

# **ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000**

**TRAINERS' GUIDE TO PACK 2  
FOR ASSESSMENT AND CARE MANAGEMENT STAFF**

## CONTENTS

1.	Introduction	1
	Resourcing the training	3
	Who should be a trainer?	3
2.	Sample programme outline	3
	Unit 1	5
	Unit 2	7
3.	How to implement the pack	8
	Optimum number of staff attending a group	8
	Group study of text	8
4.	Use of exercises	9
	Some further guidance on discussion following exercises	9
5.	Alternative guardianship exercise	14
	Discussion of the alternative guardianship exercise	15
	Annex 1 – Resource list	17
	Annex 2 – Overhead projection sheets	25
	Annex 3 – Glossary of terms	34

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

## **1. Introduction**

1.1 The pack to which this guide relates has been designed with the need for flexibility in mind. It may be used in a variety of ways, reflecting the wide range of settings and situations from the most isolated practitioners in outlying areas to those working in dedicated teams in urban areas.

It may therefore be used as distance learning material through which the individual worker studies alone, at their own pace, undertaking the exercises alone, with only the benefit of the discussion in the text. In this case, it may be of advantage for the practitioner to have the benefit of this trainers' guide, so that he/she may have the advantage of the full discussion of the exercises below, to replace the loss of opportunity of face to face discussion of the material. This is the least preferred option as it requires considerable discipline from the student, as does all distance learning material. It loses the considerable value that may be found in discussion with colleagues. You are advised that it is an option built into the design of the pack only so that the pack may be accessed by practitioners who do not have the resource of colleagues around them to create group discussion. It also requires the employer to give sufficient time and sufficient support to enable the practitioner to undertake the task. A practitioner using the pack in this way may benefit from this guide to access the discussion of exercises herein.

1.2 The pack may be used as open learning material in which a group of staff study the text alone, at their own pace and get together at set times to discuss issues and perform the exercises. This option is a less structured, more flexible means of working through the pack, while retaining the opportunity for face to face discussion amongst colleagues. As with the distance learning mode, it would involve considerable discipline from the practitioner and the allowance of time and support from the employer. It would involve the group of practitioners in co-ordinating, scheduling, timetabling and organising their study. If this option is the preferred one, it might be appropriate for the group to appoint a person to take the lead role (a team leader for example), in which case this guide should be made available to the group. Again, a group of practitioners using the pack in this way may benefit from this guide to access the structure and discussion of exercises herein.

1.3 The pack may be used in a more formal group study process, whereby a facilitator co-ordinates the group study of the text and leads the group through the exercises and discussion.

1.4 Finally, Pack 2 is the core text for Pack 3 for MHOs. If it is used in conjunction with an MHO training programme, it is up to the programme planning team to devise a way of incorporating it into the programme.

1.5 How to use the pack as distance learning material is self evident and the distance learning student of the pack is left to work through the text and tasks as directed therein. This guide is more geared to the trainer in either open learning or formal group study setting.

1.6 A range of overhead projection transparencies (OHPs) are supplied to illustrate aspects of the process to the group.

## **Resourcing the training**

1.7 The decision of how to use these packs rests largely with the section charged with training in your authority or agency. In the spirit of making the spread of information work across Scotland, it is requested that however the pack is used, staff must be given the time and resources to get the most out of it. If it is used by distance learning, it will take no less time than it will to implement it in a training session. If it is used in a training session, the two-day model must be backed by about a day of preparation time (pre-course reading). There is too much information in Pack 2 to expect any participant to take it all in during a training event. Participants will make little sense of the exercises if they have not read the text.

## **Who should be a trainer?**

1.8 Staff involved as tutors or otherwise involved in delivery of MHO programmes would be ideal trainers. Any experienced practitioner who is willing to take a lead role in the group process, however, would be suited to the task. It is recommended that trainers should be experienced MHOs because the pack itself rests upon a limited level of understanding of the legal backdrop to the areas of practice of which MHOs are familiar. While this level of knowledge is estimated to be no greater than that required of a qualifying social work student, the MHOs awareness of the context would give them the confidence as a trainer to engage with the material and the newness of the 2000 Act. It is recommended that it should be the same person who undertakes the trainer's role in this pack and in Pack 3 for MHOs, as this process would give the trainer the fullest knowledge of all the material.

