

ACCOUNTANT OF COURT



NOTES

FOR THE GUIDANCE

OF

CURATORS

(As at 1 September 2000)

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INTRODUCTION TO THE OFFICE OF THE ACCOUNTANT OF COURT

The Accountant of Court is an Officer of Court who supervises Curators appointed by the Courts, to ensure that the Curator manages the Ward's estate (or Curatory) properly.

The person whose estate (any property, money, pensions, etc) the Curator is appointed to manage is commonly called "the Ward".

The Accountant's staff, as well as ensuring that the Curator acts correctly, are there to assist Curators carry out their duties and provide advice and assistance with the many questions and difficulties which may arise. In many cases an initial meeting with a Curator may prove to be beneficial to both the Curator and the Staff of the Accountant's Office, as it can provide an insight into duties and requirements of the Curator.

The duties are not only to preserve and protect the Estate but also to manage it in the best interests of the Ward in order to ensure the best possible quality of life for the Ward. In order to achieve this, any revenue (interest, dividends, pensions, etc) may be used. It may be, particularly if the Ward is resident in a privately funded Nursing Home, that some of the Ward's capital may require to be utilised - this may only be done with the Accountant's approval (see Item 9 of the Notes on page 8). The Accountant's approval is also required, if there is a requirement to purchase unusual or expensive items.

The Curator's first duty is to take control of the Ward's estate, ensure that all benefits which the Ward may be entitled to are being claimed. It is important that the administration of the estate is managed in the most effective and efficient manner. Accordingly the Curator should consider methods of payment of Accounts etc (including periods thereof). The receipt of benefits, pensions etc should likewise be dealt with in a manner that ensures administrative work and expense is kept to a minimum.

Thereafter the Curator must lodge a formal Inventory with the Accountant. The Inventory must be submitted to the Accountant within 6 months of the Curator's appointment (the Curator is advised of this date by a letter from the Accountant at the time of Appointment). Once the Inventory has been agreed with the Accountant, and the funds appropriately invested, the next formal stage is the preparation of the Annual Account of the Curator's dealings with the Ward's Estate. The Curator is advised of the date of the first Account by the Accountant (each subsequent Account will be due on the same date). An example of the type of Account required by the Accountant is shown at Appendix B page to these Notes (with guidance on completion at Appendix A).

At any time during the Curator's appointment if it is considered that an unsatisfactory service is being provided by the Accountant's Office, then the Curator should immediately contact the Accountant (Ext 6756) or his deputy (Ext 6757) who will attempt to resolve the problem.

The Notes which follow are intended to deal with the most common matters which a Curator will require to deal with and should provide guidance in the administration of the Curatory.

Telephone Number:- 0131 240 6758/6760 (General Enquiries)

Fax Number:- 0131 240 6771

If they have difficulty in getting about and are below retirement age, they may be entitled to a mobility allowance. Once the capital of the estate of the incapax is reduced to a prescribed level, at present £16,000, Income Support may be payable together with a "care allowance" from the Local Authority.

7. Inventory¹

An Inventory detailing the Ward's estate (as at the date of the Curator's appointment) requires to be completed and returned to the Accountant for examination as soon as possible, but certainly no later than 6 months from the date on which the Bond of Caution was lodged with the Accountant.²

With regard to the Form of Inventory the following points should be noted:

(a) The date of the Curator's appointment registered by the Accountant is shown on the backing to the Inventory. If this date does not agree with the date of appointment advised to you, you must as a matter of urgency forward the Certified Copy Interlocutor/Extract Decree of your appointment to the Accountant in order that he may take action to ascertain the correct date.

(b) The estate given up in the Inventory should be the estate exactly as it existed at the date of your appointment (subject to (f) below).

(c) Balances at credit of bank and building society accounts should NOT include accrued interest but pass books should be written up-to-date prior to being exhibited to the Accountant.

(d) The Accountant has no power to extend the time for lodging the Inventory. If the full estate cannot be ascertained within the time limit, the Inventory should be lodged showing any unascertained estate as an estimated figure.

(e) The Inventory must be accompanied by all the documents necessary to vouch the estate given up therein. In this connection it should be noted that in general photocopies of documents are not considered by the Accountant sufficient to vouch the estate.

(f) Where another person has previously acted as Curator, the case falls to be treated as a continuing trust. In such cases the Inventory falls to be completed showing the estate exactly as detailed at the close of the previous Curator's final Account and where the estate has been divided in terms of the Trustee Investments Act 1961, (as amended by the Trustee Investments (Division of Trust Fund) Order 1996) the division and value of investments in previous Curator's Accounts should be retained.

¹ See Appendix E for further guidance on Inventories

² Judicial Factors Act 1849 Section 3

8. Additional Estate

Any additional estate or interest which comes to light after the Form of Inventory has been examined should be brought into the Curator's next Account under "Additional Estate".

9. Investment

(a) Bank and Building Society. A Curator may deposit Curatory funds in any institution approved under the Banking Act 1987¹ (which includes all the well known banks) or in National Savings Bank or in a building society deposit account (but not in building society share accounts). Accounts must be held in the name of the Curator as such.

(b) Investment of Estate. In terms of the Trusts (Scotland) Act 1921, a Curator is designated a Trustee and is therefore subject to the provisions of the Trustee Investments Act 1961 (as amended). This Act enabled Curators for the first time to invest in, among other things Unit Trusts, ordinary shares in a Company registered in the UK with paid-up capital of £1 million and which had paid a dividend in each of the past 5 years and building society share accounts. The First Schedule to the Act lists the investments available:

Part I lists the Narrower Range Investments not requiring advice which include investment in National Savings Certificates and National Savings Bonds.

Part II lists the Narrower Range Investments requiring advice which include UK Government Stock, Local Authority Bonds, debentures in any company that qualifies as a Wider Range Investment and Gilt Unit Trusts.

Part III lists the Wider Range Investments requiring advice which include Unit Trusts, ordinary shares in UK Companies and Building Society Share Accounts.

