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Adult Support and Protection (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision for the purposes of protecting adults from abuse; to require the establishment of committees with functions relating to the safeguarding of adults who are at risk of abuse; to amend the law relating to incapable adults; to remove an individual’s liability for expenses incurred by councils in performing certain functions in relation to the individual’s spouse or child; to allow the Scottish Ministers to delegate their functions relating to councils’ duty to pay sums for the purposes of securing community care services; to make provision entitling a council to recover expenses incurred in providing social services to persons who are not ordinarily resident in the council’s area; to allow the Public Guardian to intervene in court proceedings; to adjust the circumstances in which extensions of orders authorising compulsory treatment of mentally disordered persons must be reviewed; and for connected purposes.

PART 1

PROTECTION OF ADULTS AT RISK OF ABUSE

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 this Part 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
   (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) For the purposes of this Part, “adults at risk” are adults who, because they are affected by disability, mental disorder, illness, infirmity or ageing, are—

   (a) unable to protect themselves from abuse, or
   (b) more vulnerable to being abused than persons who are not so affected.

(2) The Scottish Ministers may by order modify subsection (1) so as to amend the definition of “adults at risk” as they think appropriate.

Inquiries

4 Council’s duty to make inquiries

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

   (a) that the person is an adult at risk, and
   (b) that it might need to intervene in the person’s affairs (by performing functions under this Part or otherwise) in order to protect the person from abuse.

5 Co-operation

(1) This section applies to—

   (a) the Mental Welfare Commission for Scotland,
   (b) the Care Commission,
   (c) the Public Guardian,
   (d) the relevant Health Board, and
(e) 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) the council, and

(b) each other,

where such co-operation is likely to enable or assist the council to make inquiries under section 4.

(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 the person from abuse,

the public body or office-holder must report the facts and circumstances of the case to the council.

**Investigations**

**6** 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 abuse.

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

**7** 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 6.

(2) An adult interviewed under this section is not required to answer any question.

(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.

**8** 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 6, 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) 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.
9 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 abuse.

(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.

(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.

10 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 6 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 abuse.

(3) An assessment order—

   (a) is valid from the date specified in the order, and
   (b) expires 7 days after that date.
11 **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 abused, and

(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 abused.

12 **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 7, or

(b) conduct a medical examination of the person under section 8, during a visit under section 6.

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13 **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 abuse.

(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.

14 **Criteria for granting removal order**

(1) The sheriff may grant a removal order only if satisfied that the person in respect of whom the order is sought is an adult at risk who is likely to be seriously abused if not moved to another place.

(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.

15 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.

16 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.

17 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.

Banning orders

18 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) Any provision of a banning order which restrains or prohibits any conduct is to be treated as an interdict; and any breach of such a provision is to be treated as a breach of interdict.

(6) 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.

19 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 abused by another person, and
(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.

### 20 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.

(5) Any provision of a temporary banning order which restrains or prohibits any conduct is to be treated as an interim interdict; and any breach of such a provision is to be treated as a breach of interim interdict.

### 21 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 19,
   (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.

### 22 Variation or recall of banning order

(1) The sheriff may vary or recall—
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(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 20(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.

23 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.

24 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.
25 **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.

26 **Police duties after arrest**

(1) The officer in charge of a police station to which any person arrested under section 25 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 29.

(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.

27 **Notification of detention**

(1) Where a person is detained under section 26, 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 29.

(2) Where the officer in charge knows or believes that a person detained under section 26 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.
28 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 26—

(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 27(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 27.

29 Duty to bring detained person before sheriff

(1) Where—

(a) a person is detained under section 26, 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.

(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.

30 Information to be presented to sheriff

Where a person is brought before the sheriff under section 29, 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.

31 Criteria for authorising longer detention

(1) The sheriff may, if satisfied—
(a) that the information which the fiscal presents under section 30 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.

Protection orders and visits: supplementary

32 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 that the affected adult at risk has been unduly pressurised to
refuse consent.

(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 abuse 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.
Visits: supplementary provisions

1. A council officer may visit a place at reasonable times only.
2. A council officer must, if asked to do so 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 46(1).

Warrants for entry

1. A “warrant for entry” is a warrant which authorises—
   (a) a council officer to visit any specified place under section 6 or 15 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.

Criteria for granting warrants for entry: section 6 visits

1. A sheriff who grants an assessment order must also grant a warrant for entry in relation to a visit under section 6 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 6 only if satisfied, by evidence on oath—
   (a) that a council officer has been, or reasonably expects to be—
      (i) refused entry to, or
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(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.

36 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 15.
(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 34(2) as having been granted on the date of variation.

37 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 6.
(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 abused 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 14(1).
(4) Subsections (3) to (7) of section 38 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 15.
(6) A justice of the peace may grant a warrant for entry in relation to a visit under section 6 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 35(2).

38 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 abuse or will not
prejudice any person affected by the disapplication—
(a) subsections (3) to (7),
(b) section 14(3),
(c) section 18(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 abuse.

Adult Protection Committees

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 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.

40 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 39 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.
41 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,
   (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.

42 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 40(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.

43 Annual 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 40(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.
44 Guidance

Adult Protection Committees, and councils, must have regard to any guidance issued by the Scottish Ministers about their functions under sections 39 to 43.

Other provisions

45 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.

46 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 9.

(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.

47 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.

48 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) An appeal against a temporary banning order is competent only with leave of the sheriff principal.

