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**Adults with Incapacity (Scotland) Act 2000
Improving with Experience
Consultation Response Form**

This response paper should be read in conjunction with the Scottish Executive's consultation on the Adults with Incapacity (Scotland) Act 2000, "Improving with Experience". The deadline for responses is **4 November 2005**. If you would like this document and/or the consultation paper in another format or language, please contact the address below.

You need not answer all the questions and can focus on those in which you have a particular interest. Please tick the question response that most closely matches your opinion. Some questions ask you to expand on your answer in the space provided. You may add further comments if you wish.

Three ways to submit your response:

By e-mail: improvingwithexperience@scotland.gsi.gov.uk

In writing: Branch 1, Civil Law Division,
Scottish Executive, Justice Department
2WR
St Andrew's House
Edinburgh
EH1 3DG

By fax: 0131 244 2195

If you have any queries please contact: Alasdair Menzies, tel. 0131 244 3581

Further copies of the consultation and this response form are available from the above address or can be down loaded from the Scottish Executive's website at: <http://www.scotland.gov.uk/consultations>

Your details

Name: Wm R. PRIMROSE

Job title (if applicable): DR

Organisation (if applicable): British Geriatrics Society (Scottish Branch)

Address: Woodend Hospital
..... Aberdeen
..... AB9 6XS

e-mail address: willie.primrose@cash-ganpian.scot.nhs.uk

1a If responding on behalf of an organisation please circle as appropriate:

- Voluntary Statutory: *local authority - health - other* Legal
- Banking/financial Professional body Advice agency
- Independent advocacy agency Private health/social care provider
- Housing Faith community Other (*please state*)

1b If you mainly support or represent the interests of one or more of the following groups please circle as appropriate:

- Carers People with dementia People with learning disability
- People with acquired brain injury People with severe mental illness
- People with severe communications difficulties (e.g. sensory or stroke related)
- Older people

2 If you are responding as an individual please circle the description that best describes your interest:

- Service user Carer/former carer (relative/friend) Lawyer
- Health professional Social care professional MSPs/MEPs
- Other (please state)

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 complete and return the accompanying Respondent *Information Form*, as this will ensure that we treat your response appropriately. Responses from those who reply in confidence will only be included within numerical totals and names and text will not appear in the list of respondents or in any published analysis. All respondents should be aware that the Scottish Executive 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 the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their responses to be made public (see the attached Respondent Information Form), these will be made available to the public in the Scottish Executive Library, and on the Scottish Executive consultation web pages as soon as practicable. We will check all responses where agreement to publish has been given for any potentially defamatory material before logging them in the library or placing them on the website. You can make arrangements to view responses by contacting the SE Library on 0131 244 4552. Responses can be copied and sent to you, but a charge will 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 proposals to amend the Adults with Incapacity (Scotland) Act 2000. We aim to issue a summary report on this consultation as soon as practicable. Changes will be implemented when we are able to identify a suitable legislative opportunity.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the contact details above

*The Scottish Executive 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 weblinks). SEconsult complements but in no way replaces SE distribution lists and is designed to allow stakeholders to keep up to date with all SE consultation activity, and therefore be alerted to the earliest opportunity to those most interested. We would encourage you to register.***

LIST OF CONSULTATION QUESTIONS (If you need more space please add pages, clearly number your answers and attach securely – thank you for your response).

Ref.	Your Views	Yes	No	Comments
1	Do you support the countersignatory proposals? If you disagree with any of the proposals please say why?	✓		Some concern about 'any class' – is there potential for abuse within family situation? Some protection if certain classes of signatories are specified
2	Do you support the proposal to allow for the appointment of substitute and joint withdrawers?	✓		
3	Do you support a change to allow for intromission with a joint account on behalf of both account holders, in circumstances where one and then the other becomes incapable?	✓		
4	Do you support proposals to increase flexibility in the management of accounts under IwF? If not, please give your reasons.	✓		
5	Do you agree that the Public Guardian should be empowered to authorise the opening of a bank account in the name of the adult, so that the applicant can intromit with funds?	✓		
6a	Do you support the proposal for the Public Guardian to be able to; authorise applicants to request confidential financial data from the adult's bank/building society for the purpose of completing the IwF application; and authorise banks to release the requested information?	✓		

