

DUNDEE CITY COUNCIL

REPORT TO: SOCIAL WORK COMMITTEE – 21 August 2000

REPORT ON: ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

REPORT BY: DIRECTOR OF SOCIAL WORK

REPORT NO: 524-2000

1.0 PURPOSE OF THE REPORT

The report informs members of the Adults With Incapacity (Scotland) Act 2000 which was passed by the Scottish Parliament and given Royal Assent in May 2000. The implementation process is detailed and the duties and responsibilities of the council are outlined.

2.0 RECOMMENDATIONS

It is recommended that the Social Work Committee:-

2.1 note the contents of this report.

3.0 FINANCIAL IMPLICATIONS

None.

4.0 LOCAL AGENDA 21 IMPLICATIONS

None.

5.0 EQUAL OPPORTUNITIES IMPLICATIONS

The Act protects the rights and interests of adults who are incapable of managing their own affairs.

6.0 MAIN TEXT

6.1 **Introduction:** The Act has been widely welcomed as a significant and much needed reform of the law. It will be implemented over the next two years. The Act protects the rights and interests of adults who are incapable of managing their own affairs; one of the most vulnerable groups in society.

6.2 **Adults with Incapacity:** Up to 100,000 adults in Scotland and their relatives and carers are affected by incapacity at any time. The Act deals with the management of their property, financial affairs and personal welfare, including medical treatment.

The number of Adults with incapacity is rising and many citizens of Dundee and their carers will be affected by the Act. The incapacity of an adult may be permanent or short term, and may arise because of mental illness, learning disability, dementia or inability to communicate due to physical disability.

6.3 **Provisions of the Act:** The Act is based on a number of clearly expressed principles and all activity under the Act must be based on these. Anything done under the Act for the adult with incapacity must bring benefit to them.

The Act identifies circumstances in which there can be grounds for intervening in the affairs of an adult and sets out how such interventions should be managed. An intervention may mean taking action or making decisions. There are a range of substitute or proxy decision makers which may be appointed and monitored under the Act.

- 6.4 **The Local Council:** A number of statutory authorities are involved in supervising those who take decisions on behalf of adults with incapacity. These include the Courts, Mental Welfare Commission and Local Authorities. The Act sets out their individual roles and requires them to co-operate and share information.

Local Authorities have a major role in looking after the welfare of adults with incapacity. The functions of Local Authorities in relation to both the personal welfare and financial affairs of adults with incapacity are laid out in part one of the Act. They are required to supervise some proxy decision makers and may be appointed to act for the adult in some cases.

Under the Act the council has a duty to: supervise welfare guardians; consult with other statutory authorities; investigate complaints and suspicious circumstances about the exercise of welfare powers; investigate any potential risk to the personal welfare of an adult with incapacity of which the authority is aware; provide information and advice.

There is a provision for the chief social work officer to act as welfare guardian in certain circumstances. For the purposes of the Act the Chief Social Work Officer's functions referred to will be undertaken by the Director of Social Work. The Act further provides that mental health officers make reports to both the civil and criminal courts, where welfare guardianship is being considered.

- 6.5 **Implementation:** The Act will be implemented over the next two years and will be complete by April 2002. Different parts of the legislation will be brought into force on different dates.

Preparation to implement the Act is being undertaken as a two stage process. Codes of Practice are required under section 13 of the Act and are currently being produced. There will be eight codes which will provide practical information and guidance on duties and responsibilities under the legislation, and will promote good practice.

The Code of Practice for managers of authorised establishments is being written by an officer of Dundee City Council on secondment to the Scottish Executive.

The Code of Practice for Local Authorities is being written by the Executive and will detail the duties of the council under the Act. Transitional arrangements will be included. It is anticipated that the draft code will be issued for consultation on the 01 September 2000. Implementation begins in April 2001.

7.0 CONSULTATION

- 7.1 The Chief Executive and the Director of Support Services have been consulted on the content 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

Director of Social Work

Date

