The Mental Health (Care and Treatment) (Scotland) Act 2003 and the Review of the Lothian Mental Health Strategy

The Executive of the Council

10 February 2004

1 Purpose of report

1.1 To brief the Executive of the Council on the content, statutory service and financial implications of the Mental Health (Care and Treatment) (Scotland) Act 2003, and to inform the Executive of the development of plans to enable the implementation of the Act.

1.2 To advise the Executive of the Review of the Lothian Mental Health Strategy and of the need to develop formal implementation plans both in respect of this Strategy and of the Mental Health (Care and Treatment) (Scotland) Act 2003.

1.3 To seek approval to progress the production of a Joint Edinburgh Implementation Plan for further development of modernised mental health services in the city that incorporates implementation plans for the new Act.

2 Summary

2.1 This report describes significant national and local developments in Mental Health Services and draws the Executive's attention to the main implications of each.

2.2 It outlines the implications of the Mental Health (Care and Treatment) (Scotland) Act 2003 and the requirement to submit a formal joint Implementation Plan.

2.3 It describes the ongoing review of the Pan Lothian Strategy for Mental Health Services - a joint initiative involving NHS Lothian, the four Lothians local authorities and other key planning partners. An Implementation Plan is also required for this
2.4 It seeks the Executive's agreement to develop a Joint Edinburgh Implementation Plan covering both the revised Strategy and the provisions of the new Mental Health Act.

3 Summary: Mental Health (Care and Treatment) (Scotland) Act 2003

3.1 The Mental Health (Care and Treatment) (Scotland) Act 2003 received Royal Assent in April 2003 and is currently expected to be implemented in tranches starting in October 2004. Much of the content of the new Act is predicated on the recommendations of the Millan Committee, which undertook a comprehensive review of the existing legislation, the Mental Health (Scotland) Act 1984. Local Implementation Plans are required.

3.2 The provisions of the new Act take account of changes in practice in the intervening period, particularly in relation to the shift from institutional to community care.

3.3 The Act also recognises and gives primacy to the perspective of service users and carers, conferring significant and progressive increased rights and opportunities for them to contribute to important decisions about care and treatment.

3.4 The Act confers significantly enhanced duties upon local authorities to provide personal care and personal support services, along with a range of services designed to promote well-being and social development, for all people with a mental disorder as defined therein. The Act also strengthens the role of Mental Health Officers, specially trained social workers who discharge statutory duties in relation to people compelled under mental health legislation.

3.5 Currently, the Council directly provides and externally commissions a range of mental health services. These will require to be reviewed and developed, if the Council is to properly discharge its statutory duties under the new Act.

3.6 The Scottish Executive has circulated a Financial Memorandum to accompany the Act detailing its intention to release funds, phased over three years, to support local authorities' implementation of the legislation.

3.7 A National Mental Health Services Assessment has been undertaken in response to concerns regarding the level of funding required for implementation. This work was led by Dr. Sandra Grant and was undertaken on behalf of the Scottish Executive. The national assessment entailed a series of visits to health board areas in order to consult with a range of stakeholders in the mental health field across Scotland. In
November 2003 the Scottish Executive announced that there would be an allocation of £15 million, phased over three years, to partnership areas across Scotland to further support the implementation of the Act.

3.8 The Council is participating in a joint review of the Joint Lothian Mental Health and Wellbeing Strategy. Following a consultation process that has sought the views of a wide variety of stakeholders in Lothian, it has been proposed that we meet the Scottish Executive’s requirement to develop joint implementation plans from health boards and local authorities in relation to the implementation of the Act. If agreed, these will be incorporated into the overall local implementation plans in relation to the Joint Lothian Mental Health and Wellbeing Strategy.

4 Development and Key Provisions of the new Mental Health Act

4.1 The enactment of the Mental Health (Care and Treatment) (Scotland) Act 2003 represents the culmination of an extended period of review and consultation that began with the establishment of the Millan Committee in 1999. This body was remitted to review the existing Mental Health (Scotland) Act 1984 and its work constituted the first comprehensive review of mental health legislation since 1960.

