



## SCOTTISH EXECUTIVE

Health Department

NHS  
HDL(2002)50

Dear Colleague

### ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000 (AWI) – PART 5 CODE OF PRACTICE - SUPPLEMENT

Part 5 of the AWI Act, which deals with medical treatment and research, comes into force on 1<sup>st</sup> July 2002. The Code of Practice under Part 5, an Aide Memoire and a general leaflet about the Act were issued at the end of May. This letter provides a supplement to the Code of Practice containing details of the Regulations relating to excepted treatments which come into force with Part 5 of the 2000 Act on 1 July 2002. They need to be distributed further as a matter of immediacy.

#### Action

This HDL is being sent to NHS Trusts and NHS Boards and requires further **urgent distribution** to ensure that it reaches all those people, primarily doctors but also nurses, dentists and others whose responsibilities will be affected by the provisions of the Act from 1st July 2002.

**NHS Boards** are requested to arrange for a copy of this letter and the supplement to the Code of Practice mentioned above to be distributed to each GP and NHS Board consultant.

**NHS Trusts** are asked to distribute a copy of this letter and the supplement to the Code of Practice to hospital consultants.

**Directors of Nursing** are requested to ensure that one copy of this HDL and supplement to the Code of Practice are distributed to the member of nursing staff in charge of each hospital ward in their area.

**Primary Care Managers** are requested to ensure supplies of this HDL and supplement to the Code of Practice are made available to all dental practices, community dental practices, optometrist and ophthalmic medical practitioner practices.

#### Further supplies/information

Further copies of the supplement to the Code of Practice are available from Brian West (see enquiry panel opposite). The supplement to the Code of Practice is also available on the Internet at the Adults with Incapacity page at the Scottish Executive Chief Medical Officer's web site. ([http://www.scotland.gov.uk/health/cmo/incapacity\\_act\\_toc.asp](http://www.scotland.gov.uk/health/cmo/incapacity_act_toc.asp)).

From 1 July general information about the Act, and Part 5 in particular, is available from the **NHS Helpline on 0800 22 44 88**, from 8am -10pm daily.

Yours sincerely

**GODFREY ROBSON**

Director of Service Policy and Planning

**27<sup>th</sup> June 2002**

#### **For action**

Medical Directors, NHS Trusts  
Directors of Public Health  
Medical Directors, Private  
Hospitals  
General Practitioners  
Primary Care Managers  
Directors of Nursing Group in  
Primary Care and Acute Trusts  
NHS Board Directors of Nursing

#### **For information**

Chief Executives, NHS Boards  
Chief Executives, NHS Trusts  
Chief Executive, State Hospital  
Board for Scotland  
Chief Executive, Health  
Education Board for Scotland  
NHS Education for Scotland  
Hospices  
Independent Hospitals  
Nursing Homes in Scotland  
Optometrists  
Ophthalmic Medical Practitioners  
General Dental Practitioners  
Community Dental Service  
Mental Welfare Commission

#### **Further enquiries**

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

**SUPPLEMENT TO**

**CODE OF PRACTICE**

**FOR PERSONS AUTHORISED TO CARRY OUT  
MEDICAL TREATMENT OR RESEARCH UNDER  
PART 5 OF THE ACT**

**EFFECTIVE FROM 1<sup>st</sup> JULY 2002**

**(Due for revision 1<sup>st</sup> July 2003)**

Laid before the Scottish Parliament by the Scottish Ministers pursuant to section 13(3) of the  
Adults with Incapacity (Scotland) Act 2000

SE/2002/111

June 2002

## **Purpose**

1. The Code of Practice for persons authorised to carry out medical treatment and research under Part 5 of the 2000 Act indicated, in paragraph 2.58, that a supplement would provide details of:

- 1.1 those treatments which are specified in Regulations under sections 48(2) and (3) of the 2000 Act as being excepted from the general authority to treat under section 47(2); and
- 1.2 the authority which is required before these treatments may be carried out.

2. This supplement gives effect to that undertaking. Copies of the Adults with Incapacity (Specified Medical Treatments) (Scotland) Regulations 2002 (SSI 2002/275) and The Adults with Incapacity (Specified Medical Treatments) (Amendment) (Scotland) Regulations 2002 (SSI 2002/302) may be obtained, if desired, from The Stationery Office.

3. The Regulations apply where the medical practitioner primarily responsible for the treatment of an adult has certified, in accordance with section 47(1) of the Act, that the adult is incapable in relation to a decision about a treatment specified in Schedule 1 of the Regulations, namely:

### Schedule 1 Part 1:

- Sterilisation where there is no serious malfunction or disease of the reproductive organs.
- Surgical implantation of hormones for the purpose of reducing sex drive.

### Schedule 1 Part 2

- Drug treatment for the purpose of reducing sex drive, other than surgical implantation of hormones.
- Electro-convulsive therapy (ECT) for mental disorder.
- Abortion.
- Any medical treatment which is considered likely by the medical practitioner primarily responsible for that treatment to lead to sterilisation as an unavoidable result.

These medical treatments may only be carried out in accordance with the provisions of the Regulations and where they are designed to safeguard or promote the physical or mental health of the adult, as described below.

