

ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

**TRAINERS' GUIDE TO PACK 1
FOR SOCIAL AND HEALTHCARE STAFF**

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

1. Introduction

1.1 Welcome to the trainers' guide for Pack 1 on the Adults with Incapacity (Scotland) Act 2000. The purpose of the pack is two-fold:

- a) While there are several ways in which the pack may be used for direct care staff in a variety of settings, the most economical option may be that, where the setting permits, managers use it for groups of their staff. While it is recognised that certain settings will not lend themselves to this arrangement, this is offered as the preferred mode of delivery. To this end, the guide is written assuming you are a trainer or a manager responsible for training staff. This should not detract from the other uses that may be made of the guide.

In order to obtain sufficient background knowledge to implement the training, the guide should be read in conjunction with Pack 1, for social and healthcare staff. As suggested in the introduction to Pack 1, anyone acting in a managerial role in direct care may find benefit in reading Pack 2 for assessment and care management staff as well.

- b) This pack contains guidance on Part 4 of the Adults with Incapacity (Scotland) Act 2000 (Management of Residents' Finances). Managers of care home settings will require to know this section in detail. This would not be necessary for direct care staff. If you are such a manager, you may find a need to share some of this material with administrative and depute managerial staff in your setting. If you are not involved in the management of a care home, you do not have to read this section.

Use of training pack

1.2 The next section of the pack deals with a trainer's view of the contents of the pack for social and healthcare staff. It outlines the material in the pack and offers more detailed discussion of the exercises. In this it uses the headings used in Pack 1.

1.3 The pack for social and healthcare staff is designed to be used in a variety of ways, you may use it formally in a group setting with an outside trainer who will guide your staff through the material and the exercises. You may use it as suggested above, with yourself as trainer (in which case you may wish to seek guidance from your employing authority's training team if you have never done training before). You may use it

less formally in small groups or you may even ask your staff to use it for study alone in the manner of distance learning. The latter is the least preferred option as the material is complex and simply reading it alone deprives staff of an opportunity to discuss it, clarify understanding and share views. If you select this distance learning option, remember that you will still have to give staff adequate time to work through the pack.

1.4 However you plan to implement Pack 1, encourage staff to take the necessary time to discuss or think about all the questions after each case study or exercise and to work through all of the material, as all of it is important to a good working understanding of the Act. If you chose to implement the pack as a trainer for your staff, take time to read the material yourself and to prepare the sessions. In reading Pack 1, you may well find that you do not need to read all of the material in detail, only focusing on those aspects with which you are less familiar. However, if you are reading the pack in order to do the training, you will need to be sure that you have full knowledge of all its contents. This is because the staff undertaking the training will have to work their way through it and discuss its contents.

1.5 At the pack's outset, there is a knowledge audit. This is to enable staff to plan their own reading of Pack 1. It may also be of help for you to do this in order to identify the aspects of the pack upon which you need to focus for your own knowledge.

A special note for staff who work in voluntary, private or health settings

1.6 While Pack 1 is designed for local authority employees, much (if not all) of the material contained in it will have strong relevance for staff working in a variety of other settings. These may be health settings such as hospitals, primary care teams, nursing homes, voluntary agencies or private agencies. If you are the manager of such services, you are advised that at all the material contained in the pack will be relevant to your setting.

Planning your training sessions

1.7 While it is envisaged that it would take two days of training to work through the pack from start to finish, you may want to devise a structure that fits with staff shift patterns and breaks this notional two day block into smaller units (for example, four half days) delivered over a longer period of time. The following sample timetable for two days is therefore only a suggested format. It is also probably a rather full timetable and

may not be the most conducive means of facilitating learning. A more protracted arrangement may be more suitable.

1.8 You must allow staff time to prepare for the training by reading the material beforehand. In this structure it is envisaged that staff would come to sessions prepared to discuss the aspects of the training outlined in the timetable for that session and that the session would be broken down into units of about 3 hours duration in which they would refresh their memory of the reading and would discuss the exercises in groups.

1.9 However many staff undertake training during a session, the optimum size of a discussion group would be about 6 or 7. Therefore, you may have to organise a session with a large group of staff who are broken down into sub-groups for some of the discussion of exercises.

2. The annotated programme

2.1 The following is a model programme for delivery. The units are devised so that each, with a short break, would constitute a half-day. They may be amalgamated into a day and a half of training or adapted to shorter sessions. You should view the actual times given in it as flexible. You can vary these according to the needs of the group and the amount of discussion thrown up by a given issue. You will also note that the training is slightly shorter for non-care home staff who do not need to undertake the reading and exercise 7, relating to Part 4 of the Act.

