

Adults with Incapacity

(Scotland) Act 2000

Protection
Principles Balance
Capabilities
Needs Autonomy

Part 4 – Management of Residents’ Finances Information Leaflet



The Adults with Incapacity (Scotland) Act 2000 (“the Act”) provides a framework for decisions to be made on behalf of adults who lack the capacity to do so themselves. These decisions may be about the adult’s property or financial affairs or about their personal welfare, including medical treatment. The Act introduces extensive new safeguards for adults with incapacity.

General principles

All decisions made on behalf of an adult with impaired capacity must:

- ✓ benefit the adult;
- ✓ take account of the adult’s wishes and feelings, if these can be ascertained;
- ✓ take account of the views of the nearest relative, primary carer and any relevant others, as far as it is reasonable and practicable to do so;
- ✓ restrict the adult’s freedom as little as possible while still achieving the desired benefit.

Where reasonable and practicable to do so, such adults should be encouraged to use existing skills and to develop new skills concerning their property, financial affairs or personal welfare.

When does it start?

Part 4 of the Act applies from 1 October 2003.

What is Part 4 for?

Part 4 of the Act is concerned with adults who live in authorised establishments and who lack the capacity to manage their financial affairs. It provides a mechanism for managers of those establishments to manage those finances on the adult’s behalf.

“Authorised establishments” is a term defined in the Act and includes:

- ✓ health service and state hospitals (unregistered establishments);
- ✓ independent and private psychiatric hospitals, care homes and limited registration services (registered establishments).

Part 4 management is intended to be used where other arrangements are not already in place. It does **not** replace existing lawful arrangements, e.g.:

- ✓ DWP Appointeeships where a person’s social security benefits are paid direct to a nominee;
- ✓ where a financial guardianship order or relevant intervention order is in place;
- ✓ where there is a continuing attorney with relevant powers.

Supervision of authorised establishments

The Scottish Commission for the Regulation of Care (the Care Commission) is the supervisory body for registered establishments. Independent and private psychiatric hospitals and care homes must be registered with the Care Commission, and limited registration services may register with the Care Commission from 1 April 2003.

A limited registration service is a service which provides accommodation but is not a care service, i.e. is not otherwise required to register.

Unregistered establishments have the appropriate NHS Board as their supervisory body.

Authorised establishments are accountable to their supervisory body for the proper operation of Part 4 of the Act for residents whose financial affairs are being managed under its provisions.

Will all authorised establishments operate Part 4?

No – managers of registered establishments can opt out by giving notice under section 35 of the Act to the Care Commission. If opt out is exercised, the Registration Certificate of the establishment will state the power to manage under Part 4 does not apply. This information will have to be available to users, potential users of the service, and their carers, as it may influence their decision about whether the establishment can meet their needs appropriately. (Note: unregistered establishments, and limited registration services, cannot opt out of operating Part 4.)

Is best practice guidance available?

Yes – two Codes of Practice give guidance on best practice for operating Part 4 of the Act. They are:

- ✓ Adults with Incapacity (Scotland) Act 2000 Part 4 Code of Practice for Managers of Authorised Establishments.
- ✓ Adults with Incapacity (Scotland) Act 2000 Part 4 Code of Practice for Supervisory Bodies.

Copies have been issued widely. Copies are available from the Scottish Executive, Community Care Division 1, Room 1E.01, St Andrew's House, Regent Road, Edinburgh EH1 3DG. Tel: 0131 244 3546. They can also be seen and downloaded from the website www.scotland.gov.uk/justice/incapacity/.

What sorts of things and amounts may be managed?

Part 4 is most likely to be used for residents with relatively small amounts of money who have no one else to lawfully manage their financial affairs.

Excluding DWP benefits, Part 4 is intended to cover a resident's free assets and income, and other moveable property to which they are entitled. Managers are entitled to manage affairs up to £10,000: beyond that sum they must get written permission from their supervisory body. They will also need to seek written permission from their supervisory body for the disposal of moveable property, the value of which is at, or in excess of, £100.

These limits are set in Regulations approved by Parliament, and may be altered from time to time.

Part 4 allows managers to purchase items for residents' benefit. Examples include personal toiletries, clothes, newspapers, items of furniture, CDs or hi-fi equipment, holidays or other items which are not part of the regular care service provided. Managers may not charge residents directly for the management of their financial affairs under Part 4, but the costs of operating Part 4 can be taken into account by establishments in setting any contract prices. The costs of medical practitioner fees can be recovered from the funds of the resident.

What must be done to enable a manager of an authorised establishment to manage a resident's financial affairs?

The manager of an authorised establishment must first consider all other possible interventions and courses of action, taking account of any lawful arrangements which may be in place already. If the manager's conclusion is that management of a resident's affairs under Part 4 is the most appropriate course of action consistent with the Act's principles, he/she may arrange for an examination of the resident involved by a medical practitioner, having first discussed this with the resident and the resident's nearest relative.

The certificate of one medical practitioner is required to declare an adult incapable of managing their own financial affairs. It applies for three years, unless circumstances change, e.g. capacity returns. The Certificate of Incapacity is in a form which is laid down in Regulations.

If issued, the manager must send a copy of the certificate to the resident and to the supervisory body, who shall notify the nearest relative that this has happened. The manager must also give notice to the resident, and to the supervisory body, that they intend to manage the resident's financial affairs. This notice should include a statement as to what other courses of action in relation to the resident have been considered, and why these were not found appropriate.

If the manager requires to access a resident's funds held by a fundholder or to spend any cash belonging to a resident, they must apply to the supervisory body for a certificate of authority for this purpose. The supervisory body may issue such a certificate in relation to a named resident if it is satisfied this is necessary and appropriate.

Safeguards for residents whose financial affairs are being managed

The Care Commission, or appropriate NHS Board, will inspect establishments which are managing residents' financial affairs and ensure that when a resident's financial affairs are being managed, proper financial accounting and audit measures are in place, and best practice recommended in the Codes of Practice is being followed.

Strict conditions apply to managing resident's financial affairs to ensure their interests are fully safeguarded and that managers, and those acting on their behalf, are fit and proper people to carry out this role. The Care Commission

will deal with matters in relation to Part 4 as part of the overall process of inspecting and regulating the activities of registered services.

NHS Boards will also incorporate matters concerned with Part 4 into their overall performance monitoring processes.

Making a complaint about the way a resident’s financial affairs are being managed

Any complaint about how a resident’s financial affairs are being managed should be made in the first instance to the appropriate manager in the establishment concerned. Every establishment should have published complaints procedures. It may also be appropriate for a complaint to be made to the appropriate supervisory body which also has published complaints procedures. Information on who to contact on a complaint should always be available from the establishment concerned.

Contacts

The Care Commission
Compass House
11 Riverside Drive
Dundee
DD1 4NY

Tel. No. 01382 207 100
Lo-call 0845 6030890
Email: web.enquiries@carecommission.com
Web: www.carecommission.com

Details of the local NHS Board Head Office can be found in the relevant local telephone directory.

Balance Principles

Where can I go for further information?

Further advice on the Act is available on the Executive's AWI website:
www.scotland.gov.uk/justice/incapacity/.

Other sources of information are:

Local Authorities

The Mental Welfare Commission

K Floor

Argyle House

3 Lady Lawson Street

Edinburgh EH3 9SH

Tel. No. 0131 222 6111

Web: www.mwscot.org.uk

The Office of the Public Guardian

Hadrian House

Callendar Business Park

Callendar Road

Falkirk FK1 1XR

Tel No. 01324 678300

Web: www.publicguardian-scotland.gov.uk

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