**ADULTS WITH INCAPACITY**

(SCOTLAND) ACT 2000



**Access to funds: A guide for banks / building societies (fundholders)**

**Who is this leaflet for?**

This is for bank / building society staff who have been presented with the certificate giving a named person or organisation authority to take specific action in relation to the financial affairs of the adult named on the certificate.

**If not familiar with this process at branch level please contact your legal department or in the case of Lloyds Banking Group your processing centre who will be able to advise you.**

**GLOSSARY**

**Adult:** A person aged 16 or over with impaired capacity.

**Public Guardian:** An officer of the Scottish Courts and Tribunals Service with statutory duties to grant authority under the Adults with Incapacity (Scotland) Act 2000.

**Withdrawer**: A person or organisation given authority by the Public Guardian to access the funds of the adult.

**Certificate of authority:** When the Public Guardian has authorised any part of the ATF scheme a certificate of authority is issued to the withdrawer. The withdrawer needs this in order to make arrangements with a fundholder.

**Fundholder**: The bank or building society where the adult has their current account or where the withdrawer has opened or wishes to open the designated account.

**Current account**: An account in the adult’s sole name which must be suitable for setting up standing orders/direct debits.

**Designated account**: An account opened by the withdrawer(s) for the purpose of receiving an agreed amount of funds transferred from the adult’s current account. The withdrawer may only intromit with the funds in this account.

**What is the access to funds (ATF) scheme?**

An adult may be unable to manage their affairs due to an illness or an accident. The ATF scheme is designed to give access to the funds of an adult held in a bank or building society, where there is no continuing attorney, financial intervener of financial guardian in place.

**What is our role?**

The Public Guardian has been given statutory duties under the terms of the Adults with Incapacity (Scotland) Act 2000 to grant authority under the access to funds scheme. We also:

* supervise withdrawers
* provide advice and guidance; and
* maintain a register of persons appointed.

**How does the ATF scheme work?**

The adult must have an account in their sole name with a fundholder. Where no suitable account exists the withdrawer must have authority from the Public Guardian to open an account in the sole name of the adult. This will be known as the current account. **The withdrawer must not be given direct access to any account other than the designated account.**

**The fundholder must only perform the instructions as specifically identified in the certificate.**

**What should the fundholder of the adult’s account do?**

* Always ask to see the certificate;
* Carefully note the date of expiry as this is when authority ceases;
* Only put in place arrangements which are identified in the certificate;
* Allow credit transactions to continue;
* Terminate any standing orders/direct debits previously arranged on the adult’s account, unless it is detailed on the certificate that they should continue.

**What should the fundholder of the designated account do?**

* Set up the designated account as per the instruction on the certificate, i.e. in the withdrawer’s name on behalf of the adult. You should note that the funds belong to the adult, even though the withdrawer’s name is on the account.

**Note that the designated account:**

* cannot receive any funds other than those specified on the certificate;
* can only be operated by the withdrawer;
* is not permitted to become overdrawn.

**Accounts in the adult’s sole name**

* All accounts in the adult’s sole name must continue to be so. Under the ATF scheme there is no provision to add the names of withdrawers to the adult’s accounts. A withdrawer has no authority to access any funds in the adult’s accounts other than what is in the designated account. Funds will continue to belong to the adult;
* Credit transactions can continue on the adult’s accounts;
* Existing direct debits and standing orders can only continue if specified in the certificate. Otherwise all other existing debit transactions will cease from the issue date of this certificate;
* The legislation provides that none of the accounts are allowed to become overdrawn;
* Apart from credit transactions no further activity is allowed on the accounts other than those specified on the certificate.

**What happens if the adult dies?**

The certificate of authority will cease to have effect on death of the adult.

**Advice and guidance**

We will be pleased to provide information and advice between 9am and 5pm, Monday to Friday. Our website is a useful point of reference with links to related sites.

**Office of the Public Guardian (Scotland)**

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The Office of the Public Guardian is part of the Scottish Courts and Tribunals Service.

We welcome any feedback or comment you may have on the content of this factsheet.