



# Adults with Incapacity (Scotland) Act 2000

2000 asp 4

## PART 5

### MEDICAL TREATMENT AND RESEARCH

#### 47 Authority of persons responsible for medical treatment

- (1) This section applies where [<sup>F1</sup>any of the persons mentioned in subsection (1A)]—
- (a) is of the opinion that [<sup>F2</sup>an adult] is incapable in relation to a decision about the medical treatment in question; and
  - (b) has certified in accordance with subsection (5) that he is of this opinion.

[<sup>F3</sup>(1A) The persons are—

- (a) the medical practitioner primarily responsible for the medical treatment of the adult;
- (b) a person who is—
  - (i) a dental practitioner;
  - (ii) an ophthalmic optician;
  - (iii) a registered nurse; or
  - (iv) an individual who falls within such description of persons as may be prescribed by the Scottish Ministers,

who satisfies such requirements as may be so prescribed and who is primarily responsible for medical treatment of the kind in question.]

- (2) [<sup>F4</sup>. . . The [<sup>F5</sup>person who by virtue of subsection (1) has issued a certificate for the purposes of that subsection] shall have, during the period specified in the certificate, authority to do what is reasonable in the circumstances, in relation to [<sup>F6</sup>. . . [<sup>F7</sup>the medical treatment in question] , to safeguard or promote the physical or mental health of the adult.

[<sup>F8</sup>(2A) Subsection (2)—

- (a) does not affect any authority conferred by any other enactment or rule of law; and

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- (b) is subject to—
  - (i) the following provisions of this section;
  - (ii) sections 49 and 50; and
  - (iii) sections 234, 237, 240, 242, 243 and 244 of the 2003 Act.]
- (3) The authority conferred by subsection (2) shall be exercisable also by any other person who is authorised by the [F<sup>9</sup>person on whom that authority is conferred] to carry out [F<sup>10</sup>the medical treatment in question] and who is acting—
  - (a) on his behalf under his instructions; or
  - (b) with his approval or agreement.
- (4) In this Part “medical treatment” includes any procedure or treatment designed to safeguard or promote physical or mental health.
- (5) A certificate for the purposes of subsection (1) shall be in the prescribed form and shall specify the period during which the authority conferred by subsection (2) shall subsist, being a period which—
  - (a) the [F<sup>11</sup>person who issues the certificate] considers appropriate to the condition or circumstances of the adult; but
  - (b) [F<sup>12</sup> does not exceed—
    - (i) one year; or
    - (ii) if, in the opinion of the person issuing the certificate any of the conditions or circumstances prescribed by the Scottish Ministers applies as respects the adult, 3 years,
 from] the date of the examination on which the certificate is based.
- (6) If after issuing a certificate, the [F<sup>13</sup>person who issued it] is of the opinion that the condition or circumstances of the adult have changed he may—
  - (a) revoke the certificate;
  - (b) issue a new certificate specifying such period [F<sup>14</sup> not exceeding—
    - (i) one year; or
    - (ii) if, in the opinion of that person any of the conditions or circumstances prescribed by the Scottish Ministers apply as respects the adult, 3 years,
 from] the date of revocation of the old certificate as he considers appropriate to the new condition or circumstances of the adult.
- (7) The authority conferred by subsection (2) shall not authorise—
  - (a) the use of force or detention, unless it is immediately necessary and only for so long as is necessary in the circumstances;
  - (b) action which would be inconsistent with any decision by a competent court;
  - (c) placing an adult in a hospital for the treatment of mental disorder against his will.
- (8) F<sup>15</sup> .....
- (9) Subject to subsection (10), where any question as to the authority of any person to provide medical treatment in pursuance of subsection (2)—
  - (a) is the subject of proceedings in any court (other than for the purposes of any application to the court made under regulations made under section 48); and
  - (b) has not been determined,

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medical treatment authorised by subsection (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.

(10) Nothing in subsection (9) shall authorise the provision of any medical treatment where an interdict has been granted and continues to have effect prohibiting the provision of such medical treatment.

[<sup>F16</sup>(11) In subsection (1A)—

“dental practitioner” has the same meaning as in section 108(1) of the National Health Service (Scotland) Act 1978 (c. 29);

“ophthalmic optician” means a person registered in either of the registers kept under section 7 of the Opticians Act 1989 (c. 44) of ophthalmic opticians.]

#### Textual Amendments

- F1** Words in s. 47(1) substituted (19.12.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 35(2)(a)(i)**, 43; S.S.I. 2005/492, **art. 3(c)**
- F2** Words in s. 47(1)(a) substituted (19.12.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 35(2)(a)(ii)**, 43; S.S.I. 2002/492, **art. 3(c)**
- F3** S. 47(1A) inserted (19.12.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 35(2)(b)**, 43; S.S.I. 2005/492, **art. 3(c)**
- F4** Words in s. 47(2) repealed (5.10.2007) by Adult Support and Protection (Scotland) Act 2007 (asp 10), **ss. 77(2)**, 79, **Sch. 2**; S.S.I. 2007/334, **art. 2(b)**, Sch. 2 (with savings in arts. 4-6)
- F5** Words in s. 47(2) substituted (19.12.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 35(2)(c)(i)**, 43; S.S.I. 2005/492, **art. 3(c)**
- F6** Word in s. 47(2) repealed (5.10.2007) by Adult Support and Protection (Scotland) Act 2007 (asp 10), **ss. 77(2)**, 79, **Sch. 2**; S.S.I. 2007/334, **art. 2(b)**, Sch. 2 (with savings in arts. 4-6)
- F7** Words in s. 47(2) substituted (19.12.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 35(2)(c)(ii)**, 43; S.S.I. 2005/492, **art. 3(c)**
- F8** S. 47(2A) inserted (5.10.2007) by Adult Support and Protection (Scotland) Act 2007 (asp 10), **ss. 77(1)**, 79, **Sch. 1 para. 5(d)**; S.S.I. 2007/334, **art. 2(b)**, Sch. 2 (with savings in arts. 4-6)
- F9** Words in s. 47(3) substituted (19.12.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 35(2)(d)(i)**, 43; S.S.I. 2005/492, **art. 3(c)**
- F10** Words in s. 47(3) substituted (19.12.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 35(2)(d)(ii)**, 43; S.S.I. 2005/492, **art. 3(c)**
- F11** Words in s. 47(5)(a) substituted (19.12.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 35(2)(e)(i)**, 43; S.S.I. 2005/492, **art. 3(c)**
- F12** Words in s. 47(5)(b) substituted (19.12.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 35(2)(e)(ii)**, 43; S.S.I. 2005/492, **art. 3(c)**
- F13** Words in s. 47(6) substituted (19.12.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 35(2)(f)(i)**, 43; S.S.I. 2005/492, **art. 3(c)**
- F14** Words in s. 47(6)(b) substituted (19.12.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 35(2)(f)(ii)**, 43; S.S.I. 2005/492, **art. 3(c)**
- F15** S. 47(8) repealed (5.10.2007) by Adult Support and Protection (Scotland) Act 2007 (asp 10), **ss. 77(2)**, 79, **Sch. 2**; S.S.I. 2007/334, **art. 2(b)**, Sch. 2 (with savings in arts. 4-6)
- F16** S. 47(11) inserted (19.12.2005) by Smoking, Health and Social Care (Scotland) Act 2005 (asp 13), **ss. 35(2)(g)**, 43; S.S.I. 2005/492, **art. 3(c)**

**Changes to legislation:**

There are currently no known outstanding effects for the Adults with Incapacity (Scotland) Act 2000, Section 47.