ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

TRAINERS' GUIDE TO PACK 3
FOR MENTAL HEALTH OFFICERS

CONTENTS

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

1. Introduction

1.1 While Pack 3 to which this guide relates has been designed with the need for flexibility in mind, trainers and managers are strongly advised that practitioners will get less out of it if they are denied the opportunity to share discussion of the exercises in a structured environment.

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 community mental health, care management and psychiatric hospital teams in urban areas. It can be used as distance learning material in 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, to have the advantage of the full discussion of the exercises below. This would help the loss of opportunity of face to face discussion of the material.

It also requires considerable discipline from the practitioner, as does all distance learning material. It also requires the employer to give sufficient time off work and sufficient support to enable the practitioner to undertake the task. This is the least preferred option except in exceptional circumstances.

1.2 Pack 3 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 model, it would involve considerable discipline from the practitioner and the provision 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.

1.3 Finally, as the option of preference advanced by the designer of the packs, it 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 How to use the pack as distance learning material is relatively self-evident and the distance learning practitioner 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.

1.5 A range of suggested outlines for overhead projection transparencies (OHPs) are supplied to illustrate aspects of the process to the group.

Resourcing the training

1.6 With reference to the advice given above on preferred options, the decision on how to use these packs rests largely with the section charged with training in your authority or agency. However Pack 3 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 preparation time (pre-course reading).

1.7 It should also be acknowledged that the person implementing this Pack as a trainer will need considerable preparation time the first time they use it.

Duration of the training

1.8 If using the preferred model of delivery, in a structured setting, the participants will need approximately a half day for preparatory reading to familiarise themselves with the text. The delivery of the training will take a full day, if delivered in one session. As will be seen in the proposed outline below, the pack is divided into two units of 3 ½ hours duration, including a brief break.

Precondition of use

1.9 As advised in Pack 2 and Pack 3, the pack for MHOs should only be used after Pack 2 for assessment care management staff has been thoroughly studied in accordance with the advice set out in the trainers' guide to it.

Who should be a trainer?

1.10 Ideally the trainer involved in implementing this pack should be the person who has been involved in implementing Pack 2. This person should be or have been an MHO. The reasons for this are that Pack 2 contains the detailed information on the Act upon which Pack 3 rests. The more familiar the trainer is with this information, the more they will be at ease with the material in Pack 3.

1.11 Staff involved as tutors or otherwise involved in delivery of MHO programmes would be ideal trainers. Any experienced practitioner 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 assumes a good level of understanding of the legal backdrop to MHO practice. Especially where the pack is being used in training of practising MHOs, the issues that are likely to come up in discussion may be alien to a non-MHO trainer.

2. Sample programme outline

2.1 As with the foregoing Pack 2, there is much for participants to assimilate in this study. You are advised that the training requires preparatory reading of the text. Some time is given in the sessions for refresher reading of the material, but this alone is not adequate to a good understanding of the subject.

2.2 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.

2.3 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.

2.4 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

2.5 Start: Welcome, introductions, agreement on the timing and content of the programme and rules of confidentiality.
Time - 15 minutes approx

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

2.7 Group study: Refresher reading of text: Role of the MHO, Core role of MHO; Brief review of pack 2; What is welfare?; Risk and welfare**.**
Time - 30 minutes approx

2.8 Exercise 1: Reading and group discussion.
Time - 1 hour approx

2.9 Break
Time - 15 minutes approx

2.10 Group study: Refresher reading of text: **guardianship orders**, etc.
Time - 15 minutes approx

2.11 Exercise 2 and group discussion.
Time - 45 minutes approx

Unit 2

2.12 Start: Group study: Refresher reading of text: Transfer of orders, etc.
Time - 15 minutes approx

2.13 Exercise 3 and group discussion.
Time - 45 minutes approx

2.14 Group study: Refresher reading of text: **powers of attorney**.
Time - 15 minutes approx

2.15 Exercise 4 and group discussion.
Time - 30 minutes approx

2.16 Break
Time - 15 minutes approx

2.17 Group Study: Refresher reading of text: **intromission** and medical treatment.
Time - 15 minutes approx

2.18 Exercise 5 and group discussion.
Time - 45 minutes approx

Close of Session.

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 would also be important to have a copy of the Act, related Codes of Practice and your agency's policy and procedures for implementing the Act to hand for reference.

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 and have scope for participants to have peace and quiet to read and space for discussion in comfort.

3.3 In introducing the general context of the training it may be worthwhile setting ground rules. 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 that enables 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 and 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 by the trainer.

Group study of text

3.5 The above programme suggests that time is divided between reading of the text, reflection and sharing of understanding of that section of the text that has been read and discussion of the exercises that are interspersed throughout the text.

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 MHOs are required to approach it and the need to keep the text brief.

