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SCOTTISH STATUTORY INSTRUMENTS

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**2007 No. 100**

**ADULTS WITH INCAPACITY**

**The Adults with Incapacity (Conditions and Circumstances Applicable to Three Year Medical Treatment Certificates) (Scotland) Regulations 2007**

*Made* - - - - 21st February 2007  
*Laid before the Scottish Parliament* - - - - 22nd February 2007  
*Coming into force* - - 23rd March 2007

The Scottish Ministers, in exercise of the powers conferred by section 47(5)(b)(ii) and (6)(b)(ii) of the Adults with Incapacity (Scotland) Act 2000(1), and of all other powers enabling them in that behalf, hereby make the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Adults with Incapacity (Conditions and Circumstances Applicable to Three Year Medical Treatment Certificates) (Scotland) Regulations 2007 and shall come into force on 23rd March 2007.

(2) In these Regulations—

“the Act” means the Adults with Incapacity (Scotland) Act 2000; and

“severe or profound learning disability” means a condition which results from the arrested or incomplete physical development of the brain, or severe damage to the brain, and which involves severe impairment of intelligence and social functioning.

**Issue of medical treatment certificates for a period of up to three years**

2. For the purpose of section 47(5)(b)(ii) of the Act the conditions and circumstances prescribed are that—

(a) the adult is suffering from—

(i) a severe or profound learning disability;

(ii) dementia; or

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(1) 2000 asp 4. Section 47(5) and (6) were amended by the [Smoking, Health and Social Care \(Scotland\) Act 2005 \(asp 13\)](#) section 35(2)(e) and (f). See section 87(1) of the Act for the definition of “prescribe” and section 86(1) as to the power to make regulations.

- (iii) a severe neurological disorder,  
such that the adult is incapable in respect of decisions about medical treatment of the adult;  
and
- (b) what the adult is suffering from under paragraph (a) is unlikely to improve.

**Issue of new medical treatment certificates for a period of up to three years**

**3.** For the purpose of section 47(6)(b)(ii) of the Act the conditions and circumstances prescribed are that—

- (a) the adult is suffering from—
  - (i) a severe or profound learning disability;
  - (ii) dementia; or
  - (iii) a severe neurological disorder,  
such that the adult is incapable in respect of decisions about medical treatment of the adult;  
and
- (b) what the adult is suffering from under paragraph (a) is unlikely to improve.

St Andrew's House,  
Edinburgh  
21st February 2007

*LEWIS MACDONALD*  
Authorised to sign by the Scottish Ministers

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## EXPLANATORY NOTE

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

These Regulations make provision in relation to the issue of certain medical treatment certificates as respects adults with incapacity in accordance with section 47(1) of the Adults with Incapacity (Scotland) Act 2000 (“the Act”).

Regulation 2 prescribes, for the purposes of section 47(5)(b)(ii) of the Act, the conditions or circumstances which must apply to the adult in order for the person who issues the certificate for the purposes of section 47(1) of the Act (authority of persons responsible for medical treatment) to issue a medical treatment certificate specifying a period of up to 3 years.

Regulation 3 prescribes, for the purposes of section 47(6)(b)(ii) of the Act, the change of condition or circumstances which must apply to the adult in order for the person who issued the original medical certificate to issue a new certificate specifying a period of up to 3 years.

The conditions or circumstances which are prescribed under regulations 2 and 3 which are to apply to the adult are that the adult suffers from (a) a severe or profound learning disability (which condition is defined in regulation 1(2)), (b) dementia or (c) a severe neurological disorder such that the adult is incapable in respect of decisions about medical treatment, and that in any of those cases what the adult is suffering from is unlikely to improve.