

ADULT SUPPORT AND PROTECTION (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament's Standing Orders, the following documents are published to accompany the Adult Support and Protection Bill introduced in the Scottish Parliament on 30 March 2006:

- Explanatory Notes;
- a Financial Memorandum;
- an Executive Statement on legislative competence; and
- the Presiding Officer's Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 62-PM.

EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE BILL – AN OVERVIEW

4. The Bill is in 4 parts. The main provisions of the Bill are as follows:

Part 1 – Protection of Adults at Risk of Abuse

- Introduces measures to identify and protect adults at risk from abuse. It defines adults at risk and abuse. Where it is known or suspected that an adult is being abused, the Bill places a duty on councils to make the necessary enquiries to establish whether or not further action is required to stop or prevent abuse. A general principle on intervention in an adult's affairs requires action which is the least restrictive to the adult whilst providing benefit to him or her. Protection orders include assessment orders, removal orders and banning orders, which require approval by a sheriff.
- Requires councils to set up Adult Protection Committees to review procedures and practices of specified public bodies relating to the safeguarding of adults at risk.

Part 2 – Adults with Incapacity

- Amends the Adults with Incapacity (Scotland) Act 2000 with a view to improving how it operates in practice.
- Follows a two year project monitoring the implementation of this Act which resulted in a consultation paper "Improving with Experience" issued by the Scottish Executive in August 2005.
- Makes changes to the regime for intromission with the funds of an adult with incapacity; in connection with powers of attorney, intervention orders and guardianship orders; and in connection with orders about incapable adults' nearest relatives.

Part 3 – Adult Support etc: Miscellaneous amendments and repeals

- Repeals the liable relatives rule as it applies to charging for accommodation provided under the Social Work (Scotland) Act 1968 and section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003. It also clarifies and updates the financial responsibility for community care services when provided in an area other than the area in which the individual is ordinarily resident.

- Amends the Social Work (Scotland) Act 1968 to enable Scottish Ministers to delegate powers to councils in relation to direct payments for social care services.
- Amends to the Social Work (Scotland) Act 1968 to define responsibility for provision of social services where a person receives a service outwith the council area or outwith Scotland.
- Amends the Mental Health (Care and Treatment) (Scotland) Act 2003 in relation to the duty of Mental health tribunals to review compulsory treatment orders.

PART 1

PROTECTION OF ADULTS AT RISK OF ABUSE

Introductory

Section 1 – General principle on intervention in an adult’s affairs

5. This section sets out the general principle for all actions that are taken under this Part. It applies only to this Part of the Bill. The general principle states that a person may intervene or authorise an intervention in an adult’s affairs, only where the person is satisfied that the intervention will provide benefit to the adult and that it is the least restrictive option of those that are available which will meet the objective of the intervention.

Section 2 – Principles for performing Part 1 functions

6. Any public body or official who carries out any functions under this Part must give consideration to the general principle set out above, the feelings of the adult at risk (as far as they can be ascertained) and the views of other significant individuals with an interest who are known to the public body or office-holder.

7. Consideration should also be given to the importance of the adult at risk participating as fully as possible by making sure that appropriate information and support is provided. The adult at risk should not be treated any less favourably than any other adult in a comparable situation and due regard should be given to the adult’s abilities, background and characteristics.

Section 3 – Adults at risk

8. This section defines adults at risk. These are adults (people aged 16 or over) who are affected by illness, mental disorder, disability, infirmity or ageing, and as a result are at risk from abuse. The Scottish Ministers can, by order, amend the definition of ‘adult at risk’. ‘Abuse’ is defined in section 50.

Inquiries

Section 4 – Council’s duty to make inquiries

9. This section places a duty on councils to make inquiries about an adult’s well-being, property or financial affairs in certain circumstances. These circumstances are where the person falls

within the definition of an adult at risk, and the council knows or believes it may have to intervene to in order to protect the adult from abuse.

Section 5 – Co-operation

10. This section addresses the requirement for public bodies to co-operate with the council and each other, where abuse is known or suspected.

11. Subsection (1) lists the public bodies as the Mental Welfare Commission for Scotland, the Scottish Commission for the Regulation of Care (the Care Commission), the Public Guardian, and the relevant Health Board. It also gives Scottish Ministers power to prescribe other public bodies or office-holders in regulations.

12. Subsection (2) requires these public bodies to co-operate with each other and with the council where this is likely to assist the council to make inquiries in accordance with the duty described in section 4 above. The duty to co-operate is subject to any other functions the bodies may have.

13. If one of the above public bodies knows or believes an adult is at risk from abuse and believe action is required to safeguard that person's well-being or property, subsection (3) requires them to report to the council.

Investigations

Section 6 - Visits

14. This section enables relevant council officers, as defined in section 50, to enter premises to make the necessary investigations which will establish whether further action is needed to protect an adult at risk from abuse.

