



# Adults with Incapacity (Scotland) Act 2000

2000 asp 4

## [<sup>F1</sup>PART 3

### ACCOUNTS AND FUNDS

#### *[<sup>F1</sup>Applications: general*

#### Textual Amendments

- F1** Pt. 3 substituted (1.4.2008) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), ss. 58, 79(3); S.S.I. 2008/49, art. 2(1) (with arts. 34)

#### **27 Applications: general requirements**

An application under section 24C, 24D, 25, 26B, 26D, 26F or 26G must—

- (a) be signed by the applicant;
- (b) contain the name and addresses of the nearest relative, named person and primary carer of the adult, if known;
- (c) be submitted to the Public Guardian no later than 14 days after—
  - (i) where it is required to be countersigned under section 27A, the day the application is so countersigned, or
  - (ii) in any other case, the day the application is signed by the applicant as mentioned in paragraph (a).

#### **27A Countersigning of applications**

- (1) An application under section 24C, 24D, 25, or 26B must be countersigned by a person who must declare in the application that—
  - (a) the person knows the applicant and has known the applicant for at least one year prior to the date of the application;
  - (b) the person is not any of the following—

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*Changes to legislation: There are currently no known outstanding effects for the Adults with Incapacity (Scotland) Act 2000, Cross Heading: Applications: general. (See end of Document for details)*

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- (i) a relative of or person residing with the applicant or the adult;
  - (ii) a director or employee of the fundholder;
  - (iii) a solicitor acting on behalf of the adult or any other person mentioned in this paragraph in relation to any matter under this Act;
  - (iv) the medical practitioner who has issued the certificate under section 27B in connection with the application;
  - (v) a guardian of the adult;
  - (vi) a welfare or continuing attorney of the adult;
  - (vii) a person who is authorised under an intervention order in relation to the adult;
- (c) the person believes the information contained in the application to be true; and
  - (d) the person believes the applicant to be a fit and proper person to intromit with the adult's funds.
- (2) An application under section 26D (reserve withdrawers) must be countersigned by a person who must declare in the application the matters set out in paragraphs (a) to (d) of subsection (1) but with references in those paragraphs to “applicant” read as references to the proposed reserve withdrawer.
- (3) This section does not apply to an application made by a body.

#### **27B Medical certificates**

An application under section 24C, 24D, or 25 must be accompanied by a certificate in prescribed form from a medical practitioner that the adult is—

- (a) incapable in relation to decisions about; or
- (b) incapable of acting to safeguard or promote the adult's interests in, the adult's funds.

#### **27C Intimation of applications**

- (1) On receipt of a competent application under section 24C, 24D, 25, 26B, 26D, 26F or 26G, the Public Guardian must intimate the application to—
- (a) the adult;
  - (b) the adult's nearest relative;
  - (c) the adult's primary carer;
  - (d) the adult's named person;
  - (e) where the applicant is—
    - (i) the individual mentioned in both paragraph (b) and (c); or
    - (ii) a body other than a local authority, the chief social work officer of the local authority; and
  - (f) any other person who the Public Guardian considers has an interest in the application.
- (2) A competent application is an application which complies with section 27 and, where appropriate, sections 27A and 27B.

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**27D Determination of applications: applicant to be fit and proper**

- (1) The Public Guardian may grant an application made under section 24C, 24D, 25, 26B or 26D only if satisfied that—
  - (a) the applicant in an application under section 24C, 24D, 25 or 26B, or
  - (b) the proposed reserve withdrawer in an application under section 26D, is a fit and proper person to intromit with the funds of the adult.
- (2) In deciding whether a person is fit and proper, the Public Guardian must have regard to any guidance issued in relation to that matter by the Scottish Ministers.

**27E Determination of applications: opportunity to make representations**

- (1) The Public Guardian must not grant an application under section 24C, 24D, 25, 26B, 26D, 26F or 26G without affording to any person who receives intimation of the application under section 27C or any other person who wishes to object an opportunity to make representations.
- (2) Where the Public Guardian proposes to refuse the application the Public Guardian must intimate the proposed decision to the applicant and advise the applicant of the prescribed period within which the applicant may object to the proposed refusal.
- (3) The Public Guardian must not refuse an application without affording to the applicant, if the applicant objects, an opportunity to make representations.

**27F Referral of application to sheriff**

- (1) The Public Guardian may remit an application under section 24C, 24D, 25, 26B, 26D, 26F or 26G for determination by the sheriff at the instance of—
  - (a) the Public Guardian;
  - (b) the applicant; or
  - (c) any person who objects to the granting of the application.
- (2) The sheriff's decision on an application remitted under subsection (1) is final.

**27G Multiple applications etc.**

- (1) Where a person who has made an application under section 24C, 24D or 25 in respect of an adult makes another application under any of those sections in respect of the same adult, the Public Guardian may disapply any of the provisions in sections 27 to 27B to that application.
- (2) Where the Public Guardian is to issue more than one certificate under this Part to the same person, the Public Guardian may instead issue a combined certificate to the person.
- (3) References in this Part to a withdrawal certificate or other certificate issued under this Part include references to any combined certificate issued by the Public Guardian instead of the withdrawal or other certificate.]

**Changes to legislation:**

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