

Important Legal Acts

Children Scotland Act 1995

- Defines Parental Responsibilities (PR's):
- Gives those with PR's the right to consent to treatment on behalf of the child.
- PR's for decision making apply up to age 16 in Scotland. Parental responsibility exists between 16-18 years for guidance only. After 16 parents no longer have the right to consent.
- Most mothers will have PR's, Pre May 2006 only married fathers automatically had PR's.

Family Law Act 2006

- After 4th May 2006, a father who is named on the birth certificate will have PR's regardless of whether he is married to the mother.

Adults with Incapacity Act 2000:

- Safeguards adults (16 and over) who lack capacity
- All medical treatment must be covered by a Section 47 certificate

Welfare Guardian: Individual appointed by the court to make decisions about personal and medical care when an adult is unable to make key decisions or take necessary actions to safeguard his or her own welfare.

Welfare Power of Attorney: Given to an individual by a person with capacity to make decision about their health and welfare when they are unable to do so. Power of attorney can exist for financial matters and/or personal welfare and the limits of power must be considered in relation to consent.

Useful resources: MPS Scotland Factsheets: Parental responsibilities/adults with incapacity, Mental welfare commission for Scotland website.

Any further Information required
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Key Points

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Adolescent Consent in Scotland

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Questionnaire answers (1)

1. 16 year old boy with no cognitive impairment undergoing a major elective operative procedure in a paediatric setting. He has had multiple procedures in the past which his parents have always consented for.

As the patient is over 16 and has capacity, he can consent for himself. As a matter of good practice, if the patient is happy for the doctor to do so (Note: duty of confidentiality to the patient) the procedure can be discussed with the parents but the patient signs the consent form. Both adult with incapacity form and parent are NOT appropriate.

2. 14 year old girl in local authority care undergoing major elective operative procedure. She has had minor procedures performed in the past and consented for herself. Parents are not involved in her care.

If in the opinion of doctor the girl is capable of understanding the nature and the possible consequences of the procedure or treatment, she can consent to the treatment or indeed withhold consent. It is of note that she has consented to similar procedures herself in the past. If she is deemed unable to consent, a parent who retains Parental Responsibilities can consent on her behalf. Likewise, if the Social Work Department has been given formal Parental Responsibilities on her behalf they too could consent if she was unable to do so. It is unlikely that any carer accompanying her would have the power to consent to a major procedure on her behalf.

3. 17 year old boy with life-long severe cognitive impairment undergoing a major elective operative procedure. His parents have always consented for his multiple previous procedures. Mum is his welfare guardian.

A patient with severe cognitive impairment would not have capacity to consent for himself. The MOST appropriate practice would be for the Adults with Incapacity Certificate to be completed. Where a Welfare Guardian is known to exist, and it is reasonable and practicable to do so, their consent should be obtained. Where a difference of opinion occurs between the Medical Practitioner and the Welfare Guardian, a further medical opinion should be obtained.

4. 15 year old boy is admitted for laparoscopy for impalpable testis. He is deemed to have capacity to consent. He states that he does not want the procedure performed. No previous operations or past medical history.

Although under 16, he is deemed to have capacity and therefore can consent or withhold his consent to the procedure. In this situation, the parents cannot overrule and consent for him.

Questionnaire answers (2)

5. 13 year old girl with severe learning difficulties cared for by grandparents as part of a formal placement by the local authority. She is admitted for an elective day case procedure. Parents are not involved in her care but visit infrequently.

Due to her learning difficulties the patient would not have capacity to consent. In this situation, the most appropriate person depends upon who has parental responsibilities (PR's). A parent who has retained PR's can consent on her behalf. Likewise, a social worker/local authority can if parental responsibilities have been conferred upon them. Unless the grandparents have had PRs conferred upon them they would be unable to consent, unless it was considered a procedure to safeguard the child's welfare which could be covered by s5 of the Children Scotland Act. Given , that the procedure is elective assuming no immediate need, consent should be obtained from somebody with PRs.

6. 15 year old girl gives birth to a baby with myelomeningocele. She is severely autistic and lives with her parents. The father of the baby has not been identified. It is a closed lesion but requires a non-emergency, planned surgical closure.

If the 15 year old girl has capacity she would be able to consent on behalf of the child. If she does not have capacity her parents (maternal grandparents) could consent. Social work/ local authority would be able to consent if the mother lacked capacity and the local authority had been granted parental responsibility.

Key Points

1. A patient **UNDER 16** who **HAS** capacity to consent is the **MOST** appropriate person to consent. This also means they can **REFUSE** treatment. Capacity may differ depending on the treatment involved (i.e. A patient who has capacity to consent/refuse minor procedure may not have capacity to consent/refuse a major operation.)
2. A patient **UNDER 16** who **DOES NOT HAVE** capacity to consent should have consent obtained from the person who holds **PARENTAL RESPONSIBILITIES**. Most often this will be a parent but may be more complicated when the patient is under local authority or kinship care.
3. A patient **OVER 16** who **DOES NOT HAVE** capacity is subject to **Adults with Incapacity Legislation** and a certificate should be completed prior to any procedure. Where a welfare guardian or attorney is identified, their consent should be sought.