

# It's your decision



The Adults with Incapacity (Scotland) Act is a new law to help you when you are unable to decide things for yourself.



# Who is the Adults with Incapacity Act for?

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Once you are aged 16 or over you are an adult. The law assumes you can make decisions about your life and can sign legal documents if you need to. No-one can make these decisions for you. But some people are not able to make these decisions or need help to do so. Now the Adults with Incapacity Act can help.

If you

- **sometimes** need help to make important decisions
- **often** need other people to help you manage things
- or think you might need this kind of help **in future** then the new law can help you.

**Someone else can get permission to make your decisions or help you with decisions.**

You are most likely to use the new law if you have

- a learning disability
- dementia
- mental ill health
- a head injury
- a physical disability that stops you communicating.



# Who can get permission to make decisions for you?

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This can be:

- someone in your family
- your carer
- a good friend
- your social worker or doctor
- your guardian or someone appointed by the court
- an attorney appointed by you.



# Rules

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There are some basic rules.

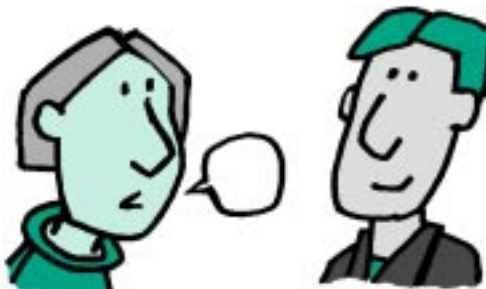
**1** No-one will get permission to make your decisions unless this will benefit you.

**2** They can only make decisions that are really needed.

**3** They must first listen to you and find out what you want to happen.

**4** They should also ask your nearest relative, carer or guardian.

**5** They will not be allowed to make decisions that you can make yourself.



As far as possible, it's your decision.

The new law is about your right to as much freedom as possible in your own life. At the same time, it makes sure you get the help you need.

# What decisions can they help with?

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They can help with important things like:

**money**



**where you live**



**work and training**



**medical treatment**



**what you do during the day.**



# 3 ways to get help with decisions

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## 1 Looking ahead

You can give someone you trust permission to make decisions for you in the future. If you can make decisions now, you can give someone a **power of attorney**. This is a legal document that means they can take over things if, one day, you are no longer able to make decisions yourself. This could happen if you have an accident or an illness.



There are 2 kinds of power of attorney:

- Welfare power of attorney to decide about things like medical treatment or where you live.
- Continuing power of attorney to look after your money or the things you own.

Someone can have both a welfare power and a continuing power of attorney. If you want to give someone a power of attorney then speak to your lawyer first. Your lawyer will write the power of attorney and make sure it has all the right information in it.

If you are not able to give a power of attorney, then someone will have to ask for permission before they can make decisions for you. In most cases, they will have to ask a **sheriff** in a court of law.

## 2 1 big decision

If you need help with 1 big decision, like selling your house or an operation, then the sheriff can give someone an **Intervention Order**. This gives them the right to make that decision for you but not any other decisions.



## 3 Help all the time

If you need help with lots of decisions, then someone can ask the sheriff for a **Guardianship Order**. This will allow the person to become your Guardian and help you with decisions all the time.



# The Public Guardian

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Someone can also ask the **Public Guardian** for permission to look after your money.

The Public Guardian will help to make sure the new law works.

The Public Guardian will:

- give information and advice
- decide if someone can look after your money
- look into complaints about decisions that involve your money or the things you own.



# Looking after your money

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## Using your money

If you need help to manage your money, someone can ask the Public Guardian for permission to use money from your bank account to pay for things for you.

## Joint accounts

If you have a joint bank account with someone else and become unable to manage your money, the other person can still use the account unless you both have to sign to take money out.

## Residential homes

If you live in a care home or hospital and there is no-one else to help you manage your money, the staff will be able to get permission to manage a small amount of money for you, after April 2002.



**Jim has dementia and is less able to manage things. His sister, Diane, asks the Public Guardian for permission to use money from his bank account to pay his bills. She gets a paper from the Public Guardian saying she can do this and she takes this paper to Jim's bank. She also needs to keep a note of what she buys with his money in case the Public Guardian asks to see this.**

# Looking after your health

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If you are ill, you may need to see a doctor. Before doctors or other health workers can treat you, they need to get your consent. Other health workers include dentists, opticians, nurses, chiropodists and therapists.

If you are not able to make that kind of decision, then they can ask your guardian or welfare attorney. Or someone can get an Intervention Order to allow the medical treatment to happen.

After autumn 2001, if you do not have a guardian or welfare attorney or an Intervention Order, then the new law allows doctors or other health workers to give you treatment. First, the doctor has to sign a paper saying you cannot make this decision for yourself. The treatment must be needed to keep you in good health.

**Mary has a learning disability. She is slowly going blind because she has cataracts (films) on her eyes and is finding it harder to do things for herself. Her mother goes to the sheriff to get an Intervention Order to allow Mary to have an operation. Being able to see again makes a big difference to her life.**

If you have an emergency and your life is in danger, then doctors can treat you right away without waiting for consent.



# What words mean

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<b>attorney</b>	The person you give a power of attorney to
<b>benefit</b>	Something that makes life better for you
<b>consent</b>	This means you agree
<b>guardian</b>	Someone who is legally chosen to look after you and make decisions for you
<b>Guardianship Order</b>	This gives permission to become someone's guardian
<b>incapacity</b>	Being unable to do something
<b>Intervention Order</b>	This gives permission to take one action or decide one thing for someone else
<b>medical treatment</b>	Any treatment that helps to keep your mind or body in good health
<b>permission</b>	If you have permission to do something, you are allowed to do it
<b>power of attorney</b>	A legal document where you give someone the power to make decisions for you.
<b>Public Guardian</b>	A new government office which will help to make the new law work
<b>sheriff</b>	Person who makes decisions in a court of law

# How to Find out more

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**More information is available at  
[www.scotland.gov.uk/justice/incapacity](http://www.scotland.gov.uk/justice/incapacity)  
or you can contact:**

**your lawyer**

**The Social Work department**  
of your local council  
– see telephone directory.

**The Office of the  
Public Guardian**

Hadrian House  
Callander Business Park  
FALKIRK FK1 1XR  
Tel: 01324 678300  
e-mail: [opg@scotcourts.gov.uk](mailto:opg@scotcourts.gov.uk)  
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**Age Concern Scotland** (from 1st June)

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e-mail: [enquiries@acscot.org.uk](mailto:enquiries@acscot.org.uk)  
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**Alzheimer Scotland  
–Action on Dementia**

22 Drumsheugh Gardens  
EDINBURGH EH3 7RN  
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e-mail: [alzheimer@alzscot.org](mailto:alzheimer@alzscot.org)  
24-hour helpline: 0808 808 3000

**Capability Scotland  
ASCS**

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**ENABLE**

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e-mail: [info@enable.org.uk](mailto:info@enable.org.uk)

**The Law Society of Scotland**

26 Drumsheugh Gardens  
EDINBURGH EH3 7YR  
Tel: 0131 226 7411  
e-mail: [lawscot@lawscot.org.uk](mailto:lawscot@lawscot.org.uk)

**The Mental Welfare Commission  
for Scotland**

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3 Lady Lawson Street  
EDINBURGH EH3 9SH  
Tel: 0131 222 6111  
e-mail: [support@mwscot.org.uk](mailto:support@mwscot.org.uk)

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Further copies of this leaflet are available from the Scottish Executive 0131 244 21 93

This leaflet applies only in Scotland.

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