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**Changes to legislation:** There are currently no known outstanding effects for the Adults with Incapacity (Scotland) Act 2000, Paragraph 5. (See end of Document for details)

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## SCHEDULE 2 MANAGEMENT OF ESTATE OF ADULT

### *Powers relating to investment and carrying on of business by guardian*

- 5 (1) Subject to the following provisions of this paragraph, a guardian with powers relating to the property or financial affairs of the adult shall be entitled—
- (a) after obtaining and considering proper advice, to retain any existing investment of the adult;
  - (b) to use the adult's estate to make new investments in accordance with the management plan prepared under paragraph 1 or with the consent of the Public Guardian.
- (2) For the purpose of sub-paragraph (1)—
- (a) proper advice is the advice of a person [<sup>F1</sup>who has permission for the purposes of the Financial Services and Markets Act 2000 to advise on investments] who is not the guardian or any person who is an employer, employee or business partner of the guardian; and
  - (b) the advice must be given or subsequently confirmed in writing.
- [<sup>F2</sup>(2A) Sub-paragraph (2) must be read—
- (a) section 22 of the Financial Services and Markets Act 2000;
  - (b) any relevant order under that section; and
  - (c) Schedule 2 to that Act.]
- (3) The guardian shall keep every investment under review and in doing so shall have regard to the following principles—
- (a) that the investment must be prudent;
  - (b) that there must be diversification of investments; and
  - (c) that the investment must be suitable for the adult's estate.
- (4) The Public Guardian may at any time direct the guardian to realise any investment.
- (5) The guardian may, subject to any direction given by the Public Guardian, carry on any business of the adult.
- (6) Any decision by the Public Guardian—
- (a) under sub-paragraph (4) as to directing the guardian to realise investments;
  - (b) under sub-paragraph (5) as to giving directions to the guardian in carrying on the business of the adult,
- may be appealed to the sheriff, whose decision shall be final.

#### Textual Amendments

- F1** Words in Sch. 2 para. 5(2) substituted (1.12.2001) by S.I. 2001/3649, art. 235(2)  
**F2** Sch. 2 para. 5(2A) inserted (1.12.2001) by S.I. 2001/3649, art. 235(3)

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