitor to help alleviate some of this stress. You can identify those by asking around your peers and local Carers Centre for example or by contacting the Law Society of Scotland and use their find a solicitor service.

Their website is <https://www.lawscot.org.uk/> or you can telephone them on 0131 226 7411 or email lawscot@lawscot.org.uk

Which Law covers Guardianship?

In Scotland, Guardianship Orders are contained within The Adults with Incapacity (Scotland) Act 2000 ("The Act") and outlines that Guardianship Orders can give the power to deal with financial and welfare matters on behalf of an individual. It is crucial however that such orders, would not restrict the individual's freedoms any more than is essential and necessary. The Act is designed to safeguard the interest and needs of those who are unable to make decisions for themselves in their day to day lives.

Considerations before applying for a Guardianship Order.

Before applying it is suggest you consider;

- **the individual's wishes have been considered in the decision-making process**
- **the individual is unable to give consent to any care that they may require**
- **the individual is no longer able to make decisions on their own to manage their financial affairs and or welfare matters**
- **what powers you will need under a Guardianship Order**
- **the good days and bad days of the individual and balance these off**

Who can apply for a Guardianship Order?

Usually, it is a family member or a friend who will apply to their local sheriff court to be a financial and or welfare guardian. The sheriff court will be in the domicile (local area) of the adult who has incapacity.

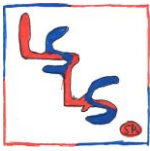
On some occasions someone acting in a professional capacity e.g., solicitor or accountant, will apply to be appointed where there is no one else more suited.

When this is not possible or feasible, the local authority may apply to be appointed guardian.



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What is the application process and stages for a Guardianship Order?

The application process is not unduly complex; however it is recommended using a solicitor as this provides a professional service making the control of both the legal process and timelines far easier.

There are three stages to the application process.

1. The Summary Warrant – This is the term used for the application to the court.

The applicant must also lodge three reports along with the application which is to be examined by the court. Usually two are from clinical professionals normally the individuals GP and Mental Health Clinician, one from a Mental Health Officer. These reports relate to the individual’s capacity and suitability of the powers that are being requested. The Mental Health Officer will also interview the applicant to gauge whether they would be suitable as a guardian.

There is a short period for anyone who has an interest in the welfare of the individual to object to the application.

A hearing will then take place in a closed court where the sheriff will decide whether or not to grant the order. The sheriff has the discretion to put a time limit on the length of the order, initially this is usually for three to five years, and however it can be longer upon renewal.

Once the order is granted, it will be communicated to the Office of Public Guardian. Although the order may have a time limit on it, it will always be subject of review and recalled at any given time.

The Office of Public Guardian’s website has much more information available.

The link is <http://www.publicguardian-scotland.gov.uk/>

A big question often asked. What is the difference between a Guardianship Order and Power of Attorney?

	Guardianship	Power of Attorney
Applicant	by a relative or trusted person on behalf of someone after they have lost capacity	by an individual with full capacity to appoint another person to make decisions for them in the future in case they lose capacity
Application Process	applied through the courts	drawn up by a solicitor.
Duration	usually Fixed term to start but can be long term upon renewal.	will continue unless the person granting the authority revokes it or dies.

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