

Adults with Incapacity (Scotland) Act 2000

Access to Funds (Part 3)

Highland Procedures

Foreword

The Adults with Incapacity (Scotland) Act 2000 was introduced to protect individuals with incapacity and to provide support for their families and carers in managing and safeguarding the individual's welfare and finances. The Act was one of the earliest pieces of legislation passed by the Scottish Parliament.

The Adults with Incapacity (Scotland) Act 2000 sets out a legal framework for regulating intervention in the affairs of Adults who may not have capacity to make important decisions about their finances or welfare. This may be as a result of a mental disorder or inability to communicate. The framework is underpinned by principles which enable interventions to be tailored to the needs of the individual.

A two year project was funded by the Executive to monitor how the Act was working. The results were positive, but showed that some changes could be made to streamline procedures and enable more Adults and their carers to benefit from the Act. In particular major changes have been made to the Access to Funds scheme to widen access to the scheme and to provide more flexibility in how the Adult's funds can be used and managed for his/her benefit.

The revised edition of the code of practice for those authorised to access funds takes account of changes to Part 3 of the Act, introduced in Part 2 of the Adult Support & Protection (Scotland) Act 2007. The code of practice was prepared in collaboration with the Office of the Public Guardian.

The purpose of the Highland Procedures is to focus on Part 3 of the Act which deals with the Access to Funds scheme. The Procedure is composed in line with legislation such as the Adults with Incapacity (Scotland) Act 2000, Mental Health (Care & Treatment) (Scotland) Act 2003 and the Adult Support & Protection (Scotland) Act 2007.

The Procedures should be read in conjunction with the revised Code of Practice for local authorities exercising functions under the 2000 Act.

I am pleased to introduce the Highland Procedures which will continue to be regularly reviewed and updated to take account of any future changes in legislation, policy and research on best practice in order to ensure the most appropriate outcomes for Adults who lack capacity.

Bill Alexander
Director of Social Work
Highland Council

6th April 2011

1. Introduction

- 1.1. Under part 3 of the Act, an individual or an organisation may apply to the Office of the Public Guardian (OPG) for authority to withdraw funds from the account of an adult, to provide for that adult's day to day care.
- 1.2. Part 3 was previously known as 'Intromission with Funds'. The title changed to 'Access to Funds' on 1 April 2008.
- 1.3. Officers of the Local Authority and other Organisations are now allowed to apply to withdraw funds under this part of the legislation.
- 1.4. Officers of the Highland Council and Health Professionals may also act as withdrawers in their own personal capacity for relatives and neighbours.
- 1.5. Staff will be approached from time to time for advice about this part of the Act, and may also in course of their day to day duties become aware of adults where this piece of legislation may be of benefit.
- 1.6. Access to Funds may be used to pay normal living expenses such as rent, food bills, Council Tax, electricity, care charges etc. and to pay debts and one-off sums for goods and services such as furniture, decoration, repairs etc. It may also be used for Direct Payments.
- 1.7. In some circumstances Access to Funds may be used for an adult whose assets exceed the recommended amount for Financial Guardianship and where regular payments are needed. It cannot be used for transactions involving heritable property.

Please Note: A joint account with the adult may continue to be operated by the account holder who retains capacity, and this may preclude the need to apply for Access to Funds.

2. Procedure

- 2.1. This procedure applies where a member of staff becomes aware of an adult whose capacity is impaired and where there are concerns about the adult's ability to manage their financial affairs.
- 2.2. Efforts should be made at this stage to establish whether the adult's finances are being, or could be, managed informally with the adult's consent, either with the help of family members or carers, or with the assistance of professional carers. Appointeeship for welfare benefits should be considered.
- 2.3. If it is apparent that informal arrangements are insufficient or unsatisfactory, and/or the adult refuses to give consent to such arrangements, an Access to Funds Review should be convened following discussion with the relevant Team Manager.

Please Note: This Part of the Act can only be used to access an account such as a bank, building society or savings account. It cannot be used to access benefits or deal with sums of cash etc. Other interventions will be required in such circumstances.

3. Access to Funds Review

3.1. The following people should be invited to a Review: the adult; advocate; GP; relatives; professional staff; Area Business Support Staff, Council solicitor. Consideration should only be given not to invite the Adult when this might be detrimental to their health.

3.2. The Review should be chaired by the relevant Team Manager.

3.3. The Principles of the Act should be followed to inform the decisions of the Review.

3.4. Assessment of Capacity

It is not necessary for a formal assessment of capacity to be completed before the Review. However an informal assessment by a professional that the adult is likely to lack capacity to make informed decisions about their financial affairs is required.

3.5. The Review should address the following areas:

3.5.1. Assessment of capacity

3.5.2. Current arrangements to manage the adult's finances

3.5.3. Concerns and risks relating to the adult's financial affairs

3.5.4. Complexity of the adult's financial affairs. **Where assets exceed £20,000, and/or where heritable property is an issue, Financial Guardianship should be considered.**

3.5.5. Items of expenditure such as food, fuel, rent, care charges etc. which could be considered under the Access to Funds scheme.

