

**Staff and registered
service summary
guidance on the use
of 13ZA, Social Work
(Scotland) Act 1968**

August 2023

Introduction

In Scotland, all adults (people aged 16+) are assumed to have capacity to make decisions. However, when a person lacks capacity to make informed decision(s) relating to their welfare, a legal framework is required to afford safeguards and promote the right to equal recognition and respect for their choices.

What is section.13ZA?

(13ZA) took effect in March 2007. It is a legal provision which, in the absence of any other welfare proxy decision maker, allows a local authority to make significant care arrangements, where the person is not capable of making informed decisions about receipt of a service. The use of 13ZA aims to promote the wishes, choices and preferences of people who are unable to make specific decisions relating to their welfare.

13ZA can be used to enable somebody to access a community care service. This includes moving to a care home or being in receipt of care and support in their home. Any use of 13ZA must ensure there is no existing proxy decision maker in place for the individual. This includes a welfare power of attorney or a welfare guardian. Additionally, before using 13ZA, local authorities/Health and Social Care Partnerships (HSCP) must satisfy themselves there is no application for welfare powers under AWI Act before the court.

If there is a welfare guardianship application in progress – 13ZA provisions cannot apply.

Intervention under 13ZA may be appropriate where an adult does not indicate disagreement with the proposed action, either verbally or through their behaviour/actions **and** it appears they are likely to accept the care arrangements. All interested parties, including professionals and the person's relevant family members/primary carer must agree with the care intervention proposed.

Although 13ZA can be used to facilitate a person moving to a care home, it does not give authority for a person to remain there if they wish to leave. Further safeguards and powers, such as welfare guardianship, are required for this and should be progressed as soon as practicable.

The local authority/ HSCP should make clear to the care provider the legal authority under which services are to be arranged.

Principles

The general principles of the [Adults with Incapacity \(Scotland\) Act 2000](#) (AWI) must be applied when 13ZA is being considered. There should be a 'proper and auditable process for taking decisions on care arrangements for people who lack capacity, and that this process fully reflects the principles of the 2000 Act'¹. This would be informed by policy of the local authority/HSCP which led the application of 13ZA.

Principle 1 – Benefit

Any action or decisions taken must benefit the adult and can only be taken when that benefit cannot reasonably be achieved without it.

Principle 2 – Least restrictive option

Any action or decision taken should be the minimum necessary to achieve the purpose. It should be the option that restricts the person's freedom as little as possible.

Principle 3 – Take account of the wishes of the adult

In deciding if an action or decision is to be made, and what that should be, the present and past wishes and feelings of the adult as far as they can be ascertained, should be taken account of. The adult should be offered appropriate assistance to communicate their views.

Principle 4 – Consultation with relevant others

In deciding if an action or decision is to be made, and what that should be, the present and past wishes and feelings of the nearest relative, primary carer of the adult, or the adult's named person, should be taken account of. In so far as it is reasonable and practicable to do so.

