

2001 No. 81 (C. 2)

ADULTS WITH INCAPACITY

**The Adults with Incapacity (Scotland) Act 2000
(Commencement No. 1) Order 2001**

Made

7th March 2001

The Scottish Ministers, in exercise of the powers conferred by section 89(2) of the Adults with Incapacity (Scotland) Act 2000(a), and all other powers enabling them in that behalf, hereby make the following Order:

Citation and interpretation

1.—(1) This Order may be cited as the Adults with Incapacity (Scotland) Act 2000 (Commencement No. 1) Order 2001.

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

Commencement

2. The provisions of the Act which are specified in column 1 of Schedule 1 to this Order and the subject matter of which is described in column 2 of that Schedule shall come into force on 2nd April 2001, and where a particular purpose is specified in relation to any provision in Column 3 of that Schedule, that provision shall come into force on that day for that purpose only.

3. The provisions of the Act which are specified in column 1 of Schedule 2 to this Order and the subject matter of which is described in column 2 of that Schedule shall so far as not then in force come into force on 1st April 2002, and where a particular purpose is specified in relation to any provision in Column 3 of that Schedule, that provision shall come into force on that day for that purpose only.

JAMES R WALLACE
A member of the Scottish Executive

St Andrew’s House,
Edinburgh
7th March 2001

SCHEDULE 1

PROVISIONS OF THE ACT BROUGHT INTO FORCE BY ARTICLE 2 OF THIS
ORDER ON 2ND APRIL 2001

<i>Column 1</i> <i>Provision of the Act</i>	<i>Column 2</i> <i>Subject matter</i>	<i>Column 3</i> <i>Purposes</i>
Section 1	General principles and fundamental definitions	
Section 2	Applications and other proceedings and appeals	
Section 3	Powers of sheriff	
Section 4	Power of Court of Session or sheriff with regard to nearest relative	
Section 5	Safeguarding of interests in Court of Session appeals or proceedings	
Section 6(1), (2)(b)(i) to (iii), (2)(c)(i) and (ii), (2)(d)	The Public Guardian and his functions	
Section 6(2)(e)	" "	Only for the purpose of bringing into force this provision insofar as it relates to continuing attorneys or withdrawers
Section 6(2)(f), (3)(b)	" "	
Section 7	The Public Guardian: further provision	
Section 8	Expenses in court proceedings	
Section 9(1)(a) to (c), (d)(i), (e), (f)	Functions of the Mental Welfare Commission	
Section 9(1)(g)	" "	Only for the purpose of bringing into force this provision insofar as it relates to welfare attorneys
Section 9(2)	" "	Only for the purpose of bringing into force this provision insofar as it relates to welfare attorneys
Section 9(3)(b)	" "	
Sections 10(1)(b), (1)(c)(i), (1)(d)	Functions of local authorities	
Section 10(1)(e)	" "	Only for the purpose of bringing into force this provision insofar as it relates to welfare attorneys

<i>Column 1 Provision of the Act</i>	<i>Column 2 Subject matter</i>	<i>Column 3 Purposes</i>
Section 10(2), (3)(b)(ii), (4)(b)	Functions of local authorities	
Section 11	Intimation not required in certain circumstances	
Section 12	Investigations	Only for the purpose of bringing into force this provision insofar as it relates to investigations in relation to continuing attorneys, welfare attorneys and intromission with funds under Part 3 of the Act
Section 13	Codes of practice	
Section 14	Appeal against decision as to incapacity	
Section 15	Creation of continuing power of attorney	
Section 16	Creation and exercise of welfare power of attorney	
Section 17	Attorney not obliged to act in certain circumstances	
Section 18	Power of attorney not granted in accordance with this Act	
Section 19	Registration of continuing or welfare power of attorney	
Section 20	Powers of sheriff	
Section 21	Records: attorneys	
Section 22	Notification to Public Guardian	
Section 23	Resignation of continuing or welfare attorney	
Section 24(1) and (4)	Termination of continuing or welfare power of attorney	
Section 25	Authority to intromit with funds	
Section 26	Application for authority to intromit	
Section 27	Notification of change of address	
Section 28	Purposes of intromission with funds	
Section 29	Withdrawal and use of funds	
Section 30	Records and inquiries	

