

**Adults with Incapacity (Scotland) Act 2000 – Consultation on
Certification of Incapacity for Medical Treatment under Part 5
Section 47**

RESPONDENT INFORMATION FORM

Please Note this form must be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Health Ethics and Law, University of Southampton (HEAL UoS).

Title Mr ☐ Ms ☐ Mrs ☐ Miss ☐ Dr ☐ *Please tick as appropriate*

Surname

Montgomery

Forename

Jonathan

2. Postal Address

Law School

University of Southampton

Highfield

Southampton

Postcode SO17 1BJ

Phone 023 8059 2875

Email jrm@soton.ac.uk

3. Permissions - I am responding as...

Individual

☐

/

Group/Organisation

☒

Please tick as appropriate

- (a)** Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate ☐ Yes ☐ No

- (b)** Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available ☐

or

Yes, make my response available, but not my name and address ☐

or

Yes, make my response and name available, but not my address ☐

- (c)** The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate ☐ ☒ Yes ☐ No

- (d)** We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

☐ ☒ Yes

☐ No

Adults with Incapacity (Scotland) Act 2000 – Consultation on Certification of Incapacity for Medical Treatment under Part 5 Section 47

Consultation Questions:

Question 1.

Do you agree that the existing regulations should be amended to allow any suitable institution to provide accredited training?

Yes ☒ No ☐ Don't Know ☐

Please provide further comments:

It seems inappropriate to create a monopoly for any single provider. The content and quality measures for the training should be specified, and a system for prior accreditation would be acceptable, but to make it impossible in law for other providers to offer courses seems an unnecessary limitation that may compromise both access to courses and also quality.

Adults with Incapacity (Scotland) Act 2000 – Consultation on Certification of Incapacity for Medical Treatment under Part 5 Section 47

Consultation Questions:

Question 2.

Should the current requirement under the AWI Act for dentists to undertake prescribed training in order to complete section 47 certificates stand? Do dentists already have sufficient knowledge and training to undertake section 47 certification without additional training as prescribed in the Act?

Yes ☐ No ☐ Don't Know ☐

Please provide further comments:

It is not possible to answer this question without more understanding of dental and medical curricula than we possess. We also note that there are two questions within Question 2 that are likely to receive opposite answers (i.e. the answer to the first will be no if the answer to the second is yes and vice-versa). However, we believe the principles are as set out below.

If Dental training already includes the knowledge and competences that the additional prescribed training covers, then there should be no need for an additional course. If it does not, then prescribing an additional course continues to be appropriate.

It is not clear whether medical training includes this and if it does not, then additional training should be required for doctors too. It seems likely that it did not until recently and this raises questions about the assumption that all doctors can undertake reliable assessments without further training. We recognise that it is important that patients are not left without a person being able to operate the Act, because their proper care could be obstructed. However, the same principles should apply to all professions that practise independently, such as dentists, opticians and midwives, who may be the only professional caring for the patient or client.

It might also be appropriate to spell out the responsibilities of the employers to ensure that their staff are fully trained in the requirements of the Act. They could be required to use induction/mandatory training or CPD to ameliorate the gaps in knowledge and competence for those trained before the material was included in the standard curricula.

Adults with Incapacity (Scotland) Act 2000 – Consultation on Certification of Incapacity for Medical Treatment under Part 5 Section 47

Consultation Questions:

Question 3.

Are there circumstances where multiple section 47 certificates should be required? Are there circumstances where a patient's safety or well-being is undermined by any requirement to have multiple section 47 certificates?

Please provide further comments:

We do not believe that multiple section 47 certificates are necessary.

It is important to separate (a) the issue of the assessment of capacity from (b) the process of identifying treatment options and also from (c) the obligations of professionals relating to counselling patients so as to ensure than consent if appropriately informed.

While multi-professional input may be required for both (b) and (c) it is not necessary in principle for (a). Consequently, it should be possible for a single professional (with appropriate levels of skill and understanding in the assessment of capacity) to issue a s 47 certificate in relation to a care plan that might incorporate a range of treatments even where the professional will be responsible only for some of the care in question.

Requiring multiple certificates in relation to a single care plan has a number of disadvantages. Most importantly, it might delay the commencement of care, contrary to the patients' interests. It may also create avoidable tensions between health care teams where different assessments come into conflict, which would be better managed by processes to resolve the disagreements rather than separate certifications. Finally, separate certification processes may undermine the development of a holistic and patient-centred care plan by creating divisions based on professional disciplines.

We believe that the need for collaboration between professionals is better encouraged by guidance on how to undertake assessments than by separate section 47 certificates.

Adults with Incapacity (Scotland) Act 2000 – Consultation on Certification of Incapacity for Medical Treatment under Part 5 Section 47

Consultation Questions:

Question 4.

Should other health professionals be enabled to issue certificates under section 47 provided they have undertaken and passed additional training to assess capacity, as per section 47(1A)(b)(iv) of the AWI Act?

Yes ☒ No ☐ Don't Know ☐

Please provide further comments:

Any health professional who may be providing care independently of medical supervision should be included in the list of those who can issue certificates provided that they have undergone the necessary independent training. This would clearly include midwives who are not currently included in the list, but others such as physiotherapists and podiatrists might also give care in such circumstances.

However, the better solution might be to extend the scope of this provision to all registered health professionals, as they are all likely to look after incapacitated patients and all are subject to professional disciplinary arrangements which provide assurance that patients' interests can be protected. This places the focus on the professional's competence to make assessments of capacity not their particular professional background.