

ADULTS WITH INCAPACITY  
(SCOTLAND) ACT 2000

# General Guidance Notes for Financial Guardians



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# 1. Introduction



## 1.1 WHAT IS IT ALL ABOUT?

The Adults with Incapacity (Scotland) Act 2000 (known as “the Act”) introduced some new arrangements for making decisions about personal welfare and managing the property and financial affairs for adults whose capacity to do so is impaired.

The Act, amongst other things, allows in Part 6 for an application to be made to the court for:

- An intervention order authorising a person to take action or make a decision of which the adult is incapable.
- An order appointing a person or office holder as guardian in relation to the adult’s property, financial affairs and personal welfare.
- An order appointing a person or office holder in relation to a child who will become an adult (age 16) within 3 months (but such an order will not have effect until the child’s 16th birthday).

## 1.2 WHEN CAN AN APPLICATION BE MADE TO COURT?

Part 6 of the Act became effective on 2 April 2002.

## 1.3 WHO CAN APPLY?

An application can be made to the court by any person, including the adult, claiming an interest, in the property, financial affairs or personal welfare of the adult. The applicant will, however, require to satisfy the court as to their suitability to be appointed.

## 1.4 CAN MORE THAN ONE GUARDIAN BE APPOINTED?

Yes. It is possible to have several guardians looking after different aspects of the adult’s property, financial affairs or personal welfare. It is also possible to appoint joint and substitute guardians.

## 1.5 HOW LONG DOES THE APPOINTMENT LAST?

The appointment will normally last for a period of three years or such other period as the court may determine.

The appointment will normally last for a period of three years or such other period as the court may determine. We will write to the guardian before the order expires. This is to remind the guardian that consideration needs to be given to whether the guardianship order is to be renewed or not.

## 1.6 DOES ANYONE SUPERVISE GUARDIANS?

Yes. The Public Guardian has a statutory obligation to supervise all financial guardians. Local authorities supervise welfare guardians in the exercise of any powers they may have relative to the adult's welfare.

## 1.7 IS THERE FURTHER GUIDANCE OR INFORMATION AVAILABLE?

Yes. There is a Code of Practice issued free of charge by the Scottish Government (please refer to section 11.5 for details on how to obtain a copy). The code should be read prior to making an application to court. The Public Guardian also provides detailed guidance for completion of the:

- inventory;
- management plan;
- annual account;
- consent to the sale or purchase of accommodation;
- application to make gifts;
- and the recall and discharge of the financial guardian's appointment.

# 2. The Public Guardian



## 2.1 WHO IS THE PUBLIC GUARDIAN?

The Act established the new office of Public Guardian. The Public Guardian, an official within the Scottish Court Service, is also the Accountant of Court.

## 2.2 WHAT ARE THE FUNCTIONS OF THE PUBLIC GUARDIAN?

The Public Guardian has a number of functions under the Act including establishing, maintaining, and making available to the public on the payment of a prescribed fee, registers of all documents relating to Guardianship and Intervention Orders under part 6 of the Act.

2.2.1 The Public Guardian can also provide general guidance to anyone considering applying for an intervention order or guardianship order in relation to the property or financial affairs of an adult.

2.2.2 The Public Guardian has the following additional functions:

- Registering continuing and welfare powers of attorney;
- Considering applications relating to accessing an adult's funds;
- Supervising any guardian or any intervener in the exercise of his functions relating to the property or financial affairs of the adult;
- Receiving and investigating any complaints regarding the exercise of functions relating to the property or financial affairs of an adult in relation to guardians, interveners or others acting in terms of the Act;
- Investigating any circumstances made known to him where the property or financial affairs of an adult seem to be at risk;
- Providing, when requested to do so, a guardian, intervener or others acting in terms of the Act; with information and advice about the performance of functions under the Act;
- Consulting with the Mental Welfare Commission and any local authority where there is a common interest; and
- Taking part as a party in any proceedings before a court or initiating such proceedings where he considers it necessary to do so to safeguard the property or financial affairs of an adult.

