

Fact Sheet on: Advance Directives



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Please note:

If you require legal representation, we will be happy to help you find a Solicitor.



(pronounced Kier-tis) is a Gaelic word for equality, fairness and justice.

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What is an Advance Directive?

An Advance Directive is a document which records your wish to refuse specific medical treatments; under very specific circumstances; and in the event that you are not capable of refusing for yourself at the time the treatments are offered to you.

An Advance Directive is sometimes also known as a 'Living Will', an 'Advance Decision', or in England as an 'Advance Directive Refusing Treatment'.

What does an Advance Directive cover?

If an Advance Directive states that, in the event that they become bed-bound and non-communicative due to the progression of a degenerative condition, someone does not want to be put on a ventilator, their Advance Directive would effectively constitute that person's refusal of that treatment under those circumstances.

But if that person with the degenerative condition is involved in an unrelated life-threatening situation like a traffic accident, or if they have an unexpected heart attack; health professionals will still make every effort to try and save their life, regardless of whether that person has an Advance Directive.

An Advance Directive cannot direct health professionals or anyone else to euthanise them, or to take positive steps to end their lives: all an Advance Directive can do is record a refusal of specific treatment under specific circumstances.

Is an Advance Directive different from an Advance Statement?

Yes, the Mental Health and Care Act (2003) states that if you have a mental health condition, you can write down in an Advance Statement how you would like to be treated if, in the future, you become too unwell to make decisions yourself.

An Advance Statement only really carries any weight for someone who is detained or treated via a compulsory order under the Mental Health Act; Advance Directives are for anyone who wants to record their refusal of specific treatments for specific conditions under very specific circumstances.

Is an Advance Directive legally binding?

No. An Advance Directive has no legal authority under Scots law, but the one of the principles of the Adults with Incapacity (Scotland) Act (2000) states that the wishes of an adult who lacks capacity 'should be taken into account' when making decisions about their care.

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Some medical authorities consider that, in the event that a patient lacks the capacity to give or refuse consent for treatment, a doctor who has treated a patient against their wishes and without their consent would have committed an assault against the patient.

Who completes an Advance Directive?

You must complete the Advance Directive yourself, usually with the help of a solicitor, and you should consult with a health professional who understands your condition in depth.

A solicitor can ensure that whatever is put in the Advance Directive is clear and unequivocal, and that there can be no misunderstanding of what it means in the event that the signatory can no longer communicate their preferences.

A health professional can ensure that the Advance Directive addresses the care pathway that someone with a particular disease or condition can expect to progress along. Again, the Advance Directive must be quite unequivocal about the clinical indications of the person's condition which trigger the refusal of treatment, and the treatment or range of treatments that they wish to refuse.

Does it need to be signed and witnessed?

Yes. An Advance Directive must be signed and witnessed, and once it has been signed and witnessed you need to make sure that everyone who might need to know about it has a copy.

Who should keep a copy of it?

You should give a copy of your Advance Directive to your General Practitioner (your GP), to your hospital

Consultant(s), and also to whoever you want to act on your behalf in the event that you cannot act for yourself.

If you are in a position where you feel you need to complete an Advance Directive, you might also consider granting Power of Attorney to someone that you can trust to act on your behalf. Power of Attorney grants someone else the power to make decisions for you and about you in the event that you can no longer do so for yourself.

There is a Ceartas Fact Sheet about Power of Attorney available.

How can Ceartas help you?

Completing an Advance Directive is part of a wider end-of-life planning process. Many people can find this a daunting process, and they would not know where to start

Ceartas can help you to gather the information you need to make informed choices, and support you to connect to the right people to help you put your plans in place.

Further Information on Advance Directives:

MND Scotland: www.mndscotland.org.uk

Compassion in Dying:
www.compassionindying.org.uk

NHS:
www.nhs.uk/conditions/end-of-life-care/planning-ahead/advance-decision-to-refuse-treatment/