



# Adults with Incapacity (Scotland) Act 2000

2000 asp 4

## [<sup>F1</sup>PART 3

### ACCOUNTS AND FUNDS

#### [<sup>F1</sup>Joint and reserve withdrawers

#### Textual Amendments

- F1** Pt. 3 substituted (1.4.2008) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), **ss. 58**, 79(3); S.S.I. 2008/49, art. 2(1) (with arts. 34)

#### **26B** Addition of joint withdrawer

- (1) This section applies where an individual has or individuals have been appointed as a withdrawer in relation to an adult.
- (2) Where this sections applies, another individual may apply to the Public Guardian for appointment as a joint withdrawer.
- (3) An application under subsection (1) must be signed by the existing withdrawer.
- (4) Where the Public Guardian grants an application under subsection (1), the Public Guardian must—
  - (a) enter prescribed particulars in the register maintained by the Public Guardian under section 6(2)(b)(iii); and
  - (b) issue a certificate of authority (a “withdrawal certificate”) to the existing withdrawer and the applicant.
- (5) Subject to sections 31(2) and 31A, a certificate issued under subsection (4)(b) is valid until the date on which the withdrawal certificate held by the existing withdrawer would cease to be valid under section 31(1) or 31E(6), as the case may be (regardless of any subsequent extension, reduction, termination or suspension of the existing withdrawer's authority).

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*Status: Point in time view as at 01/04/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Adults with Incapacity (Scotland) Act 2000, Cross Heading: Joint and reserve withdrawers. (See end of Document for details)*

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- (6) In this section, “the existing withdrawer” means the individual or individuals mentioned in subsection (1).
- (7) In this Part, where two or more individuals are appointed as withdrawers, each individual is referred to as a “joint withdrawer”.

## **26C Joint withdrawers: supplementary**

- (1) Joint withdrawers may, subject to subsection (2), exercise their functions individually, and each joint withdrawer is liable for any loss incurred by the adult arising out of—
  - (a) the joint withdrawer's own acts or omissions; or
  - (b) the joint withdrawer's failure to take reasonable steps to ensure that another joint withdrawer does not breach any duty of care or fiduciary duty owed to the adult.
- (2) Where more than one joint withdrawer is liable under subsection (1), they are liable jointly and severally.
- (3) A joint withdrawer must, before exercising any function conferred on the joint withdrawer, consult the other joint withdrawers, unless—
  - (a) consultation would be impracticable in the circumstances; or
  - (b) the joint withdrawers agree that consultation is not necessary.
- (4) Where joint withdrawers disagree as to the exercise of their functions, one or more of them may apply to the Public Guardian for directions.
- (5) Directions given by the Public Guardian in pursuance of subsection (4) may be appealed to the sheriff, whose decision is final.
- (6) Where there are joint withdrawers—
  - (a) a third party in good faith is entitled to rely on the authority to act of any one or more of them; and
  - (b) section 31A(5) (interim authority) only applies where the Public Guardian terminates the authority of all of the joint withdrawers.

## **26D Reserve withdrawers: applications**

- (1) In any case where an individual is issued with a withdrawal certificate (“a main withdrawer”), the Public Guardian may, on an application by the main withdrawer, appoint another individual (“a reserve withdrawer”) to act as a withdrawer in the event of the main withdrawer temporarily becoming unable to act.
- (2) An application for appointment of a reserve withdrawer may be made at the time of the application under section 25 for a withdrawal certificate or at any later time.
- (3) The application for appointment as a reserve withdrawer must be signed by the proposed reserve withdrawer.
- (4) Where the Public Guardian grants the application, the Public Guardian must enter prescribed particulars in the register maintained by the Public Guardian under section 6(2)(b)(iii).

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## **26E Reserve withdrawers: authority to act**

- (1) Where—
  - (a) a reserve withdrawer has been appointed under section 26D; and
  - (b) the main withdrawer considers that the main withdrawer is or will be unable to carry out some or all of the main withdrawer's functions under this Part,the main withdrawer may notify the Public Guardian that the main withdrawer wishes the Public Guardian to authorise the reserve withdrawer to intromit with the adult's funds for a specified period.
- (2) Where a reserve withdrawer becomes aware that the main withdrawer is unable—
  - (a) to carry out some or all of the main withdrawer's functions in relation to intromitting with the funds concerned; and
  - (b) to notify the Public Guardian under subsection (1),the reserve withdrawer may apply to the Public Guardian for a certificate authorising the reserve withdrawer to intromit with the adult's funds for a specified period.
- (3) The Public Guardian, on being notified under subsection (1), must or, on an application under subsection (2), may—
  - (a) enter prescribed particulars in the register maintained by him under section 6(2)(b)(iii);
  - (b) issue a certificate of authority (a “withdrawal certificate”) to the reserve withdrawer; and
  - (c) notify the adult and the main withdrawer.
- (4) The certificate issued under subsection (3)(b) is—
  - (a) valid for the specified period, or such shorter period as the Public Guardian thinks fit, but does not extend beyond the date on which the validity of the withdrawal certificate issued to the main withdrawer would cease under section 31(1) or 31E(6), as the case may be;
  - (b) suspended during any period when the authority of the main withdrawer is suspended;
  - (c) terminated if the authority of the main withdrawer is terminated.
- (5) The main withdrawer and the reserve withdrawer are liable (jointly and severally) for any loss incurred by the adult arising out of the reserve withdrawer's acts or omissions.
- (6) In this section, “specified” means specified in the notice or, as the case may be, application.]

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