4.2 The Millan Committee published its report 'New Directions' in January 2001. The report’s findings reflected the outcome of a comprehensive consultation process that sought the views of service users, carers and the wide range of statutory bodies, agencies, professional groups and others with a role or interest in mental health legislation. The Scottish Executive published a Policy Statement in October 2001 and a draft Mental Health Bill was put out for consultation in June 2002.

4.3 After a further period of consultation, during which the Scottish Parliament’s Health and Community Care Committee took evidence, a number of amendments were successfully included and the Bill received its final stage reading in March 2003. Royal Assent was obtained in April 2003. The Act is scheduled for phased implementation with limited provisions, "Advance Statements" and "Named Persons" being introduced from October 2004 and the substantive provisions following in April 2005.

4.4 The Scottish Executive established a team to take forward the drafting of the Bill and, upon enactment, created an Act Implementation Team to work in parallel. Alongside the Executive teams, a Legislation Reference Group of mental health stakeholders has been meeting to act as a key consultation group.
The Scottish Executive has established key policy objectives for the Act. It must help deliver the best possible support and protection for patients and their families, equip professionals with the best legal tools to be able to do their jobs properly and provide clearer, fairer and safer mental health legislation that underpins modern ways of delivering mental health care.

The Act is a comprehensive, complex text of considerable length. The following are the main areas of change and development; more details on each can be found in Appendix (1)

- **Statement of Principles** – against which the performance of statutory agencies, professionals and Tribunals will be measured
- **Definition of “Mental Disorder”** – defined as any mental illness, personality disorder or learning disability, however caused or manifested. The definition includes dementia
- **Mental Health Tribunals** - these will be established to arbitrate on mental health matters. There will be three members (legal, medical, general). The local Tribunal will cover an estimated 532 cases per annum in the Lothians.
- **Criteria for Civil Compulsion** – i.e. the criteria to be satisfied before long-term compulsion can be sanctioned.
- **Compulsory Treatment** – Compulsory Treatment Orders (three types) are introduced and will apply to both community and hospital-based treatment. The introduction of CTOs has proved controversial, particularly amongst service users’ groups. A Code of Guidance and other protocols will be developed by the Scottish Executive. The involvement of a Mental Health Officer (MHO) will be required in all but the most exceptional cases, and all CTOs will require to be approved by a Mental Health Tribunal.
- **Special Treatments** - Electro Convulsive Therapy and Psychosurgery will not be permissible without the patient’s consent.
- **Advance Statements** – patients will be able to prepare statements, in advance of any episode of mental disorder, that can address their views regarding any resulting care and treatment
- **Advocacy** – The Act confers a right to independent advocacy to any person with a mental disorder and places a duty on health boards and local authorities to secure these services and ensure that those eligible have access to them
- **Carers’ Rights** – these are clarified. The Tribunal will have a specific responsibility to take into account the implications, for carers, of any orders.
• **Rights to Assessment and Services** - users and carers have a right to request assessment by mental health services, and there is a duty to provide services to those patients subject to compulsion.

• **Local Authority and Health Board functions** - both are given wider duties to provide personal care and support services, plus a range of services to promote well-being and social development. This significantly extends the local authority role in care planning and provision in this field. The new duties will require a corporate approach by the Council, led by Social Work and spanning Housing, Education, Culture and Leisure and City Development.

However, the Act is rather rigid in its distinction between local authority and health board functions and does little to assist in bridging the traditional schism between hospital and the community. Further, there is an imbalance in that the duties to provide care and treatment conferred on health boards are not as explicitly stated as those for local authorities. This concern was raised during the passage of the Bill through Parliament and it was argued that corresponding duties should have been placed on health boards requiring the provision of services for a range of physical, psychological and social interventions. It was further argued that the impetus for the development of these services should not rest with local authorities’ limited powers to “request” health boards to do so.

The duties of Mental Health Offices are also significantly expanded throughout the Act. Local authorities will retain the responsibility for the appointment and operation of Mental Health Officer Services. The Scottish Executive has commissioned a national research study of MHO services to assist local authorities in determining the requirement these additional duties will place upon them in relation to review and redesign. In addition, National Standards for MHO services are currently under development.

