

*Status: Point in time view as at 04/11/2003.*

*Changes to legislation: There are currently no known outstanding effects for the Adults with Incapacity (Scotland) Act 2000, SCHEDULE 2. (See end of Document for details)*

## SCHEDULE 2

*(introduced by section 64)*

### MANAGEMENT OF ESTATE OF ADULT

#### *Management plan*

- 1 (1) A guardian with powers relating to the property and financial affairs of the adult shall, unless the sheriff otherwise directs, prepare a plan (a “management plan”), taking account of any directions given by the sheriff in the order appointing him, for the management, investment and realisation of the adult’s estate and for the application of the estate to the adult’s needs, so far as the estate falls within the guardian’s authority.
- (2) The management plan shall be submitted in draft by the guardian to the Public Guardian for his approval, along with the inventory of the adult’s estate prepared under paragraph 3, not more than one month, or such other period as the Public Guardian may allow, after the submission of the inventory.
- (3) The Public Guardian may approve the management plan submitted to him under sub-paragraph (2) or he may approve it with amendments and the plan as so approved or as so amended shall be taken account of by the guardian in the exercise of his functions in relation to the adult.
- (4) Before the management plan is approved, the guardian shall, unless the sheriff on appointing him has conferred wider powers, have power only to—
  - (a) ingather and take control of the assets of the adult’s estate so as to enable him, when the management plan has been approved, to intromit with them;
  - (b) make such payments as are necessary to provide for the adult’s day to day needs.
- (5) The Public Guardian may authorise the guardian to exercise any function within the scope of his authority before the management plan is approved, if it would be unreasonable to delay him exercising that function until the plan had been approved.
- (6) The guardian shall keep the management plan under review and shall put forward to the Public Guardian proposals for variation of it whenever it appears to him to be appropriate.
- (7) The Public Guardian—
  - (a) may at any time propose any variation to the management plan; and
  - (b) shall review the plan whenever the guardian submits his accounts for audit.
- (8) The Public Guardian shall notify the guardian of any variation which he proposes to make to the management plan and shall not make any such variation without affording the guardian an opportunity to object.
- (9) Having heard any objections by the guardian as mentioned in sub-paragraph (8) the Public Guardian may make the variation with or without amendment.

#### *Directions from sheriff*

- 2 Where the guardian disagrees with any decision made by the Public Guardian in relation to a management plan prepared under paragraph 1, he may apply to the

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sheriff for a determination in relation to the matter and the sheriff's decision shall be final.

### *Inventory of estate*

- 3 (1) A guardian with powers relating to the property or financial affairs of the adult shall, as soon after his appointment as possible and in any event within 3 months of the date of registration of his appointment or such other period as the Public Guardian may allow, submit to the Public Guardian for examination and approval a full inventory of the adult's estate in so far as it falls within the scope of the guardian's authority, along with such supporting documents and additional information as the Public Guardian may require.
- (2) The inventory shall be in a form, and contain information, prescribed by the Public Guardian.
- (3) Errors in and omissions from the inventory which are discovered by the guardian after the inventory has been approved by the Public Guardian shall be notified by him to the Public Guardian within 6 months of the date of discovery or when submitting his next accounts to the Public Guardian, whichever occurs sooner.
- (4) The Public Guardian may dispense with the need for the guardian to submit an inventory under sub-paragraph (1) or may require the guardian to take such other action as he thinks appropriate in lieu of submitting an inventory.

### *Money*

- 4 The guardian shall deposit all money received by him as guardian in a bank or a building society in an account in the name of the adult and shall ensure that all sums in excess of £500 (or such other sum as may be prescribed) so deposited shall earn interest.

### *Powers relating to investment and carrying on of business by guardian*

- 5 (1) Subject to the following provisions of this paragraph, a guardian with powers relating to the property or financial affairs of the adult shall be entitled—
- (a) after obtaining and considering proper advice, to retain any existing investment of the adult;
  - (b) to use the adult's estate to make new investments in accordance with the management plan prepared under paragraph 1 or with the consent of the Public Guardian.
- (2) For the purpose of sub-paragraph (1)—
- (a) proper advice is the advice of a person [<sup>F1</sup>who has permission for the purposes of the Financial Services and Markets Act 2000 to advise on investments] who is not the guardian or any person who is an employer, employee or business partner of the guardian; and
  - (b) the advice must be given or subsequently confirmed in writing.
- [<sup>F2</sup>(2A) Sub-paragraph (2) must be read with—
- (a) section 22 of the Financial Services and Markets Act 2000;
  - (b) any relevant order under that section; and
  - (c) Schedule 2 to that Act.]

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- (3) The guardian shall keep every investment under review and in doing so shall have regard to the following principles—
  - (a) that the investment must be prudent;
  - (b) that there must be diversification of investments; and
  - (c) that the investment must be suitable for the adult's estate.
- (4) The Public Guardian may at any time direct the guardian to realise any investment.
- (5) The guardian may, subject to any direction given by the Public Guardian, carry on any business of the adult.
- (6) Any decision by the Public Guardian—
  - (a) under sub-paragraph (4) as to directing the guardian to realise investments;
  - (b) under sub-paragraph (5) as to giving directions to the guardian in carrying on the business of the adult,may be appealed to the sheriff, whose decision shall be final.

