

ISSUED ON BEHALF OF THE SCOTTISH LAW COMMISSION
NOT FOR PUBLICATION OR BROADCAST
BEFORE 0001 HOURS 31 July 2012

DISCUSSION PAPER ON ADULTS WITH INCAPACITY

The Commission's Discussion Paper on Adults with Incapacity is published today for consultation.

The background to the project is a decision of the European Court of Human Rights in a case involving a person with autism, who had been admitted to Bournemouth - a psychiatric hospital in England. The care he was receiving there had some restrictive features, and requests by his carers for him to return home were refused. The Court's decision was that there had been a breach of his right to liberty, as protected by Article 5 of the Convention. That result caused a change in the law of England and Wales. Admissions to long-stay hospitals for people with autism or other neurological conditions or disabilities who lacked decision-making capacity could no longer be regarded as voluntary and informal. A new system was introduced to authorise these admissions. The changes also affected some admissions to care homes.

The Commission is therefore examining the position in Scots law concerning the right to liberty of adults with incapacity in residential facilities.

The main questions raised by the Discussion Paper are

- Is Scots law as it currently stands adequate to meet the requirements of the European Convention in this area? and
- If not, how should it be changed?

In particular, there is a need to decide if there should be a new procedure for authorising deprivation of liberty in residential care for adults with incapacity. If there should, what should that process be? And, very importantly, what sorts of care and what type of facilities should be regarded as involving deprivation of liberty for those who live there?

Responses to the Discussion Paper are invited by **31 October 2012**.

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 Lady Clark of Calton, 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 Ms Laura Dunlop 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/>).