## 2.3 WHERE CAN YOU FIND DETAILS OF THE PUBLIC GUARDIAN'S FEES?

All prescribed fees can be found in the fees order, a copy can be obtained by telephoning the office or by accessing the website, [www.publicguardian-scotland.gov.uk](http://www.publicguardian-scotland.gov.uk)

# 3. Caution



## 3.1 WHAT IS CAUTION AND CAN ANOTHER FORM OF SECURITY BE ORDERED?

The Sheriff may require a financial guardian to find caution or give some other form of security, whichever the Sheriff thinks appropriate. Caution is a form of insurance to safeguard the adult from loss caused by any fraudulent or negligent actions of a financial guardian. If the court orders caution to be found, a financial guardian will not be able to perform the functions given to him/her by the court until this has been done. The Sheriff will state what other sort of security is to be given. A financial guardian will not be able to perform the functions given to him/her by the court until the conditions over security are met.

## 3.2 WHERE CAN CAUTION BE OBTAINED?

Caution may be obtained from insurance companies at a premium set by and payable to the company.

## 3.3 CAUTION HAS BEEN OBTAINED/OTHER SECURITY GIVEN – WHAT NEXT?

If the court orders caution to be found, a financial guardian will not be able to perform the functions given to him/her by the court until this has been done.

The original Bond of Caution must be sent to the Public Guardian within the time limit set by the Sheriff in the order appointing the financial guardian. If the Bond of Caution is not submitted on time, the Public Guardian cannot accept it and only the Sheriff has the power to consider extending this period. The Public Guardian will not issue a certificate of appointment until such time as the Bond of Caution has been satisfactorily lodged. The Bond shall be returned by the Public Guardian. The Public Guardian will need to be satisfied that the guardian has met the conditions set by the court where another form of security is ordered.

## 3.4 IS THERE A FEE FOR LODGING THE BOND OF CAUTION?

No.

### 3.5 WILL CAUTION REQUIRE TO BE RENEWED ON AN ANNUAL BASIS?

Yes. The cost of the premiums can be taken from the adult's estate.

### 3.6 CAN THE AMOUNT OF CAUTION OR AMOUNT OF SECURITY BE INCREASED OR REDUCED?

An increase or reduction in caution/security is a matter for the court or for the Public Guardian. The financial guardian will be notified of any requirement to increase or reduce the amount of caution.

## 4. Supervision by the Public Guardian



### 4.1 WHAT HAPPENS AFTER A GUARDIANSHIP ORDER IS GRANTED BY THE COURT?

The court will send a copy of the order to the Public Guardian who will record the details in the public register and notify the following of the appointment:

- the adult (unless the court has directed otherwise)
- the Local Authority and the Mental Welfare Commission (where the adult's incapacity is the result of a mental disorder and the order relates to the adult's personal welfare)

The Public Guardian will also issue a certificate of appointment.

### 4.2 DOES THE PUBLIC GUARDIAN CHARGE A FEE?

Yes. There is a fee charged for recording the order on the public register. The fee will be advised to the person authorised under the order.

#### 4.3 IS IT NECESSARY FOR THE PUBLIC GUARDIAN TO SUPERVISE?

The Act requires the Public Guardian to supervise any person who is authorised under a guardianship order relating to the property or financial affairs of an adult.

## 5. Inventory



#### 5.1 WHAT IS THE PURPOSE OF AN INVENTORY?

The inventory is designed to let the Public Guardian know exactly what financial and property interests belonging to the adult the financial guardian will be responsible for managing. The inventory should only include those items of the adult's estate over which the guardian has been given authority. The information supplied in the inventory should reflect the value of those assets as at the date the court appointed the guardian and not the date the certificate was issued by the Public Guardian.

#### 5.2 IS AN INVENTORY ALWAYS NECESSARY?

No. The Public Guardian may dispense with the need for the financial guardian to submit an inventory. This may be where the appointment of a financial guardian has been made for fairly limited purposes e.g. to pursue a damages claim on behalf of the adult. The financial guardian will be advised by letter in the event that an inventory is not required.

#### 5.3 IS THERE A SPECIFIC FORM FOR THE INVENTORY?

Yes. The Public Guardian has devised a form for this purpose, a copy of which will be issued with the financial guardian's certificate of appointment. The form can also be copied from the website or obtained from the Public Guardian's CD.

#### 5.4 IS THERE GUIDANCE ON HOW TO COMPLETE THE INVENTORY?

Yes. Guidance on how to complete the form is included with the inventory form. Further guidance may be obtained by either telephoning the office, from the Public Guardian's CD or from our website.