3.7 If you look at the sample programme you will see that it offers reading time followed by reflection and discussion of the text and related exercise. The purpose of this is to share understanding and allow

people the scope to air aspects they are less sure about. It is anticipated that this discussion will be specific to the issues in the text and the broader discussion of how this then relates to practice as targeted in the exercises.

3.8 In introducing the programme the following 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 it knows no answers, 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 definite answers. Such issues as evolving case law and local procedures will influence emerging practice; and
- It is also recognised that the newness of the application of the law to practice will generate some anxiety in the search for certain answers.

3.9 The focused discussion on shared understanding of the text may be facilitated with the use of OHP 1. (see annex)

Use of exercises

3.10 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.

3.11 It may be useful to record salient points of the discussion of exercises on a flip-chart as an aid to memory for the participants.

Some further guidance on discussion following exercises

3.12 The following is not intended to be a comprehensive discussion of the exercises. In conjunction with the discussion of the exercises in the text, 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.

3.13 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.

3.14 Exercise 1 addresses the complexities of mediating evidence-based risk analysis with the principles of the Act, in considering the powers you may seek to use under the Act. The study itself is designed to be rather inconclusive as regards the need for an order since this will focus participants upon the nature of evidence and the consideration of the least restrictive option.

3.15 Exercise 2 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. The next question asked is to what extent does Miss Jamal pass through the gateway definition of incapacity? There are several points in the study that indicate that she lacks capacity in relation to making decisions and acting to safeguard and promote her welfare. Her lack of understanding of her limited abilities in the light of her mother's disability is reasonably well demonstrated in the last paragraph of that page.

3.16 The third step in the process of assessment, inviting consideration of the principles, poses several challenges. The risk to her mother should not in itself be offered as the sole reason for proposing **guardianship**. This may not be in keeping with the principle of benefit to the adult. The benefit to the adult needs to be teased out and made explicit. Neither should the assessment fall into the trap of making culturally biased assumptions. In taking account of the views of Miss Jamal, her relative and carer, discussion must reflect the need to respect the culture and the religious needs of the family while not shrinking from the task of protecting Miss Jamal's welfare. This discussion should be reflected in the response to the last question relating to the Race Relations (Amendment) Act 2000.

3.17 Exercise 3 - It is difficult to develop a full discussion without access to the range of cases that participants propose for discussion. This will involve the trainer in thinking on their feet.

3.18 The first task will be to select a suitable case, assuming participants identify a range of cases. In some areas of Scotland, where **guardianship** under the 1984 Act was rarely, if ever, used, it may be that no one has experience of it. In this case, the option of identifying a case that might benefit from the new, broader powers will suffice. In discussing this it may be of benefit to recall the discussion in Pack 2, relating to the culture of non-use of **guardianship**. Questions could be asked as to why it has been underused and how this may impact upon the use of the 2000 Act. The difference is that this Act now clearly addresses gaps in previous legislation and places specific duties on local authorities to investigate and take forward **intervention** and **guardianship orders** in certain cases. Informal actions taken in response to the financial and welfare needs of adults lacking capacity in respect of these matters, or inaction may, in future, be open to legal challenge.

3.19 In some remote areas such as Orkney, where there is no Section 20 approved doctor on the Islands, the discussion may focus upon practical issues that have to be resolved to facilitate the use of the Act.

3.20 Exercise 4 - There would be merit in discussing **power of attorney** with Trina, as she would have opportunity to make her own provision in the event of loss of capacity, rather than waiting until it is too late.

3.21 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, however, exactly how appropriate it would be to have Dan act in this capacity given his behaviour. It could be that care management might find ways of working with Dan to help him manage the situation better so that he does not resort to use force and can responsibly carry out the duties of a proxy.

3.22 In so far as there is evidence to indicate the need for an MHO assessment for detention in the last stage of the exercise, Dan would have the same power to consent/apply, as would any relative. Were he at odds with any MHO assessment, this could complicate the process of negotiating admission for services at home as the case may be.

3.23 Exercise 5 is intended to focus discussion on a range of treatment dilemmas. Decisions on these would be for the medical officer to make but the idea is to get MHOs to understand the divide between informal treatment, detention under the 1984 Act and certification under the 2000

Act. Given the 50 minute limit to discussion in the proposed programme outline, it would be important to have limited and focussed discussion of each case. To this end, full discussion of the scenarios is offered in the text following each one.

3.24 The limited information in the case of Richard makes it unclear as to what extent he could make an informed decision in this high-risk situation. It is not important whether the group arrives at a decision that he should be allowed to make his own choice or he should be subject to a certificate of incapacity. The importance is in the discussion, teasing out the relevant issues which should be considered before deciding upon a course of action. The decision is ultimately a medical one.

