

FAQ About Adults With Incapacity (AWI)



Q - What is an “AWI” ?

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

Q - What age does the Section 47 certificate apply to ?

A - All of those aged 16 years and over (adult under Scottish Law)

Q - Who has capacity ?

A - Every patient (unless unconscious / sedated on a ventilator) should initially be deemed to have capacity until an assessment is made, this should be documented on each ward round. It may not be immediately apparent when someone does or does not have capacity and can be a very complex decision. Use of the **\capacity** tool on TRAK may be helpful. In complex cases discuss with Critical Care Consultant and we may also involve Psychiatry when it is unclear.

Q - Who can complete a Section 47 certificate ?

A - Any doctor who is an FY2 or above. ACCPs cannot unless completed further training.

Q - Can I stop a patient leaving the Ward / Hospital who has a Section 47 Certificate in place ?

A - No, the act and Certificate are not for the active detention of a patient. Patients who require detention and lack capacity should 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) and discussed with Psychiatry services. However, in an emergency situation common law may apply and they can be detained until paperwork completed.

Q - Can I restrain a patient who has a Section 47 in place ?

A - Brief restraint, use of sedatives in those who lack capacity or use of hand mitts is allowed (risk assessment for hand mitts to be carried out) but must be documented in Annex 5 and a capacity assessment documented in patients notes (/capacity).



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Q - Patient is refusing medications and this could be detrimental to their health, what can I do ?

A - Section 47 allows for the use of covert medication but should again be documented in Annex 5

Q - What is an Annex 5?

A - Capacity, or lack of capacity should not be considered all encompassing. Some patients will have capacity about some aspects of their care. Annex 5 treatment plan is an essential stage in the Section 47 completion. It allows clear documentation of the patients' capacity and what treatment may cover. This may included general ward care, physiotherapy and specific therapies like blood transfusion (as this usually requires verbal consent this needs to be documented in Annex 5)

Q- There is no Next of Kin (NOK) to consult or document on the form (annex 5), what should I do ?

A - Document clearly no NOK available or consider social work, GP, carer contact anyone who plays a significant role in that persons life.

Q - My patient may now have capacity but still has an AWI ?

A - Incapacity like delirium may fluctuate and be short lived, or only whilst sedated artificially on a ventilator. Section 47 should be revoked when a patients capacity returns or re-instated should it be lost.

Q - If a patient has an appointed 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 those powers but only when the patient loses capacity for themselves having previously declared that person to be their welfare PoA. If they remain capable then they may make decisions for themselves.

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 AWI ?

A - The MCA is similar in principle to AWI in that it is related to patients who are assessed as lacking capacity for a decision at a particular time. Under the AWI if a patient is found to lack capacity for that decision a Section 47 with appropriate Annex 5 are required (no equivalent form in Eng/Wal). The Deprivation of Liberty Safeguards of England and Wales which specifically involves a specially trained social worker to review decisions around the patients capacity does not have an equivalent in Scotland.