## 5.5 WHEN SHOULD THE INVENTORY BE SENT TO THE PUBLIC GUARDIAN?

The inventory should be submitted along with the draft management plan within three months of the date of issue of the guardian's certificate. The Public Guardian will advise the financial guardian of this date by letter. It can be approved more quickly if lodged earlier with documents to evidence the information supplied in the inventory.

## 5.6 ONCE APPROVED IS THE INVENTORY CAST IN STONE?

The inventory should be an accurate record of the adult's estate under the management of the financial guardian as at the date of the court appointment. Where additional estate is identified after the inventory has been approved, notification should be made to the Public Guardian within six months of the date of discovery or at the account stage whichever occurs sooner in order that an appropriate note may be recorded on the inventory.

## 5.7 IS THERE A FEE FOR THE INVENTORY?

Yes. There is a single fee to cover the lodging of the inventory and management plan. This fee should be sent at the same time as lodging the inventory and management plan.

# 6. Management Plan



## 6.1 WHAT IS THE PURPOSE OF THE MANAGEMENT PLAN?

The management plan is designed to satisfy the Public Guardian that the financial guardian will be taking a proactive role in managing the adult's property and financial affairs. The primary purpose of the financial guardian's appointment is to benefit the adult not to conserve the estate.

## 6.2 IS A MANAGEMENT PLAN ALWAYS NECESSARY?

A financial guardian must submit a management plan, in draft, to the Public Guardian unless the court directs otherwise.

### 6.3 WHEN SHOULD THE MANAGEMENT PLAN BE SENT TO THE PUBLIC GUARDIAN?

The primary purpose of the financial guardian's appointment is to benefit the adult not to conserve the estate.

The draft management plan should be submitted along with the inventory. The Public Guardian will notify the financial guardian of this date. If requested, the Public Guardian may extend this day by one month. It can be approved more quickly if lodged earlier with documents to evidence the information supplied in the plan.

### 6.4 CAN I ACT BEFORE THE MANAGEMENT PLAN IS APPROVED?

Before the management plan is approved, the guardian shall, unless the court on granting the appointment has conferred wider powers, have power only to:

- Ingather and take control of the assets of the adult's estate so as to enable him/her, when the management plan has been approved, to intromit with them;
- Make such payments as are necessary to provide for the adult's day to day needs.

However, the Public Guardian may authorise the financial guardian to exercise any function within the scope of his authority before the management plan is approved, if it would be unreasonable to delay the exercise of that function until the plan has been approved.

### 6.5 IS THERE A SPECIFIC FORM FOR THE MANAGEMENT PLAN?

Yes. The Public Guardian has devised a form for this purpose, a copy of which will be issued at the same time as the financial guardian's certificate of appointment. The form can also be obtained from the Public Guardian's CD or copied from the website, [www.publicguardian-scotland.gov.uk](http://www.publicguardian-scotland.gov.uk)

### 6.6 IS THERE GUIDANCE ON HOW TO COMPLETE THE MANAGEMENT PLAN?

Yes. Separate guidance on how to complete the form is available by either telephoning the office, from the Public Guardian's CD or from our website. You should note, however, that funds should always be held in the name of the adult.

## 6.7 ONCE APPROVED IS THE MANAGEMENT PLAN CAST IN STONE?

No. The management plan should be kept under review by the financial guardian who should put forward to the Public Guardian proposals for variation when it appears appropriate to do so.

## 6.8 IS THERE A FEE FOR THE MANAGEMENT PLAN?

There is no separate fee for lodging the management plan with the Public Guardian. There will, however, be a single fee to cover the lodging of the management plan and inventory (See Section 5.7).

# 7. Investment



## 7.1 DOES THE PUBLIC GUARDIAN HAVE ANY POWERS OVER INVESTMENTS?

The Public Guardian may at any time:

- direct the financial guardian to realise any investment;
- allow a financial guardian to carry on any business of the adult within the terms of the court order.

Any decision may be appealed to the court whose decision shall be final.

## 7.2 WHAT ARE THE FINANCIAL GUARDIAN'S INVESTMENT POWERS?

A financial guardian, after obtaining and considering proper advice, can retain any existing investment of the adult or use the adult's estate to make new investments in accordance with the management plan or with the consent of the Public Guardian. All monies in excess of £500 should be in an interest bearing account in the name of the adult. The Public Guardian will expect proper financial advice to be taken where the moveable assets are in excess of £25,000. These threshold amounts may vary through time; the Public Guardian will advise guardians accordingly.

