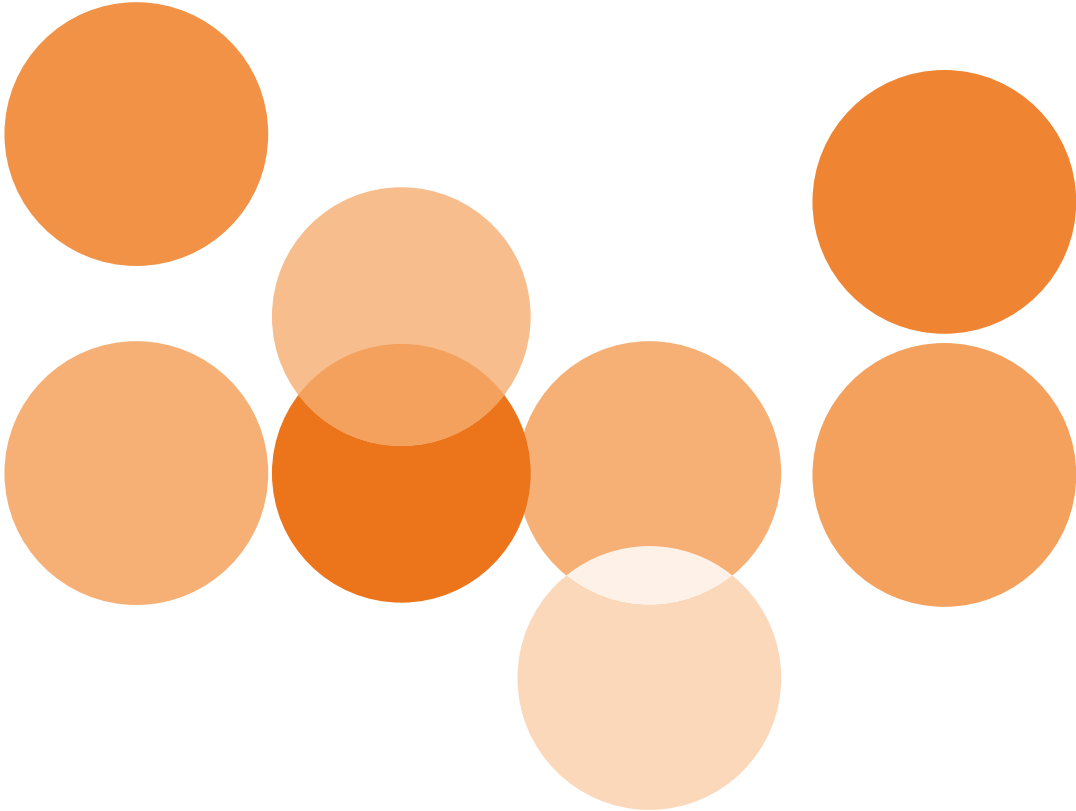


ADULTS WITH INCAPACITY
(SCOTLAND) ACT 2000

Access to Funds
A Guide for Fundholders



WHO THIS LEAFLET IS FOR?

This leaflet is to provide fundholders with an overview of how the Access to Funds Scheme works and how it should operate. Fundholder means a bank, building society or other financial institutions with which an adult who lacks capacity is an account holder.

WHAT IS THE ROLE OF THE OFFICE OF THE PUBLIC GUARDIAN (OPG)?

The OPG has powers to authorise and supervise the arrangements of the Access to Funds Scheme. The OPG provides advice and guidance and maintains a register of persons appointed under each provision of the legislation. Details of how to contact the OPG are on the back of this leaflet.

WHAT IS THE ACCESS TO FUNDS (ATF) SCHEME?

The ATF scheme is designed to enable access to the funds (usually a bank or building society account or accounts) of an adult who is unable to manage his/her affairs where there is no continuing attorney, financial intervener or financial guardian to do so. An adult may be unable to manage their affairs due to a severe learning disability, illness or an accident.

WHO MAY APPLY FOR ACCESS TO FUNDS?

An ATF application may be made by:

- an individual;
- two or more individuals who wish to act jointly; or
- an organisation.

Anyone authorised under the ATF scheme is known as the withdrawer and their details will be clearly shown on the certificate of authority issued by the Public Guardian. If a joint withdrawer or reserve withdrawer is appointed at a later stage a new certificate will be issued which will replace any previous certificate.

HOW DOES IT WORK?

The adult must have an account(s) with a bank, building society or other financial institution in their sole name. Where the funds are held or if funds are due to the adult and no suitable account(s) exist the withdrawer must have authority from the Public Guardian to open an account in the sole name of the adult.

ABOUT THE CERTIFICATE OF AUTHORITY

When the Public Guardian has authorised any part of the ATF scheme a certificate of authority will be issued to the withdrawer(s).

The withdrawer(s) need this in order to make arrangements with the fundholder.

A certificate of authority may broadly allow a fundholder to do some or all of the following:

- Open or close an account in the adult's sole name;
- Make new or continue existing standing orders/direct debits;
- Open a designated account for the receipt of funds;
- Transfer funds between certain accounts.

When the Public Guardian issues a certificate of authority to the withdrawer, the fundholder, on being presented with the certificate by the withdrawer, must only perform the tasks as specifically identified in the certificate.

WHAT SHOULD THE FUNDHOLDER DO?

The fundholder should always ask to see the certificate. If necessary, the fundholder can take a copy of the certificate and ask for additional identification from the withdrawer(s).

