The use of mental health and adults with incapacity law in general hospitals

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<th>The Mental Health (Care and Treatment) (Scotland) Act 2003 came into effect in October 2005. This sets out the law on the treatment of people with mental illness, learning disability or personality disorder (termed ‘mental disorder’). The Act defines when and how a person with a mental disorder can be given compulsory treatment</th>
<th>The Adults with Incapacity (Scotland) Act 2000 defines how essential decisions, affecting the lives of those with a mental illness, learning disability or dementia, can be made. The Act sets out the arrangements for the giving of medical treatment, granting of intervention orders which allow individual decisions to be made on behalf of the person, appointment of welfare and financial guardians, who have the authority to make decisions on behalf of a person</th>
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| - can be given compulsory treatment  
- can be detained in hospital  

The principles of the Act state that people making decisions about the care and treatment of a person with a mental disorder should  
- Take the person’s past and present wishes into account  
- Make sure the person is given the information and support needed to take part in making decisions  
- Take the views of the person's carer, ‘named person’ or welfare attorney into account  
- Consider the full range of options for care  
- Ensure that treatment will provide maximum benefit to the person  
- Make sure that any restrictions on a person’s freedom are the “minimum necessary” to ensure their safety  
- Take account of a person’s background, beliefs and abilities  
- Ensure that a person with a mental disorder is not being treated less favourably than others  
- Take carers’ needs into account and give them the information and support they need  
- Make the welfare of children under 18 paramount. | - Any actions taken on behalf of a person must benefit that person  
- Any action must be the least restrictive option that will achieve the desired effect  
- Before making a decision on behalf of a person, account should be taken of the person’s past and present views and preferences  
- The guardian, attorney, relatives and carers of a person should be consulted before any decision is made on behalf of the person  
- Anyone who is caring for a person who lacks capacity must encourage the person to develop and exercise as much skill as possible in making decisions or taking actions |

| Decisions based on these principles will provide the best care for patients in general hospitals as well as psychiatric hospitals. | In a general hospital the inability to consent to treatment is the commonest problem area that is covered by the Adults with Incapacity Act. However other areas such as the inability to manage money or to agree to discharge arrangements may be important. |
Frequently Asked Questions and Answers

Q1 Why use the Mental Health Act in a general hospital?
A1 If someone with a mental disorder is at risk of self-harm, self-neglect or of harming others they may be prevented from leaving hospital by use of the Act. Sometimes the Act is used to authorise restraint of a violent person. Authorisation of compulsory treatment for mental illness may occasionally be required.

Q2 Who may be detained?
A2 Someone who has a mental disorder and impaired judgement about the treatment of that disorder could be detained on a short-term detention certificate (STDC). If using a STDC would involve ‘undesirable delay’ an emergency detention certificate (EDC) may be used. Detention may be necessary to allow for full assessment of suicidal intent. Violent behaviour is not a mental disorder but may be a sign of underlying mental disorder such as mania or schizophrenia. Similarly, violence associated with drug or alcohol intoxication or dependence is not a mental disorder but delirium or a confusional state may result from drug or alcohol withdrawal and may justify detention. Psychotic illnesses may result from drug or alcohol use. Intoxication may increase the risk of harm to self or others and this should be taken into account when considering the detention of someone with an underlying mental disorder.

Q3 How can someone be detained under the Mental Health Act?
A3 Only a senior psychiatrist, who is an Approved Medical Practitioner (AMP), can grant a STDC, which is effective for up to 28 days. The consent of a specialist social worker (Mental Health Officer/MHO) is required. An AMP may not be available out of hours in smaller hospitals but a fully registered medical practitioner can grant an EDC, normally with the consent of an MHO. An EDC may be granted without MHO consent if it is not practicable to obtain this. The previous 1984 Mental Health Act allowed a relative to give consent, but this is no longer permitted. An EDC may be justified when detention in hospital is needed urgently in order to assess the need for treatment and where this is a risk to the person’s health, safety or welfare or the safety of others. A form (DET1) must be completed, which can be downloaded from the Scottish Executive website. The form must be passed to the Medical Records Department after completion for it to take effect. It should not simply be filed in case notes.

