

2007 No. 334 (C.28)

MENTAL HEALTH

ADULTS WITH INCAPACITY

ADULT SUPPORT

**The Adult Support and Protection (Scotland) Act 2007
(Commencement No. 1, Transitional Provision and Savings)
Order 2007**

Made - - - -

20th June 2007

The Scottish Ministers make the following Order in exercise of the powers conferred by section 79(3) and (4) of the Adult Support and Protection (Scotland) Act 2007(a).

Citation and interpretation

1.—(1) This Order may be cited as the Adult Support and Protection (Scotland) Act 2007 (Commencement No. 1, Transitional Provision and Savings) Order 2007.

(2) In this Order—

- (a) “the Act” means the Adult Support and Protection (Scotland) Act 2007;
- (b) “the 2000 Act” means the Adults with Incapacity (Scotland) Act 2000(b);
- (c) references to sections and schedules are, unless otherwise stated, references to sections of, and schedules to, the Act.

Appointed days

2. The days appointed for the coming into force of the following provisions of the Act are—

- (a) 30th June 2007 for the provisions of the Act specified in column (1) of Schedule 1 to this Order (the subject matter of each provision being mentioned in column (2)).
- (b) 5th October 2007 for the provisions of the Act specified in column (1) of Schedule 2 to this Order (the subject matter of each provision being mentioned in column (2)).

(a) 2007 asp 10.
(b) 2000 asp 4.

Transitional provision

3. Until the coming into force of section 58, for the reference to section 30B(2) of the 2000 Act in the new section 81A of that Act, inserted by the commencement of section 61 (as provided for in article 2(b) of and Schedule 2 to this Order), substitute reference to section 30(2)(a) of the 2000 Act.

Savings

4. Despite the coming into force (as provided for in article 2(b) of and Schedule 2 to this Order) of the amendments to sections 15(3) and 16(3) of the 2000 Act in section 57(1)(a) and (2)(a), those sections shall continue to have the effect on or after 5th October 2007 as they had effect immediately before that date in relation to continuing and welfare powers of attorney signed before that date.

5. Despite the coming into force (as provided for in article 2(b) of and Schedule 2 to this Order) of the amendments to section 70 of the 2000 Act in section 60(8), that section shall continue to have effect on or after 5th October 2007 as it had effect immediately before that date in relation to applications made by a guardian to a sheriff before that date and not determined before that date.

6. Despite the coming into force (as provided for in article 2(b) of and Schedule 2 to this Order) of the repeal of section 142 of the Mental Health Act 1983(a) in section 77(1) and Schedule 2, section 142 shall continue to have effect in relation to periodic payments where the first of those payments was made before 5th October 2007.

SHONA ROBISON

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
20th June 2007

(a) 1983 c.20.

SCHEDULE 1

Article 2(a)

PROVISIONS OF THE ACT COMING INTO FORCE ON 30TH JUNE 2007

<i>Column (1)</i> <i>Provision of the Act</i>	<i>Column (2)</i> <i>Subject matter</i>
Section 71	Compulsory treatment orders and compulsion orders: cross-border transfer of patients etc.
Section 72	Cross-border visits: leave of absence.
Section 73	Applications to the Mental Health Tribunal for Scotland.
Section 75	Assessment orders: amendment of Criminal Procedure (Scotland) Act 1995(a).
Section 77(1) in so far as it relates to the provisions of Schedule 1 to the Act mentioned below	Minor and consequential amendments and repeals.
Schedule 1 paragraphs 2 and 6	Minor and consequential amendments relating to the Disabled Persons (Services, Consultation and Representation) Act 1986(b) and the Mental Health (Care and Treatment) (Scotland) Act 2003(c).

(a) 1995 c.46.
(b) 1986 c.33.
(c) 2003 asp 13.