49 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,
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(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.

50 Interpretation of Part 1

(1) In this Part—

“abuse” includes any conduct which harms or exploits an individual, and in particular includes—

(a) physical abuse,
(b) psychological abuse,
(c) theft, fraud, embezzlement and extortion,
(d) self-abuse, and
(e) any other conduct which causes fear, alarm or distress or which dishonestly appropriates property.

“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 39,

“assessment order” has the meaning given by section 10,

“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 18,

“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 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 49(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,
“health professional” has the meaning given by section 49(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 26(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 13,
“specified”, in relation to any order or warrant, means specified in the order or warrant,
“temporary banning order” has the meaning given by section 20,
“visit” has the meaning given by subsection (2),
“warrant for entry” has the meaning given by section 34.

(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 6, 15 or 17 (including any such right which is authorised by a warrant for entry).

PART 2
ADULTS WITH INCAPACITY

51 Preliminary

References in this Part to “the 2000 Act” are references to the Adults with Incapacity (Scotland) Act 2000 (asp 4).

52 Orders about incapable adults’ nearest relatives

(1) Section 4 (orders about functions of nearest relative etc.) of the 2000 Act is amended as follows.

(2) In subsection (1)—

(a) the words “On an application by an adult,” are repealed,
Part 2—Adults with incapacity

(b) for “the adult”, where first occurring, substitute “an adult with incapacity”,

(c) in paragraph (b), for “application” substitute “order”.

(3) In subsection (3), the words “, on an application by an adult,” are repealed.

(4) After subsection (3) insert—

“(3A) The court may make an order under subsection (1) or (3) only on the application of—

(a) the adult to whom the application relates; or

(b) any person claiming an interest in that adult’s property, financial affairs or personal welfare.

(3B) The court may dispose of an application for an order under subsection (1) or (3) by making—

(a) the order applied for; or

(b) such other order under this section as it thinks fit.”.

(5) Subsection (4) is repealed.

53 Powers of attorney

(1) Section 15 (continuing powers of attorney) of the 2000 Act is amended as follows—

(a) after paragraph (b) of subsection (3) insert—

“(ba) where the continuing power of attorney is exercisable only if the granter is determined to be incapable in relation to decisions about the matter to which the power relates, states that the granter has considered how such a determination may be made;”;

(b) in subsection (3)(c)(ii)—

(i) for “other persons” substitute “another person”,

(ii) for “have” substitute “has”,

(c) after subsection (4) insert—

“(5) It is declared that the rule of law which provides that an agent’s authority ends in the event of the bankruptcy of the principal or the agent applies, and has applied since subsection (1) came into force, in relation to continuing powers of attorney.”.

(2) Section 16 (welfare powers of attorney) of the 2000 Act is amended as follows—

(a) after paragraph (b) of subsection (3) insert—

“(ba) states that the granter has considered how a determination as to whether he is incapable in relation to decisions about the matter to which the welfare power of attorney relates may be made for the purposes of subsection (5)(b);”;

(b) in subsection (3)(c)(ii)—

(i) for “other persons” substitute “another person”,

(ii) for “have” substitute “has”,


(c) in subsection (6)(b), for “mentioned in section 48(1) or (2)” substitute “in relation to which the authority conferred by section 47(2) does not apply”.

(3) After section 16 of the 2000 Act insert—

“16A Continuing and welfare power of attorney: accompanying certificate

Where a document confers both—

(a) a continuing power of attorney; and

(b) a welfare power of attorney,

the validity requirements imposed by sections 15(3)(c) and 16(3)(c) may be satisfied by incorporating a single certificate which certifies the matters set out in those provisions.”.

(4) In section 19(2)(c) (Public Guardian’s duty to send copy of welfare power of attorney) of the 2000 Act, after “to” insert “both the local authority and”.

(5) In section 20(3)(b)(iii) (notice of order: supervision etc) of the 2000 Act, the words from “(in” to “disorder)” are repealed.

(6) In section 22 (notice of changes) of the 2000 Act, the words “(in a case where the incapacity of the granter is by reason of, or reasons which include, mental disorder)”, where they occur in subsections (1) and (2), are repealed.

(7) After section 22 of the 2000 Act insert—

“22A Revocation of continuing or welfare power of attorney

(1) The granter of a continuing or welfare power of attorney may revoke the power of attorney (or any of the powers granted by it) after the document conferring the power of attorney has been registered under section 19 by giving a revocation notice to the Public Guardian.

(2) A revocation notice shall be—

(a) in writing; and

(b) otherwise in such form as the Public Guardian may require.

(3) The Public Guardian, on receiving a revocation notice, shall—

(a) enter the prescribed particulars of it in the register maintained by him under section 6(2)(b)(i) or (ii) as the case may be; and

(b) notify—

(i) the continuing or welfare attorney; and

(ii) where it is the welfare attorney who is notified, the local authority and the Mental Welfare Commission.

(4) A revocation has effect when the revocation notice is registered under this section.

(5) No liability shall be incurred by any person who acts in good faith in ignorance of the revocation of a power of attorney under this section. Nor shall any title to heritable property acquired by such a person be challengeable on that ground alone.”.

(8) In section 23(3) (notice of resignation) of the 2000 Act, the words from “(in” to “disorder)” are repealed.
Applications for authority to intromit with funds

(1) In section 25(1) of the 2000 Act—
   (a) for the words from “an individual” to “enactment)” substitute “a person who falls within subsection (1A)”;
   (b) for the words “a person or organisation” substitute “another person”.

