

# **Consultation on Delegation of Local Authority Functions:**

## **Mental Health (Care and Treatment) (Scotland) Act 2003**

**and**

## **Adults With Incapacity (Scotland) Act 2000**

**A Consultation Paper**

**March 2013**

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## **INTEGRATION OF ADULT HEALTH AND SOCIAL CARE**

### **CONSULTATION ON DELEGATION OF LOCAL AUTHORITY FUNCTIONS: MENTAL HEALTH (CARE AND TREATMENT) (SCOTLAND) ACT 2003 & ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000**

#### **INTRODUCTION**

1. This consultation supplements the recent Scottish Government [Integration of Adult Health and Social Care in Scotland: Consultation on Proposals](#), to seek views on the specific issue of delegation of local authority functions in Scotland under:

- the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”); and
- the Adults with Incapacity (Scotland) Act 2000 (“the 2000 Act”).

2. Under Part 4 of the 2003 Act, local authorities and health boards have an existing duty on them to cooperate with one another in the provision of relevant services, to ensure a joined up approach. Local authorities also have a number of other duties and powers under Part 4 of the 2003 Act to provide care and support services, and services to promote the well-being and social development of persons with a mental disorder. Otherwise, of course, throughout the 2003 Act, local authorities’ appointed mental health officers (“MHOs”) have a wide range of powers and duties under the 2003 Act, the Criminal Procedure (Scotland) Act 1995, and the 2000 Act. Finally, local authorities have further powers in relation to adults with incapacity under the 2000 Act.

3. Whilst the background context to this consultation being undertaken is the upcoming Bill on Adult Health and Social Care Integration, there is an underlying fundamental question for discussion on what local authority functions should be delegable. In this consultation, consultees are asked to provide their views on what, if any, MHO or local authority functions under the 2003 Act, or local authority functions under the 2000 Act, should in future be able to be delegated by local authorities to NHS (National Health Services for Scotland) boards in Scotland.

#### **PART 1: BACKGROUND ON INTEGRATION AGENDA**

##### **Integration of Adult Health and Social Care – Background to proposals**

4. As consultees will be aware, in December 2011, the then Health Secretary Nicola Sturgeon set out the Scottish Government’s plan to integrate adult health and social care, with the consultation on proposals subsequently taking place over the summer of 2012.

5. In its Programme for Government, the Scottish Government announced in September 2012 its commitment to the introduction of an integrated system of health and social care through a new Bill. The intention of this piece of legislation is to improve outcomes for people using health and social care services, and to help address funding and demographic challenges over the longer term.

6. The focus of any legislation brought forward by the Scottish Government will be squarely on improving outcomes. It is intended to introduce a nationally agreed set of outcomes which will apply across adult health and social care. It is also intended that Health Boards and Local Authorities will be jointly and equitably accountable for their shared responsibility to deliver those outcomes. In particular the legislation will ensure that service planning and commissioning of services is led by clinicians and social workers, with appropriate input from the third and independent sectors. Key to these reforms will be locality based service planning and decision making.

7. The legislation will require statutory partners to integrate budgets, for all adult health and social care services. These integrated budgets will include, as a minimum, expenditure on adult community health and adult social care services, and, importantly, expenditure on the use of some acute hospital services as well. Finally the legislation will create the role of a single, senior accountable officer locally to ensure that partners' joint objectives are delivered.

### **Integration of Adult Health and Social Care - Consultation**

8. The Scottish Government's [Integration of Adult Health and Social Care in Scotland: Consultation on Proposals](#) closed on 11 September 2012. An analysis of responses has now been made available [online](#) at:

#### [Integration of Adult Health and Social Care Consultation Analysis Report](#)

9. The Consultation Analysis Report reflects the views of the 315 respondents, including all Local Authorities, all territorial Health Boards, Third/Independent Sector organisations, professional organisations, GPs (General Practitioners), nurses, carers and individuals.

10. The Scottish Government's formal response to the Integration of Adult Health and Social Care Consultation will be published early in 2013. The development of the Bill will be informed by stakeholder views taken from consultation responses.

