

ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

EXPLANATORY NOTES

THE ACT

Part 4: Management of Residents' Finances

Section 37: Residents whose affairs may be managed

143. Subsection (1) provides that managers may manage the matters set out in section 39 on behalf of any resident where a medical practitioner has provided a certificate to the effect that the resident is incapable of doing so.
144. Subsection (2) provides that where the managers of a care establishment have considered alternative approaches to managing a resident's financial affairs, but decided that the most appropriate is management under this Part of the Act, the managers must ask a medical practitioner to assess that resident's capacity. If the medical practitioner finds that the resident is incapable of taking decisions about their funds, or of managing those funds properly, a certificate will be issued accordingly.
145. Subsection (3) requires that the managers of a care establishment must tell residents and their nearest relative that it is intended to assess their capacity.
146. Subsection (4) requires the managers and the supervisory body to notify the resident and their nearest relative of matters relating to a certificate of incapacity issued under subsection (2), and of the managers' intention to look after the resident's financial affairs.
147. Subsection (6) prohibits a medical practitioner from providing a certificate of incapacity if the medical practitioner is related to the resident or manager or has any financial interest in the establishment.
148. Subsection (7) requires that certificates of incapacity under this Part of the Act are to be reviewed as required, and that they should expire after 3 years.
149. Subsection (8) provides that a resident need not be told of the intention to assess capacity, nor be given a copy of the certificate of incapacity if there is evidence that this would be seriously detrimental to the individual's health. Subsection (9) allows for regulations to prescribe the type of evidence that the supervisory body would require before deciding that the adult should not be informed.