

EXECUTIVE NOTE

THE ADULTS WITH INCAPACITY (MEDICAL TREATMENT CERTIFICATES) (SCOTLAND) REGULATIONS 2007 (S.S.I. 2007/104)

This instrument was made in exercise of the powers conferred by section 47(5) of the Adults with Incapacity (Scotland) Act 2000. It is subject to negative resolution procedure.

Background

The Adults with Incapacity (Scotland) Act 2000 (“the Act”) allows an adult who is not capable of giving informed consent to be given necessary medical treatment, provided that a certificate under section 47(1) of the Act has been issued. The Act originally required that a registered medical practitioner sign the certificate and placed a maximum duration of 12 months on the validity of a certificate. The form of Certificate was laid down in the Adults with Incapacity (Medical Treatment Certificates) (Scotland) Regulations 2002 (S.I. 2002/208.)

A consultation on the operation of the Act in practice suggested that it would be appropriate to allow dental practitioners, ophthalmic opticians, registered nurses and other clinicians who have received training in the assessment of incapacity to sign certificates. It was also considered that in certain cases a certificate of longer duration would be justified. The Act was therefore amended by the Smoking, Health and Social Care (Scotland) Act 2005 to allow in addition to general medical practitioners, dental practitioners, ophthalmic opticians, registered nurses and any other class of individual as may be prescribed in regulations by the Scottish Ministers, who have received appropriate training, to sign certificates. The maximum duration of a certificate was increased to 3 years for people with certain conditions and in certain circumstances.

Policy Objectives

The purpose of this instrument is to change the form of a certificate issued under Section 47(1) of the Adults with Incapacity (Scotland) Act 2000 to take account of the amendments made by the Smoking, Health and Social Care (Scotland) Act 2005. The new certificate can be signed by dental practitioners, ophthalmic opticians, registered nurses and any other class of individual as may be prescribed in regulations by the Scottish Ministers in addition to medical practitioners. The maximum duration of a certificate issued for an individual who meets certain conditions is now three years. This will increase the number of practitioners who are able to sign certificates and reduce the number of repeat certificates which practitioners are required to issue for persons who will have a continuing need for medical treatment and who are unlikely to regain the ability to give informed consent, while retaining a maximum period to ensure that such persons will receive periodic reassessments of their conditions. This will reduce the workload of general medical practitioners in connection with Section 47 (1).

Consultation

The amendments to the Act were introduced after consultation with the NHS and other stakeholders on the operation of the Act in practice. Since the Regulations implement the outcome of that consultation no further consultation has been carried out.

Financial Effects

There will be minimal financial effects. Some stationery costs will be incurred in replacing certificate forms, but are not likely to be significant.

Scottish Executive Health Department
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