

## WHICH ACT TO USE – MENTAL HEALTH ACT OR THE MENTAL CAPACITY ACT?

*There are several factors to consider when deciding which is the most appropriate Act to use at any given time.*

*This table considers some of the key questions which need to be answered.*

Note: this table refers to detention in hospital under the Mental Health Act and not its community powers.

	<b>YES</b>	<b>NO</b>
<i>Is the person under 16?</i>	Only the Mental Health Act can be used.	Either the Mental Health Act or the Mental Capacity Act can be used.
<i>Do they have a mental disorder?</i>	Either the Mental Health Act or the Mental Capacity Act can be used.	The Mental Capacity Act can also be used if the person has an <i>'impairment or disturbance of mind or brain'</i> .
<i>Is the proposed treatment for mental disorder?</i>	Either the Mental Health Act or the Mental Capacity Act can be used.	If the person lacks mental capacity, only the Mental Capacity Act can be used.
<i>Do they have the mental capacity to consent to treatment?</i>	Only the Mental Health Act can be used to treat them if they refuse treatment.	Either the Mental Health Act or the Mental Capacity Act can be used. Note: if the person's mental capacity will be regained in the near future the Mental Capacity Act will be of limited use.
<i>Do they meet the criteria for detention under the Mental Health Act?</i>	If they meet the criteria for detention under the Mental Health Act and are in a unit registered to use the Act then the Mental Health Act may be used. If they are not objecting to admission or treatment DoLS could be used instead.	Only the Mental Capacity which could include the Deprivation of Liberty Safeguards.
<i>Do they have an advance decision refusing treatment for mental disorder?</i>	To override an advance decision the Mental Health Act would have to be used. Note: special rules apply to electro-convulsive therapy.	Either the Mental Health Act or the Mental Capacity Act can be used.
<i>Do they have a Court of Protection order or personal welfare attorney (LPA) or deputy refusing treatment for mental disorder?</i>	To override this, the Mental Health Act would have to be used. Note: special rules apply to electro-convulsive therapy.	Either the Mental Health Act or the Mental Capacity Act can be used.
<i>Do the person's care arrangements and treatment plan meet the acid test?</i>	If they meet the criteria for detention under the Mental Health Act and are in a hospital registered to use the Act then the Mental Health Act must be used. However, if the person is not in a place registered to use the Mental Health Act, the use of Deprivation of Liberty Safeguards may apply or assessment for transfer to a unit where the Mental Health Act could be used.	Either the Mental Health Act or the Mental Capacity Act can be used.
<i>Is restraint necessary because of the risk of harm to others?</i>	The Mental Health Act should be used because the Mental Capacity Act can only be used to prevent harm to the person themselves.	Either the Mental Health Act or the Mental Capacity Act can be used.
<i>Could the Mental Capacity Act be used as a less restrictive option in the community to avoid detention?</i>	Provide care and treatment under the Mental Capacity Act. For example, a GP prescribing medication and talking therapies.	Use the Mental Health Act or Deprivation of Liberty Safeguards.

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