ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

GUIDANCE AND WORKBOOK
FOR SOCIAL AND HEALTHCARE STAFF

PACK 1

Foreword

The Adults with Incapacity (Scotland) Act 2000 will be fully implemented by 2003. This will improve the way in which welfare, financial and medical decisions are taken on behalf of adults who cannot act on their own behalf.

I am pleased that the Social Work Services Inspectorate, through the production of these training workbooks, is able to respond to a request from the Association of Directors of Social Work for focussed and in-depth material.

There are a number of packs, each designed to address the different levels of knowledge and skills that different interests will require. There is also a trainers' guide to assist those who intend to run related courses.

I am grateful to all those who helped us to complete this work. Particular thanks goes to the Advisory Group who assisted in developing the product. Thanks must also go to the staff team at Robert Gordon University. Mike Lowit's contribution is especially appreciated.

Chief Social Work Inspector
May 2002

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NB All words in bold are terms which are explained in the glossary

1. Introduction

1.1 The purpose of the pack is to help you become familiar with the Adults with Incapacity (Scotland) Act 2000 which will affect all staff who work with groups of vulnerable adults, particularly in the field of community care. It is intended for a wide range of staff including those working in care homes, day care, home care, supported accommodation, housing support, sheltered housing, and most frontline healthcare staff, especially nurses.

1.2 The materials are set out in such a way as to give you a step by step introduction to this Act[1] and to set your understanding of it in a context relevant to the work that you do. This pack assumes that the person reading it has no previous experience of working with legislation and it puts the law in context by asking you to think about it through exercises and case studies that are relevant to a wide range of work settings.

1.3 It is designed to be used by staff who provide **direct care** in a range of settings from home care to care homes. While this may not be a term that you would use to describe your work, it is used here to refer to this wide range of workers.

1.4 The pack may be used in a variety of ways. You may use it with a trainer who will guide you through the material. This is the preferred way. If you work in a service where staff could undertake the training together, it is envisaged that the manager of your workplace will arrange and deliver the training.

1.5 On the other hand, the pack may be used in less formal small groups or may even be used in study by a person alone.

1.6 There is a trainers' and managers' guide that accompanies the pack. This contains a full discussion of the way in which it may be used and it sets out guidance for trainers and managers in formal group study. The trainers' guide has greater discussion of the exercises that you are asked to do in this pack. This is to enable anyone providing formal training to get the most from the material. It might be helpful to have access to the more detailed discussion of these exercises in the trainers' guide, if you are undertaking the work by distance learning.

[1] Law is the general term for the body of rules enforced by the Government through the Court system. An Act means an Act of Parliament; a piece of written law agreed by Parliament and given Royal Assent (approved by the Queen). Legislation is the term for all laws made by Acts of Parliament. Not all laws are legislation. For example some decisions made by Courts become 'case law' to be used by other Courts in similar situations.

1.7 Whatever way you plan to use the pack, you should take time to discuss or think about all the questions after each case study or exercise and to work through all of the material to have a good working understanding of the act. This will involve you in reading the pack before any training session so that you are familiar with material related to the exercises. You should allow yourself time to read and reflect upon the text in order to get the best out of group discussion.

Managers of care homes, home care managers and managers of day care settings

1.8 All of the material in this pack will be relevant to you. The knowledge audit below should help you to focus upon the sections that you should read closely. You may find it helpful to read the pack in conjunction with Pack 2 in this series which is for all staff who are directly involved in assessment and care management processes.

Staff who work in voluntary and independent sector

1.9 While this pack is designed for local authority employees, much of the material will have strong relevance for staff working in a variety of other settings. These may be health settings such as hospital trusts, clinics or out-patient facilities, voluntary or private agencies managing day care and care home services.

1.10 The Joint Future agenda is moving health and social care agencies into more co-operative planning, management, delivery and resourcing of services. This pack can enhance this process if used to promote joint training initiatives involving both statutory and independent agencies.

Knowledge audit

1.11 Please plan your reading of the text, taking note of those aspects that you think you may be able to read in less detail, either because you are familiar with them already or because your job does not demand that you need to know the information in detail.

1.12 Remember that much of the text involves discussion of new legislation and if you read the introductory sections in less detail, you may not understand crucial aspects of it. So, you are asked to read everything in detail unless you are certain of your understanding of it.

The law in general

1.13 We will take a step by step approach to the law. If you are not familiar with legislation, you may not realise that the title of this Act, the Adults with Incapacity (Scotland) Act 2000, can tell us a number of important things. The term Act lets us know that it is an Act of Parliament - a piece of written law. The reference to Scotland tells us that it is legislation specifically and exclusively for Scotland as opposed to a law which is made for the entire UK. The date, 2000, tells us when it was made an Act and therefore we know it was made by the Scottish Parliament, which came into being on July 1st 1999.

1.14 The rest of the title tells us the subject of the legislation. It is about adults who, we are told in section 1 (6) of the Act, are people over the age of 16 years. The specific group of adults to whom this Act relates is adults with incapacity. We will go on to look in detail at what incapacity means later.

1.15 There remain a few things to clear up in this introduction before we can move on to the Act itself. Firstly, you may have noticed that the Adults with Incapacity (Scotland) Act 2000 is referred to in this pack as 'the Act'. This is because its full title is so long. In other places, where other pieces of legislation are being discussed, it may be referred to as 'the 2000 Act' to differentiate it from other Acts.

1.16 When talking about any adult who may have incapacity, the actual language of the Act is used. In the Act such a person is called 'the adult' or 'an adult'.

1.17 Lastly, if you are not familiar with the law, you may not know that it is set out in numbered sections. The sections may be subdivided into shorter sub-sections. You may have noticed that definition of an adult in the Act has already been referred to, locating it in the sixth sub-section of section 1, i.e. section 1 (6). However, these sub-sections may be further divided into lettered sub-sections. For example, Section 6 (2) (b) is the second sub-section under Section 6 (2). If this was not complicated enough, these sub-sections may have a further sub-division attached to them, identified by roman numerals as in the case of Section 6 (2) (b) (ii). If you had the Act with you, you would be able to find this exact part of the Act in a very short time. A glance would tell you that it relates to certain documents that the Office of the Public Guardian has to make available for public inspection.

An example of sub-divisions of a section:

Section	1
Section (sub-section)	1 (6)
Section (sub-section) (sub-division)	1 (6) (a)
Section (sub-section) (sub-division) (sub-division)	1 (6) (a) ii

1.18 The reason for this system is that it allows us easily to identify where to find any part of the Act. Whenever we are discussing a piece of law this system of reference will be used.

The Act and you

1.19 In this section we will begin to explore the 2000 Act by asking you to think about important issues in relation to yourself. Think carefully about the questions asked in this exercise and try to answer them fully. This is important as it lays a foundation for us to go on and look at the concept of incapacity as it is used in the Act.

1.20 Imagine that you are in advanced old age, and that you are losing some of your mental powers, as many people do.

1.21 What do you think it would be like to find yourself incapable of making the ordinary, everyday decisions that you have been so used to making all your life? Such decisions are often virtually invisible to us because we are so used to making them. We may not even perceive them as things that we would miss, were we no longer to be capable of them. For example you might not consider it a loss were you never to have to take responsibility for paying a heating bill again, or completing a tax return. However, the reality of this loss of capacity to do these things might be very different.

Do Exercise 1 now

1.22 The list is potentially endless. If, however, you came up with making decisions about agreeing to medical treatment on your list, you have already identified an issue of major importance in the Act.

Do Exercise 2 now

1.23 Your responses are likely to include many negative and potentially upsetting emotions such as frustration, fear, anxiety and anger.

Do Exercise 3 now

1.24 The purpose of the exercise was to get you thinking about exactly how difficult it is for us to contemplate losing capacity. It is also intended that this would lead to consideration of the vast number of practical difficulties that having an incapacity brings to any ordinary life. In thinking about these things in relation to yourself, you may become more aware of the importance of people in such difficult circumstances being treated with dignity and respect.

1.25 As we will see later in the text, the Act allows you to grant powers (**powers of attorney**) to other people who exercise them on your behalf when you no longer have the capacity to make such decisions or take such actions as may be necessary to protect your welfare or financial interests. It also allows others to use powers on your behalf when you no longer have the capacity to do so yourself (e.g. under **guardianship** or **intervention orders**).

1.26 This discussion is leading us to the first basic step in our exploration of the Act itself - the definition of incapacity.

2. What is incapacity?

2.1 In considering what incapacity means in the legal sense, we firstly have to think about a basic assumption of the law that, as adults, we are all legally capable of making personal decisions for ourselves and of managing our own affairs. That presumption can be overturned only on evidence of impaired capacity.

2.2 Before we begin to discuss this, we need to distinguish between criminal law and civil law. For many people, law will immediately mean criminal law as it is the most discussed law on the front pages of newspapers. However, the type of law that relates to our capacity to make legally competent decisions is civil law. The easiest way to understand this distinction is to consider that criminal law relates to our duty to abide by our society's codes of behaviour, such as our duty to respect other people's ownership of property by not stealing it.

2.3 Civil law is about our rights in respect of our relationships with each other and the type of contracts and agreements we enter into, e.g. marriage and business. In basic terms, breaking criminal law may result in Criminal Court finding you guilty of an offence and sentencing you. Civil Court is more concerned with what legal rights and entitlements you may have and how they can be upheld even if it is at the expense of another party (for example in the case of a law suit).

2.4 Consider the vast range of legally binding agreements and decisions that you may make during the course of your life. We live in a civil society. In it everyone is completely surrounded by civil law even though it often only becomes apparent when legal problems arise. Whether or not you realise it, many, if not all of the things that occurred on your list of everyday decisions above will have a basis in one aspect of the law or another.

2.5 Other, less everyday events also are governed by civil law. The list of such law may range from everyday things like maintaining your side of a contract of employment by turning up at work on time and abiding by the rules, to bigger decisions like purchasing a house, entering into a mortgage agreement with a money lender, getting married, getting divorced or making a will. All these decisions and agreements are considered to be legal in the eyes of the law because you as an adult are old enough to make them and you have the capacity to make them.

2.6 Capacity in this sense means that you are capable of a good enough understanding of the nature, implications and consequences of your decisions. If something happens to impair your capacity, you may not be able to enter into legally binding contracts. However, whatever impaired your capacity would have to be something that the law would recognise. For example, complaining that your marriage should be nullified because you were so drunk at the time that you could not recall making the decision to get married, would definitely not be something that the law would recognise as incapacity.

Assessing capacity

2.7 Capacity and incapacity are about whether an adult can make certain decisions or not. The Act gives a very general guide to what incapacity is in Section 1 (6).

2.8 The Act gives doctors the principal responsibility in deciding whether an adult is incapable of making particular decisions or taking specific actions. In law there is a general principle that an adult is mentally capable until shown by an approved legal process not to be. The legal process may involve a court, as for **guardianship** or **intervention orders**, with the doctors providing reports on the adult's incapacity to the court. It may involve a simpler certification following processes described in the Act, as for **intromission with funds**, management of funds in establishments, or medical treatment. No formal certificate is required for research under the Act, or for defining when a **power of attorney** that springs into action when the adult becomes incapable is to be put into effect, but in both these cases incapacity is still being determined according to a process approved under the law as laid down in the Act.

2.9 The assumption in law that a person is capable until formally proved otherwise means that we do not usually have to prove our capacity to make decisions, or have it certified. However, the Act makes one exception to this. Where an adult, when capable of doing so, decides to grant a **power of attorney**, the Act requires a solicitor (or a doctor or member of the Faculty of Advocates) to certify that the person appears to be capable of the decision, and is not under undue pressure. It is hoped that this will reduce the likelihood of improper **powers of attorney** being granted, or of later dispute.

2.10 Central to most parts of the Act is the doctor's assessment of whether the adult is capable of certain decisions or actions.

2.11 In assessing capacity doctors should consider the following aspects of decision-making (which are reflected in the definition of incapacity in Section 1 (6) of the Act). The adults have:

- Information to a level appropriate to his or her particular ability to understand;
- Ability to consider choices, reason and reach a decision;
- Ability to receive information and express views sufficiently to communicate a decision;
- Freedom from susceptibility to pressure from others; and
- Consistency in the decision.

2.12 These are in no way absolutes – they are merely factors to be considered. We all make decisions that are based on incomplete information, or we rush to a decision, don't communicate our views clearly, allow ourselves to be swayed by the views of those around us or change our mind about what we decide. Nevertheless, most of us have a customary style. The doctor's difficult task is to assess whether the adult's ability to decide is sufficiently impaired to consider him or her incapable of those decisions.