### **Further Information on Integration of Adult Health and Social Care**

11. You can find out more about the Integration of Adult Health and Social Care agenda by visiting our [website](#):

<http://www.scotland.gov.uk/Topics/Health/Policy/Adult-Health-SocialCare-Integration>

## **PART 2: DELEGATION OF FUNCTIONS UNDER THE 2003 ACT**

### **Background**

12. The Scottish Government appreciates the role played, in the mental health system, by MHOs in carrying out what one might call their “core functions” under the 2003 Act. These core functions include: interviewing and advising patients; making applications for compulsory measures; and the preparation of social circumstances reports, to name but a few. We are also conscious that these functions must be carried out in an independent manner by MHOs, without undue influence from others in the mental health system. **Therefore, as previously announced, it is not the Scottish Government’s intention to interfere unnecessarily with these functions, or the MHO’s position as an appointee of a local authority.**

13. However, as indicated in the introduction, local authorities and health boards have an existing duty on them under the 2003 Act to cooperate with one another in the provision of relevant services, to ensure a joined up approach. In addition, since 2002, it has been possible for local authorities to delegate certain functions to NHS Boards under the Community Care (Joint Working etc) (Scotland) Regulations 2002 (“the 2002 Regulations”).

14. The extent of what local authority, and in particular MHO, functions could and should be capable of being delegated then came into sharper focus in 2011 in the context of the Highland Integration Project. To enable that project, consideration required to be given by the Scottish Government as to what local authority functions were currently capable of being delegated under the 2002 Regulations, and which further functions might be required to be included in those Regulations by Scottish Ministers amending the 2002 Regulations.

### **Scottish Government policy considerations**

15. The Scottish Government have been clear to maintain the separation of “core” MHO functions under the 2003 Act from health board functions. That separation between the “core” MHO functions on the one hand, and those under Part 4 (health board and local authority functions) of the 2003 Act which are delegable by the 2002 Regulations on the other, is an important concept in ensuring transparent and appropriate decisions are made about patients’ care and treatment under this Act.

16. That historic framework was touched on by the Millan Committee in their 2001 Report as part of their wider consideration of the role of MHOs; Millan highlighted the importance of the MHO in the detention and ongoing care of a service user and noted that social workers’ independence from the health service meant that they can give a genuinely independent view on compulsory measures, as well as supporting the service user’s perception that there is independent oversight of his or her case. That historic rationale, which we consider still holds true today, is one which we were mindful of when considering any amendments to the 2002 Regulations last year.

17. Therefore, in the circular issued in May 2012 (**attached at annex A**) in relation to the Community Care (Joint Workings etc.) (Scotland) Amendment Regulations 2012 (“the 2012 Regulations”), we were at pains to reassure and stress

that there was no change in this approach or policy under the 2002 Regulations, either as they stood originally or as amended at that time.

### **The 2012 Regulations - enabling further delegation**

18. As discussed above, consultees will be aware that MHOs appointed by local authorities in terms of the 2003 Act, have various functions conferred upon them. They will also be aware that the 2012 Regulations amended the 2002 Regulations to add to the local authority MHO functions which may be delegated between Health Boards and Local Authorities. Most of these MHO functions included in the revised 2012 Regulation had previously been able to be delegated to Health Boards by Local Authorities in terms of the 2002 Regulations (see table below), and the new 2012 Regulations simply restated the existing position rather than making any material changes to the law.

19. It may also be noted that the majority of the MHO functions that could be delegated to Health Boards related to those in Part 4 of the 2003 Act, therefore not touching the “core” MHO functions.

20. The 2012 Regulations did go beyond the previous position, by now allowing the section 33 “Duty to inquire” to be delegated, if appropriate, to Health Boards. It was thought sensible to provide Health Boards with the ability to initiate inquires if, and only if, the functions under section 25, 26 and 27 of the 2003 Act had also been delegated.

21. It was also highlighted in the May 2012 Circular that, in practical terms – particularly if it was expected to require a warrant to enter premises under section 35 of the 2003 Act – the NHS body would require to work with a MHO, since an MHO is required to provide evidence to a sheriff or a justice of the peace when applying for a warrant under that section. Section 34 was unaffected by the 2012 Regulations, and so persons listed at section 34(3) are required to co-operate (subject to specific exceptions).