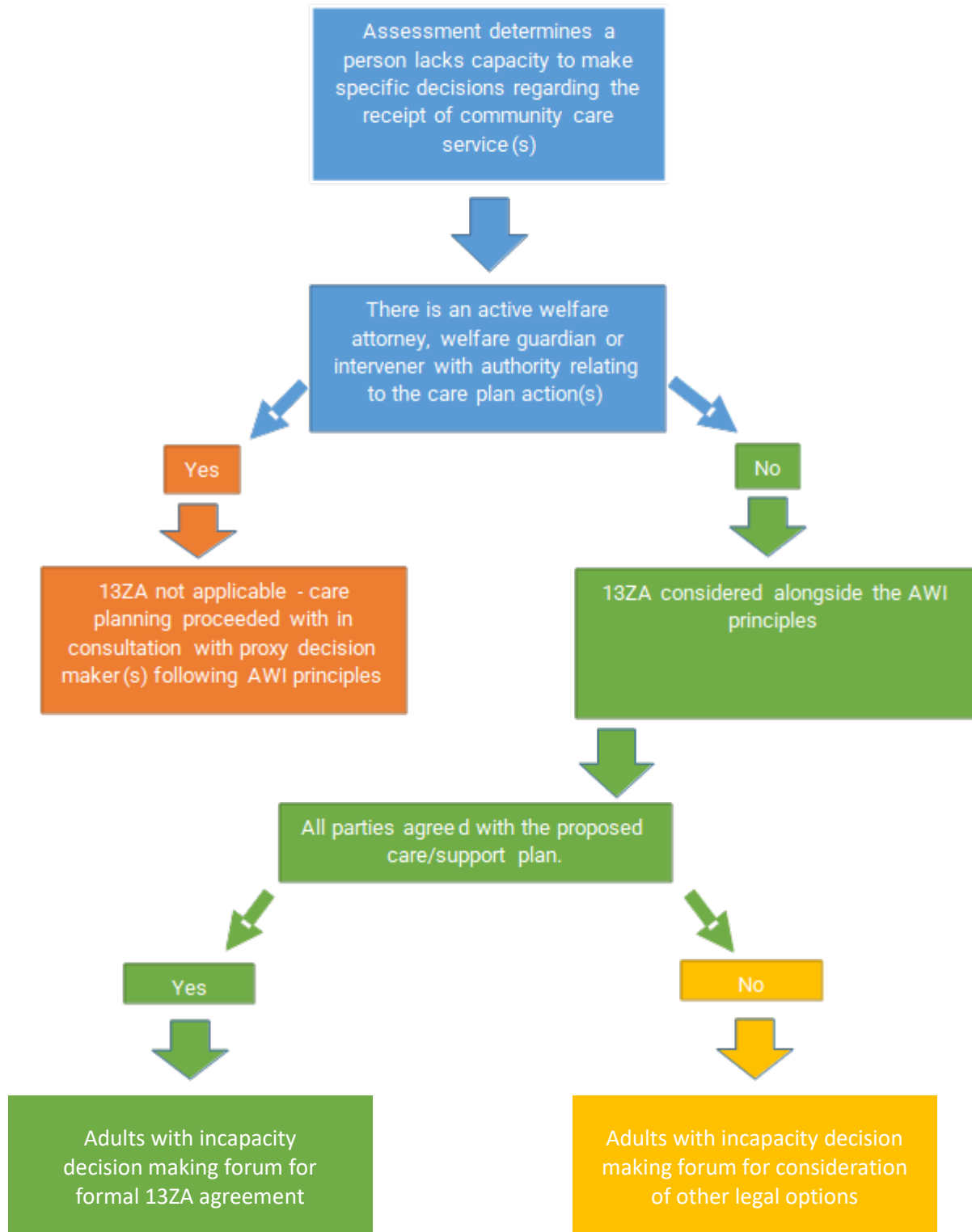
Principle 5 – Encourage the adult to exercise whatever skills he or she has

Any person or service exercising functions in relation to 13ZA shall, in so far as it is reasonable and practicable to do so, encourage the adult to exercise whatever skills they have concerning their welfare and to develop new skills.

¹ [cheshire west draft guidance.pdf \(mwscot.org.uk\)](#)

When should 13ZA be used?

13ZA Good Practice Flowchart



Adult registered services AWI good practice checklist

- There is a care plan that details the decision-making arrangements in place for the adult.
- There is information in the provider file from the HSCP that:
 - confirms the person lacks capacity to make the required decision(s)
 - details who carried out the assessment
 - when the assessment was carried out
 - the legal authority under which services are to be arranged.
- Reviews are regular and ensure the person's rights continue to be promoted and that evidence the principles of AWI Act are considered including:
 - benefit
 - least restrictive option
 - take account of the wishes of the adult
 - consultation with relevant others
 - encourage the adult to exercise whatever skills they have and develop new skills.
- There is involvement of independent advocacy to promote and support the views of the person and/or their family/carer(s).
- The local authority/HSCP have considered/sought any other appropriate AWI powers required to ensure the persons rights are safeguarded after commencement of the service. For example, Welfare/ Financial Guardianship Order, Access to Funds/Management of Resident finances, s47 certificate.