



Adult Support and Protection (Scotland) Act 2007 2007 asp 10

VALID FROM 05/10/2007

PART 1

PROTECTION OF ADULTS AT RISK OF HARM

VALID FROM 29/10/2008

Introductory

1 General principle on intervention in an adult's affairs

The general principle on intervention in an adult's affairs is that a person may intervene, or authorise an intervention, only if satisfied that the intervention—

- (a) will provide benefit to the adult which could not reasonably be provided without intervening in the adult's affairs, and
- (b) is, of the range of options likely to fulfil the object of the intervention, the least restrictive to the adult's freedom.

This section applies for the purposes of section 2 only.

2 Principles for performing Part 1 functions

A public body or office-holder performing a function under this Part in relation to an adult must, if relevant, have regard to—

- (a) the general principle on intervention in an adult's affairs,
- (b) the adult's ascertainable wishes and feelings (past and present),
- (c) any views of—
 - (i) the adult's nearest relative,
 - (ii) any primary carer, guardian or attorney of the adult, and

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- (iii) any other person who has an interest in the adult's well-being or property,
- which are known to the public body or office-holder,
- (d) the importance of—
 - (i) the adult participating as fully as possible in the performance of the function, and
 - (ii) providing the adult with such information and support as is necessary to enable the adult to so participate,
- (e) the importance of ensuring that the adult is not, without justification, treated less favourably than the way in which any other adult (not being an adult at risk) might be treated in a comparable situation, and
- (f) the adult's abilities, background and characteristics (including the adult's age, sex, sexual orientation, religious persuasion, racial origin, ethnic group and cultural and linguistic heritage).

3 Adults at risk

- (1) “Adults at risk” are adults who—
 - (a) are unable to safeguard their own well-being, property, rights or other interests,
 - (b) are at risk of harm, and
 - (c) because they are affected by disability, mental disorder, illness or physical or mental infirmity, are more vulnerable to being harmed than adults who are not so affected.
- (2) An adult is at risk of harm for the purposes of subsection (1) if—
 - (a) another person's conduct is causing (or is likely to cause) the adult to be harmed, or
 - (b) the adult is engaging (or is likely to engage) in conduct which causes (or is likely to cause) self-harm.

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Inquiries

4 Council's duty to make inquiries

A council must make inquiries about a person's well-being, property or financial affairs if it knows or believes—

- (a) that the person is an adult at risk, and
- (b) that it might need to intervene (by performing functions under this Part or otherwise) in order to protect the person's well-being, property or financial affairs.

5 Co-operation

- (1) This section applies to—
 - (a) the Mental Welfare Commission for Scotland,

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- (b) the Care Commission,
- (c) the Public Guardian,
- (d) all councils,
- (e) chief constables of police forces,
- (f) the relevant Health Board, and
- (g) any other public body or office-holder as the Scottish Ministers may by order specify.

(2) The public bodies and office-holders to which this section applies must, so far as consistent with the proper exercise of their functions, co-operate with—

- (a) a council making inquiries under section 4, and
- (b) each other,

where such co-operation is likely to enable or assist the council making those inquiries.

(3) Where a public body or office-holder to which this section applies knows or believes—

- (a) that a person is an adult at risk, and
- (b) that action needs to be taken (under this Part or otherwise) in order to protect that person from harm,

the public body or office-holder must report the facts and circumstances of the case to the council for the area in which it considers the person to be.

6 Duty to consider importance of providing advocacy and other services

(1) This section applies where, after making inquiries under section 4, a council considers that it needs to intervene in order to protect an adult at risk from harm.

(2) Where this section applies, the council must have regard to the importance of the provision of appropriate services (including, in particular, independent advocacy services) to the adult concerned.

(3) “Independent advocacy services” has the same meaning in subsection (2) as it has in section 259(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13).

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Investigations

7 Visits

(1) A council officer may enter any place for the purpose of enabling or assisting a council conducting inquiries under section 4 to decide whether it needs to do anything (by performing functions under this Part or otherwise) in order to protect an adult at risk from harm.

(2) A right to enter any place under subsection (1) includes a right to enter any adjacent place for the same purpose.

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8 Interviews

- (1) A council officer, and any person accompanying the officer, may interview, in private, any adult found in a place being visited under section 7.
- (2) An adult interviewed under this section is not required to answer any question (and the adult must be informed of that fact before the interview starts).
- (3) The power given by subsection (1) applies regardless of whether the sheriff has granted an assessment order authorising the council officer to take the person to another place to allow an interview to be conducted.

9 Medical examinations

- (1) Where—
 - (a) a council officer finds a person whom the officer knows or believes to be an adult at risk in a place being visited under section 7, and
 - (b) the officer, or any person accompanying the officer, is a health professional, that health professional may conduct a private medical examination of the person.
- (2) A person must be informed of the right to refuse to be examined before a medical examination is carried out (whether under this section or in pursuance of an assessment order).
- (3) The power given by subsection (1) applies regardless of whether the sheriff has granted an assessment order authorising the council officer to take the person to another place to allow a medical examination to be conducted.