## **2. Sample programme outline**

2.1 If you chose the formal group training session model it should take two full days to work through the pack (one day preparatory reading and one day training). The following is suggested as a programme for how this might be achieved.

2.2 You may notice that the programme is ambitious for two days training. There is much to take in. As this format is rather full, you may consider it a better arrangement to spread out the sessions over half days or to extend it over more than the two days.

2.3 If an open learning format is your preference, the programme could still be used as a rough guide although its implementation will be over a wider and more flexible timescale.

2.4 In this sample programme, there are 10 minute blocks given over to refresher reading of the text, to remind participants of the content of any given section. These generally break the text up into about 6 to 8 pages each, excluding the exercises. These sections are alternated with 50 minute sections to accommodate discussion of the exercises and other issues that arise from reflection upon the text.

2.5 The timings suggested in this outline are based on piloting the packs in formal training environments. The experience of the pilot demonstrated that no two groups are the same and that flexibility and trainer's judgement must be brought to bear in order to obtain the best out of the session. Some groups may wish to spend a great deal of time discussing one exercise and they may get a great deal out of the free ranging discussion arising from it. In this case it falls to the trainer's judgement how best to manage the exercise and when to curtail it, given the need to cover all material in the pack.

2.6 It may be that the experience of delivering the training in such groups will cause the trainer to revise and extend the suggested timescale offered in this guide. It should be recognised that the sample programme outline offered here is only advisory.

## Unit 1

2.7 Welcome, introductions, agreement on the timing and content of the programme and rules of confidentiality.

**Time - 10 minutes approx**

2.8 Introduction to the training (outlining the group study and discussion approach).

**Time - 5 minutes approx**

2.9 Group study: Refresher reading of text: Introduction, background to the Act, the legacy of the preceding legislation, definition of incapacity and Exercises 1– 3.

**Time - 10 minutes approx**

2.10 Exercises 1 - 3 and reflective group discussion of text.

**Time – 50 minutes approx**

2.11 Group Study: Refresher reading of text: The principles of the Act and Exercise 4.

**Time - 10 minutes approx**

2.12 Break time

15 minutes approx

2.13 Exercise 4 and reflective group discussion of the text.

**Time – 50 minutes approx**

2.14 Group study: Refresher reading of text: Roles and duties of sheriff, PG, MWC and local authority; **Continuing and welfare powers of attorney** and Exercise 5.

**Time - 10 minutes approx**

2.15 Exercise 5, **Continuing and welfare powers of attorney** - case study and reflective group discussion of the text.

**Time - 50 minutes approx**

2.16 Group study: Refresher reading of text: Accounts and funds, management of residents' finances, medical treatment and research.

**Time - 5 minutes approx**

2.17 Reflection and discussion of issues from text.  
**Time - 10 minutes approx**

**Total time - 3hrs 45mins**



## **Unit 2**

2.18 Recap on issues from Unit 1.

**Time - 10 minutes approx**

2.19 Group study: Refresher reading of text: **Intervention orders** and Exercise 6.

**Time - 10 minutes approx**

2.20 Exercise 6 and reflective group discussion of text.

**Time – 50 minutes approx**

2.21 Group study: Refresher reading of text: **guardianship orders** and Exercise 7.

**Time - 10 minutes approx**

2.22 Break time

**15 minutes approx**

2.23 Exercise 7 and reflective group discussion of text.

**Time - 50 minutes approx**

2.24 Completion of refresher reading of text.

**Time - 10 minutes approx**

2.25 Exercise 8 and reflective group discussion of the text.

**Time – 50 minutes approx**

2.26 Summing up and endings.

**Time - 5 minutes approx**

**Total Time - 3hrs 30min**

### **3. How to implement the pack**

3.1 As the trainer or facilitator, you will need to be very familiar with the material beforehand, so as to have the confidence in leading discussion. It is advisable to have read it thoroughly at least once before the first session. It may also be of advantage to have a copy of the Act, related Codes of Practice and your agency's policy and procedures for implementation of the Act.

3.2 As far as resources allow, you will need to consider the venue for training. Ideally it ought to be able to accommodate the number of attendees with scope for peace and quiet to read, and space to allow discussion in comfort.

