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## 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.