



# Adults with Incapacity (Scotland) Act 2000

2000 asp 4

## PART 3

### ACCOUNTS AND FUNDS

#### 25 Authority to intromit with funds

- (1) Subject to section 34, an individual (which does not include a person acting in his capacity as an officer of a local authority or other body established by or under an enactment) may apply to the Public Guardian for authority under this Part to intromit with funds held by a person or organisation (the “fundholder”) on behalf of an adult who is incapable in relation to decisions about the funds or of safeguarding his interests in the funds, and is the sole holder of an account in his name.
- (2) An application for authority under this section shall be made in respect of a specified account with the fundholder and shall not be made if there is an existing authority to intromit under this Part.

#### 26 Application for authority to intromit

- (1) An application form for authority to intromit with funds shall—
  - (a) state the purposes of the proposed intromission, setting out the specific sums relating to each purpose;
  - (b) be signed by the applicant;
  - (c) be countersigned by a member of such class of persons as is prescribed, who shall declare in the form that—
    - (i) he knows the applicant and has known him for at least 2 years prior to the date of the application;
    - (ii) he knows the adult;
    - (iii) he is not—
      - (A) a relative of or person residing with the applicant or the adult;  
or
      - (B) a director or employee of the fundholder; or

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- (C) a solicitor acting on behalf of the adult or any other person mentioned in this sub-paragraph in relation to any matter under this Act; or
  - (D) the medical practitioner who has issued the certificate under sub-paragraph (f);
  - (iv) he believes the information contained in the document to be true; and
  - (v) he believes the applicant to be a fit and proper person to intromit with the funds;
  - (d) contain the names and addresses of the nearest relative and primary carer of the adult, if known;
  - (e) identify the account with the fundholder in relation to which the authority is sought;
  - (f) be accompanied by a certificate in prescribed form from a medical practitioner that the adult is—
    - (i) incapable in relation to decisions about; or
    - (ii) incapable of acting to safeguard or promote his interests in, the funds;
  - (g) contain an undertaking that he will open an account (the “designated account”) solely for the purposes of—
    - (i) receiving funds transferred under section 29(1); and
    - (ii) intromitting with those funds.
- (2) The applicant shall, not later than 14 days after the form has been countersigned as mentioned in subsection (1)(c), send the completed form to the Public Guardian.
- (3) On receipt of a properly completed form sent timeously to him under subsection (2), the Public Guardian shall intimate the application to the adult, his nearest relative, his primary carer and any person who the Public Guardian considers has an interest in the application and advise them of the prescribed period within which they may object to the granting of the application; and he shall not grant the application without affording to any objector an opportunity of being heard.
- (4) Having heard any objections as mentioned in subsection (3), the Public Guardian may grant the application and where he does so he shall—
- (a) enter prescribed particulars in the register maintained by him under section 6(2)(b)(iii); and
  - (b) issue a certificate of authority to the withdrawer.
- (5) A certificate of authority issued under subsection (4) shall instruct—
- (a) the fundholder that the account held in the name of the adult; and
  - (b) the withdrawer that the designated account,
- must not be overdrawn; and if either account is overdrawn, the fundholder of that account shall have a right of relief against the withdrawer.
- (6) A certificate of authority issued under subsection (4) shall instruct the fundholder of the account held in the name of the adult that no operations shall be carried out on the account other than those carried out in accordance with the certificate by the person authorised under this section.
- (7) Where the Public Guardian proposes to refuse the application he shall intimate his decision to the applicant and advise him of the prescribed period within which he may

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object to the refusal; and he shall not refuse the application without affording to the applicant, if he objects, an opportunity of being heard.

- (8) The Public Guardian may at his own instance or at the instance of the applicant or of any person who objects to the granting of the application remit the application for determination by the sheriff, whose decision shall be final.
- (9) A decision of the Public Guardian—
- (a) to grant an application under subsection (4) or to refuse an application; or
  - (b) to refuse to remit an application to the sheriff under subsection (8) above,
- may be appealed to the sheriff, whose decision shall be final.
- (10) In this Act an individual in respect of whom a form is registered under subsection (4) is referred to as a “withdrawer”.

## **27 Notification of change of address**

After the name of a withdrawer has been registered under section 26 the withdrawer shall notify the Public Guardian—

- (a) of any change in his address; and
- (b) of any change in the address of the adult,

and the Public Guardian shall enter prescribed particulars in the register maintained by him under section 6(2)(b)(iii).

## **28 Purposes of intromissions with funds**

- (1) The purposes of intromissions with funds may include any or all of the following—
- (a) the payment of central and local government taxes for which the adult is responsible;
  - (b) the provisions of sustenance, accommodation, fuel, clothing and related goods and services for the adult;
  - (c) the provision of other services provided for the purposes of looking after or caring for the adult;
  - (d) the settlement of debts owed by or incurred in respect of the adult, including any prescribed fees charged by the Public Guardian in connection with the application to intromit.
- (2) The Public Guardian may, in any case, authorise payment for the provision of items other than those mentioned in subsection (1).
- (3) Subject to subsection (4), any funds used by the withdrawer shall be applied only for the benefit of the adult.
- (4) Where the withdrawer lives with the adult, he may, to the extent authorised by the certificate, apply any funds withdrawn towards household expenses.

