SCOTTISH STATUTORY INSTRUMENTS

2018 No. 86

ADULTS WITH INCAPACITY

The Adults with Incapacity (Public Guardian's Fees) (Scotland) Regulations 2018

Made - - - - 23rd February 2018
Laid before the Scottish Parliament - - - - 27th February 2018

Coming into force in accordance with regulation 1

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 7(2) and 86(2) of the Adults with Incapacity (Scotland) Act 2000(**1**) and all other powers enabling them to do so.

Citation, commencement, effect and interpretation

1.—(1) These Regulations may be cited as the Adults with Incapacity (Public Guardian's Fees) (Scotland) Regulations 2018 and, subject to paragraphs (2) and (3), come into force on 25th April 2018.

(2) Regulation 2(b) and schedule 2 come into force, and regulation 2(a) and schedule 1 cease to have effect, on 1st April 2019.

(3) Regulation 2(c) and schedule 3 come into force, and regulation 2(b) and schedule 2 cease to have effect, on 1st April 2020.

(4) In these Regulations, "the Act" means the Adults with Incapacity (Scotland) Act 2000.

Fees payable to the Public Guardian

2. Subject to regulations 3 and 4—

(a) the fees payable to the Public Guardian in respect of the matters specified in column 1 of the Table of Fees in schedule 1 (table of fees payable from 25th April 2018) are the fees prescribed in relation to those matters in column 2 of that Table;

(**1**) 2000 asp 4. The Adults with Incapacity (Scotland) Act 2000 was amended by the Adult Support and Protection (Scotland) Act 2007 (asp 10). Section 87(1) of the Adults with Incapacity (Scotland) Act 2000 contains a definition of "prescribe" relevant to the exercise of the statutory powers under which these Regulations are made. Section 87(1A) provides that any power under the 2000 Act to prescribe anything by regulations is exercisable by the Scottish Ministers.

(b) the fees payable to the Public Guardian in respect of the matters specified in column 1 of the Table of Fees in schedule 2 (table of fees payable from 1st April 2019) are the fees prescribed in relation to those matters in column 2 of that Table; and

(c) the fees payable to the Public Guardian in respect of the matters specified in column 1 of the Table of Fees in schedule 3 (table of fees payable from 1st April 2020) are the fees prescribed in relation to those matters in column 2 of that Table.

Exemption of certain persons from fees: legal aid

3. A fee prescribed by these Regulations is not payable by a person if—

(a) the person is in receipt of civil legal aid within the meaning of section 13(2) of the Legal Aid (Scotland) Act 1986(**2**) in respect of the matter in the Table of Fees in schedule 1, 2 or 3 in connection with which the fee is payable;

(b) the fee is payable in connection with a simplified divorce or dissolution of a civil partnership application and the person is in receipt of advice and assistance from a solicitor under the Legal Aid (Scotland) Act 1986 in respect of that application; or

(c) the person's solicitor is undertaking work in relation to the matter in the Table of Fees in schedule 1, 2 or 3 in connection with which the fee is payable on the basis of any regulations made under section 36(1) of the Legal Aid (Scotland) Act 1986 providing for legal aid in a matter of special urgency.

Exemption of certain persons from fees: social security

4.—(1) A fee prescribed by these Regulations is not payable by a person if—

(a) the person or the person's partner is in receipt of income support under the Social Security Contributions and Benefits Act 1992(**3**);

(b) the person is in receipt of an income-based jobseeker's allowance under the Jobseekers Act 1995(**4**);

(c) the person or the person's partner is in receipt of guarantee credit under the State Pension Credit Act 2002(**5**);

(d) the person or the person's partner is in receipt of working tax credit, provided that—

(i) child tax credit is being paid to the party, or otherwise following a claim for child tax credit made jointly by the members of a couple (as defined in section 3(5A) of the Tax Credits Act 2002(**6**)) which includes the party; or

(ii) there is a disability element or severe disability element (or both) to the tax credit received by the party;

and that the gross annual income taken into account for the calculation of the working tax credit is £18,000 or less;

(**2**) 1986 c.47. Section 13(2) was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c.40), section 74 and schedule 8, paragraph 36(3).