• **Children and Young People** - The new Act applies to all ages. Health boards are given a new duty to provide age-appropriate mental health services – it will no longer be acceptable for those under 16 to be admitted to adult psychiatric wards.

The Act also acknowledges the interface with the Children (Scotland) Act 1995 and makes provision for parents with a mental disorder to be assisted in maintaining relationships, where appropriate, with their children. Equally, where a child has a mental disorder there is provision to ensure appropriate action to mitigate any impairment of relations with parents.
• Mentally Disordered Offenders – this is possibly the most complicated area of the Act with the various provisions clarifying the powers in relation to prisoners on remand, and enabling a greater use of interim hospital placements. There is considerably more involvement of MHOs. Patients also have the right of appeal against being held in a place of excessive security (from 2006). Regulations will enable this to be extended to Medium Secure Units if required.

5 Work Currently underway in Edinburgh

Mental Health Officer Service

5.1 The Social Work Department has begun an operational review of its Mental Health Officer Service. This review recognises that the considerable additional requirements of the new Act will place burdens on the existing service that it is not configured to accommodate, given that the current working arrangements were developed in response to the requirements of the Mental Health (Scotland) Act 1984.

5.2 These additional requirements are imposed alongside a significant increase in demand on the service following the implementation of the Adults with Incapacity (Scotland) Act 2000, which also expanded the role and statutory duties of Mental Health Officers. A departmental management group with specific responsibility for mental health services is developing operational options for the Mental Health Officer Service that will entail fundamental changes in its current staffing and organisational arrangements.

5.3 This process will be informed by the information generated by the Scottish Executive’s national research study into Mental Health Officer Services in Scotland and by information from established services elsewhere in Scotland. Information generated by previous, more limited, local reviews of the service will also be used. The development of National Standards for Mental Health Officers will also be crucial to this process.

5.4 Although the Mental Health Officer role remains a designated task under the Community Care and Health (Scotland) Act 2002, there will be a requirement to ensure that any new arrangements integrate with the Joint Future agenda.

Inter-agency planning – service developments

5.5 In co-operation with our joint-planning partners, the Edinburgh Strategic Development Group – Mental Health will continue to co-ordinate the identification of service developments needs in
relation to the additional statutory duties for health boards and local authorities conferred by the new Act.

**Advocacy**

5.6 With regard to advocacy services, Edinburgh has well-established community-based individual (Advocard) and collective (Consultancy and Advocacy Promotion Service – CAPS) independent advocacy services. There is also a well-established collective advocacy service for patients at the Royal Edinburgh Hospital, the Patient's Council. In line with the requirements of the new Act however, there is a pressing need to develop an individual independent advocacy service for patients at the Royal Edinburgh Hospital. The Advocacy Planning and Implementation Group, a sub-group of the SDG Mental Health, has developed a service specification for a managing agency to establish this service and to assume the management role in relation to the Patient's Council that is currently undertaken by NHS Lothian. Commissioning of this service will be taken forward on a joint basis.

**Funding**

5.7 As indicated in 3.8 above, in response to concerns regarding the level of funding required for implementation of the Act the Health Minister announced a National Review of Mental Health Services in December 2002. This was led by Dr. Sandra Grant and was undertaken on behalf of the Scottish Executive. The National Assessment entailed a series of visits to health board areas in order to consult with a range of stakeholders in the mental health field across Scotland. An interim report and local reports have just been published.

**Training and Information**

5.8 In November 2003 the Scottish Executive announced that there would be an allocation of £15 million, phased over three years, to partnership areas across Scotland to further support the implementation of the Act. In order to access this funding the Scottish Executive is seeking the development of joint implementation plans from health boards and local authorities regarding the implementation of the new Act. This funding is in addition to the monies previously allocated in line with the Financial Memorandum that accompanied the publication of the draft Bill in September 2002.

