

# Money matters

**A quick guide  
to managing the  
finances of an adult  
with incapacity**

# Contents

Who we are	1
What we do	1
Why have we produced this guidance?	1
Quick guide to options for financial management	3
DWP appointeeship	9
Part 2 Adults with Incapacity (Scotland) Act 2000 – Continuing Powers of Attorney	11
Part 3 Adults with Incapacity (Scotland) Act 2000 – Access to Funds	14
Part 4 Adults with Incapacity (Scotland) Act 2000 – Management of Residents’ Funds	16
Part 6 Adults with Incapacity (Scotland) Act 2000 – Financial Intervention and Guardianship Orders	18

## Who we are

The Mental Welfare Commission is an independent organisation working to safeguard the rights and welfare of everyone with a mental illness, learning disability or other mental disorder. Our duties are set out in mental health law.

We are made up of people who have understanding and experience of mental illness and learning disability. Some of us have a background in healthcare, social work or the law. Some of us are carers or have used mental health and learning disability services ourselves.

We believe that everyone with a mental illness, learning disability or other mental disorder should:

- be treated with dignity and respect;
- have the right to treatment that is allowed by law and fully meets professional standards;
- have the right to live free from abuse, neglect or discrimination;
- get the best care and treatment that best suits her or his needs; and
- be enabled to lead as fulfilling a life as possible.

## What we do

- We find out whether individual treatment is in line with the law and practices that we know work well.
- We challenge those who provide services for people with a mental illness or learning disability, to make sure they provide the highest standards of care.

- We provide advice information and guidance to people who use or provide mental health and learning disability services.
- We have a strong and influential voice in how services and policies are developed.
- We gather information about how mental health and adults with incapacity law are being applied. We use that information to promote good use of these laws across Scotland.

## Why have we produced this guidance?

This guide has been produced by the Commission, in consultation with the Office of the Public Guardian (OPG), because of our concerns about the impact of financial management on the welfare of those who lack capacity. We regularly meet individuals whose quality of life could be significantly enhanced by effective management of their funds. Management of an Adult's finances can be an integral part of providing for their health and welfare. It needs to be discussed as part of the care management role and appropriate measures considered, bearing in mind the principles of the AWI Act, such as benefit to the Adult, the least restrictive option and maximization of the Adult's residual skills.

Professionals need to feel confident in their knowledge of available financial measures. Being able to give information and advice, or seek clarity about the range of roles and responsibilities of those dealing with the Adult's financial affairs, is an essential part of the care management role. For example, professionals may need to give initial advice

to relatives on the possible options for managing the Adult's finances, or request confirmation on powers of attorney from the OPG to clarify the extent of powers when planning future care arrangements. They particularly need to be aware of the duties on the local authority conferred by the Adult with Incapacity (Scotland) Act 2000 (AWI Act) and the amendments contained in the Adult Support and Protection (Scotland) Act 2007, as well as the scope of Department of Work and Pensions (DWP) appointeeship.

We are aware of several cases where adults with a learning disability, for example, are leading chaotic lives, with bills unpaid, insufficient food and clothing and where they are open to exploitation. DWP appointeeship by the local authority or other body would have been a simple way of improving the Adult's welfare.

However, in the past a number of local authorities have decided not to act as corporate appointees and have failed to put any other measures in place. Hopefully the recent amendments of the AWI Act to allow organisations, including the local authority, to access funds under Part 3 will rectify such situations.

#### Examples from our casebook

We have had contact with a woman with alcohol-related brain damage, who had separated from her husband. She had previously granted her husband with Continuing/Financial Power of Attorney (CPOA). This was activated on the event of her incapacity but he appeared to be unaware that these powers had been granted to him. These included the power to become her DWP appointee and the power to access her

occupational pension. Effective management of the woman's money would have enabled her to eat a nourishing diet and would have paid for the care services essential to her well being in the community. The multi-disciplinary team, who supported her at home, were aware of the CPOA arrangements and despite the obvious problems this was causing chose not challenge the husband's lack of use of these powers.

We have visited individuals in nursing homes where the home managers were acting as appointees for an Adult's DWP benefits but did not access the Adult's superannuated pension by using Part 4 of the Adults with Incapacity Act. Nursing home fees were then taken from the person's benefits, leaving virtually no funds available for the Adult's personal allowance. In such cases we would be concerned that the Adult's pension is left to accumulate in a bank account and not used for his or her benefit. Such funds could be accessed by using the AWI Act (Part 3, Part 4 or Part 6).

