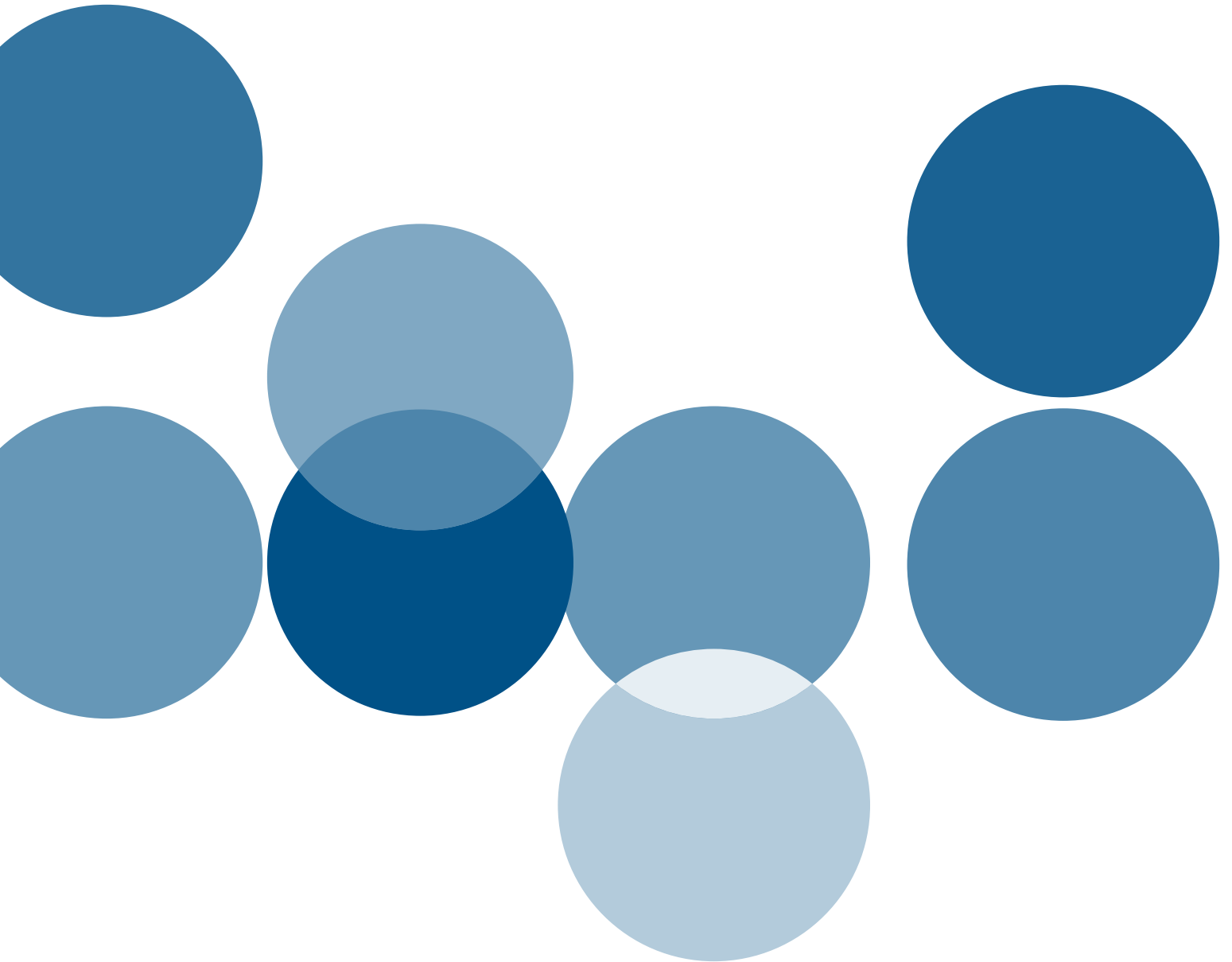


ADULTS WITH INCAPACITY
(SCOTLAND) ACT 2000

Guidance Notes and Management Plan



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1. Introduction



1.1 WHAT IS THE RESPONSIBILITY OF A FINANCIAL GUARDIAN?

The financial guardian is in a position of trust in regard to the adult's financial affairs and has a responsibility to apply skill and care when exercising the powers granted by the Sheriff in relation to the adult's financial assets. The primary purpose of the financial guardian is to manage the financial affairs so as to benefit the adult and maintain the quality of life of the adult.

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;
- and 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.

1.2 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 and not to conserve the estate. In the management plan the financial guardian should provide clear information on the funds needed to maintain the quality of life of the adult and show how the funds will be managed. In preparing a management plan the financial guardian must consider the general principles of the Act.

1.3 WHAT ARE THE PRINCIPLES CONTAINED IN THE ACT?

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

- There must be benefit to the adult which cannot be reasonably achieved without such intervention
- Intervention must be the least restrictive option in relation to the freedom of the adult
- Account should be taken of the past and present wishes of the adult as far as they can be ascertained
- The view of the nearest relative, primary carer and any other interested party should be taken in so far as it is reasonable and practicable to do so
- The adult should be encouraged, in so far as it is reasonable and practicable to do so, to exercise whatever skills he or she may have

1.4 CODE OF PRACTICE

The financial guardian should read the Code of Practice issued by the Scottish Government and Schedule 2 of the Act. Further advice can be obtained by contacting the Office of the Public Guardian.

1.5 WHAT SHOULD BE CONSIDERED WHEN PREPARING A MANAGEMENT PLAN?

The primary purpose of the financial guardian's appointment is to benefit the adult.

In the financial guardian's initial review of the adult's financial affairs, the financial guardian should give consideration to the needs of the adult and the advice the financial guardian may need to take. The management plan should reflect the inventory (where applicable) and the financial guardian may only formulate the plan within the scope of the powers granted by the Sheriff.

