**ADULTS WITH INCAPACITY**

(SCOTLAND) ACT 2000

**Guardianship**: **A guide for staff working in the financial sector**

**Who is this leaflet for?**

**This is for financial sector staff presented with a financial guardianship order registered in Scotland. It will specify the names of the individual(s) or organisation granted the authority to deal with the incapable adult’s financial affairs. The specific authority/powers granted will be detailed in the order.**

**If you are unfamiliar with this process, please contact your legal department or team dealing with court orders.**

**GLOSSARY**

**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.

**Adult with incapacity:** A person over 16 years or about to reach the age of 16, who is incapable of managing their own affairs.

**Guardianship:** A court appointment giving legal authoritya person or persons to act and make decisions on behalf of an adult with incapacity.

**Financial guardian**: A person or persons given authority by a Sheriff to carry out financial duties on behalf of the adult.

**Sheriff:** A judicial appointment and the name given to a Judge in Scotland.

**Financial powers**: Powers granted in relation to the finances and property belonging to the adult, detailed in the final interlocutor (court order) granted by the Sheriff Court.

**Certificate of authority:** Proves the order has been registered with the Public Guardian. The certificate is issued along with a copy of the court order to the guardian.

**What is a financial Guardianship Order?**

A guardianship order is a court appointment authorising a person to act and make decisions on behalf of an adult with incapacity. Guardianship is likely to be more suitable when decisions need to be taken on an ongoing basis. Powers can be requested to deal with the adult’s property and/or financial affairs and/or to make decisions about their personal welfare. The Sheriff will decide how long the order should last, this is usually based on the adult’s condition and circumstances.

**What is the difference between Guardianship Order and Deputyship?**

Guardianship orders are provided under the Adults with Incapacity (Scotland) Act 2000. This legislation applies if the adult lives in Scotland or has property e.g. a bank account or land in Scotland.

A Deputy is appointed by the Court of Protection in England & Wales under the terms of the Mental Capacity Act 2005. This legislation does not apply in Scotland. A deputyship gives powers to a deputy to make decisions on behalf of an incapable adult in England and Wales.

**The certificate, what to look out for …**

When the Public Guardian has registered an appointment we will issue the guardian with a [certificate of appointment](https://www.publicguardian-scotland.gov.uk/docs/librariesprovider3/general/pdf-documents/sample-gua-certnew.pdf?sfvrsn=84b4c179_1) and a copy of the court order detailing the powers granted. The certificate will have a crest watermark certificate, and the crest will appear on all pages of the court order. The certificate does not require an embossed or adhesive seal.

Embossed certificates were issued prior to 1 July 2023 and are in circulation. These are valid forms of legal authority and should continue to be accepted. Please see the website for [more information](https://www.publicguardian-scotland.gov.uk/general/news/2023/05/09/important-information---changes-to-certificates-of-registration). The Public Guardian’s certificate confirms that the appointment is registered under the terms of the Adults with Incapacity (Scotland) Act 2000.

Please take note that the certificate does not require any additional certification.

**Financial powers**

The court order will provide details of the legal appointment; including the details of the adult, details of the financial guardian(s) and it will list the individual powers granted.

Where more than one guardian has been appointed please note they may act alone or together. There is no requirement for all financial guardians to sign or do things together.

Another important point to note is where a financial guardian has been granted the power to open or close an account the adult does not require to be present.

**Checking that an order is valid**

If you wish to verify the validity of a guardianship order you can request this by completing [our form](https://www.publicguardian-scotland.gov.uk/docs/librariesprovider3/general/pdf-documents/form-for-pr-search-%28003%29.pdf?sfvrsn=b51061a8_2), these can be found by following the attached hyper link or by going to our website. Please ensure you give as much information as possible at the outset using the correct spellings for all names associated with the individual.

While we aim to process search requests within five working days there may be times when it takes longer.

**Contact us**

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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