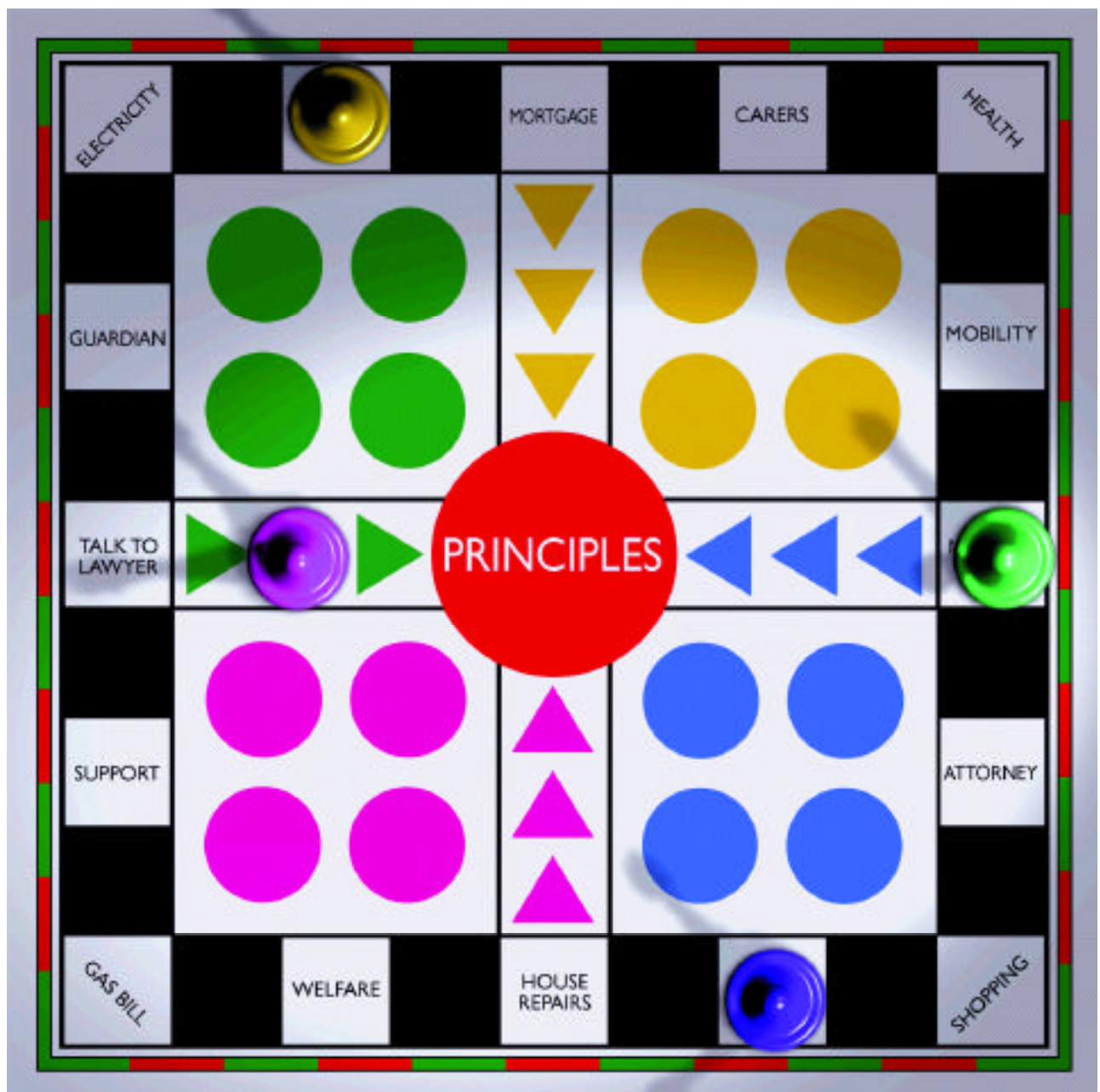


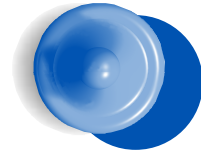


Making the right moves

Rights and protection for adults with incapacity



Summary



1. Introduction

This leaflet sets out our plans for a Bill that we shall introduce in the Scottish Parliament this autumn called the Adults with Incapacity (Scotland) Bill. It will improve the way the law protects the interests of adults who lack the ability to make decisions about their own finances or welfare, including medical treatment.