2.2 It should be noted that shorter introductory courses which broadly outline the different sections of the Act and its implications for local authorities may be sufficient for a large number of direct care staff.

Unit 1

2.3 Setting ground rules and planning the sessions in accordance with the audit of participants' knowledge: It is important to agree some basic rules such as confidentiality and respect for others' contributions before starting. You may wish to negotiate length of breaks and finish times as well. You also need to be sure that the participants all know each other. The more relaxed and at home they are, the better they will learn.

2.4 If the participants have all done their preparatory reading, they will have individually undertaken the knowledge audit at the outset of the pack. This may mean that some of them will have had to read slightly less of the pack than others. You may now need to negotiate with the group as a whole, to agree a group approach to the timetable in order to accommodate the needs of every member. This may be done by simply running through the timetable (see the overhead acetate) and checking the groups views on the amount of time they would wish to spend on the various aspects in the timetable.

Time - 30 minutes approx

2.5 Refresher reading of introduction to the law and exercises 1 to 3: You will need to check that participants are comfortable with the allocated time.

Time - 10 minutes approx

2.6 Discussion of exercise 1 to 3: For all discussion of exercises, see below for guidance.

Time - 45 minutes approx

2.7 Break: Many people more used to active work such as direct care, will find it tiring sitting for long periods and giving time to study and discussion. It becomes your responsibility as the trainer to balance the need for adequate breaks with the need to get through the material.

Time - 15 minutes approx

2.8 Refresher reading of the section on incapacity and exercise 4.

Time - 10 minutes approx

2.9 Discussion of exercise 4: For further guidance on the exercises there is discussion below. Please also refer to the discussion given after each exercise in the pack itself.

Time - 45 minutes approx

Total time - 2 hrs 25min

Unit 2

2.10 Refresher reading of the section on the principles and exercise 5.

Time - 10 minutes approx

2.11 Discussion of exercise 5.

Time - 45 minutes approx

2.12 Refresher reading of the section on roles and duties and exercise 6. Note that while exercise 6 occurs early in this section of the text, refresher reading ought to include the text relating to not only the role of the sheriff, but also the roles of the Public Guardian, Mental Welfare Commission and local authority.

Time - 10 minutes approx

2.13 Break: Location of the break may depend upon some of the variables in the programme, for example whether you included discussion of exercise 7.

Time - 15 minutes approx

2.14 Discussion of exercise 6.

Time - 45 minutes approx

2.15 Refresher reading of the section on **powers of attorney** and exercise 7.

Time - 10 minutes approx

2.16 Refresher reading of the section on **intromission** and management of residents' finances and exercise 8. Here the programme differs if it is used for non-care home staff. They may skip much of the reading and exercise 8, thereby shortening delivery. However, a reading of the short section on **intromission** is crucial for all staff in the community and it might be of value to digress into a discussion of the importance of seeking different means to manage adults' finances when they are no longer capable.

Time - 10 minutes approx

2.17 Discussion of exercise 8 for care home staff.

Time - 45 minutes approx

Unit 3

2.18 **Start:** If the training is undertaken in two day long sessions, Unit 3 would come at the start of Day 2. It would be important to review Day 1, to check that all participants in the group share a good enough understanding of the subject matter. It might even be a good idea to ask for questions, even if this provokes the type of unanswerable questions discussed above. This might add 15 minutes on to the schedule.

2.19 Refresher reading of the section on medical treatment and exercise 9.

Time - 10 minutes approx

2.20 Discussion of exercise 9.

Time - 45 minutes approx

2.21 Refresher reading of the section on **intervention and guardianship** orders and exercise 10.

Time - 10 minutes approx

2.22 Break: Location of the break may depend upon some of the variables in the programme, for example whether you included a 15 minute review of previous day.

Time - 15 minutes approx

2.23 Discussion of exercise 10.

Time - 45 minutes approx

2.24 Refresher reading of the final section of the pack.

Time - 5 minutes approx

2.25 General discussion of how the Act will change and influence practice in the work setting. While there is nothing specific in the pack relating to this exercise, it might be fruitful to give some time over to such a general discussion, especially if a group of staff from the same establishment are participants of the same sessions. Discussion might focus, for example, upon particular residents who are subject to powers, or who may be identified as vulnerable because of emerging incapacity.

Time - 30 minutes approx

Selecting a venue

2.26 It is very likely that your choice of venue is restricted. It may make sense to make use of the day care unit, care home or work base if it is suitable and provided this does not inconvenience people using the service. However, you will also need to ensure that the participants of the training are free from work based interruptions and that you have space to accommodate the number of smaller discussion groups if that is required.

