

# Adults with Incapacity

(Scotland) Act 2000

Protection  
Principles Balance  
Capabilities  
Needs Autonomy

Guidance Notes and Form for  
Application by Financial Guardian  
for Consent to Purchase or Sell  
Accommodation



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**THE SCOTTISH COURT SERVICE | OFFICE OF THE PUBLIC GUARDIAN**

# Guidance Notes and Form for Application by Financial Guardian for Consent to Purchase or Sell Accommodation



### 1.1 Is the financial guardian able to sell or purchase accommodation?

Yes. However, this will depend on whether authority has been granted by the court to do so. The guardianship order granted by the court specifies the powers a financial guardian has in relation to heritable property.

Where guardianship relates to heritable property, the property(ies) will have to be identified in the Court Order. The court document containing the order (interlocutor) requires to be registered in the General Register of Sasines or in the Land Register of Scotland. This can not be done until caution, if required, has been found.

Once registered, the endorsed interlocutor or updated Land Certificate issued by the Keeper of the Registers of Scotland must be sent to the Public Guardian.

### 1.2 What if the guardianship order does not contain the powers necessary to deal with heritable property on behalf of the adult?

If the guardianship order is inadequate, application will require to be made to the court to have the order varied or for an intervention order to be granted.

### 1.3 Is Legal Advice necessary?

If the financial guardian is not legally qualified, it would be advisable to seek legal advice whenever the question of the sale or purchase of heritable property arises.

### 1.4 What happens next?

If the financial guardian has powers to deal in heritable property, prior consent must be obtained from the Public Guardian to sell or buy accommodation for the adult.

### 1.5 Is there an application form?

Yes. A copy is attached to this guidance.

## 1.6 Why is the consent of the Public Guardian necessary?

This is a requirement of the Adults with Incapacity (Scotland) Act 2000 (the Act). Schedule 2 of the Act deals with the management of estate of an adult and sets out at paragraph 6 the requirements relating to the purchase and sale of accommodation. It provides that the Public Guardian must give consent to the sale and purchase of accommodation and describes a two-stage process.

## 1.7 What is the first stage?

An application to the Public Guardian for the consent *in principle* to buy or sell accommodation. By completing the attached application form the financial guardian is fulfilling this requirement. The Public Guardian will consider the reasons given for wanting to buy or sell accommodation and will want to be satisfied that any intervention is in the best interests of the adult. The Public Guardian will seek the views of other relevant parties by informing them of the application and their right to lodge objections to it.

## 1.8 Who can object to the application?

The Public Guardian is required to intimate receipt of the application to:

- the adult (subject to section 11 of the Act);
- the adult's nearest relative;
- the adult's primary carer; and
- anyone else the Public Guardian considers has an interest.

The above person(s) are given sight of the application and have 21 days to make an objection. Objections must be made in writing.

## 1.9 What happens if there are no objections?

If no objections are received the Public Guardian may consent in principle to the sale or purchase of accommodation. The financial guardian will be informed of this decision in writing.



However, the Public Guardian may propose to refuse the application even where no objections have been lodged. The financial guardian will be informed of this decision in writing and given the opportunity to object to the proposed refusal of the application. The letter from the Public Guardian will give details of how to go about this. An appeal may be made against the Public Guardian's decision to the court, whose decision shall be final.

The Public Guardian may refer the matter to the court even where no objections have been received.

### 1.10 What happens if someone objects?

The Public Guardian will refer any objection(s) received to the court who will make a decision. The court's decision will be final. The court will decide whether to:

- uphold the objection; or
- dismiss the objection.

Where the court upholds the objection, the Public Guardian shall refuse the application.

If the court dismisses the objection, the Public Guardian will grant the application.

### 1.11 What is the second stage?

If the Public Guardian has agreed in principle to the sale or purchase of accommodation, the financial guardian must seek authority to the *actual* sale or purchase price.

### 1.12 Why does the Public Guardian have to give consent to the sale or purchase price?

This is a legal requirement. The Act makes provision for this at Schedule 2 paragraph 6(1)(b) and paragraph 7.

The Public Guardian will want to be satisfied that the best interests of the adult continue to be served and that the purchase/sale price is fair and reasonable.

### 1.13 How is application made for consent to the sale/purchase price?

The financial guardian will have supplied most of the basic information required when applying for consent in principle. However, the Public Guardian will need sight of the proposals in writing and will require specific details at this stage.

