

**Information Line:** 0800 999 2434

**Website:** [compassionindying.org.uk](http://compassionindying.org.uk)



# Advance Directives (Living Wills)

## Scotland

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**This factsheet explains what an Advance Directive is, what it can and cannot be used for, and how to make one. It is for people living in Scotland. If you live in England, Wales or Northern Ireland, or you would like more information about planning ahead for your future care and treatment, please contact us.**

### What is an Advance Directive?

An Advance Directive allows you to record any medical treatments that you do not want to be given in the future, in case you later lack capacity and cannot make or communicate a decision for yourself.

Advance Directive is the term widely used in Scotland. In other parts of the UK it is called an Advance Decision and it used to be known as a Living Will.

### What is capacity?

Capacity is the ability to make a decision for yourself. It is time and decision-specific. This means that whether or not you have capacity depends on when the decision needs to be made and what the decision is. So, you might lack capacity to make a decision on one day but be able to make that decision

at a later date. This might be, for example, because you have dementia and your ability to remember information differs from one day to the next.

Also, you might have capacity to make some decisions but not others. For example you might have capacity to decide what you want to eat every day but not to understand what will happen if you refuse life-sustaining treatment.

You lack capacity if you cannot do one of these things:

- act on decisions
- make decisions
- communicate decisions
- understand decisions
- retain the memory of any decisions made

The law says that people must be assumed to have capacity unless it is proven otherwise. However, if a decision needs to be made about your health or care and a healthcare professional thinks that you might lack capacity, then they will need to assess whether or not you have capacity to make that decision.

## **What does the law in Scotland say about Advance Directives?**

If you have capacity it is your legal right to refuse any medical treatment.

If you live in Scotland and lack capacity, the law that says how you will be treated is called the Adults with Incapacity (Scotland) Act 2000. This Act says that when making a decision about a medical treatment, the healthcare professional must take into account the past and present wishes of the person. Because an Advance Directive is evidence of a person's wishes it should therefore be taken into account when a decision is made on the person's behalf.

In England and Wales, Advance Decisions that meet certain requirements must be followed. This is not the case in Scotland, but Advance Directives are still widely recognised and used by healthcare professionals. If a decision ever had to be made in court, it is likely that the Scottish courts would take the same approach as England and Wales and say that a clear and specific Advance Directive should be followed.

## What can I refuse in an Advance Directive?

You can use an Advance Directive to refuse any medical treatment including life-sustaining treatment, such as:

- cardiopulmonary resuscitation (CPR) if your heart stops
- being put on a ventilator if you cannot breathe on your own
- being given food or fluids artificially, for example through a drip, a tube through the nose or through a tube directly into the stomach
- antibiotics for a life-threatening infection

## Why would I want to make an Advance Directive?

If there are treatments that you would not want to have in the future then making an Advance Directive will help to make sure your wishes are followed.

Making an Advance Directive can:

- help you to make informed decisions in your own time by considering your options
- give you control over the care and treatment you receive, whether that is tomorrow or further in the future
- give you peace of mind that you have taken steps to make sure your wishes are known about, recorded and respected.

The process of making an Advance Directive can help to start conversations between you and those close to you about your wishes for future treatment and care.

If you cannot make a decision about your medical treatment and you have not made an Advance Directive or a Welfare Power of Attorney, then your doctor will decide what treatment to give you. They will base their decision on what they think will 'benefit' you, and they must take into account the views of your family members or others close to you. However, legally, they do not have to follow what these people say. This means that if you have not made an Advance Directive or Welfare Power of Attorney, the doctor has the final say about what treatments you receive.

## **What can I refuse in an Advance Directive?**

Any adult with capacity can make an Advance Directive. You can write an Advance Directive yourself, or Compassion in Dying can provide a free form that has space for you to record your wishes and all your details.

Compassion in Dying's form is called an 'Advance Decision'. It can still be used in Scotland even though it has a different name.

To make an Advance Directive, you should:

1. Think about what you want and the situations in which you would want to refuse certain treatments.
2. Speak to those close to you about your wishes.
3. Speak to your doctor about your Advance Directive. Your doctor can help you to understand your treatment options and explain the consequences of any

decisions you want to make.

4. Fill in your Advance Directive. It is a good idea to sign and date it and get it witnessed. This helps to confirm that it contains your wishes that are written down.
5. Make sure your GP and those close to you know that you have made an Advance Directive. There is more information about how to do this below.

You do not need a solicitor to make an Advance Directive.

## How will people know about my Advance Directive?

It is very important that those close to you, your GP, and anyone else involved in your care, know about your Advance Directive. There are a few things you should do to make sure people are aware of your Advance Directive:

- Ask your doctor to keep a copy of your Advance Directive with your medical records.
- Give a copy of your Advance Directive to anyone who would be contacted in an emergency.
- Give a copy of your Advance Directive to anyone else who is regularly involved in your care. This could be for example, your consultant, carer or district nurse.
- Carry the 'Notice of Advance Decision' card (which comes with Compassion in Dying's Advance Decision pack) or keep a copy of your Advance Directive on your person.

## Can I change my mind?

While you still have capacity you can change your mind or cancel your Advance

Directive at any time. If you want to change it you should make a new form and give copies to the people close to you and anyone involved in your care (instructing them to destroy the old version). You can cancel your Advance Directive by destroying it (and any other copies you have made).

## **Reviewing and updating your Advance Directive**

We recommend updating your Advance Directive every two years, or sooner if your health changes, or if you are going into hospital. It is important to talk to your doctor about your wishes for treatment, as they will be able to explain the consequences of any decision you make.

If you lose capacity and your Advance Directive was reviewed or updated in the last two years, the doctor treating you can be more confident that what you have said in your Advance Directive is still what you want.

## How can we help?

We can send you a free Advance Decision form that you can use to make an Advance Directive. It also comes with guidance notes that explain how to complete it. Alternatively, you can complete these documents online for free at [www.mydecisions.org.uk](http://www.mydecisions.org.uk).

We can also support you to complete your forms over the phone.

If you have any questions about Advance Directives, Welfare Powers of Attorney, planning ahead or decision making more generally then please contact our Information Line.

The following Compassion in Dying factsheets may also be helpful:

- *Welfare Power of Attorney – Scotland.*
- *Starting the Conversation - a booklet to support you to talk to your family, friends and doctor about your wishes for the end of life.*

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Compassion in Dying supports people to plan ahead to ensure their wishes for treatment and care are respected.

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