### **Table of MHO functions under the 2003 Act that can currently be delegated**

<b>MHO Function</b>	<b>Into force</b>	<b>1984 Act<sup>1</sup> Equivalent</b>	<b>Into force</b>
s25 - Care and support services etc	30 Mar 2012 SSI 2012/65	s7 - Functions of Local Authorities	01 Jan 2003 SSI 2003/533
s26 - Services designed to promote wellbeing and social development	30 Mar 2012 SSI 2012/65	s8 - Provision of after-care services	01 Jan 2003 SSI 2003/533
s27 - Assistance with travel	30 Mar 2012 SSI 2012/65	s11 - The training and occupation of the mentally handicapped	01 Jan 2003 SSI 2003/533
s33 - Duty to inquire into ill-treatment, neglect etc	30 Mar 2012 SSI 2012/65		

<sup>1</sup> The Mental Health (Scotland) Act 1984

## Reason for consulting now

22. However, also as discussed in the May 2012 circular we did express the view that the forthcoming Integration of Adult Health and Social Care Bill would be an appropriate opportunity to revisit this issue and seek views on, amongst other things, which MHO functions could be delegable by Local Authorities to Health Boards.

23. In addition, some concerns have been raised with us since the 2012 Regulations were made, specifically around the inclusion of the section 33 (duty to inquire) within the functions which can be delegated to Health Boards.

24. Therefore, in light of that commitment, and recognising the section 33 concerns which have been raised with us, we are now seeking views on the specific issues around local authority functions under the 2003 Act. As noted above, it is **NOT** our intention to include at this time any of the “core” MHO functions as being capable of being delegated, namely any functions that sit outwith Part 4 of the 2003 Act. However, your views are also sought on this.

## PART 3: DELEGATION OF FUNCTIONS UNDER THE 2000 ACT

### Background

25. Adults with incapacity are adults over 16 who lack capacity to take decisions for themselves. The main legislation in this area is the Adults with Incapacity (Scotland) Act 2000. Under the 2000 Act, local authorities have a number of functions – these are set out below. In the main these functions relate to welfare issues. There is also a statutory Code of Practice issued by the Scottish Ministers under section 13 of the 2000 Act in respect of local authorities exercising functions under the Act.

Section	Function
10	To supervise guardian with functions relating to the personal welfare of an adult
10	To supervise a welfare attorney or intervener when ordered to do so by the sheriff
10	To consult the Public Guardian and the Mental Welfare Commission on cases or matters relating to the exercise of functions under the 2000 Act in which there is, or appears to be, a common interest
10	To receive and investigate any complaints about the exercise of functions relating to the welfare of an adult with incapacity by a welfare attorney, a guardian or an intervener
10	To investigate any circumstances made known to a local authority in which the personal welfare of an adult with incapacity seems to be at risk
10	To provide information and advice to proxies (i.e. welfare attorneys, guardians and interveners) exercising welfare functions under the 2000 Act

<b>Section</b>	<b>Function</b>
53	To apply for an intervention order where it appears to the authority that such an order is necessary for the protection of the property, financial affairs or personal welfare of an adults and no such application has been made or is likely to be made
57(2)	To apply for a guardianship order where it appears to the authority that the adults lacks capacity: no other means under the 2000 Act would be sufficient to protect the property, financial affairs or welfare of an adult and no such application for a guardianship order has been made or is likely to be made
57(3)	Where an application is made for a guardianship order which covers welfare matters, a local authority mental health officer must provide a report, in the prescribed form, on the general appropriateness of the order sought and on the proposed suitability of the proposed guardian. Where the welfare of the adult is in jeopardy only because of an ability to communicate, the report is by the Chief Social Work Officer rather than the Mental Health Officer
53(4)	Where an application is made for an intervention order which covers welfare matters, a local authority mental health officer must provide a report, in the prescribed form, on the general appropriateness of the order sought and on the proposed suitability of the proposed intervener. Where the welfare of the adult is in jeopardy only because of an ability to communicate, the report is by the Chief Social Work Officer rather than the Mental Health Officer
59	To act as a welfare guardian where no-one else is applying to do so
73	To recall (at their own instance or on the application of any person claiming an interest) the personal welfare powers of a guardian

26. As the legislation currently stands none of these local authority functions are capable of delegation to Health Boards. However, it may be that where a Local Authority and Health Board agree in the context of integration of adult health and social care (for example already occurred under the Highland Project between Highland Council and NHS Highland), then it would be more appropriate for Health Board staff to perform some of the duties currently carried out by a local authority, under the 2000 Act.