(**3**) 1992 c.4. Section 124, which provides for income support, was amended by the Jobseekers Act 1995 (c.18), section 41 and schedules 2 and 3; the Welfare Reform and Pensions Act 1999 (c.30), section 70 and schedule 8, Part IV, paragraph 28; the State Pension Credit Act 2002 (c.16), schedules 2 and 3; the Civil Partnership Act 2004 (c.33), schedule 24; the Welfare Reform Act 2007 (c.5), schedules 3 and 8; the Welfare Reform Act 2009 (c.24), section 3; and the Welfare Reform Act 2012 (c.5), schedule 14.

(**4**) 1995 c.18.

(**5**) 2002 c.16.

(**6**) 2002 c.21. Section 3(5A) was substituted for section 3(5) to (6) by the Civil Partnership Act 2004, schedule 24, paragraph 144(3).

(e) the person or the person's partner is in receipt of income-related employment and support allowance under the Welfare Reform Act 2007(**7**);

(f) the person is in receipt of universal credit under Part 1 of the Welfare Reform Act 2012(**8**); or

(g) the person or the person's partner has, within the period of 3 months prior to the date the prescribed fee would be payable but for this exemption, received financial or other assistance under the Welfare Funds (Scotland) Act 2015(**9**).

(2) In this regulation, "partner" means a person to whom a person is married or with whom the person is in a civil partnership.

Revocation

5. The Adults with Incapacity (Public Guardian's Fees) (Scotland) Regulations 2015(**10**) are revoked.

St Andrew's House,
Edinburgh
23rd February 2018

ANNABELLE EWING
Authorised to sign by the Scottish Ministers

(**7**) 2007 c.5.
(**8**) 2012 c.5.
(**9**) 2015 asp 5.
(**10**) S.S.I. 2015/260.

SCHEDULE 1 Regulation 2(a)

TABLE OF FEES

Payable from 25th April 2018

Column 1 *(Matters)*	*Column 2* *(Fee payable)* £	*Column 3* *(Fee formerly payable)*(**11**) £
1. Submission of a document conferring—		
(a) a continuing power of attorney under section 19 of the Act;	77	75(**12**)
(b) a welfare power of attorney under section 19 of the Act;	77	75
(c) both a continuing power of attorney and a welfare power of attorney under section 19 of the Act.	77	75
2. Registration of a deed of amendment to a continuing or welfare power of Attorney under section 19 of the Act.	77	75
3. Provision of a duplicate or replacement of a certificate issued under section 19(2) of the Act.	19	18
4. Audit of accounts submitted by a continuing attorney under section 20(2)(b) of the Act.	122	119
5. Submission of an application for authorisation to obtain information about the adult's funds under section 24C of the Act and, where such an application is granted, the issue of a certificate authorising any fundholder to provide the applicant with such information.	87	85
6. Where there is no application under section 24C, the submission of an application for authorisation to intromit with funds under section 25 of the Act and, where such an application is granted, the issue of a certificate of authority to the withdrawer.	87	85
7. Submission of an application for appointment as a joint withdrawer under section 26B of the Act and, where such an application is granted, the issue of a certificate of authority to the joint withdrawer.	19	18
8. Submission of an application for appointment as a reserve withdrawer under section 26D of the Act.	19	18
9. Provision of a certificate of authority to the reserve withdrawer under section 26E(3)(b) of the Act, where the	19	18

(**11**) Column 3 shows the fees which were payable by virtue of the schedule 3 of S.S.I. 2015/2060 immediately before the coming into force of this schedule.
(**12**) A different fee narrative for item 1 has previously been applicable.