It is not necessary to divide the estate in terms of the Act unless it is proposed to purchase wider range investments and indeed it must be questionable whether in view of the additional administrative work involved it is worth doing so in estates of under £20,000. Where, however, a Curator wishes to take advantage of the wider powers of investment conferred by the Act the Accountant requires him/her to produce for his consideration a Scheme of Investment prepared by a person qualified by ability and practical experience of financial matters, normally a Stockbroker².

Curators tend to have problems with the division of the estate in terms of the Act and put in very simple terms the position may be stated as follows:

¹ **Judicial Factors Act 1849 Section 5 as amended by Law Reform (Misc Prov) (Scotland) Act 1990 Section 8.**

² **Trustee Investments Act 1961 Section 6**

(1) The Scheme of Investment requires to re-value the estate¹ and divide it, including cash, into 2 parts², one to be known as the narrower range and the other as the wider range which, at date of division, require to be in proportion of 1:3 in favour of the Wider Range.

(2) The narrower range may include only narrow range investments but the wider range may include both wider and narrower range investments.

(3) Revenue falls to be treated as additional estate. For Curatory purposes the Accountant considers that the surplus of revenue over expenditure in the accounting year falls to be divided in the above proportion.

(4) The ranges will remain in said proportion unless one of two things happens:

(i) there are realisations in which event the gain or loss on the realisation accrues to the range in which the investment is held, or

(ii) there is deficit of revenue over expenditure in the accounting year in which event the Curator has a discretion to take the deficit from whichever range he chooses.

Once the Accountant has considered the Scheme of Investment it is not necessary to consult him with regard to changes in investment or the investment of surplus funds, but the written advice obtained should be available if called upon at audit.

(c) Regularising the Investment position

In normal circumstances a Curator is expected to regularise the investment position ie comply with the requirements of the Trustee Investment Act 1961, within one year of the date of his/her appointment. In very large estates, where regularising the position within the above time scale would result in a considerable capital gain tax assessment, the Accountant on the advice of the Curator's financial advisor drawing up the Scheme of Investment, may be prepared to extend the time for regularising the position. The Accountant should be contacted in this situation in order that the matter be discussed and agreed.

¹ Trustee Investments Act 1961 Section 5

² Trustee Investments Act 1961 Section 2

10. Powers of Curator and Special Powers

(a) General

A Curator is appointed with the "usual powers" and such powers enable him/her to ingather, realise and invest the estate, pay debts and apply the revenue of the estate for the benefit of the Ward. It is outwith a Curator's normal powers to sell the Ward's home unless it is a matter of extreme necessity, that is, the Ward would have had no option but to sell it. It is, however, within a Curator's normal powers, subject to the Accountant's approval, to sell heritage which is not the Ward's former home as such property is regarded as being held in the nature of an investment. It is also within the Curator's normal powers to give up the tenancy of a house and to sell the furniture therein although special considerations may apply where a Ward is a tenant of a local authority house.

It is outwith the Curator's normal powers to concur in the sale of property liferented by the Ward or renounce a liferent interest.

It is the duty of the Curator to claim legal rights where there is no testamentary provision in favour of the Ward, but it is outwith a Curator's normal powers to claim legal rights in preference to a testamentary provision, special powers being necessary.

Other matters outwith a Curator's normal powers include carrying on a business, entering into a lease which creates a protected tenancy, an agricultural lease, resigning on behalf of the Ward as Trustee, investing in an annuity and encroaching on capital unless the Accountant considers the estate sufficient to support the Ward during his or her lifetime.

Where the income from the estate of a Ward is insufficient for the maintenance of the Ward the Curator may apply to the Accountant of Court for his consent to encroach on the capital of the estate for the purpose of maintaining the Ward.

On an application for encroachment the Accountant of Court may where such encroachment does not exceed 5% of the Capital as at the date of the application consent to the application.

If the Accountant is unable or declines to consent to the application, formal intimation to all interested parties in terms of the Rules of Court will be required.

(b) Procedure for obtaining Additional Powers

There are now 3 different procedures by which additional powers may be obtained:-

- (i) by including a crave (ie application) for Special Powers in the Petition for the appointment of the Curator. Where a crave is included in the Petition for appointment the Court will not grant the additional powers immediately, but after the Curator has been appointed and found Caution the Court will, on lodgment of a Motion, remit the Process to the Accountant who will draft his report and issue it to the law agents acting for revision and return. When returned the report is signed and returned to the Court, who should issue an interlocutor granting or otherwise disposing of the application (in the Court of Session a Motion to grant Special Powers is required).

- (ii) by the Curator making an application for Special Powers in terms of Section 7 of the Judicial Factors Act 1849;

Where an application is made in terms of Section 7 of the Judicial Factors Act 1849, the Curator requires to make a formal application to the Accountant detailing the powers required and why (a letter is insufficient). The application must accordingly be signed by the Curator. The Accountant drafts his report and issues it for revision and return.

Thereafter the Curator's application and the Accountant's report are returned to the Curator or his law agents to be incorporated in a Note to the Court. Once service of the Note has been made the Court will deal with any objections and grant or otherwise dispose of the application..

- (iii) by an application to the Accountant for his formal Consent in terms of Rules of the Court of Session 61.13 or 61.14 or Sheriff Court Rules 15 or 16.

The Accountant is authorised to give his Consent to encroach on capital in terms of Rule of the Court of Session 61.13 and Sheriff Court Judicial Factors Rule 15. He is also authorised to give his Consent to any powers which may be sought in terms of Section 2(3) of the Trusts (Scotland) Act 1961, in terms of Rule of the Court of Session 61.14 and Sheriff Court Judicial Factors Rule 16.

