

Appendix 7 – Adults With Incapacity (Scotland) Act 2000 Part 5 – Medical Treatment – Flowchart

Least restrictive option:
Anything done for or on behalf of the person without capacity should be the least restrictive to their basic rights and freedoms.

Valid consent is:

- Given by a competent person.
- Be given voluntarily.
- Given following receipt of adequate information.

Respect the wishes of the person. A person with capacity has the right to make what might be seen to be eccentric or unwise decisions.

General principles
The Adults with Incapacity Act sets out some basic principles or rules at the very front of the Act. These rules **must** be followed by anyone who takes any kind of action or decision under the Act. The courts, the sheriff and the Public Guardian will use these general principles to decide whether someone should get legal power for another adult or whether actions have been justified.

Test for capacity:

- Understand the information given to them.
- Retain the information long enough to make the decision.
- Weigh up the information available to make the decision.
- Communicate the decision.

Serious medical treatment; which involves providing, withdrawing or withholding treatment in specific circumstances where; in what is being proposed, there is a fine balance between the likely benefits and the risks to the person, or where there is a choice of treatments, and a decision as to which one to use is finely balanced **or** what is proposed would be likely to involve serious consequences for the person.

Where disagreement arises between the guardian and doctor, the doctor must ask the Mental Welfare Commission to nominate a second doctor to give an independent opinion on the medical treatment.

Where an appeal has been made to the Court of Session, medical treatment is permitted to save life or to prevent a serious deterioration in health in such circumstances until the application is finally determined.

The sheriff has jurisdiction to give directions to any person exercising functions under the Act. Anyone with an interest can apply. A practitioner can if necessary use this procedure to obtain a ruling on any matter or significant doubt or difficulty.

