

*These notes relate to the Adults with Incapacity (Scotland)  
Act 2000 (asp 4) which received Royal Assent on 9 May 2000*

# **ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000**

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## **EXPLANATORY NOTES**

### **THE ACT**

#### **Part 1: General**

#### **The Public Guardian**

##### ***Section 6: The Public Guardian and his functions***

31. This section creates a new post of Public Guardian which is to be held by the Accountant of Court, an officer of the Supreme Courts, who currently supervises curators bonis looking after the financial affairs of adults with incapacity.
32. Subsection (2) sets out the Public Guardian's role, which includes supervising those exercising financial powers under the Act and investigating complaints and suspicious circumstances relating to the exercise of these financial functions.
33. Subsection (2)(b) provides for registers to be kept by the Public Guardian of matters which he is required to register under the Act relating to powers of attorney, use of funds, guardianship orders or intervention orders. A reference in these Notes to a register is a reference to the appropriate register kept under this section.
34. Subsection (2)(d) allows the Public Guardian to investigate any circumstances made known to him where there seems to the Public Guardian to be a risk to the management of the property and financial affairs of an adult with incapacity who lives in Scotland or has property here, even where no-one else is acting for the adult under this legislation.
35. Subsection (2)(e) requires the Public Guardian to give advice to anyone acting under the legislation about managing the finances or property of an adult with incapacity. This may, for example, be done through issuing publications and leaflets.
36. Subsection (2)(f) creates a statutory duty for the Public Guardian to consult the Mental Welfare Commission and the relevant local authority about carrying out duties under the legislation where there may be a common interest. For example, the Public Guardian might ask the Mental Welfare Commission whether they had recently exercised their statutory power to visit a person with a welfare guardian where the Public Guardian thought that information might have been gained at such a visit that would shed light on concerns about the adult's financial affairs.
37. Subsection (3) allows the Public Guardian to look into complaints about financial management by guardians and attorneys appointed in other countries whose powers are recognised in Scotland where the adult is habitually resident, or property in question is situated, in Scotland.

**Section 7: The Public Guardian: further provision**

38. Subsection (1) allows Regulationsto be made prescribing the information to be included in the Public Guardian’s registers, how those registers are to be kept, the format of statutory certificates issued by the Public Guardian and the way in which applications to the office are to be made. Under subsection (1)(d), regulations may also prescribe the type of evidence that the Public Guardian would require before deciding not to inform the adult of matters, where the Act would otherwise require intimation to be given.
39. Subsection (2) allows the Public Guardian to charge a fee for carrying out his functions under the legislation and says that the fee may be required before the Public Guardian takes action, for example before a certificate of authority is issued to an attorney or guardian. This subsection does not, however, require the Public Guardian to charge for all the services offered and allows discretion for prescribed fees to be waived.
40. Subsection (3) says that the certificates issued by the Public Guardian are to be taken as evidence in court of the matters to which they relate. For example, a certificate confirming that an attorney for an adult with incapacity has authority to act for that person would be evidence that the actions of the attorney on behalf of the adult were valid.