3.3 In introducing the general context of the training it may be worthwhile setting groundrules. Examples of these are that the sessions will be more fruitful if set in a context of sharing knowledge, giving constructive criticism and ensuring confidentiality to enable participants to ethically share practice experiences.

#### **Optimum number of staff attending a group**

3.4 Depending on the chemistry of its members, group discussion tends to become complicated if the group has more than ten members. It may be less dynamic if there are only three members. It is possible to hold training for a larger number by running several groups at one time and drawing them together to feedback general issues from their discussion. This approach requires more co-ordination on behalf of the trainer.

#### **Group study of text**

3.5 The above programme suggests that time is divided between reading of the text, reflecting on and sharing understanding of that section of the text, and discussing the exercises. The purpose of this is to share understanding and allow people the scope to air issues they are less sure about. It is anticipated that this discussion will be specific to the issues in the text. The broader discussion of how this then relates to practice will come from the exercises.

3.6 It is acknowledged that some of the text requires intense reading. This is a problem created by the subject matter, the level at which practitioners are required to approach it and the need to keep the text

brief. Therefore time will have to be given to allow participants to assimilate it before the programme of study. The allotted time in the sessions is for superficial, refresher reading of the text.

3.7 In introducing the programme the following issues should be shared:

- There should be no expectation that the facilitator has all the answers;
- The collective experience of any group will be a resource in responding to many questions;
- If a group generates questions to which answers are not readily apparent, it will need to explore where and how it may find answers;
- It is anticipated that, at this early stage in the introduction of the legislation some questions will have no knowable answers. Such issues as evolving case law and departmental and agency procedures will influence emerging practice; and
- It is also recognised that the newness of the application of this law to practice will generate some anxiety in the search for certain answers.

3.8 The focused discussion on shared understanding of the text may be facilitated with the use of OHP 1. (See Annex)

## **4. Use of exercises**

4.1 The purpose of the exercises is to offer a means to reflect upon the text in proximity to practice. Just as it is important to give time and space to the reading, it is important to allow the same for the exercises.

### **Some further guidance on discussion following exercises**

4.2 The following is not intended to be a comprehensive discussion of the exercises. It is intended to spark off ideas for the trainer when considering how to direct group discussion through the exercises. If in reading this guidance in conjunction with the case studies, you find yourself in disagreement with the answers, as long as your view is

legally competent, so much the better. Then you have two opposing views to present for debate by the group.

4.3 Overall it is important to draw out of the discussion in all of these exercises the interactive dynamic of the principles and gateway definitions of incapacity in the Act and the assessment of the situation portrayed in each study.

4.4 Exercises 1 to 3 are reflective exercises to enable participants to consider the relevance of the legislation in terms of reference to themselves. As such here are no correct answers to the 'how might it feel?' questions. The other purpose of the exercises is to consider the scope of actions and decisions that we all make on an everyday basis, the legal backdrop to this process and the legal implications of incapacity.

4.5 Exercise 4 asks the reader to weigh the infringement of privacy against the risk to the adult should intervention not be made.

4.6 The issue for Duncan is that he seems incapable of realistically understanding the extent of his disability and incapable of adequately protecting his financial interests. Therefore he appears to be at considerable risk, sufficient to justify intervention. While this discussion is reflected in some detail in the text after the exercise, it might be important for the trainer to emphasise the partial nature of incapacity: Just because Duncan might not be able to manage his entire inheritance, for example, there is no evidence that he would be incapable of managing smaller sums from it on a regular basis.

4.7 In a less permanent way, Rachel seems to fit the gateway definition also by reason of mental disorder. The risk to her is of loss of financial security and family. Should any participant in the discussion raise risks attendant upon her husband and children, it would be prudent to remind them of the principle that we are only authorised to consider benefit to the adult. However, the issue is not simple: At what point does harm to the interests of one's family become detrimental to oneself? To what extent should you act to protect Rachel from engaging in behaviour which might be harmful to her family welfare which she lacks the capacity to avoid and would not be likely to engage in when well. If, as may be the case when she is well, Rachel is a dedicated partner to her husband and mother to her children, might it be of benefit to her to protect them from loss or risk?

4.8 As the discussion following the exercise states, Dorothy does not fit the gateway definition of incapacity, having a physical disability for which there appears to exist a means to facilitate communication, and not having a mental disorder impairing her capacity.

