



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

## PART 1

### PROTECTION OF ADULTS AT RISK OF HARM

#### *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.
- (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).

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- (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.
- (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

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- (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.

### **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.

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- (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),
  - (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.

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- (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.