SCOTTISH STATUTORY INSTRUMENTS

2003 No. 266

ADULTS WITH INCAPACITY

The Adults with Incapacity (Management of Residents' Finances) (No. 2) (Scotland) Regulations 2003

Made - - - -	*29th May 2003*
Laid before the Scottish Parliament - - - -	*3rd June 2003*
Coming into force - -	*1st October 2003*

The Scottish Ministers, in exercise of the powers conferred by sections 37(2) and (9), 39(3), 41(d) and 86 of the Adults with Incapacity (Scotland) Act 2000(**1**), and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Adults with Incapacity (Management of Residents' Finances) (No. 2) (Scotland) Regulations 2003 and shall come into force on 1st October 2003.

(2) In these Regulations "the Act" means the Adults with Incapacity (Scotland) Act 2000.

Certificate of incapacity of managing affairs

2. The certificate issued by a medical practitioner under section 37(2) of the Act (certificate of incapacity of managing affairs) shall be in the form set out in Schedule 1 to these Regulations.

Evidence to be taken into account under section 37(8) of the Act

3.—(1) The evidence which the supervisory body shall take into account in reaching a decision under section 37(8) of the Act (as to whether a direction should be given authorising the managers of an authorised establishment to dispense with certain matters) shall be the evidence provided in two certificates, each signed by a medical practitioner certifying as to whether or not, in the opinion of that medical practitioner, it would pose a serious risk to the health of the resident for the resident to be–

(a) notified that the resident is to be examined under section 37(2) of the Act;

(b) sent a copy of the certificate issued by a medical practitioner under that section (certificate of incapacity of managing affairs); or

(**1**) 2000 asp 4. See section 87(1) for the definition of "prescribed".

(c) notified that the managers of the authorised establishment intend to manage the resident's affairs.

(2) A certificate granted under paragraph (1) shall be in the form set out in Schedule 2 to these Regulations.

(3) Each certificate under paragraph (1) shall be prepared and signed by a medical practitioner who has examined the resident outwith the presence of the other medical practitioner.

(4) Section 37(6) applies to a medical practitioner who certifies under paragraph (1) as it applies to a medical practitioner who certifies under section 37.

(5) In any case in which the resident's incapacity is wholly or partly by reason of mental disorder, at least one of the certificates under paragraph (1) shall be signed by a medical practitioner who is a practitioner approved for the purposes of section 20 of the Mental Health (Scotland) Act 1984(**2**) as having special experience in the diagnosis or treatment of mental disorder.

Value of matter for the purposes of section 39(3) of the Act

4. The value which is prescribed for the purposes of section 39(3) (which prevents the managers of an authorised establishment from managing, without the consent of the supervisory body, any matter if its value is greater than that which is prescribed) is–

(a) £100 in the case of any matter which consists of a disposal under section 39(1)(d) (disposal of moveable property other than money) irrespective of the number of items of moveable property comprised in the disposal; and

(b) £10,000 in the case of any other matter.

Placing funds to earn interest

5. For the purpose of section 41(d) of the Act (investment for interest of funds held), the sum which is prescribed is £500.

St Andrew's House, Edinburgh
29th May 2003

MALCOLM CHISHOLM
A member of the Scottish Executive

(**2**) 1984 c. 36.

SCHEDULE 1 Regulation 2

Adults with Incapacity (Scotland) Act 2000 ("the Act")

Certificate of incapacity in relation to decisions as to, or safeguarding interest in, resident's affairs.

I …….. (full name of medical practitioner)

of .....

..... (professional address)

have examined ..... (resident's name),

…./…./…. (resident's date of birth),

of .....

.....

..... (authorised establishment where resident lives) on …../…../….. (date)

in my capacity as ..... *.

I am of the opinion that he/she is incapable in relation to:

- decisions as to**
- safeguarding his/her interests in **

any of the affairs referred to in section 39 of the Act.

This is because of:

- mental disorder**
- inability to communicate because of physical disability**

.....

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(brief description of nature of mental disorder/inability to communicate).

I am not related to the resident or to any of the managers of the authorised establishment in which he/she resides, nor do I have any direct or indirect financial interest in the authorised establishment.