When an application is made in terms of Court of Session Rule 61.13 or 61.14 or Sheriff Court Rule 15 or 16 the Curator writes to the Accountant stating the powers required and why. The letter must be signed by the Curator personally. At the same time he/she sends in terms of the above Rules a notice by recorded delivery post to, in the case of Rules 61.14 and 16, all those on whom the Petition for appointment was served, plus the petitioner and the cautioner, in the case of Rule 61.13 and 15 all those with an interest in the Ward's estate plus the cautioner advising them of the powers he/she is seeking and that they have a right to object thereto by letter sent to the Accountant within 28 days. The Curator requires to send to the Accountant a copy of the letter served together with the recorded delivery slips and, in due course, provided there are no objections, the Accountant will issue his formal Consent with his official seal thereon. It should be noted, however, that the Accountant will not, in general, deal with objections and that if any objections are received a fresh application for Special Powers will require to be made in order that the Court can consider and deal with the objections unless, of course, the objectors can be persuaded to withdraw. It should also be noted that the procedure is considered to be **factorial** in nature and accordingly no Solicitor's Business Account will be allowed.

11. Accounts

A. General

With these Notes you will have received a letter advising you of the closing date for your annual Accounts. Such Accounts should be lodged for audit within one month of that date. The Accountant has power to extend the time for lodging such Accounts where there is good reason for him doing so, but has no power to extend the time beyond 3 months from the closing date.¹

The Accounts require to be in the form of an Account of Charge and Discharge and a style of such account, and instructions on how to complete it are given in Appendices A page 17 and B page 19 to these Notes. If you have difficulty in drawing up your Account the staff of the Accountant will be pleased to assist you.

Signature - All Accounts require to be signed by the Curator personally and the signature of an agent will not be accepted.

B. Vouchers

Accounts must be accompanied by all the documents necessary to vouch them with the exception of bank books, stock and share certificates etc. The Charge side of the Account should be vouched by the dividend warrant counterfoils, pension advice notices, remittance advice notices, bank certificates of encashment, contract notes (to vouch realisation of shares), redemption warrant counterfoils, letters remitting etc. The Discharge side of the Account by detailed receipts, taxed and receipted legal accounts, invoices supported by paid cheques (Invoices on their own or paid cheques drawn on a firm's client account on their own are in general insufficient for the Accountant's purpose) and contract notes to instruct investments purchased. The bank books, stock and share certificates, bonds, National Savings Certificates and other documents necessary to vouch the Estate at Close should not in general be forwarded with the Account but will be called for by the Accountant when required. Bank Sheets covering the period of the Account should, however, be produced where appropriate.

¹ **Judicial Factors Act 1849 Section 4**

C. Account Current

The Curator need not lodge an Account Current or Cash Account bringing out the day-to-day balances in his hands, but the Accountant reserves the right to call for such an account where excess balances have been held on hand or where there is difficulty in ascertaining the balance due to or by the Curator.

D. Cash in hands of Curator

A Curator is not entitled to retain on hand balances in excess of the statutory limit of £500 for more than 10 days¹. Since there is no provision for retaining Curatory funds in non interest bearing bank accounts any funds held therein are regarded as balances in hands of the Curator. Where excess balances are held for more than 10 days a Curator may be personally liable to penal interest at the rate of 20%.

E. Accountant's Audit Report

On the initial audit of the Curator's Account being completed the Accountant will issue to the Curator or to Agents acting on behalf of the Curator his Audit Report. The Audit Report will fix the commission due to the Curator for his work, strike the balance due to or by the Curator and list in the Notes thereto the Accountant's further requirements, if any. The Audit Report requires to be returned within 20 days of its issue. If any of the findings in the Report are not objected to within 20 days they will be binding on the Curator, (eg, if the Commission fixed is not considered to be adequate by the Curator, the Curator must lodge objections thereto within 20 days of the issue of the Audit Report otherwise the Commission fixed will stand)² Where necessary the Audit Report may be issued with Second Notes stating the Accountant's further requirements. When the Audit Report has been returned and the audit finally completed the Accountant signs the Audit Report and issues an audit fee note.

12. Commission.

(a) General.

A Curator is remunerated for Factorial Work by way of Commission. The Accountant fixes the commission due to the Curator at the audit of Curator's Accounts³. Commission will be fixed by the Accountant at such sum as the Accountant in his experience considers reasonable for the work performed, keeping in view the size of the estate and the income ingathered. In general it is not considered appropriate to fix commission on an hourly basis and commission is therefore fixed on a percentage basis. One of the purposes of a Curatory appointment is to protect the estate. The Accountant must therefore ensure that the commission is not fixed at such a level that it takes an undue percentage of the revenue available to the Ward.

¹ Judicial Factors Act 1849 Section 5 as amended by Law Reform (Misc Prov) (Scotland) Act 1980

² Judicial Factors Act 1849 Section 15

³ Judicial Factors Act 1849 Section 13

(b) VAT

The appointment of a Curator is personal to the individual and the commission fixed to the Curator is only subject to VAT where the Curator is both registered for VAT and carries out his factorial duties in furtherance of business activities.

(c) Solicitor Curator

(i) Where a Solicitor acts as Curator and his firm carries out legal work on behalf of the Ward his/her firm may not charge a business account against the estate¹ and will fall to be remunerated by way of a fee being included to cover the work in the commission fixed at the audit of the annual Account. The exception to this rule is the expenses of the Curator's appointment.

(ii) Outlays for legal work properly incurred may be charged against the estate as and when incurred, without reference to the Accountant.

13. Legal Accounts.

Subject to what is written under "Solicitor Curator", legal accounts require to be submitted to the Accountant who will intimate whether he requires them to be taxed by the Auditor of Court.

14. Legal Proceedings.

A Curator is not entitled to enter into legal proceedings or take the Opinion of Counsel without first obtaining the Accountant's approval. If the Accountant's approval is not obtained and the Accountant considers the expense to have been incurred unnecessarily he may disallow the charge in the Curator's Accounts.

