

| Name of Country & Current Mental Health and Mental Capacity Regulations | History of Legislation & Policy Developments | Overview of Mental Health Legislation | Overview of Mental Capacity Legislation |
|---|---|---|--|
| <p>Scotland</p> <p>Mental Health (Care and Treatment) (Scotland) Act 2003</p> <p>Adults with Incapacity (Scotland) Act 2000</p> | <p>Regulations: Lunacy (Scotland) Acts (1857-1913) Mental Deficiency (Scotland) Acts (1913 and 1940) Mental Health (Scotland) Act 1960 Mental Health (Amendment) (Scotland) Act 1983 Mental Health (Scotland) Act 1984 (consolidating act) The Mental Health (Detention) (Scotland) Act 1991 The Criminal Procedure (Scotland) Act 1995 The Mental Health (Patients in the Community) Act 1995 The Crime and Punishment (Scotland) Act 1997 The Mental Health (Amendment) (Scotland) Act 1999 The Mental Health (Public Safety and Appeals) (Scotland) Act 1999</p> <p>Reviews & Reports: The Dunlop Committee applying the findings of England’s Percy Commission (1954-1957) to Scotland The Millan Committee’s (2001) Report on the Review of the Mental Health (Scotland) Act 1984</p> | <p>Mental Health (Care and Treatment) (Scotland) Act 2003</p> <p>Part 1: The Act is a capacity-based mental health legislation based on the set of ten guiding principles. Parts 2 and 3 contain provisions for the Mental Welfare Commission and the Mental Health Tribunal. The Tribunal, replacing the Sheriff Court, authorises and reviews compulsory treatment orders. Part 5 regulates emergency detention. Part 6 regulates short-term detention. Part 7 contains the rules for hospital and community-based compulsory treatment orders. Part 8 reforms the law relating to people with mental disorder who enter the criminal justice system. Part 17 provides additional rights and increased safeguards for patients, including the right to independent advocacy services, the possibility to make advance statements and the appointment of ‘named persons’ with the role to represent and to provide support for the patient.</p> | <p>Adults with Incapacity (Scotland) Act 2000</p> <p>Principles (Part 1): The first principle-based capacity legislation in the UK. The Act contains a presumption of capacity and endorses decision specific approach. Power of Attorney (Part 2): This part regulates the appointment of continuing (i.e. financial) and/or welfare attorneys. Access to funds scheme (Part 3): The OPG may grant authority to intromit with a mentally incapable adult’s funds. This is a way of accessing the adult’s bank or building society account in order to meet his or her living costs. Management of care home/hospital residents’ funds (Part 4): It allows care establishments and hospitals to manage a limited amount of the funds of residents who are unable to do this for themselves. Medical treatment decisions (Part 5): It allows treatment decisions to be taken for an adult who is unable to consent. Guardianship Order (Part 6): Guardianship can cover financial and/or personal welfare matters when the adult has long-term needs in relation to these. Intervention Order (Part 6) This Order is normally suitable where there is a single action to be taken on behalf of the adult.</p> |
| <p>Northern Ireland</p> <p>Mental Health (Northern Ireland) Order 1986</p> <p>Mental capacity issues are dealt with under common law</p> | <p>Regulations: Mental Treatment Act (Northern Ireland) 1932 Mental Health Act (Northern Ireland) 1948 Mental Health Act (Northern Ireland) 1961</p> <p>Reviews & Reports: MacDermott Report of Northern Ireland Review Committee on Mental Health Legislation 1981 Bamford Review of Mental Health and Learning Disability 2007</p> | <p>Mental Health (Northern Ireland) Order 1986</p> <p>The Mental Health Order makes provision for (a.) compulsory hospital-based detention and guardianship (Part 2); (b.) patients concerned in criminal proceedings or under sentence (Part 3); (c.) consent to treatment for mental disorder (Part 4); (d.) the Mental Health Review Tribunal (Part 5); (e.) the Mental Health Commission (Part 6); (f.) ‘capacity type’ protections for mentally disordered people who are unable to manage their financial affairs (Part 8); (g.) specific offences to provide protection from sexual and other abuse (Part 10).</p> <p>Present plans involve the creation of a fully unified mental health and mental capacity legislation. The new Act is going to introduce four core principles as recommended by the Bamford Review (autonomy, justice, benefit, least harm) and include a decision specific assessment of mental capacity. It will also provide for (a.) advance statements, (b.) lasting powers of attorney, (c.) financial and personal welfare deputies appointed by the High Court, (d.) and the Office of the Public Guardian.</p> | |
