

To: SOCIAL WORK (OPERATIONS AND SERVICES) SUB COMMITTEE		Subject: ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000 – IMPLEMENTATION OF PART 6 – INTERVENTION AND GUARDIANSHIP ORDERS
From: DIRECTOR OF SOCIAL WORK		
Date: 6 <sup>th</sup> DEC.2001	Ref: EMCS/LMCK	

### 1. PURPOSE OF REPORT / INTRODUCTION

- 1.1. This report advises Committee of a Scottish Executive consultation document concerning implementation of Part 6 of the Adults with Incapacity (Scotland) Act 2000, relating to Intervention and Guardianship Orders which comes into force on 1<sup>st</sup> April 2002, and to seek approval for the Council's response which is attached as an appendix to this report. A copy of the consultation document is available in the Member's Library.

### 2. BACKGROUND

- 2.1. The Adults with Incapacity (Scotland) Act 2000, as reported to Committee in August 2001, provides a new legal framework for adults who may be incapable of acting; making decisions; communicating decisions; understanding decisions; retaining the memory of decisions by reason of mental disorder or of inability to communicate because of physical disability. The Act makes interventions in a wide range of property, financial or welfare matters where the adult lacks capacity.
- 2.2. Specifically in respect of Part 6, The Act empowers the taking of time-limited Intervention Orders relating to an adult's financial affairs, property and personal welfare where the person concerned is incapable of acting. Guardianship Orders lie within the same parameters but are more appropriate for longer term measures, such as requiring a person to reside at a given address.

### 3. PROPOSALS / CONSIDERATIONS

- 3.1. The Act itself is a complex piece of legislation that is helpful in laying out general principles, guidance and practical implications for service providers, clinicians, service users and carers. It highlights that incapacity is not an all or nothing concept and that everyone carrying out the functions under the Act must apply the general principles of benefit, minimal intervention, taking account of the wishes and feelings of the adult concerned, consulting others and encouraging exercise of residual capacity.
- 3.2. The documents included for consultation are the draft code of practice for persons authorised under intervention orders and guardians and draft regulations as follows:
- The Adults with Incapacity (Supervision of Guardians etc., by Local Authorities) (Scotland) Regulations 2002.
  - The Adults with Incapacity (Reports in relation to Guardianship and Intervention Orders) (Scotland) regulations 2002.
  - The Adults with Incapacity (Recall of Guardians Powers) (Scotland) Regulation 2002.

3.3 The code of practice gives a clear account of procedures and responsibilities of Local Authorities and Mental Health Officer's (MHO's) employed by Local Authorities when implementing the Adults with Incapacity Act. Whilst comments on the length of this document have been raised, it does contain very detailed guidance on implementation and good practice.

#### **4. FINANCIAL / PERSONNEL / LEGAL / POLICY IMPLICATIONS**

4.1. There are a number of implications for Local Authorities to consider, associated with the new legislation, including:

- a) Procedures will require to be in place by April 2002 to supervise guardians and investigate complaints. There will also be a responsibility on M.H.O's to make applications for guardianship and intervention orders as required.
- b) Use of M.H.O's will require to be reviewed to meet the demands of the new legislation.
- c) There are a limited number of M.H.O.'s at present and further recruitment will require to be considered.
- d) Training for M.H.O.'s and Care Managers in other community care settings will need to be pursued.
- e) Basic awareness training with senior managers and other staff will be necessary.
- f) Public awareness of the Adults with Incapacity Act will need to be increased, including information about and the availability of advocacy

4.2. It is likely that there will be recurring financial implications for the Local Authority in fulfilling it's legal obligations under the new Act, but these are not possible to quantify at present.

#### **5. RECOMMENDATIONS**

5.1 Committee is asked to:

- (i) approve the response documented in Appendix 1; and
- (ii) request the Director of Social Work provide update reports to future Committees on implementation of the Act; and
- (iii) otherwise note the contents of the report.



**Jim Dickie**  
**Director of Social Work**  
**26 November 2001**

For further information on this report please contact Duncan Mackay, Manager, Community Care (Adults) (TEL: 01698 332065)

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Dear Mrs. Wilson

Adults with Incapacity (Scotland) Act 2000, Implementation of Part 6

Thank you for the opportunity to comment on the above.

This part of the Act concerns implementation of Intervention and Guardianship Orders, which will have significant implications for Local Authorities. The consultation document looks not only at the draft code of practice but the supervision of guardians, recall of guardian's powers and reports required in relation to guardianship and intervention orders.

The main areas which the Scottish Executive requested views on were the content and any areas that were felt to be overlooked in the code of practice. North Lanarkshire Council views the code as being very helpful in laying out the general principles, guidance and practical implications for service providers, clinicians, service users and carers. It highlights that Incapacity is not an all or nothing concept and that everyone carrying out functions under the Act must apply the general principles of benefit, minimum intervention, taking account of the adult's wishes and feelings, consulting others and encouraging exercise of residual capacity.

Part 6 of the act gives a very comprehensive guide on the responsibilities of Local Authorities and Mental Health Officers in the application, supervision, advise and investigation of guardianship and intervention orders. The code highlights the need for Local Authorities to prepare for the implementation of the Act, through training, organising internal structures and reporting lines; and to consider methods of record keeping on adults who fall within the Local Authorities jurisdiction, in a form that will facilitate action under the act when it comes into full effect. Mental Health Officers will have a particular responsibility in the completion of reports for Guardianship and Intervention Orders and in offering advice and guidance to service providers, service users and carers.

The Public Guardian and Mental Welfare Commission will play a significant part of the new Act and it has been very helpful to have their roles and responsibilities clearly laid out in the code of practice.

In summary, the Council view positively the proposed introduction of part 6 of the draft code and the consultation exercise. It introduces a range of new responsibilities for Local Authorities, which are likely to have resource implications, though it is not possible to quantify these with any certainty at this stage. It will be important as these emerge to reflect the consequences in future local government funding settlements.

It is also important to recognise that the current difficulties being experienced by all Local Authorities in the recruitment of experienced social workers to the mental health field will impact on authorities ability to comply with legislation.

Yours sincerely

Jim Dickie  
Director of Social Work