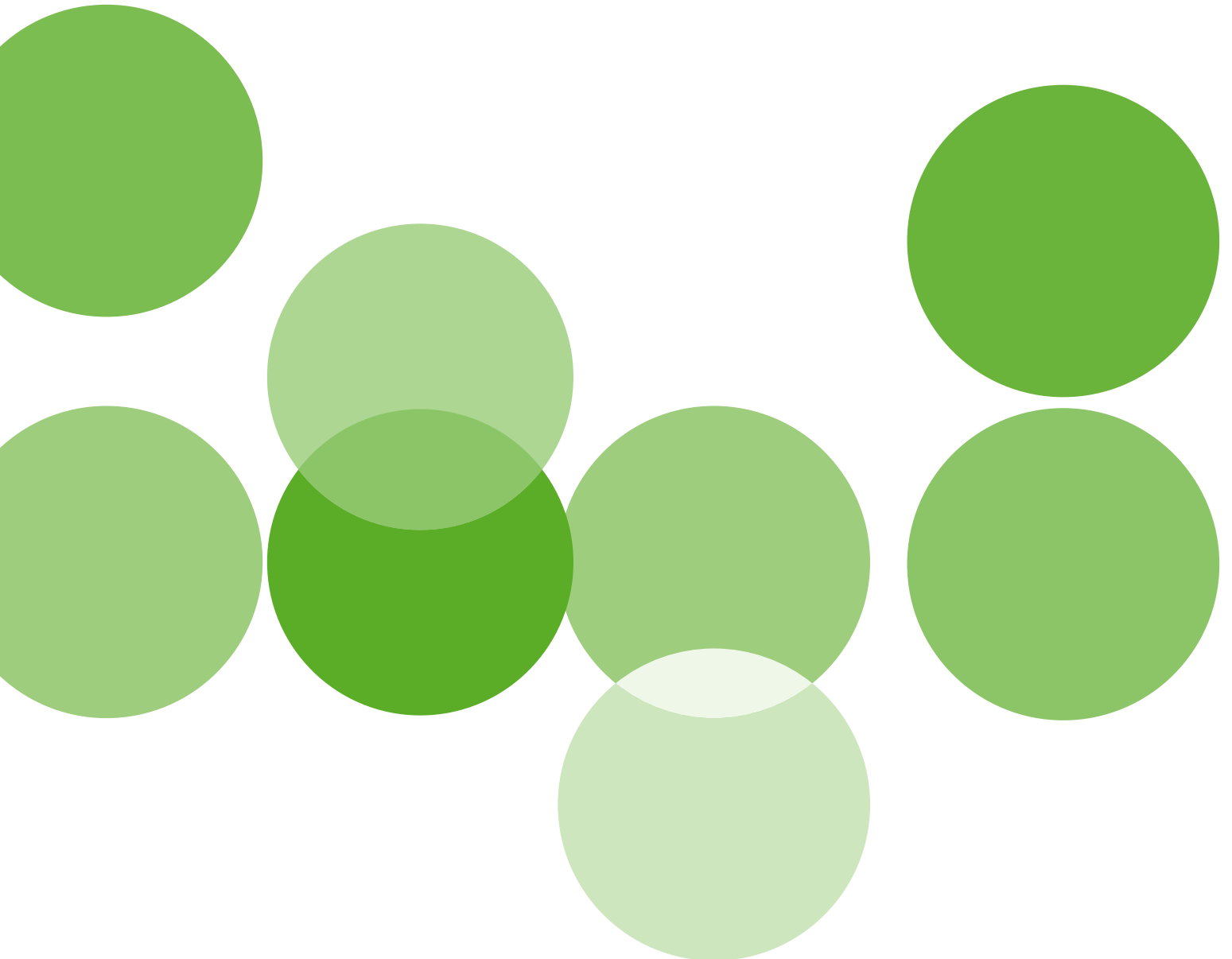


ADULTS WITH INCAPACITY  
(SCOTLAND) ACT 2000

# General Guidance Notes for Financial Interveners



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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 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 Sheriff for:

- 1.1.1 An Intervention Order authorising a person to take action or make a decision of which the adult is not capable.
- 1.1.2 An order appointing a person or office holder as guardian in relation to the adult’s property, financial affairs or personal welfare.