Column 1 *(Matters)*	*Column 2* *(Fee payable)* *£*	*Column 3* *(Fee formerly payable)*(**11**) *£*
certificate is not applied for at the same time as the application under section 26D is made.		
10. Submission of an application for variation of a withdrawal certificate under section 26F of the Act and, where such an application is granted, the issue of a varied withdrawal certificate to the withdrawer.	19	18
11. Where an application for authority to transfer a specified sum under section 26G of the Act is not made at the same time as an application under section 25, submission of an application under section 26G and, where such an application is granted, the issue of a certificate to the applicant.	19	18
12. Provision of a duplicate or replacement of a certificate of authority issued under sections 24C(3), 24D(3), 25(4)(b), 26B(4)(b), 26E(3)(b), 26F(3)(b) or 26G(4)(b) of the Act.	19	18
13. Submission of an application for renewal of authority to intromit with funds under section 31B of the Act and, where such an application is granted, the issue of a certificate of authority to the joint withdrawer.	50	49
14. Provision of a copy of any document—		
(a) up to 10 pages;	7	6
(b) each page thereafter;	0.50	0.50
(c) in electronic form, per document.	7	6
15. Registration under section 6(2) of the Act of—		
(a) a guardianship order;	87	85
(b) an intervention order;	87	85
(c) a variation of a guardianship order;	87	85
(d) a variation of an intervention order; or	87	85
(e) a renewal of a guardianship order,	87	85
made under Part 6 of the Act (including, where appropriate, checking caution or other security and issuing certificates).		
16. Recall of the powers of a guardian under section 73 of the Act—		
(a) for an estate with no heritable property;	55	54
(b) for an estate with heritable property.	122	119

(**11**) Column 3 shows the fees which were payable by virtue of the schedule 3 of S.S.I. 2015/2060 immediately before the coming into force of this schedule.

Column 1 *(Matters)*	*Column 2* *(Fee payable)* *£*	*Column 3* *(Fee formerly payable)*(**11**) *£*
17. Consideration of guardian's management plan and inventory, in accordance with paragraphs 1 and 3 of schedule 2 of the Act—		
Estate value (excluding heritable property)		
£0 to £30,000;	55	54
£30,001 to £50,000;	248	242
£50,001 to £250,000;	493	482
£250,001 to £500,000;	820	802
£500,001 and over.	1234	1,206
18. Consideration of an application for consent made in accordance with paragraph 6 of schedule 2 of the Act.	58	57
19. First review of accounts submitted in accordance with paragraph 7 of schedule 2 of the Act—		
Estate value (excluding heritable property)		
£0 to £30,000;	80	78(**13**)
£30,001 to £50,000;	204	199
£50,001 to £250,000;	574	561
£250,001 to £500,000;	740	723
£500,001 and over.	987	965
19A. Intermediate review of accounts submitted in accordance with paragraph 7 of schedule 2 of the Act (where the Public Guardian has specified limited supervision)—		
Estate value (excluding heritable property)		
£0 to £30,000;	80	
£30,001 to £50,000;	204	
£50,001 to £250,000;	574	
£250,001 to £500,000;	740	
£500,001 and over.	987	
(NOTE: these fees only apply where the Public Guardian has requested formal accounting.)		

(**11**) Column 3 shows the fees which were payable by virtue of the schedule 3 of S.S.I. 2015/2060 immediately before the coming into force of this schedule.
(**13**) A different fee narrative for item 19 has previously been applicable.

Column 1 *(Matters)*	*Column 2* *(Fee payable)* *£*	*Column 3* *(Fee formerly payable)*(**11**) *£*
20. Final review of accounts submitted in accordance with paragraph 7 of schedule 2 of the Act—		
Estate value (excluding heritable property)		
£0 to £30,000;	154	151
£30,001 to £50,000;	277	271
£50,001 to £250,000;	648	633
£250,001 to £500,000;	814	796
£500,001 and over.	1,061	1,037

SCHEDULE 2 Regulation 2(b)

