

Guidance Notes and Form to apply to Recall Powers



1. Introduction



1.1 WHAT DOES RECALL MEAN?

When reference is made to the recall of a financial guardian's powers, it means that the basis on which particular powers were granted no longer apply. Recall is different to resigning from the post of financial guardian.

This guidance supports the code of practice for persons authorised under financial guardianship. You should refer to these prior to making an application.

Welfare powers can also be recalled by either the relevant local authority or the Mental Welfare Commission.

2. Recall



2.1 WHY MIGHT THE POWERS OF A FINANCIAL GUARDIAN BE RECALLED?

The Adults with Incapacity (Scotland) Act 2000 (hereafter referred to as the Act), sets out two grounds for recall:

- the grounds for appointment are no longer fulfilled; or
- the interests of the adult in his property or financial affairs can be satisfactorily safeguarded or promoted otherwise than by guardianship.

2.2 WHAT IS MEANT BY THE "GROUNDS FOR APPOINTMENT ARE NO LONGER FULFILLED"?

An example of this would be where an adult gains, or regains a sufficient degree of capacity, allowing them to carry out the functions covered by the guardianship order. It could well be that the adult requires some assistance to achieve this but with appropriate guidance and support is able to make important decisions and manage their own financial affairs.

If an application is to be submitted on the grounds that an adult is no longer incapable and is able to manage his or her own affairs, a report from a medical practitioner must be forwarded to the Public Guardian. We have prescribed a style medical report for this, a copy of which is enclosed with the application form.

2.3 WHAT IS MEANT BY “THE ADULT’S INTERESTS CAN BE SAFEGUARDED OTHER THAN BY GUARDIANSHIP”?

It may be that an alternative of looking after the adult’s financial affairs becomes apparent. For example, the adult’s estate might be such that intervention is required only to administer Department of Work and Pensions (DWP) allowances and benefits and that appointeeship is sufficient to meet the adult’s requirements. Or it might be that a less restrictive measure such as an Intervention Order or Access to Funds may be more appropriate.

If you think the Access to Funds scheme might be appropriate, please contact the Office of the Public Guardian (OPG) for more information.

3. Who can apply?



3.1 WHO CAN APPLY FOR RECALL OF FINANCIAL POWERS?

Only applications to recall financial powers are made to the Public Guardian.

Anyone who claims an interest in the property or financial affairs of an adult. This might be the financial guardian or the adult, their nearest relative, primary carer, the named person if applicable or anyone else who considers that they have an interest.

The application is made to the Public Guardian. An application form can be found at the end of this guidance.

If there are welfare powers in place and recall is appropriate, a separate application needs to be made to the local authority or Mental Welfare Commission. In certain situations, however, an application should be made to the court (see paragraph 5.1).

3.2 HOW MIGHT THE NEED FOR RECALL BE IDENTIFIED?

You may be in daily contact with the adult and as a result be aware that changes are required. For example, there may have been a steady improvement in the adult's ability to manage their own affairs or it might now be a suitable time to start thinking about a less intrusive measure.

The Public Guardian has authority to supervise and investigate financial guardians in the exercise of their powers. It is possible in the course of the Public Guardian's investigation that something comes to light that prompts consideration to recalling financial guardianship powers.

3.3 IS THERE A FEE FOR THIS?

Yes. This fee should be sent along with the application. All prescribed fees can be found in the fees order, a copy of which can be accessed on the website, www.publicguardian-scotland.gov.uk, or by telephoning the OPG.

4. The Public Guardian



4.1 CAN THE PUBLIC GUARDIAN TAKE STEPS TO RECALL POWERS?

Yes. The Act allows the Public Guardian to recall the powers of a financial guardian at his own instance. This means that the Public Guardian does not necessarily have to be prompted by receipt of an application from someone described at paragraph 3.1.

There has to be evidence that either or both grounds for recall (see paragraph 2.1) are satisfied. There are also certain processes that must be followed prior to any decision about the recall of powers being made.

