

EXECUTIVE NOTE

The Adults with Incapacity (Accounts and Funds) (Scotland) Regulations 2008 S.S.I. 2008/51

The above statutory instrument was made in exercise of the powers conferred by sections 24D(7), 27B and 27E(2) of the Adults with Incapacity (Scotland) Act 2000⁽¹⁾ (the 2000 Act) and of all other powers enabling them to do so. The instrument is subject to negative resolution procedure and comes into force on 1st April 2008.

Policy Objective

These Regulations take account of changes made to the 2000 Act by the Adult Support and Protection (Scotland) Act 2007 (the 2007 Act). These Regulations relate to new Part 3 of the 2000 Act inserted by section 58 of the 2007 Act. They will provide the mechanisms for the provisions to become operational as follows:

- the details of the account which need to be given to the Public Guardian under section 24D(7) (Regulation 2);
- the medical certificate in section 27B to take account of the range of applications available under Part 3 (Regulation 3 and Schedule); and
- a 21 day period for objections under section 27E(2) (Regulation 4).

Background

Part 3 of the 2000 Act allows for an application to the Public Guardian for authority to intromit with the funds of an adult who lacks capacity to meet his or her day to day living expenses. The scheme has not been used as much as anticipated. To improve accessibility and flexibility, new Part 3 of the 2000 Act was inserted by section 58 of the 2007 Act. Under new Part 3 an extended range of applications is now possible, including for authority to a fundholder to release information about an adult's funds and for authority to open an account in the adult's name.

Account details

New section 24D (1)-(3) provides that the Public Guardian may, on application, issue a certificate authorising the opening of an account in the adult's name for the purpose of intromitting with funds. This was not previously possible. Section 24D(7) provides that the applicant must notify the Public Guardian of the details of the account once it has been opened. The details to be notified require to be prescribed. Regulation 2 prescribes those details as follows

- sort code
- account number/roll number
- name of account
- name of bank
- address of bank
- type of account.

⁽¹⁾ 2000 asp 4 as amended by the Adult Support and Protection (Scotland) Act 2007 (asp 10). See section 87(1) and (1A) for the definition of "prescribed" and section 86(1) as to the power to make regulations.

Medical certificate

A medical certificate is currently required to support an application to intromit with funds. New section 27B provides for a medical certificate to be prescribed to accompany the increased range of applications which will be possible once the changes are commenced - authority to provide information (24C); to open an account (24D); and to intromit (25). Medical certificates under this section will certify that that adult is incapable in relation to decisions about or incapable of acting to safeguard or promote the adult's interest in the adult's funds. Regulation 3 and the Schedule provide the new certificate

Period within which objections may be made

New section 27E provides a requirement that objectors should be heard in relation to all applications and refusals of applications under this Part. The period within which objections should be made requires to be prescribed. Regulation 4 prescribes a period of 21 days which reflects current practice. The existing guidance on Part 3 applications issued by the Public Guardian allows 21 days for objections to be lodged. 21 days allows a reasonable period for objections to be made.

Revocation of redundant SSI

Regulation 5 revokes SSI 2001/76 The Adults with Incapacity (Certificates from Medical Practitioners) (Accounts and Funds) (Scotland) Regulations 2001 <http://www.opsi.gov.uk/legislation/scotland/s-200100.htm> to reflect the change in the legislation.

Consultation

Key stakeholders were invited to comment on the draft Regulations. A list is attached at **Annex A**. The consultation was also available on the Scottish Government website. The consultation was launched on 16 August and closed on 8 November 2007. There were 14 responses – 2 from solicitors, 2 from the voluntary sector, 7 from local authorities and 3 from professional bodies.

The responses were very positive and no changes were suggested to these Regulations.

Financial Effects

Fees are charged by the Public Guardian for the existing procedures under Part 3 of the 2000 Act. There will be fees for the new procedures in new Part 3 which will fit into the current framework of fees charged by the Public Guardian.

Regulatory Impact Assessment

None has been carried out because there is no impact on business.

Scottish Government
Civil Justice and International Justice Directorate
2008

Consultation Recipient List

Local Authority Chief Executives
Local Authority Directors of Social Work
Local Authority Adults with Incapacity Coordinators
CoSLA
ADSW
Office Of the Public Guardian
Mental Welfare Commission for Scotland
Carers Scotland
Scottish Carers Alliance
Princess Royal Trust for Carers
Coalition of Carers
Crossroads Scotland
Shared Care Scotland
Advocates Library
Commission For Racial Equality- Scotland
Equal Opportunities Commission
Citizens Advice Scotland
Scottish Council for Voluntary Organisations
NSF Scotland
FAIR (Family Advice & Information Resource)
Advocard
Advocacy Information and Management Services Ltd.
Advocacy Safeguards Agency
Drumchapel Law & Money Advice Centre
Mental Health Advocacy Project
Scottish Independent Advocacy Alliance
VOCAL Carers Advocacy and Counselling Service
The Building Societies Association
Post Office Ltd
The Committee of Scottish Clearing Bankers
Co-operative Bank plc
Scottish Association Of Care Homes
Scottish Federation of Housing Associations
Dundee North Law Centre
Paisley Law Centre
Castlemilk Law Centre
East End Community Law Centre
Legal Services Agency Ltd
Ethnic Minorities Law Centre
SALC
West Dumbarton Law Centre
Govan Law Centre
Law Society of Scotland
Sheriff's' Association
Scottish Law Commission
Scottish Legal Aid Board
Scottish Law Agents Society
Help the Aged

Age Concern Scotland
Scottish Pensioners' Forum
Scottish Pensions Association
Scottish Older People's Advisory Group
ENABLE
Scottish Society for Autism
Down's Syndrome Scotland
National Autistic Society
PAMIS
Garvald Centre (Edinburgh)
Quarriers
ELCAP
Scottish Consortium for Learning Disability
Disability Centre for Independent Living
Scottish Disability Equality Forum
Headway Scotland
Chest, Heart, Stroke Scotland
Disability Rights Commission Office for Scotland
Scottish Head Injuries Forum
Capability Scotland
Scottish Association of Mental Health
Turning Point Scotland
The Richmond Fellowship Scotland
Mental Health Foundation
Manic Depression Fellowship Scotland
Alzheimer Scotland-Action on Dementia
Dementia Services Development Centre
Vulnerable Adults Alliance Scotland
Scottish Development Centre for Mental Health
Penumbra
Scottish Huntington's Association
SACRO
Depression Alliance Scotland
Scottish Dementia Working Group
Neurological Alliance Scotland
Royal College of Physicians and Surgeons Glasgow
Royal College of Psychiatrists
British Geriatrics Society
General Medical Council
Royal College of Physicians of Edinburgh
British Medical Association
Scottish General Practitioners Committee
Royal College of General Practitioners
BASW
Scottish Consumer Council
Society of Will Writers
Justice Committee of the Scottish Parliament
Health Committee of the Scottish Parliament
Adrian Ward