EXECUTIVE NOTE

THE ADULTS WITH INCAPACITY (REQUIREMENTS FOR SIGNING MEDICAL TREATMENT CERTIFICATES) (SCOTLAND) AMENDMENT REGULATIONS 2012

SSI 2012/170

The above instrument was made in exercise of the powers conferred by section 47(1A)(b) of the Adults with Incapacity (Scotland) Act 2000. The instrument is subject to negative procedure.

Policy Objectives

The policy objective of this SSI is to allow any further or higher education establishment or NHS Education Scotland (NES) to offer a training course to fulfil the requirements of section 47(1A)(b) of the Adults with Incapacity (Scotland) Act 2000. Currently, only Edinburgh Napier University is able to offer such training. Widening the range of institutions which can offer the required training course will make it easier for people to undertake the training.

Section 47(1A)(b) of the Adults with Incapacity (Scotland) Act 2000 enables a dental practitioner, an ophthalmic optician or a registered nurse to certify that an adult lacks capacity to consent to medical treatment only where the medical practitioner can satisfy 'such requirements as may be so prescribed'. The requirements that have been prescribed in the Adults with Incapacity (Requirements for Signing Medical Treatment Certificates) (Scotland) Regulations 2007 are that such medical practitioners complete and pass a course entitled 'Adult with Incapacity: Part 5 Amendment – Assessment of Incapacity for Health Professionals'. The Regulations state that this course is administered by Napier University, leaving that the only institution which can offer the course.

The SSI will amend the Adults with Incapacity (Requirements for Signing Medical Treatment Certificates) (Scotland) Regulations 2007. Regulation 2, which currently prescribes the requirement for practitioners to complete a course delivered by Napier University, will be replaced. The new version of Regulation 2 will state that the prescribed requirements for section 47(1A)(b) of the Adults with Incapacity (Scotland) Act 2000 are that the person concerned must have had their knowledge of how to assess an individual's medical capacity to be able to make decisions as to that individual's medical treatment certified by a further or higher education institution or by NHS Education Scotland.

Consultation

A public consultation took place from July 2011 to October 2011. This sought views from a range of bodies including Local Authorities, COSLA, NHS, third sector organisations (including service user groups), Equality and Human Rights Commission, professional organisations, ADSW, the Scottish Parliament (Chairs of relevant cross-party groups, committees), support organisations, academic institutions and to those individuals and organisations who had registered with the Scottish Government to receive a weekly email containing details of all new consultations.

Four specific issues were considered:

- widening the range of institutions which can offer training
- the requirement for dental practitioners to complete this training
- the requirement for multiple section 47 certificates in some circumstances
- whether other health professionals should be required to complete the training

The consultation elicited a total of 80 responses. Of these respondents almost 95% agreed that the existing regulations should be amended to allow any suitable institution to provide accredited training. The consultation responses are available on the Scottish Government website at http://www.scotland.gov.uk/Publications/2011/12/05085234/0.

No changes will be made in response to the other questions raised in the consultation. There was significant support for removing the need for dentists to undertake the training, with many arguing that appropriate skills and knowledge to assess capacity were part of undergraduate dental training. However, a number of responses argued that dentists were not exposed to the full scope of capacity assessment as part of the degree course, and that a requirement to undertake additional training should remain. Given that strong arguments were made for both outcomes, it was decided to maintain the current position but to review this in future. It was clear from consultation responses that no change was required in response to the other questions raised.

Impact Assessments

No quality impact assessment has been carried out as there are no equality issues involved.

Financial Effects

The Minister for Public Health confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Health and Social Care Integration Directorate
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