15. Agents acting on behalf of a Curator.

A Curator's normal work is termed as "factorial" work. The Curator has a duty to carry out this work and where he/she employs agents (a solicitor or accountant) to do this work, then the Curator is personally liable for the agent's charges. In practice, the agents will normally set off their charges against the commission fixed to the Curator at the audit of his/her annual Account. The only work which would not be termed factorial in nature is strictly legal work and charges for this work will form a proper charge against the estate, subject to what is written in the Notes on "Legal Accounts" and "Legal Proceedings".

¹ Mitchell & Ors v Burness 1878 5R 1124

16. Termination of Case - General.

(a) Death of Ward

Where a Ward dies the Curator's appointment falls and he/she has no power to transact further with the Ward's estate. If the Curator does so he/she requires to account to the Executor for such transactions. Where a Curator dies the Bond of Caution covers his/her Representative's actings and accordingly the Representative has power to carry out any necessary acts until such time as a new Curator is appointed. It is the Accountant's practice, therefore, to require the late Curator's Representative to lodge a final Account down to the date on which the new Curator is appointed.

On the death of the Ward the Curator should immediately advise the Accountant thereof and forward an Extract Certificate of Death. In due course the Curator will require to lodge a final Account of his/her intromissions down to the date of the Ward's death. The Accountant's instructions for closing the case will be given in the Notes to his Audit Report on the Account. The Accountant will insist on the estate being handed over to a party with a title thereto. Accordingly unless the estate will be exhausted in meeting the funeral and deathbed expenses etc, the Accountant will normally insist on Confirmation in favour of an Executor being exhibited. The Accountant will also require a detailed receipt by the Executor for the estate as at close of the Curator's final account, annotated to the effect that the estate is subject to the closing expenses of the Curator.

(b) Administrative Discharge¹

Where a Ward has died or recovers, or a minor Ward has become entitled to administer his/her estate or the estate has been exhausted, procedure has been introduced which enables the Curator (without employing law agents or going back to the Court) to obtain from the Accountant an "Administrative Discharge". In order to obtain an Administrative Discharge the Curator merely makes application by letter to the Accountant for a Certificate of Discharge. In cases of recovery, satisfactory medical evidence must be produced. At the same time the Curator sends a Notice to all those with an interest in the Ward's estate to the effect that an application has been made for a Certificate of Discharge and that they have a right to lodge objections within 21 days. (A style Notice is included at Appendix C (page 33) to these Notes). If no objections are received and the Accountant has himself no objections to a discharge being granted, he will issue a Certificate of Discharge and advise the Court that such a certificate has been issued. If objections are received the Accountant considers them and then issues his determination thereon. The Curator or the person lodging the objections has 14 days to appeal to the Sheriff against the Accountant's determination. After considering the matter in chambers the Sheriff may direct the Accountant to sign the Certificate of Discharge or appoint the Curator to lodge a petition for his/her discharge or make such further order as he considers appropriate. It should be noted that a judicial application for discharge will not be accepted by the Court where an Administrative Discharge is available.

¹ **Law Reform (Misc Prov) (Scotland) Act 1990**

Act of Sederunt (Rules of the Court of Session) 1994 Rule 61.31

Act of Sederunt (Sheriff Court Judicial Factors Rules) 1992 Rule 19

An Administrative Discharge may also be available on the death of a Curator if (a) the estate is substantially exhausted or (b) the Ward dies before a new Curator is appointed.

Full instructions on the procedure are issued by the Accountant with his Audit Report on the Curator's final Account.

(c) Judicial Discharge

(i) Where new Appointment Necessary.

Where a Curator dies or wishes to resign it will still be necessary to petition the Court for the appointment of a new Curator and such petitions should include a crave for the discharge of the previous Curator and where appropriate his Representatives.

(ii) Ward Recovered.

Where the Ward has recovered a petition may be presented for the Recall of the Curator supported by 2 medical certificates. The petition should include a crave for the discharge of the Curator.

17. Miscellaneous

A. Aliment

(a) Payments to Spouse:

Once the financial needs of the Ward have been met the balance of the revenue will be available to aliment the other party to the marriage. Where, however, the Ward is moved into a private nursing home and the total income of the Ward is required to meet the nursing home charges this may result in his/her spouse being deprived of the income which they had previously been receiving for their maintenance. In that situation a Curator could make an application to the Court for special powers to encroach on the Ward's capital to aliment the Ward's spouse or the spouse could herself apply to the Court for payments of Aliment out of capital.

(b) Payments to Children.

There is a duty to aliment children under 18 or over 18 and under 25 where undergoing instruction at an educational establishment or, training for employment or a trade, profession or vocation. Such payments fall to be met from free revenue (income) and usually require to be set by an expert, by agreement, or failing such, agreement, by application to the Court.

B. Executor qua Curator

Where a Ward is entitled to inherit the estate of a deceased person and is also (1) nominated Executor in a Will; or (2) if capax would be entitled to be appointed Executor Dative, the Curator should in (1) above enter into the duties of Executor on behalf of the Ward; and in (2) be appointed Executor Dative qua Curator in respect of the Ward. In respect that his/her appointment as Executor stems from his/her appointment as Curator, his/her intromissions with the Executory estate come under the Accountant's supervision and the Accountant will require to audit the Executory accounts. Where the Curator is a Solicitor, the Accountant will require to include in the Commission fixed at the audit of the Curator's annual Account a fee to cover all Executory work including legal work. Where the Curator is not a Solicitor, the law agents will be entitled to charge an account for all work up to the obtaining of Confirmation. The legal account should be fully detailed and submitted to the Accountant who will decide whether it requires to be taxed.

C. Joint Bank Accounts and Holdings

A Curator has a duty to ingather and place in his/her own name as Curator the Ward's estate. Where there are joint holdings they must be disentangled and the Ward's share transferred to the Curator's control. Where joint bank accounts are concerned this process should be effected in such a manner that it does not deprive the joint owner of the use of his/her own funds. In this respect it may be noted that in law the funds in a joint bank account belong to the person who contributed them but where funds are intermixed, the Accountant will in most circumstances accept a 50/50 split.