Your knowledge of the subject as the trainer

2.27 The fact that you are the trainer does not mean you must have greater knowledge of the Act than you are able to obtain from the study of these packs as discussed above. In fact, at this point in the implementation of the Act there are few experts and no one could call themselves an expert in terms of practice. The early stages in implementing a large piece of important legislation such as this Act will always be characterised by a degree of apprehension. There are many questions to which the answers cannot be known.

2.28 Therefore, what qualifies you as a trainer is the degree to which you have prepared the sessions, not your superior knowledge. That is not to deny that many experienced practitioners have knowledge of the practice settings in which the legislation will be implemented and the broad context of the previous legislation. If you feel that you have some experience of these, it will be an advantage.

2.29 While it may not be essential for trainers, it has to be recognised that there is no substitute for actually reading the Act and the associated Codes of Practice.

3. Further guidance on the discussion of the exercises

What has it got to do with you?

Exercises 1 to 3 and related reading

3.1 The preceding reading set the pack in context by giving some very basic understanding of the law in general, to enable any reader who has no experience of such matters to have an understanding of the text. Exercises 1 to 3 then form a base line for the reader to begin an understanding of incapacity in its legal context, in relation to themselves.

3.2 While a number of participants may have undertaken similar exercises before in the process of HNC or other courses, it is important to do these exercises thoroughly as they form the first building blocks in constructing an understanding of the Act. It is very important that the participants follow the instructions, and take notes, as they will be required to return to these notes in subsequent exercises. The exercises could be undertaken by participants alone, in pairs or in small discussion groups of up to 6 or 7 people. Feedback from the participants should be taken collectively in the large group.

3.3 Exercise 1, the first step in a series of inter-linked exercises, asks the participant to break down daily life into its component activities. The aim is to reflect on how we exercise choice in all of these activities. In doing this in a group setting, the benefit is that in taking collective feedback, a far wider range of examples will be discussed.

3.4 Unless a participant has actually misunderstood the exercise, there can be no wrong answers. In taking feedback, a picture should build up before the group of the wide range of decisions and actions that adults routinely take in daily life.

3.5 Exercise 2 invites the participants to think about what it would be like to have someone else decide these things for them. Again, there can be no right or wrong answers. The intention is to start the process of understanding incapacity and the concept of granting other people the authority to exercise powers on behalf of an adult. This is achieved by encouraging participants to reflect upon the process in relation to a hypothetical situation in which they might find themselves.

3.6 In the discussion it might help to draw out participants' experiences of situations where their choice was limited by circumstances. Admission to hospital for in-patient care is a good illustration of this.

3.7 Exercise 3 is already a link to **powers of attorney** (in so far as we have the capacity to choose our own **attorneys**) and other powers, where the person carrying authority to make choices and decisions on our behalf is selected by us in the absence of our capacity to make these choices and decisions ourselves.

3.8 In considering the person you would want to exercise these powers and how you would wish them implemented, there is a link to the principles of the Act. As the trainer, you may wish to make these connections explicit as the pack progresses to these matters.

3.9 Again there can be no right or wrong answers to personal questions like 'how would it feel...?'

4. What is incapacity?

Exercise 4 and related reading

4.1 This section leads into the specific content of the law by defining the term incapacity, the subject of the preceding section and exercises. In discussing the subject in the group of participants, it might be of value to reflect on how the wide and varied definition in the Act, ranging from causes of incapacity like schizophrenia to severe physical disability, is reflected in the working environment of participants.

4.2 Exercise 4 asks participants to consider four situations and discuss the **extent** to which incapacity is demonstrated and therefore the **extent** to which it would justify intervention. The intention is to encourage application of thought to the model of incapacity given in the law, in relation to three sample situations.

4.3 The complications are that the notion of incapacity is not an all or nothing concept. For this reason, the word **extent** has been put in bold. This emphasises that it would be rare for a person to be judged as being totally incapable of making any decision in their life. It is hoped that participants will enter into the discussion of the **extent** to which incapacity is reflected in the cases. However, this is a difficult notion if you have never encountered it before and so it may be that the trainer has to flag it up for participants in discussion.

4.4 The essential value of this is that it would not be in keeping with the principles were care workers to treat an adult as totally incapable when they had partial capacity.

4.5 A sub-plot of the exercise is that incapacity should only be considered to the degree that it is necessary to take powers away from an adult. The brief view given in the pack suggests that Duncan and Rachel both have a degree of incapacity because of mental disorder, in so far as they would both experience very negative consequences from their own actions which result respectively from a learning disability and a mental illness.

4.6 In discussing this with the group it might be well to get them to articulate the risks of not intervening as it is these risks that justify taking action in the law.