In all of these cases, we believe appropriate financial arrangements would have positively affected individual care.

This guidance is intended to provide a useful overview for a range of practitioners tasked with safeguarding the welfare of adults who lack capacity. We hope that this will provide professionals with some confidence when advising on ways to effectively manage Adult finances. While it is not comprehensive, our guidance does cover the main options available for financial management. The information is presented in an easy to access table format, supported by more detailed guidance and links to relevant websites.

## Quick guide to options for financial management

### Assistance on an informal basis

How	Informal arrangement.
Who can act?	Family member, friend, neighbour.
Advantages and safeguards	Free, flexible. Individual knows the Adult's circumstances.
Further considerations	Open to exploitation. No record of transactions needed. Intervention may be open to challenge as relative/friend has no legal authority to act.

### DWP appointeeship

How	Application from a prospective appointee (stating reasons why the individual is not capable of managing their state benefits).
Who can act?	Family member, friend, corporate organisation e.g. Social Work Dept, hospital Patients' Fund manager, voluntary organisation.
Advantages and safeguards	Straightforward. No fees. Adult may lack capacity to manage their benefits and be highly vulnerable and open to exploitation. All appointeeships are granted and withdrawn by DWP, usually following interviews with payee and proposed appointee. Gives access to all state benefits.
Further considerations	No formal right of appeal. No scrutiny of management of funds once the arrangement has been set up. Restricted to management of Adult's DWP benefits/pensions. Does not allow for management of other funds.

## Continuing (or Financial) Power of Attorney (CPOA) Part 2 AWI Act

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How	The Adult, whilst retaining capacity, chooses the person(s) they wish to act as CPOA and decides the powers they should have.
Who can act?	Solicitor or accountant, family member, friend or a combination of the above.
Advantages and safeguards	<p>Relatively straightforward.</p> <p>Granter can do this without help of solicitor – stationery shops sell Power of Attorney forms. Guidance on how to register a power of attorney is available on the Office of the Public Guardian's (OPG) website. Samples of registered powers of attorney can also be viewed on the OPG website.</p> <p>Useful if a person has a progressive illness e.g. Huntington's, Alzheimer's or fluctuating illness e.g. bi polar disorder.</p> <p>If the CPOA is only to begin in the event of incapacity, a statement that the granter has considered the need for a certificate of incapacity in order to activate the powers must be written into the original agreement.</p> <p>This is a proactive measure and gives the granter the choice of which financial decisions they wish to relinquish and who they want to make those decisions and at what point they are able to do so.</p> <p>Must be registered with OPG before attorney can act.</p> <p>OPG will consider and may investigate any complaints regarding possible mismanagement where an adult has been deemed as being incapable. Referral form and more information on investigative powers is available on OPG website.</p>
Further considerations	<p>The cost of registering CPOA with the OPG is £65 (Jan 09).</p> <p>A local solicitor may be able to help if the form is too complex.</p> <p>Solicitor's fees for drawing up CPOA vary greatly and can be costly.</p> <p>There is no Civil Legal Aid for setting up a CPOA but Legal Aid may be available under 'Advice and Assistance' if granter is eligible. Scottish Legal Aid Board (SLAB) 0131 226 7061.</p> <p>A decision as to when to activate powers may cause conflict.</p>

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## Access to funds Part 3 AWI Act

How	Application to OPG to set up designated bank account.
Who can act?	<p>Permits an individual or an organisation, such as a charity or voluntary organisation, or the local authority, to open and operate a 'designated bank account' to pay for day-to-day living costs.</p> <p>An organisation such as a nursing home, who is eligible to manage a resident's funds under Part 4, cannot apply to manage them under Part 3.</p>
Advantages and safeguards	<p>Flexible, inexpensive and straightforward.</p> <p>The funds in the designated account can be accessed by the applicant but not by the Adult.</p> <p>If assets and income of the individual are not known, OPG can authorise bank/building society to release information.</p> <p>OPG can give the withdrawer authority to open bank accounts on the Adult's behalf, if Adult has no suitable account, or transfer funds from one account to another e.g. higher interest-bearing account.</p> <p>Provision for joint withdrawers to act.</p> <p>Provision for a reserve to be appointed to act when a sole withdrawer is unable to do so.</p>
Further considerations	<p>Mainly for ongoing living costs though lump sums can be applied for e.g. equipment, TV, paying arrears, holiday – where it meets the needs and benefits the Adult.</p> <p>Not suitable where an individual's finances are complex, held in a joint account or involve investments.</p> <p>Finances must largely predict needs over next 3 years, though withdrawer can apply to vary transactions after the initial authority is granted.</p> <p>Application can include details of all options e.g.</p> <ul style="list-style-type: none"> <li>• Transfer of funds, request for lump sums, closure of accounts.</li> <li>• Arrangements for current Direct Debits or Standing Orders.</li> <li>• Small charges by OPG and for medical certificate of incapacity. These can be recovered from the Adult's funds as part of a lump sum request in original application.</li> </ul>

