



Adults with Incapacity (Scotland) Act 2000

2000 asp 4

PART 4

MANAGEMENT OF RESIDENTS' FINANCES

35 Application of Part 4

- (1) Subject to subsection (3), this Part applies to the management of the matters set out in section 39 relating to any resident of any of the following establishments—
- (a) a hospital or other premises mentioned in section 10(3)(a) of the Nursing Homes Registration (Scotland) Act 1938 (c. 73) (“the 1938 Act”);
 - (b) a nursing home registered under the 1938 Act;
 - (c) a hospital or similar institution which, but for section 6 of that Act, would require to be registered under the 1938 Act;
 - (d) an establishment in respect of which there is registration under section 61B, 62 or 63 of the Social Work (Scotland) Act 1968 (c. 49) (“the 1968 Act”);
 - (e) an establishment in relation to which, but for the exception provided by section 61(1A)(a) of the 1968 Act, there would require to be registration under section 62 or 63 of the 1968 Act;
 - (f) a private hospital registered under Part IV of the Mental Health (Scotland) Act 1984 (c. 36) (“the 1984 Act”);
 - (g) a State hospital.
- (2) In this Part establishments mentioned in paragraph (b), (ca), (cb), (d) or (f) of subsection (1) are referred to as “registered establishments”, all other establishments mentioned in subsection (1) are referred to as “unregistered establishments”, and registered and unregistered establishments together are referred to as “authorised establishments”.
- (3) This Part shall not apply to a registered establishment where notice in writing is given to the supervisory body by—
- (a) the managers of the registered establishment; or
 - (b) an applicant for registration of an establishment,

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that it shall not apply.

- (4) The Scottish Ministers may by regulations amend the list of authorised establishments set out in subsection (1).
- (5) In this Part, “the managers” has the meaning set out in schedule 1; and “resident” in relation to an authorised establishment means an adult whose main residence for the time being is the authorised establishment or who is liable to be detained there under the 1984 Act.

36 Registration for purposes of managing residents' finances

After section 61A of the Social Work (Scotland) Act 1968 (c. 49) there shall be inserted—

“61B Registration for purpose of managing residents' finances

- (1) Any residential or other establishment in respect of which there is no requirement to register under section 61 of this Act may apply for registration under this Part of this Act for the purposes only of Part 4 (Management of Residents' Finances) of the Adults with Incapacity (Scotland) Act 2000 (asp 4).
- (2) Where an application for registration to which subsection (1) applies is granted, the establishment shall be entered in the register kept for the purposes of section 61(2) above by the local authority or, as the case may be, the Scottish Ministers.
- (3) The provisions of this Part of this Act shall apply to establishments to which this section applies subject to the following—
 - (a) section 61(2) and (3) shall not apply;
 - (b) section 62(8) and (8A) shall not apply;
 - (c) section 65 shall not apply;
 - (d) the provisions of section 67(1) shall apply only where the person carrying on the establishment is registered.”.

37 Residents whose affairs may be managed

- (1) The managers of an authorised establishment shall be entitled to manage on behalf of any resident in the establishment in relation to whom a certificate has been issued under subsection (2) any of the matters set out in section 39.
- (2) Where the managers of an authorised establishment, having considered all other appropriate courses of action, have decided that management on behalf of the resident of the matters set out in section 39 by them is the most appropriate course of action, they shall cause to be examined by a medical practitioner any resident in the establishment who they believe may be incapable in relation to decisions as to, or of safeguarding his interest in, any of the resident’s affairs referred to in section 39; and if the medical practitioner finds that the resident is so incapable he shall issue a certificate in prescribed form to that effect.
- (3) Subject to subsection (8), the managers of the authorised establishment shall intimate their intention of requiring an examination under subsection (2) to the resident and to the resident’s nearest relative.

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- (4) Subject to subsection (8), the managers of the authorised establishment shall—
 - (a) send a copy of the certificate to the resident and to the supervisory body, who shall notify the resident's nearest relative;
 - (b) notify the resident and the supervisory body that they intend to manage the resident's affairs.
- (5) Notification under subsection (4)(b) shall include a statement as to what other courses of action had been considered and why they were not considered appropriate.
- (6) The medical practitioner who certifies under this section shall not—
 - (a) be related to the resident or to any of the managers of the authorised establishment;
 - (b) have any direct or indirect financial interest in the authorised establishment.
- (7) A certificate—
 - (a) shall be reviewed where it appears to the managers of the authorised establishment, the medical practitioner who certifies under this section or any person having an interest in any of the resident's affairs mentioned in section 39 that there has been any change in the condition or circumstances of the resident bearing on the resident's incapacity; and
 - (b) shall expire 3 years after it was issued.
- (8) If the managers of the authorised establishment consider that intimation to the resident under subsection (3) or any action under subsection (4) would be likely to pose a serious risk to the health of the resident they may apply to the supervisory body for a direction that they need not make the intimation or take the action.
- (9) The Scottish Ministers may prescribe the evidence which the supervisory body shall take into account in reaching a decision under subsection (8).

