



# Adults with Incapacity (Scotland) Act 2000

2000 asp 4

VALID FROM 01/04/2008

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

### ACCOUNTS AND FUNDS

#### Textual Amendments

- F1** Pt. 3 (ss. 24A-33) substituted (prosp.) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), ss. 58, 79

#### *Purposes and application of Part*

#### **24A Intromissions with funds**

- (1) This Part makes provision for the authorisation of persons by the Public Guardian to intromit with the funds of an adult for the purposes mentioned in subsection (2).
- (2) Those purposes are—
  - (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 an application under this Part;
  - (e) the payment for the provision of items other than those mentioned in paragraphs (a) to (d) such as the Public Guardian may, in any case, authorise.

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## **24B Adults in respect of whom applications may be made**

- (1) An application to the Public Guardian under this Part may be made only in relation to an adult who is incapable in relation to decisions about, or of safeguarding the adult's interests in, the funds to which the application relates.
- (2) But an application may not be made in the case of an adult in relation to whom—
  - (a) there is a guardian of the type mentioned in section 33(1)(a) with powers relating to the funds in question;
  - (b) there is a continuing attorney with powers relating to the funds in question; or
  - (c) an intervention order relating to the funds in question has been granted.

*Authority to take preliminary steps*

## **24C Authority to provide information about funds**

- (1) This section applies where a person—
  - (a) believes that an adult holds funds in an account in the adult's sole name; but
  - (b) cannot make an application under section 25 or section 26G because the person does not know—
    - (i) where the account is held;
    - (ii) the account details;
    - (iii) how much is held in the account; or
    - (iv) any other information needed to complete the application.
- (2) Where this section applies, the person may apply to the Public Guardian for a certificate authorising any fundholder to provide the person with such information as the person may reasonably require in order to make an application under section 25 or 26G.
- (3) Where the Public Guardian grants an application under subsection (2), the Public Guardian must issue the certificate to the applicant.
- (4) A fundholder presented with a certificate issued under subsection (3) is not prevented by—
  - (a) any obligation as to secrecy; or
  - (b) any other restriction on disclosure of information,
 from providing the person who presents the certificate to it with such information as the person may reasonably require in order to make an application under section 25 or 26G about funds held by it on behalf of the adult.

## **24D Authority to open account in adult's name**

- (1) This section applies where—
  - (a) a person believes that—
    - (i) an adult holds funds;
    - (ii) an adult is entitled to income or other payments or is likely to become so entitled; or
    - (iii) a fundholder holds funds on behalf of an adult; but

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- (b) the adult does not have a suitable account in the adult's sole name in which the funds, income or other payments can be placed for the purposes of intromitting with the adult's funds under this Part.
- (2) Where this section applies, the person may apply to the Public Guardian for a certificate authorising the opening of an account in the adult's name for the purpose of intromitting with the adult's funds.
- (3) Where the Public Guardian grants an application under subsection (2), the Public Guardian must issue the certificate to the applicant.
- (4) The certificate issued under subsection (3) may specify the kind of account which may be opened by a fundholder.
- (5) A fundholder presented with a certificate issued under subsection (3) may open an account in the adult's name.
- (6) But, if the certificate specifies a kind of account, the fundholder may open only an account of the type specified.
- (7) On an account being opened in pursuance of subsection (5), the applicant must notify prescribed particulars of the account to the Public Guardian.

#### *Withdrawal certificates*

### **26A Withdrawal certificates**

- (1) A withdrawal certificate may—
  - (a) authorise the transfer of funds—
    - (i) from the adult's current account to the designated account;
    - (ii) from the adult's current account to the adult's second account;
    - (iii) from the designated account to the adult's second account;
  - (b) authorise the continuance or making of arrangements for the regular or occasional payment of funds from the adult's current account for specified purposes (for example: by standing order or direct debit);
  - (c) authorise the withdrawal of funds from the designated account for specified purposes;
  - (d) place limits on the amount of funds that may be so transferred, paid or withdrawn.
- (2) But such a certificate does not authorise a transfer of funds or payment that would cause—
  - (a) the adult's current account;
  - (b) the adult's second account; or
  - (c) the designated account,to become overdrawn.
- (3) If any of the accounts mentioned in paragraphs (a) to (c) of subsection (2) is overdrawn, the fundholder of that account has a right of relief against the withdrawer.
- (4) In subsection (1)(b), “specified” means specified in the certificate of appointment.