2.13 The types of people who might be considered to be incapable of some types of decision will include those with dementia, learning disabilities, head injuries, strokes and other neurological conditions, and people with severe mental illness, either chronic (long-lasting) or acute (in short episodes). But a diagnosis of any of these conditions does not in itself bring automatic incapacity. There are plenty of people with dementia or learning disabilities who are capable of all or nearly all decisions. However, if an adult does have one of these conditions, and decisions have to be taken on finances, personal welfare or healthcare, the possibility of some incapacity should at least be considered. If you think the adult may be incapable, or there is some doubt, this should be discussed with your line manager and the adult's doctor.

2.14 You might assume that those with more severe illnesses were more likely to be mentally incapable, and there is some truth in that. But there are many with quite severe illnesses and quite severe impairments who are still fully capable of particular decisions. Tests of severity (such as the Mini Mental State Examination for dementia or IQ for learning disabilities) are not always good measures of incapacity.

2.15 Eventually there may be decision-specific tests or assessment procedures that are tried and tested, but these do not exist at present. For people with an illness, their previous normal ability and style is important. For people with lifelong learning disabilities the requirements of the person's day-to-day living situation will be the nearest we can get. The 'norms' of society as a whole are not helpful here. Background information about the adult's past and present is far more important.

2.16 The Act is founded on the basic principle that capacity is decision-specific. We are not necessarily either capable of all decisions or capable of none. We may be capable of some decisions but not others. The consequence of this is that the doctor as well as others involved have to assess capacity based on the particular type of decision. Can the adult make decisions or take action on particular aspects of finances, on that particular treatment, on

that particular aspect of welfare? The doctor has to make the final assessment of capacity but will be expected to use multi-disciplinary information as part of the overall assessment. So reports from nurses, occupational therapists, clinical psychologists, speech therapists, social workers, care staff and others will sometimes be asked for. And, of course, under the principles of the Act, the doctor must consider the adult's past and present wishes and feelings and, where reasonable and practicable, seek the views of significant others. All involved will have to use their own skills and common sense to help in the assessment.

2.17 There are obviously considerable difficulties at times in assessing capacity. An adult with a progressive or changeable condition may gradually become less capable of certain decisions, or become incapable of more types of decision. It is sometimes very difficult to pinpoint the moment when the person becomes incapable of one particular decision. An adult's ability to make a certain decision may come and go at different times of day, or different circumstances, or depending on the person's mood or tiredness, again making assessment extremely difficult. Nevertheless, the doctor has to take into account all the information available and come to an overall assessment. You may be in a crucial position to contribute to this assessment process.

2.18 The Act says quite a lot about trying to enhance the adult's ability to communicate. Before deciding that the adult is unable to communicate, all sorts of methods must be tried, including where appropriate, interpreters and mechanical means.

2.19 Finally, there is the problem of the subtler aspects of decision-making – judgement and susceptibility to pressure from others – what are sometimes called the executive or 'frontal lobe' aspects of decision-making. It is relatively easy to assess whether someone can count money, or understands what a tablet is supposed to be for, but much more difficult to decide whether he or she is making a 'wise' decision. Similarly, it is very difficult to assess whether someone is subject to undue influence from others because of the illness, yet this 'facility' is an important part of incapacity. The doctor has to come to a judgement having carefully considered the evidence available.

2.20 It is possible to appeal against an assessment of incapacity. The adult, or anyone claiming an interest, can appeal to the Sheriff Court, or the Court of Session if it was the sheriff who accepted the assessment.

2.21 There is one further piece of terminology you will need to know. This is where someone is incapable of a decision or an action and it requires someone else to act or decide on their behalf. Such an action or decision by another is called an intervention.

2.22 This is a crucial point for this Act. If, for whatever reason (mental disorder or inability to communicate), anyone becomes incapable of:

- acting;
- or making decisions;
- or communicating decisions;
- or understanding decisions;
- or retaining memory of decisions;

they lose the legal capacity to make those decisions.

2.23 In other words, any decision they make may not be legally binding. Look back at the list of everyday decisions you drew up earlier; matters relating to money, property and your personal welfare and consent to medical treatment. Consider also more significant matters such as buying or selling a house, getting divorced or making a will would also come into the picture.

2.24 If you were no longer capable of making these decisions in a legally competent way, it would create a legal vacuum in which you would be unable to make any such decisions unless the law had a means of appointing someone to make them for you. In other words, by being identified as having an incapacity in some area of decision making or action taking capabilities, the law is removing the power to make those decisions or take those actions from you and authorising another person to do it on your behalf.

Do Exercise 4 now

3. The general principles of the Act

3.1 Having defined incapacity and set it in the context of the law in general, and this Act in particular, the next step is to look at the principles through which the Act operates. It is a new and important departure in

Scottish Law that certain sorts of laws have a set of general principles upon which they are based. These principles outline how we should go about putting the law into action. Section 82 of the Act, which discusses the limitations of liability for anyone operating under the Act, emphasises the importance of anyone exercising powers under the Act being fully familiar with the general principles and applying them properly to decisions and actions taken. It states that those operating under the Act will not be liable for any breach of any duty of care or owed to the adult if they have:

(a) acted reasonably and in good faith and in accordance with the general principles; or

(b) failed to act and the failure was reasonable and in good faith and in accordance with the general principles.

The general principles are set out in Section 1. These principles are:

3.2 Section 1 (2) 'the person authorising any intervention must be satisfied that it will benefit the adult and that such benefit cannot be reasonably achieved without the intervention'. 'Benefit' may be read to mean any means that would help the adult to do anything that they could reasonably be expected to do were it not for the existence of the incapacity.

3.2.1 Consider, for example, that you had always gone to a particular place in Yorkshire for your summer holidays, and now, because of an accident, you have brain damage such that you are no longer capable of managing the finances and practical arrangements to do so. An intervention could be said to be of benefit to you if it enables you to undertake the holiday by allowing another person to manage your finances, make the travel arrangements and employ a person to manage your care while you are away, provided this could be done without incurring such additional expense that you would not have been likely to agree to it before you lost capacity.

3.3 Section 1 (3) states 'such intervention shall be the least restrictive option in relation to the freedom of the adult, consistent with the purpose of the intervention'.

3.3.1 At a later point in the pack we will look at the specific types of interventions that the law allows. At that point you will see that some orders carry greater powers than others. For example,

Section 47 gives a doctor power to give medical treatment when the adult is not capable of giving consent to it. On the other hand a **guardianship order** (Section 57) can have much wider and long lasting powers relating not just to medical treatment, but to almost any other aspect of the adult's life, be it financial, in relation to property or personal welfare.

3.3.2 The 'least restrictive option' refers to the fact that, however the law is used, whatever is done, it should be in such a way as to restrict the adult no more than is absolutely necessary. If the adult needs only a course of medical treatment, one should not propose a **guardianship order** with more sweeping powers. Part 5 of the Act should be used.

3.3.3 If an order has powers to require an adult to reside in a particular care home or to receive particular home or day care services, the person authorised to make decisions or take actions for the adult (the proxy) will have to be confident that those aspects of the adult's care are being managed by informal arrangements and provided in such a way that it would be in keeping with the principles of the Act. There should be a care plan for the adult to which the proxy subscribes which details:

- The powers of the Act;
- How they are being used to implement the care plan;
- What action is to be taken in the event of the adult's lack of compliance with the care plan; and
- The powers on which key aspects of the care plan are based becoming insufficient or no longer necessary.

3.3.4 There should be close liaison between the carers of the adult and the adult's proxy. Any suggestions as to the authority to deviate from the agreed care plan should be discussed with the proxy. This also relates to the principle that the adult's skills must be maintained (Section 1 (5)), which is referred to below.

3.4 Section 1 (4) states that, in 'determining if an intervention is to be made and if so, which one, account shall be taken of:

a) present, past wishes and feelings of the adult as far as they can be ascertained,

b) views of the nearest relative and primary carer of the adult, in so far as practicable,

c) (i) views of any **welfare attorney or guardian** who has powers relating to the proposed intervention; and

(ii) any person who the sheriff has directed to be consulted and the views of any person appearing to have an interest in the welfare of the adult.'

There are several points to note here. Firstly, we will examine the sheriff's role and then we will look at what **welfare attorneys and guardians** are.

3.5 Section 1 (5) tells us that anybody acting under the Act (with the exception of **intervention orders**) must encourage the adult to do as much as they are capable of in respect of managing their property and finances and making decisions about their personal welfare. For example, as the Code of Practice tells us, the Act cannot insist that the adult proxy help a person with dementia acquire new skills, but it could insist on enabling the adult to utilise existing ones. It could insist on a person authorised to take action or make decisions under the Act encouraging, for example, a younger person with a learning disability to develop whatever capacity they have to manage finances. This encourages the creative interface between law and practice.

3.6 The above principles are set in law so that everything that anyone does under the Act must be done with the principles in mind. This means that, whatever is done under the Act, you will not be doing it in accordance with the law if you are unable to show how you have considered the principles in your actions.

Do Exercise 5 now

4. Roles, powers and duties

4.1 In the next section we will look at the roles and duties of various key people and organisations under the Act. You may need to know this information because you may encounter some of these people or organisations during the course of your work. It is even more likely that you will find yourself working with adults who have some business with them.

Duties and powers of the sheriff

4.2 Before we begin to look at the role that sheriffs and the Courts have to play in the Act, there is another word that requires brief explanation. Before you did Exercise 5, we discussed that an intervention was any legal means of intervening in an adults life by removing powers from him or her and entrusting those powers in another person. In most situations where this takes place, it happens as a result of a Court decision. Such a decision conveying powers from the adult to another person is called an order.

4.3 In thinking about the role of the sheriff and Courts in the process of making orders under the Act, it might be helpful to consider that this legislation is a piece of civil law, as distinct from criminal law. In other words, it is not the sort of law in which Courts establish guilt when an offence has been committed and mete out punishment. It is a law that is concerned with rights and duties. Sheriffs have a role in both Civil and Criminal Courts of law. For example, a sheriff would preside over the trial of a person accused of theft in a Criminal Court or would make decisions about the custody of children following divorce in a Civil Court.

4.4 Although the Act contains authority and processes that may take a person's liberties away from them in certain circumstances by removing powers from them and giving them to another person to manage, these liberties are not removed as punishment for having committed a criminal offence. The reason that liberties may be taken away from an adult under the Act is solely to protect the adult who is considered unable to manage or execute these powers for themselves. In other words, the Act upholds vulnerable adults' rights to protection from abuse and neglect. It also safeguards their interests, even if that sometimes means taking power away from them.

4.5 You will notice we are now suddenly talking about this Act as if its focus is upon restricting people's freedom and forcing interventions upon them. While it may be that some adults experience it in this way, it also needs to be noted that this is an enabling piece of legislation. For example, if you had an incapacity that put you at risk living an independent life in the community, you may experience an intervention as unwelcome. However, it should be enabling for you to become subject of an intervention that gives you support to help you overcome that risk. More importantly, perhaps, it also allows for you to plan how you would wish your affairs (both financial and welfare) handled and the person you

would wish to handle them, in the event that you lose the capacity to take action or make decisions relating to these matters.

Do Exercise 6 now

Powers and duties of the Public Guardian

4.6 The Office of the Public Guardian is a completely new organisation, set up by this Act with specific duties, among which is keeping registers of the various orders and powers that are held in relation to adults with incapacity. The Public Guardian's Office systems and processes for monitoring and tracking the various forms of financial and welfare intervention.

4.7 Their duties go beyond simply keeping a register. They also monitor various orders and powers in relation to finance and property to ensure that they are being carried out properly, legally and in keeping with the principles. The Public Guardian also has the duty and authority to investigate cases where the adult's property or financial affairs appear to be at risk or complaints alleging that financial powers are being used improperly. This could cover a wide range of situations from criminal fraud, where a person is using a financial power to defraud an adult of money, to cases where the person is otherwise going about the exercise of their powers legally, but is not adhering to the principles of the Act.

4.8 The Public Guardian will consult with both the local authority and the Mental Welfare Commission in relation to all investigations undertaken. In lesser cases, the Public Guardian may simply monitor or refer the case to the local authority for close supervision or investigation of welfare issues. In more serious cases it may require a referral to Sheriff Court for action.

Implications for your work

4.9 You might have dealings with the Public Guardian in situations where a person you provide care for is subject to orders under the Act, which the Public Guardian has a duty to monitor. You might have dealings with the Public Guardian if such a person or their relative complains to the Public Guardian about any aspect of that order. If you were concerned about something relating to the adult's property or finances done by anyone else under an order (for example if you felt that an adult's **financial guardian** was abusing their power) you might wish to notify the Public Guardian yourself. You might want to discuss other

situations as well where an adult might need the protection of the Act to help safeguard their finances and property,

Public Guardian contact address

The Office of the Public Guardian
Hadrian House
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Falkirk FK1 1XR

Telephone: 01324 678 300 Fax: 01324 678 301

E-mail: opg@scotcourts.gov.uk Web: http:// www.publicguardian-scotland.gov.uk

The Mental Welfare Commission

4.10 The Mental Welfare Commission for Scotland is an organisation whose duties are set out primarily under the Mental Health (Scotland) Act 1984. It is charged with exercising protective functions in respect of persons with mental disorder who may, by reason of mental disorder, be incapable of adequately protecting their person or interests. It has the duty to make an enquiry into any potential ill-treatment, deficiency in care or treatment, improper detention or possible loss or damage to the property of individuals with mental disorders caused by this disorder. It also has the power to hold formal enquiries where the proceeding shall have the privilege of a court of law and to discharge patients detained under the Mental Health Act.

