Terminal Building
Redhill Aerodrome
Kings Mill Lane
Redhill
Surrey
RH1 5YP

POL Capacity of Consent Policy

Legislation
CQC
Mental Health Act 2005
Dignity and Diversity

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Introduction

Consent is an agreement for a health professional or carer to provide care to a patient. Within E-zec Medical this can be PTS, VCD, HDU or a 3rd party who are contracted to E-zec.

Patients have a fundamental, legal and ethical right to determine what happens to their own bodies. Valid consent is therefore essential in all forms of healthcare. E-zec Medical is committed to fulfilling its duty in relation to implementing good practice in obtaining consent to examination or treatment

The Department of Health's Reference Guide to Consent for Examination or treatment (DoH 2009) provides guidance for health professional in relation to obtaining a patients consent and what actions to take if that consent cannot be obtained.

Where valid consent cannot be obtained due to a patient lacking capacity, E-zec Medical is committed is to fulfil its duty in relation to the Mental Capacity Act 2005, with regards to the application of best interest decisions.

This Capacity to Consent Policy should be read in conjunction with E-zec Medical's Safeguarding Children and Young People, Safeguarding Vulnerable Adults policies.

This policy sets out the standards and guidance for E-zec Medical, which aim to ensure that all E-zec medical staff and 3rd parties are able to comply with the law and Department of Health Guidance with regards to the principles of consent and also mental capacity assessment.

Scope

The purpose of this document is to provide guidance for all staff working within E-zec Medical who are involved in the care, treatment and support of people who are incapable of making some or all decisions for themselves at a specific time.

- To ensure that the legislation relating to Mental Capacity Act has been sufficiently embedded throughout E-zec Medical.
- To ensure E-zec Medical complies with the Mental Capacity Act in relation to the Code of Practice.
- To promote education and training in all aspects of the Mental Capacity Act which are relevant to pre-hospital care.
- To ensure procedures and guidance on patient consent to examination or treatment are in place.
- To ensure procedures and guidance have been developed in relation to capacity assessment and are available with the policy document.
- To ensure multi agency partnerships, respective roles and responsibilities are understood and support is offered to individual police forces when developing their response to patients under the Mental Capacity Act.

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Definitions

Advanced Decision to Refuse Treatment (ADRT)	A decision to refuse treatment made in advance by a person who has the capacity to do so. The decision will then apply at a future time when that person lacks capacity to consent to, or refuse the specified treatment.
Best Interest	Any decision made or anything done for a person who lacks capacity to make specific decisions must be in the person's best interests. There are standard minimum steps to follow when working out someone's best interests. These are set out in section 4 of the Mental Capacity Act.
Capacity	The ability to make a decision about a particular matter at the time decision needs to be made. The level of competence required to make a decision increase with the complexity of the decision.
Court of Protection (COP)	The Specialist Court for all the issues relating to people who lack capacity to make specific decisions.
Decision Maker	Under the act, many different people may be required to make decisions or act on behalf of someone who lacks capacity to make decisions for themselves. The person making the decision is referred to throughout the Code, as the 'decision maker', and it is the decision-makers responsibility to work out what would be in the best interests of the person who lacks capacity.
Deprivation of liberty(DOLs)	Deprivation of Liberty (DOLs) is a term used in the European Convention on Human Rights to describe circumstances when a person's freedom is taken away.
Deputy	Someone appointed by the Court of Protection with ongoing legal authority, as prescribed by the Court to make decisions on behalf of the person who lacks capacity to make particular decisions.
Enduring Power of Attorney (EPA)	The Mental Capacity Act 2005 made provisions for people to choose someone to manage financial and health and welfare decisions should they become incapable of making their own decisions. Before this, Enduring Powers of Attorney existed; although no new EPA's can be made they still have legal standing.
Independent Mental Capacity Advocate (MENTAL CAPACITY ACT) service	Someone who provides support and representation for a person who lacks capacity to make specific decisions where the person has no one else to support them.
Lasting Power of Attorney (LPA)	A Power of Attorney created under the Mental Capacity Act 2005 which appoints an attorney to make decisions about a person's welfare including healthcare or/ and property and personal affairs.
Life Sustaining Treatment	Treatment that, in the view of the person providing healthcare, is necessary to keep a person alive.