4.2 DOES THE COURT HAVE A PART TO PLAY IN ALL OF THIS?

Yes. The court has powers to recall a financial guardianship in the same way the Public Guardian does.

5. Making an application



5.1 HOW DO I DECIDE WHOM TO APPLY TO?

Before making the application, the general principles must be taken into account.

Generally applications to recall financial guardianships will be made to the Public Guardian. This is probably the simplest and quickest road to go down especially where it is likely that there will be no objections raised by significant others to the proposed recall.

However, there will be instances where it is more appropriate to make an application to the court. This might be where there is the probability that the proposed recall will be challenged or that there is reason to believe that it could prove contentious. It is recommended that you seek legal advice in such circumstances.

5.2 I HAVE FILLED OUT THE APPLICATION FORM, WHAT NOW?

You will already have provided a lot of relevant information in support of your application by fully and comprehensively completing the application form.

In making an application for recall you must take the general principles into account, including benefit the adult and consider what measures need to be put in place (if any) to safeguard the adult's financial affairs in the future.

It is important before submitting your application that you take time to consider the information provided and if there is anything else that you might wish the Public Guardian to take into account. For example, is there any documentary evidence that might support the application?

5.3 WHAT HAPPENS NOW THAT MY APPLICATION HAS BEEN SUBMITTED?

The Public Guardian will consider what you have said and may ask you to provide additional information. It is at this stage that the Public Guardian is required to intimate receipt of your application to:

- the adult (subject to section 11 of the Act);
- their nearest relative;
- the named person, if applicable;
- the primary carer; or
- anyone else whom it is considered has an interest.

The above parties can object to the application but must do so within 21 days. Objections must be made in writing.

6. Objections



6.1 WHAT HAPPENS IF SOMEONE OBJECTS TO THE RECALL APPLICATION?

The Public Guardian, on receipt of a written objection, will want to consider what has been said and if need be, ask for additional information before making a decision on how to proceed. At this stage, there are three potential outcomes:

- to recall the powers;
- to propose to refuse the application; or
- to refer the matter to the court for determination.

If objections are received they will be considered by the Public Guardian. The objector may be invited to address the Public Guardian in support of the objections raised. Thereafter the Public Guardian may recall the powers.

If matters are referred to the court for a decision, the court's decision will be final.

If the Public Guardian, on the basis of any objections received, proposes to refuse the application to recall, he is required to intimate his proposed decision to the applicant and the adult; they must be afforded the opportunity of being heard. The requisite 21 days must be observed giving the adult and the applicant the opportunity to object to the proposed refusal.

Although the Public Guardian can make a decision based on the application and any objections received, there may be occasions when it is appropriate to refer the matter to the court for a decision. The court's decision on this matter is final.

All decisions made by the Public Guardian are notified in writing.

6.2 WHAT IF NO OBJECTIONS ARE RECEIVED?

If, on expiry of the 21-day period no objections have been received, the Public Guardian, will consider the application. He can:

- recall the powers;
- propose to refuse the application; or
- refer the matters to the court.

Again, if the decision is to propose to refuse the application, both the adult and applicant are given an opportunity to have their say.

Where an application is referred to the court for determination, the court's decision on the matter is final.

The Public Guardian notifies all decisions in writing.

6.3 WHAT IF I DISAGREE WITH THE PUBLIC GUARDIAN'S DECISION?

You can appeal to the court if you disagree with the Public Guardian's decision. The letter you receive tells you how to go about this.

7. Further information



7.1 I NEED MORE INFORMATION

You should refer to the codes of practice. You can also write to, or telephone, the OPG.