4.7 Dorothy, having a means of communication, does not have incapacity in terms of the Act only by reason of an inability to

communicate, and she does not appear to have a mental disorder affecting her capacity. Jim's situation is less easy to gauge. A paper exercise does not allow you to determine exactly how incomprehensible his whispering is and therefore to what **extent** he has an incapacity due solely to an inability to communicate because of physical disability. The intention is to involve participants in a discussion about how all aids to communication would have to be exhausted before declaring incapacity. Another dynamic here is that, while the declaration of incapacity is the responsibility of a medical practitioner, it should involve discussion with direct care staff who may know the adult best and may be best placed to decide if any of the adult's attempts to communicate can reasonably be understood.

5. The general principles of the Act

Exercise 5 and related reading

5.1 The general principles are probably the most important aspect of the Act for direct care workers. This is because, for any action committed under the Act to be legal, it must take account of the principles. It is important to underline that the authority and therefore the responsibility lies with the proxy. Workers may be answerable to the proxy for the implementation of aspects of an order as agreed in a care plan. The proxy has a duty to ensure that workers implement any action taken under the proxy's authority in accordance with the principles of the Act. It is essential for the trainer to impart the seriousness of this to participants.

5.2 Exercise 5 starts by looking back to the first exercise of the pack in which participants were asked - '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?'

5.3 This is a way of clearly articulating the link discussed in this guide (in reference to exercises 1 to 3). It is a way of asking; 'in what ways might the principles of the Act give security to the adult, that the decisions made on their behalf reflected their wishes, needs and interests?' It is a means of personalising the importance of the principles for each of the participants.

6. Roles, powers and duties

Exercise 6 and related reading

6.1 In this section of the pack a brief overview is made of the roles and duties of the sheriff, Public Guardian, the Mental Welfare Commission and the local authority.

6.2 Exercise 6 again reverts to exercises 1 to 3 of the pack. This time it recalls thinking about who would ideally manage decision making powers for the participant were they incapable of doing so. This is a step towards the complicated issue of our right to protection if we are vulnerable because of incapacity. The complication is that we may not recognise that vulnerability or need for protection and we might actually object to something being imposed upon us even if it is felt to be for our protection.

6.3 In asking participants to put themselves in this situation we are inviting them to consider both sides of the argument: On one hand they may want to be protected from risk, and on the other they might object to the imposition of that protection.

6.4 The purpose of the exercise is:

- To enable participants to see the need for a sheriff's overview of the process of removing powers and granting orders;
- To develop an understanding of the facilitative **and** protective functions of the Act; and
- To develop an understanding of how some adults will be resentful of interventions even when others judge the intervention to be in the adult's best interests.

6.5 This last point relates back to the principles (taking account of the benefit to the adult and the need to use the Act in the least restrictive way.)

7. Interventions under the Act

Exercise 7

Continuing and welfare powers of attorney

Related reading

7.1 The essence of the discussion under this section of the text is that provided we have the capacity to do it, we may anticipate incapacity and identify a person (or people) to whom we would wish to grant power to act on our behalf should this come about. It is likely that this will become a common form of power under the Act and there are already many (mostly **continuing powers of attorney**) in operation across Scotland.

7.2 The case study at this point in the text is not strictly an exercise. As such little time is given in the sample programme to considering it. It invites nothing more than a general consideration of the principles following a reading of a case study. The purpose is for participants to see a hypothetical working model of the use of **powers of attorney**.

7.3 In such space as is given on the programme for the case study, you might wish to involve the group in a general discussion of the use of the principles as reflected in the study. The more the principles are discussed the better.

Intromission with funds, management of finances

Exercise 8 and related reading

7.4 The brief section on **intromission** is most likely of little significance to care home workers. It is included here primarily for the consideration of home carers, support workers and related staff. For them it is a serious consideration that the sort of informal methods used to manage finances of adults who lack capacity may now be questioned. These sections of the Act may also affect residents who come into settings for respite care. There also may be residents who have carers, friends or relatives who manage their funds by intromission.

7.5 The management of residents' finances is a part of the Act that will have more direct relevance for staff in care home settings and less relevance for others. As advised in the sample programme, you will have to be flexible in delivery of this unit according to the needs of participants.

7.6 If you are a manager of a care home there is detailed explanation of the powers in section 5 of this guidance pack. There are also certain aspects of the management of finances that every worker in a care home needs to know.

7.7 Exercise 8: The case study invites discussion of the role of direct care staff in the managing finances. While some of the issues uncovered in the questions following the case study would fall to the remit of a manager (storing Mrs MacLean's jewellery, etc), these questions are asked to enable participants to locate their understanding of this part of the Act in a broad context.