### Management of patients'/residents' funds Part 4 AWI Act

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**How** Application with certificate of incapacity to supervising body to manage funds up to £10,000, excluding DWP benefits.

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**Who can act?** The supervising body for residential homes, nursing homes, and registered support agencies is the Care Commission.  
Hospitals are supervised by NHS Boards.

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**Advantages and safeguards** Relatively straightforward once the application is processed.  
No cost to the Adult.  
Allows management of superannuated pensions and other monies that otherwise might only be accessed by financial guardianship.  
Record of transactions required.

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**Further considerations** Homes receive no payment for this responsibility and are often reluctant to take it on.  
Excludes benefits and therefore may also require appointeeship.  
Cannot access savings which have accrued from benefits – another organisation such as the local authority or an individual may need to access these via Part 3 or Part 6 of the AWI Act.

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## Intervention Orders Part 6 AWI Act

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How	Application to the Sheriff Court for a one-off intervention or action e.g. selling a house. Two medical reports and a report from a 'suitable' person.
Who can act?	Family, friend, carer, local authority, solicitor, accountant.
Advantages and safeguards	<p>Very useful if one-off event will settle financial situation.</p> <p>Registration and supervision by OPG.</p> <p>This is a lower form of order than a guardianship order.</p>
Further considerations	<p>Lengthy process. Same process as financial or welfare guardianship.</p> <p>Fee due to OPG for registration.</p> <p>Costly to make application and may involve further costs to administer. Solicitor will charge according to the value and complexity of the estate.</p> <p>OPG will supervise intervener and will require quarterly report until all actions have been completed.</p> <p>Interveners are not remunerated for carrying out their duties in terms of the intervention order.</p> <p>If powers sought to sell or purchase heritable property, the intervener must ask Public Guardian to consent to the sale or purchase price of the heritable property.</p>

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## Financial Guardianship Part 6 AWI Act

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How	An application to the Sheriff Court for ongoing management of Adult's estate.
Who can act?	<p>Family, friend, carer, solicitor, accountant.</p> <p>Can be joint or substitutes guardians or additional guardians appointed at a later date.</p>
Advantages and safeguards	<p>Suitable when financial matters are complex or involve larger sums of money and decisions to be made over a longer period of time.</p> <p>Appointment generally lasts 3 years. If authority still needed after 3 year expiry date, further application to be made to the Sheriff Court.</p> <p>High standard of book keeping and accounting required. Inventory, management plan and annual account required by OPG.</p> <p>OPG will investigate complaints.</p>
Further considerations	<p>Lengthy and more costly than other measures under the act.</p> <p>Guardian may claim expenses and/or remuneration from estate.</p> <p>Caution (insurance) may be needed.</p> <p>This may be disproportionately expensive.</p> <p>Additional approval from OPG for major transactions e.g. selling or buying heritable property, gifts.</p> <p>Fees to be paid to PG: registration fee, approving inventory and management plan, consent to selling/buying heritable property, approving gift in excess of £2,500. However PG may waive these fees in certain circumstances. See website.</p>

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## DWP appointeeship

### Purpose

If a DWP claimant is 'unable to act' in relation to the management of their state benefits, a person or organisation can act as their appointee. 'Unable to act' is not defined in the DWP regulations and the Executive Officer from the DWP has discretionary powers in relation to the appointment of an appointee. The appointee then has the authority to receive and manage benefits on behalf of the DWP claimant. An appointee could be required where the claimant has a severe physical disability or mental incapacity, specifically in relation to management of finances. This can include his or her vulnerability to exploitation.