Office of the Public Guardian (OPG)	The Office of the Public Guardian (OPG), established in October 2007, supports the Public Guardian in registering Enduring Powers of attorney (EPA), Lasting Powers of Attorney (LPA) and supervising Deputies appointed by the Court of Protection (COP)
Personal Welfare	Personal welfare decisions include decisions about a person healthcare and anything they require for their general care and well-being. Attorneys and Deputies can be appointed to make decisions about personal welfare on behalf of a person who lacks capacity.
Statutory Principals	There are five key principles set out in the Mental Capacity Act. They are designed to emphasise the fundamental concepts and core values of Act to provide a benchmark to guide decision-makers, professionals and carers acting under the Mental Capacity Act provisions. The principals generally apply to all actions and decisions taken under the act.
Two stage Test of Capacity	Using section 2 of the Mental Capacity Act to assess whether or not a person has the capacity to make decision for themselves at that time.

Duties

E-zec Medical is responsible for providing direction and leadership for any area of practice involving the consent to examination or treatment and the application of the Mental Capacity Act (2005) and Mental Health Act 2007. Staff members will have a full understanding of the risk, systems in place for managing the risk. The board are responsible for monitoring the effectiveness of E-zec Medical in relation to regarding the Mental Capacity Act (2005) and Mental Health Act 2007 Code of Practices.

The chief executive officer (CEO) has a key role to ensuring that systems are in place and are being adhered to, in order to manage any significant risk that may face the organisation. The chief executive officer (CEO) is ultimately responsible for ensuring the Mental Capacity Act is embedded throughout the organisation, a responsibility which is discharged through the Head of Training, Governance and Compliance.

The Director of Compliance is responsible for monitoring adherence to the Mental Capacity Policy and associated procedures.

Head of Clinical Governance is responsible for providing assurance to the E-zec Medical Board that the policy is being complied.

The Director of Compliance is responsible for ensuring that policy is complied with and auditing is undertaken to measure compliance.

All road staff will receive the necessary training with regards to obtaining consent to examination, or treatment and compliance of the Mental Capacity Act (2005) and Mental Health Act 2007 in relation to capacity testing and applying best interest decisions. Best interest decisions should always promote being the less restrictive decision.

Directors and Line Managers are responsible for ensuring they have a comprehensive understanding of their own remit within this policy and any associated procedures or guidance documentation. They will lead by example and adopt good practice at all times to ensure the implementation of effective mental capacity testing and application of best interest decisions.

Duties include:

- Ensuring the staff, they are responsible for regulating, are familiar with this policy and any associated procedures.
- Facilitate and record the required mental capacity training and updates of staff under their supervision to enable them to carry out their role effectively.
- Ensure that staff members responsibilities for adhering to the Mental Capacity Act (2005) are reflected in personal development plans or appraisals.

Employees are responsible for familiarising themselves and complying with this policy and adhering to the E-zec's procedures for obtaining consent, assessing patients Mental Capacity and applying best interest decisions. Staff who come into contact with patients who may lack capacity must be aware of the Mental Capacity Act and operate in accordance with clinical practice guidelines.

Other duties include:

- Demonstrating good practice by undertaking mental capacity testing where the patient may have an impairment of their brain function or mind.
- Undertake Mandatory and Statutory training.
- Ensure that the vehicle in which they are working has the necessary procedural documentation for the assessment of a patient's mental capacity.

Individual Police Forces are responsible for ensuring roles and responsibilities are understood in relation to best interest decisions which include:

- To support ambulance staff in the safe transportation of patients to hospital under the Mental Capacity Act where there is a significant risk of harm to the person or others.
- To remain with the patient throughout the journey if there is a high risk of violence or breach of the peace.

