ABSTRACT

The Scottish Government are currently consulting on the Draft Code of Practice for the Adult Support and Protection (Scotland) Act 2007. This report comments on the draft Code of Practice and seeks committee approval for this draft response to the consultation exercise to be sent on behalf of Social Work and Health.

A copy of the draft code of practice has been placed in the Members’ Lounge.

1 RECOMMENDATIONS

It is recommended that Social Work and Health Committee:-

i) notes the contents of this report;
ii) instructs the Director of Social Work and Health to forward the proposed response to the consultation exercise on the Draft Code of Practice for the Adult Support and Protection (Scotland) Act 2007 to the Scottish Government.

2 INTRODUCTION

The Adult Support and Protection (Scotland) Act 2007 introduces new powers and duties to protect adults who are at risk of abuse or neglect because they are affected by disability, mental disorder, illness or physical or mental infirmity.

Members are referred to Committee Report 673/07 that advised of the new legislation and of the publication of the Angus Adult Protection Committee Annual Report for 2007/2008.

It is anticipated that implementation of the main provisions contained in the Act is likely to take place from October 2008. However this has not yet been confirmed by the Scottish Government.

The draft code of practice has been issued by the Scottish Government for consultation with responses requested by 21 March 2008.

3 DRAFT CODE OF PRACTICE

This code of practice provides guidance about the performance of functions by Councils and their officers and health professionals under the Act. It provides information and guidance on the principles of the Act, about the measures contained in the Act, including where and when it would be appropriate to use such powers.

The code of practice would be used in conjunction with other relevant codes of practice as appropriate, such as the codes of practice for the Mental Health (Care and
Treatment) (Scotland) Act 2003, the Adults with Incapacity Act (Scotland) Act 2000 and the code of practice for Social Service Workers and employers of Social Service workers.

The Act places a duty on councils, council employees and health professionals to comply with the code. Guidance contained within the code is seen as best practice.

The Code of Practice includes matters such as definitions, underpinning principles, the need for urgent intervention, investigation and the duty to inquire, cooperation, entry, removal and detention powers and access to records in the future.

4 RESPONSE FROM ANGUS COUNCIL

A copy of a proposed response to the draft Code of Practice is appended to this report for approval. This response is a lengthy and detailed commentary as it is felt further clarification is required on implementation of the provisions contained in the act. The response includes the following comments and concerns about the Code of Practice:

- The Code of Practice largely reiterates the legislation and does not in the main offer specific practical guidance regarding the implementation and use of the new powers.
- It would have been helpful if the guidance explored the merits and implications of the use of the protective orders contained in the legislation, rather than following the legislation in a linear fashion.
- It is disappointing that the opportunity to consider how practitioners might interpret the provisions whilst maintaining adherence to the overarching principles and values of the Act is not explored in more detail within the Code of Practice.
- The term “Risk of Harm including Self Harm” has not been sufficiently well defined to assist practitioners’ decision making in this complex area of work.
- The Code of Practice outlines proposals for the definition of “Council Officer” (powers and duties are vested in this officer). We support the proposal that the council officer would be consistently defined as officers with at least six months’ post qualifying experience in working with adults at risk who may be:
  i. Registered Social Workers
  ii. Registered Occupational Therapists
  iii. Registered nurses
- The Code of Practice does not help to clarify circumstances around medical examinations or inspection of records.
- The role and function of the Adult Protection Committee is clearly defined and is helpful

The proposed response suggests to the Scottish Government that further work and amendment is required on the Code of Practice for it to be a helpful document to the Council and its employees in the course of exercising their duties under the Adult Support and Protection (Scotland) Act 2007.

5 FINANCIAL IMPLICATIONS

There are no financial implications arising directly out of this report. However as noted in report No. 673/07 the financial implications for social work and health in implementing the legislation is significant and to date no additional resources have
been allocated to Local Authorities and to other agencies by the Scottish Government. Accordingly, options will need to be explored to contain expenditure within the current revenue budget. Any policy matters resulting from this will be presented to committee for decisions.

6 HUMAN RIGHTS IMPLICATIONS

There are no Human Rights implications arising as a result of the recommendations contained in this report.

7 CONSULTATION

The Chief Executive, the Director of Corporate Services, the Head of Finance and the Head of Law and Administration have been consulted in the preparation of this report.

R Peat
Director of Social Work and Health

NOTE: The undernoted background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to a material extent in preparing the above report.

Adult Support and Protection (Scotland) Act 2007
Draft Code of Practice Adult Support and Protection (Scotland) Act 2007