



Adults with Incapacity (Scotland) Act 2000

2000 asp 4

PART 5

MEDICAL TREATMENT AND RESEARCH

50 Medical treatment where guardian etc. has been appointed

- (1) This section applies where a guardian or a welfare attorney has been appointed or a person has been authorised under an intervention order with power in relation to any medical treatment referred to in section 47.
- (2) The authority conferred by section 47(2) shall not apply where—
 - (a) subsection (1) applies;
 - (b) the [^{F1}person who issued the certificate for the purposes of section 47(1)] is aware of the appointment or, as the case may be, authorisation; and
 - (c) it would be reasonable and practicable for that [^{F2}person] to obtain the consent of the guardian, welfare attorney or person authorised under the intervention order, as the case may be, to any proposed medical treatment but he has failed to do so.
- (3) Where the [^{F3}person who issued the certificate for the purposes of section 47(1)] has consulted the guardian, welfare attorney or person authorised under the intervention order and there is no disagreement as to the medical treatment of the adult, [^{F4}the medical practitioner primarily responsible for the medical treatment of the adult (in a case where the person who issued the certificate was someone other than that practitioner) or any person having an interest] in the personal welfare of the adult may appeal the decision as to the medical treatment to the Court of Session.
- (4) Where the [^{F5}person who issued the certificate for the purposes of section 47(1)] has consulted the guardian, welfare attorney or person authorised under the intervention order and there is a disagreement as to the medical treatment of the adult, the [^{F6}person who issued the certificate] shall request the Mental Welfare Commission to nominate [^{F7}a practitioner who the Commission consider has professional knowledge or expertise relevant to medical treatment of the kind in question (the “nominated

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- practitioner”)] from the list established and maintained by them under subsection (9) to give an opinion as to the medical treatment proposed.
- (5) Where the [^{F8}nominated practitioner] certifies that, in his opinion, having regard to all the circumstances and having consulted the guardian, welfare attorney or person authorised under the intervention order as the case may be and, if it is reasonable and practicable to do so, a person nominated by such guardian, welfare attorney or person authorised under the intervention order as the case may be, the proposed medical treatment should be given, the [^{F9}person who issued the certificate for the purposes of section 47(1)] may give the treatment or may authorise any other person to give the treatment notwithstanding the disagreement with the guardian, welfare attorney, or person authorised under the intervention order, as the case may be.
- (6) Where the [^{F10}nominated practitioner] certifies that, in his opinion, having regard to all the circumstances and having consulted the guardian, welfare attorney or person authorised under the intervention order as the case may be and, if it is reasonable and practicable to do so, a person nominated by such guardian, welfare attorney or person authorised under the intervention order as the case may be, the proposed medical treatment should or, as the case may be, should not be given, the medical practitioner primarily responsible for the medical treatment of the adult, or any person having an interest in the personal welfare of the adult [^{F11}(including, where the certificate issued for the purposes of section 47(1) was issued by another person, that person)] , may apply to the Court of Session for a determination as to whether the proposed treatment should be given or not.
- (7) Subject to subsection (8), where an appeal has been made to the Court of Session under subsection (3) or an application has been made under subsection (6), and has not been determined, medical treatment authorised by section 47(2) shall not be given unless it is authorised by any other enactment or rule of law for the preservation of the life of the adult or the prevention of serious deterioration in his medical condition.
- (8) Nothing in subsection (7) shall authorise the provision of any medical treatment where an interdict has been granted and continues to have effect prohibiting the giving of such medical treatment.
- (9) The Mental Welfare Commission shall establish and maintain a list of [^{F12}practitioners] from whom they shall nominate the [^{F13}practitioner] who is to give the opinion under subsection (4).
- (10) In this section any reference to—
- (a) a guardian shall include a reference to a guardian (however called) appointed under the law of any country to, or entitled under the law of any country to act for, an adult during his incapacity, if the guardianship is recognised by the law of Scotland;
 - (b) a welfare attorney shall include a reference to a person granted, under a contract, grant or appointment governed by the law of any country, powers (however expressed) relating to the granter’s personal welfare and having effect during the granter’s incapacity.

Textual Amendments

- F1** Words in s. 50(2)(b) substituted (19.12.2005) by [Smoking, Health and Social Care \(Scotland\) Act 2005](#) (asp 13), [ss. 35\(4\)\(a\)\(i\)](#), 43; S.S.I. 2005/492, [art. 3\(c\)](#)

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- F2** Words in s. 50(2)(c) substituted (19.12.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 35(4)(a)(ii)**, 43; S.S.I. 2005/492, **art. 3(c)**
- F3** Words in s. 50(3) substituted (19.12.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 35(4)(b)(i)**, 43; S.S.I. 2005/492, **art. 3(c)**
- F4** Words in s. 50(3) substituted (19.12.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 35(4)(b)(ii)**, 43; S.S.I. 2005/492, **art. 3(c)**
- F5** Words in s. 50(4) substituted (19.12.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 35(4)(c)(i)**, 43; S.S.I. 2005/492, **art. 3(c)**
- F6** Words in s. 50(4) substituted (19.12.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 35(4)(c)(ii)**, 43; S.S.I. 2005/492, **art. 3(c)**
- F7** Words in s. 50(4) substituted (19.12.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 35(4)(c)(iii)**, 43; S.S.I. 2005/492, **art. 3(c)**
- F8** Words in s. 50(5) substituted (19.12.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 35(4)(d)(i)**, 43; S.S.I. 2005/492, **art. 3(c)**
- F9** Words in s. 50(5) substituted (19.12.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 35(4)(d)(ii)**, 43; S.S.I. 2005/492, **art. 3(c)**
- F10** Words in s. 50(6) substituted (19.12.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 35(4)(e)(i)**, 43; S.S.I. 2005/492, **art. 3(c)**
- F11** Words in s. 50(6) inserted (19.12.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 35(4)(e)(ii)**, 43; S.S.I. 2005/492, **art. 3(c)**
- F12** Words in s. 50(9) substituted (19.12.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 35(4)(f)(i)**, 43; S.S.I. 2005/492, **art. 3(c)**
- F13** Words in s. 50(9) substituted (19.12.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 35(4)(f)(ii)**, 43; S.S.I. 2005/492, **art. 3(c)**

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