| <p>Ireland</p> <p>Mental Health (Ireland) Act 2001 (as amended by Mental Health Act 2008)</p> <p>Lunacy Regulation (Ireland) Act 1871</p> | <p>Regulations: Lunacy (Ireland) Act 1821 Criminal Lunatics (Ireland) Act 1838 Private Lunatic Asylums (Amendment) Act 1842 Central Criminal Lunatics Asylum Act 1845 Lunacy (Ireland) Act 1867 Lunacy Asylums (Ireland) Act 1875 Lunacy (Ireland) Act 1901 Mental Treatment Act 1945 Mental Treatment Act 1953 Mental Treatment (detention in Approved Institutions) Act 1961 Mental Treatment Act 1961 Health (Mental Services) Act 1981 Scheme of a Mental Capacity Bill 2008</p> <p>Reviews & Reports: Law Reform Commission: Report on Vulnerable Adults and the Law 2000</p> | <p>Mental Health (Ireland) Act 2001</p> <p>Part 1 is primarily concerned with definitions. The term ‘mental disorder’ includes mental illness, severe dementia and significant intellectual disability. Part 2 outlines the procedure of involuntary admission. Part 3 outlines the powers of the Mental Health Commission and the Mental Health Tribunals. Tribunals have the task of reviewing involuntary admissions. The members of the Tribunals are appointed by the Mental Health Commission. Part 4 deals with the rules for consent to treatment, including consent to ECT, psychosurgery and long-term medication. Part 5 regulates Approved Centres (i.e. hospitals or other in-patient facilities for the treatment of mental disorders). Part 6 contains miscellaneous provisions.</p> | <p>Lunacy Regulation (Ireland) Act 1871</p> <p>The current Ward of Court system represents an archaic status-based approach to mental capacity. Being made a Ward of Court, the person loses the right to make decisions on a wide range of issues irrespective of his actual decision-making capacity.</p> <p>The report of the Irish Law Reform Commission and the Scheme of the Mental Capacity Bill (2008) sets out the directions for a modern Mental Capacity Act. The new Act is going to (a.) adopt a principle-based approach (e.g. presumption of capacity, least restrictive means, autonomy and dignity, etc.), (b.) apply situation-specific capacity assessment, (c.) provide rules for Personal Guardians and amend existing EPA regulation (Enduring Power of Attorney Act 1996), (d.) establish the post of the Public Guardian.</p> |

| Name of country, state or province | Main sources | Involuntary civil commitment | | | | | | Capacity-type regulations | | | |
|------------------------------------|---|---|---|--|--|--|---|--|--|---|--|
| | | Name of regulation | Conditions of admission | Available procedures | Maximum duration of detention | Review of detention | Community treatment order | LPA/EPA | Deputyship | Public Guardian | Advance directives |
| United States California | Protection and Advocacy for Individuals with Mental Illness (42 US Code Ch. 114) Americans with Disabilities Act 1990 Protection and Advocacy for Mentally Ill Individuals Act 1986 Mental Health Services Act 2004 Lanterman - Petris - Short Act 1967 (California Welfare and Institutions Code sec. 5000-5550) Lanterman Developmental Disabilities Services Act 1969 Health Care Decisions Law 2000 (California Probate Code sec. 4600-4805) Uniform Durable Power of Attorney Act (California Probate Code sec. 4124, 4125, 4126, 4127, 4206, 4304, 4305) | Lanterman - Petris - Short Act 1967 | The person, as a result of mental disorder, is 1. a danger to others or 2. a danger to himself or herself or 3. gravely disabled. | Procedure 5150: Initial hold for evaluation and treatment | 72 hours | Writ of habeas corpus | Assisted outpatient treatment (Laura's Law - CWIC sections 5345-5349.5) | Durable Power of Attorney (Uniform Durable Power of Attorney Act) | LPS Conservatorship (for patients under involuntary civil commitment, CWIC 5350-5372) Probate Conservatorship (for people not under civil commitment, Cal. Probate Code 1400-4000) | Public Guardians and Public Conservators (Cal. Probate Code 2900-3000) | Health Care Decisions Law 2000 (Cal. Probate Code 4600-4805) |
| | | | | Procedure 5250: Intensive treatment | 14 days | Certification review hearing and/or writ of habeas corpus | | | | | |
| | | | | Procedure 5270: Additional intensive treatment | 30 days | Certification review hearing and/or writ of habeas corpus | | | | | |
| | | | The person is gravely disabled as a result of 1. mental disorder or 2. impairment by chronic alcoholism. | Temporary conservatorship (CWIC sections 5350-5372) | 30 days | Court or jury trial to determine grave disability and/or writ of habeas corpus if detained | | | | | |
| | | Conservatorship (CWIC sections 5350-5372) | 1 year (renewable) | Court or jury trial to determine grave disability and/or writ of habeas corpus if detained | | | | | | | |