## **PART 4: CONSULTATION QUESTIONS**

### **Consultation on the delegation of Local Authority Mental Health Officer functions in the Mental Health (Care and Treatment) (Scotland) Act 2003 under the proposed Integration of Adult Health and Social Care Bill**

#### **Consultation question**

27. Where Local Authorities and Health Boards reach agreement on the integration of adult health and social care:

- a) which of the 2003 Act MHO functions should it be possible to delegate to Health Boards?;
- b) which of the 2003 Act MHO functions should not be permitted to be delegated to Health Boards?;
- c) what are your reasons for your choices at a) and b) above?

### **Consultation on the delegation of Local Authority functions of the Adults with Incapacity (Scotland) Act 2000 under the proposed Integration of Adult Health and Social Care Bill**

#### **Consultation question**

28. Where Local Authorities and Health Boards are in agreement in the context of integration of adult health and social care:

- a) which of the 2000 Act Local Authority [MHO] functions should it be possible to delegate to a Health Board?;
- b) which of the 2000 Act Local Authority functions should it be possible to delegate to a Health Board?;
- c) what are your reasons for your choices at a) and b) above?

#### **Equality**

29. Please tell us about any potential impacts, either positive or negative, you feel any or all of the proposals in this consultation may have on a particular group or groups of people.

## **Responding to the consultation paper**

We are inviting written responses to this consultation paper by Friday, 28 June 2013.

This paper asks a number of consultation questions on which we would welcome your views. Please respond to as many or as few of the questions as you wish, indicating in your response which questions your comments relate to. Please give reasons for your views and information from your own experience where appropriate.

Please send your response to the consultation questions along with your completed respondent information form (see "handling your response") to:

[mentalhealthlaw@scotland.gsi.gov.uk](mailto:mentalhealthlaw@scotland.gsi.gov.uk) or

Ian Nicol

Scottish Government Health Directorate  
Mental Health and Protection of Rights Division  
Head of Mental Health Law Team  
3-ER St Andrews House  
Regent Road  
Edinburgh  
EH1 3DG

If you have any queries please contact Ian Nicol on 0131 244 3947.

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at <http://www.scotland.gov.uk/consultations>. You can telephone Freephone 0800 77 1234 to find out where your nearest public internet access point is.

The Scottish Government now has an email alert system for consultations (SEconsult: <http://www.scotland.gov.uk/consultations/seconsult.aspx>). This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new consultations (including web links). SEconsult complements, but in no way replaces SG distribution lists, and is designed to allow stakeholders to keep up to date with all SG consultation activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

## **Handling your response**

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please therefore also complete and return the respondent information form (provided along with this consultation paper and the Report) which forms part of the consultation, as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and will treat it accordingly, subject always to any legal requirements on the Scottish Government to disclose the information.

All respondents should be aware that the Scottish Government are subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under that Act for information relating to responses made to this consultation exercise.

### **Next steps in the process**

Where respondents have given permission for their response to be made public and after we have checked that they contain no potentially defamatory material, responses will be made available to the public in the Scottish Government Library (see the attached Respondent Information Form), these will be made available to the public in the Scottish Government Library by 14 July 2013. You can make arrangements to view responses by contacting the SG Library on 0131 244 4552. Responses can be copied and sent to you, but a charge may be made for this service.

### **What happens next ?**

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us reach a decision on which MHO functions under the 2003 Act, or Local Authority functions under the 2000 Act should be capable of delegation to NHS Scotland. We aim to issue our conclusions on this in 2013. If Scottish Ministers decide to proceed with amending legislation, Regulations will be required to be taken forward in the Scottish Parliament within a future legislative programme.

### **Comments and complaints**

If you have any comments about how this consultation exercise has been conducted, please send them to Mental Health and Protection of Rights Division at the contact details shown above (under 'Responding to this consultation paper').