4.11 The 2000 Act extends this role in relation to the new powers and procedures of the Act itself. Generally, the Commission has a role only in relation to adults whose incapacity is caused by a mental disorder, i.e. it will have few dealings with adults whose incapacities are caused by inability to communicate by virtue of physical disability. The Act also generally focuses on the Commission's role in matters relating to the personal welfare of adults, i.e. it will have fewer dealings in relation to financial and property related matters.

4.12 Key roles of the Commission are to:

- Investigate complaints about anyone authorised with powers under the Act in relation to the personal welfare of adults whose incapacities are caused by mental disorder;

- Visit adults subject to **intervention** or **guardianship orders** and bringing to the attention of the Health Board and/or local authority of the area in which the patient resides, or any other body, matters relating to the personal welfare of the adult which they consider ought to be brought to their attention;

- 'Recall' certain powers. The term 'recall' means that, in certain circumstances, the Commission may take power away from the person authorised to use it. The sort of circumstances in which this may be done are situations where the Act is not being used to benefit the adult or the powers are no longer necessary or are not being used in accordance with the principles of the Act. This power is shared by the sheriff and the local authority

- Consult the Pubic Guardian and local authority where there is a common interest;

- Investigate any circumstances made known to them in which the personal welfare of the adult may be at risk; and

- Investigate complaints concerning the exercise of functions relating to the personal welfare of adults whose incapacity is a consequence of mental disorder where they are not satisfied with any investigation made by a local authority or where the local authority failed to investigate a complaint.

Implications for your work

4.13 You might have dealings with the Commission in situations where an adult is subject to orders under the Act which the Commission has a duty to supervise. In such cases, a member of the Commission will visit the person from time to time and may wish to speak to both managers and direct care staff about the care given to the resident.

4.14 You might have dealings with the Commission if a resident or their relative complains to it about any aspect of that order.

4.15 If you were concerned about something done by anyone else under an order which relates to an adult's welfare and the adult's incapacity is related to their mental disorder, you might wish to bring this to the attention of the Commission yourself.

Mental Welfare Commission contact address:

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The local authority

4.16 Not everyone reading this will be familiar with the term 'local authority'. It is the formal way of referring to your local council. For example, if you live in Edinburgh, your local government services are provided under the auspices of The City of Edinburgh Council. This is your local authority. The reference to the local authority in the 2000 Act relates to the aspects of local authority services that deliver social work and social care services. In many local authorities there are not distinct Social Work Departments. Many have been amalgamated with other services and may have names like the Department of Community Care and Housing.

The duties of the local authority

4.17 The duties of the local authority are varied. You may begin to see a pattern developing in relation to the Public Guardian, Mental Welfare Commission and the local authority. There is a strong expectation in the Act that they will work closely together. They also need to work in tandem with the Court and the sheriff.

4.18 There is considerable overlap between the local authority's remit in respect to property and financial affairs and that of the Public Guardian. There is also an overlap in the local authority's remit in respect of the personal welfare of adults whose incapacity is due to mental disorder, and that of the Mental Welfare Commission. The local authority's responsibility potentially covers all adults with incapacity who are habitually resident in the area of that local authority.

4.19 If you work in a service that has an adult subject to any powers under the Act, you should be able to seek advice from the local authority on your potential role in helping the person authorise to exercise these powers, even if that authority is your employer.

4.20 The local authority has duties to:

- Provide advice and information to those exercising welfare functions under the Act;

- Supervise **guardians** appointed with functions relating to the personal welfare of an adult in the exercise of those functions;

- Investigate complaints in the same way that the Commission does;

- Investigate any circumstances made known to them in which the personal welfare of the adult seems to be at risk;

- Apply for orders under the Act where it finds an adult to be incapable as regards managing financial affairs, property or personal welfare;

- Recall powers in the same way that the Commission does, and

- Consult the Public Guardian and the Mental Welfare Commission on cases or matters relating to the exercise of functions under this Act in which there is or appears to be a common interest.

Implications for your work

4.21 One very important way in which this may relate to your work is that, as a direct care worker, you have contact with people who use care services on a regular basis. You may be one of the people who have the most detailed knowledge of such a person and who have the closest relationship with them. In such cases, you may be the only person to

notice that an adult is no longer capable of managing some aspect of their affairs. If this is so, you are the crucial frontline in the process of obtaining an assessment for the adult in relation to their need for intervention under the Act.

4.22 Otherwise, the duties of the local authority affect you in much the same way that the duties of both the Commission and Public Guardian do. You will need to be aware of whom to contact within your local authority in relation to carrying out specific functions under the Act. You may need to make them aware of aspects of use of the Act or failure to use the Act that give rise to concern. And your service may be subject to their monitoring duties.

The joint roles of the Public Guardian, Mental Welfare Commission and local authority

4.23 These three organisations have a duty under the Act to work closely together to exchange information, particularly in situations where they are charged with investigating cases of misuse of powers. You have a key role to play in notifying the appropriate agency where you have concern of such abuse of power over an adult, or the need to exercise the protective or facilitative functions of the Act in respect of vulnerable adults.

4.24 You may find yourself in a very awkward position when you have concerns about someone abusing their powers under the Act; or when an adult with whom you are working may be in need of the protection of the Act because of the action or lack of action of another individual. It may be difficult to follow up on your concerns without appearing to challenge and possibly alienate a relative. Your concerns might relate to the actions of a colleague or a more senior member of staff. Where possible you should always discuss your concerns with your line manager. Where this is not possible the Public Guardian's Office and the Mental Welfare Commission can always be contacted to discuss matters of concern in relation to individual cases without you necessarily having to divulge specific detailed information.

5. Interventions under the Act

5.1 From this point onward we will pay special attention to the various ways in which the Act can authorise intervention because of incapacity. We will look at the different powers that the Act can confer upon someone to act in place of an adult. This is of particular importance because you are very likely to be working with people who are, will be or should be subject to any of this range of powers. As such you will have to have a good understanding of the ways these powers work. You may have to advise an adult how they could use the legislation to make plans for the future management of their own affairs in the event of their incapacity. Alternatively, you may have to ensure that the Act is used in order to enact key aspects of a care plan and you may find yourself doing things on behalf of a person authorised with such powers under the Act.

5.2 This is an important point to note in the discussion throughout the remainder of the pack. Apart from the section dealing with Part 4 of the Act, the Management of Residents' Finances, most of the powers discussed below will devolve to people like you who provide a service of direct care to adults with incapacity. What this means is that, even though you are not the person who holds the power to make decisions or take action on behalf of the adult, that person may give you authority to implement some of those powers. For example, a person who holds **welfare power of attorney** or is authorised by a **guardianship order** may have authority to require an adult to live in a care home or to attend day care or to receive home care services. This **attorney** or **guardian** will rarely be able to implement every aspect of this care alone. So they can delegate some or all of their functions relating to the power granted under the Act to others who may agree to carry out the **power of attorney** or the order as per their instructions.

5.3 The **attorney** or **guardian** has a duty to ensure that any specified powers which are used are carried out according to the principles of the Act. This implies that they will have to work in close conjunction with you and others involved in service delivery, to ensure the discharge of their duties under the Act. While they can delegate some or all of their functions to be exercised under the Act to one or more persons, they cannot surrender of transfer these powers or functions and they remain responsible for how they are carried out on their behalf.

5.4 Alternatively, you may become aware of an adult in the setting in which you work, who appears to be incapable of managing aspects of

their life. In this case you may have to be instrumental in bringing this to the attention of the people who have the authority to assess the adult for intervention. In other cases, you may wish to discuss with the adult how they could possibly use the Act to help them maintain some degree of control and obtain some assistance in the management of these aspects of their life.

5.5 Given that the Scottish Executive estimate a potential 100,000 adults with incapacity in Scotland at the start of the Act, it is possible that people reading this pack may find themselves being authorised with some of these powers either in their professional or personal lives.

Continuing and welfare powers of attorney

5.6 If it became difficult for you to manage your financial affairs and property, you could give **power of attorney** to another person. This would give them the authority to make decisions about your finances on your behalf, without consulting you, as long as you continued to want them to do this. This provision does not relate to adults with incapacity.

5.7 This is a very different situation from the type of circumstances in which you might find yourself unable to manage your affairs because of incapacity. **Power of attorney** in the above case is something that you give to another person while you remain capable of making the decision that this is what you choose to do. Were you incapable of making, communicating, understanding, or retaining memory of the decision to give **power of attorney**, it would not be legally competent for you to grant that power to the other person. **Power of attorney** for financial matters has existed for many years as a choice available to any person to grant to any other. However, the 2000 Act has extended the powers to take account of welfare matters.

5.8 Since the Act came into force in April 2001, it has been possible to take out new variants of the power described above. The first of these is called **continuing power of attorney**. The word 'continuing' refers to the fact that, while you are only able to grant power to another person while you are capable of exercising informed choice, if you wish this to continue beyond the point where you lose capacity in relation to the powers specified, you must now indicate this. You may even set up the **power of attorney** to begin only when you lose capacity.

5.9 For example, there is evidence that some forms of early-onset dementia run in families. Early-onset dementia is dementia that begins

at an earlier age than most commonly occurring forms of the disease. If you are aware that your mother and your grandmother both developed such a form of dementia and that it may be hereditary, you may worry that you too may develop it as you age.

5.10 In this case, as you approach the age at which it affected your mother and grandmother, you may identify a person you trust and ask them if they would be willing to take on the **power of attorney**. You could set this up to take effect should you become unable to make some or all decisions or take such actions as maybe necessary. Most people seek assistance from a solicitor in preparing a **power of attorney**. In terms of the language of the law, the person granting the power is called 'the granter' and the person authorised with the power is called 'the attorney' or 'proxy'. [2] The Public Guardian's Office can be contacted for information, advice and guidance and access to the relevant forms.

5.11 You may have noticed from the discussion earlier in the text that the Act splits our area of decision making capacity into two distinct categories - property and financial affairs on one hand and personal welfare on the other. So far we have only been discussing the use of powers primarily as they relate to the management of finances and property. The Act also gives provision to people who may foresee a need to have powers in place to manage aspects of personal welfare. The creation of **welfare powers of attorney** enables you to identify a person to be given authority to act in most areas of your personal welfare which you specify, with few exceptions.

5.12 **Powers of attorney** can be continuing (financial) powers, welfare powers and powers that cover both financial and welfare authority in Scotland today. A large number of the people who are subject to these powers will be living in care homes or receiving services in their own homes. Some may have been placed in care by **welfare attorneys** who exercise authority to make decisions such as where the adult will live. If you are already aware of an adult who is subject to **powers of attorney** in your work environment you may be aware of the need to work very closely with their proxy, because it is the proxy who conveys the decisions about that person's care. In such cases, how the welfare powers are to be exercised should be detailed in the adult's care plan.

[2] Proxy is the general term for anyone, not just an Attorney, who exercises power on another's behalf. The term is most commonly known in terms of voting by proxy, i.e. where you entrust your vote to another person to exercise in your absence in an election.

5.13 The significance of this is that the principles of the Act come into play in regard of everything you do for and with such an adult. The proxy of an adult who has been granted both **continuing and welfare powers of attorney** may have more or less absolute control over decisions that that person would ordinarily make. The decisions however, will still have to accommodate the least restrictive option, the views of the adult and be implemented in such a way as to make maximum use of the adult's skills. They will also have to be of benefit to the adult.

5.14 It has to be remembered that capacity is task specific and that powers granted under **continuing and welfare powers of attorney** can only be exercised when the adult loses capacity in relation to each specific power granted.

5.15 In this case, if a **welfare guardianship order** or **welfare power of attorney** stipulated that the proxy had the right to decide what clothes the adult wears each day, it should be clear to you as the effective carer how you are expected to carry out this function. The proxy, in agreeing with you how you or other staff are to carry out this task, should be mindful of the principles of the Act . As all powers exercised under the Act must be in keeping with the principles of the Act on which the legislation is based, it often will be the case that the ways in which the powers and functions of the **guardian** are to be carried out will be detailed in the adult's care plan. Should the Public Guardian have cause to monitor or investigate the use of any **continuing power of attorney**, or the local authority or Mental Welfare Commission have cause to investigate any **welfare power of attorney**, they might demand proof from the proxy that he or she was satisfied that the care into which the adult was placed was satisfactory and that all powers exercised complied with the principles of the Act.