Section 7 – Interviews

15. This section permits a council officer and anyone accompanying the officer to interview an adult in private within the place being visited under section 6. This right exists regardless of whether the sheriff has granted an assessment order. In circumstances where it is not practicable to carry out a private interview in the place of the visit and the council officer requires to take the person to other premises, an assessment order must be obtained from a sheriff (see section 10, Assessment Orders). Subsection (2) states that an adult interviewed under this section is not required to answer any question.

Section 8 – Medical examinations

16. This section allows a health professional to conduct a private medical examination of the adult at risk in the place where investigations are being made. Where an assessment order is obtained (see section 10, Assessment Orders) , the person may also be taken to another place for medical examination if a health professional is not present during the initial visit, or where it is not practicable to do so. A health professional is defined in section 49(2) as a doctor, a nurse, a

midwife or any other suitably qualified individual described in an order made by Scottish Ministers.

Section 9 – Examination of records

17. This section gives council officers the right to require those holding health, financial or any other records to produce them for inspection, either at the time of the visit or subsequently, if this is required to establish whether further action is required to protect an adult at risk from abuse. Records may be examined by the council officer or an appropriate person, but health records can only be inspected by a health professional (as defined in section 49(2)).

Assessment orders

Section 10 – Assessment orders

18. This section allows a council to make an application to a sheriff for an assessment order to allow a council officer to conduct a private interview or a health professional to conduct a private medical examination. This would only be the case where it was not possible to carry out a private interview or medical examination within the place being visited under section 6 (see section 12). Applications can only be made where this action is required to establish whether the person is an adult at risk, and if so, to establish whether further action is required to protect them from abuse.

Section 11 – Criteria for granting assessment orders

19. This section prescribes the circumstances in which a sheriff may grant an assessment order. Such orders will be valid for up to 7 days. The sheriff must be satisfied that the council has reasonable cause to suspect the subject of the order is an adult at risk who is being, or is likely to be, seriously abused and that an order is necessary to establish this.

Section 12 – Restriction on exercise of assessment order

20. This section states that an assessment order must only be used in those circumstances where it is not possible for the adult at risk to either be interviewed or medically examined during the course of a visit as described in section 6.

Removal orders

Section 13 – Removal orders

21. This section deals with applications to the sheriff for removal orders, which allow the removal of an adult at risk to a specified place. Such orders are effective for a maximum period of 7 days. The council can also take such steps during that period as the council thinks reasonable in order to prevent the victim from suffering abuse. The application for the removal order must be made by the council, but the council may choose to nominate a person from one of the co-operating public bodies to actually move the adult at risk. The removal must be made within 72 hours of the order being made.

Section 14 – Criteria for granting removal order

22. This section specifies that a sheriff may only grant a removal order if satisfied that the person for whom the application is made is an adult at risk and that person is likely to be seriously abused if he or she is not moved.

23. Subsection (2) allows the sheriff to specify in the removal order whether a named individual can have contact with the adult at risk during the period of the removal order, and whether this should be subject to specified conditions. Before including such requirements, subsection (3) states that the sheriff must have regard to representations from the council and any relevant representations from the subject of the order (the adult at risk), anyone who wishes to contact the adult at risk or any other person who has an interest in the adult at risk's well-being or property.

24. However, a sheriff can decide to disapply the provisions contained within subsection (3) in relation to representations if he or she can be satisfied that doing so will protect an adult at risk from serious abuse or that to not serve the notice on a person will not affect the person's position in a detrimental way (see section 38, 'Applications: procedure').

Section 15 – Right to move adult at risk

25. This gives the council officer the right to enter any place to remove a person from that place in accordance with a removal order.

Section 16 – Variation or recall of removal order

26. This section allows the sheriff to vary or recall a removal order. Applications for variation or recall can only be made by the subject of the removal order, or anyone claiming an interest in his or her well-being, or by the council. Variation or recall can only be done where the sheriff is satisfied that the circumstances on which the removal order (or subsequent variation order) was granted have changed. However, the variation cannot permit the council to do anything beyond 7 days after the adult is first moved. Where an order is recalled, the sheriff can direct the council to return the person to the place he or she was removed from, or to any other place which the sheriff, having considered the adult's wishes, may specify.

Section 17 – Protection of moved person's property

27. This section requires a council which has secured a removal order in respect of an adult at risk to take reasonable steps to prevent any property owned or controlled by the removed person being lost or damaged for the duration of the removal order, where no other arrangements to protect such property have or are being made. A council officer may enter any place where the council believes that property belonging to the adult at risk is contained in order to carry out his or her duty under this section. The council is not entitled to recover expenses incurred. "Property owned or controlled" can include pets.

Banning orders

Section 18 – Banning orders

28. This section deals with applications to the sheriff for banning orders, which specify the place from which, and the length of time for which, a person is banned. The specified place may, for example, be the adult at risk's home or place of residence.

29. Subsection (2) enables a banning order to ban the subject from the vicinity of the specified place, permit the summary ejection of the subject from the specified place or its vicinity, and prohibit the subject from moving anything set out in the order from the place. The banning order may also direct the applicant for the order to take measures to preserve the moveable property of the subject which remains in the premises during the order. The subsection also gives the sheriff flexibility to specify other conditions, or to place requirements on individuals to allow proper enforcement of the order.