## 7.3 WHAT IS PROPER ADVICE?

Proper advice is the advice of a person who has permission for the purposes of the Financial Services and Markets Act 2000 to advise on investment; who is not the financial guardian or any person who is the employer, employee or business partner of the financial guardian. The advice must be given or subsequently confirmed in writing.

# 8. Accounts



## 8.1 WHY IS AN ACCOUNT NECESSARY?

The Act requires the Public Guardian to supervise financial guardians. Supervision is intended to ensure that financial guardians carry out their functions in a proper and correct manner having due regard to the needs of the adult. As part of the supervision process financial guardians will require to submit an account or a statement of their transactions with the adult's estate to the Public Guardian. The Public Guardian will advise on the format of account required. Bank books, invoices, or other material in support of the entries in the account may be called for by the Public Guardian.

As part of the supervision process financial guardians will require to submit an account or a statement of their transactions.

## 8.2 CAN THE PUBLIC GUARDIAN DISPENSE WITH THE NEED FOR ACCOUNTS?

Yes. The financial guardian may apply to the Public Guardian and, in certain circumstances, an account or accounts may be dispensed with or the accounting period may be altered. The financial guardian will be advised of any variation in the accounting requirements.

## 8.3 WHAT IS THE FREQUENCY OF THE ACCOUNTS?

The first account will, unless you have been advised otherwise, cover a twelve-month period commencing with the date of the financial guardian's appointment. Subsequent accounts will follow at twelve monthly intervals unless the Public Guardian advises otherwise.

## 8.4 WHEN SHOULD AN ACCOUNT BE SUBMITTED TO THE PUBLIC GUARDIAN?

All accounts will be due to be submitted to the Public Guardian within one month of the closing date of the account.

## 8.5 WHAT FORM DO THE ACCOUNTS TAKE?

The Public Guardian has power to determine the form of account required. In some cases the Public Guardian will call upon the guardian to provide a full accounting drawn up in schedule format or otherwise require that a review statement is completed. The guardian will be advised accordingly. A copy of the forms and account guidance will be supplied to the financial guardian.

## 8.6 CAN I GET FURTHER GUIDANCE ON THE COMPLETION OF THE SCHEDULE ACCOUNT OR REVIEW STATEMENT?

Yes. If you require further assistance you should contact the Office of the Public Guardian (OPG).

## 8.7 IS THERE A FEE TO BE PAID WHEN LODGING AN ACCOUNT?

Yes. This fee should be paid when lodging the account. Please refer to the fees order on our website.

# 9. Gifts



## 9.1 WHO MAY MAKE A GIFT FROM THE ADULT'S ESTATE?

A financial guardian may make a gift from the adult's estate only if authorised to do so by the Public Guardian. However, the Public Guardian will not require the financial guardian to seek permission for small gifts of a value of less than £50 each or where recurring identified gifts do not exceed £500 annually provided such gifts are identified in the management plan.

These threshold amounts may vary through time; the Public Guardian will advise guardians accordingly.

## 9.2 IS THERE A FORM FOR MAKING AN APPLICATION?

Yes. This can be obtained from the office, the Public Guardian's CD or from the website but is not required if the making of the gifts has already been approved in the management plan.

## 9.3 WHAT TYPE OF GIFTS ARE COVERED?

Generally, this will be a one-off gift e.g. a wedding or anniversary present. However, recurring gifts e.g. birthday presents to relatives, may be included in the management plan and, if approved, no further application will be necessary.

## 9.4 CAN GIFTS BE MADE AS PART OF A TAX PLANNING STRATEGY FOR THE ADULT?

Yes, in certain circumstances but it must be in line with the general principles of the Act and Inland Revenue guidelines on this subject.

## 9.5 IS THE PUBLIC GUARDIAN REQUIRED TO NOTIFY ANYONE OF THE APPLICATION?

The Public Guardian will notify:

- The adult;
- The nearest relative;
- The primary carer;
- The adult's named person; and
- Any other person considered by the Public Guardian to have an interest.

However, the Public Guardian may withhold intimation from the adult if it were likely to pose a risk to the adult's health.

## 9.6 IS THERE A FEE CHARGED FOR THE APPLICATION?

Yes. But only if the value of the gift is to exceed £2,500. This fee should be sent along with the application. However, there is no fee if provision for gifts is included in the agreed management plan.