**Annex A - Text of e-mail of 31 May 2012**

Dear All

**The Community Care (Joint Working etc.) (Scotland) Amendment Regulations 2012 (SSI 2012/65)**  
**The Community Care and Health (Scotland) Act 2002 (Incidental Provision) (Adult Support and Protection) Order 2012 (SSI 2012/66)**

I am sending this e mail out on behalf of Reshaping Care & Mental Health Division and the Integration & Service Development Division, in the Scottish Government Health & Social Care Directorates. Please find attached a briefing note regarding the Community Care (Joint Working etc.) (Scotland) Amendment Regulations 2012 and the Community Care and Health (Scotland) Act 2002 (Incidental Provision) (Adult Support and Protection) Order 2012.

This is really just to update on, and set out a bit more of the background to, these two recent SSIs which were made through the Parliament. Whilst the teams have to date responded to individual queries from organisations and individuals about the regulations and the Order, the teams are aware there has been some ongoing wider concerns and apprehension about them, in terms of their effect. We hope that this note will help to reassure all the relevant stakeholders about the purpose, content and effect of these SSIs.

If you have any follow up queries regarding mental health policy please direct them to [Joanna.Keating@Scotland.gsi.gov.uk](mailto:Joanna.Keating@Scotland.gsi.gov.uk), and anything on integration of adult health and social care policy please direct to [Alison.Taylor@Scotland.gsi.gov.uk](mailto:Alison.Taylor@Scotland.gsi.gov.uk) :

Kelly Martin  
Integration and Service Development  
Directorate for Health and Social Care Integration  
2 East Rear  
St Andrew's House  
Regent Road  
Edinburgh  
EH1 3DG  
Tel: 0131 244 3744

## BRIEFING NOTE

### The Community Care (Joint Working etc.) (Scotland) Amendment Regulations 2012 (SSI 2012/65)

### The Community Care and Health (Scotland) Act 2002 (Incidental Provision) (Adult Support and Protection) Order 2012 (SSI 2012/66)

## 1. The Community Care (Joint Working etc.) (Scotland) Amendment Regulations 2012

### Introduction

The Community Care (Joint Working etc.) (Scotland) Amendment Regulations 2012 came into force on 30 March 2012, amending the Community Care (Joint Working etc) (Scotland) Regulations 2002.

Their principal aim was to bring the 2002 Regulations up-to-date by amending the functions which could be delegated between NHS bodies and local authorities and to reflect current accounting standards on integrated budgets; this also served to facilitate the delegation of services which was proposed in the Highland Council/Health Board area.

This note provides further details on these changes, and their effect on the **Mental Health (Care and Treatment) (Scotland) Act 2003**

These Regulations (as amended) allow particular functions under the Mental Health (Care and Treatment) (Scotland) Act 2003 to be carried out by an NHS body where they have been so delegated by a council. Under the Regulations, the 2003 Act functions that can be delegated by a council to an NHS body are sections 25, 26, 27 and 33. The effect of these 2002 Regulations (as amended) is to enable functions to be delegated by local authorities; it does not of itself automatically delegate the functions.

It should be noted that the changes to sections 25-27 are not new; these were contained within the original 2002 Regulations such that those functions were already delegable. This has been restated via the new amending Regulations, and does not make any material changes to the law.

The effect of allowing section 33 to be carried out by an NHS body, **where the relevant functions have been delegated**, is that the NHS body will have the responsibility to cause inquiries to be made. In practice, an NHS body may make inquiries alone under section 33. However, in practical terms – particularly if it is expected to require a warrant to enter premises under section 35 – the NHS body would require to work with a mental health officer (MHO), since an MHO is required to provide evidence to a sheriff or a justice of the peace when applying for a warrant under that section. Section 34 is unaffected by the amending Regulations, and so persons listed at section 34(3) are required to co-operate (subject to specific exceptions).

While sections 33-35 often operate together in practice, only section 33 – the duty to inquire – can now be delegated to an NHS body. The duty to co-operate with the local authority or NHS body causing inquiries to be made under section 33 and the requirements for making warrants under section 35 remain unaltered. As such, the involvement of the MHO remains central to this process, even where the duty at section 33 has been delegated to an NHS body. **There is nothing in the amendment that would permit an MHO to be employed by a Health Board.**

The 2002 Regulations (as amended) enable particular local authority 2003 Act functions to be carried out by an NHS body. Nonetheless, we maintain a clear policy that particular functions must be carried out only by an MHO who is employed by a local authority.

