

Adults with Incapacity (Scotland) Act 2000

Making Decisions – Your Rights

How to use this DVD



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scotland
SCOTTISH EXECUTIVE

About this DVD

This DVD provides information on how the Adults with Incapacity (Scotland) Act 2000 can help people who are unable to make some or all decisions for themselves and sets out their rights under the Act. It describes the different ways in which someone else can gain legal authority or permission to make important decisions on behalf of an adult, such as someone with a learning disability or dementia. For example, decisions about support needs, where to live or work, or about health matters.

About this booklet

This booklet is for the person, “the facilitator”, who is planning to use the DVD with an individual or small group. Please read it through and watch all the programmes to decide which you think will be suitable for the person or group you are supporting. In general it will not be suitable for the individual or group to use on their own. This booklet contains:

- List of programmes and summary for each.
- Summary of principles, and summary of rights (which can be copied for users).
- Useful contacts and publications.



Who this DVD is for

- It's first and foremost for people who are unable to make some or all important decisions for themselves. It explains what help is available and what their rights are. There are two versions of this DVD, one is for people with dementia and the other is for people with learning disabilities. It may be helpful for other groups too.
- It also provides information for carers about how the provisions under the Act can help them in making decisions with, and for, the person they support.

How to use this DVD

This DVD can be used in two ways:

- one-to-one by a family member, friend, support worker or other professional with the person who needs, or may need, someone else to make important decisions for them, or safeguard them now or in the future;
- with a small group led by support staff to discuss issues around making decisions and help available – enabling the group to talk about their hopes and fears, perhaps leading to one-to-one support as appropriate.

Because everyone is different, this DVD won't provide all the answers to questions which each individual may have. It will provide a signpost to further information and useful contacts so that queries can be followed up.

How to watch this DVD

The programme is made up of a series of very short episodes or stories lasting about 2-5 minutes each. You can go in and out of the topics that are relevant to the individual or the group. You can stop to talk after each topic, and replay it as many times as you like, before moving on. As the facilitator, it's a good idea if you view the relevant episodes first and plan your sessions.

The first 5 programmes will be helpful for everyone to view.

Programme Content	Summary
1 Your rights	Outlines the rights of people affected by the Adults with Incapacity Act.
2 What the Act is about	Outlines why the Adults with Incapacity Act was introduced and its main aims.
3 Who will it help?	Describes the groups of people who are likely to benefit from the Act.
4 Making decisions	Explains what making an "informed decision" means.
5 Principles	Outlines the guiding principles of the Act, and how they affect the decisions other people can make with and for you.
6 Having an attorney	Explains what an attorney is and how an attorney can make some, but not all, decisions for you.



Programme Content	Summary
6a What can an attorney do?	Outlines in general terms what an attorney can do to help you.
6b How to appoint someone to be your attorney	Details what you have to do to appoint an attorney.
6c How can an attorney help you with your money and the things you own?	Outlines the different ways that an attorney can help manage your money and the things you own.
6d How can an attorney help you make decisions about your life?	Details the ways in which an attorney can help you make decisions about the way you live your life.
6e How can an attorney help make decisions about your health care?	Features the decisions an attorney can make about your health care and medical treatment.
6f Decisions an attorney is not allowed to make	Sets out the decisions an attorney is not allowed to make.
7 Having a guardian	Explains what a guardian is, who might become your guardian, and how a guardian can make decisions with, and for, you as and when needed.

Programme Content	Summary
7a Deciding if you need a guardian – what happens?	Describes the stages involved in deciding if you need a guardian.
7b What can a guardian do to help?	Outlines the decisions that a guardian can make for you.
7c What happens when someone applies to be your guardian?	Describes what happens when someone applies to be your guardian.
7d What happens when you have a guardian?	Explains what it means to have a guardian and the types of decisions they can make for you.
7e How can the guardian help with your money?	Outlines the decisions that a guardian can make to manage your money and protect the things you own.
7f How a guardian can help make decisions about your life	Describes the decisions that a guardian can make for, and with, you about the things you do and the way you live your life.
7g How a guardian can help you make decisions about your health care	Outlines how a guardian can help make decisions about your health care and medical treatment.
7h What is a guardian not allowed to do?	Highlights the types of decisions a guardian can make and those they are not allowed to make.

