SCOTTISH STATUTORY INSTRUMENTS

2024 No. 240

ADULTS WITH INCAPACITY

The Adults with Incapacity (Public Guardian's Fees) (Scotland) Regulations 2024

Made - - - -	*5th September 2024*
Laid before the Scottish Parliament	*9th September 2024*
Coming into force - -	*1st November 2024*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 7(2) and 86(2) of the Adults with Incapacity (Scotland) Act 2000(**a**) and all other powers enabling them to do so.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Adults with Incapacity (Public Guardian's Fees) (Scotland) Regulations 2024 and come into force on 1 November 2024.

(2) In these Regulations, "the Act" means the Adults with Incapacity (Scotland) Act 2000.

Fees payable to the Public Guardian

2. Subject to regulations 3 and 4, the fees payable to the Public Guardian in respect of the matters specified in column 1 of the Table of Fees in the schedule (table of fees payable from 1 November 2024) are the fees prescribed in relation to those matters in column 2 of that Table.

Exemption of certain persons from fees: legal aid

3. A fee prescribed by these Regulations is not payable by a person if—

(a) the person is in receipt of civil legal aid within the meaning of section 13(2) of the Legal Aid (Scotland) Act 1986(**b**) in respect of the matter in the Table of Fees in the schedule in connection with which the fee is payable,

(b) the fee is payable in connection with a simplified divorce or dissolution of a civil partnership application and the person is in receipt of advice and assistance from a solicitor under the Legal Aid (Scotland) Act 1986 in respect of that application, or

(c) the person's solicitor is undertaking work in relation to the matter in the Table of Fees in the schedule in connection with which the fee is payable on the basis of any regulations

(**a**) 2000 asp 4. The Adults with Incapacity (Scotland) Act 2000 ("the 2000 Act") was amended by the Adult Support and Protection (Scotland) Act 2007 (asp 10) and S.S.I. 2008/380. Section 87(1) of the Adults with Incapacity (Scotland) Act 2000 contains a definition of "prescribe" relevant to the exercise of the statutory powers under which these Regulations are made. Section 87(1A) provides that any power under the 2000 Act to prescribe anything by regulations is exercisable by the Scottish Ministers.

(**b**) 1986 c. 47. Section 13(2) was amended by paragraph 36(3) of schedule 8 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40).

made under section 36(1) of the Legal Aid (Scotland) Act 1986 providing for legal aid in a matter of special urgency.

Exemption of certain persons from fees: social security

4.—(1) A fee prescribed by these Regulations is not payable by a person if—

(a) the person or the person's partner is in receipt of income support under the Social Security Contributions and Benefits Act 1992(**a**),

(b) the person is in receipt of an income-based jobseeker's allowance under the Jobseekers Act 1995(**b**),

(c) the person or the person's partner ("the party") is in receipt of guarantee credit under the State Pension Credit Act 2002(**c**),

(d) the person or the person's partner is in receipt of working tax credit, provided that—

(i) child tax credit is being paid to the party, or otherwise following a claim for child tax credit made jointly by the members of a couple (as defined in section 3(5A) of the Tax Credits Act 2002(**d**)) which includes the party, or

(ii) there is a disability element or severe disability element (or both) to the tax credit received by the party,

and that the gross annual income taken into account for the calculation of the working tax credit is £20,592 or less,

(e) the person or the person's partner is in receipt of income-related employment and support allowance under the Welfare Reform Act 2007(**e**),

(f) the person is in receipt of universal credit under Part 1 of the 2012 Act,

(g) the person is in receipt of either—

(i) personal independence payment under Part 4 of the 2012 Act, or

(ii) adult disability payment within the meaning given in regulation 2 of the Disability Assistance for Working Age People (Scotland) Regulations 2022(**f**),

provided that the person's gross annual income is £20,592 or less, or

(h) the person or the person's partner has, within the period of 3 months prior to the date the prescribed fee would be payable but for this exemption, received financial or other assistance under the Welfare Funds (Scotland) Act 2015(**g**).

(2) In this regulation—

"partner" means a person to whom a person is married or with whom the person is in a civil partnership,

"the 2012 Act" means the Welfare Reform Act 2012(**h**).

(**a**) 1992 c. 4. Section 124, which provides for income support, was amended by schedules 2 and 3 of the Jobseekers Act 1995 (c. 18); paragraph 28 of schedule 8 of the Welfare Reform and Pensions Act 1999 (c. 30); schedules 2 and 3 of the State Pension Credit Act 2002 (c. 16); paragraph 42 of schedule 24 of the Civil Partnership Act 2004 (c. 33); schedules 3 and 8 of the Welfare Reform Act 2007 (c. 5); section 3 of the Welfare Reform Act 2009 (c. 24), and part 1 of schedule 14 of the Welfare Reform Act 2012 (c. 5).

(**b**) 1995 c.18.

(**c**) 2002 c. 16.