(2) After section 25(1) of the 2000 Act insert—
   “(1A) A person falls within this subsection if the person is—
   (a) an individual (other than an individual acting in his capacity as an officer of a local authority or other body established by or under an enactment); or
   (b) a body corporate or incorporate which is not a manager of an authorised establishment within the meaning of section 35(2).”.

(3) Section 26 of the 2000 Act is amended as follows—
   (a) in subsection (1)(c)—
      (i) insert at the beginning the words “if the applicant is an individual,”,
      (ii) for the words “member of such class of persons as is prescribed” substitute “person”,
      (iii) in sub-paragraph (i), for the words “2 years” substitute “one year”,
      (iv) sub-paragraph (ii) is repealed,
      (v) in sub-paragraph (iii)(D), for “sub-paragraph” substitute “paragraph”,
      (vi) at the end of sub-paragraph (iii) insert “or
         (E) a guardian of the adult; or
         (F) a welfare or continuing attorney of the adult; or
         (G) a person who is authorised under an intervention order in relation to the adult;”,
   (b) after subsection (1)(c) insert—
      “(ca) if the applicant is a body, identify the office (the “authorised office”) within the body, the holder of which is to be authorised to intromit with funds;”,
   (c) in subsection (1)(g), for “he” substitute “the applicant”,
   (d) after subsection (1) insert—
      “(1A) In subsection (1) any reference to—
      (a) a guardian shall include a reference to a guardian (however called) appointed or entitled under the law of any country to act for an adult during his incapacity, if the guardianship is recognised by the law of Scotland;”,
(b) a continuing attorney shall include a reference to a person granted, under a contract, grant or appointment governed by the law of any country, powers (however expressed) relating to the grantee’s property or financial affairs and having continuing effect notwithstanding the grantee’s incapacity;

(c) a welfare attorney shall include a reference to a person granted, under a contract, grant or appointment governed by the law of any country, powers (however expressed) relating to the grantee’s personal welfare and having effect during the grantee’s incapacity.”,

(e) in subsection (3), for the words from “the adult” to “application” where second occurring substitute “—

(a) the adult;

(b) the adult’s nearest relative;

(c) the adult’s primary carer;

(d) the adult’s named person;

(e) where the applicant is—

(i) the individual mentioned in both paragraph (b) and (c); or

(ii) a body other than a local authority,

the chief social work officer of the local authority; and

(f) any other person who the Public Guardian considers has an interest in the application,”;

(f) after subsection (3), insert—

“(3A) The Public Guardian must refuse an application made by a body if he is not satisfied as to such matters in relation to the body as may be prescribed by the Scottish Ministers.”,

(g) in subsection (10), after “whom” insert “, or the holder of an authorised office within a body in respect of which.”.

55 Removal of restrictions on divulging information about incapable adult’s funds

After section 26 of the 2000 Act insert—

“26A Removal of restrictions on divulging information about funds

(1) This section applies where a person—

(a) believes that an adult—

(i) holds funds in an account in his sole name; and

(ii) is incapable in relation to decisions about, or of safeguarding his interests in, those funds; but

(b) cannot make an application for authority to intromit with those funds because the person does not know—

(i) where the account is held;

(ii) the account details;

(iii) how much is held in the account; or
(iv) any other information needed to complete an application form in accordance with section 26.

(2) Where this section applies, the person may apply to the Public Guardian for a certificate authorising any fundholder to provide the person with such information as the person may reasonably require in order to apply for authority to intromit with funds held by the fundholder.

(3) The following provisions of section 26 apply in relation to an application under subsection (2) as they apply in relation to an application for authority to intromit with funds—

(a) subsection (1)(b), (c), (d) and (f); and
(b) subsections (2), (3), (7), (8) and (9).

(4) Where the Public Guardian grants an application under subsection (2), he shall issue the certificate to the applicant.

(5) A fundholder presented with a certificate issued under subsection (4) is not prevented by—

(a) any obligation as to secrecy; or
(b) any other restriction on disclosure of information,

from providing the person who presents it with such information as the person may reasonably require in order to apply for authority to intromit with funds held by it in an account in the name of the adult in relation to whom the certificate has been issued.”.

56 Joint and reserve withdrawers

(1) In section 26(10) (meaning of “withdrawer”) of the 2000 Act, after “subsection (4)” insert “or section 26B(5) or 26E(3)”.

(2) After section 26 of the 2000 Act insert—

“26B  Joint withdrawers: application

(1) An application under section 25 may be made by two or more individuals seeking authority to intromit jointly with funds; and references in section 26 to an “applicant” are to be construed accordingly.

(2) Where there is an existing authority to intromit under this Part, an individual may apply to the Public Guardian for authority to intromit jointly with the individual holding the existing authority (“the existing withdrawer”).

(3) Section 26(1)(b) to (d), (2) and (3) apply to an application under subsection (2) as they apply to an application for authority to intromit under section 25.

(4) Where an application is made under subsection (2), the application form shall, in addition to the requirements of subsection (3), be signed by the existing withdrawer.

(5) Where the Public Guardian grants the application he shall—

(a) enter prescribed particulars in the register maintained by him under section 6(2)(b)(iii); and
(b) issue a certificate of authority to the joint withdrawers.
(6) Section 26(5) and (6) apply to a certificate issued under subsection (5) as they apply to a certificate issued under section 26(4).