5.9 Planning is already underway to develop a training strategy for Mental Health Officers, to enable them to fulfil their statutory duties under the new Act. Although Edinburgh is fortunate in having a well-established MHO service with a considerable pool
of knowledge and expertise, there will be significant transitional issues as we move from the '84 legislation to the new Act. Accreditation to operate on behalf of the local authority as a Mental Health Officer will be contingent upon the successful completion of transitional training, as will continuing registration as a MHO with the Scottish Social Services Council. The Social Work department's future requirements regarding the post-qualifying training of prospective Mental Health Officers will be informed by decisions made regarding the model of service chosen as a result of the aforementioned Operational Review of the city's MHO Service.

5.10 Given the new, wide-ranging responsibilities for local authorities, it will also be necessary to consider the training and information needs of other Council staff. It will also be necessary to develop an information strategy to inform a variety of stakeholders about rights, roles and duties under the new Act. The Council will be required to produce a range of information aimed at service users, carers, the voluntary and independent sector, as well as Council staff and allied professions.

5.11 The Scottish Executive is committed to the development of national training materials for all professionals with statutory roles under the new Act. The development of a joint training strategy has been proposed to enable key professional groups, such as Consultant Psychiatrists and Mental Health Officers, to work collaboratively in preparing to undertake their new duties.

5.12 Council officers have already been extensively involved in the consultation process that has informed the development of the legislation and continue to participate in a variety of fora charged with taking forward the preparation of services at both a local and national level. A significant contribution has been made by council staff to the work of the national Legislation Reference Group, the ongoing development of the Code of Practice and General Guidance that will accompany the implementation of the Act, the National Mental Health Services Assessment, the Scottish Executive's national research study into Mental Health Officer Services, the development of national standards for MHOs and the development of national training materials.

6 Joint Review of the Lothian Mental Health Strategy

6.1 A major review of the Lothian Mental Health Strategy is underway. This Strategy originated in 1995 and was followed by the Edinburgh Joint Mental Health Plan, approved by the City of Edinburgh Council in 1998. To assist in the development of a revised Strategy a Joint Project Board was established in July
2003 comprising the diversity of stakeholders in the mental health field including Council representation.

6.2 Broad agreement has been reached that the strategic direction for the development of mental health services in Lothian should be a major and more rapid shift in resources from hospital to community based services. This is in keeping with long standing mental health policy and builds on the extensive joint work undertaken in the reprovisioning of 92 long stay patients to more appropriate care and accommodation in the community. It is envisaged that community based services will embrace a range of approaches to the care and treatment of people who experience mental health difficulties. This will support the Council's commitment to providing services based on a social care model, incorporating social inclusion and social justice as underpinning principles.

6.3 A major driver for NHS Lothian in this process is the pressing need to present the business cases to the Scottish Executive in relation to the mental health components of a number of important hospital re-provision/rebuilding projects, including the redevelopment of the Royal Edinburgh Hospital.

6.4 This initially led to unrealistic timescales and deadlines being established that have now been abandoned. There has been some debate relating to the Scottish Executive's request that the review process should include consideration of the reduction of the number of sites delivering acute mental health patient care within Lothian. Much discussion has centred on the relative merits of a two-site model, sustaining and augmenting the service at the Royal Edinburgh and maintaining St. John's, against the existing four site arrangement that maintains acute mental health hospital provision in East and Midlothian.

6.5 There is broad commitment to explore the feasibility of adopting a two-site model and reinvesting the sums released in the community. Representatives of all four Council areas within the Joint Project Board agreed that more time is required to develop strategic responses to the implications of adopting the two-site model and have agreed to prepare joint local implementation plans by the end of March 2004. This will give stakeholders representing the City of Edinburgh time to consider the particular complexities presented by having to address the needs of five LHCC areas and the significant challenges of new developments within acute care and within Community Health Partnerships, as well as advancing a socially inclusive model of care.

6.6 It is planned that the requirement to produce local implementation plans in respect of the Act will be subsumed
within these proposed overall local implementation plans for a
revised Joint Lothian Mental Health and Wellbeing Strategy.
The finalised Strategy and implementation plans will require to
be jointly agreed between the four partner Councils and Lothian
NHS Board.