SCHEDULE 2

Article 2(b)

PROVISIONS OF THE ACT COMING INTO FORCE ON 5TH OCTOBER 2007

<i>Column (1)</i> <i>Provision of the Act</i>	<i>Column (2)</i> <i>Subject matter</i>
Section 48	Code of Practice.
Section 52	Persons authorised to perform functions under this Part.
Section 53	Interpretation of Part 1.
Section 54	Preliminary.
Section 55	Applications and proceedings: sheriff to consider adult's wishes and feelings.
Section 56	Orders about incapable adults' nearest relatives.
Section 57, with the exception of sub-paragraphs (1)(b)(ii) and (iii), 2(b)(ii) and (iii) and subsections (3) and (7)	Powers of attorney.
Section 59(2) and (3)	Intervention orders.
Section 60(7), (8), (10), (15) and (17)	Guardianship orders.
Section 61	Power to obtain records.
Section 62	Accommodation charges: removal of liability to maintain spouse and child etc.
Section 63	Direct payments: sub-delegation to councils.
Section 65	Adjustments between councils in relation to social services etc.
Section 67	Public Guardian: interaction with courts.
Section 68	Review of determination extending compulsory treatment order.
Section 77(1) and (2) in so far as they relate to the provisions of Schedules 1 and 2 mentioned below	Minor and consequential amendments and repeals.

<i>Column (1)</i> <i>Provision of the Act</i>	<i>Column (2)</i> <i>Subject matter</i>
Schedule 1, paragraphs 1, 3(b), 4 and 5	Minor and consequential amendments relating to the National Assistance Act 1948(a), the Legal Aid (Scotland) Act 1986(b), the Criminal Procedure (Scotland) Act 1995(c) and the 2000 Act.
Schedule 2 in so far as it relates to the National Assistance Act 1948(d) (with the exception of section 47 of that Act), the Solicitors (Scotland) Act 1980(e), section 142 of the Mental Health Act 1983, the Law Reform (Parent and Child) (Scotland) Act 1986(f), the 2000 Act and the Courts Act 2003(g)	Repeals relating to the National Assistance Act 1948, the Solicitors (Scotland) Act 1980, the Mental Health Act 1983, the Law Reform (Parent and Child) (Scotland) Act 1986, the 2000 Act and the Courts Act 2003.

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- (a) 1948 c.29.
 - (b) 1986 c.47.
 - (c) 1995 c.46.
 - (d) 1948 c.29.
 - (e) 1980 c.46.
 - (f) 1986 c.9.
 - (g) 2003 c.39.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force certain provisions of the Adult Support and Protection (Scotland) Act 2007 (“the Act”) and makes transitional provision and savings.

Article 2(a) and Schedule 1 bring provisions of the Act which relate to mental health into force on 30th June 2007.

Article 2(b) and Schedule 2 bring certain provisions into force on 5th October 2007 including:

- (a) section 68 of the Act. Section 68 textually amends section 101(2)(b) of, and adds a section 101(3) and (4) to, the Mental Health Care and Treatment (Scotland) Act 2003 and also brings these provisions into force as at that date;
- (b) certain provisions of the Act relating to adult support and protection. These are provisions relating to the Code of Practice under Part 1 of the Act, persons authorised to perform functions under Part 1 of the Act, the removal of liability to maintain a spouse and child in relation to accommodation charges, the sub-delegation of direct payments to Councils and adjustments between Councils in relation to social services;
- (c) certain amendments in the Act to the Adults with Incapacity (Scotland) Act 2000 (“the 2000 Act”). In particular it brings into force provisions as regards powers of attorney, intervention orders, guardianship orders and the Public Guardian’s power to obtain records.

Article 3 provides that the new section 81A (Public Guardian’s power to obtain records) of the 2000 Act is to be read as referring to section 30(2)(a) of the 2000 Act (power of the Public Guardian to make inquiries) until the coming into force of the new section 30B(2).

Article 4 saves the validity of continuing and welfare powers of attorney signed before 5th October 2007.

Article 5 saves the competence of an application made before 5th October 2007 to a sheriff by a guardian to make an order ordaining any other person named in that order (other than the incapable adult) to implement the decision of the guardian.

Article 6 saves the effect of section 142 of the Mental Health Act 1983 so that that provision continues to apply to periodic payments already being made under that section.

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