An appointee can be an individual e.g. a friend or relative, or an organisation, or representative of an organisation e.g. the local authority, a solicitor, the manager of care home, etc. A suitable appointee must be over 18 years of age and be both capable and trusted to manage the finances in relation to the best interests of the claimant. They must be aware of the responsibilities of this role, which includes repaying overpaid benefit. The prospective appointee may be asked to provide evidence from a suitably qualified professional, who has a personal knowledge of the claimant, to support their application.

An appointment to act is made under Regulation 33 of the Claims and Payments Regulations 1987. An officer of the DWP acting on behalf of the Secretary of State can authorise an appointee to act in this role.

### Application process

1. The prospective appointee should fill out a BF56 available from the Job Centre Plus office that is local to the claimant. The phone number of the local office is available from the Benefits Advice Line 0800 88 22 00 or from the DWP website.
2. In some circumstances, the DWP may be contacted regarding a persons inability to manage their state benefits and there may be no one suitable to act in this role. In this situation, the DWP representative may contact the local social work office for advice and guidance. In these circumstances, consideration should be given to the local authority acting as corporate appointees.
3. On receipt of the form BF56 an officer from the DWP will then make arrangements for a home visit to the claimant and the prospective appointee. These interviews are usually conducted separately. The officer will determine whether appointee action is appropriate and that the candidate is suitable. They may ask for evidence of lack of capacity and may explore any conflict of interest issues as part of this process. There are exceptions to this process, however, e.g. where medical evidence of incapacity in relation to management of finances has already been submitted. As part of this process, the DWP representative will give clear guidance about what is expected of the appointee and the responsibilities they take on if they become the appointee.

4. Once an appointment is made, the appointee and not the claimant receives all correspondence from the DWP.
5. If the claimant regains capacity, the appointee should write to the DWP cancelling the appointeeship.

#### Safeguards

- An appointment is never approved on the grounds that it is 'convenient' for the claimant or the prospective appointee. E.g. an application to be an appointee is not appropriate if the customer is not able to get to the bank or no longer wishes to manage their affairs.
- When alerted, the DWP can investigate any concerns about an appointee's management of the claimant's affairs. Once a decision has been made to follow up concerns, payment of benefits is frozen, until the investigation is concluded.
- If there is doubt about a claimant's lack of capacity, the DWP officer will require further evidence.
- If there is thought to be a conflict of interest or undue pressure, the DWP officer is expected to investigate this.

#### Points for consideration

- There is no cost when applying to be an appointee.
- This is a straightforward way to manage someone's finances, particularly if their finances are mainly made up of DWP benefits.
- The ability of the local authority, as well as an individual, to act as appointee extends the usefulness of this measure, particularly for individuals who are vulnerable, without trusted contacts or open to exploitation.
- An appointee may not be appropriate if other financial measures are in place e.g. Continuing/Financial Power of Attorney or Financial Guardianship.

## Part 2 Adults with Incapacity (Scotland) Act 2000 – Continuing Powers of Attorney

### Purpose

A continuing (or financial) power of attorney is a legal document by which an individual, whilst having capacity, can grant powers to manage their property and/or financial affairs to an individual or individuals they trust or to a solicitor or accountant. The powers can start immediately or come into effect if capacity is lost at some point in the future. An individual, individuals, or a firm, such as solicitors or accountants can be appointed.

### Application process

1. A continuing power of attorney (CPOA) must be expressed in a written document which sets out the precise powers that the granter wishes the attorney(s) to have. The document must be signed by the granter. To set up a power of attorney it is recommended that you seek the advice of a solicitor. However continuing power of attorney forms are available at stationery shops. The OPG website provides sample CPOA documents. [www.publicguardian-scotland.gov.uk/whatwedo/sample\\_power\\_of\\_attorney](http://www.publicguardian-scotland.gov.uk/whatwedo/sample_power_of_attorney)
2. Where the CPOA is only to come into effect on incapacity, a statement must also be included that states that the granter has considered how their incapacity is to be determined.

3. It must be accompanied by a prescribed certificate of capacity signed by a prescribed person (a solicitor registered to practice in Scotland, a member of the Scottish Faculty of Advocates or a registered medical practitioner) which states that:
  - s/he interviewed the granter immediately before the granter signed the document,
  - the granter was not acting under undue influence and
  - the granter understood the nature and extent of the powers being granted.

- s/he interviewed the granter immediately before the granter signed the document,
- the granter was not acting under undue influence and
- the granter understood the nature and extent of the powers being granted.

The document and certificate will be sent to the OPG Scotland to be registered. The named attorney(s) must indicate in writing that they are prepared to act in this capacity.