Recall Application Form



PUBLIC GUARDIAN'S REF:

PG/

1. Details of adult

NAME OF ADULT:

ADDRESS:

POST CODE:

DATE OF BIRTH:
(DD/MM/YYYY)

2. Details of applicant

NAME OF APPLICANT:

ADDRESS:

DAYTIME TELEPHONE NUMBER:

E-MAIL ADDRESS:

POST CODE:

RELATIONSHIP TO ADULT:

3. Reason for Application to Recall Powers

Tell us why you think the powers relating to property and finance should be recalled. The Public Guardian can only recall the powers of a guardian on either of the two grounds that follow:

1. The reasons for appointing a guardian no longer apply

For example where the adult has gained or regained sufficient capacity to manage the affairs covered by the guardianship order. Where this is the case, a report from at least one medical practitioner should accompany this application. A style medical report can be found at the end of this application.

2. Another less intrusive measure other than guardianship could satisfactorily safeguard the interests in the property/financial affairs of the adult during his/her incapacity.

For example, an intervention order or access to the adults funds part 3 of the Adults with Incapacity (Scotland) Act 2000 or Department of Work and Pension (DWP) appointeeship. You must state specifically the alternative means by which the adult's interests are to be protected. Your reply will fall within one or both of the above categories. Please give as much information as you can in the space provided.

I hereby apply for the financial powers in the above guardianship order to be recalled because:

*The reasons for appointing a guardian no longer apply; or

*Another, less intrusive measure other than guardianship could satisfactorily safeguard the interests of the adult.

Please use the space below to explain why the reasons for appointing a guardian no longer apply and/or what other measures will safeguard the adult's financial interests. Make sure you give as much information as possible.

(If there is insufficient space please continue on a separate sheet)

SIGNED:

DATE:
(DD/MM/YYYY)

Once the form has been fully completed and signed it should be separated from the guidance and sent to the OPG at the address intimated overleaf.

This application will be sent to the adult (subject to section 11 of the Act), the adult's nearest relative, the named person if applicable and the primary carer and any other person that may have an interest in the application. Reference is made to the Codes of Practice relating to the guardian consulting with other interested parties prior to making this application to the Public Guardian.

Office of the Public Guardian (Scotland)
Certificate to Accompany Application for Recall

Report of capacity to accompany applications to the Office of the Public Guardian under section 73(1) of the Act for recall of powers of a guardian relating to property and financial affairs.

PART A DETAILS OF REPORT WRITER AND ADULT

I (Full Name)

being a medical practitioner with the following professional address:

(state full postal address for contact)

Telephone E-mail

hereby confirm that I examined and assessed the following adult ("the adult")

Name

Residing at

(state full postal address for contact)

Date of Birth

On (give date of examination and assessment)

PART B DETAILS OF APPLICATION

Name of applicant or person requesting report

Date of application (if known)

PART C FINDINGS OF EXAMINATION AND ASSESSMENT

On the basis of my examination and assessment I am of the opinion that the adult named in Part A is no longer incapable in relation to decisions about, or of acting to safeguard or promote his/her interests in his/her financial and property affairs in relation to the matters covered in the guardianship order. The reason for my opinion is given below.

Please indicate the findings of your examination and assessment, so far as they relate to the adult's capacity in relation to the matters which are the subject of the guardianship order.

Please indicate the extent to which you have been able to communicate with the adult,

Please indicate the extent to which you have been able to consult the nearest relative, primary carer, and anyone else having an interest in, or knowledge of, the adult.

Signed.....

Date

Office of the Public Guardian (Scotland)
Hadrian House
Callendar Business Park
Callendar Road
FALKIRK, FK1 1XR

DX: 550360 Falkirk 3
LP: LP-17 Falkirk

- Telephone: 01324 678300
- Fax: 01324 678301
- Email: opg@scotcourts.gov.uk
- Website: www.publicguardian-scotland.gov.uk

The office of the Public Guardian (OPG) is open to the public from 9am to 5pm, Monday to Friday.

This leaflet is available free of charge and available in other formats and community languages on request.

The office of the Public Guardian subscribes to Language Line and the RNID Typetalk service.

If you have any comments/suggestions regarding the contents/layout of these guidance notes or ways in which we might improve them, please send these to the above noted address. Your feedback is important to us as part of our ongoing review of our services.

