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SCOTTISH STATUTORY INSTRUMENTS

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**2008 No. 51**

**ADULTS WITH INCAPACITY**

**The Adults with Incapacity (Accounts and Funds) (Scotland) Regulations 2008**

*Made* - - - - 20th February 2008  
*Laid before the Scottish Parliament* - - - - 21st February 2008  
*Coming into force* - - 1st April 2008

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 24D(7), 27B and 27E(2) of the Adults with Incapacity (Scotland) Act 2000<sup>(1)</sup> 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 (Accounts and Funds) (Scotland) Regulations 2008 and come into force on 1st April 2008.

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

**Particulars of account to be notified to the Public Guardian**

2. For the purposes of section 24D(7) of the Act, the following particulars are prescribed:—

- (a) title on the account;
- (b) name of bank;
- (c) address of bank;
- (d) type of account; and
- (e) (i) sort code and account number; or  
(ii) roll number.

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<sup>(1)</sup> 2000 asp 4, as amended by the [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), Section 58 of that Act substitutes a new Part 3 in the 2000 Act. See section 87(1) and (1A) for the definition of “prescribed” and section 86(1) as to the power to make regulations.

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### **Certificate from a medical practitioner**

3. For the purposes of section 27B of the Act the certificate from a medical practitioner shall be in the form set out in the Schedule.

### **Period for objections**

4. For the purposes of section 27E(2) of the Act the period of 21 days is prescribed.

### **Revocation**

5. The Adults with Incapacity (Certificates from Medical Practitioners) (Accounts and Funds) (Scotland) Regulations 2001(2) are revoked.

St Andrew's House,  
Edinburgh  
20th February 2008

*FERGUS EWING*  
Authorised to sign by the Scottish Ministers

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SCHEDULE

Regulation 3

Adults with Incapacity (Scotland) Act 2000 (“the Act”)  
**Certificate of incapacity to accompany an application to the Public Guardian under section 24C, 24D or 25**

I ..... (full name)  
of .....  
(professional address) in my capacity as ..... (1)  
have examined the following patient on .....(date),  
..... (patient’s name)  
of .....  
..... (address) ...../...../..... (date of birth)

I am of the opinion that he/she is incapable in relation to decisions about, or incapable of acting to safeguard or promote his/her interests in, his/her funds.

I am of the opinion that the patient named above is incapable in terms of section 27B of the Act because of:

- mental disorder<sup>(2)</sup> and/or
- inability to communicate because of physical disability<sup>(3)</sup>

Brief description of mental disorder/inability to communicate .....  
.....  
.....  
..... (signed) ..... (date)

- (1) the person signing the certificate must be a medical practitioner; insert as appropriate, eg GP, specialist in mental disorder
- (2) mental disorder has the meaning given to it in section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003, namely that it means any mental illness; personality disorder or learning disability however caused or manifested, but an adult is not mentally disordered by reason only of sexual orientation; sexual deviancy; transsexualism; transvestism; dependence on, or use of, alcohol or drugs; behaviour that causes, or is likely to cause, harassment, alarm or distress to any other person; or acting as no prudent person would act.

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(3) one of these **must** be deleted unless both apply

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### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are in consequence of the commencement of section 58 of the [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#) which substitutes a new Part 3 (accounts and funds) in the [Adults with Incapacity \(Scotland\) Act 2000 \(asp 4\)](#) (“the Act”).

Regulation 2 prescribes the details that the applicant must notify to the Public Guardian when an account is opened under Part 3 of the Act.

Regulation 3 and the Schedule to these Regulations prescribe the form of certificate from a medical practitioner which must accompany an application to the Public Guardian under section 24C, 24D or 25. The certificate is completed by a medical practitioner who will confirm that the adult is incapable in relation to decisions about, or incapable of acting to safeguard or promote that adult’s interests in, the funds. Regulation 4 prescribes the period in which an applicant must object if the Public Guardian proposes to refuse an application under Part 3 of the Act. Regulation 5 revokes the previous Regulations.