4.9 Exercise 5 has less definite answers than Exercise 1. There would be merit in discussing **power of attorney** with Trina, as she would have the ability to make her own provision in the event of loss of capacity, rather than waiting until it is too late.

4.10 There are some hints that none of the people mentioned in the study might be suitable to be Trina's proxy. It is open to discussion exactly how appropriate Dan would be to act as proxy since he uses force in attempting to protect her. It could be that care management might find ways of working with Dan to help him manage the situation better.

4.11 Exercise 6 poses a problem relating to the local authority's investigative duties. From what we know, there is evidence that Roy might have impaired capacity (as perhaps might Sally). He seems at risk in so far as he is unable to manage his property. There may be financial issues to deal with and if this situation goes unresolved, his welfare may be in jeopardy. None of this can be clear without access for a proper assessment.

4.12 Working to establish a trusting relationship would seem to be the way to proceed. If this did not work over time, there might not be sufficient evidence here to suggest more forceful intervention. It is not possible to resolve this important matter from the information contained in the case study. It is the property of case studies that they cannot address all issues that may arise as a practitioner engages with a case. An awareness of the following question would be important in reflecting upon the case: In a situation such as this, in which risk cannot be fully assessed without access, at what point should more forceful means be used to achieve full assessment?

4.13 Were there good enough reason to consider that Roy and/or Sally were at risk because of impaired capacity, this might be a case in which to request authority from a sheriff to obtain access to them in pursuit of an application due to Roy and Sally's non-compliance.

4.14 Were the access issue resolved, an **intervention order** might be the most targeted means to fix the fire damage and leave the couple

who were otherwise managing their lives well-enough to work things out for themselves. It could not be considered, applied for or implemented without recourse to the principles.

4.15 Exercise 7 is intended to encourage reflection upon the process of transfer of **guardianship**. As stated above, there is the alternative exercise if you want it. The short answer to the question is that the three powers of the 1984 order may have served to secure George accommodation more suited to his needs, but they are no longer adequate to his present, more complicated situation.

4.16 If this situation is examined in the light of the principles, George is not being encouraged to make best use of his existing skills as long as he is debarred from moving to accommodation with greater independence. This cannot be said to be of benefit to him. However, taking account of his views would mean acknowledging his relationship with Janine.

4.17 Here it may be helpful to consider the model of a care plan as a basis from which to determine which aspects of George's needs should be met by the powers of a **guardianship order**.

4.18 The broader issues from this case are concerned with disentangling the MHO role from the role of social work officer involved in the assessment and care arrangement process, especially if the officer is the care manager. The reference to a multi-disciplinary conference in the discussion following the exercise is intended to promote consideration of how a non-MHO practitioner may explore a situation in which there appears to be a weight of issues that relate to MHO practice. Obviously the MHO would be a key contributor to such a conference. However, their role and assessment are to be seen as independent of, but contributing to the assessment and care management decision-making process.

4.19 This in turn relates to a broad discourse in the text, which could be summed up by the question: At what point does a social work officer determine that an MHO assessment is required? In this case it should be clearly set out in any local authority's procedures that there will be mechanisms in place to notify MHO's of transfers and reviews of guardianship orders.

4.20 Exercise 8 is built into the final examination of **guardianship** in the pack. It begins with the concept of a care plan as discussed in the

above exercise. As such it follows from the discussion above about when a social work officer assessment indicates the need for an MHO assessment. If the point feels laboured, it is because it is crucial to the good working of the Act in practice that social work officers see themselves as being in a key position to act as a screen to pick up people whose health, welfare and/or financial circumstances may be compromised by their limited capacity in these areas. It is also important that they consider themselves key links in a chain of screening. While it is not the case regarding Mr Kahn, as discussed in the case study, it could be that the day centre staff alert the social work officer to the need to screen for incapacity and this activates the social work officer making a referral to an MHO. It would be important for a trainer to bring this awareness to the discussion of the exercise.

4.21 The next question to be posed might be: to what extent does Mr Kahn pass through the gateway definition of incapacity in the Act? There are several points in the study that indicate that he is incapable in relation to decisions about and acting to safeguard and promote his welfare.

4.22 The other function of the exercise is to focus on the tasks of a social work officer being involved in either the supervision of the order as managed by the son, or the management of the order on behalf of the local authority.