<i>Column 1 Provision of the Act</i>	<i>Column 2 Subject matter</i>	<i>Column 3 Purposes</i>
Section 31	Duration and termination of registration	
Section 32	Joint accounts	
Section 33	Transfer of funds	
Section 34	Disapplication of Part 3 of the Act	
Section 81(1)(a) to (c)	Repayment of funds	
Section 81(2)	" "	Only for the purpose of bringing into force this provision insofar as it relates to section 82 of the Act
Section 82(1)	Limitation of liability	Only for the purpose of bringing into force this provision insofar as it relates to continuing attorneys, welfare attorneys and withdrawers
Section 82(2)(b) and (c)	" "	
Section 83	Offence of ill treatment and wilful neglect.	
Section 85	Jurisdiction and private international law	Only for the purpose of bringing into force the provisions of Schedule 3 to the Act specified below
Section 86	Regulations	
Section 87	Interpretation	
Section 88	Continuation of existing powers, minor and consequential amendments and repeals	Only for the purpose of bringing into force the provisions of Schedules 4, 5 and 6 to the Act specified below
Schedule 3, paragraphs 1(1) and (5), 2(1), (3) and (4), 3, 4, 5, 6, 7(1), (2)(a), (3)(a) to (d), 8, 9, 10, 13 and 14	Jurisdiction and private international law	
Schedule 4, paragraphs 4, 7(a) to (c), and 8	Continuation of existing curators, tutors, guardians and attorneys under this Act	
Schedule 5: Paragraph 2	Minor and Consequential Amendments – Defence Act 1842 (c.94)	
Paragraph 3	Judicial Factors Act 1849 (c.51)	

<i>Column 1 Provision of the Act</i>	<i>Column 2 Subject matter</i>	<i>Column 3 Purposes</i>
Paragraph 5	Titles to Land (Consolidation) (Scotland) Act 1868 (c.101)	
Paragraph 6	Judicial Factors (Scotland) Act 1889 (c.39)	
Paragraph 7	Heritable Securities (Scotland) Act 1894 (c.44)	Only for the purpose of bringing into force this provision insofar as it relates to continuing and welfare attorneys and withdrawers
Paragraph 9	Offices Shops and Railway Premises Act 1963 (c.41)	Only for the purpose of bringing into force this provision insofar as it relates to continuing and welfare attorneys and withdrawers
Paragraph 13	Sheriff Courts (Scotland) Act 1971 (c.58)	
Paragraph 14	Land Registration (Scotland) Act 1979 (c.33)	
Paragraph 17(3) to (21), (24)(b)	Mental Health (Scotland) Act 1984 (c.36)	Only for the purpose of bringing into force these provisions insofar as they relate to welfare attorneys
Paragraph 19	Legal Aid (Scotland) Act 1986 (c.47)	
Paragraph 22	Child Support Act 1991 (c.48)	Only for the purpose of bringing into force this provision insofar as it relates to welfare attorneys
Paragraph 23	Social Security Administration Act 1992 (c.5)	Only for the purpose of bringing into force this provision insofar as it relates to welfare attorneys
Paragraph 25	Clean Air Act 1993 (c.11)	
Schedule 6	Repeals	Only for the purpose of bringing into force the repeal of section 71 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c.40)

SCHEDULE 2

PROVISIONS OF THE ACT BROUGHT INTO FORCE BY ARTICLE 3 OF THIS
ORDER ON 1ST APRIL 2002

<i>Column 1</i> <i>Provision of the Act</i>	<i>Column 2</i> <i>Subject matter</i>	<i>Column 3</i> <i>Purposes</i>
Section 6	The Public Guardian and his functions	
Section 9	Functions of the Mental Welfare Commission	
Section 10	Functions of local authorities	
Section 12	Investigations	
Section 24	Termination of continuing or welfare power of attorney	
Section 53	Intervention orders	
Section 54	Records: intervention orders	
Section 55	Notification of change of address	
Section 56	Registration of intervention order relating to heritable property	
Section 57	Application for guardianship order	
Section 58	Disposal of application	
Section 59	Who may be appointed as guardian	
Section 60	Renewal of guardianship order by sheriff	
Section 61	Registration of guardianship order relating to heritable property	
Section 62	Joint guardians	
Section 63	Substitute guardian	
Section 64	Functions and duties of guardian	
Section 65	Records: guardians	
Section 66	Gifts	
Section 67	Effect of appointment and transactions of guardian	
Section 68	Reimbursement and remuneration of guardian	

