

# Capacity, Rights, or Risk? A Philosophical and Legal Comparison of Mental Health Legislation in the UK and Crown Dependencies

Dr Joseph Kendall, ST4 Forensic Psychiatry Registrar  
Dr Muzaffar Husain, Consultant Forensic Psychiatrist

## AIMS AND HYPOTHESIS

This study compares the primary mental health legislation across the six jurisdictions of the United Kingdom and Crown Dependencies: England and Wales, Scotland, Northern Ireland, the Isle of Man, and the Bailiwicks of Jersey and Guernsey. We hypothesise that despite a shared legal history, these nations have fractured into distinct legal "families", creating a complex landscape where a patient's fundamental rights and the basis for their compulsion depend entirely on geography.

## BACKGROUND

Devolution and the independent status of the Crown Dependencies have allowed for unique paths of reform. Most notably, the 2026 conference host, Northern Ireland, has introduced a radical "fusion law" model with the Mental Capacity Act (NI) 2016. This breaks completely from the traditional "status-based" mental health acts used elsewhere, creating a fundamental philosophical split in how compulsory care is justified.

## METHODOLOGY

We carried out a comparative review of mental health legislation and mental health policy across all six jurisdictions, focusing on detention criteria, community compulsion, and safeguards for detained citizens. We applied these divergent laws to determine their practical impact on a theoretical case study.

## CASE STUDY

**Clinical Diagnosis:** Severe Personality Disorder with prominent traits in the Dissocial domain with further traits in Negative Affectivity and Disinhibition.

**Presentation:** Admitted to an Emergency Department following an incident of planned, serious violence in the aftermath of severe self-harm.

**The scenario:** Patient explicitly refuses psychiatric admission or treatment.

**Capacity Assessment:** A formal assessment confirms the patient has the capacity to refuse; they understand the risks and consequences but choose to prioritize their liberty over clinical intervention.



## NORTHERN IRELAND

Mental Capacity Act (NI) 2016; partially enforced current gateway remains Mental Health (NI) Order 1986  
Dual system transitioning to a capacity-based model

**Not Detainable.** The 1986 Order provides no authority because personality disorder is excluded. The 2016 Act provides no authority because the patient retains capacity. The patient would be discharged under both current and future application of the law.

## SCOTLAND

Mental Health (C&T) (Scotland) Act 2003  
SIDMA: Significantly Impaired Decision-Making Ability (plus Risk).

**Likely Discharge:** While high-risk, if the patient's ability to make decisions is not "significantly impaired" by their disorder, they do not meet the legal criteria for a detention in hospital.

## JERSEY

Mental Health (Jersey) Law 2016  
Status and Risk: Detention is warrantable in the interests of safety or for the protection of others.

**Detainable:** The law prioritizes public protection over capacitous refusal if the "nature or degree" of the disorder warrants it.

## ISLE OF MAN

Mental Health Act 1998 (Isle of Man)  
Status and Risk: Presence of a mental illness or psychopathic disorder and a risk to safety

**Detainable:** If the risk criteria are met, the patient can be detained regardless of their decision-making capacity.

## ENGLAND AND WALES

Mental Health Act 1983 (England and Wales)  
Status & Risk: Presence of a "mental disorder" (includes PD) and a risk to others.

**Detainable.** Capacity is not a gateway. If the risk is high and treatment is "appropriate," a Section 3 can be used despite a capacitous refusal.

## GUERNSEY

Mental Health (Bailiwick of Guernsey) Law 2010  
Status and Risk: Diagnosis of a mental disorder and the protection of other persons from harm

**Detainable:** Detention is based on the nature or degree of the disorder and the necessity of preventing harm. Decision-making capacity is not a prerequisite for detention

## RESULTS

Mental health law across the British Isles is deeply divided. England, Wales, Jersey, Guernsey, and the Isle of Man use risk-based models where a patient's capacitous refusal can be overridden to prevent harm. Northern Ireland is moving toward a fusion model based on capacity, but it currently uses a dual system that still employs its 1986 risk-based Order. Scotland uses a hybrid significantly impaired decision-making (SIDMA) test.

This split affects fundamental rights: Scotland, Northern Ireland, and Jersey empower patients to choose their own representative (Named, Nominated, or Nearest Person). In contrast, England, Wales, Guernsey, and the Isle of Man currently dictate the representative via a strict statutory hierarchy (Nearest Relative). Furthermore, Scotland offers unique forensic safeguards, such as the right to appeal against "excessive security," which is absent in the other mental health jurisdictions.

## CONCLUSION

The legal framework for mental health in these islands is no longer uniform but split into three distinct philosophies: capacity-based, rights-based, and risk-based. This creates inequality for patients and significant complexity for forensic practitioners managing transfers or risk across borders. Understanding these differences is critical for navigating this fractured legal landscape.

## REFERENCES

- Primary Legislation
1. Mental Health Act 1983 (as amended by the Mental Health Act 2007). England and Wales.
  2. Mental Health (Care and Treatment) (Scotland) Act 2003. Scotland.
  3. Mental Capacity Act (Northern Ireland) 2016. Northern Ireland.
  4. Mental Health (Northern Ireland) Order 1986. Northern Ireland.
  5. Mental Health (Jersey) Law 2016. Bailiwick of Jersey.
  6. Mental Health (Bailiwick of Guernsey) Law 2010. Bailiwick of Guernsey.
  7. Mental Health Act 1998. Isle of Man.
- Supporting Academic References
1. Lynch G, Taggart C, Campbell P. Mental Capacity Act (Northern Ireland) 2016. BJPsych Bulletin. 2017;41(6):353-357.
  2. Zigmund T. Mental health law across the UK. BJPsych Bulletin. 2017;41(6):358-361.
  3. Szmulker G, Kelly BD. We should replace conventional mental health law with capacity-based law. British Journal of Psychiatry. 2016;209(4):269-271.
  4. Millan, J. (2001). New Directions: Report of the Committee on the Review of the Mental Health (Scotland) Act 1984.
  5. Bamford, D. (2007). The Bamford Review of Mental Health and Learning Disability (Northern Ireland).