## 1.2 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. In certain circumstances the local authority is obliged to apply to the court. The applicant will, however, require to satisfy the court as to the suitability of the person to be appointed.

If you are applying for an intervention order relating to the personal welfare of an adult, you may be able to apply for civil legal aid to help with the legal costs of making the application. Further details on civil legal aid can be obtained from the Scottish Legal Aid Board (SLAB). Their contact details can be found at the end of this booklet.

## 1.3 CAN MORE THAN ONE APPLICATION BE MADE?

Yes. It is possible to have more than one intervention order granted dealing with different aspects of the adult’s property, financial affairs or personal welfare.

## 1.4 HOW LONG DOES THE APPOINTMENT LAST?

There is no fixed period. It is expected that the appointment will last for as long as it takes the intervener to conclude the matter authorised by the court to be carried out on behalf of the adult.

## 1.5 DOES ANYONE SUPERVISE PEOPLE CARRYING OUT INTERVENTION ORDERS?

The Public Guardian supervises interveners with powers over finances and property affairs.

Yes. The Public Guardian has a statutory obligation to supervise all intervention orders which involve the adult's property or financial affairs. This usually involves the intervener providing regular updates about progress. The Public Guardian may ask the intervener to provide additional information such as receipts or invoices. Local authorities supervise intervention orders relative to the adult's welfare.

## 1.6 IS FURTHER GUIDANCE OR INFORMATION AVAILABLE?

Yes. There is a Code of Practice issued by the Scottish Government. The code should be read prior to making an application to court. A copy of the Code of Practice can be downloaded from the Scottish Government website [www.scotland.gov.uk/justice/incapacity](http://www.scotland.gov.uk/justice/incapacity) or a copy can be obtained by telephoning 0131 244 3581.

# 2. The Public Guardian



## 2.1 WHO IS THE PUBLIC GUARDIAN?

The Act established the office of the Public Guardian (OPG). 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 the prescribed fee, registers of:

- Guardianship orders under Part 6 of the Act;
- 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 in relation to the property or financial affairs, or financial guardianship.

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 or interveners or others acting in the 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 or intervener 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;
- 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.

# 3. Caution



## 3.1 WHAT IS CAUTION?

The Sheriff may require a financial intervener to find caution. Caution is a form of insurance to safeguard the adult from loss caused by any fraudulent or negligent actions of the intervener. If the court orders caution to be found, an intervener will not be able to perform the functions given to him/her by the court until this has been done. The Sheriff may also order the financial intervener to lodge some other form of security other than caution.

## 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 FOUND – WHAT NEXT?

The Bond of Caution must be sent to the Public Guardian within the timescale ordered by the court. 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 the Bond of Caution (if so required) or other security has been lodged. The bond is returned for safe keeping.

## 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?

Caution is required for as long as the intervener is required to act. The cost of the premiums can be taken from the adult's estate.

## 3.6 WHAT IF CAUTION IS REQUIRED TO BE INCREASED DECREASED?

An increase or decrease in caution/security is a matter for the court or the Public Guardian. You will be informed if the amount of caution is to change.

# 4. Supervision by the Public Guardian



## 4.1 WHAT HAPPENS AFTER AN INTERVENTION ORDER IS GRANTED BY THE COURT?

The intervener can start acting on behalf of the adult when in receipt of the certificate of authority.

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 a result of a mental disorder and the intervention 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 intervention order on the public register. All prescribed fees can be found in the fees order, a copy of which can be accessed on the website, [www.publicguardian-scotland.gov.uk](http://www.publicguardian-scotland.gov.uk) or by telephoning the OPG.

## 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 an intervention order relating to the property or financial affairs of an adult.

## 4.4 WHAT FORM WILL THIS SUPERVISION TAKE?

This will depend greatly on the terms of the court order. Supervision is intended to ensure that functions authorised in the court are properly carried out. The Public Guardian will advise what form the supervision will take.

