SCOTTISH STATUTORY INSTRUMENTS

2002 No. 275

ADULTS WITH INCAPACITY

The Adults with Incapacity (Specified Medical Treatments) (Scotland) Regulations 2002

Made - - - -	*6th June 2002*
Laid before the Scottish Parliament - - - -	*7th June 2002*
Coming into force - -	*1st July 2002*

The Scottish Ministers, in exercise of the powers conferred by section 48(2) and (3) 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 (Specified Medical Treatments) (Scotland) Regulations 2002 and come into force on 1st July 2002.

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

Specified Medical Treatments

2.—(1) These Regulations apply where the medical practitioner primarily responsible for the medical treatment of an adult has certified, in accordance with section 47(1) (authority of persons responsible for medical treatment) of the Act, that he is of the opinion that the adult is incapable in relation to a decision about a treatment specified in Schedule 1 to these Regulations.

(2) The medical treatments set out in Schedule 1 to these Regulations are specified, for the purposes of section 48(2) of the Act, as treatments to which section 47(2) of the Act (authority of persons responsible for medical treatment) shall not apply.

(3) The medical treatments so specified may be carried out only in accordance with the following provisions of these Regulations and where they are designed to safeguard or promote the physical or mental health of the adult.

(**1**) 2000 asp 4.

Treatments requiring application to the court

3.—(1) Subject to regulations 5 and 6 below, a treatment of a kind set out in Part 1 of Schedule 1 to these Regulations may be carried out in relation to an adult who is incapable in relation to a decision about that treatment if–

(a) the Court of Session is satisfied, on application to it by the medical practitioner primarily responsible for the medical treatment, that the treatment will safeguard or promote the physical or mental health of the adult and that the adult does not oppose the treatment; and

(b) the adult does not resist the carrying out of the treatment.

(2) The Court of Session shall, in considering such an application, afford an opportunity to any person having an interest in the personal welfare of the adult to make representations in respect of it.

Treatments requiring a certificate from a practitioner appointed by the Mental Welfare Commission

4.—(1) Subject to regulations 5 and 6 below, a treatment of a kind set out in Part 2 of Schedule 1 to these Regulations may be carried out in relation to an adult who is incapable in relation to a decision about that treatment where a medical practitioner appointed by the Mental Welfare Commission certifies, in the form set out in Schedule 2 to these Regulations, that–

(a) the adult is incapable in relation to such a decision, and

(b) having regard to the likelihood of its safeguarding or promoting the adult's physical or mental health, the treatment should be carried out.

(2) The medical practitioner referred to in paragraph (1) above shall not be the medical practitioner primarily responsible for any medical treatment of the adult.

Treatment in emergencies

5.—(1) Subject to paragraph (3) below, these Regulations are without prejudice to any authority conferred by any other enactment or rule of law for the preservation of the life of the adult or the prevention of serious deterioration in the adult's medical condition, which may apply to any of the medical treatments set out in Schedule 1 to these Regulations.

(2) Where treatment of a kind set out in Schedule 1 to these Regulations, is carried out under such an authority, the medical practitioner primarily responsible for the treatment shall within 7 days after the treatment has taken place notify the Mental Welfare Commission in writing (including in electronic form) of–

(a) the name and address of the adult;

(b) the nature of the treatment;

(c) the place at which it took place; and

(d) the reasons for its having been given.

(3) Nothing in this regulation shall authorise the carrying out of any medical treatment where an interdict has been granted and continues to have effect prohibiting the provision of such medical treatment.

Young persons

6.—(1) No treatment for mental disorder set out in Schedule 1 to these Regulations may be carried out in relation to an adult who is 16 or 17 years of age(**2**) and is incapable in relation to a decision about that treatment unless either–

(a) the medical practitioner primarily responsible for that treatment has a qualification, or special experience, in child and adolescent psychiatry; or

(b) that practitioner has sought and obtained an opinion in writing from a practitioner having such a qualification or special experience that the treatment is reasonably required to safeguard or promote the mental health of the adult.

(2) No treatment for mental disorder set out in Part 2 of Schedule 1 to these Regulations may be carried out in relation to an adult who is 16 or 17 years of age and is incapable in relation to a decision about that treatment unless the medical practitioner appointed by the Mental Welfare Commission who certifies that the treatment should be carried out has a qualification, or special experience, in child and adolescent psychiatry or in another specialism appropriate to the treatment of the adult.

Certificates by medical practitioners

7.—(1) The medical practitioner primarily responsible for the medical treatment of the adult shall send a copy of any certificate or opinion given in accordance with these Regulations to the Mental Welfare Commission within 7 days of the date of that certificate or opinion.

(2) A certificate or opinion given in accordance with these Regulations may subsist for a period not exceeding one year.

St Andrew's House,Edinburgh
6th June 2002

MALCOLM CHISHOLM
Authorised to sign by the Scottish Ministers

(**2**) "adult" is defined by section 1 of the Adults with Incapacity (Scotland) Act 2000 as meaning a person who has attained the age of 16 years.