D. Commission and Brokerage

All commissions and brokerage received by a Curator or agents acting on his/her behalf fall to be credited to the Ward's estate¹. Such commission would include commission paid to law agents by building societies, commission on insurance premiums and brokerage on stock exchange transactions.

E. Factor appointed in terms of Children (Scotland) Act 1995

Following upon an action of damages in the Court of Session or the Sheriff Court, a sum may be awarded to a person of non age or a sum of damages may be negotiated on behalf of a person of non age and subsequently given effect to by the Court approving a Joint Minute between the parties and a Factor appointed in terms of Section 13 of the Children (Scotland) Act 1995. Such appointments proceed in a similar manner to a normal Curatory.

Similarly, where a Judicial Factors is appointed by the Court after application by the Accountant in terms of Section 9 of the 1995, administration of the estate proceeds in the same manner as a Curatory.

F. Extraordinary Expenditure

In normal course the Accountant's prior approval is not required to the purchase of essential clothing etc for the Ward except where the Curator considers the demands of those looking after the Ward to be excessive. The Accountant's approval should, however, be obtained to the periodic payments from the Ward's estate and to extraordinary expenditure or to expenditure which is likely to result in encroachment on capital. In particular major repairs to heritable property always require the Accountant's approval.

G. Property Insurance

A Curator is obliged to ensure that the Ward's heritable property and valuable personal property is adequately insured.

H. Advice and Assistance

The Staff of the Accountant of Court are available to provide advice and assistance in any case. In particular, if a Curator is in any doubt over how to proceed in any matter it would be worthwhile discussing the matter with one of the Case Officers. It is particularly helpful to the Accountant if telephone queries which are to be acted upon are confirmed in writing.

¹ A B & C D Cases 1927 S C p 902

APPENDIX A

NOTES ON COMPLETION OF PRO-FORMA ACCOUNT

Estate at Start

1. In the First Account

This should be the fully detailed estate as disclosed by your Inventory ie all the estate as at date of your appointment.

In Subsequent Accounts

This should be the fully detailed estate brought forward from close of your previous Account.

All Accounts

Pensions and allowances which are in receipt should be detailed as a note to the end of the Account.

Revenue

2. (i) Name and amount of company or holding should be shown. In the case of bank accounts, account number should be shown.
- (ii) Show the type of pension or allowance and the dates covered by the payment.
- (iii) Show the tax year for which the repayment is made.
- (iv) Any other revenue ie Trust income, rent etc.

Gain or Loss on Realisation

3. Detail any estate realised (sold) with the resultant gain or loss extended. (losses to be deducted).

Additional Estate

4. Show any estate subsequently discovered ie stocks, shares, bank accounts or any refunds or miscellaneous monies received.

Maintenance & Repairs to Property

5. Show any outgoings in respect of property eg insurance, household bills, repairs etc.

Maintenance of Ward

6. Show all monies paid to Hospital or Nursing Home, money spent on holidays, clothes etc.

Management Expenses

7. First Account

Show legal expenses in connection with the Curator's appointment, the Accountant's fee for Inventory, Bond of Caution premium etc.

In Subsequent Accounts

Commission fixed to the Curator, Accountant's audit fee, Bond of Caution premium etc.

Estate Invested

8. Show any stocks or shares bought or any substantial capital expenditure ie car or home improvements. Such expenditure should *not* be extended into the main body of the Account as it should be included in the Estate at Close.

Any Other Expenses

9. Include *any* other items of expenditure which have been made on behalf of or on the Ward.

Estate at Close

10. Show all estate held and fully detailed, stocks shares property, bank accounts including those acquired during the period of the Account.

**The Accountant's Staff are available to assist Curators
in the preparation of Accounts**

Telephone Number: 0131 240 6758/6760

Office Hours:- Monday to Friday 10.00 am - 1.00 pm & 2.00 pm - 4.00pm

APPENDIX B

ACCOUNT of CHARGE and DISCHARGE

of the Intromissions of

as Curator Bonis to

From:-

To:-

CAUTIONER:

CAUTION: (Amount £)

PREMIUM:

WARD'S DATE OF BIRTH:

C H A R G E

1.	Estate at Start	Schedule A	£
2.	Revenue:-		
	(i) Interests & Dividends	Schedule B	£
	(ii) Pensions, Benefits	Schedule C	£
	(iii) Income Recovered	Schedule D	£
	(iv) Other Income	Schedule E	£_____
3.	Gain or Loss on Realisation	Schedule F	£
4.	Additional Estate	Schedule G	£_____
		Sum of Charge	£_____

D I S C H A R G E

5.	Maintenance & Repairs to property	Schedule H	£
6.	Maintenance of Ward	Schedule I	
7.	Management Expenses	Schedule J	
8.	Estate Invested (not extended)	Schedule K	£_____
9.	Any other Expenses	Schedule L	
10.	Estate at Close of Account	Schedule M	_____
		Sum of Discharge (equal to Sum of Charge)	_____

SCHEDULE A
ESTATE AT START

Heritable Estate

(Dwellinghouse, Land etc)

£

Moveable Estate

£

Total to Charge (on page 1)

£ _____

SCHEDULE B

Interests & Dividends
(from Stocks/Shares, Banks Building Societies etc)

Total to Charge 2(i)

£ _____

SCHEDULE C

Benefits/Pensions

(Benefits Agency Pensions, Allowances etc company Pensions etc)

Total to Charge 2 (ii)

£ _____

SCHEDULE D

Income Tax Recovered

Total to Charge 2 (iii)

£ _____

SCHEDULE E

Other Revenue

(Revenue not included in “Charge” 1 and 2 (i) to (iii))

Total to Charge 2 (iv)

£ _____

SCHEDULE F

Estate Realised

(Details of items sold - such as stocks and shares, cars, furniture etc)

Gain/Loss to Charge 3

£ _____

SCHEDULE G

Additional Estate

(Include here any items of Estate which have been discovered and were not included in the Estate at the start of this Account).