4.23 These issues are well enough discussed in the post-exercise discussion. There are, however, some parallel issues relating to the alternative to this exercise below.

## **5. Alternative guardianship exercise (physical incapacity)**

5.1 This exercise is included as an alternative to the final case study in the pack (Exercise 8). It is not included in the text of the pack because of a need to keep the already large pack to a minimum and because it is anticipated that incapacity because of physical disability will be a less frequent occurrence in comparison to incapacity caused by mental disorder. It is included here for those practitioners who work in the specialised field of care management of people with physical disability, who may feel that the text does not reflect their practice bias.

5.2 Please read the following case study and explore the questions in your discussion group.

5.3 Please take notes from your discussion:

5.4 Eduardo De Franco is a 78 year-old man from a traditional Italian/Jewish family, which came to Scotland in 1939. Sr De Franco lives with his wife Carla and their youngest son, his wife and three children, in a large house that he owns. Since retiring from the fruit and vegetable wholesale business which he built up, Sr De Franco has let his two sons manage the work. His oldest son Eduardo is the senior partner in this arrangement.

5.5 Recently, Sr De Franco had a series of strokes that have left him unable to move or speak. He consequently requires a very high level of nursing care, which has been managed privately at home for the past three months, reflecting Sr De Franco's avowed hatred of institutional care.

5.6 However, Eduardo Jr, on advice from the family accountant, believes that they do not have the money to sustain the cost of this care.

5.7 Both Sr De Franco's wife and younger son, Lorenzo, would prefer to sell the family business to pay for continuing home care. However, Eduardo Jr points out that this would be as much against his father's wishes as would residential care.

5.8 In this case study participants should be asked to reflect upon the following questions and issues:



5.9 Were you invited into this situation as a care manager, how appropriate would it be to propose **guardianship** as a means of making decisions about Sr De Franco's care on his behalf?

5.10 Assuming merit in **guardianship**, tease out the different financial and welfare powers which might be required and discuss the merits of considering any members of the family being the applicant, compared to the local authority.

5.11 Assuming merit in **guardianship**, discuss the merits of considering members of the family as joint **guardians**, compared to you as the named person acting on behalf of the local authority as **guardian**.

5.12 Were a sheriff to approve an order with authority to make decisions about Sr De Franco's residence and treatment with the sons as joint **guardians**, what issues do you anticipate you would have to address in supervising the order?

5.13 Were you the named person in an order with authority to make decisions about Sr De Franco's residence and treatment, what issues do you anticipate you would have to address in managing the order?

5.14 Are there issues of culture of which you should be aware, arising from the case study?

### **Discussion of the alternative to Exercise 5**

5.15 In your discussion, were you aware of the need to obtain expert advice that would confirm the extent to which Sr De Franco's physical disability causes incapacity as defined in the Act? The medical recommendations requested in relation to reports to support the application would speak to this, but you may want to check it out before deciding to make an application and requesting the required medical recommendations.

5.16 Did you consider the fact that, while Sr De Franco's family seem to be in unresolved conflict over his care and residence, the matter is legally a hypothetical discussion, given that no one has the authority to make decisions on his behalf. Only **guardianship** could invest this authority in anyone apart from Sr De Franco himself. He, himself, lacks the capacity to communicate his views.

5.17 While no one could prevent any other person whom the sheriff agrees has an interest in the adult from making an application, did your discussion identify that, while Sr De Franco's wife and his son's may become applicants, you may be inviting them to act out their conflict in court by supporting one or the other party as applicant?

5.18 While you might be able to advise and support them through an application, there should be support and expertise (including financial expertise) that you could access in your employing authority to enable you to be the applicant, or to better advise the family.

5.19 On the other hand, to discourage them from making an application may be to debar them from their responsibility as family members, in supporting their husband and father.

5.20 Were you to supervise the joint management of the welfare aspects of the **guardianship order** by the sons, you would need to encourage them to keep records that should reflect the use of the principles in their actions. An advantage of this would be that the principles of 'taking account of the past wishes of the adult' and 'the least restrictive option' might be valuable tools in resolving the conflict to the benefit of Sr De Franco.