Person Consent

Context

"A person has a fundamental legal and ethical right to determine what happens to their own body. Valid consent to treatment is therefore absolutely central in all forms of healthcare, from providing personal care to undertaking major surgery. Seeking consent is also a matter of common courtesy between health professionals and persons"

(Good Practice in Consent Implementation Guide: Consent to Examination or Treatment, Department of Health)

Self-determination and autonomy is paramount in any decision making under mental capacity and staff can help the individual decide on best interests by way of recommendation.

Assurance Framework

- Assure compliance with the Department of Health's 'Guide to consent to examination or treatment'.
- Assure compliance with the Mental Capacity Act Code of Practice (2005)

- Sources of assurances include E-zec policies, procedures, internal performance management and training records.

E-zec Medical has conducted an assessment of the risks associated with the pre- hospital management of patients who lack capacity; all identified risks have been considered within this policy.

- Demonstrate the effectiveness of the policy through auditing the procedure in place for capacity assessment.
- Any patient safety issues identified will be documented in the clinical issues register and managed appropriately by the Clinical Governance Team.

Sources of Expertise and Support

- E-zec Medical has a dedicated Safeguarding Hot-Line who will take forward any safeguarding issues raised by staff.
- The Hot-Line will seek expert advice relating to the Mental Capacity Act from the Clinical Governance Team

Risk Assessment

Risk assessment should be carried out in accordance with E-zec Medical's risk documentation. Risk identified in relation to patient consent to treatment and compliance with the Mental Capacity Act may be ongoing through reported clinical concerns, complaints, claims and risk assessments.

Staff will undertake risk assessment as part of their everyday working practice and E-zec Medical will undertake an organisational risk assessment as part of the rolling risk assessment programme.

Competence (Information and Training)

E-zec Medical will ensure that staff are provided with sufficient information, instruction and training in regard to managing risks identified with obtaining patient consent to treatment, capacity assessment and the application of 'Best Interest Decisions'.

- Mental Capacity training will be delivered to all operational staff through statutory and mandatory training.
- All new E-zec Medical employees will have Mental Capacity training. This will include guidance on obtaining patient consent to examination or treatment and the application of a 'Best Interest Decision'.
- E-zec Medical will ensure the necessary documentation (Safeguarding Policy PTS-POL-05) is available for operational staff to record capacity assessments.

Gaining Consent for Examination or Treatment

General Consent

"Consent" is a patient's agreement for a health carer to provide care and must be obtained before you examination or treat a patient. Consent must be given voluntarily without any duress of undue influence from family, friends or Health-carer; The Health-carer carrying out the treatment is ultimately responsible for ensuring that the patient is genuinely consenting to what is being done. A person may indicate consent non-verbally (for example by presenting an arm for a pulse to be taken), verbally or in writing.

For the consent to be valid, the person must comply with all the following:

- Be competent to take the particular decision.
- Have received sufficient information to make it.
- Not be acting under duress

Although gaining consent to examine or treat a patient will normally happen as a natural progression, it must however never be assumed that the patient has given their consent to examination or treatment.

Patients need sufficient information before they can decide to give consent: for example, information about the benefits and risks of the proposed treatment, and what alternatives are available. Healthcare staff should offer the patient as much information as they reasonably need and explained in simple terms. If this does not happen, then the consent may not be valid.

Consent can be written, oral or non–verbal, an example of non-verbal Consent would be where a patient, after receiving appropriate information, holds out an arm for their blood pressure to be taken, or nods their head when the health-carer prescribes oxygen this is 'implied consent'. Staff must bear in mind that the patient is entitled to withdraw consent at any time.
Valid consent can only be given by a patient (or in the case of a child or young person under 16, someone with parental responsibility.

Young people aged 16 and 17 are entitled to give consent to their own medical treatment.

