

ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

EXPLANATORY NOTES

THE ACT

Part 3: Accounts and Funds

Section 26: Application for authority to intrude

104. Subsection (1) sets out the information required for applying for authority to use the adult's funds. Subsection (1)(a) requires the application form to detail what the funds will be used for and how much is required for each item, for example, gas, electricity, Council Tax, food. It will be necessary to include information about the extent to which funds are to be used for shared household expenses.
105. Subsection (1)(c) provides that an application must be countersigned. The Scottish Ministers are to have the power to make regulations prescribing who is entitled to countersign. It is envisaged that the class of persons concerned will be similar to those entitled to authenticate passport photographs, for example, teachers, ministers, doctors. Subsection (1)(c) sets out further requirements of the person countersigning the application who must know both the adult and the applicant and must not have a personal interest in the application.
106. Subsection (1)(f) requires the application to be accompanied by a medical certificate, in a form to be prescribed in Regulations, confirming that the adult lacks the capacity to look after the funds concerned
107. Subsection (1)(g) requires details to be given of the new account set up by the applicant, the "designated account", into which the approved amounts are to be transferred from the adult's account. It is envisaged that this account will be clearly identified as the adult's account, although it will be operated by the person authorised to use the adult's funds.
108. Subsection (3) requires the Public Guardian to inform the adult and others who might be expected to have an interest, that an application has been made and that they have a right to make comments on it. The Public Guardian is obliged to take these into account before reaching a decision on whether to grant authority for access to the funds.
109. Subsection (4) provides for the Public Guardian to issue a statutory certificate confirming that an application has been granted. Details are to be entered in the register. The certificate is required by the person or organisation holding the adult's funds (the fundholder) to allow transactions on the account to take place. Otherwise, it is generally the practice to freeze the account of an adult who loses the capacity to operate it. The certificate will include details of the adult's account, the designated account to which funds are to be transferred and the period for which the Public Guardian's authority is to last.

*These notes relate to the Adults with Incapacity (Scotland)
Act 2000 (asp 4) which received Royal Assent on 9 May 2000*

110. Subsection (5) says that the certificate will require that neither the adult's account nor the designated account is to be overdrawn.
111. Subsection (6) clarifies that the certificate of authority will have the effect that only the authorised withdrawals are to be made from the adult's account and no other transactions on the account are to be permitted. Existing direct debit and standing order arrangements will be cancelled, and any cheque books and cards will be withdrawn.
112. Subsection (7) requires the Public Guardian to give the applicant a chance to make representations if it is proposed to refuse the application.
113. Subsection (8) allows for an application to be referred to the sheriff to be determined. The Public Guardian may decide to refer the matter to the sheriff, or may do so at the request of the applicant or anyone who objects to the application.
114. Subsection (10) defines a withdrawer as a person who is authorised in this Part of the Act to intromit with the adult's funds.