

# **ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000**

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## **EXPLANATORY NOTES**

### **THE ACT**

#### **Part 5: Medical Treatment and Research**

##### ***Section 50: Medical treatment where guardian etc has been appointed***

187. This section deals with the situation where a guardian or welfare attorney or person appointed under an intervention order has power in relation to medical treatment, and disagreement arises between such a person and a doctor about the desirability of treatment.
188. Subsection (1) applies this section where a guardian, welfare attorney, or person authorised under an intervention order (referred to as a “proxy”) has power in relation to any medical treatment.
189. Subsection (2) withdraws the general authority to treat where the doctor primarily responsible is aware of the appointment or authorisation of a proxy, it would be reasonable and practicable for the doctor to obtain the proxy’s consent, but they have failed to do so.
190. Subsection (3) provides that where the doctor primarily responsible has consulted the proxy and there is no disagreement as to medical treatment, any person who has an interest in the personal welfare of the adult may nevertheless appeal the decision to the Court of Session.
191. Subsection (4) provides that where disagreement arises between the proxy and doctor, the doctor must ask the Mental Welfare Commission to nominate a second doctor to give an independent opinion on the medical treatment.
192. Subsection (5) provides that the authority to give treatment will apply if the second doctor certifies that in his opinion the proposed medical treatment should be given, having regard to all the circumstances, and having consulted both the proxy and (if it is reasonable and practicable to do so) another person nominated by the proxy.
193. Subsection (6) permits the doctor primarily responsible, or any other person who has an interest in the personal welfare of the adult, to ask the Court of Session to decide whether or not the proposed treatment should be given if they disagree with the opinion of the second doctor.
194. Subsection (7) withdraws the authority to treat during an appeal to the Court of Session except for life saving treatment or treatment to prevent a serious deterioration in health.
195. Subsection (8) withdraws any authority to treat where a court order has been granted and is still in effect that prohibits the giving of such medical treatment.

*These notes relate to the Adults with Incapacity (Scotland)  
Act 2000 (asp 4) which received Royal Assent on 9 May 2000*

196. Subsection (9) provides for the Mental Welfare Commission to establish and maintain a list of medical practitioners from whom they shall nominate independent doctors in terms of subsection (4) above.
197. Subsection (10) provides that the terms “welfare attorney” and “guardian” in this section shall include foreign attorneys and guardians if their powers are recognised in Scotland.

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**Authority for research**

198. This section provides that research on adults incapable of giving consent to such research may not be carried out except in particular circumstances and subject to conditions. In particular research is not permitted where it could be carried out on adults who are capable of giving consent.
199. Subsection (1) specifies the types of research covered, and provides the general prohibition of such research except in specific circumstances
200. Subsection (2) specifies the circumstances in which research may be carried out. Research must be to obtain knowledge of the causes, diagnosis, treatment or care of the adult’s incapacity, or the effect of any treatment or care given to the adult during his incapacity. The further conditions specified in subsection (3) must also be fulfilled.
201. Subsection (3) defines the conditions under which research is permitted, all of which must normally be met. The research must be likely to produce real and direct benefit to the adult and the adult must not show unwillingness to participate. The research must involve only minimal risk or discomfort to the adult and have been approved by the Ethics Committee. Consent must also have been obtained from the patient’s guardian or welfare attorney or nearest relative.
202. Subsection (4) provides exceptionally for the possibility that research may be carried out even where it is not likely to produce real and direct benefit to the adult. This is permitted where the research is likely to improve the scientific understanding of the adult’s incapacity. The group of people suffering from that incapacity may ultimately benefit from this research. It is still necessary to comply with the conditions in subsections (1), (2) and (3)(b)-(f).
203. Subsection (5) allows the Ethics Committee to attach conditions when granting approval for research.
204. Subsection (6) provides for the regulations establishing the Ethics Committee.
205. Subsection (7) enables the Scottish Ministers to specify in regulations matters which the Ethics Committee must take into account when approving research.