

# **ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000**

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## **EXPLANATORY NOTES**

### **THE ACT**

#### **Part 6: Intervention Orders and Guardianship Orders**

##### **Functions etc. of guardian**

##### ***Section 68: Reimbursement and remuneration of guardian***

312. This section sets out whether and how a guardian may be remunerated for work done performing duties as a guardian and reimbursed for expenses so incurred.
313. Subsection (1) states that a guardian is entitled to reimbursement, with the restriction that it should only be for expenses that the guardian incurred carrying out his function as a guardian. Reimbursement will come from the adult's estate.
314. Subsection (2)(a) provides for the guardian to be reimbursed for items and services they provide that are not part of their functions as a guardian. For example, if the guardian was also the adult's solicitor, this allows them to continue to be paid by the adult for services provided that are not included in the appointment as a guardian.
315. Subsection (2)(b) protects the adult from being subject to extra local authority charges due to the appointment of a local authority guardian. If services provided would be free of charge to someone not under guardianship, a charge cannot now be made for those services.
316. Subsection (3) relates to costs that a local authority may be reimbursed, where it applies for appointment of the chief social work officer as a guardian. It differentiates between guardianship orders covering property and financial affairs, and those covering welfare matters. Only in the former case can the local authority be reimbursed. Where an order covers both finance and welfare matters, it is at the sheriff's discretion to apportion the costs between the adult and the local authority respectively. The effect of this subsection is that an adult's estate will bear the cost of administering it properly, but that the protection of the adult through the appointment of a local authority welfare guardian will not cost the adult anything.
317. Subsection (4) also distinguishes remuneration (or pay) for welfare guardianship from that relating to property and financial affairs. Only where the sheriff decides that special cause is shown and has taken the value of the adult's estate into account, and never where the chief social work officer is exercising the role, should welfare guardians be paid for exercising their functions. The sheriff might, for example, consider remuneration for a guardian who was the adult's carer and dependent on the adult, with no other means of support.
318. Subsection (4)(b) states that financial guardians will normally be remunerated out of the adult's estate for exercising their functions, which may be more onerous and involve

*These notes relate to the Adults with Incapacity (Scotland)  
Act 2000 (asp 4) which received Royal Assent on 9 May 2000*

considerable responsibility. However, the sheriff may remove this provision, perhaps where the adult's estate is very small, and the task of managing it is straightforward.

319. Subsection (5) establishes that the work involved in administering the adult's estate, and the estate's value will be determining factors for the sheriff to use in allowing remuneration of a financial guardian.
320. Subsection (6) provides for the Public Guardian to set the level of remuneration, where the sheriff has allowed it, and outlays which will be reimbursed, for each guardian. The Public Guardian will determine the level of remuneration granted, taking into account the level of the adult's resources. Where accounts are submitted by the guardian, levels of remuneration and reimbursement of expenses will be determined at the end of each accounting period.
321. Subsection (7) allows the Public Guardian to award interim remuneration to a guardian if it is unreasonable to wait for the end of an accounting period, for example, where the guardian has spent a considerable time carrying out his financial duties, the accounting period is long, and it could cause hardship to withhold remuneration.
322. Subsection (8) concerns appeals against decisions of the Public Guardian. The decision to award remuneration, or reimburse outlays or to award an interim payment can be appealed to the sheriff, whose decision is final.