



Adults with Incapacity (Scotland) Act 2000

2000 asp 4

PART 4

MANAGEMENT OF RESIDENTS' FINANCES

Modifications etc. (not altering text)

C1 Pt. 4 modified (1.4.2003) by 2001 asp 8, ss. 8(1), 81(2); S.S.I. 2003/205, art. 2 (with transitional provisions in art. 3)

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—
- [^{F1}(a) a health service hospital ;
 - (b) an independent hospital [^{F2}or private psychiatric hospital]^{F3} . . . ;
 - (c) a State hospital;
 - (d) a care home service; and
 - (e) a limited registration service.]
- (2) In this Part establishments mentioned in paragraph (b), [^{F4}(d) or (e)] 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 [^{F5}, under section 7(1) of the Regulation of Care (Scotland) Act 2001 (asp 8), for registration of the service which comprises that] establishment,
- that it shall not apply.

Status: Point in time view as at 01/04/2008.

Changes to legislation: There are currently no known outstanding effects for the Adults with Incapacity (Scotland) Act 2000, PART 4. (See end of Document for details)

- (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 [^{F6}whose detention there is authorised by virtue of the Criminal Procedure (Scotland) Act 1995 (c. 46) or the 2003 Act].
- [^{F7}(6) Expressions used in subsection (1) and in the Regulation of Care (Scotland) Act 2001 have the same meanings in that subsection as in that Act.]

Textual Amendments

F1 S. 35(1)(a)-(e) substituted (1.4.2002) for s. 35(1)(a)-(g) by 2001 asp 8, ss. 79, 81(2), Sch. 3 para. 23(2)(a); S.S.I. 2002/162, **art. 2**

F2 Words in s. 35(1)(b) inserted (2.12.2005) by The Adults with Incapacity (Management of Residents' Finances) (Scotland) Regulations 2005 (S.S.I. 2005/610), **art. 2**

F3 Words in s. 35(1)(b) repealed (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), ss. 331, 333(2)-(4), **Sch. 5**; S.S.I. 2005/161, **art. 3**

F4 Words in s. 35(2) substituted (1.4.2002) by 2001 asp 8, ss. 79, 81(2), Sch. 3 para. 23(2)(b); S.S.I. 2002/162, **art. 2**

F5 Words in s. 35(3)(b) substituted (1.4.2002) by 2001 asp 8, ss. 79, 81(2), Sch. 3 para. 23(2)(c); S.S.I. 2002/162, **art. 2**

F6 Words in s. 35(5) substituted (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), ss. 331, 333(2)-(4), **Sch. 4 para. 9(2)**; S.S.I. 2005/161, **art. 3**

F7 S. 35(6) added (1.4.2002) by 2001 asp 8, ss. 79, 81(2), Sch. 3 para. 23(2)(d); S.S.I. 2002/162, **art. 2**

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F8

Textual Amendments

F8 S. 36 repealed (1.4.2002) by 2001 asp 8, ss. 80(1), 81(2), Sch. 4; S.S.I. 2002/162, **art. 2** (subject to arts. 3-13)

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.

Status: Point in time view as at 01/04/2008.

Changes to legislation: There are currently no known outstanding effects for the Adults with Incapacity (Scotland) Act 2000, PART 4. (See end of Document for details)

- (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 [^{F9}and named person].
- (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 [^{F10}and named person];
 - (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).

Textual Amendments

- F9** Words in s. 37(3) inserted (27.9.2005) by [The Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 2, **Sch. 1 para. 28(4)(a)**
- F10** Words in s. 37(4)(a) inserted (27.9.2005) by [The Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), **art. 2** {Sch. 1 para. 28(4)(b)}

Modifications etc. (not altering text)

- C2** S. 37(6) applied (1.10.2003) by [The Adults with Incapacity \(Management of Residents' Finances\) \(No. 2\) \(Scotland\) Regulations 2003 \(S.S.I. 2003/266\)](#), **reg. 3(4)**

Commencement Information

- I1** S. 37 wholly in force at 1.10.2003; s. 37 not in force at Royal Assent see s. 89(2); s. 37(2)(9) in force for specified purposes at 6.3.2003 by [S.S.I. 2003/136](#), **art. 2**; s. 37(2)(9) in force for further specified purposes at 29.5.2003 by [S.S.I. 2003/267](#), **art. 2(1)**; s. 37 in force in so far as not already in force at 1.10.2003 by [S.S.I. 2003/267](#), **art. 2(2)**

Status: Point in time view as at 01/04/2008.

*Changes to legislation: There are currently no known outstanding effects for the
 Adults with Incapacity (Scotland) Act 2000, PART 4. (See end of Document for details)*

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F11

Textual Amendments

F11 S. 38 repealed (1.4.2002) by 2001 asp 8, ss. 80(1), 81(2), Sch. 4; S.S.I. 2002/162, art. 2 (subject to arts. 3-13); S. 38(4) expressed to be repealed (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), ss. 331, 333(2)-(4), Sch. 5; S.S.I. 2005/ 161, {art. 3}

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) [^{F12}, the State Pensions Credit Act 2002 (c. 16)] ;
 - (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.