30. Subsection (3) permits the inclusion of conditions within a banning order which allow the subject of a banning order, under certain specified circumstances, to be in the place from which he or she is banned. Examples of such circumstances are when supervised by another person (e.g. a council officer) or during specified times only. Subsection (4) states that before including this type of condition within a banning order, the sheriff must have regard to the views of the applicant for the order, the adult at risk and the subject of the order.

31. However, a sheriff can decide to disapply the provisions contained within subsection (4) in relation to representations if he or she can be satisfied that by doing so will protect an adult at risk from serious abuse or that to not serve the notice on a person will not affect that person's position in a detrimental way (see section 38, 'Applications: procedure').

32. An interdict is a court order restraining or prohibiting a person from engaging in conduct that infringes the provisions contained within the order. Subsection (5) states that any provision of a banning order which restrains or prohibits any conduct will be treated as an interdict. This means that the breach of any such provisions in a banning order will be treated as a breach of interdict. The sheriff also has the power to attach a power of arrest to any banning order (see section 23). Subsection (6) states that the period of the banning order may not exceed 6 months.

Section 19 – Criteria for granting banning order

33. This section specifies that a sheriff may only grant a banning order where satisfied that an adult at risk is likely to be seriously abused, and that banning the other person from the adult's home or place of residence would better safeguard the adult's well-being and property than the removal of the adult at risk.

Section 20 – Temporary banning orders

34. This allows for temporary banning orders to be granted by a sheriff pending determination of a banning order. Temporary orders may include any of the provisions contained in a banning order. If a temporary banning order is granted, the sheriff must grant or refuse the full banning order within a time limit to be fixed in court rules. The expiry of a temporary banning order will

be the earliest of: the date specified at the time of granting; the date the order is recalled, the date on which the sheriff determines the banning order or the date by which the sheriff is required to determine the banning order by virtue of court rules.

35. Subsection (5) provides for an temporary banning order to be treated as an interim interdict, where any of its provisions restrain or prohibit any conduct. Any breach of such provisions will be treated as a breach of interim interdict.

Section 21 – Right to apply for banning order

36. This section limits those who are able to apply for a banning order to particular persons. These are the adult at risk (which includes someone acting on his or her behalf), any other person entitled to occupy the property from which the subject would be banned, or the council. These persons are also entitled to apply for a temporary banning order in respect of the same case.

37. The council can only apply for a banning order under certain circumstances. Where a council applies, it must be satisfied that an adult at risk is being, or is likely to be, seriously abused by another person and that the adult would be more effectively safeguarded by banning the subject of the order than being removed themselves.

38. In addition, the council must be satisfied that no other person is likely to apply for a banning order and no other proceedings are before a court to eject or exclude the subject of the order from the home or place of residence of the adult at risk. Where these circumstances occur, a council must apply for a banning order.

Section 22 – Variation or recall of banning order

39. This section allows the sheriff to vary or recall a banning order or temporary banning order, but only if he or she is satisfied that there has been a change in the facts or circumstances on which the banning order was made or last varied.

40. An application for variation or recall can only be made by the banned person, the person who originally applied for the order, the adult who is being protected by the order, or any other person claiming an interest in the well-being of the adult at risk. An application can also be made by those who are acting on behalf of those listed above.

Section 23 – Powers of arrest

41. This section allows a sheriff to attach a power of arrest to any banning order or temporary banning order. The power of arrest becomes effective only when served on the subject of the order and it will expire at the same time as the order.

Section 24 – Notification to police

42. This section states that the police, via the chief constable, must be notified as soon as possible after any power of arrest attached to a banning order or temporary banning order becomes effective. This should be done by the applicant for the order (or another prescribed

person e.g. sheriff officers). The police must also be notified in the event of a variation or recall of a banning order.

Section 25 - Arrest for breach of banning order

43. Subsection (1) sets out the two-step test that must be satisfied if a police constable is to carry out an arrest. The subject of a banning order or temporary banning order, to which a power of arrest is attached, may be arrested without warrant if a constable reasonably suspects the subject to be in breach of the order and that he or she is likely to breach the order again if not arrested. Subsection (2) states that the arrested person must be told immediately the reason for the arrest and then taken by the constable to a police station as soon as is reasonably possible.

Section 26 – Police duties after arrest

44. Following an arrest under section 25, the officer in charge of the police station must detain the arrested person in custody until the person is either brought before the sheriff or accused on petition or charged on complaint with a criminal offence arising from the incident for which he or she is arrested. The officer in charge must also ensure that the facts and circumstances which gave rise to the arrest are communicated to the procurator fiscal as soon as is practicable. This is linked to the procurator fiscal's duty to present a petition to the sheriff setting out the relevant facts and circumstances on the first available court day after arrest (see section 30).

Section 27 – Notification of detention

45. Where a person has been detained under section 26 above, this section sets out a series of entitlements that may be accessed by the arrested person including the right of access to a solicitor. Subsection (2) provides that where the arrested person appears to be a child then intimation of the detention and place of detention must be given without delay to any person known to have parental responsibilities for the child.