(**d**) 2002 c. 21. Paragraphs (a) and (b) of section 3(5A) were substituted for paragraphs (a) to (d) by paragraph 23(2) of schedule 3 of S.I. 2019/1458. Section 3(5A) was substituted for section 3(5) and (6) by paragraph 144(3) of schedule 24 of the Civil Partnership Act 2004 (c. 33). Part 1 of the Tax Credits Act 2002 was repealed by part 1 of schedule 14 of the Welfare Reform Act 2012 subject to savings provisions in S.I. 2019/167.

(**e**) 2007 c. 5.

(**f**) S.S.I. 2022/54.

(**g**) 2015 asp 5.

(**h**) 2012 c. 5.

Revocation

5. The Adults with Incapacity (Public Guardian's Fees) (Scotland) Regulations 2022(**a**) are revoked.

SIOBHIAN BROWN
Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
5th September 2024

(**a**) S.S.I. 2022/184.

SCHEDULE

Regulation 2

TABLE OF FEES

Payable from 1 November 2024

Column 1 *(Matters)*	*Column 2* *(Fee payable)* £	*Column 3* *(Fee formerly payable)*(**a**) £
1. Submission of a continuing power of attorney, a welfare power of attorney or a combined continuing and welfare power of attorney under section 19 of the Act.	96	87
2. Registration of a deed of amendment to a continuing or welfare power of attorney under section 19 of the Act.	96	87
3. Provision of a duplicate or replacement of a certificate issued under section 19(2) of the Act.	22	20
4. Audit of accounts submitted by a continuing attorney under section 20(2)(b) of the Act.	149	135
5. Submission of an application for authorisation to obtain information about the adult's funds under section 24C of the Act and, where such an application is granted, the issue of a certificate authorising any fundholder to provide the applicant with such information.	107	97
6. Where there is no application under section 24C, the submission of an application for authorisation to intromit with funds under section 25 of the Act and, where such an application is granted, the issue of a certificate of authority to the withdrawer.	107	97
7. Submission of an application for appointment or provision of a certificate or duplicate certificate of authority under any of section 26B, 26D, 26E, 26F or 26G of the Act.	22	20
8. Provision of a duplicate or replacement of a certificate of authority issued under any of section 24C(3), 24D(3), 25(4)(b), 26B(4)(b), 26E(3)(b), 26F(3)(b) or 26G(4)(b) of the Act.	22	20
9. Submission of an application for renewal of authority to intromit with funds under section 31B of the Act and, where such an application is granted, the issue of a certificate of authority to the joint withdrawer.	61	55

(**a**) Column 3 shows the fees payable by virtue of the schedule 3 of S.S.I. 2022/184 immediately before the coming into force of this schedule.

10. Provision of a copy of any document—		
(a) up to 10 pages,	8	7
(b) each page thereafter,	0.50	0.50
(c) in electronic form, per document.	8	7
11. Registration and/or variation of a guardianship or an intervention order and registration of a renewal of a guardianship order under Part 6 of the Act.	107	97
12. Recall of the powers of a guardian under section 73 of the Act—		
(a) for an estate with no heritable property,	66	60
(b) for an estate with heritable property.	149	135
13. Consideration of guardian's management plan and inventory, in accordance with paragraphs 1 and 3 of schedule 2 of the Act—		
Estate value (excluding heritable property)		
£0 to £30,000,	66	60
£30,001 to £50,000,	300	273
£50,001 to £250,000,	598	544
£250,001 to £500,000,	996	905
£500,001 and over.	1,499	1,363
14. Consideration of an application for consent made in accordance with paragraph 6 of schedule 2 of the Act.	69	63
15. First review of accounts submitted in accordance with paragraph 7 of schedule 2 of the Act—		
Estate value (excluding heritable property)		
£0 to £30,000,	99	90
£30,001 to £50,000,	246	224
£50,001 to £250,000,	695	632
£250,001 to £500,000,	899	817
£500,001 and over.	1,199	1,090
16. Intermediate review of accounts submitted in accordance with paragraph 7 of schedule 2 of the Act (where the Public Guardian has specified limited supervision)—		
Estate value (excluding heritable property)		
£0 to £30,000,	99	90
£30,001 to £50,000,	246	224
£50,001 to £250,000,	695	632

£250,001 to £500,000,	899	817
£500,001 and over.	1,199	1,090
(NOTE: these fees only apply where the Public Guardian has requested formal accounting.)		
17. Final review of accounts submitted in accordance with paragraph 7 of schedule 2 of the Act—		
Estate value (excluding heritable property)		
£0 to £30,000,	186	169
£30,001 to £50,000,	347	315
£50,001 to £250,000,	787	715
£250,001 to £500,000,	988	898
£500,001 and over.	1,289	1,172

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the fees payable from 1 November 2024 to the Public Guardian.

Regulation 2 and the schedule specify fee levels payable in respect of certain matters, given effect by the Table of Fees in the schedule.

Regulations 3 and 4 exempt certain persons from payment of fees.

Regulation 5 revokes the Adults with Incapacity (Public Guardian's Fees) (Scotland) Regulations 2022.

A Business and Regulatory Impact Assessment has been prepared for these Regulations and placed in the Scottish Parliament Information Centre. Copies can be obtained from the Scottish Government Justice Directorate, St Andrews House, Edinburgh EH1 3DG.

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