TABLE OF FEES

Payable from 1st April 2019

Column 1 *(Matters)*	*Column 2* *(Fee payable)* *£*	*Column 3* *(Fee formerly payable)*(**14**) *£*
1. Submission of a document conferring—		
(a) a continuing power of attorney under section 19 of the Act;	79	77
(b) a welfare power of attorney under section 19 of the Act;	79	77
(c) both a continuing power of attorney and a welfare power of attorney under section 19 of the Act.	79	77
2. Registration of a deed of amendment to a continuing or welfare power of Attorney under section 19 of the Act.	79	77
3. Provision of a duplicate or replacement of a certificate issued under section 19(2) of the Act.	19	19
4. Audit of accounts submitted by a continuing attorney under section 20(2)(b) of the Act.	124	122

(**11**) Column 3 shows the fees which were payable by virtue of the schedule 3 of S.S.I. 2015/2060 immediately before the coming into force of this schedule.
(**14**) Column 3 shows the fees which were payable by virtue of the schedule 1 of these Regulations immediately before the coming into force of this schedule.

Column 1 *(Matters)*	*Column 2* *(Fee payable)* *£*	*Column 3* *(Fee formerly payable)*(**14**) *£*
5. Submission of an application for authorisation to obtain information about the adult's funds under section 24C of the Act and, where such an application is granted, the issue of a certificate authorising any fundholder to provide the applicant with such information.	89	87
6. Where there is no application under section 24C, the submission of an application for authorisation to intromit with funds under section 25 of the Act and, where such an application is granted, the issue of a certificate of authority to the withdrawer.	89	87
7. Submission of an application for appointment as a joint withdrawer under section 26B of the Act and, where such an application is granted, the issue of a certificate of authority to the joint withdrawer.	19	19
8. Submission of an application for appointment as a reserve withdrawer under section 26D of the Act.	19	19
9. Provision of a certificate of authority to the reserve withdrawer under section 26E(3)(b) of the Act, where the certificate is not applied for at the same time as the application under section 26D is made.	19	19
10. Submission of an application for variation of a withdrawal certificate under section 26F of the Act and, where such an application is granted, the issue of a varied withdrawal certificate to the withdrawer.	19	19
11. Where an application for authority to transfer a specified sum under section 26G of the Act is not made at the same time as an application under section 25, submission of an application under section 26G and, where such an application is granted, the issue of a certificate to the applicant.	19	19
12. Provision of a duplicate or replacement of a certificate of authority issued under sections 24C(3), 24D(3), 25(4)(b), 26B(4)(b), 26E(3)(b), 26F(3)(b) or 26G(4)(b) of the Act.	19	19
13. Submission of an application for renewal of authority to intromit with funds under section 31B of the Act and, where such an application is granted, the issue of a certificate of authority to the joint withdrawer.	51	50
14. Provision of a copy of any document—		
(a) up to 10 pages;	7	7
(b) each page thereafter;	0.50	0.50

(**14**) Column 3 shows the fees which were payable by virtue of the schedule 1 of these Regulations immediately before the coming into force of this schedule.

Column 1 *(Matters)*	*Column 2* *(Fee payable)* *£*	*Column 3* *(Fee formerly payable)*(**14**) *£*
(c) in electronic form, per document.	7	7
15. Registration under section 6(2) of the Act of—		
(a) a guardianship order;	89	87
(b) an intervention order;	89	87
(c) a variation of a guardianship order;	89	87
(d) a variation of an intervention order; or	89	87
(e) a renewal of a guardianship order,	89	87
made under Part 6 of the Act (including, where appropriate, checking caution or other security and issuing certificates).		
16. Recall of the powers of a guardian under section 73 of the Act—		
(a) for an estate with no heritable property;	56	55
(b) for an estate with heritable property.	124	122
17. Consideration of guardian's management plan and inventory, in accordance with paragraphs 1 and 3 of schedule 2 of the Act—		
Estate value (excluding heritable property)		
£0 to £30,000;	56	55
£30,001 to £50,000;	253	248
£50,001 to £250,000;	503	493
£250,001 to £500,000;	836	820
£500,001 and over.	1,259	1,234
18. Consideration of an application for consent made in accordance with paragraph 6 of schedule 2 of the Act.	59	58
19. First review of accounts submitted in accordance with paragraph 7 of schedule 2 of the Act—		
Estate value (excluding heritable property)		
£0 to £30,000;	82	80
£30,001 to £50,000;	208	204
£50,001 to £250,000;	585	574
£250,001 to £500,000;	755	740
£500,001 and over.	1,007	987

(**14**) Column 3 shows the fees which were payable by virtue of the schedule 1 of these Regulations immediately before the coming into force of this schedule.

