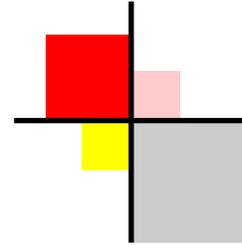


For more information contact:

User and Carer Involvement
(U.C.I.)
Kindar House, The Crichton,
Bankend Road,
DUMFRIES
DG1 4ZZ
Tel: 01387 255330
Email: info@userandcarer.co.uk



AN INTRODUCTION TO THE ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

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has been written by and reprinted with
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(Scotland)



The majority of pictures
used in this booklet are
courtesy from CHANGE



Information in this booklet is given as guidance only
and is not an authoritative guide to the law. People
are advised to seek advice if they have a specific
concern or query.

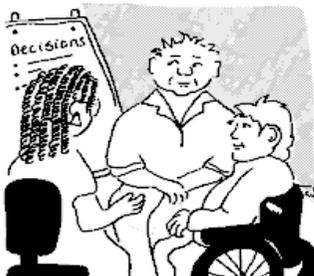
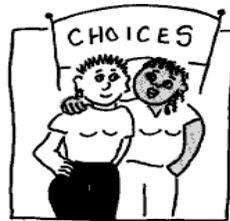


A Guide for
Carers of
people with
Learning
Disabilities

The Act:

Under the law of Scotland an adult is a person who has reached the age of 16 years. The law assumes that adults can make their own decisions so no-one can make a decision for another adult. The Act has set down safeguards for people who find decision making difficult. It aims to leave people in control of their own lives as much as possible while ensuring that people get the support that they may need. If you are an adult affected by the Adults with Incapacity (Scotland) Act you have the following rights:

You have the right to make your own decisions if you can.

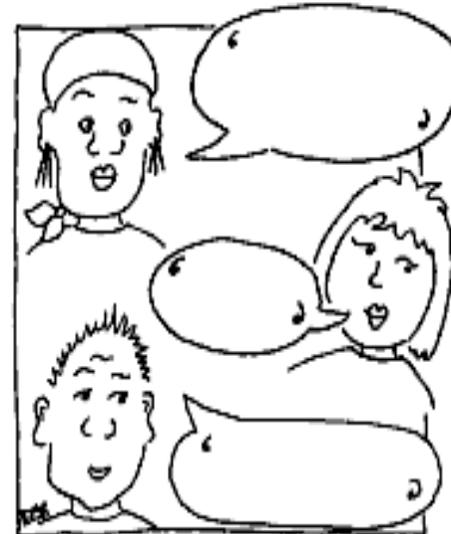


You have the right to have help with making decisions if you need it.

Any decisions made for you by someone else must help to make your life better.



User and Carer Involvement supports adults who use learning disability services across Dumfries and Galloway to have their views heard and to influence statutory and other non statutory service provision.



We want to know what you have to say about the services you receive

Further Information (National)

The Scottish Executive website contains all the official forms, guidance, codes of practice etc. and has the latest information about changes or consultations about changes.

www.scotland.gov.uk/justice/incapacity

Mental Welfare Commission

91 Haymarket Terrace

Edinburgh

EH12 5HE

Tel: 0131 313 8777 (professionals)

0800 389 6809 (service users & carers only)

Email: enquiries@mwscot.org.uk

Web: www.mwscot.org.uk

Law Society of Scotland

Atria One

114 Morrison Street

Edinburgh

EH3 8EX

Tel: 0131 226 7411

Email: lawscot@lawscot.org.uk

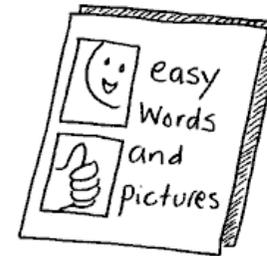
Web: www.lawscot.org.uk/

Even if you need help with decisions, you have the right to take part in decisions as much as possible and to develop your skills so you can make more of your own decisions in future.



No-one can make decisions for you or intervene in your life unless this is really needed.

You have the right to be asked about what You want to happen.

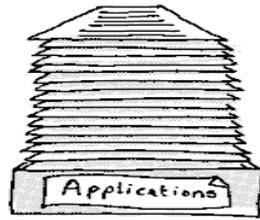


You have the right to use any communication aid or get support from someone to communicate your wishes.

You have the right to be protected from some kinds of medical treatment.



You have the right to information about an application by someone else to make decisions for you and the right to object.



Further Information (National)

For More information on aspects of the Adults with Incapacity (Scotland) Act you can consult or contact the following sources:

ENABLE Scotland Information Service
INSPIRE House
3 Renshaw Place
Motherwell
ML1 4UF
Tel: 01698 737000
Email: info@enable.org.uk
Web: www.enable.org.uk

Office of the Public Guardian
Hadrian House
Callendar Business Park
Callendar Road
Falkirk
FK1 1XR
Tel: 01324 678300
Email: opg@scotcourts.gov.uk
Web: www.publicguardian-scotland.gov.uk



You have the right to appeal to the sheriff against an assessment of incapacity.