Textual Amendments

F12 Words in s. 39(1)(a) inserted (5.10.2007) by Adult Support and Protection (Scotland) Act 2007 (asp 10), ss. 77(1), 79, Sch. 1 para. 5(b); S.S.I. 2007/334, art. 2(b), Sch. 2 (with savings in arts. 4-6)

Commencement Information

I2 S. 39 wholly in force 1.10.2003; s. 39 not in force at Royal Assent see s. 89(2); s. 39(3) in force for specified purposes at 6.3.2003 by S.S.I. 2003/136, art. 2; s. 39(3) in force for further specified purposes at 29.5.2003 by S.S.I. 2003/267, art. 2(1); s. 39 in force in so far as not already in force at 1.10.2003 by S.S.I. 2003/267, art. 2(2)

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40 Supervisory bodies

- [^{F13}(1) The supervisory body for the purposes of this Part is, in relation to—
- (a) a registered establishment, the Scottish Commission for the Regulation of Care; and
 - (b) an unregistered establishment, the Health Board for the area in which the 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) [^{F14}The]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) [^{F14}The] 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 [^{F15}, as respects any authorised establishment, amend subsection (1) by substituting for the supervisory body allotted to that establishment a different supervisory body].

Textual Amendments

- F13** S. 40(1)(a)(b) substituted (1.4.2002) for words "from the beginning of the subsection to the end of paragraph (c)" by virtue of 2001 asp 8, ss. 79, 81(2), Sch. 3 para. 23(3)(a); S.S.I. 2002/162, art. 2 (subject to arts. 3-13)
- F14** Word in s. 40(2)(3) substituted (1.4.2002) by 2001 asp 8, ss. 79, 81(2), Sch. 3 para. 23(3)(b); S.S.I. 2002/162, art. 2
- F15** Words in s. 40(4) substituted (1.4.2002) by 2001 asp 8, ss. 79, 81(2), Sch. 3 para. 23(3)(c); S.S.I. 2002/162, art. 2

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) [^{F16}, the State Pensions Credit Act 2002 (c. 16)] ;
- (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 [^{F17}, his named person] or the supervisory body;

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- (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.

Textual Amendments

- F16** Words in s. 41(a) inserted (5.10.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), ss. 77(1), 79, [Sch. 1 para. 5\(c\)](#); S.S.I. 2007/334, [art. 2\(b\)](#), [Sch. 2](#) (with savings in arts. 4-6)
- F17** Words in s. 41(f) inserted (27.9.2005) by [The Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 2, [Sch. 1 para. 28\(5\)](#)

Commencement Information

- I3** S. 41 wholly in force at 1.10.2003; s. 41 not in force at Royal Assent; s. 41(d) in force for specified purposes at 6.3.2003 by [S.S.I. 2003/136](#), [art. 2](#); s. 41(d) in force for further specified purposes at 29.5.2003 by [S.S.I. 2003/267](#), [art. 2\(1\)](#); s. 41 in force in so far as not already in force at 1.10.2003 by [S.S.I. 2003/267](#), [art. 2\(2\)](#)

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”);
 - (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.

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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 ^[F18]the 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

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they should continue to manage residents’ affairs it may revoke [^{F19}that power to manage]

- (2) ^{F20}
- (3) Where a [^{F21}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 [^{F22}the] supervisory body may be appealed to the sheriff, whose decision shall be final.

Textual Amendments

- F18** Word in s. 45 substituted (1.4.2002) by 2001 asp 8, ss. 79, 81(2), Sch. 3 para. 23(4)(a); S.S.I. 2002/162, **art. 2** (subject to arts. 3-13)
- F19** Words in s. 45 substituted (1.4.2002) for paras. (a) and (b) by 2001 asp 8, ss. 79, 81(2), Sch. 3 para. 23(4)(b); S.S.I. 2002/162, **art. 2** (subject to arts. 3-13)
- F20** S. 45(2) repealed (1.4.2002) by 2001 asp 8, ss. 79, 81(2), Sch. 3 para. 23(4)(c); S.S.I. 2002/162, **art. 2** (subject to arts. 3-13)
- F21** Words in s. 45(3) repealed (1.4.2002) by 2001 asp 8, ss. 79, 81(2), Sch. 3 para. 23(4)(d); S.S.I. 2002/162, **art. 2** (with arts. 3-13)
- F22** Word in s. 45(6) substituted (1.4.2002) by 2001 asp 8, ss. 79, 81(2), Sch. 3 para. 23(4)(e); S.S.I. 2002/162, **art. 2** (subject to arts. 3-13)

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.

Status:

Point in time view as at 01/04/2008.

Changes to legislation:

There are currently no known outstanding effects for the Adults with Incapacity (Scotland) Act 2000, PART 4.