No one can give consent on behalf of an adult who lacks capacity. However, you may still treat such a patient if it was in their best interests under the Mental Capacity Act 2005. Best interest decisions should consider factors such as their past and present wishes and beliefs, their general wellbeing and their spiritual and religious welfare.

If the person has an impairment of the function of their mind or brain then a mental capacity assessment must be carried out to determine whether that person has the capacity to consent to examination or treatment.

If a person lacks capacity, they may have a Lasting Power of Attorney or a Court Appointed Deputy for personal welfare who can give consent on their behalf.

In emergency situations where a patient is unable to give consent due to an unexpected injury e.g., unconscious patient with a head injury or life threatening illness, staff should act in the best interest of the patient and provide the life preserving treatment that is required.

Children Consent
In the case of children, only people with 'parental responsibility' are entitled to give consent on behalf of their children. Not all parents have parental responsibility for their children and if in doubt check before accepting consent on behalf of the child.

Situations involving life threatening emergencies may arise where it is impossible to gain consent from a person with parental responsibility or if consent is refused by a person who has parental responsibility. In such cases it would be legally acceptable to provide treatment to preserve life or prevent serious damage to the child's health, therefore any doubt should be resolved in favour this.

Any child under the age of 16 who can fully understand the proposed treatment can give consent for themselves. However, this would be based on the complexity of the proposed treatment and if the level of the child's capacity extends to understanding that treatment.

If neither the child nor the person with parental responsibility has capacity, then ambulance staff must act in the best interests of the child.

Non-consent or Refusal of Treatment

Refusal of treatment
Adult patients **with** capacity hold the right to refuse treatment, even if the treatment would clearly benefit their health and is viewed as an unwise decision. The only exception to this is where the treatment is for a mental disorder and the patient is detained under the Mental Health Act 1983.

It is not uncommon in pre-hospital situations for patients to refuse care or treatment. Although patients may refuse, there is still, in certain circumstances, an ongoing duty of care and therefore a legal responsibility for E-zec Medical ambulance staff to provide the care that is required.

If a patient refuses treatment, then an assessment of the patient's capacity to consent must be carried out and documented.

If a patient with capacity is refusing treatment, the crew may be acting unlawfully if they treat the patient against their wishes. In such cases the crew should seek advice from the patient's family, GP or the On Call manager.

If a patient refuses a particular treatment, other appropriate care to what they have consented must still be provided.

If a patient without capacity objects to the care or treatment, they may still legally be given the treatment under the MCA if in their best interests.

An apparent lack of capacity to give or withhold consent may in fact be the result of communication difficulties rather than a lack of capacity. This may be due to a language barrier or that the patient has learning difficulties and is unable to understand the information being given to them. In such cases staff should seek advice from a GP, Duty Manager in control, unless the urgency of the patient's situation prevents this where a best interest decision should be made.

Advanced Care Plans for End-of-Life Care
Advanced care plans are a process put in place to make a person's wishes clear in the context of an anticipated deterioration in their condition in the future, with the accompanying loss of capacity to make and/ or the ability to communicate wishes to others. Under the

Mental capacity Act, individuals over 18 years can anticipate future decisions about their care or treatment should they lose capacity. In this context, the outcome of a Advanced Care Plan may be the completion of a statement of wishes or preferences of treatment Professionals must consider the patients expressed wishes as part if the best interests decision under the MCA, only

an Advanced Decision to Refuse Treatment has legal standing under the MCA, or in relation to refusal of treatment an Advanced Care plan may lead to an Advanced Decision to refuse treatment or admission to hospital.

An advanced care plan should be:

- Clearly documented and applicable to the situation

Regularly review by the relevant health care professional managing that person's end of life care.

Withdrawal of Consent

A person with capacity is entitled to withdraw consent at any time, including during the time a procedure is being undertaken. Where a person does object during treatment, it is good practice for the staff member, if at all possible, to stop the procedure, establish the person's concerns and explain the consequences of not completing the procedure.