3.5.6. Alternative ways of managing the adult's financial affairs, including other possible informal arrangements.

3.5.7. How Access to Funds will be managed locally for the adult

3.5.8. Determine whether or not the adult is in agreement to any proposed financial arrangements

3.6. The Review can make the following decisions:

3.6.1. Apply on behalf of Highland Council to manage the adult's finances under Access to Funds

3.6.2. Determine whether or not notification of the decision to apply for Access to Funds should be dispensed with if notification may be detrimental to the adult's health

3.6.3. Assist relatives/carers or another organisation to make an application

3.6.4. Recommend an application for Financial Guardianship

3.6.5. Draw up an informal financial plan with the agreement of the adult

3.6.6. Take no further action

- 3.7. Minutes of the Review should be taken and circulated to all invited participants with a note of decisions taken.
- 3.8. The ATF Review Form should be completed and sent by email to the AWI Database Holder.
- 3.9. An application for Access to Funds should only be made if it is not possible to safeguard the adult's finances by other means, and the adult is unwilling and/or incapable of participating in such arrangements.
- 3.10. If a decision has been made to apply for Access to Funds, the Review should determine who takes responsibility for the application, and whether or not the adult has a bank account which can be accessed.
- 3.11. A decision to apply for Access to Funds can also be made at a Guardianship Case Conference.

4. Application for Access to Funds

- 4.1. The application should be completed by the Care Manager.
- 4.2. *If the adult has a bank account*, the Care Manager should check if details of the account can be obtained for the purposes of the application. If it is not possible to obtain details and the bank or building society is unable or unwilling to release them, form ATF 1 obtainable from the Office of the Public Guardian, should be completed. This gives authority to approach the fundholder to obtain details of accounts.
- 4.3. The Care Manager should arrange for the relevant Certificate of Incapacity to be completed by the adult's GP.
- 4.4. Once details of the adult's account(s) have been obtained, application form ATF 2 should be completed, to include details about the adult, the Highland Council Reference Number (held by the Office of the Public Guardian), relatives and interested parties, details of the adult's account(s) and the new account to be set up, and details of how the funds are to be used. Consideration should be given to the regular items of expenditure that are to be paid by standing order or direct debit, and any one-off items that may be needed.
- 4.5. **Please note that a Certificate of Incapacity is required at the time of the first application. A further Certificate is not required to accompany an ATF2 application if one was already obtained for ATF1.**
- 4.6. *If the adult does not have a bank account*, the OPG should be approached to authorise the opening of a bank account in the adult's name, into which funds can be deposited. The OPG will issue a Certificate (see Code of Practice page 16, para 2.21).
- 4.7. Once the application form is completed it should be returned to the OPG together with the appropriate fee (£70.00 as at 1 April 2010), within 14 days of being signed.
- 4.8. The authority to access funds normally lasts for 3 years, but a different period can be requested in the application form.

5. Action once Certificate of Authority to Access Funds is issued

- 5.1 A bank account known as the 'designated account' should be opened by the Housing & Social Work Finance Team.
- 5.2 Arrangements to transfer funds from the adult's account to the designated account as agreed in the application should be made, including the initiation of standing orders and direct debits.
- 5.3 The Housing & Social Work Finance Team will monitor the bank accounts and keep a record of transactions.
- 5.4 The Care Manager is responsible for monitoring the day-to-day management of the scheme for the adult, and report concerns and variations to the Area Business support staff.
- 5.5 The Care Manager should also report to the Area Business Support Officer where there may be a need for lump sums or one-off payments for single items such as furniture etc.
- 5.6 In such a case, the Area Business Support Officer should make an application to the OPG using Form ATF5. This form should also be used where regular payments have to be varied because of a change in circumstances.

6. Access to Funds Reviews

- 6.1 A Review should be held annually to monitor how the Access to Funds scheme is operating for the benefit of the adult.
- 6.2 The Review should be chaired by the relevant Team Manager and participants at the original Review should be invited.
- 6.3 A Review can be called at any time if there are major concerns or significant changes in circumstances.
- 6.4 A Review can decide to continue the scheme; vary it; or apply to terminate the authority. Decisions taken should be recorded.
- 6.5 The ATF Review form should be completed and sent by email to the Database Holder.

7. Useful addresses

1. Scottish Government,
St. Andrew's House,
Regent Road,
Edinburgh EH1 3DG
Tel. No. 0131 244 2193
www.scotland.gov.uk/justice/incapacity
2. Highland Council Social Work Service,
Kinmylies Building,
Leachkin Road,
Inverness IV3 8NN
Tel/ No. 01463 7034546
www.highland.gov.uk
3. The Office of the Public Guardian,
Hadrian House,
Callendar Business Park,
Falkirk FK1 1XR
Tel. No. 01324 678300
www.public-guardian-scotland.gov.uk
4. Mental Welfare Commission for Scotland,
Argyle House,
3 Lady Lawson Street,
Edinburgh EH3 9SH
Tel. No. 0131 222 6111
www.mwscot.org.uk

Please note that all the ATF Forms, Guidance and Code of Practice can be accessed on the OPG web-site

For further information please contact Karin Campbell, Resource Manager, Adult Support and Protection.