

**2005 No. 610**

**ADULTS WITH INCAPACITY**

**The Adults with Incapacity (Management of Residents’  
Finances) (Scotland) Regulations 2005**

*Made* - - - - - *29th November 2005*

*Laid before the Scottish Parliament* *1st December 2005*

*Coming into force* - - - *2nd December 2005*

The Scottish Ministers, in exercise of the powers conferred on them by section 35(4) 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 (Management of Residents’ Finances) (Scotland) Regulations 2005 and shall come into force on 2nd December 2005.

**Amendment of list of authorised establishments**

2. In section 35(1)(b) of the Adults with Incapacity Act 2000 (list of authorised establishments)(b), after the words “independent hospital” insert “or private psychiatric hospital”.

*LEWIS MACDONALD*

Authorised to sign by the Scottish Ministers

St Andrew’s House,  
Edinburgh  
29th November 2005

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(a) 2000 asp 4.

(b) Section 35(1) was amended by the Regulation of Care (Scotland) Act 2001 (asp 8), schedule 3, paragraph 23(2); and by the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), schedule 5, Part 1.

## EXPLANATORY NOTE

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

Under Part 4 of the Adults with Incapacity (Scotland) Act 2000 (“the Act”) managers of certain establishments are entitled, if certain conditions are met, to manage any of the matters listed in section 39 of the Act on behalf of a resident of that establishment.

Section 35(1) of the Act lists the establishments (“authorised establishments”) to which the powers in Part 4 of the Act can apply, subject to a condition set out in section 35(3) of the Act.

Private psychiatric hospitals were included in the list in section 35(1) of the Act when the list was amended by the Regulation of Care (Scotland) Act 2001. However the reference to private psychiatric hospitals was removed from the list by Part 1 of schedule 5 to the Mental Health (Care and Treatment) (Scotland) Act 2003 when schedule 5 was commenced on 5th October 2005 by the Mental Health (Care and Treatment) (Scotland) Act 2003 (Commencement No 4) Order 2005 (S.S.I. 2005/161), as amended by S.S.I. 2005/375.

These Regulations restore private psychiatric hospitals to the list of authorised establishments in section 35(1) of the Act.

By virtue of section 35(6) of the Act “private psychiatric hospital” has the same meaning as in the Regulation of Care (Scotland) Act 2001. “Private psychiatric hospital” is defined in section 77(1) of that Act, as amended by the Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 (S.S.I. 2005/465), article 2 and Schedule 1 paragraph 30(2) as:

“any premises used or intended to be used for the provision of medical treatment to one or more patients subject to an order or direction under the Mental Health (Care and Treatment) (Scotland) Act 2003 or the Criminal Procedure (Scotland) Act 1995 (whether or not other persons are treated there), not being—

- (a) any health service hospital (as defined in section 108(1) of the National Health Service (Scotland) Act 1978);
- (b) any state hospital; or
- (c) otherwise an independent health care service.”.

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