

ADULTS WITH INCAPACITY  
(SCOTLAND) ACT 2000

# Guidance Notes and Form to Make a Gift Application



**OFFICE OF THE PUBLIC GUARDIAN (SCOTLAND)**



# 1. Introduction



## 1.1 WHAT IS THE PURPOSE OF THE FORM?

The form is designed to enable a financial guardian to apply to the Public Guardian for consent to make a gift from the adult's estate.

## 1.2 IS THERE ANY OTHER GUIDANCE MATERIAL AVAILABLE?

Yes. These guidance notes should be read along with the Code of Practice for Guardians and the General Guidance Notes for Financial Guardians.

# 2. Consultation



## 2.1 DOES THE FINANCIAL GUARDIAN REQUIRE TO CONSULT WITH ANYONE BEFORE APPLYING?

Yes, firstly the adult. The whole principle of allowing gifts to be made depends on what the adult would have done were the adult's capacity not impaired. The financial guardian will also have to take into account the general principles contained in the Act.

## 2.2 DOES ANYONE ELSE HAVE TO BE CONSULTED?

Yes. The adult's nearest relative, the adult's primary carer (if not the nearest relative), a named person if applicable and any other person who may have an interest in the application.

## 2.3 WILL THE APPLICATION BE SENT TO ANYONE?

Yes. The Public Guardian will send a copy of the application form to the adult (subject to section 11 of the Act), their nearest relative, primary carer, a named

The general principles can be found in the Code of Practice.

This is available from the Scottish Government by telephoning 0131 244 3581.

person if applicable and anyone else whom he considers may have an interest. Anyone sent a copy of the application will have 21 days in which to object to the granting of the application.

## 2.4 WHAT HAPPENS IF SOMEONE DOES OBJECT?

The Public Guardian will consider the application and objection. If he proposes to refuse the application, the Public Guardian will intimate this to the financial guardian. The financial guardian then has 21 days to consider whether or not to oppose the proposal to refuse the application and will make his case out to the Public Guardian initially in writing. After this the Public Guardian will grant or refuse the application. The Public Guardian may remit the matter to a court.

## 2.5 CAN THE GRANT OR REFUSAL OF AN APPLICATION BE APPEALED?

Yes. An appeal can be made to the court.

## 2.6 IS EVERY APPLICATION INTIMATED?

Not always. In certain circumstances the Public Guardian may dispense with intimation e.g. if the value of the gift is not sufficient to justify this.

# 3. The Gift



## 3.1 IS THERE ANY RESTRICTION ON WHAT CAN BE GIFTED?

No. Anything over which the financial guardian has control in terms of the guardianship order and where provision has been included in the management plan, may be gifted, subject to the consent of the Public Guardian.

## 3.2 CAN A FINANCIAL GUARDIAN APPLY TO MAKE A GIFT IF IT HAS NOT BEEN MENTIONED IN A MANAGEMENT PLAN?

Yes. However, in order for the Public Guardian to grant such an application it will have to be clear that the application is in keeping with the adult's wishes. (See paragraph 2.1)

# Notes on Completion of the Application Form



## 4.1 WHERE CAN AN APPLICATION FORM BE OBTAINED?

An application form can be found at the end of this guidance.

## 4.2 WHAT INFORMATION IS REQUIRED IN THE FORM?

### **Section 1**

Current details of the adult.

### **Section 2**

Current details of the applicant.

### **Section 3**

Details of the people who will benefit from the gift.

### **Section 4**

Confirmation as to whether or not provision for making gifts has been included in the management plan for the adult's estate.

If there is no such provision, you will need to state why the application is being made and why the provision of gifts was not included in the management plan.

If provision to make gifts was included in the approved management plan, there is no need to complete a gift application form.

Details of the gift are required including the nature of the gift, money, effects or property and why the gift is being made e.g. a birthday present or in order to reduce tax liability, etc.

### **Section 5**

This section need only be completed if there is additional information which the financial guardian feels is relevant to the application, e.g. where the proposed gift is something other than cash, information should be provided as to whether the adult has a Will and if the gift is subject to a specific bequest.

The application should then be signed by the financial guardian and dated.

#### 4.3 IS THERE ANY FEE INVOLVED IN MAKING THE APPLICATION?

Not always. It will depend on the value of the gift if a fee is to be paid to the Public Guardian. 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.

# Gift Application Form



PUBLIC GUARDIAN'S REF:

PG/

## 1. Details of adult

NAME OF ADULT:

ADDRESS:

POST CODE:

DATE OF BIRTH:  
(DD/MM/YYYY)

## 2. Details of applicant

NAME OF APPLICANT:

ADDRESS:

POST CODE:

RELATIONSHIP TO ADULT:

### 3. Details of recipient(s) of gift

NAME OF FIRST RECIPIENT:

ADDRESS:

POST CODE:

RELATIONSHIP TO ADULT:

NAME OF SECOND RECIPIENT:

ADDRESS:

POST CODE:

RELATIONSHIP TO ADULT:

NAME OF THIRD RECIPIENT:

ADDRESS:

POST CODE:

RELATIONSHIP TO ADULT:

(If there are more recipients please continue on a separate sheet of paper)

## 4. Purpose of gift

HAS PROVISION FOR GIFTS BEEN INCLUDED IN THE MANAGEMENT PLAN?

Y

If answer is no, please give details of why this application is necessary:

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

Please give details of the proposed gift (including reasons for making the gift):

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

## 5. Additional information

Please give any other information which you feel is relevant in making this application, e.g. the past and present feeling and wishes of the adult and if the adult has a Will.

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

SIGNED:

DATE:

(DD/MM/YYYY)

Once the application form has been fully completed and signed it should be sent to the OPG at the address intimated overleaf.

This application will be sent to the adult (subject to section 11 of the Act), the adult's nearest relative and primary carer, named person if applicable and any other person that may have an interest in the application. Reference is made to the Code 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 (OPG) is open to the public from 9am to 5pm, Monday to Friday.

This leaflet is available free of charge and available in other formats and community languages on request.

The office of the Public Guardian 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.

