

Mental Health Law in Scotland

Introduction

The cases in this module emphasise how physical and mental health are intertwined and demonstrate how the best care for patients with long-term conditions, including dementia, may be provided. Healthcare professionals have a responsibility to be aware of the laws regulating patient care and treatment. Legislation is in place regarding the management of patients with conditions affecting their mental health, capacity or judgment. The laws in Scotland vary from other nations in the UK so this module focuses only on Scottish legislation, and members should be aware that the legislation is appropriate for those over 16 years old¹.

Primary healthcare clinicians are asked to complete Adults with Incapacity documents for patients. At times, this may be for a new patient who has entered a local nursing home or for someone we do not know well. It can be challenging to know how best to make an assessment and complete the relevant documents. The Adults with Incapacity Act 2000 has standardised this process¹.

In Scotland, in 2022-23, there were just under 3,000 Emergency Detention Certificates completed: approximately 60 cases per 100,000 of the population. Patients detained in the community accounted for 31.5% of all patients detained². Although detaining a patient for treatment is a relatively uncommon task for primary healthcare clinicians, the need can arise unexpectedly, and can be stressful for all concerned.

Additional confusion can arise when it is unclear if a patient should be treated under the Mental Health (Scotland) Act or the Adults with Incapacity Act 2000, or both. This can become complex, especially for patients whose capacity is borderline or when there are physical and mental health concerns¹. This module aims to review the practical application of what is included in the legislation and provide a summary to clinicians.

Module aims:

- To explore the assessment of capacity
- To explain relevant legislation in Scotland, including Common Law, the Adults with Incapacity Act 2000 and the Mental Health (Scotland) Act 2003
- To review what the law gives permission to clinicians to do, and appropriate treatments under the above legislation
- To review the practicalities of detention under the Mental Health (Scotland) Act 2003