7 Financial Implications

7.1 The Scottish Executive published a Financial Memorandum
along with the draft Bill that outlined the broad costs and
financial settlements in respect of implementation. These total
£23.1 million recurrently and break down as follows:

Ongoing national funding from 2004/2005 (net expenditure)

<table>
<thead>
<tr>
<th>Source</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Scottish Executive</td>
<td>£4.1 million</td>
</tr>
<tr>
<td>Local Authority</td>
<td>£13 million</td>
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<tr>
<td>NHS</td>
<td>£6 million</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>£23.1 million</strong></td>
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Within the financial memorandum it was stated that there would
be no additional specific funding for the NHS as this “... will be
covered by the substantial funding increases already
announced”. However this has now been superseded by the
recent allocation of Partnership funding of £15 million to support
implementation.

National Start-Up Costs – Total £9.25 million

7.2 From this national funding the City of Edinburgh allocation will
be £1,085,000 in 2004/05 (ongoing) with a further £48,000
ongoing from 2005/06. These sums are in addition to the
£171,000 included in the 2003/04 budget.

7.3 It will be necessary to consider the funding allocated to the City
of Edinburgh Council for implementation of the Act both within
the terms outlined in the Financial Memorandum and in the
context of the proposed Joint Edinburgh Implementation Plan.
As previously stated this plan will also require to develop
proposals for the Partnership Funding recently made available
by the Scottish Executive.
7.4 At this stage and subject to the guidance in the financial memorandum it is proposed that the City of Edinburgh Council’s allocation be broadly apportioned as follows:

New service models that offer direct alternatives to hospital £400,000

MHO service development and training £150,000 - £200,000

Advocacy service development £150,000

Opportunities for social development including Employment, leisure and education £150,000

Enhanced packages of care £150,000 - £200,000

TOTAL AVAILABLE in 2004/05 £1,085

Detailed proposals for the above projects will require to be contained within the total sum available

8 Recommendations

It is recommended that the Executive of the Council:

8.1 notes the contents of this report;

8.2 notes the level of funding available to implement the Mental Health (Care and Treatment) (Scotland) Act 2003 and agrees the proposed broad allocation of these funds as outlined in para 7.5 and in keeping with the guidance issued in the Scottish Executive Financial Memorandum;

8.3 notes that an operational review of the city’s Mental Health Officer Service has commenced and notes the implications of the new legislation for the staffing and funding of this service;

8.4 gives formal approval to ongoing participation in the Joint Review of Lothian Mental Health Services and agrees the emphasis on providing alternatives to hospital care by further developing an appropriate range of services in the community, including an extension of social care and support services;
8.5 agrees to the development of a Joint Edinburgh Implementation Plan for the Lothian Mental Health Review, that incorporates an Implementation Plan for the new Act;

8.6 notes that the details of the specific funding allocations will be provided in a future report and/or as part of the Joint Implementation Plan.

Appendices

Appendix (1) – Key Provisions of the Mental Health (Care and Treatment) (Scotland) Act 2003

Contact/tel

Sue Brace, Head of Planning and Commissioning – 553 8322

Wards affected

All

Background Papers

CEC SW Committee Report: Joint Mental Health Plan for Edinburgh (No 44: 1998/99)
CEC SW Committee Report: Joint Mental Health Plan for Edinburgh (No.72: 1998/99)

Roy Jobson
Acting Director of Social Work
APPENDIX 1

Mental Health (Care and Treatment) (Scotland) Act 2003
Description of Key Provisions

1. Principles
The legislation is underpinned by a series of principles that appear on the fact of the Act. These are: Non-discrimination, Equality, Respect for Diversity, Reciprocity, Informal Care, Participation, Respect for Carers, Least Restrictive Alternatives, Benefit and child Welfare. The performance of Tribunals, professionals and statutory agencies in the application of the legislation will be tested against these principles.