Section 28 – Duty to keep record of detention

46. This section lists the information that the police must record in connection with the detention of a person under section 26.

Section 29 – Duty to bring detained person before sheriff

47. In this section, subsection (1) makes it clear that the procedure under the Bill would only apply in circumstances where the procurator fiscal has not yet decided to take criminal proceedings against the arrested person as a result of the facts leading to the arrest. The arrested person should be brought to court on the next court day on which it is practicable to do so.

Section 30 – Information to be presented to sheriff

48. This section sets out the matters that should be referred to in the procurator fiscal's petition to the court. This allows the procurator fiscal to present to the court information that will assist the sheriff in deciding whether it would be appropriate to order the arrested person's further detention.

Section 31 – Criteria for authorising longer detention

49. This section sets out the test that the sheriff must apply in deciding whether or not to order the further detention of the arrested person for a maximum of two days. The sheriff must be satisfied, based on the information provided by the fiscal, that a breach of the banning order or temporary banning order has taken place and also that there is a substantial risk that the detained person will breach the order again. Subsection (3) provides that the arrested person must be given an opportunity to make representations before the sheriff decides whether to grant an order under this section. If the sheriff decides not to authorise the further detention, the detained person must be released (unless he or she is to be detained in custody in respect of another matter).

Protection orders and visits: supplementary

Section 32 – Consent of adult at risk

50. This section describes the situation that arises where an adult at risk has refused to consent to the granting of a protection order and/or to the proposed action to be taken under it. A protection order for the purposes of this section is defined, in subsection (7), as any assessment order, removal order, banning order or temporary banning order.

51. Where the adult at risk refuses to consent to the granting of the order, subsection (1) states that a sheriff must not make a protection order. Subsection (2) states that no action can be taken by the person carrying out a protection order if there is known refusal of consent. However, subsection (3) provides an exception to (1) and (2) above permitting the sheriff, or person carrying out the order, to ignore the refusal to consent where the sheriff or person reasonably believes that the adult at risk appears to be under undue pressure to refuse consent.

52. Subsection (4) describes a particular set of circumstances which are to be treated as amounting to undue pressure. An adult at risk may be considered to have been unduly pressurised in the situation where abuse is being inflicted on the adult by a person in which the adult has confidence and trust and that the adult would consent to interventions to prevent the abuse if he or she did not have confidence and trust in that person.

53. Subsection (6) makes clear that nothing in this Bill allows either a council officer or health professional or other council nominee to carry out an interview or a medical examination where the adult at risk concerned has refused to consent.

Section 33 – Visits: supplementary provisions

54. This section sets out some supplementary provisions in relation to visits. Visits may only be carried out at reasonable times and a council officer, if asked, must state the purpose of the visit and produce evidence of his or her authority to visit.

55. A council officer is permitted, while visiting, to examine the place and to bring with them any other person or equipment that he or she requires in order to successfully complete the visit. Council officers are not authorised to use force during their visit but it does not prevent a constable with a suitable warrant for entry (see section 34) from using force. However,

subsection (5) makes it clear that a person who refuses entry to a council officer, or any person accompanying a council officer, for a visit without a warrant, does not commit an offence under Section 46(1).

Section 34 – Warrants for entry

56. The section defines a warrant for entry. This is a warrant which allows a council officer to visit any specified place together with a constable and where the constable is authorised to use reasonable force in order to achieve the object of the visit.

57. Subsection (2) describes the conditions of a warrant for entry. The warrant is valid for 72 hours after it is granted but once this period has expired, the council officer no longer has any authorisation to remain in the place to which the warrant refers.

Section 35 – Criteria for granting warrants for entry: section 6 visits

58. This section states that a sheriff who grants an assessment order (under section 10) must also grant a warrant for entry in relation to any visit taking place under section 6. Otherwise (i.e. where no assessment order made), the sheriff may only grant a warrant for entry in relation to a visit, under section 6, if satisfied that the council officer reasonably expects to be refused entry, would otherwise be unable to enter, or that the object of the visit would be frustrated without a warrant.

Section 36 – Duty to grant warrants for entry: removal orders

59. This section states that a sheriff who grants a removal order (under section 13) must also grant a warrant for entry in relation to any visit taking place under section 15 (Right to move adult at risk). In the case where a removal order is varied, and the subject of the order has not yet been moved, the warrant for entry is treated as being granted on the date of variation of the order even if it has already expired.

Section 37 – Urgent cases

60. This section allows the council, in urgent cases, to apply to a justice of the peace instead of a sheriff for either a removal order or a warrant for entry in respect of visits under sections 6. However, this circumstance would only arise if it was not practicable to apply to the sheriff and that an adult at risk is likely to be abused if there is a delay in granting the order or warrant.

61. Subsection (3) confirms that a justice of the peace can only grant a removal order if it was not practicable for the council to apply to the sheriff and that an adult at risk is likely to be abused if there is a delay in granting the order or warrant. In addition, a justice of the peace may only grant a removal order if satisfied that the person for whom the application is made is an adult at risk and that person is likely to be seriously abused if he or she is not moved (i.e the provision contained at section 14(1) is also satisfied).

