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SCOTTISH STATUTORY INSTRUMENTS

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**2008 No. 53**

**ADULTS WITH INCAPACITY**

**The Adults with Incapacity (Recall of Guardians' Powers) (Scotland) Amendment Regulations 2008**

*Made* - - - - 20th February 2008  
*Laid before the Scottish Parliament* - - - - 21st February 2008  
*Coming into force* - - 1st April 2008

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 73(5) of the Adults with Incapacity (Scotland) Act 2000<sup>(1)</sup> and all other powers enabling them to do so.

**Citation and commencement**

1. These Regulations may be cited as the Adults with Incapacity (Recall of Guardians' Powers) (Scotland) Amendment Regulations 2008 and come into force on 1st April 2008.

**Amendment of the Adults with Incapacity (Recall of Guardians' Powers) (Scotland) Regulations 2002**

2.—(1) The Adults with Incapacity (Recall of Guardians' Powers) (Scotland) Regulations 2002<sup>(2)</sup> are amended as follows.

(2) In Schedule 1 (application to Mental Welfare Commission for recall of powers of a guardian relating to personal welfare)—

(a) at the end of Part B insert—

*“Note: The Mental Welfare Commission may not be asked to recall welfare powers other than those granted in cases where the adult’s incapacity is by reason of, or reasons which include, mental disorder.”; and*

(b) in Part E after paragraph 3 insert as paragraph 3A the text in the Schedule.

(3) In Schedule 2 (application to local authority for recall of powers of a guardian relating to personal welfare)—

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(1) 2000 asp 4, as amended by the [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#). See section 87(1) and (1A) for the definition of “prescribed” and section 86(1) as to the power to make regulations.  
(2) [S.S.I. 2002/97](#).

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(a) in Part A delete the footnote; and

(b) in Part E after paragraph 3 insert as paragraph 3A the text in the Schedule.

(4) In Schedule 4 (intimation by Mental Welfare Commission of (i) application or (ii) intention to recall powers of a guardian relating to personal welfare) at the end under the heading “Notes on Part A” and after “(c) the adult’s primary carer;” insert “(ca) the adult’s named person;”(3).

(5) In Schedule 5 (intimation by local authority of (i) application or (ii) intention to recall powers of a guardian relating to personal welfare) at the end under the heading “Notes on Part A” and after “(c) the adult’s primary carer;” insert “(ca) the adult’s named person;”(4).

St Andrew’s House,  
Edinburgh  
20th February 2008

*FERGUS EWING*  
Authorised to sign by the Scottish Ministers

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(3) The Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order (S.S.I. 2005/465), Schedule 1, paragraph 28(2) inserted “named person” in section 1(4) of the Adults with Incapacity (Scotland) Act 2000 as one of those persons whose views should be taken account of in determining if an intervention is to be made.

(4) The Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order (S.S.I. 2005/465), Schedule 1, paragraph 28(2) inserted “named person” in section 73 of the Adults with Incapacity (Scotland) Act 2000 as one of those persons to whom intimation of an application for recall should be given.

## SCHEDULE

### Regulation 2(2)(b) and (3)(b)

3A.

Name:

Address:

Relationship to  
Adult:

(State the views of the adult's named person on the proposed recall if you have obtained these. Do you agree with these views? If you have not obtained these views, why was it not reasonable or practicable to do so?)

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### EXPLANATORY NOTE

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

These Regulations amend the Adults with Incapacity (Recall of Guardians' Powers) (Scotland) Regulations 2002 ("the 2002 Regulations") and are in consequence of the commencement of section 60 of the [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#) ("the 2007 Act") which amends Part 6 of the Adults with Incapacity (Scotland) Act 2000 ("the Act") in respect of the provisions on guardianship orders. They also update the forms to provide for the adult's "named person" to be included in the list of those who must be consulted and notified of a recall of a guardian's powers.

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Regulation 2(2)(a) amends Schedule 1 to the 2002 Regulations to reflect the change in section 60(11) of the 2007 Act which restricts recall of welfare guardianships by the Mental Welfare Commission to those where incapacity is by reason of mental disorder.

Regulation 2(3)(a) amends Schedule 2 to the 2002 Regulations to reflect the new section 73A of the Act inserted by section 60(12) of the 2007 Act (which provides that a local authority may recall a guardianship where its chief social worker is the guardian).

Regulations 2(2)(b) and 2(3)(b) provide that the adult's "named person" must be consulted where there is an application to the Mental Welfare Commission or the local authority for recall of a welfare guardianship.

Regulations 2(4) and (5) amend Schedules 4 and 5 of the 2002 Regulations to provide that the adult's "named person" must be notified by the Mental Welfare Commission or the local authority where there is an application to recall a welfare guardianship.