

SMOKING, HEALTH AND SOCIAL CARE (SCOTLAND) ACT 2005

EXPLANATORY NOTES

AUTHORISATION OF MEDICAL TREATMENT

Section 35 – Amendment of Adults with Incapacity (Scotland) Act 2000: authorisation of medical treatment

155. This section provides for two substantive changes, and consequent amendments, to Part 5 of the Adults with Incapacity (Scotland) Act 2000. First an extension to the range of health professionals who can sign certificates of incapacity and second extending the length of certificates from one to three years in certain prescribed circumstances.
156. Subsection (1) signposts the two main amendments to the 2000 Act.
157. Subsection (2)(a) widens the scope of who can issue a certificate under section 47 of the 2000 Act from the ‘medical practitioner primarily responsible’ for the treatment of an adult, to include other named healthcare professionals as listed in subsection 2(b) and others who meet various requirements set out by the Scottish Ministers. A certificate under section 47 of the Act confers a general authority to treat an adult with incapacity, where the medical practitioner primarily responsible for the medical treatment of the adult is of the opinion that the adult is incapable in relation to a decision about the medical treatment in question. Only a ‘registered medical practitioner’ currently has the power to complete and sign a certificate.
158. Subsection (2)(b) lists the healthcare professionals who will be able to issue a certificate, they are: the medical practitioner primarily responsible for the medical treatment of the adult; a dental practitioner; an ophthalmic optician; a registered nurse. This section also makes provision for others to be added by regulation as and when appropriate. The additional ‘healthcare professionals’ (dentists, ophthalmic opticians and registered nurses) will only be allowed to certify for treatment in respect of their own specialist area. The subsection also enables Scottish Ministers to prescribe requirements that would need to be met by the healthcare professionals before they could issue certificates, for example they will need to have undertaken accredited training in the assessment of incapacity.
159. Subsection (2)(c)(i) makes consequential amendments to the references in section 47(2) of the 2000 Act to the medical practitioner primarily responsible for the health of the adult.
160. Subsection (2)(c)(ii) sets out that a healthcare professional who is competent to sign a certificate of incapacity can only do so within his or her own professional area.
161. Subsection (2)(d) clarifies that treatment can be delegated to any other person authorised by the certificate signatory and acting on his or her behalf, under instructions, or with his or her approval and agreement.

*These notes relate to the Smoking, Health and Social Care (Scotland)
Act 2005 (asp 13) which received Royal Assent on 5 August 2005*

162. Subsection (2)(e)(i) amends section 47(5)(a) of the 2000 Act as to who can issue the certificate from ‘medical practitioner primarily responsible for the medical treatment of the adult’ to ‘person who issues the certificate’.
163. Subsection (2)(e)(ii) amends section 47(5)(b) of the 2000 Act so that, in certain circumstances and in relation to certain conditions to be prescribed by the Scottish Ministers the maximum duration of the certificate is 3 years. The prescribed conditions will be listed in the regulations, which will be subject to consultation with key stakeholders.
164. Subsection (2)(f)(i) amends section 47(6) of the 2000 Act as to who can issue the certificate from ‘medical practitioner primarily responsible for the medical treatment of the adult’ to ‘person who issued it’.
165. Subsection (2)(f)(ii) amends section 47(6)(b) of the 2000 Act so that, in certain circumstances to be prescribed by Scottish Ministers the maximum duration of the certificate is 3 years.
166. Subsection (2)(g) clarifies the definition of “dental practitioner” and “ophthalmic optician” for the purposes of this section.
167. Subsection (3) widens the scope of subsection 49(1) of the 2000 Act to ensure that health professionals do not treat a patient where they know that an application for an intervention order or guardianship order has been made to the sheriff and has not been determined.
168. Subsection (4) widens the scope of section 50 of the 2000 Act to include all health professionals who are empowered to sign certificates of incapacity.