

Adults With Incapacity

Medical Treatment

A summary for people in hospital
and those who support them

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What does 'Adults with Incapacity' mean?

When people are in hospital there can be lots of decisions to be made, such as whether to have treatment that could involve risks or side-effects.

'Adults with Incapacity' is a phrase used to describe people over the age of 16 who are unable to make certain decisions for themselves.

The Adults with Incapacity (Scotland) Act 2000 (the Act) is designed to help and protect these people, and to make sure that decisions are made in their best interests. The Act covers decisions in relation to welfare including medical treatment and decisions over finance and property. The part of the Act that we are talking about **only covers medical treatment.**

The Act is used for adults who are not able to do all, or any of the following:

- listen to and understand information given to them
- retain information
- weigh up the pros and cons of treatments or decisions
- communicate their decision

Who does it help?

If the hospital staff, the person or their family or friends are worried about their ability to make decisions for themselves, staff will access their 'capacity' to make decisions. This is usually done by a doctor.

In hospital this is most commonly people who have memory loss, confusion or are unconscious. Sometimes it is needed for people with learning difficulties or mental illness. It may also be needed for people who have severe difficulty with language after damage to the brain e.g. after a stroke.

It is not for people who do not speak English, with a hearing impairment or who cannot speak but can communicate in other ways. These people are able to decide for themselves, though might need help from others to understand information and communicate their decisions.

What sort of decisions is it used for?

The Act is used for decisions about their health that the person cannot make for themselves. Some people have difficulty with all decisions, some only have difficulty with complicated ones.

For example, someone might be able to make a basic decision such as allowing someone to check their pulse, but not be able to consider all the different positive and negative aspects of having an operation.

The decisions the Act is used for will be different for different people, but in all cases the decisions:

- must be of benefit to the person concerned;
- must take into account the wishes of the person;
- should restrict that person's freedom as little as possible;
- should involve carers, relatives and people working closely with the person

In an emergency a person can be given important treatment under "common law" and the Act does not need to be used.

If someone needs other people to make decisions about treatment of their mental health and where they may not understand that they require treatment and, or they or others may be at risk, the team caring for them may consider using the Mental Health (Care and Treatment) Act 2003, which give the person extra safeguards.

Who can make decisions for the person?

If the adult does not have capacity to make their own decisions and someone has been appointed by the adult as a Welfare Power of Attorney (PoA) or appointed by the court as a Welfare Guardian, then they may or may not have the power to consent to treatment on behalf of the adult. People who only hold Financial Power of Attorney are not able to make decisions about care. If you have any of these you need to be aware of what powers they contain.

If no one has these powers the responsibility lies with the practitioner looking after the person (usually their doctor). The form will name the PoA, Welfare Guardian or the nearest relative or main carer. The form will say how long the doctors think that capacity will be a problem for.

What will happen on the ward?

If the doctor thinks the person doesn't have capacity they will fill in a Section 47 form which gives others the power to make the decisions regarding treatment. The form will name the PoA/Welfare Guardian or the nearest relative /main carer and will say how long the doctors think that capacity will be a problem for.

If there are lots of decisions to be made then there will also be an accompanying treatment plan which will outline what interventions or treatments are being planned in the person's best interests. The ward team will speak with the person's PoA, Welfare Guardian or next of kin as soon as possible.

The treatment plan will often include “fundamental healthcare procedures” – this means simple nursing and medical care to keep people clean, give them food and fluids, prevent pain, help with communication and help with toileting.

What is required of those close to the person?

If you are the nearest relative or main carer: we would like you to be aware that we are making decisions on the person’s behalf. We would like you to discuss with us anything that you think would be important (e.g. If the person has previously said they do not want a blood transfusion or operation etc). If you disagree with anything, it is extremely important that you tell medical or nursing staff. We value your views and your knowledge about what the person would want.

If you have Welfare Power of Attorney or Welfare Guardianship: you have designated responsibility to make decisions on the person’s behalf. It is important that you are available to discuss any proposed treatment. Please could you give the ward staff a phone number to contact you. It is also extremely important that you tell the staff if you disagree with anything that is proposed.

The ward must make all reasonable effort to obtain consent from you. If this doesn’t happen then you have the right to apply to the Mental Welfare Commission for a second opinion to help resolve any disputes.

We would also like you to bring in the Power of Attorney or Guardianship certificate so we can make a copy for the casenotes.

If you have any questions, please speak to the doctors and nurses on the ward. Thank you.

Useful Contacts

- **The Mental Welfare Commission**

Thistle House
91 Haymarket Terrace
Edinburgh
EH12 5HE

Tel: 0131 313 8777

User and carer advice: **0800 389 6809**
enquiries@mwscot.org.uk

- **The Office of the Public Guardian**

Hadrian House
Callendar Business Park
Callendar Road
Falkirk, FK1 1XR

Tel: 0132 467 8300

opg@scotcourts.gov.uk