<i>Column 1 Provision of the Act</i>	<i>Column 2 Subject matter</i>	<i>Column 3 Purposes</i>
Section 69	Forfeiture of guardian's remuneration	
Section 70	Non-compliance with decisions of guardian with welfare powers	
Section 71	Replacement or removal of guardian or recall of guardianship by sheriff	
Section 72	Discharge of guardian with financial powers	
Section 73	Recall of powers of guardian	
Section 74	Variation of guardianship order	
Section 75	Resignation of guardian	
Section 76	Change of habitual residence	
Section 77	Termination of authority to intervene and guardianship on death of adult	
Section 78	Amendment of registration under section 61 on events affecting guardianship or death of an adult	
Section 79	Protection of third parties: guardianship	
Section 80	Future appointment of curator bonis etc. incompetent	
Section 81	Repayment of funds	
Section 82	Limitation of liability	
Section 84	Application to guardians appointed under Criminal Procedure (Scotland) Act 1995	
Section 88	Continuation of existing powers, minor and consequential amendments and repeals	Only for the purpose of bringing into force the provisions of Schedules 4, 5 and 6 to the Act specified below
Schedule 2	Management of estate of adult	
Schedule 4, paragraphs 1, 2, 3 and 6	Continuation of existing curators, tutors, guardians and attorneys under this Act	
Schedule 5:	Minor and Consequential Amendments–	
Paragraph 1	General	

<i>Column 1</i> <i>Provision of the Act</i>	<i>Column 2</i> <i>Subject matter</i>	<i>Column 3</i> <i>Purposes</i>
Paragraph 7	Heritable Securities (Scotland) Act 1894 (c.44)	
Paragraph 8	National Assistance Act 1984 (c.29)	
Paragraph 9	Offices, Shops and Railway Premises Act 1963 (c.41)	
Paragraph 12	Medicines Act 1968 (c.67)	
Paragraph 15	Solicitors (Scotland) Act 1980 (c.46)	
Paragraph 16	Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c.55)	
Paragraph 17(1), (2), (3) to (21) and (24)	Mental Health (Scotland) Act 1984 (c.36)	
Paragraph 18	Insolvency Act 1986 (c.45)	
Paragraph 20	Financial Services Act 1986 (c.60)	
Paragraph 21	Access to Health Records Act 1990 (c.23)	
Paragraph 22	Child Support Act 1991 (c.48)	
Paragraph 23	Social Security Administration Act 1992 (c.5)	
Paragraph 24	Health Service Commissioners Act 1993 (c.46)	
Paragraph 26	Criminal Procedure (Scotland) Act 1995 (c.46)	
Schedule 6	Repeals	For all purposes, other than bringing into force the repeal of provisions in the Improvement of Land Act 1864 (27&28 Vict. c.114) and in section 5(2) of the Mental Health (Scotland) Act 1984 (c.36)

EXPLANATORY NOTE

(This note is not part of the Order)

This Order appoints 2nd April 2001 as the date for the coming into force of the provisions of the Adults with Incapacity (Scotland) Act 2000 (“the Act”) which are specified in Schedule 1 to the Order, subject to any restriction of purpose in that Schedule (article 2). 1st April 2002 is appointed as the date for the coming into force of the provisions of the Act which are specified in Schedule 2 to the Order, subject to any restriction of purpose in that Schedule (article 3).

The provisions of the Act remaining to be commenced after this Order are Parts 4 and 5 (sections 35 to 52), Schedule 1 and certain provisions from Schedules 3 to 6.

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