We have also been clear to maintain the separation of “core” MHO functions under the 2003 Act from health board functions. That separation between the core MHO functions on the one hand, and those under Part 4 (health board and local authority functions) of the 2003 Act which are delegated by the 2002 Regulations on the other, is an important concept in ensuring transparent and appropriate decisions are made about patients’ care and treatment under this Act. That historic framework was touched on by the Millan Committee in their 2001 Report as part of their wider consideration of the role of MHOs; Millan highlighted the importance of the MHO in the detention and ongoing care of a service user and noted that social workers’ independence from the health service meant that they can give a genuinely independent view on compulsory measures, as well as supporting the service user’s perception that there is independent oversight of his or her case. **We would wish to reassure and stress that there is no change in this approach or policy under the 2002 Regulations, either as they stood originally or as amended earlier this year.**

#### Mental Health Q&A

#### **Will this mean that MHO functions can be transferred into Health Boards?**

**No.** We are very clear that the separation between core MHO functions and Health Board functions under the 2003 Act must be maintained. All this order does is allow one additional local authority function under Part 4 of the 2003 Act to be delegated, namely section 33; sections 25-27 have been capable of delegation since 2002.

#### **In practice, section 33 is often used in conjunction with sections 34 and 35. Why amend only section 33?**

Section 33 establishes the duty to inquire into individual cases. This requires the relevant body to ‘cause inquiries to be made’. Where this function has been delegated to a Health Board, this will enable the Health Board to initiate the inquiries. The duty of co-operation at section 34 means that the Health Board can require other organisations to co-operate in the inquiries.

#### **Does this mean that the role of MHOs will be eroded?**

**No.** Where a warrant needs to be made under section 35, the involvement of an MHO is still required. As such, where a Health Board causes inquiries to be made and expects a warrant to be required, they should co-operate with an MHO, as per section 34.

**Will this cause confusion and uncertainty about who is responsible for certain functions?**

**No.** The transfer and delegation of powers is a large undertaking that organisations will require to consider carefully. We will expect them to communicate clearly with staff and stakeholders to set out any changes and their implications.

**2. The Community Care and Health (Scotland) Act 2002 (Incidental Provision) (Adult Support and Protection) Order 2012**

The Community Care and Health (Scotland) Act 2002 (Incidental Provision) (Adult Support and Protection) Order 2012 came into force on 31 March 2012.

This note provides further details on this Order and its effect on the **Adult Support and Protection (Scotland) Act 2007**.

The order applies only where any function under part 1 of the ASP Act has been delegated by a local authority to an NHS body by virtue of arrangements made under section 15(1) of the Community Care and Health (Scotland) Act 2002.

Where such delegation has taken place, any reference to a 'council officer' under Part 1 of the ASP Act is to be read as including a reference to an employee of the relevant NHS body. Similarly, any reference to a 'council nominee' under Part 1 of the ASP Act is to be read as a reference to a nominee of the NHS body.

It is important to note that the Adult Support and Protection (Scotland) Act 2007 (Restriction on the Authorisation of Council Officers) Order 2008 remains in place. This sets out that a council (or the NHS body, where the Order applies) shall not authorise a person to perform the functions of a council officer (or the NHS body, where the Order applies) unless that person meets particular requirements:

- The person is registered in the part of the SSSC register maintained in respect of social workers or is the subject of an equivalent registration;
- The person is registered in the part of the SSSC register maintained in respect of social service workers (this requirement applies only to functions carried out under sections 7 – 10 of the ASP Act);
- The person is registered as an occupational therapist in the register maintained under article 5(1) (establishment and maintenance of register) of the Health Professions Order 2001(b); or
- The person is a nurse.

In addition to meeting one of these four criteria, the person must also have at least 12 months' post-qualifying experience of identifying, assessing and managing adults at risk.

The effect of this is that the current skill set and experience which is required currently of council officers is preserved, even where the functions under Part 1 of the ASP Act are transferred by the council to an NHS body.

It should also be noted that the order provides an enabling power, not a duty or requirement to transfer these functions.