7.8 The other issue in regard to the case study is the revisiting of the principles. The importance of the relationship of all these issues to practice is that, neither you nor the staff group should feel deskilled by the advent of the Act in your practice setting. Collectively, the group of people working in a care home setting will have a wealth of experience. The principles articulate parameters of good practice in relation to the application of legislation, and many of these principles will be guiding existing practice already.

Medical treatment and research

Exercise 9 and related reading

7.9 Medical treatment is potentially a very important aspect of this Act and one that you will need to understand because there will be adults in all care settings who will be incapable of giving consent in this regard. It is one of the areas like, management of finances and **intromission with funds**, where there may have been a high number of informal arrangements for adults in the past because the law did not provide an easy remedy where an adult could not consent to medical treatment. With the advent of the 2000 Act, this may now no longer be acceptable, no matter how good the intentions of those who have operated in this way. To avoid the use of the proper law is to deny adults the right to the protection of the law which allows them and those interested in them to contest their treatment and ensures that any decisions taken on their behalf are in keeping with the principles of the Act .

7.10 The text starts by examining consent from participants' experience of surgical operations and other interventions. It invites participants to reflect upon the ways in which we indicate consent; formally, by signing forms, and informally by accepting medication. Discussion could be

extended to participants' experiences of refusing consent. There may well be participants who have refused a course of treatment, refused to sign a form before an operation, etc. You may find that it is less easy to refuse consent than to give it. Patients may be called upon to justify their wishes and may have to articulate the reasons for their refusal.

7.11 Participants in the training may be authorised to administer treatment prescribed by a doctor or they may be the front line staff who pick up issues where an adult lacks the capacity to consent. For these reasons it is important that they understand both what consent is and how you may determine when someone is able to give it.

7.12 In discussing the definition of consent the pact states that, 'Consent means that the patient has a good enough understanding of the nature and purpose of the treatment being offered and that he/she agrees to it. 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. This is linked to the concept of partial capacity. You may be able to give consent to some treatments and lack the capacity to consent to others. Consent to some interventions involves much more complex considerations than with other interventions.

7.13 It is pointed out that to force treatment upon a person, for example by giving them an injection without their consent, could constitute an assault. This is to enforce the seriousness of the issue.

7.14 Exercise 9, the medical treatment case study, invites discussion of the above issues. It suggests, in the first question, that there may be evidence that capacity for consent is a different issue for Nassir in relation to the eye treatment than it is for the epilepsy. He shows more understanding of the treatment for epilepsy and he shows he is more prepared to tolerate the inconvenience of treatment for it than he is for the treatment for his eyes.

7.15 In the second question, it could be considered that Nassir's upset at the eye treatment is a serious enough issue for it to be considered necessary to obtain an assessment of incapacity and certificate under Part 5 of the Act.

7.16 Finally, participants are asked to consider were they Nassir's keyworker, what they would wish to do about Nassir's upset at receiving ointment in his eyes? This is a difficult practice issue for which there is no immediate answer, although it is hinted that the solution is the

doctor's to find. In assessing the risks and benefits of any actions or decisions it is always a good idea to ask what would happen if the action was not taken or the decision not made.

7.17 For care workers, the issue may be: At what point does it become evident that too much force is being used for actions to comply with the least restrictive option and the law in Part 5 of the Act? Given that the law does not allow for treatment which has been the subject of a certificate to be given by force, participants should think about this issue, even if it is difficult to come up with a definite answer from a case study communicated in so few words.

Intervention and guardianship orders

Exercise 10 and related reading

7.18 The discussion of **powers of attorney** noted that a person can, while still capable, identify and grant powers to another in the event they lose capacity. The question for other orders is: What should happen to people who lack capacity in respect of financial and welfare matters all their adult lives, or were unable to make the provision of granting **power of attorney** for some other reason? In such situations, where more than the limited powers of **intromission**, management of finances or medical treatment are required, the Act makes provision for both **intervention orders** and **guardianship orders**.

7.19 While the discussion of 1984 Act **guardianship** sets the discussion in context and gives a framework of understanding for those who have experienced it, it has to be acknowledged that some areas of Scotland have little or no experience of the use of these powers to date. It is to be hoped that these areas will begin considering whether to use the 2000 Act as a means of ensuring that when actions are taken on behalf of someone who lacks the capacity to look after their own interests, the adult concerned will have the full protection of the law.

7.20 While the issue of application to Sheriff Court is important for participants' understanding of the context of **guardianship**, it is the local authority's role in applying for and managing orders that is more significant. It is suggested that participants would not be asked to make formal assessments about people who may require these orders. However, as front line staff, they may need to recognise when someone may need such an assessment and what to do about it. Their views as to the adult's capacity in respect of specific tasks may be crucial in contributing to the assessment being made.

