

2007 No. 104

ADULTS WITH INCAPACITY

**The Adults with Incapacity (Medical Treatment Certificates)
(Scotland) Regulations 2007**

Made - - - - - *21st February 2007*

Laid before the Scottish Parliament *22nd February 2007*

Coming into force - - - *23rd March 2007*

The Scottish Ministers, in exercise of the powers conferred by section 47(5) of the Adults with Incapacity (Scotland) Act 2000(a) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Adults with Incapacity (Medical Treatment Certificates) (Scotland) Regulations 2007 and shall come into force on 23rd March 2007.

Medical treatment certificates

2. A certificate for the purposes of section 47(1) of the Adults with Incapacity (Scotland) Act 2000 (authority of persons responsible for medical treatment)(b) shall be in the form set out in the Schedule to these Regulations.

Revocation

3. The Adults with Incapacity (Medical Treatment Certificates) (Scotland) Regulations 2002(c) are revoked.

LEWIS MACDONALD

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
21st February 2007

(a) 2000 asp 4. Section 47(5) of the Act was amended by the Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), section 35. See section 87(1) for the definition of "prescribed" and section 86(1) as to the power to make regulations.
(b) Subsection (1) was amended by the Smoking, Health and Social Care (Scotland) Act 2005, section 35(2)(a) and subsection (1A) was inserted by section 35(2)(b) of that Act.
(c) S.I. 2002/208.

SCHEDULE

Regulation 2

Certificate of Incapacity for the purposes of Section 47(1) of the Adults with Incapacity (Scotland) Act 2000

I(name)

of.....(address)

* am the medical practitioner primarily responsible for the medical treatment of; or

* am a person who is * a dental practitioner / an ophthalmic optician / a registered nurse and who satisfies such requirements as are prescribed by the Adults with Incapacity (Requirements for Signing Medical Treatment Certificates) (Scotland) Regulations 2007 and who is primarily responsible for medical treatment of the kind in question of

.....(name)

of.....(address)/...../..... (date of birth)

for whom the *guardian/welfare attorney/person appointed by intervention order/nearest relative/carer

is

I have examined the patient named above on/...../..... (Date). I am of the opinion that *he/she is incapable within the meaning of the Adults with Incapacity (Scotland) Act 2000 ("the 2000 Act") in relation to a decision about the following medical treatment:-

.....
.....

because of (nature of incapacity)

.....
.....

This incapacity is likely to continue for months.

*I therefore consider it appropriate for the authority conferred by section 47(2) of the 2000 Act to subsist from / / (date of examination) until/...../....., being a period which does not exceed one year from the *date of the examination on which this certificate is based/ date of revocation of the certificate issued previously by me; or

*I am of the opinion that (a) *he/she is suffering from *a severe or profound learning disability/dementia/a severe neurological disorder; and (b) *what he/she is suffering from is unlikely to improve within the meaning of the Adults with Incapacity (Conditions and Circumstances Applicable to Three Year Medical Certificates) (Scotland) Regulations 2007/ and therefore consider it appropriate for the authority conferred by section 47(2) of the 2000 Act to subsist until /...../..... being a period which does not exceed three years from the *date of the examination on which this certificate is based / date of revocation of the certificate issued previously by me.

The authority conferred by section 47(2) of the 2000 Act shall subsist for the period specified above or until such earlier date as this certificate is revoked.

In assessing the capacity of the patient, I have observed the principles set out in section 1 of the 2000 Act.

Signed

Date

*delete as appropriate

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations follow on from the amendment to section 47 of the Adults with Incapacity (Scotland) Act 2000 (“the 2000 Act”) made by section 35 of the Smoking, Health and Social Care (Scotland) Act 2005, which now enables persons other than medical practitioners to issue certificates of incapacity and for 3 year certificates of incapacity to be issued in certain prescribed circumstances. Previously, the maximum duration of such a certificate was 1 year.

These Regulations prescribe, for the purposes of section 47(1) of 2000 Act, the new form of certificate of a person mentioned in section 47(1A) of the 2000 Act (regulation 2 and the Schedule) which may subsist for a period of up to 3 years in certain prescribed circumstances. Those circumstances are separately prescribed by the Scottish Ministers in the Adults with Incapacity (Conditions and Circumstances Applicable to Three Year Medical Treatment Certificates (Scotland) Regulations 2007 (S.S.I. 2007/100).

These Regulations revoke the Adults with Incapacity (Medical Treatment Certificates) (Scotland) Regulations 2002 (S.S.I. 2002/208) which previously prescribed the form of certificate of incapacity for the purposes of section 47(1) of the 2000 Act (regulation 3).

£3.00

© Crown Copyright 2007

Printed in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, the Queen’s Printer for Scotland