(7) Section 26(7) to (9) apply to a decision of the Public Guardian to grant or refuse an application under subsection (5) as they apply to a decision to grant or refuse an application under section 26(4).

(8) Subject to section 31(2) and (3), a certificate issued under subsection (5) shall be valid until the date on which the authority of the existing withdrawer would cease under section 31(1) or 34A(6), as the case may be (regardless of any subsequent extension, reduction, termination or suspension of the existing withdrawer’s authority).

26C Joint withdrawers: supplementary

(1) Joint withdrawers may, subject to subsection (2), exercise their functions individually, and each withdrawer shall be liable for any loss incurred by the adult arising out of—

   (a) his own acts or omissions; or

   (b) his failure to take reasonable steps to ensure that a joint withdrawer does not breach any duty of care or fiduciary duty owed to the adult,

   and where more than one such withdrawer is so liable they shall be liable jointly and severally.

(2) A joint withdrawer shall, before exercising any function conferred on him, consult the other joint withdrawers, unless—

   (a) consultation would be impracticable in the circumstances; or

   (b) the joint withdrawers agree that consultation is not necessary.

(3) Where joint withdrawers disagree as to the exercise of their functions, one or more of them may apply to the Public Guardian for directions.

(4) Directions given by the Public Guardian in pursuance of subsection (3) may be appealed to the sheriff, whose decision shall be final.

(5) Where there are joint withdrawers—

   (a) a third party in good faith is entitled to rely on the authority to act of any one or more of them; and

   (b) section 31(4) (interim authority) only applies where the Public Guardian terminates the authority of all of the joint withdrawers.

(6) In this section and sections 26B and 31, individuals holding authority to intromit jointly with funds are referred to as “joint withdrawers”.

26D Reserve withdrawers: applications

(1) In any case where an individual is issued with a certificate of authority under section 26(4)(b) (“a main withdrawer”), the Public Guardian may, on an application by the main withdrawer, appoint another individual (“a reserve withdrawer”) to act as a withdrawer in the event of the main withdrawer temporarily becoming unable to act.
(2) An application for appointment of a reserve withdrawer may be made at the time of the application for authority to intromit with funds or at any later time.

(3) Section 26(1)(b) and (c), (2) and (3) apply to an application for appointment as a reserve withdrawer as they apply to an application under section 25, except with references in section 26(1)(c) to “applicant” read as references to the proposed reserve withdrawer.

(4) The application form for appointment as a reserve withdrawer shall also—

(a) where the application is made after the application for authority to intromit, contain the information described in section 26(1)(d); and

(b) be signed by the proposed reserve withdrawer.

(5) Where the Public Guardian grants the application he shall enter prescribed particulars in the register maintained by him under section 6(2)(b)(iii).

(6) Section 26(7) to (9) apply to a decision of the Public Guardian to grant or refuse an application under subsection (5) as they apply to a decision to grant or refuse an application under section 26(4).

26E Reserve withdrawers: authority to act

(1) Where—

(a) a reserve withdrawer has been appointed under section 26D; and

(b) the main withdrawer considers that he is or will be unable to carry out some or all of his functions under this Part,

he may notify the Public Guardian that he wishes the Public Guardian to authorise the reserve withdrawer to intromit for a specified period.

(2) Where a reserve withdrawer becomes aware that the main withdrawer is unable—

(a) to carry out some or all of the main withdrawer’s functions in relation to intromitting with the funds concerned; and

(b) to notify the Public Guardian under subsection (1),

the reserve withdrawer may apply to the Public Guardian for authority to intromit for a specified period.

(3) The Public Guardian, on being notified under subsection (1), shall or, on an application under subsection (2), may—

(a) enter prescribed particulars in the register maintained by him under section 6(2)(b)(iii);

(b) issue a certificate of authority to the reserve withdrawer; and

(c) notify the adult and the main withdrawer.

(4) Section 26(5) and (6) apply to a certificate of authority issued under subsection (3) as they apply to a certificate of authority issued under section 26(4).

(5) The authority of a reserve withdrawer to intromit with funds under this section shall—
(a) be valid for the specified period, or such shorter period as the Public Guardian thinks fit, but shall not extend beyond the date on which the authority of the main withdrawer would cease under section 31(1) or 34A(6), as the case may be;

(b) be suspended during any period when the authority of the main withdrawer is suspended;

(c) terminate if the authority of the main withdrawer is terminated.

(6) The main withdrawer and the reserve withdrawer shall be liable (jointly and severally) for any loss incurred by the adult arising out of the reserve withdrawer’s acts or omissions.

(7) In this section, “specified” means specified in the notice or application, as the case may be.”.

(3) In section 27 (notification of change of address) of the 2000 Act—
   (a) for “withdrawer”, where first and second occurring, substitute “person”,
   (b) after “section 26” insert “, 26B, or 26E”.

(4) In section 29(1) (arrangements for transfer of funds) of the 2000 Act, after “section 26(4)(b)” insert “, 26B(5)(b), 26E(3)(b)”.

(5) Section 31 (duration and termination of registration) of the 2000 Act is amended as follows—
   (a) in subsection (1), for “Subject to the following provisions of this section” substitute “Unless this Part provides otherwise”,
   (b) in subsection (2), for “validity mentioned in subsection (1)” substitute “authority of a withdrawer”,
   (c) for subsection (3)(a), substitute—
      “(a) the withdrawer whose authority is suspended or terminated;
      (aa) any other joint withdrawer or reserve withdrawer; and”,
   (d) at the end of subsection (3) insert “by the withdrawer whose authority is suspended or terminated”.