Your nearest relative has a right to give his or her views about what should happen in your life. You have the right to apply to the sheriff to set aside your 'nearest relative' and have someone else in this role.



You have the right not to be ill-treated or neglected.

There are some decisions that no-one can make for you, like getting married, making a will or voting.



Further Information (Local)

User and Carer Involvement (U.C.I.)
Kindar House, The Crichton,
Bankend Road
DUMFRIES
DG1 4ZZ
Tel: 01387 255330
Email: info@userandcarer.co.uk



Social Work Department
Adult Services
124 Irish Street
DUMFRIES
DG1 2AW
Tel: 01387 273600

D&G Advocacy Service
9 Church Crescent
Dumfries, DG1 1DF
Tel: 01387 247 237

Dumfries and Galloway Citizens Advice Service:

19a Bank Street
Annan DG12 6AA
Tel: 0300 303 4321

81-85 Irish Street
Dumfries, DG1 2PQ
Tel: 0300 303 4321

3 St Andrews Street
Castle Douglas DG7 1DE
Tel: 0300 303 4321

23 Lewis Street
Stranraer DG9 7AB
Tel: 0300 303 4321

There are also clinics in the following areas:

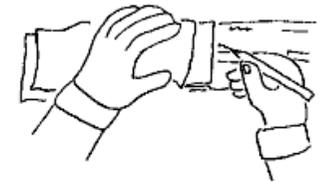
Northwest Resource Centre Mon & Wed 10am-12noon	Whithorn Mon & Tues 1.30pm-4pm
Wigtown Mon 10am-12.30pm	Lockerbie Tues 10am-12noon
Dalbeattie Tues 11am-1pm	Moffat Wed 11am-1pm
Langholm Wed 6.45pm-7.45pm	Kirkconnel Wed 1.30pm-3.30pm
Newton Stewart Wed 10am-4pm	
Sanquhar Wed 10am-12.30pm	

The Adults with Incapacity (Scotland) Act gives you the right to keep as much control as possible over your own life and encourages others to support you to develop decision-making skills. If you find some decisions difficult it has provided six options that someone close to you can use under the Act to help you.



Withdrawers:

Someone, usually a relative or friend, can apply to the Public Guardian for permission to withdraw money on a regular basis from your bank or building society account in order to pay household bills and regular expenses.



Intervention Orders

Someone close to you can apply to the sheriff for the power to make a one-off or short-term decision or take one action on your behalf. This may be to sign a legal contract such as a tenancy agreement or to sell a house. An Intervention Order can be for any kind of decision about property, finance or personal welfare. There can be only one Intervention Order at any one time and only the powers stated in the Order can be used.



Guardianship Orders

If you need a lot of support all the time for help to manage your money, personal care or both then someone close to you can apply to the sheriff to become your guardian. They will only be able to use the powers stated on the Guardianship Order.



Doctors can authorise medical treatment

Doctors will need your consent before they can give you medical treatment, like an operation. If you are unable to give your consent then doctors can authorise treatment by signing a certificate. If there is someone else with the power to



consent on your behalf, such as a welfare attorney or welfare guardian, then that person will also need to give consent before the treatment can go ahead.

Managers can look after residents' finances

If you live in a registered establishment, the manager can manage your finances up to the value of £10,000 but only if there is no-one else with appropriate legal authority like an appointee, financial attorney or a financial guardian.

Does it cost anything?

Yes, but it should not cost much. And if you get benefits or are on a low income you may be able to get help with the cost from legal aid. Ask your lawyer about this.



What will happen if I don't make a power of attorney?

If you do not make a power of attorney then, if anything happens to you, other people will need to apply to the court for permission to make decisions for you (or if you need medical treatment doctors can treat you).



The court might not appoint the person you want to make decisions for you.



How do I make a power of attorney?



It is best to have a power of attorney written by a lawyer.

You can ask a friend to help you find a lawyer. You can ask a lawyer to visit you at home if you cannot go to their office.

When should I make a power of attorney?

You can make a power of attorney at any time. You just need to be aged 16 or over and able to decide what you want to happen.

Many people make a power of attorney at the same time as making a will.



Both these things are about planning for the future and deciding what you want to happen.

Power of Attorney

This is when you give someone the power to make decisions on your behalf if you become unable to make these decisions for yourself.



Making a Power of Attorney

One of the principles of the Act is that you should retain as much control as possible over your own life.

The Act gives you the option to leave instructions in a legal document about what should happen if you later become unable to make your own decisions through, for example illness or injury. This legal document is called a 'Power of Attorney'. You can grant another person a 'power of attorney' to manage your financial and property matters or your personal welfare or both. The following pages explain what is involved in making a power of attorney.