62. Where an application is made to a justice of the peace for a removal order then subsections (3) to (7) of section 38 do not apply (see below).

63. A justice of the peace who grants a removal order must also grant a warrant for entry – this is the same position as for a sheriff. Similarly, a justice of the peace may grant a warrant for entry in relation to a visit, described in section 6, if satisfied that it is not practicable to apply to the sheriff and that an adult at risk is likely to be abused if there is a delay in granting a warrant. In addition, he or she must be satisfied that the council officer reasonably expects to be refused entry, would otherwise be unable to enter or that the object of the visit would be frustrated without one.

Section 38 – Applications procedure

64. This section applies to applications for assessment orders, removal orders, a banning order, a temporary banning order or the variation or recall of a removal order, a banning order or a temporary banning order.

65. The applicant for an order must give notice of an application to both the subject of the application and the affected adult at risk (in the situation where the adult is neither the applicant nor the subject). Before granting an application, the sheriff must invite the subject of the application and the affected adult at risk (again where the adult is neither the applicant nor the subject) to be heard by, or represented before, the sheriff. An adult at risk can be accompanied by a friend, relative or representative at any hearing. The sheriff may appoint a person to safeguard the interests of the adult at risk.

66. However, subsection (2) allows the sheriff not to apply the provisions described in paragraph 65 above in any application if satisfied that doing so will protect an adult at risk from serious abuse or that to not serve the notice on a person will not affect the person's position in a detrimental way. In addition, the provisions stated in sections 14(3) and 18(4), which require that a sheriff must have regard to relevant representations made in relation to removal orders and banning orders where the orders contain specified conditions relating to contact, may also be disapplied for the same reason.

Adult Protection Committees

Section 39 – Adult Protection Committees

67. Subsection (1) states that each council must establish an Adult Protection Committee to carry out the functions listed in relation to the safeguarding of adults at risk present in the council's area. The Committee, in carrying out its functions, should also be seeking to improve co-operation between each of the public bodies involved in order to better safeguard adults at risk. The public bodies involved are the relevant council, the Care Commission, the relevant Health Board, the chief constable of the police force in the council area, and any other public body as may be specified by Scottish Ministers.

Section 40 – Membership

68. The council must appoint an independent convener and other members of its Adult Protection Committee. The public bodies listed in section 39 above (other than the council and the Care Commission) must nominate a representative with the relevant knowledge and skills to be a Committee member. The Care Commission may choose to nominate a representative if it

wishes to do so. The council must then appoint those nominated representatives as members of the Adult Protection Committee. The council may also appoint such other persons to be members of the Committee as appear to it to have skills and knowledge relevant to the Committee.

Section 41 – Committee procedure

69. Each Adult Protection Committee will be responsible for regulating its own procedures but these procedures must allow a representative from the Mental Welfare Commission, the Public Guardian, the Care Commission or any other public body or office-holder to be specified by Scottish Ministers, to attend Committee meetings if they so wish.

Section 42 – Duty to provide information to Committee

70. The public bodies represented on the Adult Protection Committee together with the Mental Welfare Commission for Scotland, the Public Guardian, the Care Commission, and any other public body or office-holder to be specified by Scottish Ministers, must provide the Committee with any information which it requires in carrying out its functions.

Section 43 – Annual Report

71. The convener of an Adult Protection Committee must prepare a general report on the Committee's work every two years. After obtaining the Committee's approval of the report, a copy should be sent to each of the public bodies and office-holders represented on the Committee, the Scottish Ministers, the Mental Welfare Commission for Scotland, the Public Guardian, the Care Commission, and any other public body or office-holder to be specified in regulations by Scottish Ministers.

Section 44 – Guidance

72. This section states that Adult Protection Committees must take into account any guidance issued by Scottish Ministers in relation to their functions.

Other provisions

Section 45 – Code of practice

73. This section requires Scottish Ministers to prepare and publish a code of practice containing guidance on the operation of the adult protection measures contained within this Part. This code of practice will provide guidance on how to perform the functions undertaken by councils, their officers, and health professionals. This code of practice must be periodically reviewed and updated in consultation with others. Those councils, council officers, and health professionals who have a role in performing the functions contained within this Part should have regard to the code of practice produced.

Section 46 – Obstruction

74. This section states that it is an offence to prevent or obstruct any person from doing anything which he or she is authorised or entitled to do under an assessment order, a removal order, a banning order, a temporary banning order, a warrant for entry or any other provision contained in this Part. It is also an offence to refuse, without reasonable excuse, to comply with a request to provide information made under section 9 (Examination of records etc). A person found guilty of these offences is liable on summary conviction to a fine (not exceeding level 3 on the standard scale), to imprisonment (for a term not exceeding 3 months) or both. However, nothing done by the adult at risk will constitute an offence such as is described under this section.

Section 47 – Offences by bodies corporate etc.

75. This section allows for individuals who exercise control within an organisation, as well as the organisation itself, to be proceeded against and punished where the organisation commits any offences described under this Part.