10 Examination of records etc.

- (1) A council officer may require any person holding health, financial or other records relating to an individual whom the officer knows or believes to be an adult at risk to give the records, or copies of them, to the officer.
- (2) Such a requirement may be made during a visit or at any other time.
- (3) Requirements made at such other times must be made in writing.
- (4) Records given to a council officer in pursuance of such a requirement may be inspected by—
 - (a) the officer, and
 - (b) any other person whom the officer, having regard to the content of the records, considers appropriate,for the purposes of enabling or assisting the council to decide whether it needs to do anything (by performing functions under this Part or otherwise) in order to protect an adult at risk from harm.
- (5) Nothing in this section authorises a person who is not a health professional to inspect health records (other than to determine whether they are health records).
- (6) A requirement under subsection (1) which is transmitted by electronic means is to be treated as being in writing if it is received in legible form and capable of being used for subsequent reference.

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- (7) “Health records” are records relating to an individual's physical or mental health which have been made by or on behalf of a health professional in connection with the care of the individual.

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Assessment orders

11 Assessment orders

- (1) A council may apply to the sheriff for an order (“an assessment order”) which authorises a council officer to take a specified person from a place being visited under section 7 in order to allow—
- (a) a council officer, or any council nominee, to interview the specified person in private, and
 - (b) a health professional nominated by the council to conduct a private medical examination of the specified person,
- for the purposes set out in subsection (2).
- (2) Those purposes are to enable or assist the council to decide—
- (a) whether the person is an adult at risk, and
 - (b) if it decides that the person is an adult at risk, whether it needs to do anything (by performing functions under this Part or otherwise) in order to protect the person from harm.
- (3) An assessment order—
- (a) is valid from the date specified in the order, and
 - (b) expires 7 days after that date.

12 Criteria for granting assessment order

The sheriff may grant an assessment order only if satisfied—

- (a) that the council has reasonable cause to suspect that the person in respect of whom the order is sought is an adult at risk who is being, or is likely to be, seriously harmed,
- (b) that the assessment order is required in order to establish whether the person is an adult at risk who is being, or is likely to be, seriously harmed, and
- (c) as to the availability and suitability of the place at which the person is to be interviewed and examined.

13 Restriction on exercise of assessment order

A person may be taken from a place in pursuance of an assessment order only if it is not practicable (due to a lack of privacy or otherwise) to—

- (a) interview the person under section 8, or
- (b) conduct a medical examination of the person under section 9,

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during a visit under section 7.

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Removal orders

14 Removal orders

- (1) A council may apply to the sheriff for an order (“a removal order”) which authorises—
 - (a) a council officer, or any council nominee, to move a specified person to a specified place within 72 hours of the order being made, and
 - (b) the council to take such reasonable steps as it thinks fit for the purpose of protecting the moved person from harm.
- (2) A removal order expires 7 days (or such shorter period as may be specified in the order) after the day on which the specified person is moved in pursuance of the order.

15 Criteria for granting removal order

- (1) The sheriff may grant a removal order only if satisfied—
 - (a) that the person in respect of whom the order is sought is an adult at risk who is likely to be seriously harmed if not moved to another place, and
 - (b) as to the availability and suitability of the place to which the adult at risk is to be moved.
- (2) A removal order may require a council to allow any specified person to have contact with the adult at risk to whom the order relates—
 - (a) at any specified time during which the order has effect, and
 - (b) in accordance with any specified conditions.
- (3) But the sheriff must, before including such a requirement, have regard to—
 - (a) any representations made by the council as to whether persons should be allowed to have contact with the adult at risk, and
 - (b) any relevant representations made by—
 - (i) the adult at risk,
 - (ii) any person who wishes to be able to have contact with the adult at risk, and
 - (iii) any other person who has an interest in the adult at risk's well-being or property.

16 Right to move adult at risk

- (1) A council officer may enter any place in order to move an adult at risk from the place in pursuance of a removal order.
- (2) A right to enter any place under subsection (1) includes a right to enter any adjacent place for the same purpose.

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17 Variation or recall of removal order

- (1) The sheriff may vary or recall a removal order if satisfied that the variation or recall is justified by a change in the facts or circumstances in respect of which the order was granted or, as the case may be, last varied.
- (2) A removal order may not be varied so as to authorise the council to do anything after the day which falls 7 days after the day on which the adult at risk to whom the order relates is moved in pursuance of the order.
- (3) Where an adult at risk has been moved from any place in pursuance of a removal order which is recalled, the sheriff may direct the council to—
 - (a) return the adult to that place, or
 - (b) take the adult to any other place which the sheriff, having regard to the adult's wishes, may specify.
- (4) A removal order may be varied or recalled only on the application of—
 - (a) the adult at risk to whom the order relates,
 - (b) any person who has an interest in the adult at risk's well-being or property, or
 - (c) the council.