38 Financial procedures and controls in registered establishments

- (1) In section 1(3) of the Nursing Homes Registration (Scotland) Act 1938 (c. 73) (“the 1938 Act”), after paragraph (d) there shall be inserted—
 - “(e) that the applicant does not maintain financial procedures and controls adequate to ensure the safeguarding of any property of a resident of the home which the applicant will be required to manage.”.
- (2) In section 4(1)(a) of the 1938 Act, after sub-paragraph (ii) there shall be inserted “; and (iii) the financial procedures and controls relating to residents' property.”.
- (3) In section 62(3) of the Social Work (Scotland) Act 1968 (c. 49), after paragraph (c) there shall be inserted—
 - “(d) that the applicant does not maintain financial procedures and controls adequate to ensure the safeguarding of any property of a resident of the establishment which the applicant will be required to manage.”.
- (4) In section 13(1) of the 1984 Act, after paragraph (a) there shall be inserted—
 - “(aa) that the person proposing to carry on the establishment maintains financial procedures and controls adequate to ensure the safeguarding of any property of a resident of the hospital which that person will be required to manage.”.

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39 Matters which may be managed

- (1) The matters which may be managed under this Part by the managers of an authorised establishment are—
 - (a) claiming, receiving, holding and spending any pension, benefit, allowance or other payment other than under the Social Security Contributions and Benefits Act 1992 (c. 4);
 - (b) claiming, receiving, holding and spending any money to which a resident is entitled;
 - (c) holding any other moveable property to which the resident is entitled;
 - (d) disposing of such moveable property,and in this Part these matters, or any of them, are referred to as residents' affairs; and cognate expressions shall be construed accordingly.
- (2) In managing these matters, the managers of an authorised establishment shall—
 - (a) act only for the benefit of the resident; and
 - (b) have regard to the sentimental value that any item might have for the resident, or would have but for the resident's incapacity.
- (3) The managers of an authorised establishment shall not, without the consent of the supervisory body, manage any matter if that matter has a value greater than that which is prescribed for the purposes of this subsection.
- (4) The supervisory body may in relation to an individual resident permit the managers of the authorised establishment to manage any matter which has a value greater than that which is prescribed in relation to it under subsection (3).
- (5) For the purpose of this section, "manage" denotes no greater responsibility than complying with the duties set out in this section.

40 Supervisory bodies

- (1) A supervisory body for the purposes of this Part is—
 - (a) in relation to a registered establishment (other than an establishment mentioned in paragraph (f) of section 35(1)), the person or body with whom the establishment is required to register;
 - (b) in relation to an authorised establishment mentioned in paragraphs (a), (c), (f) or (g) of section 35(1), the Health Board for the area in which the authorised establishment is situated;
 - (c) in relation to an authorised establishment mentioned in paragraph (e) of that section, the local authority of the area in which the authorised establishment is situated,and any reference in this Part to an authorised establishment in relation to a supervisory body is a reference to an authorised establishment for which the supervisory body is responsible.
- (2) A supervisory body shall from time to time make inquiry as to the manner in which the managers of an authorised establishment are carrying out the management of residents' affairs and in particular the manner in which they are carrying out their functions under section 41.
- (3) A supervisory body shall investigate any complaint received as to the manner in which the managers of an authorised establishment are managing residents' affairs.

- (4) The Scottish Ministers may by regulations amend the list of supervisory bodies set out in subsection (1).

41 Duties and functions of managers of authorised establishment

The managers of an authorised establishment shall, in relation to residents whose affairs they are managing under section 39—

- (a) claim, receive and hold any pension, benefit, allowance or other payment to which the resident is entitled other than under the Social Security Contributions and Benefits Act 1992 (c. 4);
- (b) keep the funds of residents separate from the funds of the establishment;
- (c) comply with any requirements of the supervisory body as respects keeping the funds of residents separate or distinguishable from each other;
- (d) ensure that where, at any time, the total amount of funds held on behalf of any resident exceeds such sum as may from time to time be prescribed they shall be placed so as to earn interest;
- (e) keep records of all transactions made in relation to the funds held by them in respect of each resident for whose benefit the funds are held and managed and, in particular, ensure that details of the balance and any interest due to each resident can be ascertained at any time;
- (f) produce such records when requested to do so by the resident, his nearest relative or the supervisory body;
- (g) spend money only on items or services which are of benefit to the resident on whose behalf the funds are held;
- (h) not spend money on items or services which are provided by the establishment to or for such resident as part of its normal service;
- (i) make proper provision for indemnifying residents against any loss attributable to—
 - (i) any act or omission on the part of the managers of the establishment in exercising the powers conferred by this Part or of others for whom the managers are responsible or attributable to any expenditure in breach of paragraph (g);
 - (ii) any breach of duty, misuse of funds or failure to act reasonably and in good faith on the part of the managers.

