

EXECUTIVE NOTE

The Adults with Incapacity (Requirements for Signing Medical Treatment Certificates) (Scotland) Regulations 2006 SSI/2006/343

The above instrument was made in exercise of the powers conferred by section 47(1A)(b) of the Adults with Incapacity (Scotland) Act 2000 (asp 4).

Policy Objectives

Concerns were expressed to the Executive about the operation of Part 5 of the Adults with Incapacity (Scotland) Act 2000. In particular, general practitioners were concerned about the workload implications of the procedure recommended to be followed in the Code of Practice, especially the processes connected with the completion of certificates under Section 47. Dental practitioners were concerned that treatment for an adult with incapacity presenting at their surgeries could be delayed until a certificate of incapacity could be issued by a doctor. This was especially frustrating in the community dental service, where patients – and their capacity to consent or refuse – are often already well known to the dental practitioner.

Following an extensive consultation exercise, including a face to face meeting with key stakeholders the general consensus among respondents was that health professionals other than registered medical practitioners should be allowed to sign certificates of incapacity, subject to various qualifications including the need to ensure that health professionals are equipped with sufficient skills. This was also the view of the meeting with stakeholders in February 2004.

The necessary amendment was subsequently made to section 47 of the Adults with Incapacity (Scotland) Act 2000 by virtue of section 35(2)(b) of the Smoking, Health and Social Care (Scotland) Act 2005 (asp 13).

In addition to the medical practitioner primarily responsible for the medical treatment of the adult, the amendment to section 47 of the Adults with Incapacity (Scotland) Act 2000 ensures that the following may issue certificates of incapacity:

A person who is;

- a dental practitioner
- an ophthalmic optician
- a registered nurse
- or a person who falls within such description of persons as may be prescribed by the Scottish Ministers, who satisfy such requirements as may be so prescribed.

This instrument now prescribes the requirements which must be satisfied by any of the above persons in order for that person to be authorised to sign a certificate for the purposes of section 47(1). The requirements are that they must first complete accredited training by NHS Education for Scotland in the assessment of incapacity.

Financial Effects

The instrument has no financial implications for the Scottish Executive or Local Government.

Regulatory Impact Assessment

There has been no Regulatory Impact Assessment (RIA) undertaken in respect of the regulations. The making of the regulations in themselves will have no impact upon Scottish businesses.