

## REPORT

To: SOCIAL WORK (OPERATIONS AND SERVICES) SUB COMMITTEE		Subject: ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000: PROGRESS REPORT	
From: DIRECTOR OF SOCIAL WORK			
Date: 07 DECEMBER 2004		Ref: MW/EN	

## 1. Purpose of Report/Introduction

To advise Committee of the recently published report from the Scottish Executive entitled "The Adults with Incapacity (Scotland) Act 2000: Learning from Experience". The report provides information on the early stages of the Act's implementation.

## 2. Background

2.1. The Adults with Incapacity (Scotland) Act 2000 was passed by the Scottish Parliament on 29<sup>th</sup> March 2000 and received royal assent on 9<sup>th</sup> May 2000. It was incrementally implemented between 2000 and 2003.

2.2. The Adults with Incapacity (Scotland) Act 2000 modernised the law with the aim of safeguarding the interests of adults who are unable to make all or some decisions, or to communicate decisions relating to their welfare or finances.

2.3. In 2002, the Scottish Executive commissioned research from Alzheimer Scotland - Action on Dementia. Working in partnership with the Scottish Development Centre for Mental Health. Their remit was to :

- examine the implementation of those parts of the Act for which the Justice Department had responsibility
- monitor the use of the Act
- research its operation and impact on service users

These research findings have been reported in "The Adults with Incapacity (Scotland) Act 2000: Learning from Experience".

2.4. Separate research and consultation has been undertaken by the Health Department on Part 5 of the Act, "Medical Treatment and Research" and the outcome of this consultation is included in the report.

2.5. The implementation of the Act has had significant implications for local authorities, and this has been regularly reported to Social Work Committee.

2.6. The research indicates that the Act is yielding benefits for adults with incapacity and for those who care for and about them. The principles in the Act have been warmly welcomed. These include minimal intervention and demonstrable benefit to the person.

2.7. The report highlights possible legislative, procedural and practice issues, which impact on the implementation of the Act. These issues are presently being tackled with key stakeholders and are as follows:

- In August 2004, the Mental Welfare Commission published a discussion paper entitled "Authorising Significant Interventions for Adults who Lack Capacity." This paper also suggests alternative legislation which may benefit the adult and equally well protect their interests.
- In August 2004, a consultation paper "The Adults with Incapacity (Scotland) Act 2000 Proposed Changes to Regulations", was issued for comment to local authorities. It proposed that the responsibilities of local authorities relating to the supervision of guardianship orders be decreased and that there be an increase of accessibility to Part 3 of the Act (Intromission of Funds) through extending the range of people able to countersign applications. The Scottish Executive has not yet advised the outcome of this consultation.
- The Department of Health, following consultation with key stakeholders revisited the Code of Practice for Part 5 of the Act (Medical Treatment and Research) and two amendments will be recommended in the forthcoming Health Service Miscellaneous Bill. The first proposed amendment is an increase in the number of healthcare professionals who can sign a certificate of incapacity, the second is for the duration of certificates to be increased from 1 to 3 years.

### North Lanarkshire's Position

2.8. Part 6 of the Act protects adults who lack capacity through guardianship orders and intervention orders. The number of statutory interventions under Part 6 of the Act is increasing. In North Lanarkshire, interventions under Part 6 are detailed below and reflect national trends as the Act becomes embedded.

	October 2003	October 2004
Guardianship Orders	11	39
Intervention Orders	7	16

2.9. The Mental Welfare Commission's recently issued guidance about statutory interventions under the Act confirms the existing practice guidance already issued to staff in North Lanarkshire. For example, an older woman with dementia was recently transferred from hospital to a care home setting without statutory intervention under the Act. This was appropriate because at an earlier stage the woman and her family, working closely with the department, had agreed the need for this to happen for the woman's care and protection.

### 3. Financial/Personnel/Legal/Policy Implications

3.1. The report highlights the possible need for changes in legislation, particularly in areas that affect local authority guardianships. No timescales have been set for this to be completed.

- 3.2. The Scottish Executive has commissioned a further piece of research on the interface between the Adults with Incapacity (Scotland) Act 2000 and the new Mental Health (Care and Treatment) (Scotland) Act 2003. This may have training and practice implications for local authorities which will become clearer in due course.
- 3.3. In 2005/2006 the Health Department plans to undertake an evaluation of Part 4 of the Act. This section of the Act relates to the management of finances for residents in care homes and private hospitals, where they lack capacity. Local authorities will be key stakeholders in this process and the findings will have implications of local authorities.

#### 4. Recommendation

##### 4.1. Committee is asked to:

- note the contents of this report.



Jim Dickie  
Director of Social Work  
9 October 2004