Recurring gifts such as birthday presents to relatives may be included in the management plan. If this is approved there is no need to make a further application.

## 9.7 DOES INTIMATION HAVE TO BE MADE NO MATTER THE VALUE OF THE PROPOSED GIFT?

No. The Public Guardian has discretion to dispense with intimation where the value of the gift is such that intimation is not considered necessary.

## 9.8 WHAT IF SOMEONE OBJECTS?

All interested parties notified of the application have 21 days to lodge any objections with the Public Guardian. Having heard any objections the Public Guardian may grant or refuse the application.

## 9.9 IS THE PUBLIC GUARDIAN'S DECISION FINAL?

No. Where objections have been received and considered, any party may appeal to the Sheriff against the Public Guardian's decision to grant or refuse the application.

# 10. Accommodation (Sale or Purchase)



## 10.1 WHAT HAPPENS WHERE THE GUARDIANSHIP ORDER REFERS TO HERITABLE PROPERTY?

The person authorised under the order must, once caution has been obtained if required, immediately apply to the Keeper of the Registers of Scotland for recording the court interlocutor in the General Register of Sasines or the Land Register of Scotland. The person authorised under the order must send the original endorsed interlocutor, 'quick copy' from the Registers Direct system or an office copy of the title sheet (obtained from the Keeper upon application) to the Public Guardian. The document will be noted and returned to the sender.

## 10.2 CAN A FINANCIAL GUARDIAN SELL OR PURCHASE ACCOMMODATION?

Yes. A financial guardian must have been given powers by the court to manage or deal with any interest the adult may have in heritable property. Before exercising that general power the financial guardian should have the inventory and management plan approved and have lodged the documents mentioned at 10.1. The financial guardian will also require to obtain from the Public Guardian consent in principle to dispose of accommodation used for the time being as the adult's dwelling house or to purchase accommodation for the adult.

## 10.3 HOW DO I OBTAIN THE CONSENT IN PRINCIPLE TO SELL ACCOMMODATION USED AS THE ADULT'S DWELLING HOUSE OR TO PURCHASE ACCOMMODATION?

The financial guardian will require to apply to the Public Guardian in the prescribed form, a copy of which can be obtained from the website or by contacting the office. The Public Guardian will require to send a copy of the application to:

- The adult;
- The nearest relative;
- The primary carer;
- The adult's named person; and
- Anyone else the Public Guardian considers has an interest.

However, the Public Guardian may withhold intimation from the adult if it were likely to pose a risk to the adult's health.

## 10.4 IS THERE GUIDANCE ON HOW TO COMPLETE THE APPLICATION?

Yes. This guidance can be obtained from the website, the Public Guardian's CD or by calling the office. The guidance details how to complete the form.

## 10.5 WHAT IF SOMEONE OBJECTS?

All interested parties notified of the application have 21 days to lodge any objections with the Public Guardian. Any objections received shall be referred to the court for determination by the Sheriff whose decision shall be final.

## 10.6 IS THERE A FEE PAYABLE?

Yes. The fee should be sent along with the application.

## 10.7 WHAT HAPPENS AFTER THE PUBLIC GUARDIAN'S CONSENT IS GIVEN?

The financial guardian requires to obtain from the Public Guardian further consent to the price to be paid, or to be received, for the purchase or sale of the accommodation. There is no requirement for the Public Guardian to make any additional intimation to the adult, nearest relative, named person or primary carer.

# 11. Other Duties



The role of a financial guardian is a proactive role in which there is an ongoing requirement to consider the principles of the Act.

## 11.1 CONTACT WITH THE ADULT, NEAREST RELATIVE, NAMED PERSON AND PRIMARY CARER

The role of a financial guardian is a proactive role in which there is an ongoing requirement to consider the principles of the Act. The Public Guardian will require to see evidence that this is being done. The Code of Practice for financial guardians identifies that the financial guardian should hold regular review meetings and suggests it would be good practice to hold a review meeting at least once every six months.