Programme Content	Summary
<p>7i What you can do if you are unhappy with the guardianship application; or how things are working after the appointment</p>	<p>Sets out what you can do if you are unhappy with the guardianship application or parts of it; or if you are unhappy with the way your guardian is acting and making decisions on your behalf.</p>
<p>8 What happens if you don't have an attorney or a guardian? (featuring other ways someone can act or make decisions for you)</p>	<p>Features other ways of: managing your money through the "Access to Funds" scheme; making medical and dental treatment decisions; making a living will/advance statement.</p>
<p>9 Helping with your money</p>	<p>Outlines the type of help that you can get to manage your money and the things you own.</p>
<p>9a Financial Powers of Attorney (Repeat of 6c)</p>	<p>Outlines the different ways that an attorney can help manage your money and the things you own.</p>
<p>9b Access to Funds</p>	<p>Describes what the Access to Funds scheme is about and how it can help. It also sets out what making the application involves.</p>
<p>9c Financial Guardian (Repeat of 7e)</p>	<p>Outlines the decisions that a guardian can make to manage your money and the things you own.</p>

Programme Content	Summary
10 Making decisions about your life	Provides information about the people who can help you make decisions about your life when you can't make some or all of them for yourself.
10a Welfare power of attorney (Repeat of 6d)	Details the ways in which an attorney can help you make decisions about the way you live your life.
10b Welfare guardian (Repeat of 7f)	Describes the decisions that a guardian can make for, and with, you about the things you do and the way you live your life.
11 Making health care decisions	Outlines the rules that people need to follow and the decisions that they need to make about your medical treatment and care.
11a What a doctor can do if you have an attorney (Repeat of 6e)	Features the decisions an attorney can make about your health care and medical treatment.
11b What a doctor can do if you have a welfare guardian (Repeat of 7g)	Outlines how a guardian can help make decisions about your health care and medical treatment.
12 For carers, relatives and friends	Outlines the links between community care and the Adults with Incapacity Act.

Programme Content	Summary
12a Purpose of the Act	Outlines the aims and principles of the Adults with Incapacity Act.
12b What does mental incapacity mean?	Explains what mental incapacity means in terms of the Act.
12c Roles and responsibilities of carers (unpaid carers – family members and friends)	Outlines the roles and responsibilities of carers under the Act.
12d Responsibilities of being an attorney	Provides information on the responsibilities involved in being an attorney.
12e Responsibilities of being a guardian	Outlines the responsibilities associated with being a guardian.
12f Support available	Provides information for carers, attorneys and guardians on where to find further information, and support in relation to the Adults with Incapacity Act.

About key organisations

Office of the Public Guardian

The Public Guardian

- provides information and advice on the options available for managing the finances of adults who lack capacity. The office is open from 9.00-5.00, Monday to Friday;
- provides guidance leaflets relating to provisions under the Act, available free of charge in Braille, audio cassette, in large print and several languages;
- registers all appointments of attorneys, people who can access funds, guardianship and intervention orders;
- has a supervisory and investigative role in relation to those authorised to manage finances (see address below).

Mental Welfare Commission for Scotland (MWC)

The Mental Welfare Commission is an independent organisation working to safeguard the rights and welfare of everyone with a learning disability, dementia or other mental disorder. In relation to guardianship they:

- offer advice and information to carers, relatives and guardians and those on guardianship orders; provide guidance leaflets and reports free of charge (see freephone number below);
- write to everyone on a welfare guardianship order to offer advice and a visit. In some cases, where matters have not been straightforward, the MWC may arrange a visit;
- carry out investigations if requested to do so by the local authority or by others with concerns;
- see all welfare guardianship and intervention order applications and can send comments to the sheriff.



The Scottish Legal Aid Board (SLAB)

Legal aid allows people who would not otherwise be able to afford it, to get help with their legal problems. SLAB is responsible for managing legal aid in Scotland. Advice and information is provided to the public and professionals. Free legal aid is available for all welfare guardianship applications. SLAB provides an on-line search for legal aid solicitors (see contact details below).

Care Commission

The Care Commission is an independent body which regulates care services in Scotland. It inspects services and investigates complaints in relation to: care homes; short break/respite care services; housing support; adult placement schemes, support services, care at home, nursing agencies and hospice care. All complaints are taken seriously and dealt with on an individual basis. There are National Care Standards for all these services. Copies of the Standards are available on line at: www.nationalcarestandards.com or from Blackwell's Bookshop, 53-59 South Bridge, Edinburgh EH1 1YS. Tel. 0131 622 8283. A copy of the *Complaints Procedure – Easy Guide*, has been written in such a way that everyone can use, and will help people with learning disabilities (see Care Commission's address below).