When Consent is refused

If an adult or young person (16-17) with capacity makes a voluntary and appropriately valid decision to refuse treatment, their decision must be respected, except in circumstances defined by the Mental Health Act 1983, the Children Act 1989 or the Family Reform Act of 1969. This is the case even where this may result in the death of the person and/or the death of an unborn child, whatever the stage of pregnancy.

Duty of Care and Consent

Duty of Care may be defined as:
'The absolute responsibility of a healthcare professional to treat and care for a person with a reasonable degree of skill and care'

Mental Capacity

The Mental Capacity Act

The Mental Capacity Act has been in force since 2007. It provides a statutory framework to empower and protect vulnerable adults and children (over 16 yrs) who lack capacity to make decisions for themselves. This includes those with learning disabilities and people who have temporary lack of capacity due to drug or alcohol abuse. The Mental Capacity Act also provides a statutory framework to enable people to plan ahead in the form of an 'Advanced Decision' for a time when they may lose capacity and are no longer able to make decisions for themselves.

The Mental Capacity Act provides a basis for determining an individual's capacity to make decisions. It also clarifies who can make decisions on behalf of another person and in which situations those decision can be made. It offers legal protection for those people making decisions on behalf of another who lacks capacity to make that particular decision for themselves using the best interests' principals.

This includes major decisions that are made in relation to someone's healthcare treatment.

The Mental Capacity Act applies to everyone involved in the care, treatment and support of people aged 16 or over living in England and Wales who are unable to make decisions for themselves. For people living in Scotland nearly all mental capacity issues come under the Adults with Incapacity (Scotland) Act 2000.

The Mental Capacity Act Code of Practice provides guidance to those people who are working with people who may lack capacity and explains how the Mental Capacity Act (2005) works on a day-to-day basis. All staff who act in a professional Capacity for, or in relation to a person who may lack capacity, irrespective of the route in which the contact takes place, have a legal duty to have regard to the Mental Capacity Act Code of Practice.

Under the Mental Capacity Act (2005), you are required to make an assessment of capacity before carrying out any decisions on behalf of another person who is unable to make a decision at a particular time, because their mind or brain is affected by illness, injury, drugs or alcohol. The more serious the decision, the more formal the assessment of capacity needs to be.

Mental Capacity Act – Five Key Principles

- **A presumption of capacity** – every adult has the right to make his or her own decisions and must be assumed to have capacity to do so unless it is proved otherwise. This means that you cannot assume that someone cannot make a decision for themselves just because they have a particular medical condition or disability.
- **Individuals being supported to make their own decisions** – a person must be given all practicable help before anyone treats them as not being able to make their own decisions. This means you should make every effort to encourage and support people to make the decision for themselves. If a lack of capacity is established, it is still important that you involve the person as far as possible in making decisions.
- **Unwise decisions –** people have the right to make decisions that others might regard as unwise or eccentric. You cannot treat someone as lacking capacity for this reason. Everyone has their own values, beliefs and preferences which may not be the same as those of other people.
- **Best interests –** anything done for on behalf of a person who lacks mental capacity must be done in their best interest.
- **Less restrictive option –** someone making a decision or acting on behalf of a person who lacks capacity must consider whether it is possible to decide or act in a way that would interfere less with the person's rights and freedoms of actions, or whether there is a need to decide or act at all. Any intervention should be weighed up in the particular circumstances of the case.

What is Mental Capacity?

Mental capacity is the ability to make a decision. This includes decisions that affect daily life and can also include a decision to agree to medical treatment. It should always be initially assumed that the person has the capacity to make the decision unless proven otherwise. It should also be demonstrated that you have made every effort to encourage and support the person to make the decision themselves. It must also be considered that if a person makes an unwise decision that it does not necessarily mean that the person lacks capacity to make the decision.