7.21 The other crucial reason staff should be aware of such orders is because they are very likely to become a part of the process of putting the powers of an order into action, whether as part of the local authority where the local authority is the **guardian**, or on behalf of another person who is the **guardian**.

7.22 Exercise 10 invites consideration of the implementation of **guardianship** in a difficult situation. It asks, "Were you to be involved in provision of services to Mike in his home or were Mike to come into respite care in a setting in which you worked, what issues would you wish to address and how?" This requires participants with no experience of respite care as a model, to reflect upon it. It may be easiest to think of receiving a new resident into care as a parallel situation.

7.23 The issues of his confusion, hostility and the fact that he is likely to forget about the order are important matters to be dealt with. The powers outlined in the order (especially requirement of residence and receipt of services) will affect his care in ways that differ from the care of an adult who is not subject to an order. If another person did not wish services they could refuse them even up to the point of leaving.

7.24 The principles would influence the detail of the care you would give Mike in many ways.

7.25 For example, in pursuit of the least restrictive option, how do you minimise restriction for someone who is hostile and ill-disposed towards receiving a service that is being forced upon them? The key to the answer would be, by building up a relationship with him. However, it is hard to build up a relationship with a person who may forget you every time you go out of the door. Perhaps repeated, short contacts may overcome this. On the other hand, repeated short interventions may aggravate Mike. There may be a question in this discussion relating to the point at which an order becomes unworkable. The answer to this is that it would be a responsibility of care staff to notify the proxies but it would not be their responsibility alone to resolve the matter. While ultimately this is the responsibility of the proxy, this underlines the need for close multi-disciplinary working.

7.26 A key point to underscore is that the details of how the powers of the Act are to be used in implementing a care plan should be detailed in that care plan itself, especially those powers which are to be delegated.

7.27 If you get a feeling that every answer potentially poses a new set of questions, this may be the way that your discussion with participants goes. However, this is the nature of difficult practice.

7.28 The above discussion of the least restrictive option is offered only as an example of the application of practice through the principles. In the question, participants were encouraged to work through all of the principles.

7.29 It is very important to avoid the temptation to gloss over the remaining issues in the pack, just because they will arrive at the end of a difficult last unit. Knowledge of these serious issues is crucial. While Part 2 of this guide is mostly of relevance to managers of care homes (in reference to management of residents' finances), it is important to other managers to note the closing discussion. In this you receive further discussion of the issue of the relationship between the principles of the Act and liability for acts not done in good faith or with due care. It may be important for them to read this information before discussing this section in training.

7.30 It would also be important to have a discussion about the importance of the Codes of Practice as reference documents for practice.

7.31 Finally, in the structure of the formal training (see programme above) there is some time given over to an unstructured discussion that would place the implications of the Act in context for a group of staff from the same residential establishment.

7.32 Assuming that you are the manager of that establishment delivering this training, you are likely to see certain issues in focus by this point in working through these packs. For example, you may well be aware of people using the service who need to have their finances managed, who have relatives who may wish to **intromit with funds**, who have been subject to **guardianship** under the 1984 Act, who are subject to **powers of attorney** or who are subject to no powers but who would benefit from an assessment of capacity because of inability to consent to proposed changes in a care plan to which they are objecting. Discussion of such issues will become important, as will a general discussion of how the principles should be implemented. You might also wish to ask: "Do, or will, the principles have any influence upon practice in general?"

8. A note for managers of care homes on the transfer of pre-existing orders under the 2000 Act

8.1 **Schedule 4**, at the end of the Act, deals with certain powers such as curator bonis, which granted authority to manage a person's finances before the 2000 Act. It effectively states that these became **guardianship orders** with financial powers, as of April 2002.

8.2 It also deals with the transfer of **guardianship orders** under the Mental Health (Scotland) Act 1984, to the 2000 Act as of the same date. If you are aware of a resident who was subject to such powers before April 2002, you would be advised to discuss the matter with the local authority, who have a duty to give advice.

8.3 The Codes of Practice and relevant guidance documents in relation to the Act are listed in Annex 1.

8.4 As with the Code of Practice for the Mental Health (Scotland) Act 1984, the codes will not impose a legal duty to comply, but they will be statutory documents and as such, there may be legal consequences which fall from failing to comply with them.

Detailed information

8.5 The rest of this pack contains specialised guidance for managers of residential care homes. It is important that you read it if you are a manager.

8.6 Most managers reading this will be a manager of establishments registered under the Regulation of Care (Scotland) Act 2001. If this is the case, the registering authority will now be the Care Commission.