6b	Do you consider that the two stage process provides an adequate safeguard to protect the adult from potential abuse?	✓		
7a	Do you support the proposal that organisations should be allowed to intromit with funds? If not, please state your reasons.	✓		
7b	Are there any considerations which would make certain types of organisation unsuitable to IwF? If so, please state what you think these would be.	✓		If organisations were to employ staff in relation to client's care/interests - conflict. Best not
8a	Please suggest an alternative name for 'intromission with funds'.			
8b	What do you suggest the name/title for someone authorised to manage funds under IwF should be?			
9a	Do you agree that, in considering the need for a financial guardian of last resort, it is important to draw a distinction between – cases where the challenge is to <u>identify a willing nominee and supply is restricted or absent</u> - and cases where the nature of the case makes it difficult to attract a nominee on any commercial basis (supply side constraints may also be present in such cases)?			
9b	Do you think there is a gap in the 'universal' provider market for guardianship at the moment, i.e. are there cases which would have supported the payment of a professional fee but where no professional was available to administer the guardianship? If so, please say why you think this gap arises.			

9c	Do you have any information on the scale of the gap ? (If so please state).			
9d	Would it be helpful to see any such gap in terms of the market for wider community legal services?			
9e	Do you have any ideas about how the gap in the provision of professional financial guardians in such situations could be met? For example, would it be helpful to have a central referral system for the allocation of a suitable professional from a panel? Would that ensure a suitable service even in remote areas?			
9f	What are the key features of cases which, even if a referral and panel system were to be in place, would require a guardian of last resort?			
9g	What would be the likely annual demand for a last resort service for such cases?			
9h	Taking into account the nature and volume of last resort cases, what kind of skills and organisational arrangements would the provider of a last resort service have to have?			
10	Do you support the proposal to include a check in the registration process for powers of attorney to ensure that the granter has considered how and by whom incapacity is to be determined?	✓		

11	Do you support the proposal to amend the Act to provide that only one supporting certificate by an approved person is required when a power of attorney contains both continuing financial and welfare powers?	✓		
12a	Do you agree that it would be beneficial to make specific provision for sheriffs to dispense with caution if they consider it appropriate in the circumstances?	✓		
12b	Do you agree that the Public Guardian should be granted powers to vary caution?	✓		
13	Do you support the proposal to make specific provision to allow sheriffs discretion to extend the period for lodging reports to a maximum of 60 days in cases where an adult's condition is stable and long term, or deteriorating and long term?	✓		
14	<p>Do you support the proposal to deal with situations where the adult for whom the report by the approved medical practitioner is required lives outwith Scotland, to enable an appropriately qualified medical practitioner with experience recognised by the country in which he/she works to:</p> <ul style="list-style-type: none"> - make an examination of the adult. - discuss that examination with a medical practitioner approved under section 22 of the Mental Health (Care and Treatment) 	✓		<p>Are there remote situations in Scotland where similar difficulties would apply?</p>

	(Scotland) Act 2003, or with a medical commissioner or medical officer of the Mental Welfare Commission for Scotland, and; -provide a report on the adult's capacity in relation to the measures sought?			
15	Should sheriffs be given discretion to make interim orders for a period of more than three months where this is appropriate in the circumstances of the case?			
16a	Do you support the proposal that local authorities should be able to recall their own guardianships?	<input checked="" type="checkbox"/>		
16b	Have you experienced a specific difficulty in the recall of a guardianship? Please provide details.			
17a	Do you support the proposal to broaden section 4 to allow for an application to the sheriff by a person having an interest in the affairs of an adult with incapacity?	<input checked="" type="checkbox"/>		
17b	In addition, do you support the proposal that the court should have, on its own initiative, the power to make an order under section 4, subject to intimation to (informing) the adult and any other person the court considers has an interest?	<input checked="" type="checkbox"/>		
18a	Would it be appropriate to consider widening the categories of professionals who sign certificates of incapacity under the Act? If 'yes' please answer the following questions below.		<input checked="" type="checkbox"/>	
18b	To which professionals, and under which Parts of the Act should this be extended?			
18c	What issues would any extension raise e.g. training, indemnity cover?			