Do Exercise 7 now

Intromission with funds

5.16 If you hold a bank account, savings account or building society account you will know that you need your signature or, at least, your pin-number to access it. If you were to become incapable of managing your finances, it may be difficult for anyone else to gain access to the funds so that they could be spent on your behalf, according to your needs.

5.17 **Intromission**, which the dictionary defines as 'to gain entry to…' is a process by which an authorised person may gain access to the account of an adult with incapacity. In doing this, the principles of the Act must apply. For example, you could only intromit with an adult's funds to spend them to the adult's benefit.

5.18 The Act does not allow any officer i.e. employee of the local authority to be authorised with this power in respect of adults they are dealing with in relation to their employment. Therefore, unless you work for a private or voluntary agency contracted to undertake services for the local authority, you will not be in a position to be authorised with powers of **intromission**. However, you may have to work closely with a relative or informal carer of an adult who does have such authority. In this case you will have to have regard to the principles of the Act in any aspect of the work you do with the adult relating to powers of **intromission** eg in assisting the adult with budgeting of intromitted money.

5.19 In the past, many people who appeared to lack capacity to do so themselves or needed assistance in doing so, have had their finances managed, without valid written informed consent. However, this may no longer be adequate or possible in many cases, now that we have a new law which specifically addresses the legal and administrative processes for dealing with the finances of adults who lack the capacity to do so themselves. If you have been a party to managing a person's money because of concerns about their ability to manage and you did so without any formal legal authority to do so, you should now check with your line manager if this should continue. Your line manager may have to obtain a formal assessment of the adult's capacity in order to verify whether it is legal for you to operate informally without the protection of the law. Every local authority should have procedures for handling the funds on behalf of any clients with specific reference to such practices when they involve an adult who lacks the capacity to do so for themselves.

5.20 The reference to informal arrangements includes any arrangements which are carried out without the clear, valid consent of the adults concerned such as when the consent is felt to be implicit or is assumed, or is carried out on the instructions of a third party not authorised under the Act. Distinctions should be made between adults requiring assistance in managing their finances and those lacking the capacity to agree to actions taken on their behalf. There will be situations where an adult requires and receives assistance and this overcomes the difficulties they are experiencing and arguably with such assistance would be able to give informed consent to these informal

arrangements. Anyone lacking the capacity to agree to any 'informal' arrangements, however, should not have these imposed upon them.

5.21 The above reference is mentioned to indicate that the law has changed and there are new ways of managing the funds of adults with incapacity which must be taken into account. However honest your intentions, you will be doing something without legal authority if you now withdraw money from the account of an adult who lacks the capacity to consent to this. If you are unsure of the legality of any aspect of handling money on behalf of an adult or you are unsure about the adult's capacity to consent to current arrangements, seek advice from your line manager or your employing agency's legal advisor. The Public Guardian's Office is also a good source of information, advice and guidance material as well as the relevant forms to be used to intromit with the funds of an adult with incapacity.

5.22 It is possible that, if you are a direct care worker, you may be aware of an adult who is increasingly unable to manage their affairs, in which case you have a duty to draw this to the attention of the care manager or your line manager for action.

Management of residents' finances

5.23 Part 4 of Act, the Management of Residents' Finances, is a part of the Act that will have more direct relevance to you if you are a manager of a care home than if you are a direct care worker. However, there are certain aspects of the management of finances that every worker in a care home needs to know. If your work doesn't bring you into contact with any residential setting, respite care or otherwise, you may move on to the next section.

5.24 Part 4 of the Act addresses the issue of adults who are unable to manage their own moveable property and financial affairs because of incapacity, where they live in a broad range of residential settings - called 'authorised establishments'. The things that are covered by moveable property and financial affairs are outlined below.

5.25 Being an authorised establishment is different from being registered to operate as a care home. The types of establishments that may become authorised establishments are NHS hospitals, the State hospital, care homes and independent sector hospitals.

5.26 All of these establishments (except NHS hospitals and the State hospital) must be registered in order to operate regardless of whether or not they become authorised to manage residents' finances under the Act. For example, since the implementation of the Regulation of Care (Scotland) Act 2001, care homes have to register with the Scottish Commission for the Regulation of Care (The Care Commission). The requirements relating to the management of funds under Part 4 of the Act will be inspected as part of their first post 1 April 2003 inspection. Between 1 April 2003 and the time of the inspection taking place and their authorisation or opt out is confirmed, services will have to operate their systems for managing and monitoring service users' financial affairs on the basis of the requirements that the Care Commission will place upon them in respect of all service users. Any prospective care home service applying to become a registered service after 1 April 2003 will have authorisation for managing residents' finances under the Act dealt with by the Care Commission as part of the application. The Care Commission has a responsibility to check the quality and standard of care given by homes registered under it.

5.27 Some facilities may seek authorisation to operate Part 4 arrangements as a limited registration service. This is a facility or service which provides accommodation and is not a care service i.e. is not otherwise required to register with the Care Commission. Such a service could be a sheltered or intensively supported housing project where the landlord is also the support adviser.

5.28 NHS hospitals or the State hospital must become authorised establishments and they must operate Part 4 of the Act when it is implemented. These hospitals must manage the finances of patients who reside in them and who are incapable of managing their own affairs if no one has the authority to do so. Care homes may opt out of the right to become an authorised establishment. When an establishment has been approved as an authorised establishment, its performance will be monitored by its 'supervisory body'. The supervisory body is the Care Commission, in relation to care homes, independent hospitals and limited registration services and the relevant NHS Board in relation to NHS hospitals and the State hospital.

5.29 There are two Codes of Practice which provide guidance on best practice in the operation of Part 4 - one for Managers of Authorised Establishments and one for Supervisory Bodies.

5.30 Where an establishment is authorised by its supervisory body, provided there are no other arrangements such as **power of attorney**, **financial intervention** or **guardianship order** dealing with the matters giving rise to concern, and no-one else is available or willing to manage the resident's finances, the manager may ask a doctor to examine the adult. Before the manager of an establishment decides on this course of action they should first discuss the situation with the resident, relatives, carers, and the adult's care manager. They have to advise the adult and their nearest relative of their intention of securing a medical examination of the person's capacity to manage their finances. This notice to the adult can be dispensed with if it is felt by two medical practitioners that this would pose a serious risk to their health. If the doctor agrees that the person lacks the capacity to safeguard their own financial interests, they will issue a certificate which gives authority to the manager to manage the adult's affairs. Once a medical certificate, which is good for 3 years unless circumstances change to make this shorter, is given, a copy is sent to the resident and the supervisory body. They must notify the resident's nearest relative and the managers must notify the resident and the supervisory body that they intend to manage the resident's affairs. All such interventions should be within the planned context of continuing assessment and care management and all key professionals involved should address this issue collectively before deciding that this is the appropriate course of action.

5.31 In the introduction to the powers under the Act, the discussion of devolved powers stated that 'apart from the section dealing with Part 4 of the Act, the management of residents' finances, all of the powers discussed below devolve to people like you, providing a service of direct care to adults with incapacity'. This is because the authority to manage finances of residents is held by the manager of the establishment. But while the authority to manage an adult's funds remains with the manager of the establishment, key workers and other staff will play an important role due to their knowledge of the adult and their circumstances in advising as to how the adult's funds could be put to best use in enhancing their welfare. This is not a power held by a proxy external to the establishment as is most likely to be the case, for example, in **powers of attorney** and **guardianship orders**. You may be answerable to the manager of your workplace, but this is no different to your accountability in other aspects of your work.

5.32 The types of affairs that can be managed are:

- 'Claiming, receiving, holding and spending any pension, benefit allowance' or other payment other than under the Social Security Contributions and Benefits Act 1992 (C.4). This Act relates to income related benefits;

- 'Claiming, receiving, holding and spending any money to which the resident is entitled' (Section 39 (1) (b)),

- 'Holding any moveable property to which the resident is entitled' (Section 39 (1) (c)), and

- 'Disposing of such property' (Section 39 (1) (d)).

It should be noted that Part 4 does not replace existing arrangements eg Department of Work and Pensions appointeeships, where social security benefits can be paid direct to a nominee.

Do Exercise 8 now

Medical treatment and research

5.33 When we first began to discuss capacity and incapacity, the issue of consent to medical treatment was briefly mentioned. This is an important aspect of the Act that you will need to understand as there may be adults receiving services in your work setting who are incapable of giving consent in this regard. You may also be working with adults subject to the Act where a proxy has been given powers in relation to these matters.

5.34 If you have ever had a surgical operation requiring general anaesthetic, you should have been asked to sign a consent form. This is because the doctor responsible for administering it must verify that you are in agreement with what is being proposed. On the other hand, while you are awake, for some procedures such as minor dental treatment formal written consent is not seen as necessary.

5.35 To force treatment upon a person, for example by giving them an injection when they are objecting, could be construed as criminal assault. So it is important to know exactly what consent means in this set of circumstances.

5.36 Consent means that the patient has a good enough understanding of the nature and purpose of the treatment being offered and that they agree to it without being coerced . By good enough, it is meant that the person has what could be thought of as the average, non-medically trained person's understanding of the likely effects of the treatment and any significant side effects or risks. The person must also understand the likely effects of not having the proposed treatment.

5.37 But there are complications. The biggest of these is where a person is already unconscious, for example, after a car crash. They would not be capable of showing any understanding of treatment and they would be incapable of offering agreement to it. A doctor would be unable to obtain consent and would have to rely upon the common law assumption that most people would want treatment, were they unconscious after an accident. While courts would accept that this assumption, which lets the Accident and Emergency team get on with their job, people might not wish to receive all forms of treatment even in life-saving circumstances. Decisions about resuscitation of people whose quality of life will be very poor is one. This, however, is a sensitive area involving both professional judgements and value judgements and it is best if these matters are resolved where possible outwith Accident and Emergency units. It is sometimes the case that relatives and doctors are in dispute over how far to go to preserve the life of a person who has had considerable suffering.

5.38 Sections 47 to 50 of the Act set out matters relating to consent to medical treatment in relation to incapacity. Before the creation of the Act, the area of law surrounding treatment suffered from a lack of clarity. For example, is someone who has profound learning disabilities and has very limited ability to communicate, to be thought of in the same light as the person who is unconscious after an accident? To a certain extent they do share common features in their lack of capacity to consent, even if the person who has suffered an accident may only have a lack of capacity for the duration of unconsciousness.

5.39 However, if there is an assumption that most people would wish to receive treatment following an accident, the issue is more complicated for the person with a learning disability. It is this area of complication that the Act seeks to clarify.

5.40 The Act (Section 47 (1) (a)) states that, where a medical practitioner 'is of the opinion that the adult is incapable in relation to a

decision about the medical treatment in question' they may issue a certificate authorising treatment for a specified healthcare problem or set of problems about which the adult cannot reach a decision. It is possible that care plans (also known as treatment plans) will be drawn up, in keeping with the principles of the Act. This should address some of the potential difficulties with multiple certificates relating to the multiple health problems. It is important to note that the certification is in relation to a particular course of treatment. It may be that an adult has several certificated treatments running side by side, but no certificate can provide blanket cover to treat for all ailments and no certificate can run open-endedly. Certificates are not valid longer than a year and are approved for periods up to this point as the medical practitioner primarily responsible for the medical treatment of the adult considers appropriate. The certificate can be revoked if the adult's capacity improves.

5.41 It is also important to consider partial capacity. It may be that an adult has a good enough understanding of the nature and purpose of some treatments for some conditions but lacks the capacity to consent to a more complicated area of treatment. Such a situation is outlined in Exercise 9.

5.42 Before we look at it, there are some issues to clarify. The Act does not generally permit certification to allow treatment that involves force, for example, in the case of an adult who is incapable of consenting to a course of injections and fears needles so much that he would have to be held down and forcibly injected. Section 47 (3) allows the medical practitioner who is authorising the treatment, i.e. the doctor who signs the certificate, to give approval to any other person to carry out the treatment. This is why this part of the Act is of importance to you. If a doctor has issued a certificate for treatment of an adult in your work, you may become authorised to give that treatment or be involved in it in some way.

5.43 That must not mean that you are asked to do tasks for which you are not qualified, such as giving injections if you are not a nurse. However, it may mean that you are asked to give medication to an adult who is incapable of understanding the purpose of the treatment.

Do Exercise 9 now

Intervention and guardianship orders

5.44 If you think back to the discussion of **powers of attorney**, you may recall that it was suggested that the combined exercise of **continuing and welfare powers** offers potentially a more or less total control over the adult's range of decision making. But what should happen to people who have either had incapacity all their adult lives, or were unable to make the provision of granting **power of attorney**?

