

Planning Ahead.

This leaflet will provide an overview of what capacity is and what it is not and why it is important to plan ahead in the event of not being able to make decisions about money matters or welfare issues. It will also outline the Scottish legal framework to ensure the individual's voice is heard.

It is important to think ahead and consider the possibility of not being able to make decisions. This is known as incapacity and for many people this is a frightening topic, and one, we prefer not to think about, but it is important to plan to ensure our voice is heard in the event of requiring help to make decisions.

No-one has an automatic right to make a decision about someone else's life or take financial decisions on their behalf if they lose the capacity to do this for themselves.



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About Capacity.

- 1. Everyone makes decisions all of the time, and most of us are able to make these decisions for ourselves, although we may all seek information, advice for the more complex ones.**
- 2. People with significant learning disability may have had limited capacity all their lives, but it is important to remember that they too may be able to make some decisions.**
- 3. Other people have diminishing capacity caused by a progressive illness such as dementia or mental health illnesses.**
- 4. It is possible to lose capacity, after a stroke or brain injury.**
- 5. A temporary cause of incapacity may be as a result of physical illness such as a delirium caused by for example infection, pain or medication.**
- 6. Other physical illnesses may either cause or be part of the reason for confusion, drowsiness or unconsciousness.**
- 7. Substance or alcohol misuse may also reduce decision making skills.**

8. Just because someone has difficulty expressing themselves it does not mean they lack capacity.

9. Mental capacity is not all or nothing: it can change both in the short term and long term. The ability to make decisions can vary from day to day and hour to hour.

10. Many people believe that if they were to lose capacity, their husband, wife, partner, civil partner or next of kin could make decisions on their behalf. This is not true.

What does the law in Scotland say about capacity?

The Act which covers what to do when a person has difficulties making decisions is called The Adults with Incapacity (Scotland) Act 2000 (The Act).

If someone becomes incapable of managing their finances or making decisions about their welfare, the Adults with Incapacity (Scotland) Act 2000 (The Act) protects them. It safeguards people who have lost capacity, and those who want to support them.

The Act describes incapacity as being unable to:

- **Act** on decisions, or
- **Make** decisions, or
- **Communicate** decisions, or
- **Understand** decisions, or
- **Remember** decisions

It is vital to help the person to participate in each of the above to the best of their ability.

To help people to make good decisions on behalf of someone else The Act has 5 essential principles.

- 1. Any action taken must benefit the person and must be necessary.**
- 2. The wishes of the person must be taken into account.**
- 3. The option taken should always be the least restrictive one which has the desired effect.**
- 4. Other relevant people must be consulted before a decision is made.**
- 5. The person must be encouraged to use their own skills and develop new skills where possible.**

If the person still has the capacity to do so, they could grant someone they trust to be their Attorney. This can either be financial or welfare or both.



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