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### *Joint and reserve withdrawers*

#### **26B Addition of joint withdrawer**

- (1) This section applies where an individual has or individuals have been appointed as a withdrawer in relation to an adult.
- (2) Where this section applies, another individual may apply to the Public Guardian for appointment as a joint withdrawer.
- (3) An application under subsection (1) must be signed by the existing withdrawer.
- (4) Where the Public Guardian grants an application under subsection (1), the Public Guardian must—
  - (a) enter prescribed particulars in the register maintained by the Public Guardian under section 6(2)(b)(iii); and
  - (b) issue a certificate of authority (a “withdrawal certificate”) to the existing withdrawer and the applicant.
- (5) Subject to sections 31(2) and 31A, a certificate issued under subsection (4)(b) is valid until the date on which the withdrawal certificate held by the existing withdrawer would cease to be valid under section 31(1) or 31E(6), as the case may be (regardless of any subsequent extension, reduction, termination or suspension of the existing withdrawer's authority).
- (6) In this section, “the existing withdrawer” means the individual or individuals mentioned in subsection (1).
- (7) In this Part, where two or more individuals are appointed as withdrawers, each individual is referred to as a “joint withdrawer”.

#### **26C Joint withdrawers: supplementary**

- (1) Joint withdrawers may, subject to subsection (2), exercise their functions individually, and each joint withdrawer is liable for any loss incurred by the adult arising out of—
  - (a) the joint withdrawer's own acts or omissions; or
  - (b) the joint withdrawer's failure to take reasonable steps to ensure that another joint withdrawer does not breach any duty of care or fiduciary duty owed to the adult.
- (2) Where more than one joint withdrawer is liable under subsection (1), they are liable jointly and severally.
- (3) A joint withdrawer must, before exercising any function conferred on the joint withdrawer, consult the other joint withdrawers, unless—
  - (a) consultation would be impracticable in the circumstances; or
  - (b) the joint withdrawers agree that consultation is not necessary.
- (4) Where joint withdrawers disagree as to the exercise of their functions, one or more of them may apply to the Public Guardian for directions.
- (5) Directions given by the Public Guardian in pursuance of subsection (4) may be appealed to the sheriff, whose decision is final.

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- (6) Where there are joint withdrawers—
- (a) a third party in good faith is entitled to rely on the authority to act of any one or more of them; and
  - (b) section 31A(5) (interim authority) only applies where the Public Guardian terminates the authority of all of the joint withdrawers.

#### **26D Reserve withdrawers: applications**

- (1) In any case where an individual is issued with a withdrawal certificate (“a main withdrawer”), the Public Guardian may, on an application by the main withdrawer, appoint another individual (“a reserve withdrawer”) to act as a withdrawer in the event of the main withdrawer temporarily becoming unable to act.
- (2) An application for appointment of a reserve withdrawer may be made at the time of the application under section 25 for a withdrawal certificate or at any later time.
- (3) The application for appointment as a reserve withdrawer must be signed by the proposed reserve withdrawer.
- (4) Where the Public Guardian grants the application, the Public Guardian must enter prescribed particulars in the register maintained by the Public Guardian under section 6(2)(b)(iii).

