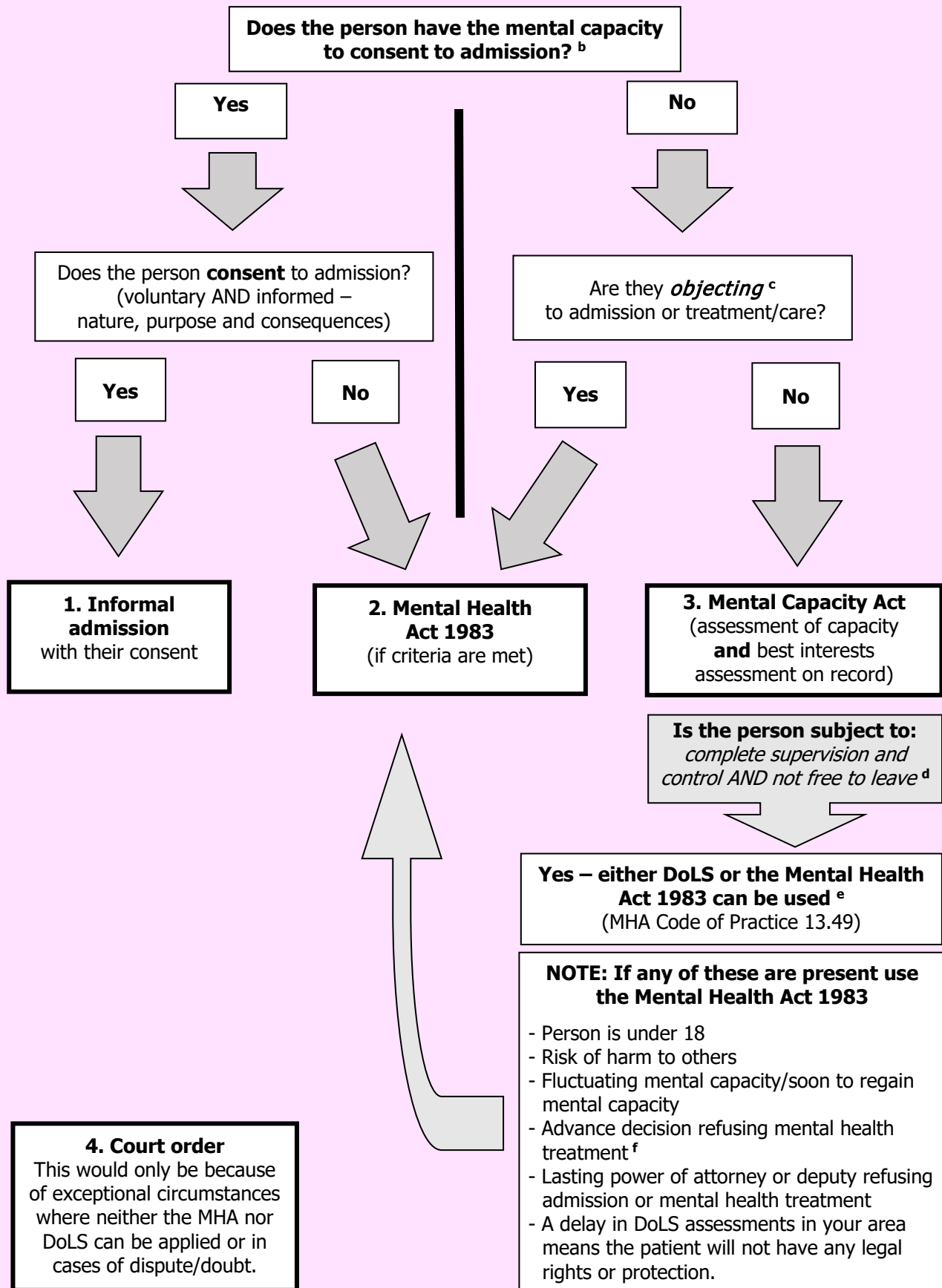


## Admission of adults to mental health hospitals (18 +)

For a person in need of treatment for mental disorder <sup>a</sup>  
(letter references in this chart are detailed on the next page)