5.45 In such situations, where more than the limited powers of **intromission with funds**, management of finances or authorisation for medical treatment are required, the Act makes provision for both **intervention orders** and **guardianship orders**. While **intervention orders** (Section 53) appear before **guardianship orders** (Section 57) in the Act, we will discuss **guardianship** first.

5.46 **Guardianship** has existed as a power under the Mental Health (Scotland) Act 1984 (we will call such orders 1984 **guardianship**). There were over 300 such orders in force in Scotland at the time when this part of the 2000 Act (Part 6) was implemented (April 2002). As a number of the adults subject to 1984 **guardianship** received home or day care or lived in care homes, it is possible that you have experience of such orders.

1984 Act guardianship

5.47 The use of these orders was restricted to people with mental disorders, so it could not be used to meet the needs of adults whose incapacities are caused only by an inability to communicate because of physical disability. The orders were restricted to three powers:

- To require the adult to reside at places specified by the proxy;
- To require the adult to attend places for education, training, treatment and other purposes; and,
- To require access to the adult at reasonable times.

These three powers were granted in all cases regardless of whether all three powers were needed. This is not how the 2000 Act operates and any powers sought have to relate to specific actions or decisions for which the adult lacks capacity, and they must be the least restrictive

powers necessary to achieve the stated outcomes which must be of benefit to the adult.

2000 Act guardianship

5.48 The 2000 Act extended **guardianship orders** to adults with incapacity as a result of physical disabilities. It also widened the powers available under such orders to a potential range as wide as those available to proxies under both **continuing and welfare powers of attorney**. Proxies in **powers of attorney** are called **attorneys** as proxies in **guardianship orders** are called **guardians**. **Guardianship** is now available in respect of financial as well a welfare matters, the former effectively being substituted for what was possible previously under legislation relating to Curator Bonis petitions.

5.49 Anyone may apply to Sheriff Court asking a sheriff to grant a **guardianship order**. If no one else has done so, and it appears to the local authority that an adult has needs that might be resolved by a **guardianship order**, then the local authority has a duty to apply for one. This is a new and important duty which the Act now places on local authorities and all local authority staff should be aware of this.

5.50 In the order, the person applying outlines the particular powers that they wish to be included in the order. These might range from control of aspects relating to the adult's financial affairs and property, to matters of personal welfare such as where the adult will live, how they will spend their time, aspects of consent to medical treatment, what type of services the adult will receive and so on. The powers asked for in the application are drawn from what has been refereed to as a menu of powers. If you consider the range of rights and powers that any adult automatically has access to and exercises, this is the menu from which the applicant selects the specific powers requested of the Court in the application. If the sheriff agrees, the powers are then included in the order.

5.51 The law requires 2 medical reports and 1 report from the local authority to accompany an application for **guardianship**, outlining an assessment of incapacity and the need for specific powers in relation to the principles. Where the incapacity is caused by mental disorder and the application relates to the adult's personal welfare, the report must be written by a Mental Health Officer (MHO), who is a social worker with specialist training and experience in relation to mental disorder and mental health law. The reports must be based on recent interviews of the adult and contain an opinion as to whether the proposed order is

appropriate and whether the person nominated to be **guardian** is suitable. Where incapacity is caused only by physical disability, the report is written by the Chief Social Work Officer of the local authority, or a person instructed to write it on their behalf.

5.52 The sheriff must approve the proposed **guardian**. As long as this process is followed, anyone may become a **guardian**. It could be that the applicant proposes themselves as the **guardian**, or in relation to personal welfare of the adult, the local authority itself may be the **guardian**, in which case it has to name a worker to act as the **guardian** on its behalf. The local authority cannot act as **guardian** in relation to **financial guardianship** orders.

5.53 Following the sheriff's approval of an order, the **guardian** then has authority to exercise these powers on behalf of the adult. The sheriff will specify how long the order is to last, but this will ordinarily be a period of 3 years followed by 5 years if the order is renewed.

Do Exercise 10 now

Intervention orders

5.54 There may be situations in which an adult needs one decision to be made on a number of discrete decisions to be made, or actions taken, for which they lack the capacity. It may be in such situations that the broad scope of powers available under **guardianship** would appear an overly restrictive means of gaining authority for these matters. So application for an **intervention order** is a means of asking the Court to grant such power when ongoing intervention and supervision on a compulsory basis are not required.

5.55 The following are examples of situations that might become subjects of an **intervention order**:

- The sale or repair of a house;
- The defence of a divorce action;
- A single intervention, such as cleaning up someone's house.

It should go without saying that none of these could be done under **intervention orders** unless the adult lacked the capacity to achieve them him or herself.

5.56 The proxy in **intervention orders** is called the **intervenor**. The process of applying is very similar to that for **guardianship**, and once approved, it authorises the **intervenor** to carry out the action or decision contained in the order. The law gives no time limit on an **intervention order** because it will run as long as the action or decision takes to complete.

The relevance for direct care staff

5.57 You may already know of people subject to **guardianship orders**. It is likely that, wherever you work with vulnerable adults, you will come across **guardianship** in its new form. It is also possible that some people in their homes, in day care or care homes will become subject to **intervention orders** for one issue or another in their lives.

5.58 As with other interventions under the Act, it is suggested that you will not be asked to make formal assessments about people who may require either of these orders. However, as direct care staff, you may need to recognise when someone may need such an assessment and what to do about it. Your views should be sought by those who do the formal assessments and reports as part of the application.

5.59 The easiest rule of thumb is that, if you think a person in your work environment may be in need of such an order, you should contact their care manager, social worker or the local social work services.

5.60 The other reason why you should be aware of such orders is because you may become a part of the process of putting the powers of an order into action. For example, if an adult is subject to a **guardianship order** requiring them to stay in a day care setting or residential setting in which you work, you may need to ensure that they do not leave. By now you should have developed an understanding that the authority to ensure that the adult does not leave lies with the proxy. How this power is put in place and the role staff may have in ensuring this should be detailed in the adult's care plan.

What to do when an adult may be in need of an order because of incapacity

5.61 The Act imposes a duty on local authorities to apply for orders if they are aware an adult is in need of such an order in situations where no one else has made or is making an application. You may be the first person to notice such a situation as a direct care worker. If this is so,

discuss your concerns with your line manager or speak to the adult's care manager who will notify the MHO or Chief Social Work Officer. The adult's GP also should be involved in such discussions.

6. Other issues

6.1 There are a few important issues that we should discuss briefly to ensure you have sufficient understanding of this Act.

6.2 Section 82 sets out that no one authorised under an intervention, including managers of establishments, will be liable for prosecution in Court for any breach in duty of care 'as long as they have acted reasonably and in good faith and in accordance with the principles' of the Act. Neither shall they be liable for failure to act as long as the failure to act was reasonably in good faith and in keeping with the principles. This means that the manager of the establishment carries a heavy responsibility to ensure that all actions done by staff, in relation to the Act are done in good faith and in accordance with the principles.

6.3 Section 83 makes it a criminal offence for any person exercising powers under the Act in relation to the personal welfare of an adult, to ill-treat or wilfully neglect that adult. The seriousness of this offence is reflected in the fact that, in the most serious cases, a person found guilty of such an offence shall be liable to up to two years imprisonment. If you ever find yourself in a position where you are concerned that someone is abusing their powers under the Act, you should discuss this with your line manager.

6.4 The Act requires the Scottish Executive to prepare documents called Codes of Practice for circulation to people and agencies charged with responsibility under the Act. They are listed along with other relevant guidance documents in the Annexes.

6.5 These codes give a more detailed explanation of every relevant aspect of the Act in a given context. It will be important for any community care settings where a service is given to adults with incapacity to have the Code for Managers of Authorised Establishments. If you are employed by the local authority, it would also be important to have the Code for Local Authorities Exercising Functions under the Act. It is unlikely that you would ever read the full documents.

6.6 The Codes of Practice are not law in themselves. The Act does not impose a legal duty to comply with the Codes. However, the Codes

are statutory documents and there may be legal consequences arising from failure to observe the terms of the Codes. For example, someone might raise a legal action for negligence relying on the Codes to argue that action taken under the Act by a local authority did not follow best practice.

7. EXERCISES

Exercise 1

Take a moment to reflect on the wide range of choices you exercise and the large number of decisions that you make in your daily life.

To get you started, here are a few examples:

- how you spend your money,
- how you access your bank account,
- how you choose the clothes you wear,
- how you protect yourself by locking the front door at night and going out appropriately dressed,
- what food to buy, cook and eat.

Write your list.

Exercise 2

Having come up with a list of the sort of everyday, unremarkable decisions that you make, consider the following:

What it would be like to have someone else decide these things for you?

If you were not able to do it for yourself, someone else would have to do it for you to prevent you coming to harm or being at some unacceptable risk. Take a moment to reflect upon what it might feel like to have another person making such personal decisions on your behalf. Again, write down your responses.

Exercise 3

Now consider who you would wish to have made those decisions for you Who would you trust to appoint to this position, if you had the power to do so. Consider what difficulties you meet in trying to think of a person who you would be prepared to trust with such a responsibility.

If, as is the case with many people who find themselves in this situation, you were unable to choose any person you now know to act on your behalf, what sort of person would you wish to have make these sort of everyday, personal decisions for you? How would you wish them to go about the task? Are there any special instructions you would wish them to know about? Write your responses.

Exercise 4

Incapacity case studies

It is important to notice the word ‘extent’. This is to emphasise something that was raised earlier; it would be rare that a person was judged to be totally incapable of being able to make any decision in their life. Most often, people will be considered to have partial capacity. That means that they may be only capable of managing matters of welfare, property, or finance up to a certain point or in certain areas of their lives. For example, a person might have the ability to decide about matters of welfare such as the clothes they wear, the friends they choose, the food they eat but not other issues like where they will live and how they should spend portions of their time.

Consider the following situations and discuss the extent to which incapacity is demonstrated. Your answer must be justifiable in reference to the Act. The specific question being asked is: 'Were you involved in practice with these adults, would you consider incapacity present to the extent that you would refer to an MHO?'

Case example A

Duncan is 20 years old. Both his parents were killed and he suffered serious brain damage in a car crash when he was 8. Being an only child, he was left most of his parents’ £750,000 estate, which has been kept in a trust fund for him, to be released to his control on his 21st birthday.

Duncan has moderately restricted capacity for speech, but can read and write simple words. His numeric skills are also limited but he can budget with his weekly allowance of £30 spending money. He lives in a group living setting for adults with learning disabilities and he manages fairly well to care for himself, with staff support. However, he resents the constant intervention in his life and has plans for independence.

It is his intention to buy a house of his own where he could live alone or invite friends to stay.

Case example B

Rachel is a 39 year old married mother of two children, aged 11 and 15. She works as a care worker in a local private nursing home. Her husband is a schoolteacher. They own their three-bedroom home.

Rachel has a ten-year long history of bi-polar affective disorder (sometimes called manic depression). This illness is characterised by dramatic mood swings and great elation, disinhibition, wildly unrealistic ideas which she can carry into action and spending sprees in its manic phases. Usually well controlled by medication, Rachel has recently become unwell. Before this could be detected, she had already spent most of the couple's modest savings from their joint bank account on a deposit for a sports car. She is planning to take out a second mortgage on a holiday home in Tunisia where she plans to live and write screenplays for Hollywood.

Now consider the extent to which Rachel has incapacity and the extent to which it may justify intervention.

Case example C

Dorothy is a 40-year-old businesswoman who has been quadriplegic since a riding accident last year. Her only limited means of communication is by moving her eyes and only her partner can interpret this to the outside world. Her participation in some crucial business transactions is becoming urgently required.

Now consider the extent to which Dorothy has incapacity and the extent to which it may justify intervention.

Discussion

From the slight information available, it is difficult to accurately ascertain the extent of disability in the first two cases. Much of the group discussion of the exercises will highlight differences of opinion because of the varying experience and different perception of those in the group. This should lead to a healthy debate and a more thorough explanation of the issues.

One way of examining is to consider first of all if there is evidence of mental disorder or physical disability (which there is in all three cases).

Then you need to relate the disorder/disability to an inability to act or make, communicate or understand decisions or to retain memory of decisions. Finally, there is a need to evaluate the risk imposed by that disorder/disability. It is the extent to which incapacity imposes risk that justifies intervention.

In Duncan's case there is a mental disorder, which is a learning disability, and it might affect his capacity to understand the extent to which he can manage without support. From this, were there to be no intervention, he might be at risk of exploitation and loss of this estate if he followed through on his plans. This latter assumption is arguable and dependent upon Duncan's refusal to work with services.

In Rachel's case, she has a mental disorder, having a diagnosis of bi-polar affective disorder. It affects her ability to exercise caution as she would when not ill. This poses risks of loss of savings, home, job and family, it might be the clearest cut of the scenarios presented here. This might be the easiest case in which to determine the need for an expert assessment of capacity.