Law Society for Scotland

The Law Society is the governing body for solicitors. It provides information to the public on where to find, and what to expect from, solicitors. The Law Society's Client Relations Officer has legal responsibility to handle complaints against Scottish solicitors. To discuss a complaint, or if you need more information, contact the Client Relations Helpline 0845 113 0018 (see address below).

Principles

All decisions made on behalf of someone who is unable to make some or all decisions for themselves must:

- Benefit the person.
- Take account of the person's past and present views and wishes – and provide every assistance necessary to aid understanding and communication.
- Take account of the views of the nearest relative, primary carer, guardian or attorney and others with an interest in the person, as far as possible.
- Restrict the person's freedom as little as possible to achieve the desired benefit.
- Encourage the person to use their existing skills and develop new skills.



Making decisions – your rights

- You have a right to make your own decisions if you can.
- You have a right to have help with making decisions if you need it. These might be decisions about managing your money, medical decisions or decisions about how you live your life. The law says that you must not be left disadvantaged just because you find it too difficult to make certain sorts of decisions.
- Any decisions made for you by someone else must help make your life better.
- Anyone making decisions for you must abide by the principles of the Act.
- You have a right to be involved in all decisions about your life, including an assessment or review of your support needs, and the assessment of your ability to make specific decisions.
- You can have someone you trust to attend meetings and appointments with you.
- You have a right to ask for an independent advocate if you need one.
- You have a right to information about an application by someone else to make decisions for you, and the right to object.

- You have a right to object to the sheriff against:
 - the assessment of incapacity;
 - the person who is applying to be your guardian;
 - the powers over you that are being requested;
 - your nearest relative being given confidential information about you.
- You have the right to apply to the sheriff to set aside your 'nearest relative' and have someone else in this role. (Your nearest relative has a right to give his or her views about what should happen in your life.)
- If you have a financial guardian or attorney looking after your money, and you think that something is going wrong, you can make a complaint to the Public Guardian.
- If you have a welfare attorney or guardian looking after other aspects of your life, and you think that something is going wrong, you can complain to the local authority or Mental Welfare Commission.
- There are some decisions that no-one can make for you – getting married, making a will or voting.
- You have a right not to be ill-treated or neglected.
- If your ability to make important decisions improves, you can have your guardianship order reviewed and possibly removed.



Further information available from:

Office of the Public Guardian

Hadrian House
Callendar Business Park
Callendar Road
Falkirk FX1 1XB
01324 678300

www.publicguardian-scotland.gov.uk

**Mental Welfare Commission
for Scotland**

Argyle House
3 Lady Lawson Street
Edinburgh EH3 9SH
0131 222 6111

www.mwc.scot.org.uk

Scottish Executive

Branch 1
Civil Law Division
Floor 2 West (Rear)
St Andrew's House
Regent Road
Edinburgh EH1 3DG
0131 244 2193

www.scotland.gsi.gov.uk/justice/incapacity

The Sheriff Court

Check the telephone book for the address of the court covering the area in which the adult normally lives, or check the sheriff court website at:

www.scotcourts.gov.uk/sheriff

The Social Work Service of the local authority
(see local telephone book for address)

Citizens Advice Bureau
Address in your local telephone book.

Scottish Legal Aid Board
44 Drumsheugh Gardens
Edinburgh EH3 7SW
0131 226 7061
www.slab.org.uk

Law Society for Scotland
26 Drumsheugh Gardens
Edinburgh EH3 7RN
0131 226 7411
Client Relations Helpline
0845 113 0018
www.lawscot.org.uk

Care Commission
Headquarters
Compass House
11 Riverside Drive
Dundee DD1 4NY
Tel. 01382 207100
Locall 0845 603 0890
www.carecommission.com



