

SOLICITORS FOR
OLDER PEOPLE
SCOTLAND



In partnership with



Guide to Advance Directives

The Options in Scotland

For more information or to speak to one of our trained advisers please telephone our team on 0800 152 2037

Solicitors For Older People Scotland
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It has long been recognized in Scotland that an adult with legal capacity has the right to influence his or her medical treatment. This includes the right to refuse to accept medical treatment at all if the adult so wishes.

Some people refuse certain treatments due to religious beliefs. More commonly nowadays people refuse certain treatments because of possible side effects or because they believe coping with the illness may be easier than accepting significant treatments which may have limited chances of success.

Of course being able to refuse treatment presupposes the patient has the ability to communicate. Legal and practical difficulties arise where a person loses capacity, cannot communicate and therefore cannot influence his or her treatment or refuse it. Medical advances have moved this issue to the centre stage particularly towards the end of life. Now life can be sustained much longer than in the past even if the patient is unconscious, with no hope of cure, and when death may occur at any time. Not everybody wants to be kept alive for long periods in that condition by interventionist treatment. Just to give two examples – someone extremely ill and very close to death might have a heart attack which would end their life, but resuscitation could stop that natural death. Another example might be someone again in the very last stages of life contracting influenza, which could be treated, but if left to take its course might result in an earlier natural death. The problem is that the patient who is in the last stages of life anyway – is usually not able to communicate his or her wish to refuse such treatment. The Advance Directive (AD for short) gets over that problem by the patient stating his or her treatment preferences in writing and in advance to his or her doctors and carers or relatives – in other words to the people who will be making medical decisions in these last days.

This is absolutely not anything to do with assisted dying. It is not about having a car crash and your heart stops and not being resuscitated. People should have absolutely no fears that an Advance Directive would stop them getting any appropriate lifesaving treatment in the above or any other scenario.

An Advance Directive is simply a clear statement in advance to someone’s doctors and relatives as to their wishes regarding healthcare and treatment should certain extreme conditions arise. These are if the person was suffering from a terminal condition, was incapable of communication and understanding and also had only a short time to live. Normally the directive would state that a doctor would have to confirm that that was the situation. At that point the medical professionals would really like to know what the person’s wishes as to treatment were, and they would follow them. Consequently the existence of a Directive really helps medical staff treating the patient towards the end of life.

The purpose of an Advance Directive is to prepare in advance a guide or direction or instruction to doctors as to healthcare treatment someone would want in these extreme circumstances. A Directive can say anything anyone wants it to say but most people choose to direct the doctors not to use intervention treatments simply to prolong life a little longer – when letting things take their natural course might result in an earlier death. However you should note that all appropriate palliative treatment for relieving pain etc would of course be continued if you followed the normal form of directive. (NB palliative treatment is simply

treatment relieving symptoms e.g. pain but which cannot cure the condition) An individual can say anything they like in a Directive – even “keep me alive for as long as medically possible no matter what” – although folk generally do not want that. But even that would be clear guidance to doctors.

At the end of life relatives are consulted by doctors on these final medical decisions. This can be very stressful and difficult for relatives. A relative placed in this situation may feel troubled and even guilty over any decision they make. However much of that stress and worry felt by relatives is removed when the patient has made their wishes known in advance. The Advance Directive therefore can be a great comfort to relatives as it allows doctors and relatives to go along with what the person wanted. If you think about it really such a directive is as much a benefit to the family as to the person themselves. The medical profession, particularly palliative care specialists working in hospices are very keen on more people preparing directives to help doctors and relatives alike.

Preparing an Advance Directive is quite straightforward. It simply is a document signed by someone – usually prepared by a solicitor and witnessed by a solicitor – but not always. The document spells out the person’s wishes clearly. At Solicitors for Older People Scotland we recommend that clients make their next of kin and their welfare attorney (assuming they have one) aware of the existence of the directive and what it says. We so strongly recommend to clients that they prepare these documents when they are fit and well and way in advance of any illness striking.

Probably In excess of 70% of pensioners in Scotland can get legal aid to prepare these documents usually completely free.

Other Points

- an AD is revocable by anyone at any time whilst they have capacity
- even a verbal revocation would be accepted by a doctor
- an AD is not a legally binding document in Scotland but it would be very persuasive if challenged in court say by a relative who wanted to overturn it
- an AD is usually be sent in first instance to client’s GP to be placed with medical records
- the welfare attorney or next of kin if no attorney should really be advised it exists – even if they do not know its contents
- the normal AD only kicks in when a very extreme situation is reached and when the patient is unaware of circumstances
- At Solicitors for Older People Scotland we prepare wallet cards for people saying who their attorneys are and if there is an AD or not.
- People may wish to discuss their AD with their family and doctor.
- AD’s have no legal fixed name – other names for the same document exist such as “do not resuscitate orders” , “living wills” , “advance medical directives”