

EXECUTIVE NOTE

NATIONAL HEALTH SERVICE, SCOTLAND

The Adults with Incapacity (Conditions and Circumstances Applicable to Three Year Medical Treatment Certificates) (Scotland) Regulations 2007 (S.S.I. 2007/100)

This instrument was made in exercise of the powers conferred by section 47 (5) (b)(ii) and (6) (b) (ii) of the Adults with Incapacity (Scotland) Act 2000. It is subject to negative resolution procedure.

Background

The Adults with Incapacity (Scotland) Act 2000 (“the Act”) allows an adult who is not capable of giving informed consent to be given necessary medical treatment, provided that a certificate, under section 47(1) of the Act confirming that the adult is incapable in relation to a decision about medical treatment, has been issued. The Act originally placed a maximum duration of 12 months on the validity of a certificate. A consultation on the operation of the Act in practice suggested that in cases of severe or profound learning difficulty, dementia, or a severe neurological disorder where in the clinical judgment of the authorising practitioner an improvement in a person’s condition or circumstances is unlikely, a certificate of longer duration would be justified. The Act was therefore amended by the Smoking, Health and Social Care (Scotland) Act 2005 to allow a maximum duration of 3 years if the conditions and circumstances prescribed by the Scottish Ministers are met.

Policy Objectives

The purpose of this instrument is to specify the conditions and circumstances in which it would be appropriate for a practitioner to sign a certificate for a period of up to three years. These are in cases of severe or profound learning difficulty, dementia, or a severe neurological disorder where in the clinical judgment of the authorising practitioner an improvement in a person’s condition or circumstances is unlikely. This will reduce the number of repeat certificates which practitioners are required to issue for persons who will have a continuing need for medical treatment and who are unlikely to regain the ability to give informed consent, while retaining a maximum period to ensure that such persons will receive periodic reassessments of their conditions.

Consultation

The amendments to the Act were introduced after consultation with the NHS and other stakeholders on the operation of the Act in practice. Since the Regulations implement the outcome of that consultation no further consultation has been carried out.

Financial Effects

There will be minimal financial effects. Some savings in the payment of fees to practitioners for the signing of certificates may be expected, but are not likely to be significant.

Scottish Executive Health Department
February 2007