EXECUTIVE NOTE

THE ADULTS WITH INCAPACITY (SUPERVISION OF WELFARE GUARDIANS ETC BY LOCAL AUTHORITIES)(SCOTLAND) AMENDMENT REGULATIONS 2005 SSI/2005/630

1. The above statutory instrument was made in exercise of powers conferred by sections 10(3)(a) and 86(2) of the Adults with Incapacity (Scotland) Act 2000 (the 2000 Act). The instrument is subject to negative resolution procedure.

Policy Objective

2. The instrument extends the intervals within which a local authority must arrange visits, except for the initial visit, to an adult with incapacity and to a welfare guardian from three to six months. The initial visit in both cases must be made within three months, as at present. The instrument does not affect the position that there is no requirement to arrange for the welfare guardian to be visited where that guardian is the Chief Social Work Officer.

Background

3. Where a guardian has been appointed under Part 6 of the Adults with Incapacity (Scotland) Act 2000 in relation to the personal welfare of an adult, the local authority has a duty under section 10 of the Act to supervise the appointment. Regulation 2 of Scottish Statutory Instrument 2002 No. 95: The Adults with Incapacity (Supervision of Welfare Guardians etc. by Local Authorities) (Scotland) Regulations 2002 set out that the local authority must arrange for the adult to be visited on its behalf within three months of the guardianship order being granted and thereafter at intervals of not more than three months where the guardianship is for a period of one year or more. In addition, the guardian (except where the guardian is the chief social work officer) is to be visited on behalf of the local authority from time to time, at intervals of not more than three months

4. The consultancy project which monitored the implementation of the Act identified that this requirement is considered intrusive by carers and unnecessary in most cases by local authorities who regard it as a major workforce issue. The Association of Directors of Social Work (ADSW), in a letter to the Justice 2 committee about the Act, made the point that the 3 month review of welfare guardianships is proving difficult to meet and is unhelpful in meeting the needs of the adult. It went on to point out that where an adult is in a complex situation requiring intensive care management, the adult and the guardian will be visited on a more regular basis and in cases where circumstances are more ‘settled’, private guardians have voiced concerns that it is inconvenient to have such regular scrutiny. ADSW recommend that supervisory visits should take place at least every 6 months.

Consultation

5. We issued a consultation paper on 9 July 2004 which sought views on a proposed amendment to Regulation 2 of Scottish Statutory Instrument 2002 No. 95: The Adults with Incapacity (Supervision of Welfare Guardians etc. by Local Authorities) (Scotland) Regulations 2002 to increase the period between the supervisory visits in the following terms.

Do you agree that the requirement on local authorities, when a personal welfare guardian has been appointed to an adult for a period of one year or more,

- **to arrange a visit on its behalf to the adult within three months of the guardianship order being granted and thereafter at intervals of not more than three months and**
- **to arrange a visit on its behalf to the guardian (except where the guardian is the chief social work officer) at intervals of not more than three months**

is intrusive and burdensome and that the maximum period between visits should be extended?

Do you agree that the Regulations should be amended to extend the intervals between supervisory visits to both the adult and the guardian to 'not more than six months' when guardianship is for a period of one year or more.

6. The consultation was sent to Directors of Social Work, The Office of the Public Guardian, Mental Welfare Commission, Law Society of Scotland, Alzheimer Scotland, ENABLE, Capability Scotland, Citizens Advice Scotland, The Scottish Huntington's Association, Headway Scotland Development Office, Scottish Carers Alliance, The Scottish Independent Advocacy Agency, VOCAL, PAMIS and was posted on the Scottish Executive website.

7. The consultation responses to these questions agreed that the maximum period between supervisory visits should be extended to six months for guardianships of a year or more. However, a number of respondees took the view that the initial visit should still take place within three months of the appointment of the guardian. We agree that an initial visit within three months would offer protection for the adult and support for a new guardian.

Financial Effects

8. It is not anticipated that extending the intervals within which a local authority must arrange visits, except for the initial visit, to an incapable adult and to a welfare guardian (except where the guardian is the chief social work officer) from three to six months will give rise to extra expense for individuals or local authorities. Indeed, this change should have resource benefits for local authorities.