For example, if it is proposed to **purchase accommodation** on the adult's behalf, what is the address of the property? What is the property's size and layout? Are any special adaptations required or already carried out? What is the condition of the property? Is remedial work required and is this reflected in the purchase price? How much is being asked? What is the proposed offer? Is this in keeping with house prices for similar properties in the general locale? What is the value of the property based on an independent valuation? Will the property be owned jointly with anyone else?

The Public Guardian would want to see a current valuation/survey of this as soon as it is available.

The financial guardian may also want to include additional documentary evidence for the Public Guardian's consideration, for example, property schedules, or property adverts from local newspapers.

If it is proposed to **sell accommodation** used for the time-being as a dwelling house by the adult, the Public Guardian will require details of the proposed selling price to be submitted in writing along with any other relevant information and documentation.

Details of all offers received and which offer it is to be accepted. The Public Guardian would also require to be told if the property is owned jointly with anyone else and what proportion of the sale price would be due to the adult's estate along with details of any outstanding loans, securities or mortgages.

The Public Guardian will want to see a current valuation/survey undertaken on the property in question.

### 1.14 Does this application need to be intimated to anyone?

No. There is no legal requirement to intimate the application for *consent to the sale/purchase price* of accommodation. This differs from the process described above when consent *in principle* was being sought.



### 1.15 What happens now?

The Public Guardian will make a decision based on the information and evidence provided as to whether the proposed purchase/sale price is acceptable. The financial guardian will be advised of the decision in writing.

### 1.16 Can the Public Guardian's decision be appealed?

The Public Guardian's decision is final and there is no appeal to the court.

### 1.17 Is there anything else the financial guardian is required to do?

The financial guardian is required to keep records of any transactions or interventions made on behalf of the adult. The financial guardian must also let the Public Guardian know if and when the adult changes address.

### 1.18 Is there a fee payable to the Public Guardian?

Yes. This fee should be sent along with the application. 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 Office of the Public Guardian.



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## Application Form

Please delete as appropriate

I am applying for consent to:

- purchase accommodation for the adult and/or
- dispose of accommodation used for the time-being as a dwellinghouse by the adult.

### Details of Adult

Name of Adult:

Address:

Post Code:

Date of Birth:

### Details of Applicant

Name of Applicant:

Address:

Post Code:

Daytime telephone number:

e-mail address:

### Details of Guardianship Order

Date of Guardianship Order:

Sheriff Court where Order made:

Court reference number:

Public Guardian's reference number:



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### Consent to Dispose of Accommodation

#### Complete this section if you are applying for consent to sell accommodation

Address of the accommodation you propose to sell should the Public Guardian (in principle) give consent

Address:

  

Post Code:

Use the space below to explain why you intend to sell the accommodation concerned. You should also indicate what arrangements have been made to secure suitable accommodation for the adult. For example, is it the intention to purchase other accommodation for the benefit of the adult. Please give as much information as you can. You should also demonstrate compliance with the general principles in section 1 of the Act.

(If there is insufficient space, please continue on a separate sheet of paper)



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### Consent to Purchase

Complete this section if you are applying for consent to purchase accommodation for the adult.

Use the space below to tell us **why** you propose to purchase accommodation for the adult. You must specifically state how this will **benefit** the adult and if there are any other reasonable alternatives you have considered. Please give as much information as you can.

(If there is insufficient space, please continue on a separate sheet of paper)



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Give an indication of the property price-bracket for which you seek consent.

Please enter the amount:

£

Will the adult's funds be used to meet the **full** purchase price:

*Delete as applicable*

\*Yes Go to next section.

\*No As far as you are able to ascertain at this stage, how much of the adult's own funds will be used towards the purchase of accommodation; how will any shortfall be met. Use the space below to tell us about this. Give as much information as you are able:

(If there is insufficient space, please continue on a separate sheet of paper)



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### Additional Information

(If there is insufficient space, please continue on a separate sheet of paper)

Signed:

Date:

Once the form has been fully completed and signed it should be separated from the guidance and sent to the Office of the Public Guardian at the address intimated overleaf.

This application will be intimated to the adult (subject to section 11 of the Act), the adult's nearest relative and primary carer and any other person that the Public Guardian thinks would have an interest in the application. Reference is made to the Codes of Practice relating to the guardian consulting with other interested parties prior to making this application to the Public Guardian.

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**The Office of the Public Guardian is open to the public from  
09.00–17.00 hours Monday to Friday.**

This leaflet is available free of charge in Braille, audiotape,  
large print format, Urdu, Punjabi, Bengali, Arabic, Chinese and Gaelic  
by phoning the above number.



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