18 Protection of moved person's property

- (1) The council must take reasonable steps to prevent any property owned or controlled by a person moved in pursuance of a removal order from being lost or damaged because—
 - (a) the moved person is unable to protect, care for or otherwise deal with it, and
 - (b) no other suitable arrangements have been or are being made for the purposes of preventing such loss or damage.
- (2) A council officer may enter any place which the council knows or believes to contain any property in respect of which it has a duty under subsection (1) in order to enable or assist the council to perform that duty.
- (3) A right to enter any place under subsection (2) includes a right to enter any adjacent place for the same purpose.
- (4) A council officer who finds any property in respect of which the council has a duty under subsection (1) may do anything which the officer considers reasonably necessary in order to prevent the property from being lost or damaged (and may, in particular, move the property to another place).
- (5) The council is not entitled to recover from a moved person any expenses it incurs in performing functions under this section in relation to property owned or controlled by that person.
- (6) The duty imposed by subsection (1) applies only while the removal order concerned has effect.
- (7) A council which moves any property in pursuance of the duty imposed by subsection (1) must, as soon as is reasonably practicable after the removal order concerned ceases to have effect, return the property to the adult concerned.

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Banning orders

19 Banning orders

- (1) A banning order is an order granted by the sheriff which bans the subject of the order (“the subject”) from being in a specified place.
- (2) A banning order may also—
 - (a) ban the subject from being in a specified area in the vicinity of the specified place,
 - (b) authorise the summary ejection of the subject from the specified place and the specified area,
 - (c) prohibit the subject from moving any specified thing from the specified place,
 - (d) direct any specified person to take specified measures to preserve any moveable property owned or controlled by the subject which remains in the specified place while the order has effect,
 - (e) be made subject to any specified conditions,
 - (f) require or authorise any person to do, or to refrain from doing, anything else which the sheriff thinks necessary for the proper enforcement of the order.
- (3) A condition specified in a banning order may, in particular, authorise the subject to be in the place or area from which the subject is banned in specified circumstances (for example, while being supervised by another person or during specified times).
- (4) The sheriff must, before including a condition of the type mentioned in subsection (3), have regard to any relevant representations made by—
 - (a) the applicant for the order,
 - (b) the adult at risk,
 - (c) any other person who has an interest in the adult at risk's well-being or property, and
 - (d) the subject.
- (5) A banning order expires on the earliest of the following dates—
 - (a) any specified expiry date,
 - (b) if the banning order is recalled, the date on which it is recalled,
 - (c) the date which falls 6 months after the date on which it is granted.

20 Criteria for granting banning order

The sheriff may grant a banning order only if satisfied—

- (a) that an adult at risk is being, or is likely to be, seriously harmed by another person,
- (b) that the adult at risk's well-being or property would be better safeguarded by banning that other person from a place occupied by the adult than it would be by moving the adult from that place, and
- (c) that either—

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- (i) the adult at risk is entitled, or permitted by a third party, or
 - (ii) neither the adult at risk nor the subject is entitled, or permitted by a third party,
- to occupy the place from which the subject is to be banned.

21 Temporary banning orders

- (1) The sheriff may grant a temporary banning order pending determination of an application for a banning order.
- (2) A temporary banning order may include any provision which may be included in a banning order.
- (3) Where a temporary banning order is granted, the sheriff must determine the related application for a banning order within such period as may be specified in rules made under section 32 of the Sheriff Courts (Scotland) Act 1971 (c. 58).
- (4) A temporary banning order expires on the earliest of the following dates—
 - (a) the date on which the sheriff determines the related application for a banning order,
 - (b) the date by which subsection (3) requires the sheriff to determine the related application for a banning order,
 - (c) if the temporary banning order is recalled, the date on which it is recalled,
 - (d) any specified expiry date.

22 Right to apply for banning order

- (1) An application for a banning order may be made only by or on behalf of—
 - (a) an adult whose well-being or property would be safeguarded by the order,
 - (b) any other person who is entitled to occupy the place concerned, or
 - (c) where subsection (2) applies, the council.
- (2) The council must apply for a banning order if it is satisfied—
 - (a) as to the matters set out in section 20,
 - (b) that nobody else is likely to apply for a banning order in respect of the circumstances which caused the council to be satisfied as to those matters, and
 - (c) that no other proceedings (under this Part or otherwise) to eject or ban the person concerned from the place concerned are depending before a court.
- (3) An applicant for a banning order may also apply for a temporary banning order in respect of the same case.

23 Banning orders: occupancy rights of adult at risk

The granting of a banning order or a temporary banning order does not affect any right the adult at risk has by virtue of being a non-entitled spouse to occupy a home within the place from which the subject is banned under section 1(1) of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c. 59).