Gain/Loss to Charge 4

£ _____

SCHEDULE H

Maintenance and Repairs to Property

(Include Insurance - building and contents)

Total to Discharge 5

£ _____

SCHEDULE I

Maintenance of Ward

Total to Discharge 6

£ _____

SCHEDULE J

Management Expenses

Total to Discharge 7

£ _____

SCHEDULE K

Estate Invested

Do not Transfer to Discharge

£ _____

SCHEDULE L

Any Other Expenses

(include *any* other expenditure made on or on behalf of the Ward)

Total to Discharge 9

£ _____

SCHEDULE M

Estate at Close of this Account

Heritable Estate

(Dwellinghouse, land etc)

£

Moveable Estate

£

Total to Discharge 10 (On page 1)

£ _____

APPENDIX C

FORM OF NOTICE WHERE APPLICATION FOR DISCHARGE IS MADE TO ACCOUNTANT OF COURT

[Place, date]

To: [Name and address of cautioner or person with interest] Notice is hereby given that A.B. [address] curator bonis [or other type of factor] to [or on the estate of] C.D. [address] has made application to the Accountant of Court for a certificate of discharge.

The audited accounts of the judicial factory are available for inspection at the office of the Accountant of Court, 2 Parliament Square, Edinburgh Tel. No. 0131 240 6765.

Representations relating to the application must be made in writing and lodged with the Accountant of Court on or before [date of expiry of period of notice].

[Signed]
Curator Bonis to C.D.
[or Solicitor for A.B.
Curator Bonis to C.D.]

IF YOU ARE UNCERTAIN ABOUT THE EFFECT OF THIS NOTICE PLEASE CONSULT
A SOLICITOR IMMEDIATELY.

APPENDIX D

LIST OF COMPANIES WHO PROVIDE BONDS OF CAUTION

- 1. Commercial Union Assurance Plc, London**
- 2. Sun Alliance & London Insurance Plc, London**

APPENDIX E

ADDITIONAL GUIDANCE ON COMPLETION OF FACTORIAL INVENTORY

Documents and Information to be produced in support of the Estate of the Inventory

A. **Heritable Estate**

- (a) Property which is occupied but not rented (no intention to sell)
Estimated value of subjects and band of Council Tax in which it is placed.
- (b) Property which is empty and it is intended to sell
Up-to-date professional valuation.
- (c) Property which is rented
Estimated value of subjects, band of Council Tax in which placed and certified Rental Statement with Missives of Let (if any) covering the period prior to appointment and showing the current rental and any arrears due. (If the rental is collected by a private individual it should be possible to show the exact position as at date of appointment but if by a Property Agent it will probably require to be the position at the preceding Whitson or Martinmas).

B. **Pensions, Allowances, State Benefits, Annuities, Liferent interests**

- (a) State Benefits
Letter from the DSS stating the nature and rate of benefits in issue to the Ward. The date from which they first became payable to you and who they were paid to prior to that date of your appointment (NOTE - Your appointment is over all estate and pensions etc and DSS benefits must be taken into your own hands unless the Accountant's approval is given to some other arrangement).
- (b) Other Pensions
Letter from the paying authority in similar terms to (Ba) above. If the pension is received by you from date of appointment, the payment advice slip will be sufficient.
- (c) Annuities
By Bond of Annuity or (if missing or in cases where no Bond) letter from the paying authority giving details of the frequency and amount of the payments.
- (d) Liferent Interest
By certified Extract of the Settlement showing the liferent provisions in favour of the Ward and certificated Trust Account bringing out the estate liferented by the Ward and revenue balance.

C. **Moveable Estate**

(a) (i) Bank and Building Society Accounts

By passbook or statements showing all transactions in the period from a date 3 months prior to appointment, to date of appointment. Where the passbook is missing a certified statement by the bank or building society showing the transactions in the period. (A bank or building society Certificate of Balance is not normally required except where the entries in passbook or statements are not clear. It may however be necessary in the case of a cheque account to produce a statement reconciling the position as brought out in the statements with the actual position to take account of outstanding cheques). Balances at credited of bank and building society accounts need NOT include accrued interest but passbooks should be written up-to-date prior to being exhibited to the Accountant.

(ii) Deposit Receipts

By production of the Deposit Receipts or where encashed a bank certificate showing the sum lodged, date of lodgment, date of upliftment and interest earned in the total period Deposit Receipt.

(iii) Building Society Bonds

By Bonds or where uplifted, letter from society stating sum held at date of appointment, date of upliftment and interest earned to upliftment. (The interest on some of these Bonds is credited to the capital sum lodged and accordingly, in such event, it will be necessary to produce a letter from the society stating the balance at credit of the Bond at date of appointment).

(b) Stocks and Shares, Unit Trusts etc

By the relative certificates or where missing a letter from the Registrars certifying the Ward's holding at date of appointment. A stockbroker's valuation of the investments as at date of appointment should also be produced and in the case of a private company, a valuation by the company's auditors should be produced.

(c) Damages Awards

(i) Where determined by the Court - by certified Interlocutor of the Court (including details of Award and expenses).

(ii) Where the action is still proceeding - by a copy of the Closed Record and copy correspondence to instruct the present position.

(iii) Where settled out of Court - by tender and Counsel's Opinion and any other relevant papers.

(iv) Where Criminal Injuries Compensation Board settlement - by letter from the Board stating the terms and conditions of the award including what expenses, if any, in addition to the award are being met by the Board and the date the award was remitted.

(NOTE - The Accountant's approval is required prior to any out of Court settlement being effected and in the case of a claim in excess of £10,000 the Opinion of Counsel as to the adequacy of the offer must be produced. In the case of Criminal Injuries Compensation Board offers this only applies where it results from the enquiries of a single member of the Board).

(d) Life Policies (see also Life Assurance Investment Bonds)

By policies or where missing, a letter from the company stating the terms and conditions of the policy. In the case of policies with an assured sum of less than £100 the sum assured will be accepted as its value but in other cases a letter from the company stating the surrender value should be obtained.