#### Textual Amendments

- F1** Words in [Sch. 2 para. 5\(2\)](#) substituted (1.12.2001) by [S.I. 2001/3649](#), [art. 235\(2\)](#)  
**F2** [Sch. 2 para. 5\(2A\)](#) inserted (1.12.2001) by [S.I. 2001/3649](#), [art. 235\(3\)](#)

#### *Purchase or disposal of accommodation*

- 6 (1) The guardian shall not, without the consent of the Public Guardian—
  - (a) in principle; and
  - (b) to the purchase or selling price,purchase accommodation for, or dispose of any accommodation used for the time being as a dwelling house by, the adult.
- (2) On receipt of an application for consent in principle under sub-paragraph (1)(a) in the prescribed form, 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.
- (3) The Public Guardian shall remit any objection under sub-paragraph (2) for determination by the sheriff (whose decision shall be final) and—
  - (a) if the sheriff upholds the objection, shall refuse the application;
  - (b) if the sheriff dismisses the objection, shall grant the application.
- (4) Where the Public Guardian proposes to refuse the application other than under sub-paragraph (3)(a) he shall intimate his decision to the applicant and advise him of the prescribed period within which he may object to the refusal; and he shall not refuse the application without affording the applicant, if he objects, an opportunity of being heard.
- (5) Having heard any objections as mentioned in sub-paragraph (4) or where there is no objection as mentioned in sub-paragraph (2), the Public Guardian may grant the application.

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- (6) The Public Guardian may at his own instance or at the instance of any person who objects to the granting or refusal (other than a refusal under sub-paragraph (3)(a)) of the application remit the application to the sheriff for determination by the sheriff, whose decision shall be final.
- (7) If consent in principle to the purchase or disposal of the accommodation is given, the guardian shall apply to the Public Guardian for consent under sub-paragraph (1) (b) to the purchase or selling price.
- (8) A decision of the Public Guardian—
  - (a) to grant or to refuse (other than under sub-paragraph (3)(a)) an application; or
  - (b) to refuse to remit an application to the sheriff under sub-paragraph (6),
 may be appealed to the sheriff, whose decision shall be final.
- (9) A decision of the Public Guardian to give or to refuse consent under sub-paragraph (1)(b) shall be final.

#### *Accounting and auditing*

- 7 (1) A guardian with powers relating to the property or financial affairs of the adult shall submit accounts in respect of each accounting period to the Public Guardian within one month from the end of the accounting period or such longer period as the Public Guardian may allow.
- (2) There shall be submitted with the accounts under sub-paragraph (1) such supporting documents as the Public Guardian may require, and the Public Guardian may require the guardian to furnish him with such information in connection with the accounts as the Public Guardian may determine.
- (3) For the purposes of this paragraph, the first accounting period shall commence with the date of appointment of the guardian and end at such date not later than 18 months after the date of registration of the guardian's appointment as the Public Guardian may determine; and thereafter each accounting period shall be a year commencing with the date on which the immediately previous accounting period ended.
- (4) Notwithstanding the foregoing provisions of this paragraph, the Public Guardian may at any time—
  - (a) give directions as to the frequency of accounting periods;
  - (b) dispense with the need for the submission of accounts by the guardian; or
  - (c) require the guardian to do anything which the Public Guardian thinks appropriate in lieu of submitting accounts.
- (5) The accounts shall be in such form as is prescribed by the Public Guardian and different forms may be prescribed for different cases or descriptions of case.
- (6) Where the estate of the adult includes a business or an interest in a business that part of the accounts which relates to the business or to the interest in the business shall be accompanied by a certificate from such person and in such form as may be prescribed by the Public Guardian, certifying the accuracy of that part of the accounts.
- (7) The accounts submitted to the Public Guardian under sub-paragraph (1) (other than any part to which a certificate as mentioned in sub-paragraph (6) relates) shall be audited by the Public Guardian or by an accountant appointed by, and responsible to, the Public Guardian for that purpose.

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### *Approval of accounts*

- 8 (1) After the accounts of the guardian have been audited, the Public Guardian shall, if the accounts appear to him—
- (a) to be a true and fair view of the guardian's management of the adult's estate, approve them and fix the remuneration (if any) due to the guardian;
  - (b) not to be a true and fair view of the guardian's management of the adult's estate, prepare a report as to the extent to which they do not represent such a true and fair view and adjusting the accounts accordingly.
- (2) The Public Guardian may approve the accounts, notwithstanding any minor inconsistencies or absence of full documentation in the accounts, if he is satisfied that the guardian acted reasonably and in good faith.
- (3) The Public Guardian shall send any report prepared by him under sub-paragraph (1) (b) to the guardian, who may object to anything contained in the report within 28 days of it being sent to him.
- (4) If no objection is taken to the report, the accounts as adjusted by the Public Guardian shall be regarded as approved by him.
- (5) Where any objection taken to the report cannot be resolved between the guardian and the Public Guardian, the matter may be determined by the sheriff on an application by the guardian, and the sheriff's decision shall be final.
- (6) Without prejudice to sub-paragraph (7), the guardian shall be liable to make good any deficiency revealed by the accounts as approved by the Public Guardian under sub-paragraph (1)(a).
- (7) Where a deficiency is revealed as mentioned in sub-paragraph (6), the Public Guardian may require the guardian to pay interest to the adult's estate on the amount of the deficiency at the rate fixed by Act of Sederunt as applicable to a decree of the sheriff in respect of the period for which it appears that the deficiency has existed.

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