2. Mental Disorder
The Act defines 'mental disorder'. Mental disorder means any mental illness, personality disorder or learning disability, however caused or manifested; and cognate expressions shall be construed accordingly. A number of exclusions are identified as not of themselves causing a person to have a mental disorder, for example, dependence on alcohol or drugs, or simply acting as no prudent person would. It is likely that an early review will be undertaken of the continuing appropriateness of the inclusion of learning disability within this legal framework or whether a separate framework should be established.

3. Mental Health Tribunals
The current use of the Sheriff Court as the locus in which the arbitration of mental health hearings takes place will change. The Act establishes Mental Health Tribunals that will comprise of three members; a legal member who will chair proceedings, a medical member and a general member who will be a professional or other person who has knowledge and understanding of care planning and personal and social care services.

The Scottish Executive Implementation Team is currently consulting on how the tribunal system will be implemented and plans to establish a shadow system. The configuration of the tribunal system will initially be based on calculations developed by the Royal College of Psychiatrists that estimated approximately 3000 cases nationally per annum. It is estimated that there will be 532 cases per annum in Lothian, the majority of which will involve people from Edinburgh.

The development of an effective tribunal system will be critical to the overall successful implementation of the Act and is likely to
present a number of practical and other challenges in relation to staffing, funding, membership and administration. The Legislation Reference Group has established a sub-group to assist the Implementation Team with this work.

4. Criteria for Civil Compulsion
These criteria must be satisfied before long term compulsion can be sanctioned: (i) The presence of mental disorder, (ii) the availability of treatment that will benefit the patient, (iii) the significant risk of harm to self or others if not treated, (iv) the assurance that treatment is the least restrictive alternative, (v) the assurance that treatment cannot be provided by agreement with the patient and (vi) the assurance that the person’s judgement is impaired. The latter three assurance will not apply in criminal cases.

5. Compulsory Treatment
The Act introduces compulsory treatment orders that will apply both to hospital and community based treatment. The introduction of community based Compulsory Treatment Orders is controversial and has raised concern, particularly amongst groups representing service users. The Code of Practice and other guidance that will be issued to accompany the implementation of the Act will require adherence to strict protocols regarding the application of powers of compulsion however. All Compulsory Treatment Orders will require to be approved by the new Tribunal. The assessment and consent of a Mental Health Officer will be a mandatory requirement in all but the most exceptional cases, where the circumstances of a psychiatric emergency preclude timeous attendance.

There will be three types of civil compulsion, depending on the circumstances of the individuals involved. In cases of pressing psychiatric emergency any doctor can grant an Emergency Detention Certificate that confers powers of detention in hospital for up to 72 hours.

A Short-term Detention Certificate confers powers to detain for up to 28 days, subject to the consent of a Mental Health Officer. It will no longer be permissible to use a Nearest Relative to consent to such an order. There are comprehensive duties of notification in relation to this order.

Long term detention in hospital and long term compulsion in the community will be achieved through the successful application of a Mental Health Officer to a Tribunal for a Compulsory Treatment Order. The MHO has a duty to apply and must indicate in a report whether or not they support the application. Every application will require two doctors to examine the patient and complete reports. One doctor may be a General
Practitioner and the other an approved doctor with knowledge and expertise of mental disorder.

6. Special Treatments
Electro Convulsive Therapy and Psychosurgery will not be permissible without the patient’s consent. If the patient lacks the capacity to consent there will be procedures whereby the doctor can seek the second opinion and consent of a ‘designated medical practitioner’ who can confirm consent and enable the administration of these treatments. Again, this is a controversial aspect of the new legislation.

7. Advance Statements
Patients will be able to prepare statements, in advance of any episode of mental disorder, that can address their views regarding any resulting care and treatment. There will be procedures to enable authentication of advance statements by specially designated persons. Professionals involved in any subsequent applications for compulsion to Tribunals will be required to evidence that these statements have been taken into account in relation to plans for treatment and care. Advance Statements will not be legally binding but their use and implementation will be closely monitored.

8. Advocacy
The Act confers a right to access independent advocacy to any person with a mental disorder (not only those who are the subjects of applications to compel care and treatment). The Act places a duty on health boards and local authorities to secure the availability of independent advocacy services and to ensure that people with mental disorder have access to them.