To help determine a person's capacity the information relating to the decision needs to be presented in a way that is appropriate to meet their individual's needs and circumstances. It is also important to explain the information using the most effective form of communication for that individual (e.g. simple language, sign language, visual representation).

An decision that the person lacks capacity should never be based simply on:

- Their age
- Their appearance
- Assumptions about their condition, or
- Any Aspect of their behaviour

Lack of capacity may not be a permanent condition; assessments of capacity are both decision and time specific.

A person may be deemed to have a temporary lack of capacity due to drug or alcohol abuse. With such patients a capacity assessment should be carried out before forming a decision as to whether the patient has the capacity at that specific time to make a decision for themselves.

Mental Capacity
Stage 1: To determine someone as lacking capacity there must be evidence to suggest that there is an impairment of the mind or brain which affects the way that their mind or brain works. Examples of impairment or disturbance in the functioning of the mind or brain may include the following (the list is not exhaustive):

Conditions associated with some forms of mental illness

- Dementia
- Learning disabilities
- The effects of brain damage
- Physical or medical conditions that cause confusion, drowsiness or loss of consciousness
- Delirium
- Concussion or other head injury related symptoms
- The symptoms of alcohol or drug use

Stage 2: Is to demonstrate that the impairment has rendered that person unable to make a specific decision when they need to. If this is not apparent then they will not lack capacity under the Act. Stage 2 can only apply if all appropriate support to help the person make the decision has failed. In deciding if a person has the capacity to make a decision at that particular time, the impairment or disturbance must be affecting the specific decision. If the person cannot demonstrate one of the following then they do not have the capacity to make that decision.

A person is unable to make a decision if they are unable to:

- understand the information about the decision that has been given to them?
- retain the information in their mind
- use or weigh up the information as part of the decision making.
- communicate their decision (by talking, using sign language or by any other means).

When it has been determined that a patient lacks the capacity to consent or refuse treatment then a decision must be made in their best interest (principle 4 of key principals) Decision-makers must take into account all relevant factors that would be reasonable to consider, not just those that they think are important. These may include any beliefs or values such as religion, culture or morals. They must not act or make a decision based on what they would want to do if they were the person who lacked capacity.

Actions to be taken when a patient is found to have impairment and does not have capacity.
If an E-zec crew believes that a patient who is lacking capacity needs urgent or lifesaving treatment, they should act in their best interests. In these circumstances under section 5 of the Mental Capacity Act and chapter 6 of the Mental Capacity Act code of Practice,

E-zec Medical do not restrain patients but ambulance staff have the powers to detain, restrain and to remove a patient to hospital, restraining a patient in this way is not a deprivation of liberty. If restraining or removing someone to hospital poses a safety risk to ambulance staff, it may be necessary to contact the police for assistance to safely remove the patient to hospital.

The police are empowered under the Mental Capacity Act to provide assistance to healthcare agencies who are dealing with someone experiencing a mental crisis or any other vulnerable patients such as those with learning difficulties. When a best interest decision has been applied and there is a need to transport the patient to hospital the patient for lifesaving treatment ambulance transport should be used. Police transport should only be considered after all other transport options have been deemed unsuitable.

If the condition is less serious and not of a life-threatening nature, then forced removal of the patient at this stage may be inappropriate if alternative care is available to address their needs adequately. Consideration should be made as to what the least restrictive approach to meet the needs of the patient would be. This may include involving their GP, out of hour's doctor's service or another professional expert to conduct a thorough assessment.

The decision-maker must consult other people if it is appropriate to do so and take into account their views as to what would be in the best interest of the patient. This would include carers, close relatives, close friends or anyone else involved in their personal welfare. It must be considered that the patient may have appointed a Personal Welfare Lasting Power of Attorney, or the Court Appointed Personal Welfare Deputy who has the authority to consent to the specific treatment proposed, however the patient may still only be treated if that treatment is believed to be in their best interests.

