

ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

EXPLANATORY NOTES

THE ACT

Part 7: Miscellaneous

Schedule 2: Management of Estate of Adult

420. This schedule makes detailed provision for the Public Guardian's supervision of guardians with powers over the property and financial affairs of an adult and sets out where the Public Guardian's consent is required to some specific activities of such guardians.
421. **Paragraph 1** requires a financial guardian to draw up a management plan setting out how the adult's estate falling within the scope of the guardian's powers should be handled. The management plan must be submitted to the Public Guardian for approval, generally within a month of the inventory of the adult's assets required at paragraph 3. The Public Guardian may require the draft management plan to be amended. The plan is subsequently to be kept under review by both the guardian and the Public Guardian. Until the plan has been approved, the guardian will generally have only limited powers to spend the adult's resources for their day to day needs. The sheriff may dispense with the need for a management plan, for example in the case of a small or simple estate or where the guardian has only very limited powers. There are provisions for decisions of both the Public Guardian and the sheriff in relation to the management plan to be appealed.
422. **Paragraph 3** requires a financial guardian to produce an inventory of the adult's estate falling within the scope of the guardian's authority within 3 months of the guardian's appointment. The Public Guardian may decide that there is no need for an inventory or may allow for an alternative, for example, in the case of a small estate or a guardian with very limited powers.
423. **Paragraph 4** requires the guardian to lodge all money received on behalf of the adult in a bank or building society account in an account in the adult's name. Any sum over £500 must be placed in an interest-bearing account. This figure may be varied in regulations made by the Scottish Ministers. These provisions are required to guard against the possibility of the guardian using the adult's funds for their own purposes.
424. **Paragraph 5** governs the activities of a guardian in relation to the adult's investments and business. Guardians are allowed to retain existing investments if they get proper professional advice and also to make new investments in the name of the adult, with the agreement of the Public Guardian. When considering any investment strategy the guardian is specifically required to have regard to current general investment principles as set out at sub-paragraph (3). The guardian is allowed to continue running the adult's business subject to any requirements that may be imposed by the Public Guardian.

*These notes relate to the Adults with Incapacity (Scotland)
Act 2000 (asp 4) which received Royal Assent on 9 May 2000*

425. [Paragraph 6](#) deals with the disposal of an adult's house or acquisition of new accommodation for the adult by the guardian. The Public Guardian is required to consent to a sale or purchase of accommodation and this is to be a 2-stage process. The first stage requires the guardian to apply to the Public Guardian for consent to the principle of selling or buying the house. At this point, the adult and others with an interest are to be informed and given the chance to object. Appeals may be made to the sheriff against the Public Guardian's decision. In the second stage, once the authority to the principle of sale or purchase has been obtained, the guardian is required to seek the Public Guardian's consent to the actual sale or purchase price. This will generally need to be done very quickly because of the Scottish legal system and there is no requirement to notify the actual price to anyone else or to allow any objections to be made at this stage.
426. [Paragraph 7](#) requires financial guardians to submit annual accounts to the Public Guardian for audit. There is some flexibility for the Public Guardian to allow accounts at intervals greater than a year, for example, when the estate is modest and there is little change from year to year. The Public Guardian may also waive the requirement for accounts altogether in such cases and ask for information in another form. The Public Guardian will accept alternative information where the guardian has powers over the adult's business. The Public Guardian is to arrange for all accounts to be audited.
427. [Paragraph 8](#) provides for the Public Guardian to approve accounts if they appear to be a true and fair view of the guardian's management of the adult's estate. At that point, the guardian's remuneration is to be determined. If the Public Guardian is not satisfied with the accounts, he is required to prepare a report and the accounts are to be adjusted. There are provisions for an appeal to the sheriff against the Public Guardian's decision. If the accounts show that the adult has not had the benefit of any part of their resources, the guardian will be required to pay interest on the relevant amount to the adult.