## 11.2 WHAT ARE THE PRINCIPLES OF THE ACT?

The principles can be found in Part 1 Section 1 of the Act and are as follows:

- There shall be no intervention in the affairs of an adult unless the person responsible for authorising or effecting the intervention is satisfied that the intervention will benefit the adult.
- Where it is determined that an intervention into the affairs of an adult is to be made, such intervention shall be the least restrictive option in relation to the freedom of the adult.
- In determining if an intervention is to be made, account shall be taken of the past and present wishes of the adult in so far as they can be ascertained.
- In determining if an intervention is to be made, and if so, what intervention, account shall be taken of the views of the nearest relative, named person and primary carer of the adult, any guardian or attorney of the adult or any person whom the Sheriff has directed should be consulted.
- The adult should be encouraged, in so far as it is reasonable and practical to do so, to exercise whatever skills he or she may have.

## 11.3 KEEPING RECORDS

The Public Guardian will expect full and comprehensive records to be kept to support the financial guardian's administration and management of the adult's affairs. These records will include minutes of meetings the financial guardian has had with the adult or other interested parties.

## 11.4 INTIMATION OF CHANGES

The financial guardian is obliged to immediately advise the Public Guardian of any changes in the adult's circumstances, including change of address. The financial guardian should also advise the Public Guardian of any changes affecting their own circumstances e.g. change of address.

## 11.5 CODE OF PRACTICE

All financial guardians should use the Code of Practice as a reference document for information guidance and, when necessary, seek the advice and assistance of the Public Guardian. The Code of Practice can be downloaded from the Scottish Government or Public Guardian's website or the Public Guardian's CD. Hard copies of the Code of Practice may be obtained from the Scottish Government by telephoning 0131 244 3581.

# 12. Remuneration



## 12.1 WILL A FINANCIAL GUARDIAN RECEIVE REMUNERATION?

Unless the Sheriff directs otherwise a financial guardian may be remunerated for managing the adult's financial affairs. Remuneration is awarded from the adult's estate.

## 12.2 WHO WILL DETERMINE THE LEVEL OF PAYMENT?

The Public Guardian will set the level of payment taking into account the adult's resources.

## 12.3 HOW WILL THE PUBLIC GUARDIAN DETERMINE THE LEVEL OF PAYMENT?

The payment will be calculated using a pre-determined formula which is based on a percentage of the capital value of the adult's moveable estate which excludes the value of the adult's heritable assets.

## 12.4 IS THERE A RIGHT OF APPEAL AGAINST THE LEVEL OF PAYMENT DETERMINED BY THE PUBLIC GUARDIAN?

Yes. A decision by the Public Guardian may be appealed to the court.

## 12.5 WHEN WILL THE FINANCIAL GUARDIAN RECEIVE PAYMENT?

The level of payment will be notified at the close of the audit of the financial guardian's annual account. The Public Guardian has discretion to authorise an interim payment on the grounds of financial hardship of the financial guardian.

# 13. Terminations



## 13.1 RECALL

### 13.1.1 WHO CAN APPLY TO RECALL FINANCIAL GUARDIANSHIP?

The adult subject to the guardianship order or any other person claiming an interest in the adult's property or financial affairs may apply.

### 13.1.2 WHEN WOULD AN APPLICATION TO THE PUBLIC GUARDIAN BE APPROPRIATE?

Where the application is likely to proceed without opposition by those with an interest in the adult's affairs, otherwise the application should be made to the court.

### 13.1.3 DOES THE PUBLIC GUARDIAN HAVE AN APPLICATION FORM FOR RECALL?

Yes. A copy of the form can be obtained from the website, the Public Guardian's CD or by calling the office. This form is for use only in applications made to the Public Guardian.

Guidance in respect of this process can be found on the website, the Public Guardian's CD or obtained by calling the office. The procedures for recall are also covered in the Code of Practice.

### 13.1.4 WHO IS INFORMED ABOUT THE APPLICATION?

The Public Guardian is obliged to notify:

- The adult;
- The adult's nearest relative;
- The adult's primary carer;
- The adult's named person;

- Any other person who the Public Guardian considers has an interest in the application; and
- The financial guardian if not the applicant.

However, the Public Guardian may withhold intimation from the adult if it were likely to pose a risk to the adult's health.

### 13.1.5 IS THERE A FEE CHARGED BY THE PUBLIC GUARDIAN?

Yes. This fee should be sent along with the application.

### 13.1.6 WHO CAN RECALL FINANCIAL GUARDIANSHIP?

Both the Sheriff and the Public Guardian have power to recall a financial guardianship.