4. To speed up the process, it is recommended that the Public Guardian's registration form be completed. This can be obtained from the OPG or downloaded here. <http://www.publicguardian-scotland.gov.uk/docs/Registrationform3.pdf>
5. Once registered with the OPG, they will issue a certificate of registration. The certificate can then be used immediately, or it can be kept safe until such times as the granter has lost capacity, or wishes the attorney to act on his/her behalf. Attorneys have no authority to act until the power of attorney document has been registered by the OPG. There is a fee to register.

6. The granter can revoke a CPOA, or any of the powers granted, once it has been registered with the OPG. The granter must give notice of the revocation in writing. This must be accompanied by a certificate completed by the prescribed person (see list above) and must be attached to the letter informing the OPG of the revocation.

A welfare power of attorney, also covered by Part 2 of the AWI Act, relates to decision making in relation to the granter's personal care and can only come into effect on incapacity. This is not dealt with in this guidance. As welfare decisions often have financial implications, where both welfare and financial powers of attorney exist, it is important that they complement each other.

The granter should try to foresee all property and financial affairs which may need to be managed. Further information can be found in the Code of Practice for Continuing Powers of Attorney and also in the document 'A guide to making a power of attorney' available from the OPG.

<http://www.publicguardian-scotland.gov.uk/docs/poa/Financial%20Powers.doc>

### Safeguards

- The OPG's responsibilities in relation to powers of attorneys are to maintain a register of all documents relating to continuing attorneys for inspection by members of the public.
- When instructed by a Sheriff, the OPG can supervise and investigate the continuing attorney and audit any accounts submitted.
- The OPG also provide advice and guidance to continuing attorneys. They will carry out an investigation on receipt of a complaint or concern regarding the exercise or functions, relating to the property or financial affairs of a granter with incapacity, in relation to continuing attorneys.

### Points for consideration

- Granter can appoint persons they trust.
- The powers can be as flexible or as specific as the granter chooses.
- If capacity fluctuates, then the powers can be brought into effect when required and relinquished when the person regains capacity. However, the granter needs to consider how the point of incapacity will be determined.
- Where the granter has specified that CPOA powers are to be triggered at the point of incapacity, it may be difficult for the prospective attorney to decide when this point is reached. This may be a source of conflict and may require a medical opinion.
- The power of attorney document can be difficult to complete without professional help. This has cost implications. Civil Legal Aid is not specifically available for

Powers of Attorney, as there is no court action. However, the Scottish Legal Aid Board (SLAB) provides funding for 'Advice and Assistance', where the person is financially eligible for this. Legal aided 'Advice and Assistance' (A&A) can be available when a person first consults a solicitor. It **may** be sufficient to set up a Power of Attorney. Solicitors grant Advice and Assistance (A&A) and they decide if the client is eligible. If a solicitor grants A&A to be used to set up powers of attorney, they currently have £95 available to spend on the matter. If this is not enough, they can ask SLAB for more – if the client has to be seen at home, or in hospital, an increase is usually needed. There is no limit on the amount of funding that can be allowed in any A&A application, if an individual is financially eligible for it. Full information on this and other A&A issues can be found on the SLAB website at [www.slab.org.uk](http://www.slab.org.uk)

- There is no provision in the AWI Act for reimbursement of expenses incurred by a continuing power of attorney. Provision for out of pocket expenses is a matter for the grantor of the power of attorney and should be written into the document.
- The attorney(s) can only act during the lifetime of the granter.
- The Public Guardian must be made aware of any changes of circumstances, such as changes of address of the granter or attorney(s) or the death of the granter or attorney(s).

### Relevant links

AWI Act Part 2:

[http://www.opsi.gov.uk/legislation/scotland/acts2000/asp\\_20000004\\_en\\_1](http://www.opsi.gov.uk/legislation/scotland/acts2000/asp_20000004_en_1)

AWIA Code of Practice for Continuing and Welfare Powers of Attorney:

<http://www.scotland.gov.uk/Resource/Doc/216725/0058106.pdf>

Regulations:

[http://www.opsi.gov.uk/legislation/scotland/ssi2008/ssi\\_20080056\\_en\\_1](http://www.opsi.gov.uk/legislation/scotland/ssi2008/ssi_20080056_en_1)

Office of the Public Guardian (Scotland):