Our Bill will replace the current old-fashioned and unsatisfactory legal framework governing decision-making on behalf of people with incapacity. It will improve the daily life of thousands of vulnerable people in Scotland and make things easier for those who care for them.

We hope you will agree that our proposals are indeed Making the Right Moves.

Jim Wallace
Deputy First Minister and
Minister for Justice

Susan Deacon
Minister for Health and
Community Care

2. Who will we be helping?

Our Bill will help an estimated 100,000 people in Scotland with incapacity and their families and carers. The number of adults with incapacity is rising. It includes:

- people who have never had capacity to make decisions about their own affairs, for example some people with learning disabilities;
- people who lose capacity temporarily or permanently through accident or illness, for example people who suffer from Alzheimer's disease, certain mental or physical illnesses, head injuries or stroke;
- people who are unable to communicate decisions.

3. How will incapacity be determined?

The decision that an adult lacks capacity will be taken on the basis of medical and other assessments. Incapacity will be judged in relation to particular decisions or types of decisions. Adults will be encouraged to exercise as much capacity as they can. Every effort will be made to help them understand the decision and communicate effectively. Only where medical and other assessments confirm that the adult lacks capacity will someone be authorised to intervene in the adult's affairs.

4. General principles

Anything done under our new law for an adult with incapacity will have to:

- benefit the adult;
- take account of the adult's wishes and those of the nearest relative, primary carer and guardian or attorney, if appointed;
- be the least restrictive of the adult's freedom while still achieving the desired purpose;

and anyone authorised or appointed to intervene in the adult's affairs will have to encourage the adult to use their existing skills and acquire new skills where possible.

5. What our proposals will mean in practice

a) **Individuals** will be able to make plans for their future by granting a power of attorney to a person of their choice, while they are able to understand fully what they are doing. The attorney will be able to deal with whatever welfare, medical treatment or financial matters the person granting the power has specified, in the event of their incapacity to make their own decisions. There will be a range of safeguards to protect people who grant a power of attorney.

b) **Those holding the funds** of adults with incapacity, including banks and building societies, may be legally authorised to release funds from the account of an adult who loses the capacity to operate it, so that the money can be used to meet the adult's daily living expenses. Organisations will also be able to allow one holder of a joint account to continue to operate the account if the other holder loses capacity to do so.

c) **Hospital and care home managers** will be allowed to manage the funds of patients and residents who lack capacity to do so. But they will only be able to do this if no suitable alternative is available and if the amount involved is fairly small. There will be stringent monitoring.

d) **Doctors and other healthcare professionals** will have a general authority to treat adult patients who are unable to give their consent and to conduct research relevant to that treatment. Relatives will have to be consulted. There will be safeguards. Certain treatments will not be covered by the doctor's general authority to treat and will require further approval by a second medical opinion or by the court.

e) **The sheriff court** will be able to make one-off orders, on the application of relatives or other interested parties, to deal with specific decisions faced by adults with incapacity such as selling a house or signing an important document. The court will also be able to appoint a longer-term guardian to deal with any combination of welfare, medical treatment and financial matters. The new kind of guardian will replace curators bonis, tutors and Mental Health Act guardians, all of whom are currently appointed to take decisions on behalf of adults with incapacity. The courts will be able to intervene in how guardians and attorneys use their powers where things go wrong.

f) **The Public Guardian** will be a new office within the court system. The Public Guardian's functions will include keeping public registers of attorneys, intervention orders and guardians and supervising those with financial powers.

g) **Local authorities** will supervise attorneys and guardians with welfare powers.

h) **Registration and Inspection teams** in local authorities and health boards will authorise managers of residential and nursing homes to look after funds belonging to their residents who cannot manage their own financial affairs, where there is no alternative. Registration and Inspection teams will inspect accounts.

i) **The Mental Welfare Commission** will monitor attorneys and guardians with welfare powers and carry out investigations where something appears to be wrong.

6. *How to find out more*

If you want more information about our proposals, you can ring 0131-244-2180. A fuller statement of our plans, also called Making the Right Moves can be found on the Scottish Executive's website www.scotland.gov.uk