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24 Variation or recall of banning order

- (1) The sheriff may vary or recall—
 - (a) a banning order, or
 - (b) a temporary banning order,if satisfied that the variation or recall is justified by a change in the facts or circumstances in respect of which the order was granted or, as the case may be, last varied.
- (2) A variation may not vary the date on which the order expires—
 - (a) in the case of a banning order, beyond the date which is 6 months after the date on which the order was granted,
 - (b) in the case of a temporary banning order, beyond the date by which section 21(3) requires the sheriff to determine the related application for a banning order.
- (3) An order may be so varied or recalled only on an application by or on behalf of—
 - (a) the subject of the order,
 - (b) the applicant for the order,
 - (c) the adult at risk to whom the order relates,
 - (d) any other person who has an interest in the adult at risk's well-being or property.

25 Powers of arrest

- (1) The sheriff may attach a power of arrest to any—
 - (a) banning order, or
 - (b) temporary banning order.
- (2) Any such power of arrest—
 - (a) becomes effective when it is served (together with such documents as may be prescribed) on the subject of the order, and
 - (b) expires together with the order to which it is attached.

26 Notification to adult at risk etc.

- (1) This section applies where the sheriff—
 - (a) grants a banning order or temporary banning order, or
 - (b) varies or recalls such an order,on the application of a person other than the adult whose well-being or property is safeguarded by the order.
- (2) Where this section applies, the applicant (or such other person as may be prescribed) must deliver the document mentioned in subsection (3) to—
 - (a) the adult whose well-being or property is safeguarded by the order, and
 - (b) any other person with an interest in that adult's well-being or property as the sheriff may specify.
- (3) The document which is to be delivered under subsection (2) is a copy of—
 - (a) the order (and any power of arrest attached),
 - (b) the varied order, or, as the case may be,

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(c) the order of recall.

(4) Failure to comply with subsection (2) does not invalidate the order, variation or recall concerned.

27 Notification to police

(1) The applicant for a banning order or temporary banning order (or such other person as may be prescribed) must, as soon as possible after any power of arrest attached to the order becomes effective, deliver to the chief constable—

- (a) a copy of the order (with the power of arrest attached), and
- (b) such other documents as may be prescribed.

(2) Where a banning order or temporary banning order is varied or recalled, the applicant for the variation or recall (or such other person as may be prescribed) must, as soon as possible after the variation or recall, deliver to the chief constable—

- (a) a copy of the varied order or, as the case may be, a note of the recall, and
- (b) such other documents as may be prescribed.

(3) In this section, “chief constable” means the chief constable of the police force maintained for the area in which the place specified in the order concerned is situated.

28 Arrest for breach of banning order

(1) A constable may arrest without warrant the subject of any banning order, or temporary banning order, to which a power of arrest is attached if the constable—

- (a) reasonably suspects the subject to be breaching, or to have breached, the order, and
- (b) considers that there would, if the subject were not arrested, be a risk of the subject breaching the order again.

(2) The constable must—

- (a) immediately inform the arrested person of the reason for the arrest, and
- (b) take the arrested person as quickly as is reasonably practicable to a police station.

29 Police duties after arrest

(1) The officer in charge of a police station to which any person arrested under section 28 is taken (“the officer in charge”) must detain the arrested person in custody until the person is—

- (a) accused on petition or charged on complaint with an offence in respect of the facts and circumstances which gave rise to the arrest, or
- (b) brought before the sheriff under section 32.

(2) The officer in charge must ensure that the facts and circumstances which gave rise to the arrest are reported to the fiscal as soon as is practicable.

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30 Notification of detention

- (1) Where a person is detained under section 29, the officer in charge must ensure that the detained person is informed immediately of—
 - (a) the right to have, on request, intimation of the detention and of the place of detention given, without delay, to—
 - (i) a solicitor, and
 - (ii) one other person reasonably named by the person,
 - (b) the right to have, on request, intimation given to a solicitor that the solicitor's professional assistance is required,
 - (c) the right to have, on request, the solicitor informed, as soon as the information is available, of the court to which the person is to be taken and the date when that is to happen, and
 - (d) the right to have, on request, a private interview with the solicitor before any appearance before the sheriff under section 32.
- (2) Where the officer in charge knows or believes that a person detained under section 29 is a child, the officer must, where practicable, give intimation, without delay, of the detention and of the place of detention to any person known to have parental responsibilities and rights in relation to the detained person.
- (3) Any person to whom intimation is given under subsection (2) must be permitted reasonable access to the detained person.

31 Duty to keep record of detention

The officer in charge must ensure that the following matters are recorded in connection with the detention of a person under section 29—

- (a) the time at which the person was arrested,
- (b) the police station to which the person was taken,
- (c) the time when the person arrived at that police station,
- (d) the address of any other place to which the person is, during the detention, taken,
- (e) the time when the person was informed of the rights set out in section 30(1),
- (f) the time and nature of any request made by the person to exercise any of those rights, and
- (g) the time and nature of any action taken by a police officer under section 30.

32 Duty to bring detained person before sheriff

- (1) Where—
 - (a) a person is detained under section 29, and
 - (b) the fiscal has not decided to take criminal proceedings in respect of the facts and circumstances which gave rise to the arrest,the detained person must be brought, on the next court day on which it is practicable to do so, before the sheriff sitting as a court of summary jurisdiction for the district in which the person was arrested.