42 Authorisation of named manager to withdraw from resident's account

- (1) On an application in writing by the managers of an authorised establishment the supervisory body may issue a certificate of authority under this section in relation to any resident named in the application.
- (2) An application under subsection (1) shall specify one or more persons (being managers, officers or members of staff of the establishment) who shall exercise the authority conferred by this section.
- (3) A certificate of authority shall be signed by the officer of the supervisory body authorised by the body to do so and shall—
 - (a) specify accounts or other funds of the resident;
 - (b) name the persons specified in the application (the“authorised persons”);

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- (c) specify the period of validity of the certificate of authority, being a period not exceeding the period of validity of the certificate issued under section 37(2).
- (4) The authorised persons may make withdrawals from such account or source of funds of the named resident as is specified in the certificate of authority and the fundholder may make payments accordingly.
- (5) The supervisory body may at any time after it has issued a certificate of authority, revoke it and if it does so it shall notify the fundholder of the revocation.

43 Statement of resident's affairs

- (1) In this section, “resident” means a resident of an authorised establishment whose affairs are being managed in accordance with the provisions of this Part and “statement” means a statement of the affairs of the resident.
- (2) Where a resident ceases to be incapable of managing his affairs, the managers of the establishment shall prepare a statement as at the date on which he ceases to be incapable and shall give a copy to him.
- (3) Where a resident moves from an authorised establishment to another authorised establishment, the managers of the establishment from which he moves shall, except where he has ceased to be incapable, prepare a statement as at the date on which he moves and shall send a copy of the statement to the managers of the other establishment.
- (4) Where a resident leaves an authorised establishment, other than to move to another authorised establishment and except where he has ceased to be incapable, the managers of the establishment shall prepare a statement as at the date on which he leaves and shall give a copy of the statement to any person who appears to them to be the person who will manage his affairs.

44 Resident ceasing to be resident of authorised establishment

- (1) Where a resident ceases to be a resident of an authorised establishment, or ceases to be incapable, the managers of the establishment shall continue, for a period not exceeding 3 months from the date on which he ceases to be a resident or, as the case may be, to be incapable, to manage his affairs while such other arrangements as are necessary for managing his affairs are being made.
- (2) At the end of the period referred to in subsection (1) during which the managers of the establishment have continued to manage the resident's affairs, they shall prepare a statement and shall give a copy of it to—
 - (a) the resident, if he has ceased to be incapable; or
 - (b) any person who appears to them to be the person who will manage his affairs.
- (3) Where a resident ceases to be a resident of an authorised establishment and his affairs are to be managed by another establishment, authority or person (including himself) the managers of the establishment shall take such steps as are necessary to transfer his affairs to that establishment, authority or person, as the case may be.
- (4) Where a resident ceases to be a resident of an authorised establishment the managers of the establishment shall within 14 days of that event inform—
 - (a) the supervisory body; and

- (b) where the resident has not ceased to be incapable and has moved neither—
 - (i) to another authorised establishment; nor
 - (ii) into the care of a local authority,the local authority of the area in which they expect him to reside.

45 Appeal, revocation etc

- (1) Where it appears to a supervisory body that the managers of an authorised establishment are no longer operating as such or have failed to comply with any requirement of this Part or that, for any other reason, it is no longer appropriate that they should continue to manage residents' affairs it may revoke—
 - (a) in the case of a registered establishment to which section 61B of the Social Work (Scotland) Act 1968 (c. 49) applies, the registration;
 - (b) in any other case, the power to manage.
- (2) Where the managers of a registered establishment have given notice to the supervisory body under section 35(3) the supervisory body shall revoke the registration.
- (3) Where a registration or a power to manage has been revoked under this section, the supervisory body shall within a period of 14 days from such revocation take over management of the residents' affairs and, where they do so, comply with the requirements imposed by and under this Part upon the managers of an authorised establishment.
- (4) The supervisory body shall, within the period of 3 months after taking over management of residents' affairs under subsection (3), cause that management to be transferred to such other establishment, authority or person (who may be the resident) as they consider appropriate.
- (5) Where the supervisory body is satisfied that the circumstances mentioned in subsection (1) no longer apply in relation to an establishment whose power to manage it has revoked, it may annul the revocation of the power and, where necessary, of the registration.
- (6) Any decision of a supervisory body may be appealed to the sheriff, whose decision shall be final.

46 Disapplication of Part 4

- (1) This Part shall not apply to any of the matters which may be managed under section 39 if—
 - (a) there is a guardian, continuing attorney, or other person with powers relating to that matter; or
 - (b) an intervention order has been granted relating to that matter,but no liability shall be incurred by any person who acts in good faith under this Part in ignorance of any guardian, continuing attorney, other person or intervention order.
- (2) In this section any reference to—
 - (a) a guardian shall include a reference to a guardian (however called) appointed under the law of any country to, or entitled under the law of any country to act for, an adult during his incapacity, if the guardianship is recognised by the law of Scotland;

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- (b) a continuing attorney shall include a reference to a person granted, under a contract, grant or appointment governed by the law of any country, powers (however expressed), relating to the granter's property or financial affairs and having continuing effect notwithstanding the granter's incapacity.