

DUNDEE CITY COUNCIL

REPORT TO: SOCIAL WORK COMMITTEE 19 March 2001

REPORT ON: ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000 – CODES OF PRACTICE

REPORT BY: DIRECTOR OF SOCIAL WORK

REPORT NO: 123-2001

1.0 PURPOSE OF THE REPORT

To advise the Social Work Committee of the Codes of Practice issued to the Local Authorities by the Scottish Executive for comment and to raise awareness about the implications for the Local Authority from the Adults with Incapacity (Scotland) Act 2000.

2.0 RECOMMENDATIONS

It is recommended that the Social Work Committee:-

2.1 Notes and approves the contents of the report.

2.2 Instructs the Director of Social Work to bring back a report detailing arrangements that the Social Work Department will have to put in place to implement the Act.

3.0 FINANCIAL IMPLICATIONS

3.1 The cost of the additional duties arising from the implementation of the Act is estimated to be approximately £22,000. This is in line with the resources allocated by the Scottish Executive.

4.0 LOCAL AGENDA 21 IMPLICATIONS

4.1 The principles and values contained within the report are in line with the key themes of the Local Agenda 21.

5.0 EQUAL OPPORTUNITIES IMPLICATIONS

5.1 The report is consistent with the Council's Equal Opportunity Policy ensuring that adults who are incapable of managing their own affairs are afforded the same level of support and safety as other citizens.

6.0 MAIN TEXT

6.1 Background

6.1.1 The Adults with Incapacity (Scotland) 2000 aims to provide enhanced protection of the rights and interests of adults who are incapable of managing their own affairs.

6.1.2 The Act was designed to help an estimated 10,000 people in Scotland with incapacity and their families and carers. Adults with incapacity can be defined as those who:

- have never had capacity to make decisions about their own affairs;
- who lose capacity temporarily or permanently through accident or illness, such as a stroke or head injury;
- who are unable to communicate decisions.

- 6.1.3 The main aims of the Act are to ensure that any actions taken for an adult with incapacity will benefit the adult, take account of the adults wishes and those of the nearest relative or carer and be the least restrictive of the adult's freedom. Where specified, persons granted power of attorney would be able to deal with any welfare, medical treatment or financial matters affecting the adult. The introduction of a Public Guardian and allocation of responsibility to local authorities to supervise attorneys and guardians with welfare powers will ensure a greater level of protection for adults with incapacity.
- 6.1.4 The Act will be implemented over a two-year period, coming into force in April 2001. Provisions relating to attorneys and access to the accounts and funds of adults with incapacity will come into effect in April 2001. The authority for medical practitioners to medically treat adults with a certificate of incapacity will come into force in the summer of 2001. Formal management of resident's finances, within residential and nursing homes will be agreed for authorised establishments in April 2002, as will the ability to apply for intervention orders to deal with clearly defined financial, personal welfare or property matters.
- 6.1.5 The functions of the Local Authority under the Act can be summarised as:
- Supervision of Welfare Guardians.
 - Consulting with the Welfare Commission.
 - Investigation of complaints in relation to welfare power of attorney.
 - Investigation of potential risks to the welfare of adults with incapacity.
 - Responsibility to apply for welfare guardianship or intervention orders or financial guardianship where necessary and where others are not applying for this.
 - Responsibility to reapply for guardianship where welfare grounds exists.
 - Responsibility to recall guardianship where necessary.
- 6.1.6 Under Section 13 of the Act, the Scottish Executive is required to prepare codes of practice, which contain guidance as to the exercise of the Act. The Scottish Executive recently circulated the first three codes of practice to the Local Authority for consultation. Included within these codes are:
- The Draft Local Authority Code of Practice.
 - Draft Code of Practice for Continuing Attorneys and Welfare Attorneys.
 - Draft Code of Practice for Persons Authorised Under Part 3 To Access Funds of an Adult.

6.2 **Implications Arising from the Act**

- 6.2.1 For the initial implementation of the first part of the Act the Social Work Department should ensure that:
- all Care Managers are aware of and can advise carers of the new "withdrawer's powers" which will assist them to manage the incapacitated adults daily living expenses; and
 - where power of attorney has been granted prior to an adult losing capacity the Local Authority must be prepared to provide supervision to the person with this power should they be requested to do so by the Public Guardian or the Sheriff.
- 6.2.2 Initial examination of the codes has highlighted areas of practice which will make a greater demand on Local Authority services. These can be detailed as follows.
- an increase in the number of applications for guardianships and intervention orders;
 - an increasing workload for Mental Health Officers which will include responsibility for applying for welfare guardians, renewal/discharge of guardians, and the supervision of welfare guardians;
 - an increasing work load for Care Managers, particularly where Care Managers are applying for intervention orders or guardianship orders for people with dementia who are incapable of making decisions regarding their admission to a nursing home;

- training implications – both for current Mental Health Officers, who will be required to update their knowledge of the new legislation and Care Managers who will be expected to incorporate the legislation into their daily duties taking decisions where applicable.

6.2.3 Joint implementation teams with Health colleagues should be established. Transitional arrangements have to be put in place and include:

- The development of practice guidance.
- Clear locally agreed definitions of capacity.
- Identification and definitions of risks.
- Identification of the individuals who will require assessments regarding their capacity to manage their affairs (welfare, financial and medical).
- Administrative procedures to identify current responsibility for guardianships.
- Administrative procedures to record and alert staff as to when guardianship ends.
- Application of specific powers to bring current arrangements in line with the new Act.

6.2.4 It is expected that a further three Codes of Practice will be published by the Scottish Executive early next year. The codes will be distributed to Local Authorities for consultation prior to adoption.

6.2.5 The provision of information to incapacitated adults and their carers will be important to ensure that all adults affected will maintain their rights. The Scottish Executive have produced leaflets raising awareness of the Act, and these have been distributed to all local authorities, health boards, NHS Trusts, GP surgeries, pharmacies, libraries, professional and voluntary agencies. Within the Social Work Department there will be a targeted distribution of the leaflet through care managers and social work offices ensuring those most in need receive the relevant information quickly.

6.2.6 The cost of implementing the changes arising from the introduction of the Act will be met by the monies allocated by the Scottish Executive to the revenue budget specifically for this function.

7.0 CONSULTATION

7.1 The Director of Finance and the Director of Support Services have been consulted on this report.

8.0 BACKGROUND PAPERS

Adults with Incapacity (Scotland) Act 2000
 Code of Practice for Persons Authorised Under Part 3 To Access Funds of an Adult
 Local Authority Code of Practice
 Code of Practice for Continuing Attorneys and Welfare Attorneys

9.0 SIGNATURE

Director of Social Work

Date