

ADULT SUPPORT AND PROTECTION (SCOTLAND) ACT 2007

EXPLANATORY NOTES

THE ACT – AN OVERVIEW

Part 2

Adults With Incapacity

Section 58 – Accounts and funds

Joint and reserve withdrawers

103. New section 26B provides that the Public Guardian may on application issue a certificate appointing an additional withdrawer to be authorised to act alongside one or more existing withdrawers. Previously there could only be one withdrawer on an incapable adults account. This new provision will ensure continuity for the adult. The joint withdrawer's application must be signed by the original withdrawer and the Public Guardian will enter the particulars into the Register. The certificate is valid until the withdrawal certificate held by the original withdrawer ceases to be valid
104. New section 26C defines the extent of joint withdrawers' liability. It provides for consultation among joint withdrawers before the exercise of their functions and for an application to the Public Guardian for directions in the event of a disagreement between joint withdrawers. There is an appeal to the sheriff and provision is made for third parties transacting with joint withdrawers in good faith.
105. New section 26D provides for an application to the Public Guardian for the appointment of a reserve withdrawer either at the time of the original application or at some later date on application by the main withdrawer. This was not possible under the original scheme and will help ensure continuity for the adult. The reserve withdrawers application must be signed by the original withdrawer and the Public Guardian will enter the particulars into the Register.
106. New section 26E (1)-(3) provides for a reserve withdrawer's authority to act coming into effect, either by notice to the Public Guardian by the main withdrawer, or in cases where the main withdrawer is unable to do so, by the reserve withdrawer and for the issue of a certificate by the Public Guardian. Section 26E(4) provides for the duration of the validity of the certificate and section 26E(5) sets out the limits of liability of both withdrawers for the reserve withdrawer's actings.