## 13.2 RESIGNATION

### 13.2.1 IN WHAT CIRCUMSTANCES CAN A FINANCIAL GUARDIAN RESIGN?

A financial guardian, where there is a joint or substitute financial guardian appointed, can resign at any time provided that either the joint or substitute financial guardian is willing to act. Where there is no joint or substitute financial guardian appointed, resignation cannot proceed until such time as a replacement financial guardian is appointed.

### 13.2.2 WHERE SHOULD THE RESIGNATION BE SENT?

Notice in writing should be sent to the Public Guardian along with evidence that the joint or substitute financial guardian is willing to act or that a replacement guardian has been appointed.

### 13.2.3 IS THE NEW FINANCIAL GUARDIAN REQUIRED TO FIND CAUTION OR OTHER SECURITY?

Yes, if so required.

The Public Guardian may withhold intimation from the adult if it were likely to pose a risk to the adult's health.

### 13.2.4 DOES THE PUBLIC GUARDIAN ISSUE A NEW CERTIFICATE?

Yes. Provided that caution has been found or conditions over other security met (if so required), the Public Guardian will issue a new certificate of appointment; update the public register and notify the adult. However, the Public Guardian may withhold intimation from the adult if it were likely to pose a risk to the adult's health.

## 13.3 DEATH OF GUARDIAN OR ADULT

### 13.3.1 INTIMATION OF DEATH OF ADULT

As soon as the financial guardian is aware that the adult has died the date of death should be given in writing to the Public Guardian together with an extract of the death certificate. The guardianship order ceases to have effect following the death of the adult.

### 13.3.2 WHAT WILL THE PUBLIC GUARDIAN REQUIRE FOLLOWING INTIMATION OF AN ADULT'S DEATH?

The financial guardian will require to provide a final account of transactions to the date of death of the adult, together with a receipt from the party or parties entitled to take over the adult's executry estate.

### 13.3.3 DEATH OF FINANCIAL GUARDIAN

If aware that the guardianship exists, the personal representative(s) of a guardian who dies must notify the Public Guardian. A new certificate of appointment will be issued to any existing joint guardian, provided they are willing to act. A new certificate will be issued where the Public Guardian is satisfied that any substitute guardian appointed is willing to act and has found caution or other security, if so required.

### 13.3.4 WHO SHOULD APPLY FOR A REPLACEMENT FINANCIAL GUARDIAN?

If there is no joint or substitute guardian or they are unwilling to act, any party with an interest in the financial and property affairs of the adult can apply. Application is made to the sheriff court and it is the Sheriff who will decide if the proposed replacement guardian is suitable to act.

## 13.4 DISCHARGE

### 13.4.1 WHAT IS THE EFFECT OF DISCHARGE OF THE FINANCIAL GUARDIAN?

Discharge removes any liability from the financial guardian for his/her actings with the property or financial affairs of the adult, other than a liability for fraudulent actions. Until discharge is granted, the guardian remains legally responsible for their actings.

All forms and guidance can be obtained from the OPG website, by phoning the OPG or from the CD-ROM.

### 13.4.2 WHEN CAN AN APPLICATION BE MADE?

An application for discharge of the appointment of a financial guardian can be made at any time following:

- expiry of the period of appointment;
- the recall of the guardianship order;
- resignation, removal or replacement of a guardian; and
- the death of the adult.

### 13.4.3 WHERE SHOULD THE APPLICATION BE MADE?

The application should be made to the Public Guardian.

### 13.4.4 IS THERE A STANDARD APPLICATION FORM?

Yes. This form can be obtained from the website, Public Guardian's CD or by calling the office.

Guidance in respect of this process can be found on the website, the Public Guardian's CD or obtained by calling the office. The procedures for discharge are also covered in the Code of Practice.

### 13.4.5 IS THERE A FEE PAYABLE FOR THE APPLICATION?

No. There is no separate fee for a discharge application.

#### 13.4.6 WHAT HAPPENS THEN?

The Public Guardian intimates the application to the adult and other interested parties. If no one objects to the discharge application, the Public Register is updated and a certificate is issued.

#### 13.4.7 IS THE DECISION OF THE PUBLIC GUARDIAN TO GRANT OR REFUSE DISCHARGE FINAL?

No. The applicant has a right of appeal to the Sheriff.