[www.publicguardian-scotland.gov.uk](http://www.publicguardian-scotland.gov.uk)

## Part 3 Adults with Incapacity (Scotland) Act 2000 – Access to Funds

### Purpose

This is a straightforward means by which one or more individuals, or an organisation (including the local authority), can access the bank or building society of an Adult with incapacity in order to meet his/her day-to-day living costs. The funds can be used by the ‘withdrawer’ to pay for food, clothes, utility bills, care home fees and other items for the Adult’s benefit. Funds continue to belong to the Adult, but cannot be accessed by him once authority has been granted to the withdrawer. Funds can only be accessed where they are held in an account in the sole name of the Adult. Other arrangements can be made where money is in a joint account – see Code of Practice.

The OPG can also authorise banks/building societies to release information about the Adult’s account, where the income and assets are unknown, so a decision can be made as to how those should be managed.

Where the Adult does not have an account, the OPG can authorise an account to be opened in the sole name of the adult to receive income or funds to which the adult is entitled. A second account may also be opened where necessary e.g. a savings type account.

The Access to Funds Scheme cannot be used where there is already a guardian or attorney with powers related to the funds in question, or where there is an intervention order relating to those funds. Where financial assets are complex, Part 6 rather than Part 3 may be more appropriate for managing these.

An organisation who is eligible to manage funds under Part 4, such as a residential or nursing home, may not manage them under Part 3.

### Application process

1. Where the potential ‘withdrawer’ has insufficient information on the Adult’s funds, they may first need to apply to the OPG for a certificate authorising the fund holder(s) to provide them with the necessary information (Form ATF 1). This application must be supported by a medical certificate and fee.
2. When the relevant information is available, but there is no suitable account, the withdrawer can apply to open a suitable account in the name of the Adult within their application for authority to access funds (Form ATF 2). If approved, the OPG will issue a certificate giving authority to open a suitable account. Once the withdrawer supplies the OPG with the details of that account, a further certificate will be issued allowing the withdrawer to open a designated account and begin accessing the funds identified in the application.

3. Where there is already information on the Adult's funds and there is a suitable account, the withdrawer can apply straight away for authority to access funds using Form ATF 2.
4. In the application the withdrawer is required to itemise the estimated expenditure needed for the person's daily living expenses and the amount to be transferred from the Adult's 'current account' to the designated account on a regular basis. The period of authority normally lasts for 3 years, so any increases that may be required over that period need to be taken into consideration. In the event of unforeseen expenditure being required after the initial authority is granted a variation may be applied for on Form ATF 5.
5. Authority to access one-off lump sums (e.g. specialised equipment or to pay off debts) can be applied for additionally with the appropriate evidence provided.
6. A medical certificate of incapacity must accompany the application to access funds. Conditions also have to be met relating to the suitability of the withdrawer.

### Safeguards

- The OPG is required to intimate the application to relevant parties and the Adult, and to examine the suitability of the applicant(s) before issuing the appropriate certificate enabling the withdrawer to act.
- Applications by individuals must be countersigned by a person who knows the applicant(s). Organisations applying must show they are fit for the purpose of dealing with the adults funds.
- A current medical certificate must be completed and sent along with the application.
- Random reviews are carried out to ensure the adult's funds are being used appropriately.
- Records must be kept and the OPG can inquire into any complaints or concerns. [http://www.publicguardian-scotland.gov.uk/whatwedo/investigations\\_team.asp](http://www.publicguardian-scotland.gov.uk/whatwedo/investigations_team.asp)

### Points for consideration

- This is an easy way to access funds for daily living, where there are funds in addition to DWP benefits. Where there are only DWP benefits, appointeeship may be more useful.
- It is extremely useful in gathering information on the Adult's estate where this is unknown, in order to plan the management of their funds.
- It ensures the Adult's money can be held in a suitable interest-bearing account.