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- (2) Nothing in this section prevents the detained person from being brought before the sheriff on a day other than a court day if—
- (a) the sheriff is sitting on such a day for the disposal of criminal business, and
 - (b) the fiscal has not decided to take criminal proceedings in respect of the facts and circumstances which gave rise to the arrest.

33 Information to be presented to sheriff

Where a person is brought before the sheriff under section 32, the fiscal must present to the sheriff a petition—

- (a) giving the detained person's particulars,
- (b) stating the facts and circumstances which gave rise to the arrest,
- (c) giving any information known to the fiscal—
 - (i) about the circumstances which gave rise to the banning order or temporary banning order concerned, and
 - (ii) which is relevant to an assessment of whether the detained person is likely to breach that order again, and
- (d) requesting the sheriff to consider whether a longer period of detention is justified.

34 Criteria for authorising longer detention

- (1) The sheriff may, if satisfied—
- (a) that the information which the fiscal presents under section 33 ostensibly discloses a breach of a banning order or temporary banning order, and
 - (b) that there is a substantial risk that the detained person will breach the order again,
- by order authorise the continuation of the detention for a period of not more than 2 days (not counting days which are not court days).
- (2) Where the sheriff refuses to authorise such a continuation, the detained person must be released from custody (unless that person is in custody in respect of any other matter).
- (3) Before deciding whether to grant an order under this section, the sheriff must give the detained person the opportunity to make representations.

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Protection orders and visits: supplementary

35 Consent of adult at risk

- (1) The sheriff must not make a protection order if the sheriff knows that the affected adult at risk has refused to consent to the granting of the order.
- (2) A person must not take any action for the purposes of carrying out or enforcing a protection order if the person knows that the affected adult at risk has refused to consent to the action.

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- (3) Despite subsections (1) and (2), a refusal to consent may be ignored if the sheriff or person reasonably believes—
- (a) that the affected adult at risk has been unduly pressurised to refuse consent, and
 - (b) that there are no steps which could reasonably be taken with the adult's consent which would protect the adult from the harm which the order or action is intended to prevent.
- (4) An adult at risk may be considered to have been unduly pressurised to refuse to consent to the granting of an order or the taking of an action if it appears—
- (a) that harm which the order or action is intended to prevent is being, or is likely to be, inflicted by a person in whom the adult at risk has confidence and trust, and
 - (b) that the adult at risk would consent if the adult did not have confidence and trust in that person.
- (5) Subsection (4) does not affect the generality of subsection (3).
- (6) Neither subsection (3) nor any other provision of this Part authorises a council officer or a health professional or other council nominee to ignore a refusal by a person to consent to participate in—
- (a) an interview, or
 - (b) a medical examination.
- (7) In this section, a “protection order” means any—
- (a) assessment order,
 - (b) removal order,
 - (c) banning order, or
 - (d) temporary banning order,
- and “affected adult at risk”, in relation to a protection order, means the person whose well-being or property would be safeguarded by the granting, carrying out or enforcement of the order.

36 Visits: supplementary provisions

- (1) A council officer may visit a place at reasonable times only.
- (2) A council officer must, while visiting any place—
- (a) state the object of the visit, and
 - (b) produce evidence of the officer's authorisation to visit the place.
- (3) A council officer may, while visiting any place—
- (a) examine the place,
 - (b) take into the place—
 - (i) any other person, and
 - (ii) any equipment,
 as may be reasonably required in order to fulfil the object of the visit, and
 - (c) do anything else (under this Part or otherwise) which is reasonably required in order to fulfil the object of the visit.

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- (4) A council officer may not use force during, or in order to facilitate, a visit (but this does not prevent the sheriff from granting a warrant for entry authorising a constable to use force).
- (5) A refusal to allow a council officer, or any person accompanying a council officer, to carry out a visit which is not authorised by a warrant for entry does not constitute an offence under section 49(1).

37 Warrants for entry

- (1) A “warrant for entry” is a warrant which authorises—
 - (a) a council officer to visit any specified place under section 7 or 16 together with a constable, and
 - (b) a constable who so accompanies a council officer to do anything, using reasonable force where necessary, which the constable considers to be reasonably required in order to fulfil the object of the visit.
- (2) A warrant for entry—
 - (a) expires 72 hours after it is granted, and
 - (b) does not entitle any person to remain in a place which that person has entered in pursuance of the warrant after the warrant has expired.

38 Criteria for granting warrants for entry: section 7 visits

- (1) A sheriff who grants an assessment order must also grant a warrant for entry in relation to a visit under section 7 of a place from which a person may be taken in pursuance of the assessment order.
- (2) The sheriff may, on the application of the council, otherwise grant a warrant for entry in relation to a visit under section 7 only if satisfied, by evidence on oath—
 - (a) that a council officer has been, or reasonably expects to be—
 - (i) refused entry to, or
 - (ii) otherwise unable to enter,the place concerned, or
 - (b) that any attempt by a council officer to visit the place without such a warrant would defeat the object of the visit.