Could you see that Dorothy has no convincing evidence of incapacity because, through her partner, there did exist a human means of communicating, providing all those involved were convinced that he was able to assist her in communicating, accurately, her wishes. This, of course, assumes that she did not have a brain injury which caused her mental disorder which affected the content of her communication and her capacity to make decisions or to take actions required.

Before moving on to discuss other aspects of the Act, a final slightly more detailed case study is offered of acknowledgement that this pack does not address the complexity of physical disability, incapacity and communication fully elsewhere.

Case example D

Jim, a 67 year old retired teacher, has had Parkinson's disease for about 8 years. He has had medication for the condition but from time to time this has to be changed because of the side effects of the drugs. Currently Jim is off the drugs and has all the classic symptoms of the condition.

He has difficulty moving about, partly due to being unable to initiate movement but then once started he takes small steps and gets faster

and faster, often tripping and falling. He has difficulty with speech and his voice is so quiet and the words so indistinct that people find it hard to know what he is saying. Writing things down is not possible because his dexterity is also affected and his writing is very small and tails off into a scribble after a couple of words.

Because of the effects of the Parkinson's disease Jim has no facial expression, making it difficult to tell what his mood is. He has experienced anxiety attacks, which the doctor attributed to the effects of the drugs. He has also been depressed.

Jim's wife Mary has looked after him throughout his illness. They have had little contact with social services requiring only to arrange some bathing equipment to make life easier for Jim and Mary assisting him. Otherwise they are a private couple who have managed their own affairs. However, Mary has now suffered a massive stroke and is in intensive care. Because of his physical needs the GP arranged for an emergency admission for Jim.

It is not clear whether Mary will recover and discussions are underway about Jim's future. Jim seems to be saying that he wants to go home but because of his communication difficulties the social worker is finding it difficult to work out whether Jim understands the situation and his care needs.

Again you are asked to consider the following situations and discuss the extent to which incapacity is demonstrated, taking notes for your answer, which must be justifiable in reference to the Act. Please remember the specific question you are asked is: 'Were you involved in practice with these adults, would you consider incapacity present to the extent that you would refer to an MHO?' If so, in what areas would you suggest to the MHO that the adult may be lacking capacity and which powers under the Act would have to be sought?

Discussion

This study is more complex than the preceding one relating to Dorothy. Setting aside the possibility that Dorothy may have a mental disorder as well as a physical disability, Dorothy simply serves to underline that if a method of communication exists, incapacity due solely to an inability to communicate does not. In Jim’s case there should be more debate about the extent to which his incoherent whispers can be understood enough to constitute a means of communication and the extent to which

every other avenue of communication has been exhausted. As with other cases, the words on these pages do not offer enough living detail to answer these questions. However, they do open up the debate.

Assisted communication

Assisted communication may be broken into different areas. There are two groupings in aids to communication - technological and human. The human aids rely on interpretation while the technological means rely on prosthetic, mechanical and electronic devices.

To facilitate any communication there are basic things that must be checked - that teeth are in, glasses are on, hearing aids are in, and that any of these devices needed are fitted.

Low technological means include such examples as personal books. High technological devices include lightwriters, touch talkers, delta talkers and computers. There are issues that have to be considered in communication with these devices: go at the pace of the user, use single subject questions and give time to complete sentences.

When the Act refers to human means of facilitating communication it means using, for example, interpreters of sign languages (such as British Sign Language and Makaton) and lip speakers. While language may be an issue, clearly not speaking the mainstream language alone would never constitute an incapacity. It may complicate assisted communication, for example, when a person is using a computer and can only speak another language.

Particular care should be taken in using family members or friends as interpreters as their relationship with the adult may hinder their ability to assist in this way. This is not to say, however, that their own views should be sought in keeping with the principles of the Act.

Giving the interpreter appropriate information in advance is important. Even a skilled interpreter may have to research the best way to communicate the complexities of legal language. Use of plain language is important, especially in the area of incapacity and the law. You should always speak to the individual not the interpreter.

Only if all of the above has been exhausted, and Jim's whispers still remain incoherent to everybody, should he be considered to be incapable in regard of communicating his wishes for care.

Exercise 5

Imagine that you were subject to powers under the Act that authorised another person to intervene on your behalf because of a condition such as dementia. In what ways might the principles of the Act give you security that the decisions made on your behalf reflected your wishes, needs and interests?

Please write down your response. In doing so, consider each principle in turn.

Discussion of exercise 5

It is very difficult to anticipate the sort of responses that you have made to the questions asked above, because they will all be so individual and personal. While this pack was being piloted some participants suggested that it would be 'soul-destroying' to have someone else make personal decisions for you as the nature of personal decisions about things like how you spend your money, what you wear and what and when to eat are very intimate. Even the person closest to you will get it at least partially wrong.

Participants on the pilot training suggested things like:

'My husband would never buy the type of skin lotion that my skin needs'.

'I love music. It is very important in my life. No one would ever get my taste in music right to my satisfaction'.

'Given that fashion changes, how could anyone ever know the sort of clothes and the type of hair style that I feel reflects who I am?'

These are only some samples of the type of comment that suggests that who you are, what your true likes and interests are and what choices you would make yourself, may well get lost where someone else has to make these decisions on your behalf. In the face of this risk, the principles are all that you would have to guide the person exercising powers on your behalf. They are a broad set of guidance, but if they are used with great care, they may reduce this risk.

Exercise 6

If you really objected to someone else interfering in your life by imposing decisions on you - decisions about where you will live, how your money will be spent, how you will spend your time and so on - would you prefer to be at risk of neglect or exploitation or would you wish your right to have protection forced upon you by an order of the Courts?

For example, if you suffered from dementia, were so confused that you forgot to switch off your cooker or shut your front door, and if you tended to get lost every time you went out and generally could not care for yourself, would you wish to be protected from these risks or would you want to be left alone in your confused state?

Take a minute to reflect upon this and note your answer.

Discussion of exercise 6

Your answer is likely to be a very complicated one, marked by considerable ambivalence. In the first instance, were you incapable of making decisions in respect of your finances and welfare, you would probably not recognise it, your inability to recognise it being part of your incapacity. While this is not always the case, some people who have a mental disorder which affects them in ways serious enough for them to be considered incapable in terms of the Act would probably lack this insight. In such a case, you would not be likely to want anyone interfering in your life because you would not understand what the problem is.

On the other hand, if you look now at what you would want done should you ever become at risk because of your incapacity, you might say that you should have a right to be protected even if that meant someone taking control of aspects of your life against your wishes. Take note of this discussion because we will return to it when we discuss **powers of attorney**.

The Act introduces a number of safeguards to ensure that the circumstances of each adult's case are considered fully and that the proposed actions are both necessary and in keeping with the principles of the legislation. All proposed actions must take account of the present and past wishes and feelings of the adult as far as they can be ascertained. The views of the nearest relative and the primary carer of the adult must be taken into account as far as reasonable and

practicable to do so. The views of any proxy, or proposed proxy, under the Act must be considered. All such persons could ask to be heard by the sheriff in considering any application under the Act. The sheriff can also appoint a person in any application or proceeding under the Act for the purposes of safeguarding the interests of the person who is the subject of the application or proceedings.

Exercise 7

Powers of attorney case example

The following case study departs from the usual exercise format. There are no questions asked of you from this study. It is intended to help you to see how **powers of attorney** might work in the residential context. As you read the study, please carry in your mind the importance of the principles of the Act. Try to think how you might use them were you Ian's keyworker in this situation.

Ian Miller is a 40 year old man who has to live in a care home because of dementia. He acquired the condition through AIDS and, since he had some warning that, one way or another, he might experience a degree of incapacity, he granted **continuing and welfare powers** to his partner Colin, when the HIV began to develop into full blown AIDS last year.

The onset of dementia has been very rapid and Colin was soon unable to care for Ian even with support services going into the house. Ian has very poor short-term memory, he is unable to manage his finances and he would tend to wander out of the home if he was left unsupervised.

Colin uses his **powers of attorney** to require Ian to live in the home, to manage Ian's pension and savings so that he can pay for his share of the care and have some spending money left over. He takes a very active interest in his partner’s care and works closely with the staff to agree the sort of care that Ian would have wanted.

While Colin has potential to exercise great authority over Ian's life, and while Ian's incapacity does require that his proxy takes many decisions on his behalf, Colin is careful to work with the staff to ensure that Ian does as much for himself as his remaining skills allow.

Exercise 8

Case example

Vera MacLean is a 93 year old widow who lives in a care home. She has regular telephone contact from her daughter who is married and lives in Australia. She also has visits from friends from her local church. Mrs MacLean has had to live in the home for the past three years because she is suffering from dementia, such that she is often too confused and forgetful to manage on her own. While she sometimes finds herself very disoriented and frightened, generally Mrs MacLean enjoys the business and company of the home.

Mrs MacLean used to be a keen gardener and often contributed to the local annual flower show. She is also a lover of opera and used to sing in the church choir.

Mrs MacLean has a state old-age pension and a private pension. This leaves her with about £30 a week to spend on her personal needs. She has a quantity of family jewellery and some antique furniture, which she has in her room.

Recently Mrs MacLean has been becoming more confused and she is frequently either losing her money, pension book or jewellery, or she is wrongly accusing others of taking it. Because of this, the manager of the home has successfully applied to the Care Commission and the home is now approved for the purposes of part 4 of the act. She has also asked Mrs MacLean's doctor to examine her and a certificate of incapacity has been issued, entitling the manager to manage such affairs as Section 39 (1) (a) to (d) allows. However, Mrs MacLean is very suspicious about her jewellery being removed from her room, something she has never allowed before. She is upset by the possibility that it might be kept in the office safe.

With the principles in mind, how would you wish to approach the management of all aspects of Section 39 (1)? Note your answers.

Discussion

Did you note the need to receive, hold and spend Mrs MacLean's pension, benefit, money and moveable property in ways which are of benefit to her, are in the least restrictive manner, and in ways that take

account of her views and that encourage her to maximise the use of her existing skills? Were there any other people whose views should be taken into account in considering how this should be done?

In spending money, did you seek to involve Mrs MacLean in any way in the process, or did you simply consider it alright to spend it in ways you yourself thought she might like? Did you think about her interests in music and gardening when considering what she might like her money to be spent on? Did you consider how Mrs MacLean might be involved in the problem of storing her jewellery? Did you consult her key worker?

Exercise 9

Medical treatment case example

Please read the following case study and answer the questions below it, taking notes of your answers.

Nassir Kahn is a 20 year old man who lives in a sheltered scheme for adults who, like Nassir, have learning disabilities. Within the scheme Nassir has his own flat, but he can only manage with support of a home carer and with day care support. Until recently, Nassir lived with his parents. However, he felt that he wanted to lead a more independent life.

Nassir has very limited ability to read and write. His speech is unclear but people who know him well can understand what he is saying. Nassir also suffers from epilepsy. This is mostly well controlled with medication which he receives in syrup form and occasionally in the form of anal suppositories.

Nassir has accepted this treatment since his childhood. There is every indication that he is upset and frightened by the rare epileptic seizures that he has and that he can understand that the medicine is given to keep the fits away. However, his need for medical treatment has been complicated by an inflammatory eye condition that requires ointment applied directly onto his eyes.

Nassir was frightened and upset by the medical examination of his eyes. He screamed and struggled during the brief examination and it took some time to comfort him afterwards. His eyes are red and obviously irritated. He rubs them frequently, which only serves to irritate them further. Attempts by his keyworker in the day centre to apply the ointment have only caused him more upset. Clearly the ointment feels uncomfortable on his already troubled eyes and he cannot understand that this additional discomfort is necessary in order to cure him of the condition.

Is there evidence in this case that capacity for consent is a different issue in relation to the eye treatment than it is for the epilepsy?

To what extent do you consider Nassir's upset at the eye treatment to be a serious enough issue for it to be considered necessary to obtain an assessment of incapacity?

If you were Nassir's keyworker, what would you wish to do about Nassir's upset at receiving ointment in his eyes? As key worker, you might want to contact the GP anyway, to let them know about the problem Nassir is having.

If no other easy solution can be found by the doctor - for example, changing the ointment to drops, which might be more easily given, with less discomfort - at what point would you become anxious that force was being used in administering the treatment?

Discussion

It could be considered that, by his behaviour, Nassir does seem more accepting of the treatment of epilepsy. It may be that it is simply less uncomfortable and that he is used to it. However, he does seem to understand that the medicine does help to keep the upsetting experience of fits away. If he has received treatment for epilepsy since childhood, it may be that he has had more time to think about it than he has in relation to the eye ointment.

Assuming this to be the case, there does appear to be an issue of incapacity if Nassir cannot be helped to see that the discomfort of the eye treatment is part of the process of taking the inflammation and itch out of his eyes. However, not every minor treatment that an adult is incapable of understanding should become the subject of certification. For example, giving an adult an aspirin to relieve a headache should not require a certificate. Yet Nassir's eye condition seems to require more upsetting and longer-term treatment than the giving of an aspirin.