Useful contacts

Alzheimer Scotland

22 Drumsheugh Gardens

Edinburgh EH3 7RN

0131 243 1453

www.alzscot.org

Dementia Helpline

Freephone 0808 808 3000

Scottish Dementia Working Group

c/o Alzheimer Scotland

81 Oxford Street

Glasgow G5 9EP

0141 418 3939

www.alzscot.org.uk

Scottish Consortium for Learning Disability

Adelphi Centre, Room 16

12 Commercial Road

Glasgow G5 0PQ

0141 418 5420

www.sclld.org.uk

ENABLE

6th Floor

7 Buchanan Street

Glasgow G1 3HL

0141 226 4541

www.enable.org.uk

PAMIS

Head Office
Springfield House
15/16 Springfield Road
University of Dundee
Dundee DD1 4JE
01382 345 154
www.dundee.ac.uk/pamis

Scottish Association for Mental Health

Cumrae House
15 Carlton Court
Glasgow G5 9JP
0141 568 7000
www.samh.org.uk

ASCS – Advice Service Capability Scotland

11 Ellersley Road
Edinburgh EH12 6HY
0131 313 5510
www.capability-scotland.org.uk

Sense Scotland

43 Middlesex Street
Kinning Park
Glasgow G41 1EE
0141 564 2444
www.sensescotland.org.uk

Publications

Mental Welfare Commission: *Welfare Guardianship – making sure the decisions are in the person’s best interests*. (Free – address above)

The following publications are free from the Scottish Executive (see address above)

It’s Your Decision – leaflet for adults

Guardianship – a guide for carers

Making welfare decisions – a guide for carers

Codes of Practice: Part 2 Powers of Attorney; Part 3

Access to Funds; Part 5 Medical Treatment and

Research; Part 6 Intervention orders and Guardianship.

Office of the Public Guardian – see publications order form for full list of booklets and application forms (address above).

Dementia: Money and Legal Matters: a guide. Free from the Dementia Helpline for people with dementia and their carers; £5 per copy for others (contact, Alzheimer Scotland – address above.

A Map of Independent Advocacy Across Scotland Edition 2003-2004. Advocacy Safeguards Agency. Available at: www.advocacysafeguards.org/files/map.ind.adv.2003-3.pdf

Will Making Made Easy – Will Writing Pack (free) from Alzheimer Scotland (address below) or e-mail: will-writing@alzscot.org with your name and postal address.

DVD: *Batteries are not included*. A resource pack for those working with people with communication support needs, covers Sex and the Law, including the Human Rights Act, the new Mental Health Act and Adults with Incapacity Act. From Common Knowledge, The Adelphi Centre, Glasgow G55 0PQ. www.ckglasgow.org.uk
Tel. 0141 429 4912.

Making Choices – Keeping Safe Policy, and Practice Guidelines on relationships and sexual wellbeing when working with people with learning disabilities. Easy Read version available. NHS Lothian Health Promotion – Learning Disabilities. Tel: 0131 536 9275 or download from www.mcks.scot.nhs.uk



Glossary – what words mean

Benefit	Something that makes life better for you
Consent	This means you agree
Guardian	Someone who is legally allowed to look after you and make decisions for you
Guardianship order	This gives legal permission to become someone's guardian
Incapacity	Being unable to do something or make a decision
Independent Advocate	Someone to support you to have your voice heard
Legal authority/ permission	If you have permission you are allowed to do it
Medical treatment	Any treatment that helps to keep your body and mind in good health
Power of attorney	A legal document where you give someone the power to make money and/or other decisions about your life for you. This person is called an 'attorney'
Sheriff	Person who makes decisions in a court of law
Living Will/ Advance Directive	You record on paper your specific wishes for the future, in case you become unable to make decisions. It is not legally binding but must be considered

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***Alzheimer Scotland** provides a 24-hour helpline, information and a range of community-based services, including a welfare rights advice service for people with dementia and their carers; campaigns for better policies.*

***Scottish Dementia Working Group** is run for, and by, people with dementia who are committed to improving training and service provision, changing attitudes, and providing mutual support.*

***Scottish Consortium on Learning Disabilities (SCLD)** supports people and organisations make changes set out in 'The same as you?' through training, consultation, public education and research.*

***ENABLE Scotland** supports people with learning disabilities of all ages by campaigning, providing information, legal advice, training and other services.*

***PAMIS** – works with people with profound and multiple learning disabilities, their family carers and professionals who support them. It offers practical help, advice, training and information, individual support and the opportunity to campaign.*

The DVD and booklet provides information about the Adults with Incapacity (Scotland) Act 2000 and is correct at June 2006. Specific issues should always be checked with the appropriate agencies or legal advisers.



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