39 Duty to grant warrants for entry: removal orders

- (1) A sheriff who grants a removal order must also grant a warrant for entry in relation to a visit under section 16.
- (2) Where—
 - (a) a removal order is varied, and
 - (b) the subject of the varied order has not yet been moved in pursuance of the order,the warrant for entry granted under subsection (1) in relation to the order is, regardless of whether the warrant has already expired, to be treated for the purposes of section 37(2) as having been granted on the date of variation.

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40 Urgent cases

- (1) A council which believes that the circumstances set out in subsection (2) have arisen may apply to a justice of the peace instead of the sheriff for—
 - (a) a removal order, or
 - (b) a warrant for entry in respect of a visit under section 7.
- (2) Those circumstances are—
 - (a) that it is not practicable to apply to the sheriff, and
 - (b) that an adult at risk is likely to be harmed if there is any delay in granting such an order or warrant.
- (3) A justice of the peace may grant a removal order only if satisfied, by evidence on oath—
 - (a) that the circumstances set out in subsection (2) have arisen, and
 - (b) as to the matter set out in section 15(1).
- (4) Subsections (3) to (7) of section 41 do not apply in relation to an application to a justice of the peace for a removal order.
- (5) A justice of the peace who grants a removal order must also grant a warrant for entry in relation to a visit under section 16.
- (6) A justice of the peace may grant a warrant for entry in relation to a visit under section 7 only if satisfied, by evidence on oath—
 - (a) that the circumstances set out in subsection (2) have arisen, and
 - (b) as to either of the matters set out in section 38(2).
- (7) A removal order granted under this section must—
 - (a) despite section 14(1)(a), specify a period of 12 hours beginning when the order is made as the period within which the person specified in the order may be moved in pursuance of the order, and
 - (b) specify a period of no longer than 24 hours as the period within which the order is to have effect.
- (8) Despite section 37(2)(a), a warrant for entry granted under this section expires 12 hours after it is granted.

41 Applications: procedure

- (1) This section applies in relation to any application for—
 - (a) an assessment order,
 - (b) a removal order,
 - (c) a banning order,
 - (d) a temporary banning order,
 - (e) the variation or recall of a removal order, banning order or temporary banning order.
- (2) The sheriff may disapply any of the following provisions in relation to an application if satisfied that doing so will protect an adult at risk from serious harm or will not prejudice any person affected by the disapplication—
 - (a) subsections (3) to (7),
 - (b) section 15(3),

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- (c) section 19(4).
- (3) The applicant must give notice of an application to—
- (a) the subject of the application, and
 - (b) the affected adult at risk (where that person is neither the applicant nor the subject of the application).
- (4) The sheriff must, before determining an application, invite—
- (a) the subject of the application, and
 - (b) the affected adult at risk (where that person is neither the applicant nor the subject of the application).
- to be heard by, or represented before, the sheriff.
- (5) The affected adult at risk may be accompanied at any hearing conducted in respect of an application by a friend, a relative or any other representative chosen by the adult.
- (6) The sheriff may appoint a person to safeguard the interests of the affected adult at risk in any proceedings relating to an application.
- (7) Such an appointment may be made on such terms as the sheriff thinks fit.
- (8) Nothing in this section affects the Court of Session's power to make further provision under section 32 of the Sheriff Courts (Scotland) Act 1971 (c. 58) in connection with the procedure and practice to be followed in connection with an application.
- (9) For the purposes of this section, the “affected adult at risk” is—
- (a) where an application relates to an assessment order or removal order, the subject of the application,
 - (b) where an application relates to a banning order or a temporary banning order, the person whom that order would protect, or is protecting, from harm.

VALID FROM 29/10/2008

Adult Protection Committees

42 Adult Protection Committees

- (1) Each council must establish a committee (an “Adult Protection Committee”) with the following functions—
- (a) to keep under review the procedures and practices of the public bodies and office-holders to which this section applies which relate to the safeguarding of adults at risk present in the council's area (including, in particular, any such procedures and practices which involve co-operation between the council and other public bodies or office-holders to which this section applies),
 - (b) to give information or advice, or make proposals, to any public body and office-holder to which this section applies on the exercise of functions

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which relate to the safeguarding of adults at risk present in the council's area,

- (c) to make, or assist in or encourage the making of, arrangements for improving the skills and knowledge of officers or employees of the public bodies and office-holders to which this section applies who have responsibilities relating to the safeguarding of adults at risk present in the council's area,
 - (d) any other function relating to the safeguarding of adults at risk as the Scottish Ministers may by order specify.
- (2) In performing its functions, an Adult Protection Committee must have regard to the desirability of improving co-operation between each of the public bodies and office-holders to which this section applies for the purpose of assisting those bodies and office-holders to perform functions in order to safeguard adults at risk present in the council's area.
- (3) The public bodies and office-holders to which this section applies are—
- (a) the council,
 - (b) the Care Commission,
 - (c) the relevant Health Board,
 - (d) the chief constable of the police force maintained in the council's area,
 - (e) any other public body or office-holder as the Scottish Ministers may by order specify.