## **Treatments requiring application to the Court of Session**

4. The treatments set out in Part 1 of Schedule 1 of the regulations may only be administered to an adult with incapacity where 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.

5. In addition, it is a requirement that the adult does not demonstrate any resistance to the treatment at the time of it being carried out. If resistance, however manifested, is shown the treatment should not be carried out, notwithstanding the Court approval.

6. The treatments in Part 1 of Schedule 1 to which this requirement applies are:

- Sterilisation where there is no serious malfunction or disease of the reproductive organs
- Surgical implantation of hormones for the purpose of reducing sex drive.

### **Treatments requiring a Certificate from a doctor appointed by the Mental Welfare Commission**

7. The treatments as set out in Part 2 of Schedule 1 require the medical practitioner primarily responsible for the treatment of the adult to obtain from a doctor appointed by the Mental Welfare Commission for Scotland (MWC) a certificate to the effect that the MWC-appointed doctor is of the opinion that the adult is incapable in relation to a decision about the treatment proposed and that the treatment is reasonable in the circumstances to safeguard or promote the physical or mental health of the adult. The doctor appointed by the MWC is required to take account of the principles of the 2000 Act when considering whether to authorise the treatment.

8. The treatments set out in Part 2 of Schedule 1 are:

- Drug treatment for the purpose of reducing sex drive, other than surgical implantation of hormones
- Electro-convulsive therapy (ECT) for mental disorder
- Abortion
- Any medical treatment which is considered likely by the medical practitioner primarily responsible for that treatment to lead to sterilisation as an unavoidable result.

### **Certificate of Doctor appointed by MWC**

9. A copy of the certificate, which is to be completed by the doctor appointed by the MWC for the treatments set out in paragraph 9, is contained in Schedule 2 of the Regulations. The certificate may be valid for up to one year. The certificate becomes invalid at any point during that time when the adult regains capacity to consent in respect of the medical treatment to which the certificate applies.

10. The doctor appointed by the MWC to provide this certificate may not be the medical practitioner primarily responsible for any medical treatment of the adult.

11. The MWC will retain a list of suitably qualified and trained doctors who can, on request, be appointed by the MWC to provide a certificate under these Regulations. The medical practitioner primarily responsible for the treatment of the adult should contact the MWC to arrange for such an opinion when necessary.

### **Young Adults**

12. The Regulations specify additional safeguards where consideration is being given to carrying out a regulated treatment for mental disorder for a person who is aged 16 or 17. (The 2000 Act does not apply to anyone below the age of 16.)

13. No treatment for mental disorder regulated under s48(2) of the 2000 Act may be administered to an adult with incapacity who is 16 or 17 years of age 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.

14. In addition, no treatment for mental disorder regulated under s48(2) and (3) and requiring a certificate from a doctor appointed by the MWC may be administered to an person with incapacity who is 16 or 17 years of age, unless the doctor appointed by the MWC, who certifies that the treatment should be given, has a qualification or special experience in child and adolescent psychiatry or in another specialism appropriate to the treatment of the adult. It will be for the MWC to identify a medical practitioner with the experience that they consider appropriate in the circumstances.

### **Treatment in Emergencies**

15. The regulations under section 48(2) and (3) provide that, where any of the regulated treatments is immediately necessary to preserve life or prevent a serious deterioration in an adult's condition, the treatment may be given by the medical practitioner primarily responsible for the treatment of the adult without the need to comply with the safeguards in the regulations.

16. In such a situation, the doctor would need to be satisfied that the administration of the treatment was immediately necessary for the above reasons and that it could not be delayed while the necessary approval required by the regulations was obtained.

17. Where a regulated treatment is carried out under these circumstances, the medical practitioner primarily responsible for the treatment must inform the MWC in writing (including in electronic form) within 7 days of giving the treatment 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.

### **Other Considerations**

#### Long Term Medication

18. Long term medication for mental disorder is not specified in these regulations as a treatment requiring special safeguards. However, it would be good practice to ensure, where an adult with incapacity receives any long term drug treatment, that a review of that treatment is carried out by the responsible medical practitioner when reconsidering renewal of the certificate of incapacity.

### Guardians and Welfare attorneys

19. Welfare guardians and attorneys may not consent on behalf of an adult to any treatment which is regulated under s48(2) and (3). However, the views of the welfare guardian or attorney should be taken into account when considering treatment for the adult.

### **The Mental Welfare Commission**

20. The Mental Welfare Commission (MWC) has protective functions in relation to adults whose incapacity is as a result of mental disorder. The MWC has a special role in relation to the Regulations under section s48(2) and (3) of the 2000 Act. It will appoint, on request, a medical practitioner who can provide a certificate in relation to the treatments set out in Part 2 of Schedule 1 of the Regulations. The MWC will establish and maintain a list of such doctors. The medical practitioner primarily responsible for the treatment of an adult should contact the MWC to arrange such an opinion when necessary.

21. The MWC's contact details are:

Mental Welfare Commission for Scotland  
K Floor  
Argyle House  
3 Lady Lawson Street  
Edinburgh  
EH3 9SH

Tel. 0131 226 6111  
Fax 0131 222 6112  
E-mail: [enquiries@mwscot.org.uk](mailto:enquiries@mwscot.org.uk)

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