

ISSUED ON BEHALF OF THE SCOTTISH LAW COMMISSION
NOT FOR PUBLICATION OR BROADCAST
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REPORT ON ADULTS WITH INCAPACITY

The Scottish Law Commission today publishes a report recommending some reforms to the law on adults with incapacity.

The Commission has been examining the processes applying when people receive care which requires some restriction of their liberty. This may happen in the care of people with dementia or learning difficulties in general hospitals and in community facilities, such as care homes.

Although individuals may need to be restricted in order to protect them from harm, it is important that the restriction does not curtail their freedom beyond what is required to safeguard their welfare.

Scots law already provides a detailed process to ensure that any medical treatment received by a person with cognitive disability is properly authorised. The Commission is recommending that where that treatment is given in hospital and additional measures are adopted to prevent the person from leaving the hospital unaccompanied, the authorisation process should be extended to cover those additional measures. This would mean that restrictions which are considered by the person themselves or by their family to be unnecessary could be challenged.

For care homes and other residential facilities in the community, the Law Commission recommends a new process for people who cannot make key decisions themselves. The new process seeks to identify the care regimes with the most restrictions and to provide a level of scrutiny to ensure that all the measures to which a person is subject are necessary for their wellbeing, and are the least restrictive care regime possible.

Finally, the Law Commission also recommends a procedure for challenging allegedly unlawful detention in settings in the community.

In preparing its Report, the Commission has been greatly assisted by input from organisations which promote the rights of individuals with dementia and learning disability, as well as from carers groups, local authorities, healthcare professionals, academics and lawyers who specialise in mental health and disability.

Laura Dunlop QC, the lead Commissioner on the adults with incapacity project, said: "In any individual case where care involves a degree of restraint, questions could arise about whether a person's freedom has been unduly restricted. Our task in the Law Commission has been to contribute to the maintenance of a system which endeavours to meet the needs and protect the rights of vulnerable individuals in Scotland. We hope our Report achieves that goal".

NOTES TO EDITORS

1. The Scottish Law Commission was set up in 1965 to promote the reform of the law of Scotland. The Chairman is the Hon Lord Pentland, a Court of Session judge. The other Commissioners are Laura J Dunlop QC, Patrick Layden QC TD, Professor Hector L MacQueen, and Dr Andrew J M Steven. The Chief Executive is Malcolm McMillan.

2. Further information can be obtained by contacting Heike Gading, Scottish Law Commission, 140 Causewayside, Edinburgh EH9 1PR (Tel: 0131 668 2131, Fax: 0131 662 4900, email: info@scotlawcom.gsi.gov.uk).

3. The paper may also be viewed on our website at <http://www.scotlawcom.gov.uk/> or purchased from TSO (<http://www.tsoshop.co.uk/>).