

*These notes relate to the Adults with Incapacity (Scotland)  
Act 2000 (asp 4) which received Royal Assent on 9 May 2000*

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

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## **EXPLANATORY NOTES**

### **THE ACT**

#### **Part 7: Miscellaneous**

#### ***Section 84: Application to guardians appointed under Criminal Procedure (Scotland) Act 1995***

396. Section 84 and the consequential amendments at paragraph 26 of schedule 5 change the current provisions for guardianship orders made under the Criminal Procedure (Scotland) Act 1995. The 1995 Act allows the High Court or the sheriff court, on convicting a person of an offence punishable by imprisonment, to place that person under the guardianship of a local authority or of a person approved by a local authority. This option is available if the person is suffering from mental disorder, but not for particularly serious offences for which the sentence is fixed by law.
397. **Section 84** and paragraph 26 of schedule 5 allow the criminal courts to appoint a welfare guardian or to make an intervention order under the new legislation. Amendments are required to the 1995 Act, because the existing office of Mental Health Act guardian is being abolished and replaced with the new form of guardianship. Several of the provisions of Parts 1, 5, 6 and 7 must therefore be inserted into the 1995 Act. For example, to provide for the court to confer specific powers on the guardian and determine the period for which the guardian is appointed, to make provision for joint and substitute guardians, to require registration of the order by the Public Guardian, to clarify the role of the Mental Welfare Commission in relation to the adult under guardianship and to allow for recall of guardianship by the Mental Welfare Commission or the local authority. The incapacity conditions for guardianship under the new legislation must also be satisfied.