

# **ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000**

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## **EXPLANATORY NOTES**

### **THE ACT**

#### **Part 1: General**

#### **Mental Welfare Commission**

##### ***Section 9: Functions of the Mental Welfare Commission***

43. This section sets out the role, under this legislation, of the Mental Welfare Commission, in protecting the interests of adults whose incapacity is a result of mental disorder. The Commission's existence is governed by the Mental Health (Scotland) Act 1984 ("the 1984 Act"). The Commission has no role in relation to adults whose incapacity is due solely to an inability to communicate, for example people who are deafblind.
44. The references in section 3 of the 1984 Act, which set out the Commission's functions in relation to people with guardians appointed under that Act, are being repealed by the Act. Subsection (1) creates a new free-standing set of provisions for the Commission's activities under this legislation. In particular, subsection (1)(b) gives the Commission the power to visit adults on whose behalf others are acting under the Act. Subsection (1)(d) allows the Commission to investigate complaints about the exercise of welfare powers by guardians, attorneys and others, if the local authority, which is the primary complaints body, has not exercised its duty to investigate satisfactorily. Subsection (1)(e) provides for the Commission to look into suspicious circumstances even in the absence of complaints. Subsection (1)(f) allows the Commission to make inquiries if an adult's property, including funds, is at risk. As a result of such investigations or otherwise, the Commission would be entitled to initiate legal proceedings or take other action in order to protect the interests of the adult concerned.
45. Subsection (2) reproduces the requirement currently at section 5(2) of the 1984 Act for local authorities and guardians to allow the Commission the access it needs, for example to interview the adult, to carry out its functions effectively. The requirement is extended to welfare attorneys and those acting under intervention orders
46. Subsection (3) clarifies that the Commission's powers to investigate complaints about welfare matters extend to complaints about the actions of welfare attorneys and guardians appointed in other countries, if their authority is recognised in Scotland and the adult is resident or personal welfare is at risk and the adult is present in Scotland.