#### 4.5 WHAT POWERS DOES THE PUBLIC GUARDIAN HAVE?

If not satisfied with the actings of the intervener, the Public Guardian may report matters of concern to the court.

#### 4.6 WHAT HAPPENS WHERE THE INTERVENTION ORDER RELATES TO HERITABLE PROPERTY?

The person authorised under the order must, once caution/security 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.

Consent must be given by the Public Guardian if accommodation is to be sold or purchased on behalf of the adult.

#### 4.7 DOES THE PUBLIC GUARDIAN REQUIRE TO APPROVE THE PRICE OF ACCOMMODATION TO BE ACQUIRED OR DISPOSED OF ON BEHALF OF THE ADULT?

Yes. The consent of the Public Guardian as to the price is required before accommodation can be acquired or disposed of.

#### 4.8 HOW DO I OBTAIN CONSENT FROM THE PUBLIC GUARDIAN?

The intervener will require to apply to the Public Guardian by letter. It will help the Public Guardian to reach a decision if a recent valuation of the property concerned is provided. If consent relates to the sale of accommodation, details of all offers received and a copy of the offer the intervener proposes to accept will further assist.

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

No.

#### 4.10 WHAT IF THE ADULT OR INTERVENER CHANGES ADDRESS?

The intervener is required to advise the Public Guardian if either his/her or the adult's address changes. This must be done within 7 days of the change occurring.

#### 4.11 WHAT HAPPENS IF THE PERSON APPOINTED TO ACT AS INTERVENER DIES?

If aware of the existence of the Intervention Order, the intervener's personal representative must notify the Public Guardian if the intervener dies.

## 5. Remuneration Outlays



#### 5.1 WILL A PERSON AUTHORISED UNDER AN INTERVENTION ORDER BE PAID A FEE?

No. The Act does not allow a person authorised under an intervention order to receive payment for the exercise of functions relating to the property or financial affairs of an adult.

#### 5.2 CAN A PERSON AUTHORISED UNDER AN INTERVENTION ORDER RECOVER ANY OUTLAYS INCURRED?

All reasonable outlays incurred in doing anything directed or authorised under an order, will be able to be recovered from the adult's estate. The legal expenses incurred in making the initial court application may only be recovered if a request for expenses is made to the court and granted in the order.

#### 5.3 WHO CAN APPROVE/AUTHORISE THE OUTLAYS?

The adult may have the capacity to authorise or pay the outlays. If not it will be necessary to seek the authority of someone who has powers in relation to the adult's property or financial affairs. If in doubt you should seek the advice of the Public Guardian.

# 6. Records



## 6.1 WHAT RECORDS SHOULD THE INTERVENER KEEP?

In short, the person should keep all papers and documents relating to the powers conferred upon them in terms of the order e.g. a copy of the court order; the certificate of appointment from the Public Guardian; a plan for implementing the order. More detailed guidance can be found in the Code of Practice.

## 6.2 WHY ARE SUCH DETAILED RECORDS NEEDED?

There is a statutory obligation on the person authorised under the order to keep such records. The Public Guardian will require to see full and complete records to ensure that the powers in terms of the order have been fully complied with.

## 6.3 WHEN WILL I SEND MY RECORDS TO THE OPG?

In cases where the adult's finances are involved, staff from the OPG will normally contact you three months after the intervention certificate has been issued. This is to find out if the actions allowed in the order are complete or otherwise to receive an update on progress to date.

If the terms of the order have been completed to the Public Guardian's satisfaction, the case will be closed and no further action is required.

An intervention order is designed to assist with short term specific actions. Consequently, in the majority of cases the powers included in the court order should have been used and the action concluded within 12 months. If exceptionally, the order allows the action to continue over a longer period of time, the Public Guardian, depending on the circumstances, may request an annual account from the intervener.

In his supervisory capacity the Public Guardian may however request the records at any time in addition to those specified above.

The Public Guardian may request to see the intervener's records at any time.

# 7. 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)

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)

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

