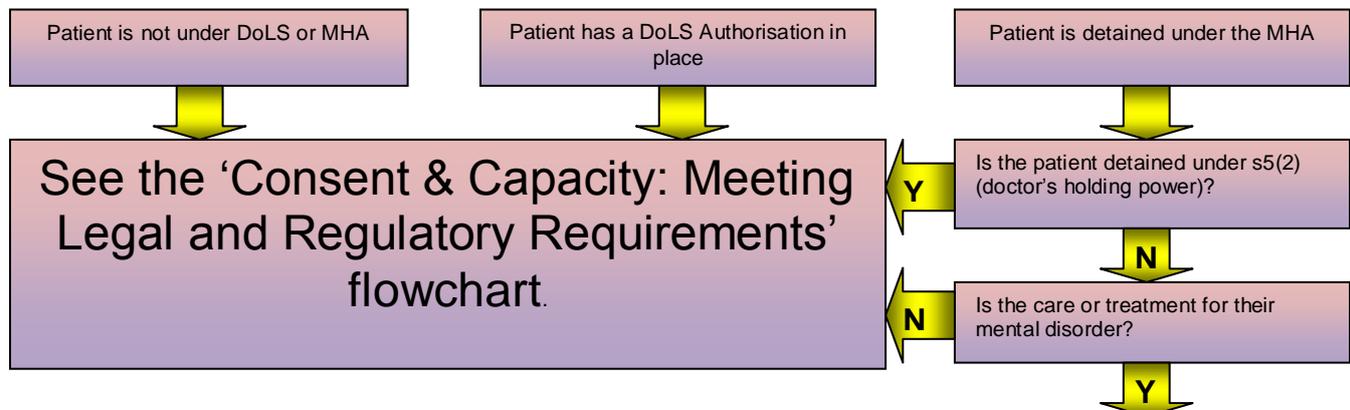


Providing Care and Treatment – Lawful Authority

The steps outlined below will not necessarily occur in a linear fashion or in the order suggested.



A patient detained under section 5(2) does not fall under the treatment provisions of the MHA. The section 5(2) can only be used to prevent them from leaving the ward (for a maximum of 72 hours) until a full MHA assessment can take place. Any care or treatment to be provided to the patient must be done with alternative lawful authority (see the 'Consent & Capacity: Meeting Legal and Regulatory Requirements' flowchart as indicated above). The same applies to section 4 (the use of which should be rare).

Section 2:

This section can only be applied following a Mental Health Act assessment by 2 doctors (one of whom must be approved under s12) and an AMHP. It lasts for up to 28 days from the day the application (A2 form) is accepted on behalf of the Hospital Managers (H3 form completed). It cannot be 'renewed' or reapplied at the end of the 28 days – a further assessment must be undertaken and an application made for section 3. The patient must be assigned a Responsible Clinician (who is an 'Approved Clinician').

Section 3:

This section can only be applied following a Mental Health Act assessment by 2 doctors (one of whom must be approved under s12) and an AMHP. It lasts for up to 6 months from the day the application (A6 form) is accepted on behalf of the Hospital Managers (H3 form completed). It can be renewed by the Responsible Clinician at the end of the 6 months. The patient must be assigned a Responsible Clinician (who is an 'Approved Clinician'). Applications for section 3 must identify the specific hospital(s) where the necessary treatment can be provided.

Section 17 leave:

Patients on section 2 and section 3 (plus s37) can be granted leave away from the hospital to which they are detained. This may include leave away from a mental health hospital to an acute hospital to receive treatment for a physical disorder. Whilst they are on s17 leave they are still 'liable to be detained' and the following consent to treatment provisions apply in respect of treatment for their mental disorder).

Consent to Treatment:

When a patient is detained under section 2 or 3 medication for their mental disorder may be given without express consent and even against the patient's wishes in accordance with section 58 of the MHA. Where covert or administration under restraint is likely this should be carefully planned and documented.

Before the end of 3 months of the patient being detained and receiving medication a T2 or T3 form must be completed which provides the lawful authority for treatment to be continued beyond 3 months. Without this form administering treatment may be UNLAWFUL.

A T2 form is completed by the Responsible Clinician when it is believed the patient has the mental capacity to consent to their medication and is consenting to receiving it.

If the Responsible Clinician believes that the patient lacks the mental capacity to consent to their medication OR if the Responsible Clinician believes the patient has the mental capacity to consent to their medication but is refusing, a Second Opinion Appointed Doctor (SOAD) must be contacted to complete a T3 form. A SOAD can be requested via the CQC. They can take several weeks to visit so if a T3 form is likely to be needed it is advisable to plan ahead.

If a patient has been detained for 3 months or more and you are asked to prescribe or administer medication you must ensure that this is in accordance with the T2/T3.

In the event of an emergency, treatment can be given that is not authorised by a T2 or T3 form. The definition of an emergency is contained within s62. A T2/T3 should be immediately arranged.

Other forms of care and treatment for mental disorder e.g. psychological therapies are covered by section 63 and do not have the same requirement for a T2/T3 form after 3 months.

Different provisions apply to ECT and to patients who are recalled to Hospital from a Community Treatment Order so advice should be sought.

Please contact our specialist, [Elaine Dower](mailto:elaine.dower@nhs.net), on elaine.dower@nhs.net to discuss how 360 Assurance can help you achieve the steps above.