When you are over 16 years of age you are legally classed as an adult. This means that you have the right to make decisions for yourself, provided that you understand these decisions. The type of decisions that you will make could be about:

- Managing your own money 
- Consent to medical treatment 
- Signing legal agreements like a tenancy agreement 
- Deciding where you are going to live. 

Some people can manage these decisions for themselves, or with a little support and advice. Others find them difficult. Sometimes some decisions are too hard for you and you want someone else to make decisions and manage things for you.

Susan was left a big sum of money in her mother's will. It was too much for her to manage and she worried about it a lot.



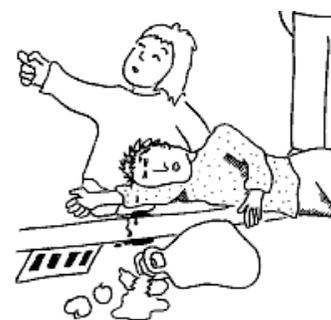
or
deciding where you live



can only start once you lose the ability to make those decisions yourself. But you need to set up the power of attorney while you are still able.

If you have lost the ability to make decisions you cannot give anyone a power of attorney.

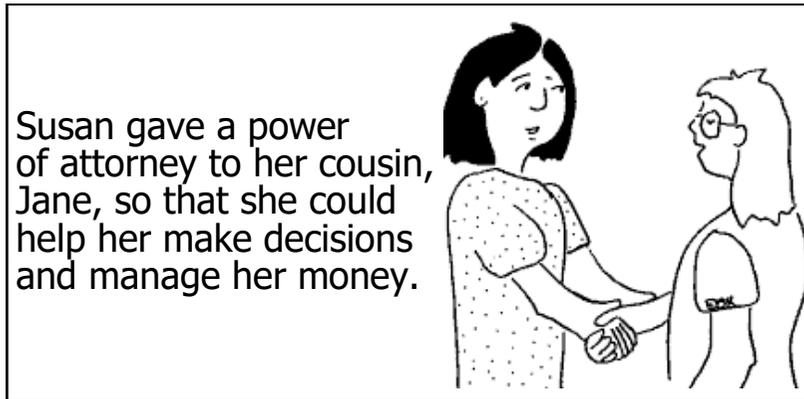
Ian wanted his mother to make his decisions for him but he had not given her a power of attorney. So when he had a serious road accident and was unable to make decisions for himself, she could not easily step in and help him as she could have if Ian had made a power of attorney.



Now Ian was unable to give powers of attorney to her or anyone else.

Can I give them these powers right away?

You can give the person the power to decide about your money or things that you own and that can start right away.



Or you can set it up so it only starts when something happens to make you lose your ability to manage your own money.

Carol gave her sister Anne a power of attorney to manage Carol's money and property. But Anne would only get to use these powers if something happened to Carol that meant Carol could no longer manage her money e.g. if Carol had an accident. They did not think anything was going to happen—but Carol wanted to plan ahead just in case it did.

A power of attorney to do with your person like medical treatment



Sometimes something happens that stops you from making your own decisions. You can have an accident that gives you a head injury or you may have an illness like dementia or a mental health problem that means you can lose the ability to make decisions.

Ian had a learning disability but managed his own tenancy and had a little part-time job collecting trolleys at the local supermarket. But then he had a bad road accident and he could no longer look after himself or go out to work.

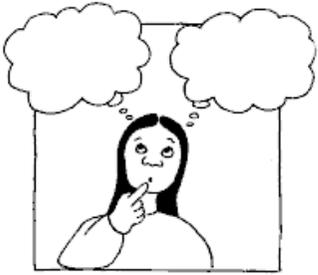


Ian needed someone to look after him and make decisions for him. Because he was an adult no-one was allowed to do this without legal permission. You can plan ahead by giving someone you trust the power of attorney in case you have an accident or an illness that stops you having the ability to make decisions.

What is a Power of Attorney?

A power of attorney is a legal document. In it you say the name of the person you want to make decisions for you. You also say what powers you want to give them.

Who should I choose?



You choose whom to give the power of attorney so it is very important that you choose someone who you trust. Think about who will let you have as much say as possible in any decisions you have to make. Who will take the time to help you understand the information you need to make a decision. Think about the powers you want to give away.

Think about who the best person is to make those decisions for you. If you want you can choose two people like your Mum and Dad or your cousin and a friend. Keep in mind that the person you choose must know you very well so that they will know what you would want to happen.



What powers can I give to the person?

In just the same way as it was your choice to choose someone to be your power of attorney, it is also up to you to choose what powers you give to the person.

Think about the decisions that you need help with now or might need help with in the future. You can give them the power to make decisions in 2 areas -

- Decisions to do with you money or things you own.



- Decisions to do with you as a person, like deciding about medical treatment,



or where you might live.