Advanced Decision to Refuse Treatment (Advanced Directives)
Advanced decision enables someone aged 18 and over, while still capable, to refuse specified medical treatment for a time in the future when they may lack capacity to consent or refuse that treatment. Their advance decision **must** be respected when they lack capacity if both valid and applicable, even if others think that the decision to refuse treatment is not in their best interests.

There is also no set form for writing an advance decision because the contents will vary depending on a person's wishes and situation. Advanced decision/refusals can be written or verbal, unless they deal with life-sustaining treatment, in which case they must be written. Specific rules apply to advanced decision that deal with life-sustainable treatments

Elderly Confused Patients
E-zec Medical staff may encounter elderly patients who normally have capacity, however are suffering from physical illness which may result in disorientation and/or aggressive behaviour. In such cases a GP following an assessment may feel that the patient needs to be admitted to hospital. Non- consenting patients such as this who do not have the capacity to make a decision can be legally transported to hospital by ambulance despite objections under The Mental Capacity Act. Where possible, staff should avoid the need to involve police assistance, however

if by transporting the patient poses a risk to staff or if the patient requires restraining, then police assistance should berequested.

Learning Disabilities

Learning disabilities can be also referred to as intellectual disabilities or learning difficulties and can be defined as a cessation or incomplete development of the mind which includes impairment of intelligence and social functioning. Learning difficulties may be mild, moderate or severe and affects the way a person learns and communicates. Having a learning disability does not necessarily mean people lack capacity, therefore capacity and consent issues should be no different to a person without learning difficulties.

Some people with learning difficulties can have a reduced ability to adapt and cope with everyday demands. They can struggle to understand complex information and make informed decisions for themselves. Most people with learning difficulties do not have any physical difference as the general population although some may have clear physical characteristics such as a person with Down Syndrome.

When providing information to a person with learning difficulties' it is important that the information is presented in a way that is appropriate to meet their needs and circumstances using the most effective form of communication which may be simple language.

Exceptions to the Principles of Consent

Certain statutes set out specific exceptions to the principles of consent contained within this policy.
These are:

- Part IV of the Mental Health Act 1983 sets out circumstances in which persons detained under the Act may be treated without consent for their mental disorder. It has no application to treatment for physical disorders unrelated to the mental disorder.
- Neither the existence of mental disorder nor the fact of detention under the 1983 Act should give rise to an assumption of incapacity. The person's capacity must be assessed in every case in relation to the particular decision being made as the capacity of a person with a mental disorder may fluctuate.
- The Public Health (Control of Disease) Act 1984 provides that, on an order made by a magistrate, persons suffering from certain notifiable infectious diseases can be medically examined, removed to, and detained in a hospital without their consent.
- Section 47 of the National Assistance Act 1948 provides for the removal to suitable premises of persons in need of care and attention without their consent. Such persons must either be suffering from grave chronic disease or be aged, infirm or physically incapacitated and living in insanitary conditions. In either case, they must be unable to devote to themselves (and are not receiving from others) proper care and attention. The Act does not give a power to treat such persons without their consent and therefore their treatment is dependent on common law principles.

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Family Reform Act 1969
Children Act 1989
Mental Capacity Act 2005
Mental Health Act Revised 2007 to include Deprivation of Liberty
12 Key Points on Consent – the Law in England. (DH 2009)
Safeguards
Care Act 2014
Criminal Justice and Courts Act 2015
Mental Capacity Act (Amendment) Bill 2019
Health and Social Care Act and associated Regulations

Equality Impact Assessment

Name of process/policy	Capacity of Consent Policy
Is the process new or existing? If existing, state policy reference number EXISTING	Existing
Person responsible for process/policy	Governance
Name of assessment lead or EIA assessment team members	Gary Parkinson Head of Clinical Governance
EIA	Does not impact on this policy
Who does the policy/procedure/practice/event impact on? Race X Religion/belief X Marriage/Civil Partnership X Gender X Disability X Sexual Orientation X Age X Gender Re-Assignment X Pregnancy/maternity X	