43 Membership

- (1) It is for the council to appoint the convener and the other members of its Adult Protection Committee in accordance with this section.
- (2) Each public body and office-holder to which section 42 applies (other than the council and the Care Commission) must nominate a representative who appears to the body or office-holder to have skills and knowledge relevant to the functions of the Adult Protection Committee to be a Committee member.
- (3) The Care Commission may nominate a representative who appears to it to have skills and knowledge relevant to the functions of the Adult Protection Committee to be a Committee member.
- (4) The council must appoint the representatives nominated under subsections (2) and (3) as Committee members.
- (5) The council may also appoint as Committee members such other persons who appear to it to have skills and knowledge relevant to the functions of the Adult Protection Committee.
- (6) The Committee convener must not be a member or officer of the council.

44 Committee procedure

- (1) It is for an Adult Protection Committee to regulate its own procedures.
- (2) But those procedures must allow a representative of—
 - (a) the Mental Welfare Commission for Scotland,
 - (b) the Public Guardian,

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- (c) the Care Commission (where it has not nominated a representative to be a member of the Committee), and
 - (d) any other public body or office-holder as the Scottish Ministers may by order specify,
- to attend Committee meetings.

45 Duty to provide information to the Committee

- (1) Each of the public bodies and office-holders set out in subsection (2) must provide the Adult Protection Committee with any information which the Committee may reasonably require for the purposes of performing the Committee's functions.
- (2) Those public bodies and office-holders are—
 - (a) each of the public bodies and office-holders represented on the Adult Protection Committee by virtue of section 43(4),
 - (b) the Mental Welfare Commission for Scotland,
 - (c) the Public Guardian,
 - (d) the Care Commission (where it is not represented on the Committee), and
 - (e) any other public body or office-holder as the Scottish Ministers may by order specify.

46 Biennial Report

The convener of an Adult Protection Committee must, as soon as practical after such date as the council may direct biennially—

- (a) prepare a general report on the exercise of the Committee's functions during the 2 years ending on that date, and
- (b) after securing the Committee's approval of the report, send a copy of it to—
 - (i) each of the public bodies and office-holders represented on the Adult Protection Committee by virtue of section 43(4),
 - (ii) the Scottish Ministers,
 - (iii) the Mental Welfare Commission for Scotland,
 - (iv) the Public Guardian,
 - (v) the Care Commission (where it not represented on the Committee), and
 - (vi) any other public body or office-holder as the Scottish Ministers may by order specify.

47 Guidance

Adult Protection Committees, and councils, must have regard to any guidance issued by the Scottish Ministers about their functions under sections 42 to 46.

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Other provisions

48 Code of practice

- (1) The Scottish Ministers must prepare a code of practice containing guidance about the performance of functions under this Part by—
 - (a) councils and their officers, and
 - (b) health professionals.
- (2) The Scottish Ministers must review the code of practice from time to time and may, following such a review, revise it.
- (3) Before preparing the code of practice, and when reviewing it, the Scottish Ministers must consult—
 - (a) such councils (or persons representing councils),
 - (b) such health professionals (or persons representing health professionals), and
 - (c) such other persons appearing to them to be interested in the code of practice, as they think fit.
- (4) The Scottish Ministers must publish the code of practice and any revisions to it.
- (5) Councils, council officers and health professionals performing functions under this Part must, if relevant, have regard to the code of practice.

VALID FROM 29/10/2008

49 Obstruction

- (1) A person commits an offence by, without reasonable excuse, preventing or obstructing any other person from doing anything which the other person is authorised or entitled to do by virtue of—
 - (a) an assessment order,
 - (b) a removal order,
 - (c) a banning order,
 - (d) a temporary banning order,
 - (e) a warrant for entry, or
 - (f) any provision of this Part.
- (2) A person commits an offence by, without reasonable excuse, refusing or otherwise failing to comply with a requirement made under section 10.
- (3) A person who is guilty of an offence under this section is liable, on summary conviction—
 - (a) to a fine not exceeding level 3 on the standard scale,
 - (b) to be imprisoned for a term not exceeding 3 months, or
 - (c) to both such a fine and such imprisonment.
- (4) Nothing done by a person whose well-being or property another person is attempting to investigate or safeguard constitutes an offence under this section.

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50 Offences by bodies corporate etc.

