

FAQ about Adults with Incapacity

Q – What is “an AWI”?

A – An AWI is the common name for a Section 47 certificate. The formal title for the certificate is Certificate of Incapacity under Section 47 of the Adults with Incapacity (Scotland) Act 2000 (AWIA).

Q – What age does a Section 47 certificate cover?

A – It is applicable to those age 16 and over.

Q – Who has capacity?

A – Every patient (unless unconscious/emergency) should be deemed to have capacity until an assessment has been undertaken.

Q – Who can complete a Section 47 certificate?

A – Any doctor who is FY2 or above. Some members of the MDT who have undertaken further training in capacity and Section 47 assessment at Masters level.

Q – Can I stop a patient leaving the ward / hospital who has a Section 47 Certificate (AWIA) in place?

A – No, the act and certificate do not allow for the detention of patients. Patients who require detention should initially be detained under the Mental Health (Care and Treatment) (Scotland) Act (2003) with an Emergency Detention Certificate (DET1) or a Short Term Detention Certificate (DET2). However, in an emergency common law may apply.

Q – Can I restrain a patient who has a Section 47 Certificate (AWIA) in place?

A – Brief restraint may be considered necessary for clinical interventions. The principles of the act should be considered at all times. Bed rails and such like are considered restraint and must be considered against the principles of the act and be clearly documented within Annex 5 and the patient's notes.

Q – There is no next of kin to consult or document on the form. What do I do?

A – Document this clearly and consider other options such as close friends, GP, carers, or anyone that has played a significant role in the patient's life.

Q – My patient is refusing their medication and this could be detrimental to their health. What can I do?

A – Section 47 certificate allows for the use of covert medication but this should be clearly documented as appropriate for each individual patient and only permissible where other

alternatives have been explored. Please see link on webpage to MWC Good Practice Guide for use of covert medication.

Q – What is the Annex 5?

A – Capacity, or lack of capacity, should not be considered as all encompassing. Some patients will have capacity for specific decisions but not others. The Annex 5 treatment plan is an essential stage in the placement of a Section 47 certificate. It allows a clear documentation of the patient's capacity and what the certificate will and will not cover.

Q – Help, my patient has a Section 47 but appears to have capacity.

A – Capacity can fluctuate, be short term, and may resolve. Section 47 certificates should be reassessed regularly and with any change in the patient's condition. They can be revoked and can also be replaced later.

Q – If a patient has appointed a Welfare Power of Attorney (PoA), does that mean the PoA automatically can make decisions for them about care and treatment?

A – No, a PoA is granted at a point where the granter has capacity and becomes operational only when the granter loses capacity. An assessment of incapacity is required to trigger the PoA into being active.

Q – If a Section 47 certificate (AWI) is in place, does this provide legal authority to discharge a patient to a care home?

A – No, the AWI framework does not allow you to do this. If the patient lacks capacity for this decision but they are not against it then the framework of Section 13ZA of the Social Work (Scotland) Act 1968 can be used to move the patient (completed by social workers). However if the patient lacks capacity and disagrees with the move then a Welfare PoA or Welfare Guardianship Order (granted through the courts) are required to legally move the patient.

Q – I am more familiar with the Mental Capacity Act (MCA) (2005) as I have worked / trained in England or Wales - how is this different to AWIA?

A – The MCA is similar in principle to AWIA in that it is related to patients who are assessed as lacking capacity for a particular decision at a particular time. Under the AWIA if a patient is found to lack capacity for that decision a Section 47 Certificate and Annex 5 (treatment plan) are required (which do not have equivalence in England and Wales). Similarly the Deprivation of Liberty Safeguards of England and Wales (soon to be replaced by Liberty Protection Safeguards) which involves a specially trained social worker to review the decision around the patient's capacity, does not have equivalence in Scotland.