

## Potential new “you are leaving this hospital” rules

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It seems pretty clear that when this pandemic is over nothing is going to be quite the same for most of us. Will “home working” become the norm? What will happen to the travel industry? Will the retail industry be changed forever? These huge questions will be answered in due course.

Even just “drilling down” to legal issues – this little virus may yet cause massive changes. Will the strict rules of signing and formal witnessing of legal documents survive into the future? Procedures are now being relaxed to allow “video” witnessing during the pandemic. What would be the point of going back to the old formal procedure after the crisis? Client interviews by phone and video are the “norm” now. If that works (which it does) will clients go back to the “face to face” meetings with all the travel and organisation that involves?

And tucked away in the Coronavirus (Scotland) Act 2020 is some legislation which could totally change how we deal with people in hospital who have lost the capacity to make decisions.

Up until now – Local Authority social work departments have had the power to remove patients without capacity from hospitals and place them in other residential accommodation. These powers are contained in the Social Work (Scotland) Act 1968. However these powers could not be used where the patient or the patient’s relatives did not agree to the move. Some people were of the view that this was a significant contributor to the disappointing delayed discharge figures from Scottish hospitals.

The new legislation makes two dramatic changes. First it allows Local Authority social work departments to take steps to remove patients who have lost capacity from hospitals, no matter what their or their relatives’ wishes are. Second even if the patient does have an attorney or guardian with powers to make decisions for them, the Local authority can still remove the patient from hospital even if the attorney or guardian objects. That seems to me to be a source of potential litigation. From a patient’s point of view – the practical implication here is “you will go where we say you will go” – although it is to be hoped any new policy will be applied with sensitivity and in the knowledge that rarely would this person be moved again!

Overall these are very significant changes – and it is difficult to see why they are in this Act unless there is an intention to use these new powers widely. The Scottish Parliament has not yet triggered these changes - this has been delayed to see how the pandemic develops - so watch this space!

**Effectively the state has taken considerable new powers. But if these new powers are used successfully during the pandemic - will they be jettisoned once the current crisis ends?**

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