8.7 Whether or not you manage a local authority establishment, the local authority should be in a position to advise you on issues of application to the Care Commission. Information regarding implementation of part 4 of the 2000 Act will also be available directly from the Care Commission. The policy will give guidelines for the procedure but also expected standards by which care should be implemented. The Regulation of Care (Scotland) Act 2001 places a duty on the Scottish Executive to publish national standards, which are available to you.

8.8 Managers who are aware of residents who are unable to manage their financial affairs (ref Section 39 (1)) will need to request the

resident's doctor to complete a certificate of incapacity before they can begin the process of managing their affairs.

8.9 As a trainer you should emphasise to managers the importance of:

- 1) Their own authority's or establishment's administrative and practice procedures;
- 2) Guidance from the Care Commission; and,
- 3) The Code of Practice for Managers of Establishments (Part 4 of the Act).

Monitoring of your management of residents' finances

8.10 The 2000 Act also covers issues of monitoring and overview of practice. It details who will do it and how and when you will be monitored as follows:

8.11 **Section 40 (2)** states that the Care Commission will enquire from time to time as to how managers are carrying out the affairs set out in Part 4. The 2000 Act does not specify what 'from time to time' means but it does specify that the Care Commission enquiries will relate to the following:

- Your maintenance of residents' funds separately from the funds of the establishment. In other words, accounts will have to be kept clearly separate;
- You need to keep individual residents' funds separately or distinguishable from each other, keeping a record of all transactions made in relation to funds and producing these records for the scrutiny of the Care Commission, the resident or their nearest relative.¹ This last point suggests that you will

¹ 'Nearest relative' is a specific term. It refers to the first occurring person on a list of people set out in Section 53 of the Mental Health (Scotland) Act 1984:

- (a) spouse;
- (b) child;
- (c) father or mother;
- (d) brother or sister;
- (e) grandparent;
- (f) grandchild;
- (g) uncle or aunt;
- (h) nephew or niece.

have to keep note of occasions when either the resident or their nearest relative has asked to see the record;

- You need to demonstrate that you have spent money only on items which are of benefit to the adult. You will need to show that such money is not spent on items which are provided as part of the normal service of your establishment;
- You need to show that you have made provision for indemnifying residents against loss attributable to any act of omission on your part in carrying out the above functions; and
- You will need to address the issue of keeping records of residents' property with clear descriptions and arrangements for receipts.

8.12 **Section 40 (3)** deals with investigation of complaints about your management of residents' affairs by the Care Commission.

8.13 Detailed information on all of this can be found in the Codes of Practice.

8.14 **Section 41** outlines all your duties as discussed under Section 40 (2) above.

8.15 **Section 45** discusses the power of the Care Commission to revoke the authorisation of any establishment for non-compliance with any of the requirements set out in Section 41. It also outlines the appeals process for any establishment which has had its approval revoked.

9. Other issues

9.1 As discussed in the pack for social and healthcare staff, section 82 sets out that no one authorised under an intervention, including managers of establishments, will be liable 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 in ensuring that all actions done by staff in relation to the Act are done in good faith and in accordance with the principles. This places a new focus on the line-management and supervision structures within any establishment. There will need to be particular regard for verifying that practice in the home for those subject to the 2000 Act is in keeping with legal requirements. Employees of local authorities will need to be aware as well of the local authority's statutory duty to take action under the legislation in certain cases where **financial and/or welfare intervention** and **guardianship orders** are necessary.

9.2 While not all of those actions referred to above would constitute criminal liability, as discussed in Section 83, the relationship between Sections 82 and 83 is important to understand.

9.3 Lesser actions such as failure to keep proper records in terms of management of finances might result in civil prosecution if, for example, they resulted in loss of money or property. However, actions outlined in section 83 (which make it a criminal offence for any person exercising powers to ill-treat or wilfully neglect an adult) do impact upon the manager of an establishment. In the unlikely event of actions of this serious nature being committed by a member of staff in any establishment, it may be that the manager's practice also comes under scrutiny.

9.4 It may be of value to include a focus upon this aspect of the Act in your concluding discussion of the training. You may have to articulate the need to take the concerns of staff seriously and the need to set in place or review internal workplace policies to respond to the raising of concerns in regard of any resident.

9.5 The Act requires the Scottish Executive to prepare Codes of Practice for circulation to people and agencies charged with responsibility under the Act. They are listed in Annex 1, along with a

broader range of other relevant guidance documents than are listed in the pack for social and healthcare staff.

9.6 The Codes of Practice are not law in themselves. However, because they are closely related to the law, are laid before Parliament and are designed to give guidance on good practice, there may be legal consequences if they are not complied with. It is therefore very important to have access to these documents in the establishment.