Column 1 *(Matters)*	*Column 2* *(Fee payable)* *£*	*Column 3* *(Fee formerly payable)*(**14**) *£*
19A. Intermediate review of accounts submitted in accordance with paragraph 7 of schedule 2 of the Act (where the Public Guardian has specified limited supervision)—		
Estate value (excluding heritable property)		
£0 to £30,000;	82	80
£30,001 to £50,000;	208	204
£50,001 to £250,000;	585	574
£250,001 to £500,000;	755	740
£500,001 and over. (NOTE: these fees only apply where the Public Guardian has requested formal accounting.)	1,007	987
20. Final review of accounts submitted in accordance with paragraph 7 of schedule 2 of the Act—		
Estate value (excluding heritable property)		
£0 to £30,000;	157	154
£30,001 to £50,000;	283	277
£50,001 to £250,000;	661	648
£250,001 to £500,000;	830	814
£500,001 and over.	1,082	1,061

(**14**) Column 3 shows the fees which were payable by virtue of the schedule 1 of these Regulations immediately before the coming into force of this schedule.

SCHEDULE 3 Regulation 2(c)

TABLE OF FEES

Payable from 1st April 2020

Column 1 *(Matters)*	*Column 2* *(Fee payable)* £	*Column 3* *(Fee formerly payable)*(**15**) £
1. Submission of a document conferring—		
(a) a continuing power of attorney under section 19 of the Act;	81	79
(b) a welfare power of attorney under section 19 of the Act;	81	79
(c) both a continuing power of attorney and a welfare power of attorney under section 19 of the Act.	81	79
2. Registration of a deed of amendment to a continuing or welfare power of Attorney under section 19 of the Act.	81	79
3. Provision of a duplicate or replacement of a certificate issued under section 19(2) of the Act.	19	19
4. Audit of accounts submitted by a continuing attorney under section 20(2)(b) of the Act.	126	124
5. Submission of an application for authorisation to obtain information about the adult's funds under section 24C of the Act and, where such an application is granted, the issue of a certificate authorising any fundholder to provide the applicant with such information.	91	89
6. Where there is no application under section 24C, the submission of an application for authorisation to intromit with funds under section 25 of the Act and, where such an application is granted, the issue of a certificate of authority to the withdrawer.	91	89
7. Submission of an application for appointment as a joint withdrawer under section 26B of the Act and, where such an application is granted, the issue of a certificate of authority to the joint withdrawer.	19	19
8. Submission of an application for appointment as a reserve withdrawer under section 26D of the Act.	19	19
9. Provision of a certificate of authority to the reserve withdrawer under section 26E(3)(b) of the Act, where the	19	19

(**15**) Column 3 shows the fees which were payable by virtue of the schedule 2 of these Regulations immediately before the coming into force of this schedule.

Column 1 *(Matters)*	*Column 2* *(Fee payable)* *£*	*Column 3* *(Fee formerly payable)*(**15**) *£*
certificate is not applied for at the same time as the application under section 26D is made.		
10. Submission of an application for variation of a withdrawal certificate under section 26F of the Act and, where such an application is granted, the issue of a varied withdrawal certificate to the withdrawer.	19	19
11. Where an application for authority to transfer a specified sum under section 26G of the Act is not made at the same time as an application under section 25, submission of an application under section 26G and, where such an application is granted, the issue of a certificate to the applicant.	19	19
12. Provision of a duplicate or replacement of a certificate of authority issued under sections 24C(3), 24D(3), 25(4)(b), 26B(4)(b), 26E(3)(b), 26F(3)(b) or 26G(4)(b) of the Act.	19	19
13. Submission of an application for renewal of authority to intromit with funds under section 31B of the Act and, where such an application is granted, the issue of a certificate of authority to the joint withdrawer.	52	51
14. Provision of a copy of any document—		
(a) up to 10 pages;	7	7
(b) each page thereafter;	0.50	0.50
(c) in electronic form, per document.	7	7
15. Registration under section 6(2) of the Act of—		
(a) a guardianship order;	91	89
(b) an intervention order;	91	89
(c) a variation of a guardianship order;	91	89
(d) a variation of an intervention order; or	91	89
(e) a renewal of a guardianship order,	91	89
made under Part 6 of the Act (including, where appropriate, checking caution or other security and issuing certificates).		
16. Recall of the powers of a guardian under section 73 of the Act—		
(a) for an estate with no heritable property;	57	56
(b) for an estate with heritable property.	126	124