9. Carers Rights
The rights of carers to information are clarified within the Act. The Tribunal will have a specific responsibility to take account of the implications of orders for carers.

10. Rights to Assessment and Services
Service users and carers will have a right to request assessment by mental health services. In line with the principle of reciprocity there is a duty to provide appropriate services to patients made subject to compulsion.

11. Local Authority and Health Board Functions
Local authorities have been given more wide ranging duties to provide personal care and personal support services, together with a range of services designed to promote well-being and social development. This extends and significantly enhances the local authority role in care planning and provision for people with mental disorder within the community. This is a welcome
development away from the notion of 'aftercare services' and incorporates a much clearer statement of the services that individuals need to enable them to live as normal and fulfilling lives as possible. These new duties require a corporate approach to be adopted by the Council, led by Social Work and spanning Housing, Education, Recreation and City Development.

However, the Act is rather rigid in its distinction between local authority and health board functions and does little to assist in bridging the traditional schism between hospital and the community. Further, there is an imbalance in that the duties to provide care and treatment conferred on health boards are not as explicitly stated as those for local authorities. This concern was raised during the passage of the Bill through Parliament and it was argued that corresponding duties should have been placed on health boards requiring the provision of services for a range of physical, psychological and social interventions. It was further argued that the impetus for the development of these services should not rest with local authorities' limited powers to 'request' health boards to do so.

The duties of Mental Health Offices are significantly expanded throughout the Act. Local authorities will retain the responsibility for the appointment and operation of Mental Health Officer Services. The Scottish Executive has commissioned a national research study of MHO services to assist local authorities in determining the requirement these additional duties will place upon them in relation to review and redesign. In addition, National Standards for MHO services are currently under development.

11. Children and Young People

The new Act is universal and applies to people of all ages. Specific recognition is given to the welfare of children as being of paramount importance. The Act places a duty on health boards to provide age appropriate mental health services, ensuring that once implemented, it will no longer be acceptable for people under 16 years of age to be admitted to adult psychiatric wards. The Act also acknowledges the interface with the Children (Scotland) Act 1995 and makes provision for parents who have a mental disorder to have assistance in maintaining relationships, where appropriate, with their children. Equally, where a child has a mental disorder there is provision to ensure that the appropriate action is taken to mitigate any impairment or diminution of relations with anyone with parental responsibilities.
The Act also requires 'designated medical practitioners' to include doctors who specialise in child health.

12. Mentally Disordered Offenders

This is possibly the most complicated area of the Act. The various provisions clarify the powers in relation to remanded prisoners and enable and promote a greater use of interim hospital orders and hospital directions. There is considerably more and earlier involvement of Mental Health Officers in Court reports and proceedings. Psychology input is also recognised.

The role of Scottish Ministers in relation to high-risk patients who are on restricted orders is transferred to the Tribunal. The Act links to the new Criminal Justice Bill and many of the new provisions in the new Act will replace those currently conferred by the Criminal Procedure (Scotland) Act 1995.

Patients will also have the right to appeal against being held in a place of excessive security. This will be implemented for 2006. Regulations will enable the extension of this provision to Medium Secure Units if required.
Agenda item:

Report title: The Mental Health (Care and Treatment)(Scotland) Act 2003 and the Review of Lothian Mental Health Strategy

In accordance with the Council's Standing Orders, the contents of this report have been noted by the appropriate Executive Member.

Without prejudice to the integrity of the report, and the recommendations contained within it, the Executive Member expresses his/her own views as follows:

Signed: [Signature]

Date: 2 February 2004

For information – Standing Order 57(1) states:

"Heads of Department will prepare reports, with professional advice and recommendations, on matters requiring decisions by the Executive:

- a report seeking decisions on matters of corporate strategy, corporate policy and corporate projects will be submitted direct to the Executive

- a report seeking decisions on matters relating to the special responsibilities allocated to an individual member of the Executive will be submitted, in the first instance, to that member. The member will add his or her own recommendation to it before submission to the Executive. Where the Executive member disagrees with the advice and the recommendation of the officers, the Executive member will also state his or her reasons."