

DUNDEE CITY COUNCIL

REPORT TO: Social Work Committee - 15th March 2004

REPORT ON: The Mental Health (Care and Treatment) (Scotland) Act 2003

REPORT BY: The Director of Social Work

REPORT NO: 200 - 2004

1.0 PURPOSE OF THE REPORT

1.1 To inform members of the new responsibilities placed on the local authority by the Mental Health (Care and Treatment) (Scotland) Act 2003.

1.2 To inform members of the proposed implementation plan.

2.0 RECOMMENDATIONS

It is recommended that the Social Work Committee:-

2.1 notes the content of this report;

2.2 endorses the proposal that guidance to staff, and training for mental health officers is progressed by the Senior Officer (Mental Health) Strategy and Performance Service as detailed in section 6.6 below.

2.3 endorses that a joint project board convened with partner authorities should consider the implications arising from the new Mental Health Act, and shall prepare a joint implementation plan in accordance with Scottish Executive requirements, and that the tasks identified by the project board be implemented locally.

3.0 FINANCIAL IMPLICATIONS

3.1 The Scottish Executive has included resources within the Local Government Finance Settlement to enable local authorities to meet their new responsibilities arising from the Mental Health Act. Dundee City Council's budgetted allocation is £34k in 2003/04, £309k in 2004/05 and £320k in 2005/06.

4.0 LOCAL AGENDA 21 IMPLICATIONS

4.1 The Act will ensure that the Social Work Department provides an equitable service which protects and improves the lives of local citizens with mental health problems.

5.0 EQUAL OPPORTUNITIES IMPLICATIONS

5.1 All persons subject to the new legislation will be given respect and dignity and will be provided with equality of service.

6.0 MAIN TEXT

6.1 Introduction

The Mental Health (Care and Treatment) (Scotland) Act 2003 (the 2003 Act), received Royal Assent on 25th April 2003, and is due to come into force on 4th April 2005. The passing of this Act followed a comprehensive review of mental health law in Scotland carried out by the committee chaired by the Rt. Honourable Bruce Millan. The Millan Committee recommended an extensive overhaul of the law, and following widespread consultation with key stakeholders, most of the Committees recommendations were adopted by the Scottish Executive, leading to the passing of the new Act.

6.2 The main provisions of the new Act

The 2003 Act will help achieve the objective of effective care and treatment for people with mental disorder by:

- establishing principles which must be observed by professionals dealing with people with mental disorder. These principles are designed to ensure the maximum participation by persons with mental disorder, in decisions regarding their care and treatment, including decisions which may affect their liberty. There is a new right of access to independent advocacy services; scope to nominate a named person who can represent the mentally disordered person, and appeal certain decisions, as well as the provision to make an advance statement, which allows a person to set out how they would wish to be treated in the event of them becoming unable to make their views known when receiving care and treatment at a future date.
- comprehensively reforming and modernising the legal framework for compulsory detention and treatment, setting out clear criteria which must be met before compulsion can be authorised, as well as providing checks, balances and safeguards which ensure that persons have a right to challenge and appeal decisions.
- retaining the scope for a doctor to compulsorily admit a person to hospital in a psychiatric emergency for a maximum of 72 hours, but introducing a mandatory requirement that consent of a mental health officer (M.H.O.) must be sought and given to the making of a short-term detention order (28 day order) by an approved psychiatrist. Relatives will no longer be called upon to give their consent to the use of compulsory powers in any circumstances.
- establishing the entirely new Mental Health Tribunal for Scotland, which will replace the sheriff court as the forum for decision making regarding longer term compulsion.
- creating a new Compulsory Treatment Order (C.T.O.) which allows for care and treatment to be provided in the community in appropriate cases, as well as authorising detention in hospital where this has been demonstrated to be necessary. A C.T.O. will only be able to be granted by the Mental Health Tribunal upon an application by a mental health officer accompanied by two medical recommendations. The tribunal will consider the application for a C.T.O. at a hearing at which the person who is the subject of the application, their named person and others with an interest, the mental health officer and the doctors providing the recommendations may be present. A C.T.O. may impose requirements on the person concerned, for example, that they reside at a specified address, or attend a specific place for treatment.
- introducing improved safeguards governing the administration of certain treatments such as neurosurgery for mental disorder, electro-convulsive therapy and long-term medication
- substantially reforming the law relating to people with mental disorder who enter the criminal justice system, allowing for the assessment of a person at any stage

of the criminal justice process prior to sentencing, as well as improving the provisions governing disposals available to courts in respect of mentally disordered offenders.