- The ability of the local authority, as well as an individual, to act as withdrawer, extends the usefulness of this measure for those who have no friends or relatives who can act in this capacity.
- Low cost measure. There are fees involved for the provision of a medical certificate and for the OPG registration fees but these can be retrieved from the Adult's funds if included in the application. OPG Fees Schedule: <http://www.publicguardian-scotland.gov.uk/whatwedo/fees.asp>

#### Relevant links

Amendments to AWI Act in Part 2 of Adult Support and Protection (Scotland) Act 2007: [http://www.opsi.gov.uk/legislation/scotland/acts2007/asp\\_20070010\\_en\\_4](http://www.opsi.gov.uk/legislation/scotland/acts2007/asp_20070010_en_4)

Code of Practice Part 3: <http://www.scotland.gov.uk/Resource/Doc/215749/0057713.pdf>

## Part 4 Adults with Incapacity (Scotland) Act 2000 – Management of Residents' Funds

### Purpose

This is a mechanism whereby managers of care homes, or hospitals, can manage residents' funds where they lack capacity to do so themselves. In carrying out these functions NHS hospital managers are supervised by the Health Board. Care home managers and managers of independent and private hospitals are supervised by the Care Commission and the State Hospital managers, by the State Hospital Board. In addition, agencies such as support providers can apply for limited registration to manage residents' funds and are supervised by the Care Commission.

Managers will be able to manage cash or funds, excluding DWP benefits, up to the value of £10,000. They may also hold or dispose of resident's moveable property, where it would realise less than £100. Funds must be in an interest-bearing account. DWP benefits would be managed separately under appointeeship by the manager or other interested party.

### Application process

1. To manage funds, an establishment must first be registered with its supervising body. Establishments, other than the State Hospital or NHS hospitals, may choose to opt out of Part 4 as part of their registration, or following registration.
2. If they consider Part 4 the best option for managing residents' funds, the manager then obtains a certificate of incapacity from a medical practitioner.

3. This is submitted with relevant information to the supervisory body who issue a Certificate of Authorisation under Section 42 to enable the manager act. The resident should be notified when the medical certificate is completed and of the intention to manage their funds under Part 4, though intimation may be withheld if thought to pose a serious risk to the resident's health.

#### Safeguards

- The supervisory bodies are responsible for granting the Certificates of Authorisation, for monitoring the management of funds and for investigating complaints.

#### Points for consideration

- Straightforward and relatively quick process that enables receipt and management of moderate amounts, from superannuated pensions and other monies, which might otherwise only be accessed by financial guardianship or by another organisation or individual accessing them by Part 3.
- Low cost to Adult – cost of medical certificate comes from their estate.
- Most care homes to date have chosen not to manage residents' funds under Part 4, as there is no reimbursement for the administration of this, and other measures have had to be considered.
- Part 4 does not allow the manager to access money in a bank account which has accumulated from DWP benefits. The local authority or another organisation or an individual could however access these under Part 3 of the Act.

#### Relevant links

AWI Act Part 4:

[http://www.opsi.gov.uk/legislation/scotland/acts2000/asp\\_20000004\\_en\\_1](http://www.opsi.gov.uk/legislation/scotland/acts2000/asp_20000004_en_1)

Code of Practice Part 4 for Managers:

<http://www.scotland.gov.uk/Resource/Doc/1097/0000605.pdf>

Code of Practice Part 4 for Supervisory Bodies:

<http://www.scotland.gov.uk/Resource/Doc/1097/0000604.pdf>

Regulations:

[www.opsi.gov.uk/legislation/scotland/ssi2003/ssi\\_2003155\\_en.pdf](http://www.opsi.gov.uk/legislation/scotland/ssi2003/ssi_2003155_en.pdf)

## Part 6 Adults with Incapacity (Scotland) Act 2000 – Financial Intervention and Guardianship Orders

### Purpose

Financial intervention and guardianship orders are applicable when the Adult is incapable, their property and finances require protection and there is no other means of achieving this.

**Financial intervention orders** are normally suitable when there is a single issue that requires to be dealt with on behalf of the Adult, where the outcome can be predicted, and where there is no other means of dealing with this. This could be a financial or property transaction, or legal action which requires signing a document or going to Court.

**Financial guardianship orders** are applicable where more than one financial measure is required and there are longer term needs for management of finances and/or property.

The person(s) appointed to act as financial intervener or guardian may be a relative or friend with the expertise to manage the Adult's estate or a professional such as a solicitor or an accountant. The local authority may act as financial intervener, where it is appropriate, but may **not** act as financial guardian.

### Application process

1. The application for a financial intervention or guardianship order may be made by a relative, friend, professional person or the local authority where it is necessary and no one else is doing it.
2. The summary application to the Sheriff Court, which includes the powers sought, must be accompanied by two medical reports of incapacity. Where the powers sought cover only financial and property matters, i.e. no welfare powers, a report from someone with sufficient knowledge of the adult and applicant must also accompany the application and speak to the appropriateness of the order and suitability of the individual(s) nominated. This report could be by a solicitor or accountant, social worker, relative, carer or other professional involved with the adult.