5.21 On the other hand, there is a power dynamic between the sons, Eduardo is the senior partner in the firm and this may pose difficulty in resolving the conflict while needing to respect the principle of 'taking account of the views of relatives and carers.'

5.22 Were you the named person on behalf of the local authority, you would be left with the difficult task of resolving the conflict, taking account of all the above principles. This might be especially hard in consideration of the principle of 'taking account of the views of relatives and carers.'

5.23 The impact of culture is implied in the case study by particularly close family relationships. There may be other issues arising from the situation which the study does not address in so many words. For example, if Sr De Franco was a practising Jew, he may require kosher food. This may be an issued should he require feeding by intubation.

## **ANNEX 1 – Resource List**

### **Legislation**

**The Adults with Incapacity (Scotland) Act 2000** can be viewed on the HMSO web-site: [www.hmso.gov.uk](http://www.hmso.gov.uk) or purchased from the Stationery Office – [www.hmso.gov.uk](http://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/](http://www.scotland.gov.uk/justice/incapacity/)  
Guidance from the Office of the Public Guardian can be downloaded from [www.publicguardian-scotland.gov.uk/](http://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/](http://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/](http://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/](http://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 <b>guardian</b> relating to personal welfare
AWI[12]	Application to local authority for recall of powers of a <b>guardian</b> 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 <b>guardian</b> relating to personal welfare
AWI[14]	Intimation by Mental Welfare Commission of application or intention to recall powers of a <b>guardian</b> relating to personal welfare
AWI[15]	Intimation by local authority of application or intention to recall powers of a <b>guardian</b> relating to personal welfare
AWI[16]	Intimation by Mental Welfare Commission of proposal to refuse an application for recall of powers of a <b>guardian</b> relating to personal welfare
AWI[17]	Intimation by local authority of proposal to refuse an application for recall of powers of a <b>guardian</b> relating to personal welfare
AWI[18]	Decision by Mental Welfare Commission on recall of powers of a <b>guardian</b> relation to personal welfare
AWI[19]	Decision by local authority on recall of powers of a <b>guardian</b> relation to personal welfare

These forms are available electronically from the website at [www.scotland.gov.uk/justice/incapacity](http://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 organised 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](http://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. 2<sup>nd</sup> 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/](http://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](http://www.mwc.scot.org.uk)

#### Courts

Scottish Court Service  
Hayweight House  
23 Lauriston Street  
Edinburgh EH3  
Tel: 0131 229 9200  
[www.scotcourts.gov.uk](http://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](http://www.lawscot.org.uk)

Legal Aid  
Scottish Legal Aid Board  
44 Drumsheugh Gardens  
Edinburgh EH3 7RN  
Tel: 0131 226 7061  
[www.slab.org.uk](http://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](http://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](http://www.alzscot.org)

Carers UK  
3<sup>rd</sup> 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](http://www.cas.org.uk)

ENABLE  
6<sup>th</sup> Floor  
7 Buchanan Street  
Glasgow G1 3HL  
Tel: 0141 226 4541

Sense Scotland  
5<sup>th</sup> Floor  
45 Finnieston Street  
Glasgow G3 8JU  
Tel: 0141 564 2444  
[www.sensecotland.org.uk](http://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](http://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 assessment and care management staff

#### Sharing an understanding of the text

As you read each section of the text, take notes of:

- Any issues of which you feel unsure;
- Any aspects of which you require more understanding;
- Any aspects of which you have related experience of (for example, if you have experience of application for or management of **guardianship** under the 1984 Act, it will have relevance to various points of discussion of **guardianship** under 2000 Act);

After reading each section you will be invited to share both understanding and lack of understanding. Remember that each of these is equally valuable to the acquisition of knowledge and understanding.

## OHP 2 – ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

### Pack for assessment and care management staff

#### Principles of the Act (Section 1)

- 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.
- 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.
- 1(4) ‘ in determining if an intervention is to be made, (and, if so, what intervention is to be made, accounts shall be taken of -
  - a) the present and past wishes and feelings of the adult as far as they can be ascertained by any means of communication, whether human or by mechanical aid (whether of an interpretative nature or otherwise) appropriate to the adult;
  - b) views of the nearest relative and primary carer of the adult, in so far as reasonable and practicable to do so;
  - c) (i) views of any **guardian, continuing attorney** or **welfare attorney** of an adult 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.
- 1(5) ‘Any **guardian, 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 shall, 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 3 – ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000**

### **Pack for assessment and care management staff**

#### **Definition of incapacity - (Section 1 (6))**

- (6) For the purposes of this Act, and unless the context otherwise requires:

‘adult’ means a person who has attained the age of 16 years;

‘incapable’ means incapable of:

- (a) acting; or
- (b) making decisions; or
- (c) communicating decisions; or
- (d) understanding decisions; or
- (e) retaining the 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); and

‘incapacity’ shall be construed accordingly.

