

ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

EXPLANATORY NOTES

THE ACT

Part 4: Management of Residents' Finances

138. This Part deals with the management of the financial affairs (defined at section 39) of adults with incapacity, by the managers of care establishments (hospitals, nursing homes, residential care homes) and by a small number of establishments which will be able to apply to be registered only for the purpose of managing residents' finances.

Section 35: Application of Part 4

139. Subsection (1) sets out the categories of establishment which will be able to manage the finances of residents with incapacity.
140. Subsection (2) distinguishes between "registered establishments" and "unregistered establishments". "Registered establishments" includes those which currently have to register with local authorities or health boards in order to operate as care establishments (most independent sector care homes, nursing homes), and will also include those which have applied for and been granted the new form of limited registration under section 36 for the specific purpose of managing residents' finances. "Unregistered establishments" are those which are presently exempt from registration (local authority homes, NHS hospitals). Both registered and unregistered establishments will be able to manage residents' finances and are collectively referred to in the Act as "authorised establishments". The references to paragraphs (ca) and (cb) of subsection (1) are to an earlier version of the Act and may be ignored as they are now meaningless. Under subsection (3), registered establishments, but not unregistered establishments, may opt out of managing their residents' finances. Subsection (4) allows regulations to be made to amend the list of authorised establishments.
141. Subsection (5) provides definitions of "the managers", by reference to schedule 1, and of "resident" as someone whose current main residence is the care establishment or someone who has been detained under the Mental Health (Scotland) Act 1984.

Section 36: Registration for purposes of managing residents' finances

142. This section amends the Social Work (Scotland) Act 1968 to provide a new form of limited registration, for the specific purpose of managing residents' finances. It is expected that establishments applying will include some offering forms of sheltered accommodation.

Section 37: Residents whose affairs may be managed

143. Subsection (1) provides that managers may manage the matters set out in section 39 on behalf of any resident where a medical practitioner has provided a certificate to the effect that the resident is incapable of doing so.

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

144. Subsection (2) provides that where the managers of a care establishment have considered alternative approaches to managing a resident's financial affairs, but decided that the most appropriate is management under this Part of the Act, the managers must ask a medical practitioner to assess that resident's capacity. If the medical practitioner finds that the resident is incapable of taking decisions about their funds, or of managing those funds properly, a certificate will be issued accordingly.
145. Subsection (3) requires that the managers of a care establishment must tell residents and their nearest relative that it is intended to assess their capacity.
146. Subsection (4) requires the managers and the supervisory body to notify the resident and their nearest relative of matters relating to a certificate of incapacity issued under subsection (2), and of the managers' intention to look after the resident's financial affairs.
147. Subsection (6) prohibits a medical practitioner from providing a certificate of incapacity if the medical practitioner is related to the resident or manager or has any financial interest in the establishment.
148. Subsection (7) requires that certificates of incapacity under this Part of the Act are to be reviewed as required, and that they should expire after 3 years.
149. Subsection (8) provides that a resident need not be told of the intention to assess capacity, nor be given a copy of the certificate of incapacity if there is evidence that this would be seriously detrimental to the individual's health. Subsection (9) allows for regulations to prescribe the type of evidence that the supervisory body would require before deciding that the adult should not be informed.

Section 38: Financial procedures and controls in registered establishments

150. This section requires that registered establishments have satisfactory systems in place for managing the funds of residents with incapacity, including accounting and record keeping procedures which allow them to demonstrate how funds have been used and what balances exist.
151. Unregistered establishments, which are public bodies, have other established procedures to ensure that satisfactory systems for managing residents' funds are in place.

Section 39: Matters which may be managed

152. This section sets out the matters which managers of care establishments may manage on behalf of residents with incapacity. These include any accounts or cash the resident may have and any moveable property (e.g. furniture or pictures) the resident brings to the establishment. Any reference to "residents' affairs" or similar in this part of the Act can be taken to refer to the specific areas set out in this section. Subsection (2) ensures that the managers use a resident's funds for the benefit of that resident. It is permissible to use funds to contribute to the purchase of shared items, so long as each resident concerned will benefit from such items. Subsection (2) also clarifies that managers must take into account the sentimental value of items belonging to a resident, in considering, for example, whether such items should be disposed of. Subsection (3) allows for regulations to prescribe an upper limit to the amount of funds that may be managed. The approval of the supervisory body would be required for managers to look after funds exceeding this figure.

