

EXECUTIVE NOTE

Adults with Incapacity (Management of Residents' Finances) (Scotland) Regulations 2005 No. 610

The above instrument was made in exercise of the powers conferred by section 35(4) of the Adults with Incapacity (Scotland) Act 2000 (the AWI). The instrument is subject to negative resolution procedure. It is intended that it will come into force on 2 December 2005.

Legal Background

Part 4 of the AWI allows for managers of certain residential and care establishments (including care homes and hospitals) to manage the finances of adults residing there who, in the opinion of a medical practitioner, are incapable of doing so. The affairs which can be managed are listed in section 39 of the AWI. There are various conditions attached to such management. Part 4 of the AWI only applies to residents of certain establishments, which are listed in section 35(1) of the AWI.

Section 35(1) of the AWI included private psychiatric hospitals as authorised establishments. When the Mental Health (Care and Treatment) (Scotland) Act 2003 (the 2003 Act) was drafted it inadvertently repealed the reference to private psychiatric hospitals in both the AWI and the 2001 Act.

When the time came to implement the 2003 Act, there were a number of private psychiatric hospitals registered with and regulated by the Care Commission under the 2001 Act (there are now four such hospitals). It was felt that the most straightforward solution to the repeals made by the 2003 Act was to make a number of minor technical amendments to the definition of "private psychiatric hospital" in the 2001 Act. This was achieved by the Mental Health (Care and Treatment) (Scotland) Act 2003 (Modification of Enactments) Order 2005 (S.S.I. 2005/465).

Unfortunately the repeal of the definition in the AWI by the 2003 Act was missed. The repeal came into effect on 5 October 2005.

Policy Objective

These regulations restore private psychiatric hospitals to the list of authorised establishments in section 35(1) of the AWI. By virtue of section 35(6) of the AWI "private psychiatric hospital" has the same meaning as in the Regulation of Care (Scotland) Act 2001.

Scottish Executive Health Department
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