

## **EAST AYRSHIRE COUNCIL**

### **SOCIAL WORK COMMITTEE : 6 NOVEMBER 2003**

#### **MENTAL HEALTH (CARE AND TREATMENT) (SCOTLAND) ACT 2003**

##### **Report by the Director of Educational and Social Services**

### **1. PURPOSE**

- 1.1 To advise Committee of the main requirements of the Mental Health (Care and Treatment) (Scotland) Act 2003.
- 1.2 To seek approval to implement measures in order to meet the Council's increased responsibilities.

### **2. BACKGROUND**

- 2.1 The Mental Health (Care and Treatment) (Scotland) Act 2003 is the result of the Millan Review, the first review of Mental Health law for forty years.
- 2.2 The new Act provides a broad definition of mental disorder as any disability or disorder of mind or brain which results in an impairment or disturbance of mental functioning. This includes mental health, learning disability and personality disorder.

### **3. OVERVIEW OF ACT**

- 3.1 The Mental (Health Care and Treatment) (Scotland) Act 2003 provides a single system for use of compulsory powers, ensures safeguards for patients and makes provision for mentally disordered offenders.
- 3.2 It also outlines the conditions for compulsion i.e. emergency detention, short term detention and compulsory treatment orders and tightens criteria for compulsion based on risk to self and others.
- 3.3 The Act further outlines more detailed procedures with greater participation by individuals and carers and introduces a concept of community based compulsory treatment orders.
- 3.4 There are nine possible certificates, orders or directions able to be granted in respect of an individual who has a mental disorder. Any individual subject to compulsory measures in terms of the Act requires to have access to a range of safeguards including a written care plan, a nominated person, access to a tribunal, access to separate medical expert and access to specialist mental health advocacy services.

- 3.5 The Act also introduces the Mental Health Tribunal Service which will replace the role played by Sheriff Courts in, for example, considering applications for compulsory treatment orders. These tribunals will comprise a legal convener, a medical member and a general member with experience of provision of care. The tribunal will consider all compulsory treatment order applications, any extensions or variations to these order and appeals.
- 3.6 Courts have also been provided with additional powers under this Act in respect of mentally disordered offenders, namely the power to remand such offenders for assessment.
- 3.7 It is anticipated that The Mental Health (Care and Treatment) (Scotland) Act 2003 will be fully implemented on 1<sup>st</sup> April 2005 however some parts of the Act will be introduced on 1<sup>st</sup> October 2004.

#### **4. IMPLICATIONS FOR LOCAL AUTHORITIES**

- 4.1 There are substantial implications for Local Authorities in terms of the **duties** imposed under this Act. These are:
- to provide care and support services to individuals subject to the Act,
  - to provide services aimed at promoting well being and social inclusion,
  - the significant increase in the duties and responsibilities of Mental Health Officers.
- 4.2 At a National Conference held in Edinburgh on 22 September 2003, The Social Work Services Inspectorate reminded Local Authorities of the need to begin preparation now for the new duties required of them under this Act.
- 4.3 The Council requires to develop an action plan for the implementation of this Act. This action plan requires to address:
- the development of care and support services, particularly Advocacy,
  - the appointment and training of an increased number of Mental Health Officers in the significant additional responsibilities,
  - training for all care management staff
  - the development of robust systems and protocols.

#### **5. PERSONNEL IMPLICATONS**

- 5.1 To meet the Council's legal obligation a new post of Mental Health Co-ordinator requires to be introduced. The purpose of the post would be to progress the development and implementation of the required Action Plan.
- 5.2 The Council requires to recruit an additional two Mental Health Officers, to meet the increased workload.

5.3 Trade Union agreement has been secured in respect of this proposal.

## **6. FINANCIAL IMPLICATIONS**

6.1 The Scottish Executive has provided dedicated funds to Local Authorities in respect of implementation of the Act. The Social Work budget for 2003/04 includes £35,000 from this source and the draft General Services revenue estimates for 2004/05 includes an additional £264,000 allocation. This proposal can be funded from these additional earmarked resources, subject to final approval of this level of additional funding for 2004/05.

## **7. LEGAL / POLICY IMPLICATIONS**

7.1 The Council is legally required to implement new duties in terms of the Mental Health (Care and Treatment) (Scotland) Act 2003.

## **8. RECOMMENDATIONS**

8.1 It is recommend that Social Work Committee:

- (i) agree to the recommendations in Section 5 of this report;
- (ii) refer the staffing implications to the Corporate Governance Committee for consideration; and
- (iii) otherwise note the content of the report.

**John Mulgrew**  
**Director of Educational and Social Services**  
**20 October 2003**  
**Enc (0)**

### **LIST OF BACKGROUND PAPERS**

The Mental Health (Care and Treatment) (Scotland) Act 2003

For further information please contact:  
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