- (1) Where—
- (a) an offence under this Part has been committed by—
 - (i) a body corporate,
 - (ii) a Scottish partnership, or
 - (iii) an unincorporated association other than a Scottish partnership, and
 - (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
 - (i) a relevant person, or
 - (ii) a person purporting to act in the capacity of a relevant person,that person as well as the body corporate, partnership or, as the case may be, unincorporated association is guilty of the offence and is liable to be proceeded against and punished accordingly.
- (2) In subsection (1), “relevant person” means—
- (a) in relation to a body corporate other than a council—
 - (i) a director, manager, secretary or other similar officer of the body,
 - (ii) where the affairs of the body are managed by its members, a member,
 - (b) in relation to a council, an officer or member of the council,
 - (c) in relation to a Scottish partnership, a partner, and
 - (d) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

VALID FROM 29/10/2008

51 Appeals

- (1) No appeal is competent against the granting of—
- (a) an assessment order,
 - (b) a removal order, or
 - (c) a warrant for entry.
- (2) Any decision of a sheriff to grant, or to refuse to grant, a banning order or temporary banning order may be appealed to the sheriff principal.
- But an appeal under this subsection against the granting of, or a refusal to grant, a temporary banning order is competent only with leave of the sheriff.
- (3) The sheriff principal's decision on an appeal under subsection (2) may be appealed to the Court of Session.

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But an appeal under this subsection against a decision relating to a temporary banning order is competent only with leave of the sheriff principal.

- (4) Where a sheriff principal decides to quash a banning order or temporary banning order, the order concerned is (despite the sheriff principal's determination) to continue to have effect until—
- (a) the end of the period during which the decision to quash the order may be appealed to the Court of Session (if no such appeal is made),
 - (b) where such an appeal is made, the day on which—
 - (i) the appeal is abandoned, or
 - (ii) the Court of Session confirms the sheriff principal's decision to quash the order, or
 - (c) any other day on which—
 - (i) the order otherwise expires by virtue of section 19(5) or 21(4), or
 - (ii) in the case of a temporary banning order, the sheriff principal refuses leave to appeal against the decision to quash the order.

52 Persons authorised to perform functions under this Part

- (1) The Scottish Ministers may by order restrict the type of individual who may be authorised by a council to perform functions given to council officers by virtue of this Part.
- (2) For the purposes of this Part, a person is a “health professional” if the person is—
- (a) a doctor,
 - (b) a nurse,
 - (c) a midwife, or
 - (d) any other type of individual described (by reference to skills, qualifications, experience or otherwise) by order made by the Scottish Ministers.

53 Interpretation of Part 1

- (1) In this Part—
- “adult” means an individual aged 16 or over,
 - “adult at risk” has the meaning given by section 3,
 - “Adult Protection Committee” means a committee established under section 42,
 - “assessment order” has the meaning given by section 11,
 - “attorney” means a continuing attorney or welfare attorney (within the meaning of the Adults with Incapacity (Scotland) Act 2000 (asp 4)),
 - “banning order” has the meaning given by section 19,
 - “Care Commission” means the Scottish Commission for the Regulation of Care,
 - “child” means an individual under the age of 16,
 - “conduct” includes neglect and other failures to act,
 - “council” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39); and references to a council in relation to any

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person known or believed to be an adult at risk are references to the council for the area which the person is for the time being in,

“council officer” means an individual appointed by a council under section 64 of the Local Government (Scotland) Act 1973 (c. 65) (but “council officer” must, where relevant, also be interpreted in accordance with any order made under section 52(1)),

“court day” means a day which is not—

- (a) a Saturday,
- (b) a Sunday, or
- (c) a court holiday prescribed for the relevant court under section 8 of the Criminal Procedure (Scotland) Act 1995 (c. 46),

“doctor” means a fully registered person within the meaning of the Medical Act 1983 (c. 54),

“fiscal” means the procurator fiscal,

“harm” includes all harmful conduct and, in particular, includes—

- (a) conduct which causes physical harm,
- (b) conduct which causes psychological harm (for example: by causing fear, alarm or distress),
- (c) unlawful conduct which appropriates or adversely affects property, rights or interests (for example: theft, fraud, embezzlement or extortion),
- (d) conduct which causes self-harm,

“health professional” has the meaning given by section 52(2),

“midwife” means an individual registered in the register maintained under article 5 of the Nurses and Midwives Order 2001 (S.I. 2002/253) by virtue of qualifications in midwifery,

“nearest relative” has the meaning given by section 254 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13),

“nurse” means an individual registered in the register maintained under article 5 of the Nurses and Midwives Order 2001 (S.I. 2002/253) by virtue of qualifications in nursing,

“officer in charge” has the meaning given by section 29(1)

“parental responsibilities and rights” has the same meaning as in the Children (Scotland) Act 1995 (c. 36),

“prescribed” means prescribed by rules of court,

“primary carer” has the same meaning as in the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13),

“relevant Health Board”, in relation to any council, means any Health Board or Special Health Board constituted by order under section 2 of the National Health Service (Scotland) Act 1978 (c. 29) which exercises functions in relation to the council's area,

“removal order” has the meaning given by section 14,

“specified”, in relation to any order or warrant, means specified in the order or warrant,

“temporary banning order” has the meaning given by section 21,

“visit” has the meaning given by subsection (2),

“warrant for entry” has the meaning given by section 37.

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- (2) References in this Part to visiting any place are, unless the contrary intention appears, to be read as references to a council officer exercising a right of entry conferred by section 7, 16 or 18 (including any such right which is authorised by a warrant for entry).

Status:

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Changes to legislation:

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