If you were Nassir's keyworker, would you wish to contact the doctor for an assessment of incapacity?

If you felt anxious that your attempts to get the ointment into Nassir's eyes did involve use of force it would be your responsibility to notify the doctor and the doctor's responsibility to find a solution. There is also the danger of force causing damage. Even where an adult does lack capacity to consent to the proposed treatment, Section 47 (7) of the Act prohibits the use or force or detention unless it is immediately necessary and only for so long as is necessary in the circumstances.

In this case, the case study does suggest that an assessment should be made. It is the doctor who should be contacted. The Code of Practice

suggests that the doctor will usually be the adult's GP unless the adult is subject to specialist treatment by another doctor. If an eye specialist were tending to Nassir's eye condition, it would be that doctor who should be contacted.

You may be asking why should anyone go through the bother of getting a certificate for the treatment of Nassir if he would be unlikely to understand the workings of the Act and the abstract concept of consent for treatment. The most compelling reason, from the adult's perspective, is that certification will give the adult the right to expect that the treatment will be administered in keeping with the principles of the Act. For someone like Nassir who will have very little power to protect his own rights, it will ensure that the treatment is for his benefit, that it takes account of his views as far as they can be ascertained, and the views of his relatives and carers, that it is given in the least restrictive way possible.

The law accepts that it is a fundamental right of adults that no medical treatment should be imposed upon them without their consent. Where consent is not possible due to the lack of capacity to consent, the law accepts that the adult has a right to treatment. But that there must be safeguards in place to ensure that the adult genuinely lacks capacity, that the treatment proposed is necessary, that all those who have an interest in the patient's welfare have been consulted and that any objections to the proposed treatment can be brought to the attention of the Sheriff Court.

Exercise 10

Guardianship case example

Please read the following case study, discuss or think about the following questions and take a note of your deliberation.

Mike Johnston is a 50 year old man who has a long history of alcohol abuse. By his own admission, he has alienated his ex-wife and his two daughters by his aggressive behaviour and prolonged drinking. He does have a brother who takes an interest in his situation.

Although he no longer drinks at all, Mike has a condition brought on by his prolonged use of alcohol, which has severely damaged his short-term memory, to the point where he is often very confused about his surroundings, the people in his life and routine daily tasks. Because of this condition, Mike is no longer able to live unsupported. It is also the case that Mike lacks the memory to understand that he has made decisions affecting his care. For this reason, Mike's care manager identified that certain aspects of his life ought to be subject to powers of a **guardianship order**. This was done in conjunction with a multi-disciplinary case conference involving all service providers, Mike's GP and his psychiatrist, who subsequently wrote medical reports for the application and the MHO who wrote the welfare report.

The **guardianship order** approved by the Court grants powers to the local authority, which was appointed as Mike's **welfare guardian** and his brother who was appointed as his **financial guardian**. The local authority named Mike's care manager to carry out the welfare duties of **guardian** on their behalf as Mike's brother felt that, should he become the **guardian**, this authority would interfere in his relationship with Mike. The brother was persuaded to become the **guardian** in respect of the financial aspects of the order, however, since the local authority is debarred from this authority.

It means that the care manager and Mike's brother have to work closely together with all service providers to manage Mike's care.

While Mike lives in a supported tenancy, he requires a high degree of support and his home carer is authorised by his **welfare guardian** to gain access to the flat even when Mike has forgotten the arrangement and objects to her presence. Mike is also required by his **welfare guardian** to reside in the supported flat and has periods when he is

required to stay in respite care to obtain a higher level of support. The **financial guardian** also manages Mike's finances and devolves this responsibility down to the home carer for budgeting with Mike. When Mike goes into respite care, Mike's brother takes care of the expenses of the care and authorises the respite care home to help Mike manage his spending money.

When Mike comes into respite care, he can become disoriented and he can be hostile to staff intervening in his life because he lacks insight into how his brain damage affects his ability to look after himself. There is a need for all the services to work closely with the care manager and Mike's brother, who has strong views about how Mike's past passion for country and western music should be reflected in his daily life now.

Discussion

Were Mike a home care client of yours, or were he to come into respite care in a setting in which you worked, what issues would you wish to address and how?

How might the powers outlined in the order affect his care in ways that differ from the care of an adult who is not subject to an order of any sort?

How would the principles influence the detail of the care you would wish to give Mike ? Be sure to carefully consider all of the principles in turn. You should also consider the relationship between you and your line management, as service providers, with authority devolved to you by Mike's joint **guardians**.

In identifying issues, were you able to reflect upon the need to sensitively manage Mike's disorientation and confusion on coming into an environment in which he may feel quite lost? Were you able to see a link between this confusion and his hostility? Could you see a need to devise a strategy for managing this aspect of how Mike responds to certain interventions under **guardianship**?

It may be that, as direct care staff, you have to have repeated sensitive and sympathetic discussions with Mike to remind him about his circumstances in respite care, under a **guardianship order**. It may be that you have to devise strategies on when and how you go into his room. In many cases there would be advantages in outlining in Mike's

care plan how and when staff might use the powers of **guardianship** in implementing Mike's care plan.

Are you able to see why it might be necessary for you to have a good working knowledge of the Act in general and **guardianship** in particular, because explaining orders is not just the job of specialised social workers and care managers?

In going through the principles, were you able to consider how each, in turn informs your task of providing care under the order? How might you approach going into the room of a potentially hostile person like Mike to carry out a care task or to see that he is OK, in the least restrictive manner?

Did you acknowledge that since the authority of the order is given to the care manager and brother by the sheriff, they have responsibility for implementing it and must ensure that your care of Mike and your use of any **guardianship** power is in keeping with the principles of the Act?

What to do if you think an adult may be in need of an order because of incapacity?

The act imposes a duty on local authorities to apply for orders if they are aware an adult is in need of such an order in situations where no one else has mad an application. You may be the first person to notice such a situation as a direct care worker. If this is so, discuss your concerns with your line manager who will notify the MHO or Chief Social Work Officer.

ANNEX 1 - Adults with Incapacity (Scotland) Act 2000

Overview of main provisions

Introduction

The Act changes the system for safeguarding the welfare, and managing the finances and property, of adults (aged 16 or over) who lack the capacity to take some or all decisions for themselves because of mental disorder or inability to communicate by any means. It allows other people to make decisions on behalf of these adults, subject to safeguards.

General principles

All decisions made on behalf of an adult with impaired capacity must:

- Benefit the adult;
- Take account of the adult's wishes and the wishes of the nearest relative or primary carer, and any **guardian or attorney**;
- Restrict the adult's freedom as little as possible while still achieving the desired benefit; and
- Encourage the adult to use existing skills or develop new skills.

Under the Act a number of different agencies are involved in supervising those who take decisions on behalf of the adult.

- The Public Guardian has a supervisory role and keeps registers of **attorneys**, people who can access an adult's funds, **guardians** and **intervention orders**;
- Local authorities look after the welfare of adults who lack capacity; and
- The Mental Welfare Commission protects the interests of adults who lack capacity as a result of mental disorder.

Under the Act, the main ways that other people can make decisions for an adult with impaired capacity are:

Power of attorney

Individuals can arrange for their welfare to be safeguarded and their affairs to be properly managed in future, should their capacity

deteriorate. They can do this by giving another person (who could be a relative, carer, professional person or trusted friend) **power of attorney** to look after some or all of their property and financial affairs and/or to make specified decisions about their personal welfare, including medical treatment.

All **continuing and welfare powers of attorney** granted from 2 April 2001 need to be registered with the Public Guardian to be effective.

Access to the adult's funds

Individuals (normally relatives or carers) can apply to the Public Guardian to gain access to the funds of an adult incapable of managing those funds. This applies to funds held in, for example, a bank or building society account in the sole name of the adult.
The Act also includes provisions to allow access to a joint account to continue where one account holder has become incapable of managing the funds. These provisions came into effect on 2 April 2001.

Funds of residents in care establishments

Authorised care establishments can manage a limited amount of the funds and property of residents who are unable to do this themselves. This will come into effect on 1 April 2003.

Medical treatment and research

The Act allows treatment to be given to safeguard or promote the physical or mental health of an adult who is unable to consent. Special provisions apply where others such as attorneys have been appointed under the Act with powers relating to medical treatment.

Where there is disagreement a second medical opinion can be sought. Cases can also be referred to the Court of Session in certain circumstances. The Act also permits research involving an adult incapable of giving consent but only under strict guidelines.

These provisions come into effect on 1 July 2002.

Intervention and guardianship orders

Individuals can apply to their local Sheriff Court for:

- An **intervention order** where a one-off decision or short term help is required (for example selling property or signing a document).

- A **guardianship order**, which may be more appropriate where the continuous management of affairs or the safeguarding of welfare is required.

Local authorities or any person claiming an interest in the adult's affairs may make applications for **intervention** and **guardianship orders**. Local authorities, in fact, have a statutory duty to apply for **financial and/or welfare Intervention** and **guardianship orders** where they are necessary and no-one else is making an application. It is essential that all local authority staff are aware of this new duty.

Codes of practice and regulations

Codes of practice and regulations will come into effect at the same time as the relevant provisions of the Act.

The codes of practice are for those people and organisations that have functions given to them by the Act. The codes will provide guidance on the legislation itself and offer further practical information.

ANNEX 2 - ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

Part of the Act	Type of Intervention		Previous Consent Required by Adult	Who can Intervene?					
	Welfare	**Property/ financial**		**Relative/ Friend/Carer/ Neighbour**	**Lawyer**	**Officer of Local Authority**	**Other Professionals eg CPN, Care Staff, Hospital**	**Doctor**	**Medical Certificate/ Report Required**
2	Welfare Attorney	Continuing Attorney	Yes	Yes	(Certifies ability to understand) Yes	Cannot intervene	No	(Certifies ability to understand)	Not Statutory
3[3]		Intromission with funds	No	Yes	(Counter signature) can act as withdrawer but unpaid.	Cannot intervene (MHO can countersign)	No (Nurses may countersign)	(Counter signature)	Yes
4		Management of residents finances	No	No	No	Care Home Manager	Care Home and Hospital Managers	No	Yes
5	Authority to Treat		No	A person having an interest can appeal	As Proxy[4] can object or consent	As Proxy can object or consent	As Proxy can object or consent	Yes	Yes
6	Intervention Order	Intervention Order	No	Yes	Yes	Yes (also report)	Could make application	No	Yes
6	Guardianship Order	Guardianship Order	No	Yes	Yes (also report) (Finance only)	Yes (welfare only) (also report)	Could make application	No	Yes

[1] Under Part 3 'Intromission with Funds' Countersigning relates to a declaration in the application form that the applicant is a 'fit and proper person to intromit with funds' (Section 26(1)(c)

[2] Proxy means a person appointed under the Act to act for an adult with incapacity, to include welfare and continuing attorneys, guardians and persons authorised under intervention orders

ANNEX 3 - Adults with Incapacity Training Advisory Group

John Armstrong	Social Work Department City of Edinburgh Council
Susan Baird	Senior Officer Glasgow City Council Social Work Department
Juliet Cheetham	Social Work Commissioner Mental Welfare Commission for Scotland
Bill Cook	Highland Council Social Work Services
Sandra Costigan	Senior Manager Staff Development & Training Fife Social Work Department
Dr Alan Jacques	Consultant Psychiatrist Royal Edinburgh Hospital
Kitty Mason	Principal Planning & Commissioning Officer City of Edinburgh Council
Christina Naismith	Social Work Department City of Edinburgh Council
Mike Nolan	Principal Service Development Officer East Lothian Council
Pippa Sutton	Finance Manager Scottish Borders Council

ANNEX 4 – Glossary

The following is an explanation of terms that occur in the text.

Adult	Refers to a person over the age of 16 years. It is usually a reference to an adult with incapacity.
Attorney	Is a person who has been selected by an adult while still capable of exercising informed choice to grant powers which take effect when the granter becomes incapable. Powers of attorney are separated in the 2000 Act into continuing powers (which deal with financial affairs of the adult) and welfare powers (which deal with the personal welfare of the adult).
Care Manager	Is the term used to refer to Social Work Officers who have specific duties in the assessment of need and the management of packages of care for people under the NHS and Community Care Act 1990.
Care Plan	This term is used generically in the text to cover all personal care plans which result from a multidisciplinary assessment of needs. The term must be read in context but can refer as well to treatment plans and/or nursing care plans for those in receipt of health care services.
Chief Social Work Officer	Is the most senior Social Work Officer in a local authority line management structure. It is the person with responsibility for the delivery of social work services in a local authority.
Curator Bonis	Is a power to manage the estate of a person who is not capable of doing. For any person over the age of 16, as of April 2002, this power has become financial guardianship under the framework of the 2000 Act.

