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Part three - Guardian, Curator Bonis & Tutor, Scotland

Introduction

- 3000 When a customer is incapable of managing their affairs and therefore incapable of appointing another person to act on their behalf, an application can be made to the court in Scotland to appoint a Guardian, Curator Bonis or Tutor.
- 3001 A court will grant a Guardian or Curator Bonis full powers to act in all matters.
- 3002 A court decree may grant a Tutor:
- full powers to act in all matters or specifically all Social Security matters or
 - limited powers which will not include the power to act on behalf of the customer in relation to property or Social Security matters
- 3003 A Guardian, Curator Bonis or Tutor appointment is always made in favour of an individual. The person to whom a Guardian, Curator Bonis or Tutor is appointed is the customer.
- 3004 A Guardian, Curator Bonis or Tutor with full powers to act on the customer's behalf, takes precedence over any other type of Scottish OP.
- 3005 A Curator Bonis or Tutor appointed for an adult must have been appointed, or the court proceedings started, on or before 31 March 2002.
- 3006 On or after 1 April 2002, Guardians are appointed for adults instead. The OPG will issue a Certificate of Registration.
- 3007 All existing Curator Bonis' or Tutors appointed for an adult before this date will automatically become Guardians from 1 April 2002, although they will retain their original powers under the old law.
- 3008 - 3009

Position in the order of authority

- 3010 A Guardian, Curator Bonis or Tutor granted full powers to manage all of the customer's affairs in Scotland has the same authority as a receiver in England/Wales.
- 3011 If a Guardian, Curator Bonis or Tutor with full powers is appointed while another type of OP of an equal or lower authority exists, the existing OP arrangements must be ended and replaced with the Guardian, Curator Bonis or Tutor. For a full list of OPs, see *Part one* of this guide.

Example

The customer has an appointee authorized by an officer acting on behalf of the Secretary of State.

A court in Scotland subsequently appoints a Guardian to act on the customer's behalf.

After verifying the court decree appointing the Guardian, you must terminate the appointeeship and record the Guardian as the OP instead.

For more information, see *Changing the customer's OP/COP* in *Part six* of this guide.

3012 - 3049

Verifying the Evidence of Appointment

- 3050 If you receive a claim or enquiry from any person stating that they are the customer's Guardian, Curator Bonis or Tutor, ask to see evidence of the appointment. If such evidence empowers the person to act in all matters, or specifically in Social Security matters, they may act on behalf of the customer. Evidence of appointment will normally mean a court order.
- 3051 If a Guardian, Curator Bonis or a Tutor has been appointed to act on behalf of a customer, they may do so without further authority from the Secretary of State.
- 3052 If, exceptionally, the powers contained in the decree are limited, refer the case to the nominated / appropriate officer to consider appointee action. For information about authorizing an appointee, see *Appointee* in *Part five* of this guide.

Guardian appointed on or after 1 April 2002

The Adults with Incapacity (Scotland) Act 2000

- 3053 The Adults with Incapacity (Scotland) Act 2000 provides that the courts can appoint welfare guardians or financial guardians to deal with the affairs of the customer. Welfare Guardians will not usually be given powers to deal with the financial affairs of the customer.
- 3054 If you receive a request from someone who claims to have been made the customer's Guardian ask to see both the "interlocutor" and the Certificate of Registration. The "interlocutor" is the court document which specifies the powers that have been granted to the guardian. The Certificate of Registration is issued by the OPG to show that the guardianship order has been registered with them.
- 3055 Where more than one person has been appointed by the OPG all those named must have a Certificate of Registration. Check the proceedings began on or after 31 March 2002.
- 3056 In all cases where it is clear that the guardianship order includes the power to administer the financial affairs of the customer, do not take any appointee action. The guardian is authorized to deal with the customer's social security affairs. See also para. 3010.
- 3057 **Guardianship Orders should be sent to:**
DWP Devolution Policy Team
Silvan House, 2nd Floor
231 Corstorphine Road
Edinburgh
7EH12 AT
- Tel: 0131 310 1161**
- E-mail:** The address is listed on the GAL as DWP Devolution Policy Team
- Courier:** Edinburgh Information and Devolution Policy
- 3058 If Information Management, Devolution and Governance, Devolution Team confirm that the Guardian has authority to handle the social security benefit affairs of the customer, see *Creating an OP/COP relationship in Part six of the guide.*

Intervention Orders

3059 The Adults with Incapacity (Scotland) Act 2000 also gives the courts power to impose intervention orders. These are intended as a temporary measure in relation to a specific act or decision on behalf of the customer in order to protect their interests.

It should be noted that an Intervention Order, even where it includes authority to manage benefit payments, does not take priority over an appointment made by the Secretary of State. They can operate simultaneously. In practice you should consider whether this would be the best approach for the customer. As the Intervention Order is likely to cover all the customer's financial affairs and not just benefits, then if there is an existing appointment you may want to consider revoking it. This will require careful consideration and discussion with all parties.

3060 The length of time the intervention order is in force, and the powers specified in the order will determine whether the Department needs to take any action.

3061 Intervention Orders should be sent to the Devolution Policy Team. See *para 3057* for details.

3062 Issue any claim forms and record the following:

1. details of the PAB;
2. whether the appointment is of Guardian, Curator Bonis or Tutor;
3. the number and date of the order of appointment;
4. the receipt and disposal of the OB if appropriate.

Forward a copy of the appointment to all other appropriate benefit sections.

3063 If the powers of appointment are limited and/or it is not clear whether the person is appointed to deal with Social Security matters, refer the case to the supervisor or team leader to consider referral to Information Management, Devolution and Governance, Devolution Team for normal appointee action.

3064 - 3099

Responsibilities of a Guardian, Curator Bonis or Tutor

3100 If the court empowers a Guardian/Curator Bonis/Tutor to act in all matters, or specifically all Social Security matters, the Guardian/Curator Bonis/Tutor becomes fully responsible for the customer's financial affairs. This includes:

- claiming benefit/s, including completing and signing any claim forms
- collecting/receiving benefit payments **and**
- reporting any changes in circumstance

3101 A Guardian, Curator Bonis or Tutor is also responsible for reporting changes in their own circumstances that the Secretary of State may require, eg a change of address or change of account.

3102 - 3149

After you verify the Evidence of Appointment

3150 After you verify that the court has appointed the Guardian/Curator Bonis/Tutor to act on behalf of the customer, see *Action following verification of a PAB/COP* in *Part six* of this guide.

3151 - 3999