57 Renewal of authority to intromit with funds

(1) In section 25(2) of the 2000 Act, after “Part” insert “unless section 26F applies”.

(2) After section 26 of the 2000 Act, insert—

“26F Renewal of authority to intromit

(1) This section applies to an application under section 25 if condition A or B is satisfied.

(2) Condition A is that the application is made by a person holding an existing authority to intromit.

(3) Condition B is that—
   (a) the main withdrawer has died or become incapable or his authority under this Part has been terminated; and
(b) the application is made, without undue delay, by an individual who was the reserve withdrawer at the time of the death, incapacity, or termination, as the case may be.

(4) The Public Guardian may disapply any of the provisions in section 26(1)(a), (c), (e), (f) and (g), and (2) to an application to which this section applies (but may require the applicant to provide such other information as he requires to determine the application).

(5) Where condition A is satisfied in relation to an application under section 25, the existing authority to intromit will continue to be valid until the application is determined.

(6) Where an application to which this section applies is granted, the existing authority to intromit shall cease to be valid.”.

58 Withdrawal and transfer of funds

(1) Section 29 of the 2000 Act is amended as follows—

(a) in subsection (1), for “Public Guardian” substitute “certificate”,

(b) in subsection (4)(b), after “payment” insert “by a method authorised”.

(2) Section 33 of the 2000 Act is amended as follows—

(a) in subsection (1)—

(i) the words from “authorise” to the end of the subsection become paragraph (a),

(ii) at the end insert “or

(b) authorise the transfer of funds from another specified account to that account.”,

(b) after subsection (1) insert—

“(1A) An authorisation under subsection (1)(b) may authorise—

(a) the transfer of funds from more than one account;

(b) the transfer of a specified amount on more than one specified occasion;

(c) the closure of the account from which the funds are transferred.”,

(c) in subsection (2), for “subsection (1)” substitute “subsections (1) and (1A)”.

59 Transition from guardian to withdrawer

(1) In section 34(1) (disapplication of Part 3 where guardian or continuing attorney appointed or intervention order granted) of the 2000 Act, for “This Part shall not apply” substitute “Unless section 34A applies, no application under this Part may be made”.

(2) After section 34 of the 2000 Act insert—

“34A Transition from guardianship

(1) This section applies where—

(a) there is a guardian with powers relating to the property or financial affairs of an adult; and
(b) an application is made under section 25 by the guardian in relation to funds held on behalf of the adult.

(2) Section 26(1)(c) shall not apply to the application.

(3) The Public Guardian may disapply section 26(1)(f) to the application.

(4) Where the Public Guardian proposes to grant the application he shall initiate the recall of the guardianship under section 73.

(5) Despite section 26(4), the Public Guardian shall not grant the application unless the guardianship is recalled.

(6) Where the Public Guardian grants the application, the authority of the withdrawer to intromit with funds under section 26 shall be valid for such period as the Public Guardian shall specify at the time he grants the application.”.

60 Intervention orders

(1) In section 53 (intervention orders) of the 2000 Act—

(a) in subsection (4), for “Section 57(3) and (4)” substitute “Subsections (3), (3A), (3B) and (4) of section 57”,

(b) in subsection (7)—

(i) the word “and”, and

(ii) the words from “shall” to the end of paragraph (b),

are repealed,

(c) in subsection (10)—

(i) the word “and” which immediately follows paragraph (a) is repealed,

(ii) after paragraph (a) insert—

“(aa) when satisfied that the person authorised under the order has found caution if so required, issue a certificate of appointment to the person; and”,

(iii) in paragraph (b), after “Commission” insert “of the terms of the interlocutor”.

(2) In section 55 (notice of change of address), for the words from “notify”, where first occurring, to “Guardian”, where second occurring, substitute “, not later than 7 days after any change of the person’s or the adult’s address, notify the Public Guardian of the change who”.

(3) After section 56 insert—

“56A Death of person authorised to intervene

Where a person authorised under an intervention order dies, the person’s personal representatives shall, if aware of the existence of the authority, notify the Public Guardian who shall—

(a) notify—

(i) the adult;

(ii) the local authority; and
(iii) in a case where the adult’s incapacity is by reason of, or reasons which include, mental disorder and the intervention order relates to the adult’s personal welfare or factors including it, the Mental Welfare Commission; and

(b) enter prescribed particulars in the register maintained under section 6(2)(b)(v).”.

61 Guardianship orders

(1) In section 57 (guardianship orders) of the 2000 Act—

(a) in subsection (3)(a), for “an approved” substitute “a relevant”,

(b) after subsection (3), insert—

“(3A) Subsection (3B) applies where a report lodged under subsection (3)(a) relates to an examination and assessment carried out more than 30 days before the lodging of the application.

(3B) Where this subsection applies, the sheriff may, despite subsection (3)(a), continue to consider the application if satisfied that the adult’s condition is unlikely to have improved since the examination and assessment was carried out.”,

(c) in subsection (6)(b), for the words from “period” to “appointment” substitute “effective period”,

(d) after subsection (6) insert—

“(6A) The “effective period”, for the purposes of subsection (6), means—

(a) the period of 3 months beginning with the date of appointment; or

(b) such longer period (not exceeding 6 months) beginning with that date as the sheriff may specify in the order.