## **29 Withdrawal and use of funds**

- (1) On presentation to it of the certificate issued under section 26(4)(b), the fundholder of the account held in the name of the adult specified in the form may make arrangements to transfer to the designated account such sums as the Public Guardian shall authorise.

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- (2) The fundholder of an account held by an adult shall be liable to the adult for any funds removed from the account under this section at any time when it was aware that the withdrawer's authority had been terminated or suspended by the Public Guardian under section 31(3), but, on meeting such liability, the fundholder of the account shall have a right of relief against the withdrawer.
- (3) The Public Guardian may authorise a method of payment other than a method mentioned in subsection (1).
- (4) A decision of the Public Guardian not to authorise—
  - (a) a method of payment other than a method mentioned in subsection (1); or
  - (b) a payment under subsection (3),
 may be appealed to the sheriff, whose decision shall be final.

### **30 Records and inquiries**

- (1) The Scottish Ministers may by regulations provide that a withdrawer shall keep a record of his intromissions with the funds and that the Public Guardian may at any time require a withdrawer to produce such record for the Public Guardian's inspection.
- (2) The Public Guardian may—
  - (a) make inquiries from time to time as to the manner in which a withdrawer has exercised his functions under this Part; and
  - (b) ask the withdrawer to produce any records which he has relating to his intromissions.
- (3) The Public Guardian may require a fundholder of an account in the name of an adult or of a designated account to make its records of the account available for inspection by the Public Guardian.
- (4) A fundholder complying with a requirement under subsection (3) may charge a reasonable fee for doing so and may recover that fee from the account concerned.

### **31 Duration and termination of registration**

- (1) Subject to the following provisions of this section, the authority of a withdrawer to intromit with funds under section 26 shall be valid for a period of 3 years commencing with the date of issue of the certificate by the Public Guardian under subsection (4) (b) of that section.
- (2) The Public Guardian may reduce or extend the period of validity mentioned in subsection (1); and an extension may be without limit of time.
- (3) The Public Guardian may suspend or terminate the authority of a withdrawer and shall forthwith intimate such suspension or termination to—
  - (a) the withdrawer;
  - (b) the fundholder of the designated account,
 and such suspension or termination shall have the effect of suspending or, as the case may be, terminating all operations on that account.
- (4) The Public Guardian may on terminating the authority of the withdrawer grant the withdrawer interim authority to continue to intromit with the funds of the adult for a period not exceeding 4 weeks from the date of the termination; and paragraphs (a) and

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- (b) of section 26(4) shall apply in the case of a grant of interim authority under this subsection as they apply to the grant of an application under that section.
- (5) Subsections (1) and (2) are without prejudice to the right of the withdrawer to make subsequent applications under the said section 26 after the end of a valid period of authority to withdraw or, as the case may be, a suspension or termination of the authority.
- (6) A decision of the Public Guardian to reduce or extend a period of validity mentioned in subsection (1) or to suspend or terminate the authority of a withdrawer under subsection (3) may be appealed to the sheriff, whose decision shall be final; and the suspension or termination shall remain in force until the appeal is determined.
- (7) The authority of a withdrawer to withdraw funds under section 26 shall come to an end—
- (a) on the appointment of a guardian with powers relating to the funds or account in question;
  - (b) on the granting of an intervention order relating to the funds or account in question; or
  - (c) on a continuing attorney's acquiring authority to act in relation to the funds or account in question,
- but no liability shall be incurred by any person who acts in good faith under this Part in ignorance of the coming to an end of a withdrawer's authority under this subsection.
- (8) In subsection (7) 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;
  - (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.

## **32 Joint accounts**

Where an individual who along with one or more others is the holder of a joint account with a fundholder becomes incapable in relation to decisions about, or of safeguarding his interests in, the funds in the account, any other joint account holder may continue to operate the account unless—

- (a) the terms of the account provide otherwise; or
- (b) he is barred by an order of any court from so doing.

## **33 Transfer of funds**

- (1) The Public Guardian may, on an application made at the same time as, or at any time after, an application for authority to intromit with funds held in a specified account by a fundholder, authorise the transfer of funds from that account to another specified account.
- (2) In subsection (1), "specified" means specified in the application to transfer funds and in the authorisation of that transfer; and the account to which funds are transferred may be specified as to kind of account.

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- (3) A decision of the Public Guardian under subsection (1) may be appealed to the sheriff, whose decision shall be final.

### **34 Disapplication of Part 3**

- (1) This Part shall not apply in the case of an adult in relation to whom—
- (a) there is a guardian or continuing attorney with powers relating to the funds or account in question; or
  - (b) an intervention order has been granted relating to the funds or account in question,
- but no liability shall be incurred by any person who acts in good faith under this Part in ignorance of any such appointment or grant.
- (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;
  - (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.

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