Section 48 – Appeals

76. There are no appeals against the granting of an assessment order, a removal order or a warrant for entry. An appeal against a temporary banning order is valid only with leave of the sheriff principal. A banning order granted by a sheriff should be appealed to either the sheriff principal or the Court of Session in accordance with sections 26 and 27 of the Sheriff Court (Scotland) Act 1907.

Section 49 – Persons authorised to perform functions under this Part

77. This section sets out who is able to perform functions under this part. Scottish Ministers have the power to restrict by order the type of individual who may be authorised by a council to perform those functions given to council officers under the adult protection measures. In any case, individuals must be authorised by the relevant council as being suitable to perform particular functions.

78. A health professional, who is authorised to carry out medical examinations under this Part, is defined as a doctor, a nurse, a midwife or any other suitably qualified individual as specified by order by Scottish Ministers.

Section 50 – Interpretation of Part

79. This section lists the meaning of various terms used throughout this Part.

80. In particular, the section defines the meaning of “abuse”. “Abuse” is defined to include any conduct which harms or exploits an individual. Four kinds of abuse are listed: physical abuse, psychological abuse, abuse by theft and fraud and self-abuse. More generally, “abuse” is defined to also include any other conduct causing fear, alarm or distress and conduct which results in the dishonest taking of property from the victim. Taken together, these different kinds

of abuse will encapsulate more specific types of abuse such as domestic abuse, sexual abuse and racial abuse.

PART 2

ADULTS WITH INCAPACITY

Section 52 – Orders about incapable adult’s nearest relatives

81. This section amends section 4 of the Adults with Incapacity (Scotland) Act (“the 2000 Act”). Section 4 at present allows an adult to apply to the sheriff to have the person who would otherwise be treated as the adult’s nearest relative displaced, for the purposes of the Act. This amendment provides that any person claiming an interest in the adult’s property, financial affairs or personal welfare may apply to have the nearest relative displaced. It also provides that a court may make an order different to the one applied for, eg naming a different person from the person specified in the application.

Section 53 – Powers of attorney

82. This section amends sections 15, 16, 19, 20, 22 and 23 of the 2000 Act.

83. Subsections (1) and (2) amend section 15 (creation of continuing power of attorney) and section 16 (creation and exercise of welfare power of attorney) respectively. They provide that where the person does not have sufficient knowledge of the granter it is sufficient that the person consults one person who does have knowledge of the granter to ascertain that the granter understood the nature and extent of the power of attorney. At present under these provisions it is necessary to consult more than one person. These amendments also provide that all welfare powers of attorney and those continuing powers of attorney which will start on incapacity must contain a statement to the effect that the granter has considered how incapacity should be determined. Subsection (1) also contains a declaratory provision that a continuing power of attorney ceases to have effect if the granter or attorney becomes bankrupt.

84. Subsection (3) inserts a new section 16A to provide that where a power of attorney contains both welfare and financial powers in a single document only one certificate is required.

85. Subsections (4), (5), (6) and (8) contain a number of minor changes relating to notification of welfare powers of attorney.

86. Subsection (7) introduces a new section 22A dealing with revocation of continuing and welfare powers of attorney. At present there is no express provision in the Act dealing with revocation of powers of attorney and the common law governs the position. This new statutory provision provides that revocation by the granter of a power of attorney (or any of the powers in it) must be done by giving notice in writing to the Public Guardian and must also be in such form as the Public Guardian may require. The revocation will be registered by the Public Guardian which is the point at which revocation takes effect. The Public Guardian will notify the attorney of the revocation and, in addition, where it is a welfare power of attorney, the Mental Welfare Commission and the local authority.

Section 54– Applications for authority to intromit with funds

87. This section makes changes to sections 25 and 26 of the 2000 Act to provide for organisations as well as individuals to intromit with funds and to make it easier to apply for authority to intromit with funds. Intromission with funds is a means by which an individual family member, friend or carer can have the legal authority to access and manage the day to day finances of someone who lacks the capacity to do so for themselves.

88. Subsections (1), (2) and (3)(b),(c) and (g) amend sections 25 and 26 to provide that an organisation as well as an individual can apply for authority to intromit with funds and that in the case of the former, an office holder must be identified. Managers of authorised establishments under Part 4 of the 2000 Act are excluded. Subsection (3)(f) provides that the Public Guardian must refuse an application by an organisation where she is not satisfied that it satisfies such matters as may be prescribed by Scottish Ministers. For example these prescribed matters may include suitable accounting systems, sufficient indemnity cover and suitable staff to deal with such intromissions.

89. Subsection (3)(a) amends the countersignatory requirements for an application to intromit with funds by an individual to remove the requirement for the countersignatory to be a member of a specified class of persons as prescribed by regulations; reduce from two years to one year the specified period that a countersignatory must have known the adult; remove the requirement for the countersignatory to know the adult on whose behalf intromission is sought and add to the list of persons excluded as acting as a countersignatory anyone already acting under the 2000 Act on behalf of that adult. Subsection (3)(d) inserts a new subsection (1A) in section 26 to provide that anyone acting on behalf of the adult under the law of any other country in a similar capacity is also not able to act as a countersignatory.

