
SCOTTISH STATUTORY INSTRUMENTS

2022 No. 184

ADULTS WITH INCAPACITY

**The Adults with Incapacity (Public
Guardian’s Fees) (Scotland) Regulations 2022**

Made - - - - 24th May 2022
*Laid before the Scottish
Parliament* - - - - 26th May 2022
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 2022 and, subject to paragraphs (2) and (3), come into force on 1 July 2022.

(2) Regulation 2(b) and schedule 2 come into force, and regulation 2(a) and schedule 1 cease to have effect, on 1 April 2023.

(3) Regulation 2(c) and schedule 3 come into force, and regulation 2(b) and schedule 2 cease to have effect, on 1 April 2024.

(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 1 July 2022) are the fees prescribed in relation to those matters in column 2 of that Table,
- (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 1 April 2023) are the fees prescribed in relation to those matters in column 2 of that Table, and

(1) 2000 asp 4. The Adults with Incapacity (Scotland) Act 2000 was amended by the Adult Support and Protection (Scotland) Act 2007 (asp 10) and S.S.I. 2008/380. 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.

- (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 1 April 2024) 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 (“the party”) 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 £20,592 or less,
 - (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⁾,

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

(3) 1992 c. 4. Section 124, which provides for income support, was amended by schedules 2 and 3 of the Jobseekers Act 1995 (c. 18); paragraph 28 of schedule 8 of the Welfare Reform and Pensions Act 1999 (c. 30); schedules 2 and 3 of the State Pension Credit Act 2002 (c. 16); paragraph 42 of schedule 24 of the Civil Partnership Act 2004 (c. 33); schedules 3 and 8 of the Welfare Reform Act 2007 (c. 5); section 3 of the Welfare Reform Act 2009 (c. 24), and paragraph 1 of schedule 14 of the Welfare Reform Act 2012 (c. 5).

(4) 1995 c. 18.

(5) 2002 c. 16.

(6) 2002 c. 21. Paragraphs (a) and (b) of section 3(5A) were substituted for paragraphs (a) to (d) by paragraph 23(2) of schedule 3 of S.I. 2019/1458. Section 3(5A) was substituted for section 3(5) and (6) by paragraph 144(3) of schedule 24 of the Civil Partnership Act 2004 (c. 33). Part 1 of the Tax Credits Act 2002 was repealed by paragraph 1 of schedule 14 of the Welfare Reform Act 2012 subject to savings provisions in S.I. 2019/167.

(7) 2007 c. 5.

- (f) the person is in receipt of universal credit under Part 1 of the 2012 Act,
 - (g) the person is in receipt of either—
 - (i) personal independence payment under Part 4 of the 2012 Act, or
 - (ii) adult disability payment within the meaning given in regulation 2 of the Disability Assistance for Working Age People (Scotland) Regulations 2022⁽⁸⁾,
provided that the person’s gross annual income is £20,592 or less, or
 - (h) 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,
- “the 2012 Act” means the Welfare Reform Act 2012⁽¹⁰⁾.

Revocation

5. The Adults with Incapacity (Public Guardian’s Fees) (Scotland) Regulations 2018⁽¹¹⁾ are revoked.

St Andrew’s House,
Edinburgh
24th May 2022

ASH REGAN
Authorised to sign by the Scottish Ministers

⁽⁸⁾ S.S.I. 2022/54.
⁽⁹⁾ 2015 asp 5.
⁽¹⁰⁾ 2012 c. 5.
⁽¹¹⁾ S.S.I. 2018/86.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

SCHEDULE 1

Regulation 2(a)