Direct Care Staff	This refers to all staff who are providing care on an employed basis this includes such posts as care staff in care homes, home care staff and day care staff.
Duty of Care	Is a duty to exercise due skill and care in exercising powers one has been given in relation to another person.
Granter	Is the term for a person who grants Power of Attorney to another.
Guardian	Means a person appointed by the sheriff to set or make decisions for an adult under Part 6 of the Act. A financial guardian means a guardian with financial powers. A welfare guardian means a guardian with welfare powers. Guardianship under the Mental Health (Scotland) Act 1984 no longer exists with the implementation of Part 6 of the 2000 Act in April 2002.
Intervention Order	Means an order made by the sheriff, under Part 6 of the Act that something should be done, or a decision made, on behalf of an adult.
Intromission	Intromit means to 'deal with' the funds of an adult with incapacity as outlined in Part 3 of the Act.
Liability	In reference to Section 82, 'limitation of liability', means that the person liable is legally responsible for their actions or failure to act. It implies that a person who is liable may face legal action in either Civil or Criminal Court as a result of actions or failure to act if they failed to do so reasonably, with due care and in accordance with the principles of the Act.
Local authority	Is the term used in legislation to refer to any local government or Island Council in Scotland. By implication, it refers to the local authority's duties in relation to social work services as discussed in this text.

MHO	Mental Health Officer is the term given by the Mental Health (Scotland) Act 1984, to specially trained social workers appointed by their employing local authority to perform specific duties relating to detention in hospital and guardianship of people with mental disorder. The new roles that the 2000 Act gives to MHOs are explained throughout the text.
Proxy	Is the term used to describe any person authorised to make decisions or to take action on behalf of an adult whose capacity has become impaired.
Social Work Officer	Is the term used in this text and by the Codes of Practice to cover 'social work services staff in the broad sense, including, where appropriate, qualified social work officers, occupational therapists, etc, employed to provide social work or similar services.' (The Code of Practice for Local Authorities, 2001, Scottish Executive/Astron.)
Tutor Dative and Tutor-at-Law	Are people appointed by Court to exercise powers, manage aspects of an adults' welfare and, occasionally, to manage short-term aspects of financial affairs. As of April 2002, these powers have become Guardianship Orders under the framework of the 2000 Act.

ANNEX 5 – Resource List

Legislation

The Adults with Incapacity (Scotland) Act 2000 can be viewed on the HMSO web-site: www.hmso.gov.uk or purchased from the Stationery Office – www.hmso.gov.uk and can be downloaded from the Scottish Executive's website, as can the **Explanatory Notes**
www.scotland.gov.uk/justice/incapacity/
Guidance from the Office of the Public Guardian can be downloaded from www.publicguardian-scotland.gov.uk/

Regulations

The Adults With Incapacity (Scotland) Act 2000 (Commencement No. 1) Order 2001 (SSI No.81)

The Adults with Incapacity (Public Guardian's Fees) (Scotland) Regulations 2001 (SSI No.75)

The Adults with Incapacity (Certificates from Medical Practitioners) (Accounts and Funds) (Scotland) Regulations 2001(SSI No.76)

The Adults with Incapacity (Supervision of Welfare Attorneys by Local Authorities) (Scotland) Regulations 2001(SSI No. 77)

The Adults with Incapacity (Countersignatories of Applications for Authority to Intromit) (Scotland) Regulations 2001(SSI No.78)

The Adults with Incapacity (Evidence in Relation to Dispensing with Intimation or Notification) (Scotland) Regulations 2001 (SSI No.79)

The Adults with Incapacity (Certificates in Relation to Powers of Attorney) (Scotland) Regulations 2001(SSI No. 80)

The Civil Legal Aid (Scotland) Amendment Regulations 2001 (SSI 2001 No.82).

The Adults with Incapacity (Supervision of Welfare Guardians etc by Local Authorities) (Scotland) Regulations 2002 (S.S.I. 2002/95)

The Adults with Incapacity (Reports in Relation to Guardianship and Intervention Orders) (Scotland) Regulations 2002 (S.S.I. 2002/96)

The Adults with Incapacity (Recall of Welfare Guardians' Powers) (Scotland) Regulations 2002(S.S.I. 2002/97)

The Adults with Incapacity (Non-compliance with Decisions of Welfare Guardians) (Scotland) Regulations 2002 (S.S.I. 2002/98)

Civil Legal Aid (Scotland) Amendment Regulations 2002 (S.S.I. 2002/88)

Copies of the act, explanatory notes and regulations are available from:

Stationery Office Bookshop
71 Lothian Road
Edinburgh EH3 9AZ
Tel 0870 606 5566
Fax 0870 606 5588
www.scotland-legislation.hmso.gov.uk/

Codes of Practice

Code of Practice for local authorities exercising functions under the Act

Code of Practice for persons authorised under part 3 to access funds of an adult

Code of Practice for **continuing and welfare attorneys**

Code of Practice for persons authorised under **intervention orders** and **guardianship**

Code of Practice for persons authorised to carry out medical treatment or research

Awaiting publication

Code of practice for managers of authorised establishments
Code of practice for supervisory bodies

The codes of practice are available from the following address:

Scottish Executive
Justice Department
Civil Law Division
Floor 2 West (Rear)
St Andrew's House
Regent Road
Edinburgh EH1 3DG
Tel 0131 244 2193

Alternatively all documents may be downloaded from the website www.scotland.gov.uk/justice/incapacity/

Forms

The forms required to accompany an application for an **intervention or guardianship order** are schedules to the Adults with Incapacity (Reports in Relation to **guardianship** and **intervention orders**) (Scotland) Regulations 2002. Details of the forms are as follows:-

AWI [1] Report of incapacity to accompany application for **guardianship**, renewal of **guardianship** or an **intervention order**

AWI [2] Mental Health Officer's report to accompany application for **guardianship** relating to personal welfare

AWI [3] Mental Health Officer's report to accompany application for renewal of **guardianship** relating to personal welfare

AWI [4] Mental Health Officer's report to accompany application for an **intervention order** relating to personal welfare

AWI [5] Chief Social Work Officer's report to accompany an application for **guardianship** relating to personal welfare

AWI [6] Chief Social Work Officer's report to accompany an application for renewal of **guardianship** relating to personal welfare

AWI [7] Chief Social Work Officer's report to accompany an application for an **intervention order** relating to personal welfare

These forms are available electronically from the Website at www.scotland.gov.uk/justice/incapacity. This facility allows the text boxes in the forms to be expanded as necessary. If you have difficulty accessing the forms please telephone 0131 244 2193.

The forms for applying to the local authority or the Mental Welfare Commission for recall of welfare powers of a **guardian** are schedules to the Adults with Incapacity (Recall of Guardian's Powers) (Scotland) Regulations 2002. Details of the forms are as follows:-

AWI[11]	Application to Mental Welfare Commission for recall of powers of a **guardian** relating to personal welfare
AWI[12]	Application to local authority for recall of powers of a **guardian** relating to personal welfare
AWI[13]	Medical report of capacity to accompany an application to Mental Welfare Commission or local authority for recall of powers of a **guardian** relating to personal welfare
AWI[14]	Intimation by Mental Welfare Commission of application or intention to recall powers of a **guardian** relating to personal welfare
AWI[15]	Intimation by local authority of application or intention to recall powers of a **guardian** relating to personal welfare
AWI[16]	Intimation by Mental Welfare Commission of proposal to refuse an application for recall of powers of a **guardian** relating to personal welfare
AWI[17]	Intimation by local authority of proposal to refuse an application for recall of powers of a **guardian** relating to personal welfare
AWI[18]	Decision by Mental Welfare Commission on recall of powers of a **guardian** relation to personal welfare
AWI[19]	Decision by local authority on recall of powers of a **guardian** relation to personal welfare

These forms are available electronically from the website at www.scotland.gov.uk/justice/incapacity. This facility allows the text boxes in the forms to be expanded as necessary. If you have difficulty accessing the forms please telephone 0131 244 2193.

Training resource pack

The Scottish Executive commissioned a series of training seminars on the Act organised by ENABLE and ASAD in Spring of 2001. A training resource pack produced for seminar participants is available on the Scottish Executive's website at www.scotland.gov.uk/justice/incapacity

The pack includes the following materials:

Section 1

- Introduction to the Act
- Principles and definitions
- Concept of capacity and assessing incapacity

Section 2

- Welfare interventions

Section 3

- Financial interventions

Section 4

- Roles and responsibilities of organisations and individuals

Reading

Astell A.J, Wilkinson H.A (2001) Adults with Incapacity (Scotland) Act 2000: A survey of Scottish professionals. University of Abertay Dundee.

Scottish Executive (2000) The same as you? A review of services for people with learning disabilities.

Jacques A, Jackson G (2000) Understanding Dementia. Churchill Livingstone.

McKay C, and Patrick H, The Community Care Maze – the law and your rights to community care in Scotland. ENABLE and Scottish Association for Mental Health. Now out of print but available in libraries.

Child Poverty Action Group (2001) Paying for Care Handbook. 2nd Edition.

The Law Society and British Medical Association (1995) Assessment of Mental Capacity. Guidance for Doctors and Lawyers.

The British Medical Association (1999) Withholding and Withdrawing Life-prolonging Medical Treatment. Guidance for Decision Making
.
Scottish Executive (2001) New Directions. Report on the Review of the Mental Health (Scotland) Act 1984. (Millan Report).

Baumhover L.A,Beall S C (1996) Abuse, Neglect and Exploitation of Older Persons, Strategies for Assessment and Intervention. Jessica Kingsley.

The Inquiry into the care of Mrs K aged 90, The Mental Welfare Commission, November 2001

Useful addresses

Statutory authorities under the Act

The Office of the Public Guardian
Hadrian House
Callander Business Park
Falkirk FK1 1XR
Tel: 01324 678300

www.publicguardian-scotland.gov.uk/

The Mental Welfare Commission for Scotland
Argyle House
3 Lady Lawson Street
Edinburgh EH3 9SH
Tel: 0131 222 6111
www.mwc.scot.org.uk

Courts
Scottish Court Service
Hayweight House
23 Lauriston Street
Edinburgh EH3
Tel: 0131 229 9200
www.scotcourts.gov.uk

Contacts on specific issues

The Law Society of Scotland
26 Drumsheugh Gardens
Edinburgh EH3 7YR
Tel: 0131 226 7411
www.lawscot.org.uk

Legal Aid
Scottish Legal Aid Board
44 Drumsheugh Gardens
Edinburgh EH3 7RN
Tel: 0131 226 7061
www.slab.org.uk

Advocacy 2000
134 Ferry Road
Edinburgh EH6 4PQ
Tel: 0131 554 7878

Criminal Injuries Compensation Board
Tay House
300 Bath Street
Glasgow G2 4LN
Tel: 0141 331 2726
www.cica.gov.uk

Other useful contacts

ASCS – Advice Service Capability Scotland
11 Ellersly Road
Edinburgh EH12 6HY
Textphone/Minicom: 0131 346 2529

Age Concern Scotland
113 Rose Street
Edinburgh EH2 3DT
Tel: 0131 220 3345

Alzheimer Scotland-Action on Dementia
22 Drumsheugh Gardens
Edinburgh EH3 7RN
Tel: 24hr freephone Helpline 0808 808 3000
www.alzscot.org

Carers UK
3rd Floor
91 Mitchell Street
Glasgow G1 3LN
Tel: 0141 221 9141

Citizens Advice Bureau
Address in your local phone book or from
Citizens Advice Scotland
26 George Street
Edinburgh
Tel: 0131 667 0156
www.cas.org.uk

ENABLE
6TH Floor
7 Buchanan Street
Glasgow G1 3HL
Tel: 0141 226 4541

Sense Scotland
5th Floor
45 Finnieston Street
Glasgow G3 8JU
Tel: 0141 564 2444
www.sensescotland.org.uk

Royal College of Speech and Language Therapists
2 White Hart Yard
London SE1 1NX
Tel: 020 7378 1200

Scottish Association for Mental Health
Cumbrae House
15 Carlton court
Glasgow G5 9JP
Tel: 0141 568 7000
www.samh.org.uk

Scottish Executive

Health Department
Community Care Division
Branch 3
Area 3ER
St Andrew's House
Regent Road
Edinburgh EH1 3DG
Tel: 0131 244 5389

Health Department
Social Work Services Inspectorate, Health Team
St Andrew's House
Regent Road
Edinburgh EH1 3DG
Tel: 0131 244 3752

Justice Department
Civil Law Division
Area 2WR
St Andrew's House
Regent Road
Edinburgh EH11 3DG
Tel: 0131 244 4212

Health Department
Public Health Division
Area 3E
St Andrew's House
Regent Road
Edinburgh EH1 1DG