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SCOTTISH STATUTORY INSTRUMENTS

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**2008 No. 49 (C. 6)**

**MENTAL HEALTH  
ADULTS WITH INCAPACITY  
ADULT SUPPORT**

**The Adult Support and Protection (Scotland) Act 2007  
(Commencement No. 2 and Transitional Provisions) Order 2008**

*Made - - - - 20th February 2008*

The Scottish Ministers make the following Order in exercise of the powers conferred by section 79(3) and (4) of the Adult Support and Protection (Scotland) Act 2007<sup>(1)</sup>.

**Citation and interpretation**

**1.**—(1) This Order may be cited as the Adult Support and Protection (Scotland) Act 2007 (Commencement No. 2 and Transitional Provisions) Order 2008.

(2) In this Order—

- (a) “the 2000 Act” means the Adults with Incapacity (Scotland) Act 2000<sup>(2)</sup>;
- (b) references to sections, schedules and parts are, unless otherwise stated, references to sections and parts of, and schedules to, the Adult Support and Protection (Scotland) Act 2007.

**Commencement**

**2.**—(1) Part 2, in so far as it is not already in force, shall come into force on 1st April 2008.

(2) Section 74, section 77(2) and Schedule 2, in so far as they relate to section 146 of the Mental Health Act 1983<sup>(3)</sup>, come into force on 1st October 2008.

**Transitional provisions**

**3.** An application under section 26 of the 2000 Act for authority to intromit with funds made before the coming into force of the substitution of Part 3 of the 2000 Act by section 58, but not

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(1) 2007 asp 10.  
(2) 2000 asp 4.  
(3) 1983 c. 20.

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granted or refused before that date, shall be treated on or after that date as if it were an application under section 25 of the 2000 Act (as substituted by section 58).

**4.** A certificate of authority issued under section 26(4)(b) of the 2000 Act before the coming into force of the substitution of Part 3 of the 2000 Act by section 58, shall be treated on or after that date as if it were a certificate issued under section 25(4)(b) of the 2000 Act (as substituted by section 58).

St Andrew's House, Edinburgh  
20th February 2008

*FERGUS EWING*  
Authorised to sign by the Scottish Ministers

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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”) on 1st April 2008.

Article 2(1) brings into force the remaining provisions in Part 2 (Adults with Incapacity) of the Act. These provisions make various amendments to the Adults with Incapacity (Scotland) Act 2000 (“the 2000 Act”).

Article 2(2) brings into force section 74 of and part of Schedule 2 to the Act which repeal sections 88, 128 and 146 of the Mental Health Act 1983 on 1st October 2008.

Articles 3 and 4 contain transitional provisions for applications made and certificates issued under Part 3 (Accounts and Funds) of the 2000 Act. Article 3 provides that applications made but not determined before 1st April 2008 are to be treated as applications under the new Part 3 of the 2000 Act. Article 4 provides that certificates of authority issued under Part 3 of the 2000 Act before 1st April 2008 are to be treated as certificates of authority issued under the new Part 3 of the 2000 Act.

## NOTE AS TO EARLIER COMMENCEMENT ORDERS

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

The following provisions of the Act have been brought into force by the Adult Support and Protection (Scotland) Act 2007 (Commencement No. 1, Transitional Provision and Savings) Order 2007 ([S.S.I. 2007/334 \(C.28\)](#)):-

<i>Provision</i>	<i>Date of Commencement</i>
Section 48	5th October 2007
Section 52	5th October 2007
Section 53	5th October 2007
Section 54	5th October 2007
Section 55	5th October 2007
Section 56	5th October 2007
Section 57, with the exception of sub-paragraphs (1)(b)(ii) and (iii), 2(b)(ii) and (iii) and subsections (3) and (7)	5th October 2007
Section 59(2) and (3)	5th October 2007
Section 60(7), (8), (10), (15) and (17)	5th October 2007
Section 61	5th October 2007
Section 62	5th October 2007
Section 63	5th October 2007
Section 65	5th October 2007

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<i>Provision</i>	<i>Date of Commencement</i>
Section 67	5th October 2007
Section 68	5th October 2007
Section 71	30th June 2007
Section 72	30th June 2007
Section 73	30th June 2007
Section 75	30th June 2007
Section 77(1) in so far as it relates to the commencement of paragraphs 2 and 6 of Schedule 1	30th June 2007
Section 77(1) and (2) in so far as they relate to the provisions of Schedules 1 and 2 mentioned below	5th October 2007
Schedule 1, paragraphs 1, 3(b), 4 and 5	5th October 2007
Schedule 2 in so far as it relates to the National Assistance Act 1948 <sup>(4)</sup> (with the exception of section 47 of that Act), the Solicitors (Scotland) Act 1980 <sup>(5)</sup> , section 142 of the Mental Health Act 1983, the Law Reform (Parent and Child) (Scotland) Act 1986 <sup>(6)</sup> , the Adults with Incapacity (Scotland) Act 2000 <sup>(7)</sup> and the Courts Act 2003 <sup>(8)</sup>	5th October 2007

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(4) 1948 c. 29.  
(5) 1980 c. 46.  
(6) 1986 c. 9.  
(7) 2000 asp 4.  
(8) 2003 c. 39.