

Adults with Incapacity (Scotland) Act 2000

Your rights as a person with a diagnosis of dementia

No one has the authority to make decisions for you which you are still able to make for yourself. In addition, the law states that everyone is presumed to have capacity unless there is evidence that they can no longer look after their own interests.

Having a diagnosis of dementia does not mean you are unable to make some or all major decisions for yourself. This is why the law says that if someone wishes to apply to manage any of your affairs on your behalf, it is necessary for a doctor to assess your capacity in relation to the specific decisions to be made. (The doctor may charge for this service.) Anyone then acting on your behalf must follow the principles of the Adults with Incapacity Act.

What is The Act for?

The Scottish Government states that:

- » The Act provides ways to help safeguard the welfare and finances of people who lack capacity.
- » It protects adults (people aged 16 or over) who lack capacity to take some or all decisions for themselves because of a mental disorder or an inability to communicate.
- » It allows a person - such as a relative, friend or partner - to make decisions on someone's behalf.
- » The Act also lets you make arrangements for another person or persons to make decisions and manage affairs on your behalf if you lose capacity in the future.

What does incapacity mean?

The Act does not see incapacity as 'all-or-nothing'. It recognises that a person might be unable to make some kinds of decision, but still be able to decide on other things. For example, someone who may struggle handling money, may still be able to decide what he or she wants to buy.

For the purposes of the Act, 'incapacity' applies to someone who is incapable of:

- » acting on decisions; or
- » making decisions; or
- » communicating decisions; or
- » understanding decisions; or
- » retaining the memory of decisions in relation to any particular matter due to mental disorder, such as dementia, or inability to communicate because of physical disability.

No one should be treated as unable to make or act on a decision unless all practical steps have been taken to assist him or her.

The Principles of the Act

The Act is based on several fundamental principles which must be followed by anyone making a decision on behalf of someone with dementia. The principles are:

- » **Benefit:** any action taken under the Act must only be done if it benefits the adult with incapacity (in this case, the person with dementia), and this benefit cannot be achieved any other way.
- » **Minimum intervention:** the person handling your affairs can only take an action under the Act if there isn't a simpler way to get the same result which would be less likely to take responsibility away from the adult.
- » **Present and past wishes:** anyone taking action on behalf of the adult must take account of the adult's wishes by asking him or her, if possible. They must also consider past wishes; for example, by asking those (such as family, friends and professionals) who knew the adult before he or she was ill. A person may have set down some of his or her wishes in the form of an 'advance statement' or 'living will'.
- » **Consultation:** the adult, the adult's nearest relative and his or her main carer must also be consulted about any action, as far as is reasonable and practical. So must anyone appointed by the person with dementia to look after his or her affairs (by granting a power of attorney) or appointed by the court (guardians or interveners), and anyone else with an interest in the person, which might include a friend or professional.
- » **Exercising and developing skills:** the person whose affairs are being looked after must be encouraged and helped to do as much as he or she is capable of in relation to his or her property, financial affairs and personal welfare.

What does The Act do?

The Act provides various ways to safeguard a person's welfare and manage his or her financial affairs. These include Power of Attorney, Access to Funds scheme, Guardianship and Intervention orders.

For information about these options, including how they are set up and when they should be used, you can visit the Office of the Public Guardian (Scotland) website at www.publicguardian-scotland.gov.uk or phone them on **01324 678 300**.

Further information

Your rights are well explained in the DVD “**Making Decisions – Your Rights: People with Dementia**”. This is available free from the Scottish Government, telephone **0131 244 3581** for more information.

There are other Scottish Government publications relating to The Act which you can download from their website and include:

www.scotland.gov.uk/Topics/Justice/law/awi/010408awiwebpubs

<http://www.scotland.gov.uk/Resource/Doc/217194/0058194.pdf>

There are other laws which aim to help decision making and protect the rights of vulnerable adults, including people with dementia, which you may wish to find out more about. They include:

- » the Mental Health (Care & Treatment) (Scotland) Act 2003
- » the Adult Support & Protection (Scotland) Act 2007.

You can call the 24 hour freephone Dementia Helpline on **0808 808 3000** for further information or advice on anything that is worrying you about dementia or visit www.alzscot.org and there is information for carers at www.carers.org

This leaflet has been prepared to provide information for people with dementia, and for their carers.