TABLE OF FEES

Payable from 1 July 2022

<i>Column 1</i> <i>(Matters)</i>	<i>Column 2</i> <i>(Fee payable)</i> <i>£</i>	<i>Column 3</i> <i>(Fee formerly payable) (12)</i> <i>£</i>
1. Submission of a continuing power of attorney, a welfare power of attorney or a combined continuing and welfare power of attorney under section 19 of the Act.	83	81
2. Registration of a deed of amendment to a continuing or welfare power of attorney under section 19 of the Act.	83	81
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.	129	126
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.	93	91
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.	93	91
7. Submission of an application for appointment or provision of a certificate or duplicate certificate of authority under any of the following sections of the Act - sections 26B, 26D, 26E, 26F and 26G	19	19
8. 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
9. 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.	53	52
10. Provision of a copy of any document— (a) up to 10 pages,	7	7

(12) Column 3 shows the fees which were payable by virtue of the schedule 3 of [S.S.I. 2018/86](#) immediately before the coming into force of this schedule.

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<i>Column 1</i> <i>(Matters)</i>	<i>Column 2</i> <i>(Fee payable)</i> £	<i>Column 3</i> <i>(Fee formerly payable) (12)</i> £
(b) each page thereafter,	0.50	0.50
(c) in electronic form, per document.	7	7
11. Registration and/or variation of a guardianship or an intervention order and registration of a renewal of a guardianship order under Part 6 of the Act.	93	91
12. Recall of the powers of a guardian under section 73 of the Act—		
(a) for an estate with no heritable property,	58	57
(b) for an estate with heritable property.	129	126
13. 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,	58	57
£30,001 to £50,000,	263	258
£50,001 to £250,000,	523	513
£250,001 to £500,000,	870	853
£500,001 and over.	1,310	1,284
14. Consideration of an application for consent made in accordance with paragraph 6 of schedule 2 of the Act.	61	60
15. 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,	86	84
£30,001 to £50,000,	216	212
£50,001 to £250,000,	608	597
£250,001 to £500,000,	785	770
£500,001 and over.	1,048	1,027
16. 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,	86	84

(12) Column 3 shows the fees which were payable by virtue of the schedule 3 of [S.S.I. 2018/86](#) immediately before the coming into force of this schedule.

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<i>Column 1</i> <i>(Matters)</i>	<i>Column 2</i> <i>(Fee payable)</i> £	<i>Column 3</i> <i>(Fee formerly payable) (12)</i> £
£30,001 to £50,000,	216	212
£50,001 to £250,000,	608	597
£250,001 to £500,000,	785	770
£500,001 and over.	1,048	1,027
(NOTE: these fees only apply where the Public Guardian has requested formal accounting.)		
17. 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,	163	160
£30,001 to £50,000,	295	289
£50,001 to £250,000,	687	674
£250,001 to £500,000,	864	847
£500,001 and over.	1,126	1,104

SCHEDULE 2

Regulation 2(b)

TABLE OF FEES

Payable from 1 April 2023

<i>Column 1</i> <i>(Matters)</i>	<i>Column 2</i> <i>(Fee payable)</i> £	<i>Column 3</i> <i>(Fee formerly payable) (13)</i> £
1. Submission of a continuing power of attorney, a welfare power of attorney or a combined continuing and welfare power of attorney under section 19 of the Act.	85	83
2. Registration of a deed of amendment to a continuing or welfare power of Attorney under section 19 of the Act.	85	83

(12) Column 3 shows the fees which were payable by virtue of the schedule 3 of S.S.I. 2018/86 immediately before the coming into force of this schedule.

(13) 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.

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<i>Column 1</i> <i>(Matters)</i>	<i>Column 2</i> <i>(Fee payable)</i> £	<i>Column 3</i> <i>(Fee formerly payable) (13)</i> £
3. Provision of a duplicate or replacement of a certificate issued under section 19(2) of the Act.	20	19
4. Audit of accounts submitted by a continuing attorney under section 20(2)(b) of the Act.	132	129
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.	95	93
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.	95	93
7. Submission of an application for appointment or provision of a certificate or duplicate certificate of authority under any of the following sections of the Act - sections 26B, 26D, 26E, 26F and 26G.	20	19
8. 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.	20	19
9. 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.	54	53
10. 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
11. Registration and/or variation of a guardianship or an intervention order and registration of a renewal of a guardianship order under Part 6 of the Act.	95	93
12. Recall of the powers of a guardian under section 73 of the Act—		
(a) for an estate with no heritable property,	59	58
(b) for an estate with heritable property.	132	129

(13) 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.