The fundholder should carefully note the date of expiry as this is when authority normally ceases. Fundholders should note however:

- Where the period of authority is about to expire and the withdrawer has applied for renewal the period of authority will continue until the outcome of the renewal has been determined. The Public Guardian will issue written confirmation of this to the withdrawer.
- The authority of a withdrawer could cease earlier if the adult recovers capacity; a guardianship order or intervention order with regard to the funds is subsequently granted. The Public Guardian will advise the fundholder if this happens.
- The fundholder will be liable to the adult for any funds removed from the account at a time when it was aware that the withdrawer's authority had ceased or had been terminated.

The fundholder may only put in place arrangements which are identified in a certificate. Where standing orders/direct debits are arranged on an account which is the subject of the ATF scheme they must terminate where there is no indication in the certificate that they should continue.

On occasions subsequent certificates may be issued to vary the details of the financial transactions or to confirm the identity of the current withdrawer(s). Where authority to access to funds is due to expire, the withdrawer will be invited to renew the authority.

An example of the certificate is over the page

WHAT IS THE DESIGNATED ACCOUNT?

The designated account:

- Is set up by the withdrawer to receive agreed amounts from the adult's accounts as detailed in the certificate of authority. In addition, upon authority from the Public Guardian, funds may be transferred from the "designated" account as detailed in the certificate of authority.
- Requires to be set up by the withdrawer(s) and may be in the name of the withdrawer(s) on behalf of the adult or in the sole name of the adult but to be operated by the withdrawer(s).

The funds in the designated account continue to belong to the adult, even though the withdrawer(s) names are on the account.

Fundholders have different methods of showing this but the main point is that the designated account must show that the funds belong to the adult but is to be operated by the withdrawer(s).

- Does not require to be set up in the same bank, building society etc or branch as the adult's accounts. The withdrawer(s) may, for example, find it more convenient to set up the designated account at their own fundholder's branch.
- Can only be used by the withdrawer(s) to pay for things or transfer funds as authorised by the Public Guardian. However, in all other respects the designated account is operated like any other.

The withdrawer, for example, might want to set up direct debits, standing orders and such like to pay things for the adult. The Public Guardian favours the use of direct debit and standing order arrangements to pay regular bills from the designated account.

- Is not permitted to become overdrawn. The fundholder can ask the withdrawer(s) personally to make good any funds that are overdrawn and recover any charges or interest arising.

ACCOUNT(S) BELONGING TO THE ADULT

All accounts which are in the adult's sole name will continue to be so. Under the ATF scheme there is no provision to add the withdrawers' names. A withdrawer has no authority to access any funds in accounts other than those which are authorised in their certificate of authority issued by the Public Guardian. Funds will always belong to the adult.

Existing credit transactions can continue, for example, pensions, annuities and state benefits (this list is not exhaustive).

Existing direct debits and standing orders can continue but only if specified in the certificate of authority issued by the Public Guardian, otherwise all other existing transactions will cease from the issue date of the certificate of authority.

The legislation provides that none of the accounts are allowed to become overdrawn. This applies even if arrangements were previously in place allowing the account to become overdrawn. If the accounts, which the withdrawer(s) have authority to access, are allowed to become overdrawn the fundholder has a "right of relief" against the withdrawer(s). This means that the overdrawn amount and any interest or charges arising can be recovered from the withdrawer(s) personally.

The withdrawer must only perform the tasks as specifically identified in the certificate of authority.

Apart from credit transactions no further activity is allowed on the accounts other than those specified on the Public Guardian's certificate of authority.

FREQUENTLY ASKED QUESTIONS

Q The withdrawer has found out that there are other things that need to be paid on behalf of the adult. Can the fundholder arrange to transfer other funds to the designated account?

A No. The fundholder is empowered to transfer only what is stated on the certificate. If additional funds are required the withdrawer(s) will require to apply to the Public Guardian to vary the terms of the certificate of authority.

Q What happens if the adult dies?

A The certificate of authority will cease to have effect. The withdrawer will need to arrange to pay over to an executor (or other person entitled to receive the funds) any balance that remains in the designated account.

Q The funds in the adult's account detailed in the certificate of authority have now been used. Can other bank accounts be accessed using the existing certificate?

A No. However, the withdrawer(s) can apply to the Public Guardian for authority to transfer funds from another account in the sole name of the adult. A new certificate of authority will be issued.

Q The withdrawer wants someone else to deal with the adult's accounts for a few months while he is out of the country. Is this ok?

A Yes, but the withdrawer will require to apply to the Public Guardian to arrange this and a new certificate of authority will be issued. This person will be known as the "reserve withdrawer".

Q Do the same rules and procedures apply when an organisation is the withdrawer?

A Yes. The certificate of authority will only identify the organisation. The fundholder will need to be able to establish and obtain verification that the person presenting the certificate is operating on behalf of that organisation.

Q I have some concerns as to the way the withdrawer(s) is/are managing the adult's funds. Who can I contact for advice?

A Any concerns should be raised with staff at the OPG.

Q Can an adult's joint account be used?

A No. The accounts must be in the sole name of the adult.

ADVICE AND GUIDANCE

The staff at the OPG will be pleased to provide information and advice. The office is open between 9am and 5pm, Monday to Friday.

Our website is a useful point of reference with links to related sites. We can also provide a CD-ROM (it is free) that gives access to the relevant code of practice and to the Act itself. Please contact the office if you would like one sent out to you.

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The OPG is part of the Scottish Court Service



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