ANNEX 1 - Resource/reading list

The items on this list are offered as documents that your establishment should have for reference in situations where an adult's care requires careful discussion

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.hms.o.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

Still to be published

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
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 Regulations 2002 (Reports in relation to **guardianship and intervention orders**) (Scotland). 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 Regulations 2002 (Recall of **guardian's** powers) (Scotland). 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 run by ENABLE and ASAD in Spring 2001. A training resource pack produced for seminar participants is available on the Scottish Executive's website:

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

Further 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.sensecotland.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 3BA
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

ANNEX 2 - Overhead projection sheets

The following sheets for overhead projection are offered as illustrations to be used if needed at points in the programme of training.

OHP 1 - ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

Pack for social and healthcare staff

Suggested programme for training

Unit 1

Start, setting ground rules and planning the sessions in accordance with the audit of participants' knowledge

Time - 30 minutes

Refresher reading of introduction to the law and exercises

1 to 3

Time - 10 minutes

Discussion of Exercise 1 to 3

Time - 45 minutes

Break

Time - 15 minutes

Refresher reading of the section on incapacity and exercise 4

Time - 10 minutes

Discussion of Exercise 4

Time - 45 minutes

Total time - 2hr 35min

OHP 2 - ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

Pack for social and healthcare staff

Suggested programme for training

Unit 2

Refresher reading of the section on the principles and exercise 5

Time - 10 minutes

Discussion of Exercise 5

Time - 45 minutes

Refresher reading of the section on roles and duties and exercise 6

Time - 10 minutes

Break

Time - 15 minutes

Discussion of exercise 6

Time - 45 minutes

Refresher reading of the section on **powers of attorney** and exercise 7.

Refresher reading of the section on **intromission** and management of residents' finances and exercise 8 if needed for care home staff

Time - 10 minutes

Discussion of exercise 7 and, if needed for care home staff, 8.

Time - 45 minutes

Maximum total time 3hrs 10min

OHP 3 - ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

Pack for social and healthcare staff

Suggested programme for training

Unit 3

Start: Review of day 1 (if required)

Time - 15 minutes

Refresher reading of the section on medical treatment and exercise 9

Time - 10 minutes

Discussion of exercise 9

Time - 45 minutes

Refresher reading of the section on **intervention** and **guardianship orders** and exercise 10

Time - 10 minutes

Break

Time - 15 minutes

Discussion of exercise 10

Time - 45 minutes

Refresher reading of the final section of the pack

Time - 5 minutes

General discussion of how the Act will change and influence practice in the work setting

Time - 30 minutes

Maximum total time - 3hrs 05min

OHP 4 - ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

Pack for social and healthcare staff

(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.'

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

(Section 1 (4)) '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 whom the sheriff has directed to be consulted and the views of any person appearing to have an interest in the welfare of the adult.'

(Section 1 (5)) ' Any **guardians continuing attorney, welfare attorney** or manager of an establishment exercising functions under this Act or under any order of the sheriff in relation to an adult, in so far as it is reasonable and practicable to do so, encourage the adult to exercise whatever skills he has concerning his property, financial affairs or personal welfare, as the case may be, and to develop new such skills.'

OHP 5 - ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

Pack for social and healthcare staff

Section 1 (6) states that incapable means 'incapable of -

- (a) acting; or
- (b) making decisions; or
- (c) communicating decisions; or
- (d) understanding decisions; or
- (e) retaining memory of decisions...'

'As mentioned in any provision of this Act, by reason of mental disorder or of inability to communicate because of physical disability; but a person shall not fall within this definition by reason only of a lack or deficiency in a faculty of communication if that lack or deficiency can be made good by human or mechanical aid (whether of an interpretative nature or otherwise)'

OHP 6 - ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

Pack for social and healthcare staff

Definition of Mental Disorder: 'mental illness (including personality disorder) or mental handicap...

An adult shall not be treated as suffering from a mental disorder by reason only of promiscuity, or other immoral conduct, sexual deviancy, dependence on alcohol or drugs, or acting as no prudent person would act.'

OHP 7 - ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

Pack for social and healthcare staff

Management of residents' funds

The types of affairs that can be managed are:

- 'claiming, receiving, holding and spending any pension, benefit or allowance other than under the Social Security Contributions and Benefits Act 1992' (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)),
- 'disposing of such property' (Section 39 (1) (d)).

OHP 8 - ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

Pack for social and healthcare staff

Consent to Medical treatment

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 write a certificate authorising treatment for a specific course of treatment without consent.

ANNEX 3 - Glossary of terms

The following is a definition of certain 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.