(6B) In subsection (3)(a), “relevant medical practitioner” means—

(a) an approved medical practitioner;

(b) where the adult concerned is not present in Scotland, a person who—

(i) holds qualifications recognised in the place where the adult is present and has special experience in relation to the diagnosis and treatment of mental disorder which correspond to the qualifications and experience needed to be an approved medical practitioner; and

(ii) has consulted the Mental Welfare Commission for Scotland about the report concerned; or

(c) a person of such other description as the Scottish Ministers may prescribe.”.

(2) In section 58(6) (guardian’s duty to find caution) of the 2000 Act, for the words from “shall” to the end of paragraph (b) substitute “may”.

(3) In section 63(5) (substitute guardian’s duty to find caution) of the 2000 Act, for the words from “shall” to the end of paragraph (b) substitute “may”.
(4) In section 64(2)(b) (medical treatment to which a guardian cannot consent), for “mentioned in section 48(1) or (2)” substitute “in relation to which the authority conferred by section 47(2) does not apply”.

(5) In section 70 (non-compliance with guardian’s decisions)—
   (a) in subsection (1), the words “or by any other person”, “or other person” and “or any person named in the order” are repealed,
   (b) after subsection (4) insert—
   “(4A) The sheriff may, on cause shown, disapply or modify the application of—
   (a) subsection (3), and
   (b) subsection (4) in so far as it requires the sheriff to hear objections.”.

(6) In section 71(2) (replacement or substitute guardian’s duty to find caution) of the 2000 Act, for the words from “shall” to the end of paragraph (b) substitute “may”.

(7) In section 72(1) (discharge of guardian with financial powers), after paragraph (a) insert—
   “(aa) the expiry of such a guardianship order;”.

(8) In section 73 (recall of guardian’s powers) of the 2000 Act, after subsection (3) insert—
   “(3A) The Mental Welfare Commission may recall the powers of a guardian under subsection (3) only if those powers were granted in a case where the adult’s incapacity is by reason of, or reasons which include, mental disorder.”

(9) In section 74(2) (guardian’s duty to find caution: variation) of the 2000 Act, for the words from “shall” to the end of paragraph (b) substitute “may”.

(10) After section 75 insert—
   “75A Death of guardian

   The personal representatives of a guardian who dies shall, if aware of the existence of the guardianship, notify the Public Guardian who shall—
   (a) notify—
      (i) the adult;
      (ii) the local authority; and
      (iii) in a case where the adult’s incapacity is by reason of, or reasons which include, mental disorder and the guardianship order relates to the adult’s personal welfare or factors including it, the Mental Welfare Commission;
   (b) enter prescribed particulars in the register maintained under section 6(2)(b)(iv); and
   (c) issue a new certificate of appointment—
      (i) to any surviving joint guardian who notifies the Public Guardian of willingness to continue to act;
      (ii) where the Public Guardian is satisfied that any substitute guardian appointed in respect of the dead guardian is willing to act and has found caution if so required, to the substitute guardian.”.

(11) After section 79 insert—
79A Guardianship orders: children

Sections 57 to 79 apply in relation to a child who will become an adult within 3 months as they apply in relation to an adult; but no guardianship order made in relation to a child shall have effect until the child becomes an adult.”.

(12) In paragraph 6 (application of 2000 Act to curator bonis, tutor-dative or tutor-at-law treated as guardian appointed under that Act) of schedule 4 to the 2000 Act—

(a) in sub-paragraph (3), for the words from “to the period” to the end of that sub-paragraph substitute “—

(a) in the case of a curator bonis who, under paragraph 1(2), became guardian to a person on the person attaining the age of 16 years, to the period of 2 years from the later of the following dates—

(i) the date on which section 61(12) (which amends this paragraph) of the Adult Support and Protection (Scotland) Act 2006 (asp 00) came into force;

(ii) the date on which the person attained the age of 16 years,

(b) in any other case, to the period of 2 years from the date on which section 61(12) (which amends this paragraph) of the Adult Support and Protection (Scotland) Act 2006 (asp 00) came into force.”,

(b) after sub-paragraph (3) insert—

“(3A) A person who has become a guardian to an adult by virtue of this schedule and who was a curator bonis, tutor dative or tutor-in-law to that adult shall cease to be authorised to act as that adult’s guardian—

(a) where the person does not apply for renewal of guardianship within the 2 year period set by sub-paragraph (3), on the expiry of that period;

(b) where—

(i) the person applies for such a renewal within that period; and

(ii) the sheriff refuses the application, on the date of refusal;

(c) where—

(i) the person applies for such a renewal within that period; and

(ii) the sheriff grants the application, in accordance with the provisions of this Act.

(3B) Sub-paragraph (3A) does not prevent the authority of a guardian of the type mentioned in that sub-paragraph from being terminated (by virtue of the terms on which the guardian is authorised to act or sections 71, 73, 75 or 79A) earlier than the date on which it would otherwise terminate by operation of that sub-paragraph.”.
Part 3—Adult support etc.: miscellaneous amendments and repeals

62 Accommodation charges: removal of liability to maintain spouse and child etc.

(1) In the National Assistance Act 1948 (c.29)—

(a) sections 42 and 43 are repealed, and

(b) in section 65(f)—

(i) after “expressed” insert “in sections 22(2) to (8) and 26(2) to (4) of this Act”,

(ii) for the word “thereof” substitute “of this Act”.

