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## EXPLANATORY NOTE

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

These Regulations make provision in relation to the medical treatment of adults with incapacity in accordance with section 48 of the [Adults with Incapacity \(Scotland\) Act 2000 \(asp 4\)](#) (“the Act”).

They specify certain medical treatments to which the authority to treat under section 47(2) of the Act shall not apply (regulation 2(2) and Schedule 1).

They authorise the carrying out of such treatments but only in accordance with the provisions of the Regulations (regulation 2(3)).

Treatments set out in Part 1 of Schedule 1 may be carried out following a decision of the Court of Session (regulation 3(1)(a)) and where the adult does not resist the carrying out of the treatment (regulation 3(1)(b)).

Treatments set out in Part 2 of Schedule 1 may be carried out where a certificate in the form set out in Schedule 2 is given by a practitioner appointed by the Mental Welfare Commission to the effect that the adult is incapable in relation to a decision about the treatment and that it should be carried out (regulation 4).

The Regulations are subject to any authority to carry out the treatment conferred by any other enactment or rule of law for the preservation of life of the adult or the prevention of serious deterioration in the adult’s medical condition (regulation 5(1)). Notice of such treatment must be given to the Mental Welfare Commission (regulation 5(2)). Such treatment is not authorised, however, where an interdict prohibits it (regulation 5(3)).

No treatment for mental disorder set out in Schedule 1 may be carried out in relation to adults with incapacity aged 16 or 17 unless the medical practitioner primarily responsible has a qualification or special experience, in child and adolescent psychiatry (regulation 6(1)(a)) or has obtained a written opinion from a practitioner having such qualification or special experience (regulation 6(1)(b)).

No treatment for mental disorder set out in Part 2 of Schedule 1 may be carried out in relation to adults with incapacity aged 16 or 17 unless the medical practitioner appointed by the Mental Welfare Commission has a qualification or special experience in child and adolescent psychiatry or in another specialism appropriate to the treatment of such persons (regulation 6(2)).

Certificates or opinions under the Regulations must be sent to the Mental Welfare Commission within 7 days of their date (regulation 7(1)).

Certificates and opinions remain valid only for a period not exceeding 1 year from the date of their being given (regulation 7(2)).