

Consent – it's your decision

How you should be involved in decisions about your health care and treatment

Version 3

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Who is this leaflet for?

- This leaflet is for people of all ages.
- There is also a version of this leaflet for young people under 16, called **Consent – your rights**. You can get a copy from anywhere you receive NHS care, or on the internet (www.hris.org.uk).

What is this leaflet about?

It tells you about your right to make decisions about your health care and treatment. Normally, you can accept or refuse any treatment, examinations or tests, and you can decide whether to take part in research.

What does consent mean?

It means agreement. Before a doctor, nurse or any other health professional can examine or treat you, they must have your consent.

Who can give consent?

You can give consent if you can make decisions for yourself.

- Being able to make decisions means you can understand what is involved and can think clearly about the advantages and disadvantages of different actions.
- You must be given enough information, and you should be allowed to make up your own mind without pressure from other people.

What if I can't give consent?

You can give consent only if you can understand the information you are given, make a decision, remember your decision and tell other people your decision. If you can't do all these things, it is called 'incapacity'.

- If your incapacity is because of intoxication from drugs or alcohol, a health professional may be able to treat you without consent, if this is in your best interests.
- If your incapacity is because of a mental disorder such as a learning disability or dementia, someone else may be able to give consent for you.

If you are an adult

Someone can give consent for you if:

- you have given them welfare power of attorney with the power to consent to treatment, or
- a court has given them a welfare guardianship order with the power to consent to treatment, or

- a court has given them a welfare intervention order specifically for the treatment, and the treatment is needed only for a short time.

Doctors can also treat you if there is no-one who can give consent on your behalf, and the treatment will benefit you.

You should always be given information in a way that you understand and you should always be given help to communicate.

For more information, see the leaflet **Caring and consent**. See page X for where to get a copy.

See page X for where to get more information about the rights of adults with incapacity.

If you are under 16

- Someone with parental responsibility can give consent for you if you can't give it yourself.

See page X for where to get more information about the rights of young people under 16.

What happens in an emergency?

- In an emergency – for example, if you've been in a road accident and you need urgent treatment to save your life – you may not be well enough to make a decision about your treatment.
- If you can't give your consent and there is no time for anyone else to make a decision for you, doctors can treat you. But they can only treat you without your consent if this is necessary to save your life or stop you suffering more serious harm.

How will I be asked to give my consent?

- A doctor or another health professional may ask you to do something to show your consent. For example, a doctor may ask to examine your foot. If you take off your shoe, it shows you agree to this.
- Usually you will be asked to say whether you agree to the examination or treatment.
- If the examination or treatment is complicated, for example an operation, you may be asked to sign a form showing you agree to it.

What information should I be given?

- To help you make a decision, NHS staff involved in your care must give you information about the examination or treatment you are being offered in a way that you understand. You may want to know:
 - why you are being offered the examination or treatment
 - what it will involve
 - what the benefits are
 - whether there are any risks or side effects
 - how large or small the risks are
 - whether there are any alternatives
 - what may happen if you don't have the examination or treatment
 - whether you will have to pay (for example for dental treatment), and
 - the name of the doctor who is responsible for your care.
- You have the right to ask questions if you don't understand or you want to know more. If the person who is asking you to give consent can't answer your questions, ask them if they can find out or get someone else who can help. If you think you need it, you can ask for a second opinion.

- If you need an interpreter, ask a member of staff to arrange this for you in advance. When you make an appointment, tell them which language you prefer.
- If you wish, someone can be with you when you are told about the examination or treatment. This could be a friend, a relative, a partner or carer, another member of staff, or an independent representative (often called an 'advocate').
- You may find it difficult to fully understand what you've been told about an examination or treatment. If you would like to take away written information to help you make a decision, you should say so.

How long can I take to decide?

In emergencies, decisions will have to be made quickly. In other cases you may be able to take more time. It is important that you are given enough time to make your decision so you don't feel rushed. If you want time to think about your decision, you should say so.

What if I change my mind?

You can change your mind about giving your consent to an examination or treatment at any time. You should tell one of the people looking after you.

Can I refuse examination and treatment?

- Normally you can refuse an examination or treatment at any time, even if this means your health, or the health of your unborn baby, may be seriously harmed.

- It is important that you understand what may happen to you if you decide not to have the examination or treatment.
- If another treatment can be used instead, you should be given information about it. But you can't insist on a particular treatment if the NHS staff involved in your care don't think it will help you.
- Remember that you can ask for a second opinion about the treatment you have been offered.

Information for young people under 16

If you are under 16, and the health care professional looking after you believes you can make decisions for yourself, you can refuse examination or treatment.

However:

- the person providing your care may ask why you don't want it. They need to know they have given you enough information for you to make your decision
- in very unusual cases, if you have refused treatment and you have a very serious condition, your parent or the person who looks after you may disagree with you and want to discuss your case with a lawyer. You could also have your own lawyer to help you with this.

For more information contact the Scottish Child Law Centre (see page X)

For where to find information about consent for young people under 16, see page X.

What if I have a mental illness or disorder?

- In most cases, if you have a mental health problem, you have the same right to accept or refuse an examination or treatment as anyone else.
- But if you are being cared for under the Mental Health Act, you can be examined and treated for your mental illness or disorder without your consent. This will happen only if:
 - it is in your best interests, and
 - there would be a significant risk to yourself or others if you didn't have the treatment.

There are guidelines for certain treatments. Your doctor may need to get a second opinion from another doctor before giving you a particular treatment.

- The Scottish Government Health Directorates have produced a series of guides for people with a mental disorder and their carers. See page X for where to get copies of these.

For more information about the rights of people with mental illnesses or disorders, see page X.

What if I'm asked to take part in teaching?