(2) In section 87(3) of the Social Work (Scotland) Act 1968 (c.49), for the words from “(as amended”, where first occurring, to “etc.)” substitute “(as amended by any enactment within the meaning of the Scotland Act 1998 (c.46)) of the said Act of 1948”.

(3) In section 4(1)(b) of the Community Care and Health (Scotland) Act 2002 (asp 5), the words from “including” to the end of paragraph (b) are repealed.

63 Direct payments: sub-delegation to councils

In section 12B(6) of the Social Work (Scotland) Act 1968 (c.49), before paragraph (a) insert—

“(za) make provision for the delegation of functions to local authorities;”.

64 Adjustments between councils in relation to social services etc.

(1) Section 86 (adjustments between local authority providing services and local authority of area of ordinary residence) of the Social Work (Scotland) Act 1968 (c.49) is amended as follows—

(a) in subsection (1)—

(i) for “section”, where first occurring, substitute “subsection”,

(ii) after paragraph (b) insert—

“(ba) in making a payment under section 12B of this Act in relation to the provision of a service for a person ordinarily so resident, or”,

(b) in subsection (3)—

(i) after “child,”, where first occurring, insert “any period during which he is provided with accommodation under this Act or under sections 25 to 27 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13),”,

(ii) for the words from “hospital”, where first occurring, to “1978”, where second occurring, substitute “health service hospital (within the meaning of section 108(1) of the National Health Service (Scotland) Act 1978 (c.29))”,

(c) after subsection (3) insert—

“(4) This subsection applies where a local authority (“the responsible authority”) performs a function under—

(a) this Act;
(b) Part II of the Children (Scotland) Act 1995 (c.36); or
(c) section 25 to 27 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13),

by making arrangements with a person (“the provider”) in terms of which the provider undertakes to accommodate, or to secure accommodation for, another person.

(5) Where subsection (4) applies—

(a) any expenditure incurred under the arrangements by a provider which is a local authority is recoverable from the responsible authority; and

(b) any period during which the person is accommodated under the arrangements is to be disregarded in determining the person’s ordinary residence for the purposes of subsection (1) of this section.

(6) The Scottish Ministers may make regulations specifying circumstances in which a local authority (“the providing authority”) may recover from another local authority (“the other local authority”) expenditure which the providing authority incurs in the provision of services or facilities under arrangements made with the other authority for the purpose of enabling that other authority to perform a function under—

(a) this Act;

(b) Part II of the Children (Scotland) Act 1995 (c.36); or

(c) section 25 to 27 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13).

(7) The Scottish Ministers may make regulations specifying circumstances which must be taken into account, or disregarded, when determining a person’s ordinary residence for the purposes of subsection (1) of this section (and such regulations may modify subsection (2), (3) and (5)(b) of this section).

(8) Regulations made under subsection (6) or (7) of this section may—

(a) make different provision for different cases and for different persons;

(b) include such supplementary, incidental, consequential and transitional provisions and savings as the Scottish Ministers think fit.

(9) Despite section 90(2) of this Act, no statutory instrument containing regulations made under subsection (7) of this section which includes provisions which modify this section may be made unless a draft of the instrument has been laid before, and approved by a resolution of, the Scottish Parliament.

(10) References in subsections (4) to (6) of this section to a local authority which is providing accommodation, service or facilities include references to a local authority in England or Wales.”.

(2) In section 2 of the Community Care and Health (Scotland) Act 2002 (asp 5), for “section 87(2)” substitute “sections 86 and 87(2)”. 

Application of Social Work (Scotland) Act 1968: persons outwith Scotland

After section 87 of the Social Work (Scotland) Act 1968 (c.49) insert—
“87A  Power to modify Act for persons placed from outwith Scotland

(1) The Scottish Ministers may make regulations modifying this Act in such manner as they think fit for the purposes of applying or disapplying any of its provisions in relation to persons placed in Scotland by virtue of arrangements made by—

(a) a local authority in any other part of the United Kingdom or in any of the Channel Islands or the Isle of Man;

(b) any other public body or office-holder exercising functions in relation to any other part of the United Kingdom, or any of the Channel Islands or the Isle of Man, as may be specified in the regulations.

(2) Such regulations may—

(a) make different provision for different cases and for different persons;

(b) include such supplementary, incidental, consequential and transitional provisions and savings as the Scottish Ministers think fit.

(3) Despite section 90(2) of this Act, no statutory instrument containing such regulations may be made unless a draft of the instrument has been laid before, and approved by a resolution of, the Scottish Parliament.”.

66  Public Guardian: interaction with courts

After section 6(2)(d) of the Adults with Incapacity (Scotland) Act 2000 (asp 4), insert—

“(da) to take part as a party in any proceedings before a court or to initiate such proceedings where he considers it necessary to do so to safeguard the property or financial affairs of an adult who is incapable for the purposes of this Act,”

67  Amendment to Mental Health (Care and Treatment) (Scotland) Act 2003

Section 101 (duty of Mental Health Tribunal to review determination extending compulsory treatment order) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) is amended as follows—

(a) for subsection (2)(b) substitute—

“(b) the conditions in subsection (3) are satisfied in relation to the compulsory treatment order to which the determination relates,”;

(b) after subsection (2) insert—

“(3) The conditions mentioned in subsection (2)(b) above are—

(a) that the order was made 2 or more years before the renewal day;

(b) that this section did not require the Tribunal to review the previous determination made under section 86 of this Act in relation to the order; and

(c) that, in the period of 2 years ending with the day before the renewal day, no application has been made to the Tribunal under section 92, 99, 95 or 100 in relation to the order.
(4) In subsection (3) above, the renewal day is the first day on which the order, had it not been extended by the determination, would not authorise the measures specified in it.”.