### **a. Treatment for mental disorder**

The Mental Health Act Code of Practice (para 24.3): *'In the Act, 'medical treatment' includes nursing, psychological intervention and specialist mental health habilitation, rehabilitation and care.'* and (para 13.37): *'This may include treatment of physical conditions that is intended to alleviate or prevent a worsening of symptoms or a manifestation of the mental disorder (eg a clozapine blood test) or where the treatment is otherwise part of, or ancillary to, treatment for mental disorder.'*

### **b. Mental capacity to consent to admission**

Case law has considered what a person needs to understand to have the mental capacity to consent to admission to a mental health ward. The cases are: *AM v SLAM NHS Trust & the Secretary of State for Health [2013] UKUT 0365 (AAC)* and *A PCT v LDV, CC & B Healthcare Group [2013] EWHC 272*.

### **c. What is objecting?**

The Mental Capacity Act (Schedule 1A): *'In determining whether or not P objects to something, regard must be had to all the circumstances (so far as they are reasonably ascertainable), including the following – (a) P's behaviour; (b) P's wishes and feelings; (c) P's views, beliefs and values. But regard is to be had to circumstances from the past only so far as it is still appropriate to have regard to them.'*

The DoLS Code of Practice (para 4.47): *'... whether that objection is reasonable or not is not the issue'* and (para 4.46): *'If there is reason to think that a person would object if able to do so, then the person should be assumed to be objecting.'*

The Mental Health Act Code of Practice (para 13.51): *'In deciding whether a patient objects to being admitted to hospital, or to some or all of the treatment they will receive there for mental disorder, decision-makers should err on the side of caution and, where in doubt, take the position that a patient is objecting.'*

Note: If the person has a personal welfare lasting power of attorney or deputy, they can agree to the admission of an objecting person and therefore DoLS could still be used (this rule overrides the objection).

### **d. Complete supervision and control and not free to leave**

The Care Quality Commission report, *Monitoring the Mental Health Act 2013-14*, referring to the Supreme Court ruling in Cheshire West stated: *'The 'acid test' for a deprivation of liberty is if the person is not free to leave and is under continuous supervision. This is likely to be met for any incapacitated patient who requires psychiatric hospital admission.'*

### **e. Either DoLS or the Mental Health Act can be used**

The Mental Health Act Code of Practice (para 13.58): *'The choice of legal regime should never be based on a general preference for one regime or the other, or because one regime is more familiar to the decision-maker than the other.'*

### **f. Electroconvulsive therapy (ECT)**

Special rules apply to the use of ECT. If a person has a valid and applicable advance decision or a personal welfare lasting power of attorney or deputy refusing ECT, the Mental Health Act cannot be used to override this unless the use of ECT is considered immediately necessary to save the patient's life or prevent a serious deterioration (Section 62 (1)(a) or (1)(b)). See chapter *Treatment powers*.

### **What authority is required to treat a person under DoLS?**

Treatment of a patient under DoLS is either with their consent (if they have mental capacity to consent to the specific treatment) or in their best interests under the Mental Capacity Act (if they lack the mental capacity to consent to the specific treatment).

### **Which Act has more rights for the patient?**

The Mental Health Act Code of Practice (para 13.59): *'Both regimes provide appropriate procedural safeguards to ensure the rights of the person concerned are protected during their detention. Decision-makers should not therefore proceed on the basis that one regime generally provides greater safeguards than the other.'*

### **What if people disagree about which Act to use?**

The Mental Health Act Code of Practice (para 13.60): *'The most pressing concern should always be that if an individual lacks capacity to consent to the matter in question and is deprived of their liberty they should receive the safeguards afforded under either the Act or through a DoLS authorisation or a Court of Protection order.'*