(**15**) Column 3 shows the fees which were payable by virtue of the schedule 2 of these Regulations immediately before the coming into force of this schedule.

Column 1 *(Matters)*	*Column 2* *(Fee payable)* *£*	*Column 3* *(Fee formerly payable)*(**15**) *£*
17. Consideration of guardian's management plan and inventory, in accordance with paragraphs 1 and 3 of schedule 2 of the Act—		
Estate value (excluding heritable property)		
£0 to £30,000;	57	56
£30,001 to £50,000;	258	253
£50,001 to £250,000;	513	503
£250,001 to £500,000;	853	836
£500,001 and over.	1,284	1,259
18. Consideration of an application for consent made in accordance with paragraph 6 of schedule 2 of the Act.	60	59
19. First review of accounts submitted in accordance with paragraph 7 of schedule 2 of the Act—		
Estate value (excluding heritable property)		
£0 to £30,000;	84	82
£30,001 to £50,000;	212	208
£50,001 to £250,000;	597	585
£250,001 to £500,000;	770	755
£500,001 and over.	1,027	1,007
19A. Intermediate review of accounts submitted in accordance with paragraph 7 of schedule 2 of the Act (where the Public Guardian has specified limited supervision)—		
Estate value (excluding heritable property)		
£0 to £30,000;	84	82
£30,001 to £50,000;	212	208
£50,001 to £250,000;	597	585
£250,001 to £500,000;	770	755
£500,001 and over. (NOTE: these fees only apply where the Public Guardian has requested formal accounting.)	1,027	1,007
20. Final review of accounts submitted in accordance with paragraph 7 of schedule 2 of the Act—		

(**15**) Column 3 shows the fees which were payable by virtue of the schedule 2 of these Regulations immediately before the coming into force of this schedule.

Column 1 *(Matters)*	*Column 2* *(Fee payable)* *£*	*Column 3* *(Fee formerly payable)*(**15**) *£*
Estate value (excluding heritable property)		
£0 to £30,000;	160	157
£30,001 to £50,000;	289	283
£50,001 to £250,000;	674	661
£250,001 to £500,000;	847	830
£500,001 and over.	1,104	1,082

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the fees payable to the Public Guardian.

Regulation 2 and schedules 1 to 3 specify fee levels payable to the Public Guardian in respect of certain matters.

- The fee levels for the period from 25th April 2018 until 31st March 2019 are given effect by the Table of Fees in schedule 1.
- The fee levels for the period from 1st April 2019 until 31st March 2020 are given effect by substituting the Table of Fees in schedule 1 with the Table of Fees in schedule 2.
- The fee levels from 1st April 2020 onwards are given effect by substituting the Table of Fees in schedule 2 with the Table of Fees in schedule 3.

Regulations 3 and 4 exempts certain persons from payment of fees.

Regulation 5 revokes the Adults with Incapacity (Public Guardian's Fees) (Scotland) Regulations 2015.

A Business and Regulatory Impact Assessment has been prepared for these Regulations and placed in the Scottish Parliament Information Centre. Copies can be obtained from the Scottish Government Justice Directorate, St Andrews House, Edinburgh EH1 3DG.

(**15**) Column 3 shows the fees which were payable by virtue of the schedule 2 of these Regulations immediately before the coming into force of this schedule.