#### **26E Reserve withdrawers: authority to act**

- (1) Where—
  - (a) a reserve withdrawer has been appointed under section 26D; and
  - (b) the main withdrawer considers that the main withdrawer is or will be unable to carry out some or all of the main withdrawer's functions under this Part,the main withdrawer may notify the Public Guardian that the main withdrawer wishes the Public Guardian to authorise the reserve withdrawer to intromit with the adult's funds for a specified period.
- (2) Where a reserve withdrawer becomes aware that the main withdrawer is unable—
  - (a) to carry out some or all of the main withdrawer's functions in relation to intromitting with the funds concerned; and
  - (b) to notify the Public Guardian under subsection (1),the reserve withdrawer may apply to the Public Guardian for a certificate authorising the reserve withdrawer to intromit with the adult's funds for a specified period.
- (3) The Public Guardian, on being notified under subsection (1), must or, on an application under subsection (2), may—
  - (a) enter prescribed particulars in the register maintained by him under section 6(2)(b)(iii);
  - (b) issue a certificate of authority (a “withdrawal certificate”) to the reserve withdrawer; and
  - (c) notify the adult and the main withdrawer.
- (4) The certificate issued under subsection (3)(b) is—
  - (a) valid for the specified period, or such shorter period as the Public Guardian thinks fit, but does not extend beyond the date on which the validity of

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- the withdrawal certificate issued to the main withdrawer would cease under section 31(1) or 31E(6), as the case may be;
- (b) suspended during any period when the authority of the main withdrawer is suspended;
  - (c) terminated if the authority of the main withdrawer is terminated.
- (5) The main withdrawer and the reserve withdrawer are liable (jointly and severally) for any loss incurred by the adult arising out of the reserve withdrawer's acts or omissions.
- (6) In this section, “specified” means specified in the notice or, as the case may be, application.

#### *Variation of withdrawer's authority*

### **26F Variation of withdrawal certificate**

- (1) The Public Guardian may—
- (a) on the application of a withdrawer, or
  - (b) if notified under section 30A,
- vary the withdrawal certificate (the “existing certificate”) issued to the withdrawer.
- (2) But a withdrawal certificate may not be varied under this section so as to alter the period of validity of the certificate.
- (3) Where the Public Guardian decides to vary the withdrawal certificate under subsection (1), the Public Guardian must—
- (a) enter prescribed particulars in the register maintained by the Public Guardian under section 6(2)(b)(iii); and
  - (b) issue a varied withdrawal certificate to the withdrawer.
- (4) The existing certificate ceases to be valid on the date the varied certificate is issued under subsection (3)(b).

#### *Authority to transfer funds*

### **26G Authority to transfer specified sums**

- (1) A person mentioned in subsection (2) may apply to the Public Guardian for a certificate authorising the transfer of a specified sum from a specified account (“the original account”) in an adult's sole name to—
- (a) the designated account;
  - (b) the adult's current account;
  - (c) the adult's second account; or
  - (d) such other account as may be specified.
- (2) Those persons are—
- (a) a withdrawer;
  - (b) a person who has applied for a withdrawal certificate under section 25;
- (3) An application under subsection (1) may also seek authority—

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- (a) to close the original account;
  - (b) to terminate an arrangement for the payment of funds from the original account to another account (for example: a standing order or direct debit).
- (4) Where the Public Guardian grants an application under subsection (1), the Public Guardian must—
- (a) enter prescribed particulars in the register maintained by the Public Guardian under section 6(2)(b)(iii); and
  - (b) issue the certificate to the applicant.
- (5) In this section, “specified” means specified in the application under subsection (1) or, as the case may be, in the certificate granted under subsection (4).

#### *Applications: general*

### **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—
    - (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,

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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.

### **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



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(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.

#### *Fundholders*

### **28A Fundholder of original account**

The fundholder of an original account may act on the instructions of a withdrawer to the extent authorised by the certificate issued to the withdrawer under section 26G(4).

#### *Withdrawers*

### **30A Notification of change of address**

(1) A withdrawer must notify the Public Guardian—  
(a) of any change in the withdrawer's address; and  
(b) of any change in the address of the adult.

(2) A notice under subsection (1) must be given within 7 days of the date of the change to which it relates.

### **30B Records and inquiries**

(1) A withdrawer must keep records of the exercise of the withdrawer's powers.

(2) The Public Guardian may make inquiries from time to time as to the manner in which a withdrawer has exercised the withdrawer's functions under this Part.

#### *Duration etc. of authority*

### **31A Suspension and termination of authority**

(1) The Public Guardian may suspend or terminate the authority of a withdrawer under a withdrawal certificate.