(e) Life Assurance Investment Bonds

By the Bond together with a letter from the company certifying the units held and surrender value at date of appointment. (It should be noted that these are not an authorised investments).

(f) National Savings Certificates

By Certificates and valuation as at date of appointment by the SAYE and Savings Certificates Office.

(g) Premium Savings Bonds

By Bonds or if lost, Certificate from the Bonds and Stock Office certifying the holding. (Premium Savings Bonds are an authorised investment and require to be realised. However holdings of £50 or less (which it may not be cost effective to realise) may be retained as a Special Range investment). Where there is a large holding a letter should be produced in due course stating whether any prizes were paid to the Factor to date of realisation.

(h) Executory Estates

(i) Where the Factor is appointed Executor qua Factor on the deceased's estate (or the Ward is appointed Executor and the Curator signs the Confirmation on her/his behalf) - by a certified extract of the deceased's Settlement (if testate), Confirmation and all documents to instruct the estate given up in the Confirmation.

(ii) In all other cases by a certified extract from the Settlement showing the provisions in favour of the Ward (if testate) and certified Executory Account bringing out the estate due to the Ward.

(i) Balances due to or by Law Agents

By certified copy ledger sheets.

(j) Loans etc due to estate

Where heritable by Heritable Security otherwise by document of debt.

(k) Contents of house, jewellery etc

Where these are possibly of considerable value or you are in any doubt as to whether there may be items of value, a professional inventory and valuation thereof must be obtained. Otherwise you should certify that the contents are of little or no value or include a certified list of the principal items and place a value thereon. Please note, however, that if the value placed thereon is in excess of £750.00, the Accountant will insist on a professional inventory and valuation. Where the contents have been sold the Roup Roll should be produced.

(l) Farms and Businesses

Where the estate includes a farm or other type of business you should produce a professional inventory and valuation of all assets and stock as at date of your appointment. Where the valuation of stock is at a date subsequent to appointment, as will most likely be the case, a reconciliation statement should be produced to arrive at a figure for stock at date of appointment. Certified copies of the last prepared accounts of the business should also be produced (audited if available).

(m) Debts

A Schedule of all debts due by the estate at date of appointment should be produced. The vouchers will not normally be required at this time but exceptions are:

- (i) certified ledger sheets to instruct sum due to solicitors.
- (ii) bank sheets (covering period 3 months prior to appointment) to instruct overdraft.
- (iii) letter from building society or bank stating balance due at date of appointment in respect of any heritable debt. The Accountant may, however, on examination of the Schedule of Debts call for further documentation to instruct other debts.

APPENDIX F

REQUIREMENTS IN APPLICATIONS TO ENCROACH ON CAPITAL

MADE IN TERMS OF:-

SECTION 7 OF THE JUDICIAL FACTORS ACT 1849 or COURT OF SESSION RULE OF COURT 61.13 or SHERIFF COURT RULE OF COURT 15

Where an application is made for power to encroach on capital the Accountant will, in general, require the following information:-

- a. whether it is medically desirable that the Ward remains or moves to the proposed Nursing Home or accommodation (a Medical Certificate will be required to this effect).
- b. whether there is any likelihood of suitable alternative accommodation being found for the Ward at a lesser cost.
- c. the total cost of the Ward's maintenance in the Home (for the year).
- d. the Ward's total income from all sources and the estimated deficit. (Where there is a house which is in the process of being sold the estimated income from the process of sale should be included).
- e. whether the Home has the nursing facilities to look after the Ward, should his or her condition deteriorate.
- f. whether the Ward will be able to remain at the Home by virtue of assistance from DSS, if no funds from the estate remain.
- g. the Ward's age.
- h. any other relevant information.

If the Ward is in a Private Nursing Home then Attendance Allowance should be received from the Benefits Agency. If it is not, an application should be made for the allowance immediately.

APPENDIX G

ABBREVIATIONS USED IN FOOTNOTES

Judicial Factors Act	JF
Section	S
Trust (Scotland) Act	TS
Schedule	Sch
Trustee Investment Act 1961	TI
Law Reform (Misc. Prov.) (Scotland) Act	LR
Act of Sederunt (Rules of the Court of Session Amendment No 1) (Miscellaneous) 1990	AS 1990(1)
Act of Sederunt (Rules of the Court of Session Amendment No 8) Discharge of Judicial Factors 1991	AS 1991(8)
Act of Sederunt (Sheriff Court Judicial Factors Rules) 1992	AS 1992

APPENDIX H

(EXAMPLE ONLY)

ACCOUNT of CHARGE and DISCHARGE of the Intromissions of JOHN SMITH residing at 37 High Street, Falkirk, as Curator Bonis to MISS ANNIE BROWN residing at Stirling Royal Infirmary, Stirling.

From:- 3 OCTOBER 1996 (Date of Appointment)

To:- 30 NOVEMBER 1999

CAUTIONER: Global Insurance Co
CAUTION: (Amount £) £50,000.00
PREMIUM: £50.00 paid to 15 December 1999

WARD'S DATE OF BIRTH: 13 February 1905

C H A R G E

1.	Estate at Start	Schedule A		£80,800.00
2.	Revenue:-			
	(i) Interests & Dividends	Schedule B	£580.00	
	(ii) Pensions, Benefits	Schedule C	802.75	
	(iii) Income Recovered	Schedule D	115.00	
	(iv) Other Income	Schedule E	<u>32.50</u>	1,530.25
3.	Gain or Loss on Realisation	Schedule F		4,805.00
4.	Additional Estate	Schedule G		<u>40.75</u>
		Sum of Charge		<u>£87,176.00</u>

