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Caesar & Howie
The Central Scotland Law Group

Guardianship and Intervention Orders In Scotland

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The Caesar& Howie Group
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When somebody has lost their capacity to make decisions for themselves and they have not previously granted a Continuing Power of Attorney, an Intervention or Guardianship Order may be required. The local court will grant such an Order appointing and authorising somebody to act on behalf of the incapacitated adult.

This article will briefly outline what Intervention and Guardianship Orders are, how to apply for them, and what it actually involves if the Orders are granted.

An Intervention Order will be sought usually for a “one off” particular matter to be put in place. For example a property may need to be sold and a signature is required on the legal document transferring ownership. Alternatively perhaps arrangements need to be made to have the adult placed in a nursing home. The Intervention Order will only give authority for those matters to be completed. The person appointed under the Intervention Order is called an “Intervener”.

If, on the other hand, ongoing management of the adult’s affairs is required then a Guardianship Order should be obtained. This Order is more suitable if the adult will have long term needs. The Guardianship Order will appoint a Guardian to look after the adult’s affairs on a continuous basis.

Both Orders can be granted to authorise somebody to be responsible for property and financial concerns, or matters relating to the personal welfare of the adult, or the Order can cover both areas of responsibility.

The next question to be answered is who should be appointed as the Guardian or Intervener? The person appointed needs to be an adult. A friend, relation or person acting in a professional capacity can be appointed.

How then do you apply for either an Intervention or Guardianship Order? An application has to be made to the local Sheriff Court. Before you apply you must consult with the incapacitated adult to ensure his or her wishes, where possible, are taken into consideration and likewise for the adult’s immediate family. You may also have to consult with “relevant people”. Relevant people are people with a connection to the adult – for example the adult’s doctor or carers. The application to the court must be accompanied by two medical reports. In addition if the application includes authorisation for the personal welfare of the adult you must obtain a report from the Chief Social Worker stating that the applicant is a suitable person. If the order relates only to property or financial matters a report must be obtained from a person with sufficient knowledge as to the applicant’s suitability. All these reports are based on a meeting with the adult within thirty days from the date the application is sent to the Court.

An application for either one of these orders is a long and complicated process in respect of which most families obtain specialist legal advice. At the date of this publication free Legal Aid is available for many, but not all, of such applications, without means testing. This will reduce the costs to families. Not all solicitors offer legal aid and families might wish to check the position before instructing a firm.

If the Order is granted, it will have to be registered with the Office of the Public Guardian (OPG). The OPG is part of the Scottish Court Service. They are responsible, amongst other things, for supervising the financial actions of those who have been appointed under an Intervention or Guardianship Order to manage the affairs of an adult. The Local Authority will be the supervisory body if the Guardian has any personal welfare responsibilities.

If an Intervention Order has been granted, the Intervener will have to report regularly to the OPG on their actions under the Order. The Intervener will need to keep careful records as he or she may be asked by the OPG to submit paperwork completed on behalf of the adult. Finally once all duties under the Order have been carried out the Intervener will have to advise the OPG of this and provide evidence to this effect.

Where financial guardianship is granted, the OPG supervision is considerably more thorough as this order is of an ongoing nature. The Guardian will have to submit an Inventory as soon as the Order has been registered with the OPG. The Inventory will detail all assets held by the adult. A management plan will have to be prepared explaining how the Guardian is going to administer the adult's estate. He or she will also have to submit annual accounts.