- NHS staff involved in your care should always ask if you prefer not to have a student present while you are examined or treated. You have a right to refuse, and the standard of care you receive won't be affected.
- Staff must ask you to give your consent before they take any photographs or make any video or sound recordings of your examination or treatment for teaching purposes. Wherever

possible, they will remove information that identifies you before using the recordings. Where this isn't possible, they must tell you before you make your decision.

- If you agree to photos being taken or recordings being made for teaching purposes, you can change your mind later. If you withdraw your consent, the photos or recordings will not be used and will be destroyed as soon as possible.

What if I'm asked to take part in research?

- If you can make your own decisions, it's up to you to decide whether you want to take part in research.
- Before you decide, you should be given as much information about the research as you need, and you can ask as many questions as you wish.
- You will usually be given written information about the research to take home. You can use this to discuss the research with your family and friends if you want to. You should never be put under any pressure to agree to take part.
- If you do not want to take part in research, the staff should ask you to sign a form showing that you give your consent. They may give you a copy of this form to keep, and will also keep a copy in your health records.
- You can change your mind at any time about taking part in research, without giving a reason.
- If you decide not to take part in the research, the standard of care you receive will not be affected.

Consent for using personal health information

The NHS must keep your personal health information confidential. You should be involved in decisions about how your personal health information is used.

For more information about using your personal health information, see our leaflet **Confidentiality – it's your right**. See page X for where to get a copy of this leaflet.

What if I'm not happy?

If you are unhappy about how you have been involved in decisions about your health care, first talk to a member of NHS staff involved in your care. If you are still unhappy, you can make a formal complaint.

For more information about making a complaint, see the leaflet **Making a complaint about the NHS**. See page X for where to get a copy of this leaflet.

How to find out more

- For more information about anything in this leaflet, contact:
 - a member of NHS staff involved in your care
 - the NHS inform Helpline on **0800 22 44 88** (textphone 18001 0800 22 44 88; the helpline also provides an interpreting service), or
 - your local citizens advice bureau (find your nearest bureau on the internet at **www.cas.org.uk** or in your local phone book).
- For more information about how the law affects children and young people, contact:

The Scottish Child Law Centre

54 East Crosscauseway

Edinburgh EH8 9HD

Information helpline **0131 667 6333**

Freephone number for under 18 **0800 328 8970**

Free text enquiry service: text 'SCLC' followed by your question to **80800** (replies will be sent to your mobile)

Email **enquiries@sclc.org.uk**

Website **www.sclc.org.uk**

- If you can't make decisions for yourself or can't tell others your decisions, this is called 'incapacity'. The leaflet **Caring and consent** explains the rights of people who can't consent to medical treatment and the rights of their carers. See page **X** for where to get a copy. For information about the Adults with Incapacity (Scotland) Act, contact:

The Office of the Public Guardian (Scotland)

Hadrian House

Callendar Business Park

Callendar Road

Falkirk FK1 1XR

Phone **01324 678 300**

Email **opg@scotcourts.gov.uk**

Website **www.publicguardian-scotland.gov.uk**

- For more information about the rights of people with a mental illness, learning disability, dementia or other mental disorder, contact the **Mental Welfare Commission for Scotland**. They can also give you information and advice on people's rights under the Adults with Incapacity Act.

Mental Welfare Commission for Scotland

Thistle House

91 Haymarket Terrace

Edinburgh EH12 5HE

Freephone number for service users and carers **0800 389 6809**

Email **enquiries@mwscot.org.uk**

Website **www.mwscot.org.uk**

- **The Scottish Government Health Directorates** have produced a series of guides for people with a mental disorder and their carers. These include a guide on giving consent to treatment. If you would like copies of any of these guides, contact:

Mental Health Law Team

Mental Health Division

Scottish Government Health Directorates

St Andrew's House

Regent Road

Edinburgh EH1 3DG

Phone **0131 244 2591**

Email **mentalhealthlaw@scotland.gsi.gov.uk**

Website **www.scotland.gov.uk** (follow the links to health and community care, improving health, mental health, mental health law and guidance).

Information about health rights

- **The NHS and You** explains what you can expect from the NHS in Scotland, and what the NHS expects from you.
- **Making a complaint about the NHS** tells you how to complain using the NHS complaints procedure.
- **Confidentiality – it's your right** explains how you the NHS protects your personal health information.
- **How to see your health records** explains your right to see or have a copy of your health record.
- **Health care for overseas visitors** is a set of factsheets explaining what NHS services overseas visitors can expect to receive while they are in Scotland.

Information for young people

- **Consent – your rights** explains how you should be involved in decisions about your health care and treatment.
- **Confidentiality – your rights** tells you how the health service keeps information about you private.
- **Have your say! Your right to be heard** tells you how to give feedback or make a complaint about the NHS.

Information for carers

- **Caring and consent** explains your right to be involved in decisions about the health care of the adult you care for.

You can get this information from:

- GP and dental surgeries, hospitals and other places where you get NHS care
- **www.hris.org.uk**
- your local citizens advice bureau (find your nearest bureau on the internet at **www.cas.org.uk** or in your local phone book), and

- the NHS inform Helpline on **0800 22 44 88** (textphone 18001 0800 22 44 88; the helpline also provides an interpreting service).

We have tried our best to make sure the information in this leaflet is correct. However, the leaflet is for guidance only so you should not rely on it as a full statement of the law. If you are thinking about taking legal action, you should contact a solicitor, a citizens advice bureau or other advice agency.

Produced by Health Rights Information Scotland, a project of Consumer Focus Scotland, for the Scottish Government Health Directorates.

To get this leaflet in another language or format phone your local NHS board. If you need help to do this contact the NHS inform Helpline on 0800 22 44 88 (textphone 18001 0800 22 44 88).

www.hris.org.uk