Section 40: Supervisory bodies

153. Subsection (1) sets out which authority is responsible for the supervision of each type of residential establishment: Health Boards for nursing homes and hospitals, local authorities for residential care homes.

154. Subsections (2) and (3) impose duties on the supervisory body to monitor the management of residents' affairs by managers of care establishments and to investigate complaints.

Section 41: Duties and functions of managers of authorised establishment

155. Subsection (1) imposes duties on the managers of authorised establishments in relation to the manner in which they deal with residents' affairs. Residents' funds must be held separately from those of the establishment; funds must either be held in separate accounts or residents' individual balances must be readily identifiable to the extent that the supervisory body requires this; when a resident's funds reach a level to be prescribed by regulations they must be placed in an interest bearing account and not simply held as cash; managers must keep proper records of their use of residents' funds and provide these records to the resident, their nearest relative and the supervisory body on request; managers must only use a resident's funds for that resident's benefit; and establishments managing funds must insure against any loss of those funds which results from the managers' acts or omissions. Paragraph (h) clarifies that a resident's funds should not be spent on services that are normally provided by the establishment.

Section 42: Authorisation of named manager to withdraw from resident's account

156. Subsection (1) allows the supervisory body to provide a certificate allowing the manager of an authorised establishment to make withdrawals from specified accounts belonging to a resident.
157. Subsections (2) and (3) require that such a certificate be signed by a properly authorised officer of the supervisory body and that it set out the accounts and other funds available to the resident and specify by name an authorised manager.
158. Subsection (4) authorises the manager to make withdrawals from an account specified in the certificate and provides that the bank or other fund holder may allow the manager to do so.

Section 43: Statement of resident's affairs

159. This section provides for the managers of an authorised establishment to give a financial statement of the resident's affairs to any resident who becomes capable of looking after their own resources, or (if the resident remains incapable) to the managers of another authorised establishment or person who will manage the resident's affairs, when the resident moves from the first establishment.

Section 44: Resident ceasing to be resident of authorised establishment

160. Subsection (1) provides that when a resident leaves an authorised establishment or gains capacity to look after their own affairs the managers of that establishment may continue to manage the resident's affairs for up to 3 months to enable other suitable arrangements to be made.
161. Subsection (2) requires the managers to provide a financial statement of the resident's affairs after the transitional period in subsection (1).
162. Subsection (3) requires the managers of the establishment which the resident has left to transfer the former resident's affairs to the establishment, authority or person who will be responsible for their management in future. If the resident has recovered capacity they will resume responsibility for their own affairs.
163. Subsection (4) requires the managers to inform the supervisory body, and in certain circumstances the local authority, of the fact that a resident has ceased to reside in the establishment, within 14 days of leaving.

Section 45: Appeal, revocation etc.

164. Subsection (1) makes provision for the power to manage residents' affairs, or, in the case of an establishment registered for the sole purpose of managing residents' affairs, the registration of the establishment, to be revoked by the supervisory body if it is satisfied that the establishment is not performing its duties properly.
165. Subsection (3) requires the supervisory body, if it revokes a power to manage residents' affairs, to take over this role itself within 14 days.
166. Subsection (4) provides that the supervisory body then has 3 months to transfer the management to another authorised establishment etc.
167. Subsection (6) is a general right to appeal to the sheriff against any decision of a supervisory body taken under this Part of the Act.

Section 46: Disapplication of Part 4

168. Subsection (1) provides that the powers given by this Part will not be available if there is a guardian, attorney, intervention order, or other arrangement relating to the matter in question, but anyone who does not know that such arrangements exist and acts in good faith shall not incur any liability.