Q4 What measures are authorised by an EDC?
A4 If the person is not an inpatient, admission to hospital is authorised (within 72 hours) and detention in hospital is then authorised for up to 72 hours. A person in an Accident and Emergency department is not usually an inpatient and an EDC will not usually authorise detention of a person there. Under an EDC, treatment for mental disorder may be given if the person is able to consent and does so but only urgent treatment may be given without consent. There are some restrictions on the type of urgent treatment that may be given e.g. treatment that entails significant physical hazard may not be given to alleviate suffering or to prevent violent behaviour or danger to the person or others. If urgent treatment is given the Mental Welfare Commission must be informed, within 7 days, using form T4.
Q5 When does an EDC end?
A5 A person who is subject to an EDC should be assessed by an Approved Medical Practitioner as soon as possible. Normally the EDC will be rescinded and the person will either become informal or made subject to a STDC. **An EDC should not usually remain in force for the full 72 hours.** Occasionally a person may need to leave hospital temporarily during the period of detention. The EDC can be suspended by the doctor in charge of the person’s care, the Responsible Medical Officer (RMO).

Q6 What measures are authorised by a STDC?
A6 Compulsory treatment for a mental disorder is authorised in addition to detention. Treatment can be given without the person’s consent but with reference to the principles of the Act.

Q7 What is a Compulsory Treatment Order?
A7 This is a long-term order, with provisions similar to a STDC. Compulsory Treatment Orders may apply to people in hospital or in the community. A Compulsion Order is similar but is granted by a court. Occasionally persons subject to these orders are admitted to a general hospital for treatment of a physical condition. A psychiatrist (AMP) must be responsible for mental health care. Liaison between the relevant psychiatric hospital and general hospital medical records departments is essential to ensure that the necessary legal arrangements are made to allow the person to be admitted to the general hospital, although no special arrangements are necessary if the psychiatric unit is in the same hospital. If the person is to be detained in a different hospital, however, suspension of the order or formal transfer of the person from one hospital to another will be required. **There is no requirement under the Act that such a person should be cared for by mental health nurses but local arrangements may be made if this is appropriate.**

Q8 Who is responsible for the person’s treatment under a compulsory order?
A8 Hospital managers must appoint an AMP to be the person’s RMO, who is responsible for the person’s mental health care on the general ward. Responsibility for the treatment of the person’s physical disorder remains with the appropriate physician or surgeon. If the person’s detention has been suspended, the psychiatric hospital is responsible for appointing an AMP. If the person’s order has been transferred to a general hospital, its managers are responsible for appointing the AMP. There should be clear arrangements for liaison between the AMP and the medical/surgical team.

Q9 Can treatment for a physical condition be given without consent?
A9 The Mental Health Act authorises treatment for mental disorder or for conditions that are a consequence of mental disorder. Treatment of conditions that are a direct cause of mental disorder, such as an infection that is causing delirium, is authorised, as is the treatment of conditions directly resulting from mental disorder, such as self-poisoning by a person suffering from a depressive illness. Artificial feeding of a person with anorexia nervosa or severe depression may be authorised by the Act although a second opinion will be required.

Where a person is unable to consent to treatment because of mental disorder, treatment can be authorised under the Adults with Incapacity Act by completing a Section 47 certificate, providing that the person does not object to or resist treatment. If a person objects or resists, treatment can be given under common law in an emergency but the Act procedure should be used if time allows. Another person may be
authorised to give consent under Act. This may be through a Power of Attorney, an Intervention Order or Welfare Guardianship. The consent of the person authorised to make a decision about treatment should always be sought, if it is practicable. Occasionally consent may be withheld and, in these circumstances, treatment may not be given. The Act contains arrangements to resolve such disputes, including a second opinion procedure.

Where treatment is not urgent and the person objects or resists, there is no simple procedure to authorise treatment. Guardianship or an intervention order may be approved by a court, and an enforcement order applied for subsequently, but the Commission does not know of an example of this leading to successful treatment.

**Further information about the mental health and incapacity law in Scotland is available from the Commission's website**
www.mwcscot.org.uk The website provides links to the Acts and their Codes of Practice. Mental Health Act forms can be downloaded from the Scottish Executive website. A link to forms is also provided from the Commission site.

**Other useful information sources**
www.gmc-uk.org
www.bma.org.uk
www.nmc-uk.org