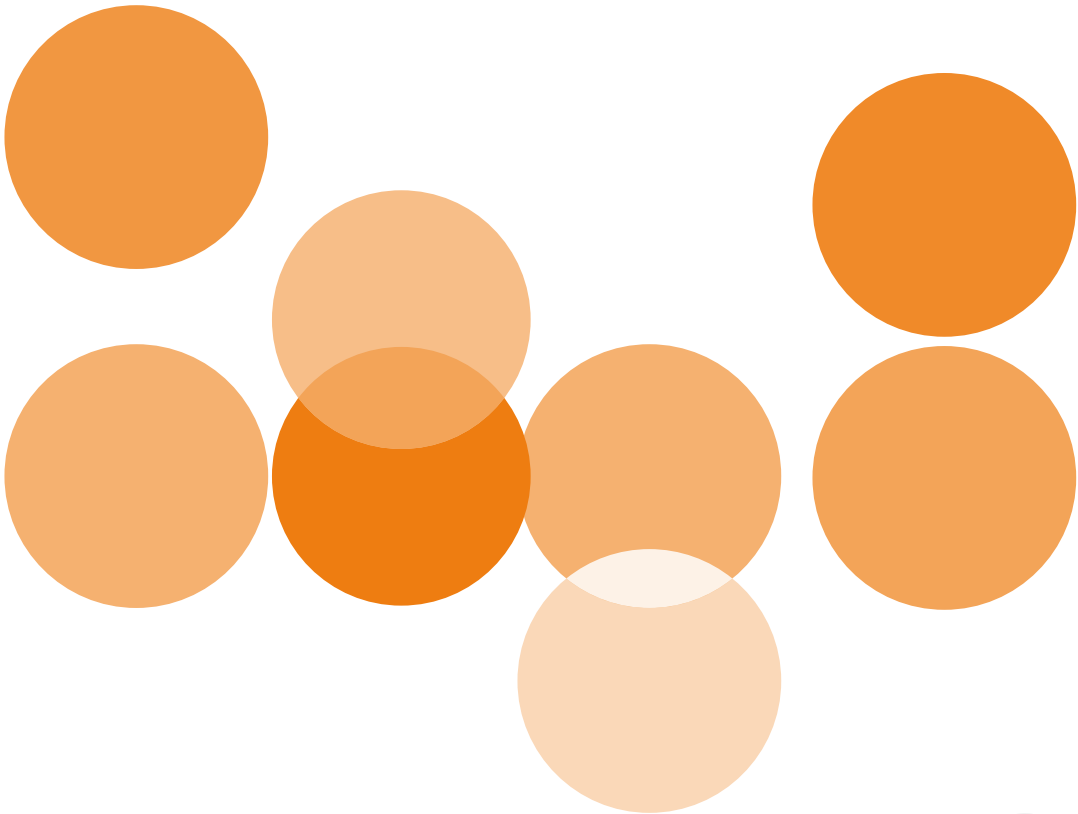


ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

Access to Funds

A Guide for Banks/Building Societies
(Fundholders)



GLOSSARY

Adult - The person aged 16 or over with impaired capacity.

Withdrawer - The person(s) or organisation with authority from the Office of the Public Guardian (OPG) to access the funds of an adult.

Fundholder - The bank or building society where the adult has his/her current account or where the withdrawer has opened or wishes to open the designated account.

Current account - An account in the adult's sole name which must be suitable for setting up standing orders/direct debits.

Designated account - An account opened by the withdrawer(s) for the purpose of receiving an agreed amount of funds transferred from the adult's current account and intromitting with them.



WHAT IS THE ACCESS TO FUNDS (ATF) SCHEME?

An adult may be unable to manage their affairs due to an illness or an accident. The ATF scheme is designed to enable access to the funds of an adult held in a bank or building society, where there is no continuing attorney, financial intervener or financial guardian to do so.

WHAT IS THE ROLE OF THE OPG?

- To authorise and supervise arrangements under the ATF scheme;
- To provide advice and guidance;
- To maintain a register of persons appointed under each provision of the legislation.

HOW DOES ATF WORK?

The adult must have an account in his/her sole name with a fundholder. Where no suitable account exists the withdrawer must have authority from the Public Guardian to open an account in the sole name of the adult. This will be known as the current account.

The withdrawer must not be given direct access to any account other than the designated account.

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.

The withdrawer must present this to the fundholder. **The fundholder must only perform the instructions as specifically identified in the certificate.**

ACCOUNT(S) IN THE ADULT'S SOLE NAME

- All accounts which are in the adult's sole name must continue to be so. Under the ATF scheme there is no provision to add the withdrawers' names to the adult's account(s). A withdrawer has no authority to access any funds in the adult's accounts other than what is in the designated account. Funds will continue to belong to the adult;
- Credit transactions can continue on the adult's accounts;
- Existing direct debits and standing orders can only continue if specified in the certificate of authority issued by the Public Guardian. Otherwise all other existing debit 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;
- Apart from credit transactions no further activity is allowed on the accounts other than those specified on the Public Guardian's certificate of authority.

WHAT SHOULD THE FUNDHOLDER OF THE ADULT'S ACCOUNT DO?

- The fundholder should always ask to see the certificate;
- The fundholder should carefully note the date of expiry as this is when authority ceases;
- The fundholder must only put in place arrangements which are identified in the certificate;
- Credit transactions can continue;
- Where standing orders/direct debits were previously arranged on the adult's account, they must be terminated unless detailed on the certificate that they should continue.

WHAT SHOULD THE FUNDHOLDER OF THE DESIGNATED ACCOUNT DO?

The designated account: -

- Is set up by the withdrawer(s) to receive agreed amounts from the adult's current account as detailed in the certificate of authority;
- Requires to be set up as per the instruction on the certificate, i.e. in the withdrawer(s) name on behalf of the adult;
- Contains funds which belong to the adult, even though the withdrawer(s) names are on the account;
- Cannot receive any funds other than those specified on the certificate of authority;
- Can only be operated by the withdrawer;
- Is not permitted to become overdrawn.

WHAT HAPPENS IF THE ADULT DIES?

- The certificate of authority will cease to have effect on death of the adult.

ADVICE AND GUIDANCE

The staff in the ATF Team 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.

Office of the Public Guardian (Scotland)
Hadrian House
Callendar Business Park
Callendar Road
FALKIRK, FK1 1XR

DX 550360 Falkirk 3
LP-17 Falkirk

- Telephone: 01324 678300
- Email: opg@scotcourts.gov.uk
- Website: www.publicguardian-scotland.gov.uk
- Fax: 01324 678301

The OPG is part of the Scottish Court Service