90. Subsection (3)(e) amends the intimation requirements on the Public Guardian once the application is received. The amendment lists those who must receive intimation.

Section 55 – Removal of restrictions on divulging information about incapable adult's funds

91. This section inserts a new section 26A into the 2000 Act. This provides that the Public Guardian may, on application, issue a certificate of authority to a person who wishes to apply to intromit with funds but cannot do so because of a lack of information as to the adult's accounts. The certificate will authorise a bank or other financial institution to provide confidential information about an adult's account or accounts, required for the purposes of making an application for authority to intromit with funds.

Section 56 – Joint and reserve withdrawers

92. Subsection (2) inserts four new sections into Part 3 of the 2000 Act which make provision for joint and reserve withdrawers. At present there can only be one withdrawer on an incapable adult's account.

93. New sections 26B and C deal with joint withdrawers and 26D and E with reserve withdrawers. The new section 26B allows for the appointment of a joint withdrawer either at the time of the original application or at some later date. In the latter case, the provision sets out what information will be required in the application form which will require to be signed by the original withdrawer. The Public Guardian will enter particulars into the register. The joint authority will run for the same period as the original grant of authority. The new section 26C makes supplementary provision for liability, consultation and resolution of disputes.

94. The new section 26D allows for the appointment of a reserve withdrawer either at the time of the original application or at some later date on application by the main withdrawer. In the latter case, the section sets out what information will be required in the application form. The Public Guardian will enter particulars into the register and issue a new certificate of authority to the main withdrawer. The new section 26E provides that where a reserve withdrawer has been appointed and the main withdrawer considers that he or she is or will be unable to act (for example because he or she is going away on holiday) then the main withdrawer may notify the Public Guardian that he or she wishes the reserve withdrawer to be authorised to intromit with funds for a specified period. It also provides that where the reserve withdrawer becomes aware that the main withdrawer is unable to act (for example through unexpected illness or injury) he or she may apply to the Public Guardian for authority to intromit with funds for a specified period. In addition where the main withdrawer's authority ceases, is suspended or terminated, the reserve withdrawer's authority follows suit. Provision is also made for liability and intimation.

Section 57 – Renewal of authority to intromit with funds

95. This section inserts a new section 26F in the 2000 Act to deal with applications where the person applying holds an existing authority to intromit or where the reserve withdrawer wants to take the place of the main withdrawer where the latter has died, become incapable or his or her authority has been terminated. The purpose of this new section is to make the process for such applications faster and less onerous by allowing for various requirements under section 26 to be disapplied.

Section 58 – Withdrawal and transfer of funds

96. This section allows for more flexibility in managing the accounts of an adult with incapacity. It amends section 33 of the 2000 Act to expand existing provisions relating to transfers of funds between an adult's bank accounts and provides for the closure of an account from which funds are transferred.

Section 59 – Transition from guardian to withdrawer

97. This section inserts a new section 34A to provide for a less onerous application to be made under section 25 where there is already a guardianship order in place relating to the adult's property or financial affairs. This is done by disapplying various requirements of section 26. There may be instances where financial guardianship is no longer necessary (e.g. because there has been a simplification of the adult's financial affairs) but the adult remains incapable of managing his or her finances and intromission with funds would be more appropriate.

Sections 60 and 61 – Intervention orders and guardianship orders

98. These sections amend provisions in Part 6 of the 2000 Act which makes provision for intervention orders and guardianship orders.

99. Sections 60(1)(a) and 61(1) amend sections 53 and 57 of the 2000 Act respectively to provide that:-

(a) where a medical report is lodged in an application for an intervention order or a guardianship order it shall be valid even where the medical examination of the adult has been carried out more than 30 days previously provided that the sheriff is satisfied that the adult's condition is unlikely to have improved since the examination was carried out;

(b) Scottish Ministers may prescribe in regulations persons (i.e. medical practitioners) who can complete reports to accompany applications for guardianship and intervention orders; and

(c) where an adult is not living in Scotland and is the subject of an application for an intervention order or guardianship order, he or she may be examined by a medical practitioner in the country where he or she lives provided that practitioner holds recognised qualifications, has special experience in relation to mental disorders and has consulted the Mental Welfare Commission about the report .

100. Sections 60(1)(b) and (c) and 61(2), (3), (6) and (9) amend sections 53 and 57 respectively to dispense with the requirement for caution in intervention orders and guardianship orders relating to property or financial affairs. Whether to impose caution in such circumstances is left instead to the sheriff's discretion.

101. Section 60(2) amends sections 53 to provide for notification to the Public Guardian by the person authorised under the intervention order of a change in his or her or the adult's address within 7 days of such a change. Provision for such notification by guardians is already made in section 64(4) of the 2000 Act.

102. Sections 60(3) and 61(10) insert new sections 56A and 75A which provides for notification to the Public Guardian of the death of a person authorised to intervene or death of a guardian by his or her personal representatives.