| Canada British Columbia | The Canadian Charter of Rights and Freedoms Federal Criminal Code of Canada, R.S. 1985, c. 46 (Mental Disorder provisions) Mental Health Act, R.S.B.C. (Revised Statutes of British Columbia) 1996, c. 288 Adult Guardianship Act, R.S.B.C. 1996, c. 6 Health Care (Consent) and Care Facility (Admission) Act, R.S.B.C. 1996, c. 181 Representation Agreement Act, R.S.B.C. 1996, c. 405 Power of Attorney Act, R.S.B.C. 1996, c. 370 Patients Property Act, R.S.B.C. 1996, c. 349 Public Guardian and Trustee Act, R.S.B.C. 1996, c. 383 | Mental Health Act 1996 | The person 1. has mental disorder 2. requires treatment 3. requires care, supervision and control to prevent the person's substantial mental or physical deterioration, or to protect the person, or to protect others 4. cannot be admitted as a voluntary patient. | Emergency confinement and short-term admission (section 22) | 48 hours (can be extended to 1 month) | Periodical review by physician and by Review Panel + writ of habeas corpus by Supreme Court | Conditional leave from hospital (section 37) | Representatives (Representation Agreement Act 1996) Enduring Power of Attorney (Power of Attorney Act 1996) | Committeeship (Patients Property Act 1996) Regulation in transition (Part 2 of the Adult Guardianship Act is not yet in force) | Public Guardian and Trustee of B.C. (Public Guardian and Trustee Act 1996) | No specific legislation. Certain provisions of the Health Care (Consent) Act and the Representations Agreement Act provide a limited framework. |
| | | | | Renewal of detention and long-term admission (section 24) | Additional 1 month + 3 months + 6 months periods | Periodical review by physician and by Review Panel + writ of habeas corpus by Supreme Court | | | | | |
| Australia New South Wales | Mental Health Act 2007 Guardianship Act 1987 Protected Estates Act 1983 Powers of Attorney Act 2003 Mental Health (Criminal Procedures) Act 1990 | Mental Health Act 2007 | The person 1. has mental illness and 2. (a) treatment is necessary either for the person's own protection from serious harm or 2. (b) for the protection of others from serious harm. | Initial, second and (in case of disagreement) third examination by medical practitioners | Initial examination within 12 hours | Review by Review Tribunal every 3 months for the first year, every 6 months afterwards + appeal to Supreme Court | Community treatment order (issued by Mental Health Review Tribunal, section 51) | Enduring Guardian (sections 5-60 Guardianship Act 1987) Enduring Power of Attorney (sections 19-25 Powers of Attorney Act 2003) | Financial Manager and Guardian (sections 25D – 25U and 14-25C Guardianship Act 1987) | NSW Public Guardian (Guardianship Act 1987) Protective Commissioner (Protected Estates Act 1983) | No specific legislation. The issue falls under common law. |
| | | | | Mental health inquiry by Mental Health Review Tribunal | 3 months at first (renewable) | | | | | | |
| | | | The person 1. has mental disorder and 2. his/her behaviour is so irrational that temporary care, treatment or control is necessary (a) for the person's own protection from serious physical harm, or (b) for the protection of others from serious physical harm. | Initial, second and (in case of disagreement) third examination by medical practitioners | Initial examination within 12 hours, maximum 3 days of detention | N/A | | | | | |
| New Zealand | Mental Health (Compulsory Assessment and Treatment) Act 1992 Protection of Personal and Property Rights Act 1988 Code of Health and Disability Services Consumers' Rights (1996) Mental Health Commission Act 1998 | Mental Health (Compulsory Assessment and Treatment) Act 1992 | The person has mental disorder, understood as: 1. an abnormal state of mind (continuous or intermittent), 2. characterised by delusions, or by disorders of mood or perception or volition or cognition, of such a degree that it 3. (a) poses a serious danger to the health or safety of that person or of others; or 3. (b) seriously diminishes the capacity of that person to take care of himself or herself. | Preliminary assessment (sections 8-12) | 5 days | Judicial review | Community treatment order (Courts shall give priority to CTOs over inpatient orders whenever possible, sections 28 - 29) | Enduring Power of Attorney (sections 93-108 Protection of Personal and Property Rights Act 1988) | Welfare Guardians and Managers (Sections 5-23 and 24-52 Protection of Personal and Property Rights Act 1988) | No PG, but the Public Trust can be appointed as property manager in some cases. | Delegated to common law by the Code of Health and Disability Services Consumers' Rights (1996, Right 7.5) |
| | | | | Further assessment (section 13) | 14 days | Judicial review | | | | | |
| | | | | Compulsory treatment order issued by Family Court judge (sections 17-36) | 6 + 6 months, indefinite afterwards | Clinical review (after 3 months, then every 6 months) with appeal possibility to the Review Tribunal. | | | | | |