## **OHP 4 – ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000**

### **Pack for assessment and care management staff**

#### **Test of incapacity - medical treatment (Section 47 (1))**

#### **47 Authority of persons responsible for medical treatment**

- (1) This section applies where the medical practitioner primarily responsible for the medical treatment of an adult:
  - (a) is of the opinion that the adult is incapable in relation to a decision about the medical treatment in question; and
  - (b) has certified in accordance with subsection (5) that he is of this opinion.

## **OHP 5 – ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000**

### **Pack for assessment and care management staff**

#### **Test of incapacity – intervention orders (Section 53 (1) and guardianship orders (Section 58 (1))**

##### **53 Intervention orders**

- (1) The sheriff may, on an application by any person (including the adult himself) claiming an interest in the property, financial affairs or personal welfare of an adult, if he is satisfied that the adult is incapable of taking the action, or is incapable in relation to the decision about his property, financial affairs or personal welfare to which the application relates, make an order (in this Act referred to as an **'intervention order'**).

##### **58 Guardianship orders**

- (1) Where the sheriff is satisfied in considering an application under Section 57 that:
  - (a) the adult is incapable in relation to decisions about, or of acting to safeguard or promote his interests in, his property, financial affairs or personal welfare, and is likely to continue to be so incapable; and
  - (b) no other means provided by or under this Act would be sufficient to enable the adult's interests in his property, financial affairs or personal welfare to be safeguarded or promoted,

he may grant the application.



## **OHP 6 – ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000**

### **Pack for assessment and care management staff**

#### **Programme outline - Unit 1**

Welcome, introductions, agreement on the timing and content of the programme and rules of confidentiality.

**Time - 10 minutes approx**

Introduction to the training (outlining the group study and discussion approach).

**Time - 5 minutes approx**

Group study: Refresher reading of text: Introduction, background to the Act, the legacy of the preceding legislation, definition of incapacity and Exercises 1 – 3.

**Time - 10 minutes approx**

Exercises 1 - 3 and reflective group discussion of text.

**Time - 50 minutes approx**

Group study: Refresher reading of text: The principles of the Act and Exercise 4.

**Time - 10 minutes approx**

Break time

15 minutes approx

Exercises 4 and reflective group discussion of the text.

**Time - 50 minutes approx**

Group study: Refresher reading of text: roles and duties of sheriff, PG, MWC and local authority; **continuing and welfare powers of attorney** and Exercise 5.

**Time – 10 minutes approx**

Exercise 5, **continuing and welfare powers of attorney** - case study and reflective group discussion of the text.

**Time - 50 minutes approx**

Group study: Refresher reading of text: Accounts and funds, management of residents' finances, medical treatment and research.

**Time - 5 minutes approx**

Reflection and discussion of issues from text.

**Time - 10 minutes approx**

**Total time - 3hrs 45mins**

## **OHP 7 – ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000**

**Pack for assessment and care management staff**

**Programme outline – Unit 2**

Recap on issues from Unit 1.

**Time - 10 minutes approx**

Group study: Refresher reading of text: **intervention orders** and Exercise 6.

**Time - 10 minutes approx**

Exercise 6 and reflective group discussion of text.

**Time - 50 minutes approx**

Group study: Refresher reading of text: **guardianship orders** and Exercise 7.

**Time - 10 minutes approx**

Break time

**15 minutes approx**

Exercise 7 and reflective group discussion of text.

**Time - 50 minutes approx**

Completion of refresher reading of text.

**Time - 10 minutes approx**

Exercise 8 and reflective group discussion of the text.

**Time - 50 minutes approx**

Summing up and endings.

**Time - 5 minutes approx**

**Total time - 3hrs 30min**

## **ANNEX 3 – 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.