- giving persons in hospital (including the State Hospital) a right to apply to the Tribunal for an order declaring that they are being held in conditions of excessive security, and requiring the health board to find accommodation that is appropriate to their needs.

6.3 New responsibilities on local authorities to provide services

The 2003 Act places specific new responsibilities on local authorities to provide, or secure the provision of care and support services, and services designed to promote well-being and social development, for persons who have, or have had a mental disorder.

The specific services are:

- residential accommodation
- personal care and personal support
- social, cultural and recreational activities
- training for such of those persons as are over school age
- assistance for such of those persons as are over school age in obtaining and undertaking employment
- provision of such facilities for, or assistance in, travelling as may be considered necessary to enable those persons to attend or participate in any of these services.

6.4 Increased responsibilities on mental health officers

Mental health officers perform an important role by providing an independent, objective and non-medical opinion as to the appropriateness or otherwise of using compulsory powers. The 2003 Act considerably expands that role by giving mental health officers new responsibilities.

In particular, these responsibilities include:-

- giving or withholding consent to compulsory admission to hospital in emergency situations, or for short-term detention orders.
- applying to the Mental Health Tribunal for compulsory treatment orders.
- preparing comprehensive care plans to accompany applications to the Tribunal
- providing a report when it is proposed to renew a compulsory treatment order
- providing social circumstances reports at various times when these are required under the Act
- providing assessments and reports to the criminal courts when consideration is being given to the making of a compulsory order as a disposal
- inquiring into the circumstances of any person who appears may be at risk, and where necessary obtaining a warrant on sworn evidence authorising an assessment of the persons mental state
- advising persons of their right to independent advocacy services, and ensuring they have the opportunity of making use of those services

6.5 Joint responsibility with health boards to develop advocacy

The 2003 Act places a duty on local authorities and health boards to collaborate in order to secure the availability, to persons in their areas who have a mental disorder, of independent advocacy services and to take appropriate steps to ensure that those persons have the opportunity of making use of those services.

6.6 Action required by the local authority

There is a need to develop guidance for local authority staff on the 2003 Act and its implications for practice. It is also necessary to provide appropriate training for practicing mental health officers on the new provisions contained in the Act, in order that they are sufficiently prepared to be able to discharge their new duties by April 2005. The Scottish Executive has commissioned the development of training materials in order to assist local authorities with this.

Action: It is proposed that the Senior Officer (Mental Health) Strategy and Performance Service shall take responsibility for developing guidance for local authority staff as outlined above, as well as ensuring that appropriate training is provided to mental health officers, which will include the delivery of training developed by the Scottish Executive as well as any additional training and guidance which appears to that officer to be necessary.

The new corporate responsibilities placed on local authorities to provide services (outlined at 6.3 above) and the joint responsibility to develop advocacy services in collaboration with the health board (outlined at 6.5 above) require detailed consideration in order to assess the extent of their implications and the steps that need to be taken in order to ensure that these new responsibilities can be discharged.

To assist this process, the Scottish Executive has asked Chief Executives of NHS Boards to produce in collaboration with their local authority partners, a joint implementation plan by 31 March 2004, indicating how the Boards intend jointly with their partner authorities to ensure that services will be ready to meet the requirements of the 2003 Act.

Action: A project board has been convened which includes representatives from relevant partner authorities which will consider all the implications which arise from the 2003 Act, and will prepare a joint implementation plan as required, and will identify the tasks which need to be undertaken, including timescales and lead responsibilities, in order to ensure that adequate preparation is in place for the implementation of the Act. The membership of the project board is included at appendix 1 of this report.

7.0 CONSULTATION

7.1 The Chief Executive, the Depute Chief Executive (Finance) and Depute Chief Executive (Support Services) have been consulted in the preparation of this report.

8.0 BACKGROUND PAPERS

No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information), were relied on to any material extent in preparing the above report.

9.0 SIGNATURE

Alan G Baird
Director of Social Work

Date: 5th March 2004

Appendix 1

Membership of Joint Project Board

Dr. Peter Connelly, Associate Director for Mental Health, Tayside Primary Care

Iain Fisk, Angus Council Social Work

Neil Fraser, Strategy & Performance Manager, Tayside NHS Board

Dave McCaw, Senior Officer (Mental Health), Dundee City Council Social Work

Bill Nicoll, Interim General Manager, Care Together, Perth

Fiona Stewart, Perth and Kinross Council Social Work

Joyce Lewis, Head of Adult Care, Care Together, Perth

Peter Williamson, Director of Health Strategy, Tayside NHS Board

(Local Health Care Co-operatives have been invited to nominate representatives to join the project board)