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- (2) The Public Guardian must without delay intimate the suspension or termination to—
  - (a) the withdrawer whose authority is suspended or terminated;
  - (b) any other joint withdrawer;
  - (c) any reserve withdrawer; and
  - (d) the fundholder of the designated account; and
  - (e) such other persons as the Public Guardian thinks fit.
- (3) A suspension or termination under subsection (1) suspends or, as the case may be, terminates all operations on the designated account by the withdrawer whose authority is suspended or terminated.
- (4) The Public Guardian must on suspending or terminating the authority of the withdrawer enter prescribed particulars in the register maintained by the Public Guardian under section 6(2)(b)(iii).
- (5) The Public Guardian may on terminating the authority of the withdrawer issue to the withdrawer an interim withdrawal certificate to continue to intromit with the adult's funds for a period not exceeding 4 weeks from the date of the termination.

### **31B Renewal of authority to intromit**

- (1) This section applies to an application under section 25 if condition A or B is satisfied.
- (2) Condition A is that the application is made by a person holding an existing withdrawal certificate.
- (3) Condition B is that—
  - (a) the main withdrawer has died or become incapable or the main withdrawer's authority under this Part has been terminated; and
  - (b) the application is made, without undue delay, by an individual who was the reserve withdrawer at the time of the death, incapacity, or termination, as the case may be.
- (4) Where this section applies, the Public Guardian may disapply any of the provisions in sections 26(1), 27A and 27B to an application to which this section applies (but may require the applicant to provide such other information as the Public Guardian requires to determine the application).
- (5) Where condition A is satisfied in relation to an application under section 25, the existing withdrawal certificate will continue to be valid until the application is determined.
- (6) Where an application to which this section applies is granted, the existing withdrawal certificate ceases to be valid.

### **31C Duration of certificates issued under section 24C, 24D, and 26G etc.**

- (1) A certificate issued under section 24C, 24D or 26G is valid for such period as it may specify.
- (2) But the Public Guardian may cancel the certificate at any time before the end of any period so specified.
- (3) The Public Guardian must without delay intimate such a cancellation to—

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- (a) the person to whom the certificate was issued,
- (b) where the certificate was issued under section 26G, the fundholder of the original account, and
- (c) such other persons as the Public Guardian thinks fit.

### *Appeals*

#### **31D Appeals**

- (1) A decision of the Public Guardian—
  - (a) to grant or refuse an application under section 24C, 24D, 25, 26B, 26D, 26E, 26F or 26G;
  - (b) to refuse to remit an application to the sheriff under section 27F;
  - (c) to reduce or extend the period of validity of a withdrawal certificate under section 31(2); or
  - (d) to suspend or terminate the authority of a withdrawer under section 31A, may be appealed to the sheriff.
- (2) The sheriff's decision on an appeal under subsection (1) is final.

### *Transition from guardianship*

#### **31E Transition from guardianship**

- (1) This section applies where—
  - (a) there is a guardian with powers relating to the property or financial affairs of an adult; and
  - (b) an application is made under section 25 in relation to the adult's funds.
- (2) Section 27A does not apply to the application if it is made by the adult's guardian.
- (3) The Public Guardian may disapply section 27B to the application.
- (4) Where—
  - (a) it appears to the Public Guardian that, if the application were granted, the adult's interests in the adult's property and affairs can be satisfactorily safeguarded or promoted otherwise than by the existing guardianship; and
  - (b) the Public Guardian proposes to grant the application,the Public Guardian must initiate the recall of the guardianship under section 73.
- (5) The Public Guardian may not grant the application unless the guardianship is recalled.
- (6) Where the Public Guardian grants the application, the withdrawal certificate issued to the withdrawer is valid for such period as the Public Guardian specifies at the time the Public Guardian grants the application.
- (7) This section does not apply, and no application under this Part may be made, in the case of an adult if there is a person who is—

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- (a) appointed or otherwise entitled under the law of any country other than Scotland to act as a guardian (however called) in relation to the adult's property and financial affairs during the adult's incapacity; and
  - (b) recognised by the law of Scotland as the adult's guardian.
- (8) Despite subsection (7), no liability is incurred by any person who acts in good faith under this Part in ignorance of any guardian of the type mentioned in that subsection.]

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