### Adult Support and Protection – Q&A

#### **Does this change who can carry out council officer functions under the ASP Act?**

Technically, yes. Where a local authority has delegated relevant functions to an NHS body, any reference to a 'council officer' in Part 1 of the ASP Act must be read as including reference to an NHS body. However, the same professional registration and experience set out by the Adult Support and Protection (Scotland) Act 2007 (Restriction on the Authorisation of Council Officers) Order 2008 are still required. This means that largely the same professionals will still undertake council officer duties.

#### **What is the rationale for this?**

The integration of health and social care is a key policy for Scottish Ministers. The goal for integration is to deliver care that is better joined up and as a consequence delivers better outcomes for patients, service users and carers. Most Health Boards are considering what this means for them, but NHS Highland and Highland Council have already transferred adult protection functions. This Order enabled that to happen while ensuring that the necessary skills and experience required to carry out council officer functions remained in place. There is nothing in the Order which compels the transfer of functions: it applies only where the functions under Part 1 of the ASP Act have been delegated by the council to an NHS body.

#### **Where delegation takes place will it change or dilute the duties and powers the ASP Act creates and places on council officers?**

**No**, none of the functions have changed.

#### **Where delegation takes place will this alter the criteria that had to be met when appointing a 'council officer'**

**No**, the requirements of the Adult Support and Protection (Scotland) Act 2007 (Restriction on the Authorisation of Council Officers) Order 2008 remain in place.



## **How will this affect the services delivered to adults at risk of harm?**

Adults at risk of harm will continue to be offered the same support and protection provided for under the ASP Act. By improving integration across health and social care, Ministers are seeking to improve continuity of care, and outcomes for people using services.

## **Consultation on integration of adult health and social care**

More broadly, you will be aware that the Scottish Government has now published its proposals for integrating adult health and social care. You can find the consultation document on the Scottish Government website, here:

<http://www.scotland.gov.uk/Publications/2012/05/6469>

The development of legislation to support Ministers' proposals for adult health and social care will require further consideration of the Community Care and Health (Scotland) Act 2002, as well as these Regulations. We will ensure effective engagement with stakeholders in this process.

We look forward to receiving your responses to the consultation.

## **Reshaping Care and Mental Health Division**

3ER St Andrew's House

## **Integration and Service Development Division**

2ER St Andrew's House

May 2012

**CONSULTATION ON DELEGATION OF LOCAL AUTHORITY  
FUNCTIONS: MENTAL HEALTH (CARE AND TREATMENT)  
(SCOTLAND) Act 2003 & ADULTS WITH INCAPACITY (SCOTLAND)  
ACT 2000**



**RESPONDENT INFORMATION FORM**

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

**1. Name/Organisation**

Organisation Name

Title Mr  Ms  Mrs  Miss  Dr  *Please tick as appropriate*

Surname

Forename

**2. Postal Address**

Postcode	Phone	Email

**3. Permissions - I am responding as...**

**Individual** / **Group/Organisation**   
*Please tick as appropriate*

**(a)** Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

*Please tick as appropriate*  Yes  No

**(b)** Where confidentiality is not requested, we will make your responses available to the public on the following basis

*Please tick ONE of the following boxes*

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

**(c)** The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

*Please tick as appropriate*  Yes  No

**(d)** We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

*Please tick as appropriate*  Yes

## CONSULTATION QUESTIONS

### **Mental Health (Care and Treatment) (Scotland) Act 2003**

Where Local Authorities and Health Boards reach agreement on the integration of adult health and social care:

- a) which of the 2003 Act MHO functions should it be possible to delegate to Health Boards?

Comments

- b) which of the 2003 Act MHO functions should not be permitted to be delegated to Health Boards?

Comments

- c) what are your reasons for your choices at a) and b) above?

Comments

### **Any further comments**

Comments

### **Adults with Incapacity (Scotland) Act 2000**

Where Local Authorities and Health Boards are in agreement in the context of integration of adult health and social care:

- a) which of the 2000 Act Local Authority [MHO] functions should it be possible to delegate to a Health Board?

Comments

- b) which of the 2000 Act Local Authority functions should it be possible to delegate to a Health Board?

Comments

- c) what are your reasons for your choices at a) and b) above?

Comments

## **Equality**

Please tell us about any potential impacts, either positive or negative, you feel any or all of the proposals in this consultation may have on a particular group or groups of people.

Comments

## **Any further comments**

Comments



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EH1 3DG

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