



# Smoking, Health and Social Care (Scotland) Act 2005

2005 asp 13

## PART 6

### MISCELLANEOUS

#### *Authorisation of medical treatment*

#### **35 Amendment of Adults with Incapacity (Scotland) Act 2000: authorisation of medical treatment**

- (1) The Adults with Incapacity (Scotland) Act 2000 (asp 4) is amended as follows.
- (2) In section 47 (authorisation of medical treatment)—
- (a) in subsection (1)—
- (i) for the words “the medical practitioner primarily responsible for the medical treatment of an adult” substitute “ any of the persons mentioned in subsection (1A) ”;
- (ii) in paragraph (a), for the words “the adult” substitute “ an adult ”;
- (b) after that subsection, insert—
- “(1A) The persons are—
- (a) the medical practitioner primarily responsible for the medical treatment of the adult;
- (b) a person who is—
- (i) a dental practitioner;
- (ii) an ophthalmic optician;
- (iii) a registered nurse; or
- (iv) an individual who falls within such description of persons as may be prescribed by the Scottish Ministers,

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**Changes to legislation:** There are currently no known outstanding effects for the Smoking, Health and Social Care (Scotland) Act 2005, Cross Heading: Authorisation of medical treatment. (See end of Document for details)

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who satisfies such requirements as may be so prescribed and who is primarily responsible for medical treatment of the kind in question.”;

- (c) in subsection (2)—
- (i) for the words “medical practitioner primarily responsible for the medical treatment of the adult” substitute “ person who by virtue of subsection (1) has issued a certificate for the purposes of that subsection ”;
  - (ii) for the words “medical treatment” where they second occur substitute “ the medical treatment in question ”;
- (d) in subsection (3)—
- (i) for the words “medical practitioner primarily responsible for the medical treatment of the adult” substitute “ person on whom that authority is conferred ”;
  - (ii) for the words “medical treatment”, where they second occur, substitute “ the medical treatment in question ”;
- (e) in subsection (5)—
- (i) in paragraph (a), for the words “medical practitioner primarily responsible for the medical treatment of the adult” substitute “ person who issues the certificate ”;
  - (ii) in paragraph (b), for the words “does not exceed one year from” substitute “does not exceed—
    - (i) one year; or
    - (ii) if, in the opinion of the person issuing the certificate any of the conditions or circumstances prescribed by the Scottish Ministers applies as respects the adult, 3 years,
 from ”;
- (f) in subsection (6)—
- (i) for the words “medical practitioner primarily responsible for the medical treatment of the adult” substitute “ person who issued it ”;
  - (ii) in paragraph (b), for the words “not exceeding one year from” substitute “not exceeding—
    - (i) one year; or
    - (ii) if, in the opinion of that person any of the conditions or circumstances prescribed by the Scottish Ministers apply as respects the adult, 3 years,
 from ”;
- (g) after subsection (10) insert—
- “(11) In subsection (1A)—
- “dental practitioner” has the same meaning as in section 108(1) of the National Health Service (Scotland) Act 1978 (c. 29);

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“ophthalmic optician” means a person registered in either of the registers kept under section 7 of the Opticians Act 1989 (c. 44) of ophthalmic opticians.”.

- (3) In section 49(1) (medical treatment where there is an application for intervention or guardianship order)—
- (a) for the words “Section 47(2)” substitute “ Subsection (2) of section 47 ”;
  - (b) for the words “medical practitioner primarily responsible for the medical treatment of the adult” substitute “ person on whom authority is conferred by that subsection ”.
- (4) In section 50 (medical treatment where guardian etc. has been appointed)—
- (a) in subsection (2)—
    - (i) in paragraph (b), for the words “medical practitioner primarily responsible for the medical treatment of the adult” substitute “ person who issued the certificate for the purposes of section 47(1) ”;
    - (ii) in paragraph (c), for the words “medical practitioner” substitute “ person ”;
  - (b) in subsection (3)—
    - (i) for the words “medical practitioner primarily responsible for the medical treatment of the adult” substitute “ person who issued the certificate for the purposes of section 47(1) ”;
    - (ii) for the words “any person having an interest” substitute “ the medical practitioner primarily responsible for the medical treatment of the adult (in a case where the person who so issued the certificate was someone other than that practitioner) or any person having an interest ”;
  - (c) in subsection (4)—
    - (i) for the words “medical practitioner primarily responsible for the medical treatment of the adult” substitute “ person who issued the certificate for the purposes of section 47(1) ”;
    - (ii) for the words “medical practitioner”, where they second occur, substitute “ person who issued the certificate ”;
    - (iii) for the words “a medical practitioner (the “nominated medical practitioner”)” substitute “ a practitioner who the Commission consider has professional knowledge or expertise relevant to medical treatment of the kind in question (the “nominated practitioner”) ”;
  - (d) in subsection (5)—
    - (i) for the words “nominated medical practitioner” substitute “ nominated practitioner ”;
    - (ii) for the words “medical practitioner primarily responsible for the medical treatment of the adult” substitute “ person who issued the certificate for the purposes of section 47(1) ”;
  - (e) in subsection (6)—
    - (i) for the words “nominated medical practitioner” substitute “ nominated practitioner ”;
    - (ii) after the words “personal welfare of the adult” insert “ (including, where the certificate issued for the purposes of section 47(1) was issued by another person, that person) ”;
  - (f) in subsection (9)—

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- (i) for the words “medical practitioners” substitute “ practitioners ”;
- (ii) for the words “medical practitioner” substitute “ practitioner ”.

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**Commencement Information**

**II** S. 35 in force at 19.12.2005 by S.S.I. 2005/492, art. 3(c)

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