

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

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## **EXPLANATORY NOTES**

### **THE ACT**

#### **Part 3: Accounts and Funds**

##### ***Section 31: Duration and termination of registration***

127. Subsection (1) provides that authority for regular payments from the adult's account should normally last for 3 years, at which point a fresh application to the Public Guardian in the same form as the original application would be required. Subsection (2) allows the Public Guardian to vary the period of the authority and to allow any other period, including an indefinite period, as he thinks fit.
128. Subsection (3) allows the Public Guardian at his sole discretion to suspend or terminate an authority to have access to funds. The suspension or termination would have to be notified to the withdrawer and, through a formal certificate, to the fundholder.
129. Where the Public Guardian terminates the authority to withdraw, he may under subsection (4) grant an interim authority for a period of up to 4 weeks, provided the adult still lacks capacity to operate their account. The interim authority would allow payments specified by the Public Guardian to be made from the adult's account, in order to prevent hardship of the adult, and of the withdrawer where the relevant expenses are shared. An interim certificate of authority is to be in the same format as a normal certificate and particulars are to be entered in the register.
130. Subsection (6) allows an appeal to the sheriff against a decision of the Public Guardian to suspend or terminate an authority. Suspension or termination of the authority is to remain in effect notwithstanding any appeal to the sheriff until it is reversed on appeal.
131. Subsection (7) clarifies that the authority to have access to the adult's funds automatically terminates where a guardian with the relevant powers is appointed, or an intervention order is granted, or an attorney acquires authority to act. If someone continues to act under the Public Guardian's authority in good faith, however, they will not have to repay to the adult the amounts they have spent.
132. Subsection (8) clarifies that access to funds shall be terminated by the appointment of either a foreign guardian recognised under the law of Scotland or a foreign attorney, with relevant powers.