# 14. Glossary of Terms



“THE ACT” OR THE “2000 ACT”	means the Adult with Incapacity (Scotland) Act 2000.
“THE ADULT”	means a person who has attained the age of 16 years.
“CAUTION”	a form of insurance or a sum of money which serves as an insurance to safeguard the adult from loss caused by actions of someone acting on his or her behalf.
“COURT”	in this guidance means the sheriff court.
“FINANCIAL GUARDIAN”	means a guardian appointed by the court with property and / or financial powers to act or make decisions for an adult.
“HERITABLE ASSETS”	means any building or land owned by the adult.
“INTERLOCUTOR”	means a decision of the court.
“INCOME”	includes all income, eg benefits, pensions, investments, bank interest etc.
“MOVEABLE ASSETS”	anything in which the adult has a beneficial interest eg any funds, furniture, paintings etc belonging to the adult.
“PUBLIC GUARDIAN”	means the officer within the Scottish Court Service, who keeps public registers of those with functions under the Act, grants authority in some cases and supervises those with financial powers.

# 15. Useful Contacts



## COURTS

Scottish Court Service  
Hayweight House  
23 Lauriston Street  
Edinburgh EH3 9DQ  
0131 229 9200  
[www.scotcourts.gov.uk](http://www.scotcourts.gov.uk)

## LEGAL AID

Scottish Legal Aid Board  
44 Drumsheugh Gardens  
Edinburgh EH3 7YR  
0131 226 7061  
[www.slab.org.uk](http://www.slab.org.uk)

## SOLICITORS

Law Society of Scotland  
26 Drumsheugh Gardens  
Edinburgh EH3 7YR  
0131 226 7411  
[www.lawscot.org.uk](http://www.lawscot.org.uk)

## OTHER

Mental Welfare Commission  
Argyle House  
3 Lady Lawson Street  
Edinburgh EH3 9SH  
0131 222 6111  
[www.mwscot.org.uk](http://www.mwscot.org.uk)

Care Commission  
Compass House  
11 Riverside Drive

Dundee DD1 4NY  
0845 60 30 890  
[www.carecommission.com](http://www.carecommission.com)

Enable  
2nd Floor  
146 Argyle Street  
Glasgow  
G2 8BL  
0141 226 4541  
[www.enable.org.uk](http://www.enable.org.uk)

Citizens Advice Bureau  
The address for your local bureau can  
be found in the telephone book or from  
Citizens Advice Scotland  
[www.cas.org.uk](http://www.cas.org.uk)

Capability Scotland  
11 Ellersly Road  
Edinburgh EH12 6HP  
0131 337 9876  
[capability@capability-scotland.org.uk](mailto:capability@capability-scotland.org.uk)  
[www.capability-scotland.org.uk](http://www.capability-scotland.org.uk)

Alzheimer Scotland –Action on  
Dementia  
22 Drumsheugh Gardens  
Edinburgh  
EH3 7RN  
Dementia helpline 0808 8083000  
[www.alzscot.org](http://www.alzscot.org)

Dementia Helpline  
0808 808 3000

Scottish Association for Mental Health  
Cumbrae House  
15 Carlton Court  
Glasgow G5 9JP  
0141 568 7000  
[www.samh.org.uk](http://www.samh.org.uk)

Keeper of the Registers of Scotland  
Edinburgh Customer Service Centre  
Erskine House  
68 Queen Street  
Edinburgh EH2 4NF  
0845 607 0161  
[www.ros.gov.uk](http://www.ros.gov.uk)

or

Glasgow Customer Service Centre  
Lomond House  
9 George Square  
Glasgow G2 1DY  
0845 607 0164  
[www.ros.gov.uk](http://www.ros.gov.uk)

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

DX: 550360 Falkirk 3  
LP: LP-17 Falkirk

- Telephone: 01324 678300
- Fax: 01324 678301
- Email: [opg@scotcourts.gov.uk](mailto:opg@scotcourts.gov.uk)
- Website: [www.publicguardian-scotland.gov.uk](http://www.publicguardian-scotland.gov.uk)

The office of the Public Guardian (OPG) is open to the public from 9am to 5pm, Monday to Friday.

This booklet is available free of charge in Braille, audiotape large print format, and various non-English languages by phoning the above telephone number. The OPG subscribes to Language Line and the RNID Typetalk service.

If you have any comments/suggestions regarding the contents/layout of these guidance notes or ways in which we might improve them, please send these to the above noted address. Your feedback is important to us as part of our ongoing review of our services.