1.6 IS THERE A SPECIFIC FORM?

Yes. The Public Guardian has devised a form for this purpose, a copy of which can be found enclosed with this guidance.

1.7 WHERE CAN ADVICE BE OBTAINED?

The Act requires the financial guardian to take proper financial advice about the adult's investments or business affairs. The financial guardian should therefore consider whether decisions require to be made now or in the future on which specialist advice needs to be taken. The Public Guardian will expect proper financial advice to be taken where the moveable assets are in excess of £50,000 and the Public Guardian will require to see this as part of the management plan.

Proper advice is the advice of a person authorised to carry on investment business in the United Kingdom for the purposes of the Financial Services & Markets Act 2000, 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.

1.8 WHO SHOULD BE CONSULTED WITH REGARD TO THE ADULT'S NEEDS?

The financial guardian may not be the only person with power to intervene in the adult's affairs. To ensure that all measures take account of the adult's wishes and are of agreed benefit to the adult the financial guardian should consult with the adult together with other relevant parties such as:

- The nearest relative
- The primary carer
- The welfare guardian (if appointed) and
- Any other party with an interest in the needs of the adult

2. Details required in the Management Plan



2.1 THE PERSONAL NEEDS OF THE ADULT

It should be possible for the financial guardian to determine the measures and estimated amounts needed to maintain the quality of life, or observe the wishes, of the adult. These may include amounts needed on a regular basis to meet the needs of the adult eg:

- clothing
- food and toiletries
- utilities
- holidays
- hobbies
- gifts
- mortgage/rent
- support for dependents
- nursing home fees and
- therapy

The management plan must also include proposals for meetings etc. with the adult and other relevant persons.

This list is not exhaustive and could contain a variety of other measures specific to the terms of the guardianship order and the wishes of the adult.

2.2 WHAT OTHER INFORMATION IS REQUIRED IN THE MANAGEMENT PLAN?

In the interests of promoting prudent financial management, the management plan must detail the financial guardian's intentions for the management, investment and realisation of all of the adult's estate for which the financial guardian has been given authority by the court order and for its application to meet the needs of the adult. It could include proposals such as:

- re-investment of assets
- purchase or sale of further assets including heritable property
- decisions to allow assets to remain in place
- estimates for future growth of investments
- investment of any surplus funds to secure a reasonable return
- adequacy of current standing orders to pay for ongoing regular expenses
- any state or other benefits to which the adult may be entitled but has not yet claimed
- renewal or surrender of leases if relevant
- future support of any dependents of the adult and
- any possible move to residential care etc

The management plan may also include other measures, for example, proposals for the deposit of funds in excess of £500 in an interest bearing account.

2.3 TAX PLANNING

The financial guardian may wish to consider proposals to manage the amount of tax payable on the adult's estate.

This must be done in line with the past and present wishes of the adult so far as can be ascertained and in line with Inland Revenue guidelines.

2.4 GIFTS

The financial guardian may wish to consider, after consultation with:

- the adult (unless the court has directed otherwise)
- the nearest relative
- the primary carer and
- any other person with an interest in the adult's affairs

whether to include in the management plan one-off or recurring gifts, e.g. birthdays, anniversaries etc. Further information on gifts is available from the Public Guardian.

3. Lodging the Management Plan



3.1 WHAT HAPPENS WHEN THE MANAGEMENT PLAN HAS BEEN COMPLETED?

The management plan, with supporting evidence of living expenses, should be submitted along with the inventory within three months of the registration of the financial guardian's appointment i.e. the date the certificate is issued. The Public Guardian will intimate this date to the financial guardian by letter. If requested, the Public Guardian may extend the lodging date by one month. A copy of any financial advice received should be attached to the plan.

3.2 IS THERE A FEE FOR THE MANAGEMENT PLAN?

Before the management plan is approved, the guardian shall have limited powers, unless the court has conferred wider powers.

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. This fee should be sent at the same time as lodging the inventory and management plan. There are circumstances when the Public Guardian can waive this fee. Please contact the office for more information.

3.3 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.

The Public Guardian will also offer advice and assistance as necessary to a financial guardian throughout their period of appointment.

4. Record Keeping



4.1 WHAT RECORDS NEED TO BE KEPT?

The financial guardian must keep the adult's affairs strictly separate from his or her own, and be able to account for all transactions the financial guardian has carried out.

Any funds received by the financial guardian on behalf of the adult must be deposited in an account in the name of the adult.

4.1 CONTINUED ...

A financial guardian must keep accurate records and accounts, including supporting documentation, of all instances of the exercise of his or her powers such as:

- Copies of any correspondence relating to the adult's affairs
- Copies of instructions given by the financial guardian to a third party in relation to payments by, or to, the adult
- Invoices and receipts for any purchases made on behalf of the adult or receipts for any sales of the adult's property
- Correspondence with the Inland Revenue on behalf of the adult
- Correspondence with the adult's employer or pension provider
- Correspondence concerning insurance or life assurance policies relating to the adult or their property
- Certificates of ownership of stocks and shares
- Life assurance or insurance policies and valuation certificates of any valuable items
- Title deeds of any heritable property owned by the adult and
- Documents relating to any loan incurred by the adult etc

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

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, on the Public Guardian's CD or by telephoning the office.

YOU SHOULD ONLY FORWARD THE
INVENTORY FORM TO THE OPG.

PLEASE RETAIN THESE GUIDANCE
NOTES FOR YOUR OWN USE.

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Callendar Road
FALKIRK, FK1 1XR

DX: 550360 Falkirk 3
LP: LP-17 Falkirk

- Telephone: 01324 678300
- Email: opg@scotcourts.gov.uk
- Website: 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 leaflet 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.