However, where an application covers any aspect of personal welfare, the report must be completed by the mental health officer. Where the incapacity of the adult is due only to the inability of the adult to communicate, the chief social work officer will complete a report.

3. There are prescribed timescales for preparation of the reports, intimation of the application, caution and notifications of the granting of an order detailed in the Code of Practice.

4. Once the order has been granted, it is registered with the OPG, who also has a supervisory role in the exercise of the powers. As part of this supervision, within 3 months of issue of their certificate of authority, financial guardians are required to produce an inventory to the OPG containing information about the property and finances under their control. Supporting information is also required to be sent with the inventory, e.g. bank statements.

Within 4 months of issue of the certificate of authority, the guardian is required to produce a management plan which explains how they intend to manage the adult's property and finances. The guardian will have to obtain written financial advice if the value of the adult's moveable estate is more than £25,000.

A financial guardian cannot use all their powers until the management plan is approved and are restricted to paying for day-to-day living expenses and ingathering the adult's estate.

Annually thereafter, financial guardians must submit their accounts to the OPG for review, including receipts and invoices to verify expenditure. Each year, financial guardians must keep records of how they exercise their powers.

### Safeguards

- The Court will examine the appropriateness of the order and suitability of the nominated person and can ask for further information and reports.
- Application intimated to the adult and to interested parties.
- The OPG requires an inventory of the estate, a management plan and the submission of annual accounts. Additional consent is required from the OPG for the acquisition or disposal of property.
- The OPG has the power to investigate mismanagement of funds.  
[http://www.publicguardian-scotland.gov.uk/whatwedo/investigations\\_team.asp](http://www.publicguardian-scotland.gov.uk/whatwedo/investigations_team.asp)
- The Sheriff will normally demand that caution is taken out, though has the discretion to waive this. Caution is a type of insurance to safeguard the Adult's estate from any loss due to the actions of the intervener or guardian.

### Points for consideration

- Financial guardianship enables appropriate management of larger or more complex estates.
- Advice and scrutiny are provided by the OPG.
- Application process can be lengthy and costly. Costs can be recovered from the Adult's estate. Where there is a joint application for welfare and financial powers, part of the costs of the application for the welfare powers can be paid for by Legal Aid. [http://www.slab.org.uk/getting\\_legal\\_help/index.html](http://www.slab.org.uk/getting_legal_help/index.html)
- Supplementary report comments on the appropriateness of the order and the suitability of the proposed guardian. Proposed guardian should be made aware of what is expected from them by author of this report.
- There may be ongoing costs for the annual administration of the estate, where this is being carried out by a professional person such as a solicitor or accountant. The OPG will set the level of payment, taking into account the size of the estate. If the estate is less than around £20,000, these costs can considerably deplete the remaining assets. Where the Adult is in a care home or hospital, it may be advantageous to consider transfer to Part 4 of the Act when the Adult's estate has diminished. AWI Act amendments in the Adult Support and Protection Act have made provision for a smoother transition from Part 6 (Financial Guardianship) to Part 4 (Management of Residents' Funds). <http://www.opsi.gov.uk/legislation/scotland/acts2007/20070010.htm>

- The Sheriff may require caution, which can be disproportionately expensive and sometimes there can be delays in obtaining this. There are currently (January 09) three companies who provide caution – Zurich, Norwich Union and HSBC. Rates and speed of processing applications for caution varies between companies. More information can be sought from the OPG.

### Other relevant links

Revised Code of Practice Local Authorities Exercising Functions under the AWI Act: <http://www.scotland.gov.uk/Publications/2008/03/20114619/0>

Revised Code of Practice for Persons Authorised to act under Intervention Orders and Guardianship: <http://www.scotland.gov.uk/Publications/2008/03/18094148/0>

Guardianship Information OPG: [http://www.publicguardian-scotland.gov.uk/whatwedo/guardianship\\_order.asp](http://www.publicguardian-scotland.gov.uk/whatwedo/guardianship_order.asp)

Intervention Orders information OPG: [http://www.publicguardian-scotland.gov.uk/whatwedo/intervention\\_order.asp](http://www.publicguardian-scotland.gov.uk/whatwedo/intervention_order.asp)

OPG Fees Schedule: <http://www.publicguardian-scotland.gov.uk/whatwedo/fees.asp>





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