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<i>Column 1</i> <i>(Matters)</i>	<i>Column 2</i> <i>(Fee payable)</i> £	<i>Column 3</i> <i>(Fee formerly payable) (13)</i> £
Estate value (excluding heritable property)		
£0 to £30,000,	166	163
£30,001 to £50,000,	301	295
£50,001 to £250,000,	701	687
£250,001 to £500,000,	881	864
£500,001 and over.	1,149	1,126

SCHEDULE 3

Regulation 2(c)

TABLE OF FEES

Payable from 1 April 2024

<i>Column 1</i> <i>(Matters)</i>	<i>Column 2</i> <i>(Fee payable)</i> £	<i>Column 3</i> <i>(Fee formerly payable) (14)</i> £
1. Submission of a continuing power of attorney, a welfare power of attorney or a combined continuing and welfare power of attorney under section 19 of the Act.	87	85
2. Registration of a deed of amendment to a continuing or welfare power of Attorney under section 19 of the Act.	87	85
3. Provision of a duplicate or replacement of a certificate issued under section 19(2) of the Act.	20	20
4. Audit of accounts submitted by a continuing attorney under section 20(2)(b) of the Act.	135	132
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.	97	95

(13) 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.

(14) 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.

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<i>Column 1</i> <i>(Matters)</i>	<i>Column 2</i> <i>(Fee payable)</i> £	<i>Column 3</i> <i>(Fee formerly payable) (14)</i> £
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.	97	95
7. Submission of an application for appointment or provision of a certificate or duplicate certificate of authority under any of the following sections of the Act - sections 26B, 26D, 26E, 26F and 26G	20	20
8. 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.	20	20
9. 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.	55	54
10. 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
11. Registration and/or variation of a guardianship or an intervention order and registration of a renewal of a guardianship order under Part 6 of the Act.	97	95
12. Recall of the powers of a guardian under section 73 of the Act—		
(a) for an estate with no heritable property,	60	59
(b) for an estate with heritable property.	135	132
13. 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,	60	59
£30,001 to £50,000,	273	268
£50,001 to £250,000,	544	533
£250,001 to £500,000,	905	887

(14) 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.

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<i>Column 1</i> <i>(Matters)</i>	<i>Column 2</i> <i>(Fee payable)</i> £	<i>Column 3</i> <i>(Fee formerly payable) (14)</i> £
£500,001 and over.	1,363	1,336
14. Consideration of an application for consent made in accordance with paragraph 6 of schedule 2 of the Act.	63	62
15. 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,	90	88
£30,001 to £50,000,	224	220
£50,001 to £250,000,	632	620
£250,001 to £500,000,	817	801
£500,001 and over.	1,090	1,069
16. 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,	90	88
£30,001 to £50,000,	224	220
£50,001 to £250,000,	632	620
£250,001 to £500,000,	817	801
£500,001 and over.	1,090	1,069
(NOTE: these fees only apply where the Public Guardian has requested formal accounting.)		
17. 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,	169	166
£30,001 to £50,000,	315	301
£50,001 to £250,000,	715	701
£250,001 to £500,000,	898	881
£500,001 and over.	1,172	1,149

(14) 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.

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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 from 1 July 2022 until 31 March 2023 are given effect by the Table of Fees in schedule 1.
- The fee levels from 1 April 2023 until 31 March 2024 are given effect by the Table of Fees in schedule 2.
- The fee levels from 1 April 2024 onwards are given effect by the Table of Fees in schedule 3.

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

Regulation 5 revokes the Adults with Incapacity (Public Guardian's Fees) (Scotland) Regulations 2018.

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.