



Adults with Incapacity (Scotland) Act 2000

2000 asp 4

PART 3

ACCOUNTS AND FUNDS

26 Application for authority to intromit

- (1) An application form for authority to intromit with funds shall—
- (a) state the purposes of the proposed intromission, setting out the specific sums relating to each purpose;
 - (b) be signed by the applicant;
 - (c) be countersigned by a member of such class of persons as is prescribed, who shall declare in the form that—
 - (i) he knows the applicant and has known him for at least 2 years prior to the date of the application;
 - (ii) he knows the adult;
 - (iii) he is not—
 - (A) a relative of or person residing with the applicant or the adult; or
 - (B) a director or employee of the fundholder; or
 - (C) a solicitor acting on behalf of the adult or any other person mentioned in this sub-paragraph in relation to any matter under this Act; or
 - (D) the medical practitioner who has issued the certificate under sub-paragraph (f);
 - (iv) he believes the information contained in the document to be true; and
 - (v) he believes the applicant to be a fit and proper person to intromit with the funds;
 - (d) contain the names and addresses of the nearest relative and primary carer of the adult, if known;
 - (e) identify the account with the fundholder in relation to which the authority is sought;

Status: This is the original version (as it was originally enacted).

- (f) be accompanied by a certificate in prescribed form from a medical practitioner that the adult is—
 - (i) incapable in relation to decisions about; or
 - (ii) incapable of acting to safeguard or promote his interests in, the funds;
 - (g) contain an undertaking that he will open an account (the “designated account”) solely for the purposes of—
 - (i) receiving funds transferred under section 29(1); and
 - (ii) intromitting with those funds.
- (2) The applicant shall, not later than 14 days after the form has been countersigned as mentioned in subsection (1)(c), send the completed form to the Public Guardian.
- (3) On receipt of a properly completed form sent timeously to him under subsection (2), the Public Guardian shall intimate the application to the adult, his nearest relative, his primary carer and any person who the Public Guardian considers has an interest in the application and advise them of the prescribed period within which they may object to the granting of the application; and he shall not grant the application without affording to any objector an opportunity of being heard.
- (4) Having heard any objections as mentioned in subsection (3), the Public Guardian may grant the application and where he does so he shall—
 - (a) enter prescribed particulars in the register maintained by him under section 6(2)(b)(iii); and
 - (b) issue a certificate of authority to the withdrawer.
- (5) A certificate of authority issued under subsection (4) shall instruct—
 - (a) the fundholder that the account held in the name of the adult; and
 - (b) the withdrawer that the designated account,must not be overdrawn; and if either account is overdrawn, the fundholder of that account shall have a right of relief against the withdrawer.
- (6) A certificate of authority issued under subsection (4) shall instruct the fundholder of the account held in the name of the adult that no operations shall be carried out on the account other than those carried out in accordance with the certificate by the person authorised under this section.
- (7) Where the Public Guardian proposes to refuse the application he shall intimate his decision to the applicant and advise him of the prescribed period within which he may object to the refusal; and he shall not refuse the application without affording to the applicant, if he objects, an opportunity of being heard.
- (8) The Public Guardian may at his own instance or at the instance of the applicant or of any person who objects to the granting of the application remit the application for determination by the sheriff, whose decision shall be final.
- (9) A decision of the Public Guardian—
 - (a) to grant an application under subsection (4) or to refuse an application; or
 - (b) to refuse to remit an application to the sheriff under subsection (8) above,may be appealed to the sheriff, whose decision shall be final.
- (10) In this Act an individual in respect of whom a form is registered under subsection (4) is referred to as a “withdrawer”.