3.25 The function of devising the scenario involving Gill is to provoke discussion of the distinction between treatment allowed under Section 47 and treatment that would involve 'placing an adult in a hospital for treatment of a mental disorder against his (or her) will' (Section 47 (7) (c)), which is not allowed under the 2000 Act and therefore falls to the 1984 Act.

3.26 What is not discussed here is the complex issue of determining the point at which the phrase 'against his will' can be seen to apply. If Gill is so depressed that she is passively compliant but unable to express her acceptance of treatment, is this or is it not against her will? You may find some approximation of an answer in the discussion of de facto detention and the Bournewood case (in Pack 2). The short answer to this question, should it arise, is that MHOs ought to be well used to deciding when consent to an application for detention is justified and they should not allow themselves to be confused by the imposition of another potential layer of legislation under the 2000 Act. If in doubt, the question 'which route to treatment best protects and secures the person's rights?' might focus the issue. It is also a decision that MHOs should not have to arrive at alone. It is to be made in consultation with medical colleagues. Ultimately, the decision in either case, rests with the medical practitioner. The MHO, however, plays an important role in contributing to the medical practitioner's assessment.

3.27 Making George (case example C) subject to **guardianship** is a means of getting the group to think about the inter-relationship of different parts of the Act. It could be that the **guardianship order** needs to be varied to include treatment powers but it sounds as if there is not the luxury of time in this case so a doctor's certificate to treat might be a more focused means to that end.

3.28 In (case example D), Gordon is reluctant to undergo treatment for a physical condition because he is incapacitated by mental illness. Were it appropriate to treat him without his consent, the 1984 Act would be appropriate for treatment of the mental disorder and the 2000 Act would be the route for such treatment as is required for his chest pains.

3.29 In the last case example, Erica fits more into the orbit of the 1984 Act as the treatment is for a mental illness, against her will. As in the case of Gill, treatment would involve 'placing (the) adult in a hospital for treatment of a mental disorder against (her) will' and so the **guardianship order** may be discounted apart from the good practice issue of consultation with the **guardian** over issues that affect the adult.

ANNEX 1 - 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 mental health officers

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; and
- Any aspects in which that 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 of the Act.

OHP 2 - ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

Pack for mental health officers

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, which one), account shall be taken of:

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

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

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

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

- 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 …… and to develop new such skills”.

OHP 3 - ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

Pack for Mental Health Officers

Definition of incapacity

Section 1 (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 mental health officers

Definition of incapacity: Management of residents' funds

Section 37 (2) 'Where the managers of an authorised establishment have decided that management on behalf of the resident of the matters set out in Section 39 by them is the most appropriate course of action, they shall cause to be examined by a medical practitioner any resident in the establishment who they believe may be incapable in relation to decisions as to, or of safeguarding his interest in, any of the resident's affairs referred to in Section 39; and if the medical practitioner finds that the resident is so incapable he shall issue a certificate in prescribed form to that effect.'

Section 39: Matters which may be managed

The matters which may be managed under this Part by the managers of an authorised establishment are:

(a) claiming, receiving, holding and spending any pension, benefit, allowance or other payment other than under the Social Security Contributions and Benefits Act 1992 (Income related benefits);

(b) claiming, receiving, holding and spending any money to which a resident is entitled;

(c) holding any other moveable property to which the resident is entitled; and

(d) disposing of such moveable property.

OHP 5 - ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

Pack for mental health officers

Definition of incapacity

Section 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 6 - ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

Pack for mental health officers

Definitions of incapacity

Section 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'**).

Section 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 7 - ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

Pack for mental health officers

Sample programme

Unit 1

Start: Welcome, introductions, agreement on the timing and content of the programme and rules of confidentiality**.**
Time - 15 minutes approx

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

Group study: Refresher reading of text: Role of the MHO, Core role of MHO; Brief review of pack 2; What is welfare?; Risk and welfare.
Time - 30 minutes approx

Exercise 1: Reading and group discussion.
Time - 1 hour approx

Break
Time - 15 minutes approx

Group study: Refresher reading of text: **guardianship orders**, etc.
Time - 15 minutes approx

Exercise 2 and group discussion.
Time - 45 minutes approx

OHP 8 - ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

Pack for mental health officers

Sample programme

Unit 2

Start: Group study: Refresher reading of text: Transfer of orders, etc.
Time - 15 minutes approx

Exercise 3 and group discussion.
Time - 45 minutes approx

Group study: Refresher reading of text: **powers of attorney**.
Time - 15 minutes approx

Exercise 4 and group discussion.
Time - 30 minutes approx

Break
Time - 15 minutes approx

Group study: Refresher reading of text: **intromission** and medical treatment.
Time - 15 minutes approx

Exercise 5 and group discussion.
Time - 45 minutes approx

Close of session.

ANNEX 2 - 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.