D I S C H A R G E

5.	Maintenance & Repairs to property	Schedule H		£ 175.00
6.	Maintenance of Ward	Schedule I		285.00
7.	Management Expenses	Schedule J		270.00
8.	Estate Invested (not extended)	Schedule K	£875.50	
9.	Any other Expenses	Schedule L		240.00
10.	Estate at Close of Account	Schedule M		<u>86,206.00</u>
		Sum of Discharge		<u>£87,176.00</u>
		(equal to Sum of Charge)		

John Smith

SCHEDULE A

**ESTATE AT START
(EXAMPLE ONLY)**

Heritable Estate

(Dwellinghouse, Land etc) £60,000.00

**House, 37 Green Street, Airth
Personal effects 500.00**

Moveable Estate

£5000 4% Treasury Stock 1998 5,500.00

£10,000 6% Treasury Stock 2001 10,100.00

800 Ordinary 25p Shares ZED Co Plc 1,250.00

**Life Insurance Policy No AB9876 300.00
Empire Insurance Co**

County Bank - Account No 123456 3,150.00

Total to Charge (on page 1) £80,800.00

**SCHEDULE B
(EXAMPLE ONLY)**

Interests & Dividends

(from Stocks/Shares, Banks Building Societies etc)

£5000.00 4% Treasury Stock 1998

15/12/98 ½ yrs int **£100.00**

£2500.00 4% Treasury Stock 1998

15/6/99 ½ yrs int **50.00** **£150.00**

£10,000.00 6% Treasury Stock 2001

14/3/99 ½ yrs int **300.00**

County Bank

31/1/2/98 Interest **50.00**

800 Ord Shares ZED Co Plc

1/12/98 Final div **£50.00**

1/7/98 Int Div **30.00** **80.00**

Total to Charge 2(i)

£580.00

**SCHEDULE C
(EXAMPLE ONLY)**

Benefits/Pensions

(Benefits Agency Pensions, Allowances etc company Pensions etc)

DSS Retirement Pension

10/10/98	13 weeks at £12.25	£159.25	
9/1/99	13 weeks at £12.25	159.25	
10/4/99	13 weeks at £12.25	159.25	
10/7/99	13 weeks at £12.50	162.50	
9/10/99	13 weeks at £12.50	<u>162.50</u>	<u>802.75</u>

Total to Charge 2 (ii)

£802.75

**SCHEDULE D
(EXAMPLE ONLY)**

Income Tax Recovered

4/6/99 Tax refund 1996/1997

£115.00

Total to Charge 2 (iii)

£115.00

**SCHEDULE E
(EXAMPLE ONLY)**

Other Revenue

(Revenue not included in “Charge” 1 and 2 (i) to (iii))

3/7/99 Messrs Stockbrokers - share of Commission on investment transaction	<u>£32.50</u>
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Total to Charge 2 (iv)	<u>£32.50</u>
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**SCHEDULE F
(EXAMPLE ONLY)**

Estate Realised

(Details of items sold - such as stocks and shares, cars, furniture etc)

Description	Value as in Estate at Start	Amount Realised	Gain/Loss
1/12/99 House	£60,000.00	£65,000.00	£5,000.00
16/1/99 £2500.00 4% Treasury Stock 1998	2,750.00	2,550.00	(200.00)
15/4/99 £10,000.00 6% Treasury Stock 2002	10,100.00	10,105.00	5.00
	<hr/> £72,850.00	<hr/> £77,655.00	<hr/> £4,805.00

Gain/Loss to Charge 3

£4805.00

**SCHEDULE G
(EXAMPLE ONLY)**

Additional Estate

(Include here any items of Estate which have been discovered and were not included in the Estate at the start of this Account).

4/3/99	15 NS Premium Bonds	£15.00
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7/12/98	British Gas - Refund of charges	<u>25.75</u>
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Gain/Loss to Charge 4		<u>£40.75</u>
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**SCHEDULE H
(EXAMPLE ONLY)**

Maintenance and Repairs to Property

(Include Insurance - building and contents)

1/11/99	P Line Plumber - Repairs to hot water tank	£175.00
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Total to Discharge 5	<u>£175.00</u>
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**SCHEDULE I
(EXAMPLE ONLY)**

Maintenance of Ward

1/12/98	Hospital for comforts	£100.00
4/3/99	Hospital for comforts	75.00
8/6/99	Eye Spy Ltd Spectacles	<u>110.00</u>

Total to Discharge 6 **£285.00**

**SCHEDULE J
(EXAMPLE ONLY)**

Management Expenses

7/4/99	Accountant of Court - Inventory fee	£220.00
7/12/98	Global Insurance Co Bond of Caution premium	<u>50.00</u>

Total to Discharge 7 **£270.00**

**SCHEDULE K
(EXAMPLE ONLY)**

Estate Invested

1/9/99	500 Ord £1 shares "Exex" Co Plc	£875.50
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Do <u>not</u> Transfer to Discharge	<u>£875.50</u>
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**SCHEDULE L
(EXAMPLE ONLY)**

Any Other Expenses

(include *any* other expenditure made on or on behalf of the Ward)

1/12/99	Annual Church Giving	£240.00
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Total to Discharge 9	<u>£240.00</u>
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**SCHEDULE M
(EXAMPLE ONLY)**

ESTATE AT CLOSE

Heritable Estate

(Dwellinghouse, land etc)

Moveable Estate

Narrower Range

£2500 4% Treasury Stock 1998	£ 2,750.00	
County Bank Account 123456	<u>80,515.50</u>	
	£83,265.50	
LESS: Due to Wider Range		<u>£21,347.75</u>
£61,917.75		

Wider Range

800 Ord 25p shares "ZED" Co Plc	£ 1,250.00	
500 Ord £1 shares "Exex" Co Plc	<u>875.50</u>	
	£ 2,125.50	
PLUS: Due from Narrower Range	<u>61,917.75</u>	£ 64,043.25

Special Range

Personal Effects	£ 500.00	
Empire Insurance Co - Policy No AB9876	300.00	
15 NS Premium Bonds	<u>15.00</u>	<u>£ 815.00</u>

Total to Discharge 10 (On page 1) £86,206.00

John Smith