PART 4

FINAL PROVISIONS

68 Ancillary provision

(1) The Scottish Ministers may by order make—
   (a) such supplementary, incidental or consequential provision, or
   (b) such transitional, transitory or saving provision,

as they consider appropriate for the purposes of, or in consequence of, or for giving full effect to, any provision made by virtue of this Act.

(2) An order under subsection (1) may modify any enactment, instrument or document.

69 Minor and consequential amendments and repeals

(1) Schedule 1 contains minor and consequential amendments.

(2) The enactments mentioned in the first column in schedule 2 are repealed to the extent specified in the second column.

70 Orders

(1) Any power of the Scottish Ministers under this Act to make an order is exercisable by statutory instrument.

(2) Any such power includes power to make different provision for different purposes.

(3) Subject to subsection (4), a statutory instrument containing an order (other than an order made under section 71(2)) made under this Act is subject to annulment in pursuance of a resolution of the Scottish Parliament.

(4) A statutory instrument containing—
   (a) an order made under section 3(2), or
   (b) an order made under section 68 containing provisions which add to, replace or omit any part of the text of this or any other Act,

may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the Scottish Parliament.

71 Commencement

(1) This Part (other than section 69) comes into force on Royal Assent.

(2) Section 69, and the provisions of Parts 1 to 3, come into force on such day as the Scottish Ministers may by order appoint.

(3) Such an order may also make such transitional, transitory or saving provision as the Scottish Ministers consider appropriate.
72  **Short title**

This Act may be cited as the Adult Support and Protection (Scotland) Act 2006.
SCHEDULE 1
(introduced by section 69(1))

MINOR AND CONSEQUENTIAL AMENDMENTS

National Assistance Act 1948 (c.29)

1 In section 26(4) of the National Assistance Act 1948—
   (a) for “Subsections (5A), (7) and (9)” substitute “Subsection (5A)”, and
   (b) for “they apply” substitute “it applies”.

Criminal Procedure (Scotland) Act 1995 (c.46)

2 The Criminal Procedure (Scotland) Act 1995 is amended as follows—
   (a) in section 58(6)(d), for “person” substitute “person’s personal welfare which
       makes the same provision as the guardianship order which the court proposes to
       make under this section”,
   (b) in section 58(7)—
       (i) after “order”, where first occurring, insert “made under this section”,
       (ii) for “offender” substitute “person” and for “offender’s” substitute
           “person’s”,
   (c) in section 60B, the words “under section 58(1) of this Act” are repealed.

Adults with Incapacity (Scotland) Act 2000 (asp 4)

3 The Adults with Incapacity (Scotland) Act 2000 is amended as follows—
   (a) in section 6(2)(b)(iii), for “to intromit” substitute “relating to intromission”,
   (b) in paragraph 6(2) of schedule 2, after “carer” insert “, his named person”,
   (c) in paragraph 3(3) of schedule 3, for “18” substitute “20”,
   (d) in paragraph 4 of schedule 4—
       (i) in sub-paragraph (4), for “(3)” substitute “(5)”,
       (ii) in sub-paragraph (6), for “(5)” substitute “(7)”.

Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)

4 In paragraph 3(1)(b) of schedule 1 to the Mental Health (Care and Treatment) (Scotland)
   Act 2003 (asp 13), for “a minimum of three” substitute “one or more
### SCHEDULE 2
*(introduced by section 69(2))*

#### REPEALS

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<td><strong>5</strong> National Assistance Act 1948 (c.29)</td>
<td>Section 47</td>
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<td>In section 48(1), paragraph (c) and the word “or” which immediately precedes it.</td>
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<td>National Assistance (Amendment) Act 1951 (c.57)</td>
<td>The whole Act.</td>
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<td><strong>10</strong> Solicitors (Scotland) Act 1980 (c.46)</td>
<td>In section 24F(1), paragraph (b).</td>
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<td>In section 24G(4), the words “or (b)” and the words “or, as the case may be, on the <em>curator bonis</em> being discharged”.</td>
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Adult Support and Protection (Scotland) Bill
[AS INTRODUCED]

An Act of the Scottish Parliament to make provision for the purposes of protecting adults from abuse; to require the establishment of committees with functions relating to the safeguarding of adults who are at risk of abuse; to amend the law relating to incapable adults; to remove an individual’s liability for expenses incurred by councils in performing certain functions in relation to the individual’s spouse or child; to allow the Scottish Ministers to delegate their functions relating to councils’ duty to pay sums for the purposes of securing community care services; to make provision entitling a council to recover expenses incurred in providing social services to persons who are not ordinarily resident in the council’s area; to allow the Public Guardian to intervene in court proceedings; to adjust the circumstances in which extensions of orders authorising compulsory treatment of mentally disordered persons must be reviewed; and for connected purposes.

Introduced by: Mr Andy Kerr
On: 30 March 2006
Supported by: Lewis Macdonald
Bill type: Executive Bill