103. Section 61(1)(d) amends section 57 to provide that sheriffs may grant interim guardianships for 3 months (as at present) or for a longer period up to a maximum of 6 months.

104. Section 61(5) amends section 70 (non-compliance with decisions of guardian with welfare powers) to remove the unintended effect that a warrant may be issued for the adult's removal from his or her place of residence where a third party has refused to comply with the guardian's decision. It also inserts a new subsection to provide that the sheriff may, on cause shown, disapply the intimation requirement and the corresponding right to object within a

prescribed period. The reason for this is that in urgent cases a delay of the prescribed period of 21 days can prove detrimental to the welfare of the adult concerned.

105. Section 61(7) amends section 72(1) to provide that where the guardianship order has expired the Public Guardian may grant a discharge to a financial guardian in respect of the former guardian's actings and intromissions with the estate of the adult.

106. Section 61(8) inserts a new subsection (3A) in section 73(3) to provide that the Mental Welfare Commission may recall guardianships relating to personal welfare only in those cases where incapacity relates to a mental disorder and not, as at present, all guardianships relating to personal welfare.

107. Section 61(11) inserts a new section 79A which allows a guardianship order to be applied for in the three month period prior to an individual's sixteenth birthday and for that order to come into effect on the individual's sixteenth birthday. The new provision is to provide continuing protection for young adults who lack capacity. At present, an application cannot be made for an individual aged under sixteen. These guardianship orders will be subject to the other provisions which currently apply to guardianship orders.

108. Section 61(12) inserts new sub-paragraph (3A) into paragraph 6 of schedule 4 to provide for the reconsideration under the 2000 Act of the appointments of all welfare and financial guardians who became such by virtue of being curators bonis, tutors dative or tutors at law prior to the coming into effect of Part 6 of the 2000 Act. The amendment provides that these guardianships will cease unless there is an application for renewal within two years of the commencement of this subsection (or, where the guardian was previously curator bonis to a person under 16 years, within 2 years of the person becoming sixteen, if that is a longer period). Subsection (12) also inserts the new sub-paragraph (3B) to provide that new sub-paragraph (3A) does not prevent early termination of guardianship under the terms of the Act, e.g. where guardianship is recalled.

PART 3

ADULT SUPPORT ETC.: MISCELLANEOUS AMENDMENTS AND REPEALS

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

109. This section repeals sections 42 and 43 of the National Assistance Act 1948 whereby a spouse or parent of a person resident in accommodation provided or secured by a local authority under the Social Work (Scotland) Act 1968 or provided with accommodation under section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003 can be required to contribute to the cost of the resident's care. Section 62 of the Bill includes technical amendments in order to clarify the provisions in section 65(f) of the National Assistance Act 1948 and section 87(3) of the Social Work (Scotland) Act 1968, and makes a consequential amendment to section 4(1)(b) of the Community Care and Health (Scotland) Act 2002 in order to repeal the reference to liable relatives in that section.

Section 63 – Direct payments: sub-delegation to councils

110. The section amends section 12B(6) of the Social Work (Scotland) Act 1968. The amendment allows regulations made under section 12B to be more flexible by enabling them to include provisions delegating functions (including decision-making functions) to local authorities. The intention is to use the new power immediately to allow local authorities to determine whether exceptional circumstances exist which would justify using direct payments to employ a close relative in a particular case.

Section 64 – Adjustments between councils in relation to social services etc.

111. This section clarifies and updates the legislation determining which local authority is financially responsible for providing community care services when a person moves between local authority areas. The Scottish Executive's long established policy and guidance is that normally the local authority in which a person is ordinarily resident is financially responsible for the community care services for that person. The current legislation may not support this policy and the proposed amendments to section 86 of the Social Work (Scotland) Act 1968 ("the 1968 Act") aim to put the matter beyond doubt. The amendments also update the provisions in recognition of the changes in the range of services available and the methods of provision.

112. Section 64(1)(a) extends the provision to cover direct payments and makes a consequential amendment to section 86(1) of the 1968 Act. Section 64(1)(b)(i) introduces a new provision into section 86(3) of the 1968 to disregard from determining ordinary residence in the case of a child, any period during which he is provided with accommodation under the 1968 Act or under section 25 to 27 of the Mental Health (Care and Treatment) (Scotland) Act 2003. Section 64(1)(b)(ii) updates the statutory references to hospitals.

113. Section 64(1)(c) inserts new subsections into section 86 of the 1968 Act to extend the provisions for adjustments between local authorities to cover care provided by way of an arrangement between them.

114. New section 86(4) and (5) of the 1968 Act supplement the provisions of section 86(1) of the 1968 Act which allows local authorities who provide or secure services or accommodation provided under the Acts mentioned in section 86(1) of the 1968 Act to recover the net cost of doing so from the local authority in whose area the person to whom the care is provided is ordinarily resident. New section 86(4) and (5) provide that where one local authority ("the responsible authority") arranges with another local authority or a third party ("the provider") for accommodation to be provided in an area in which the person is not ordinarily resident, so that the responsible authority can fulfil its obligations under the provisions referred to in new section 86(4)(a) to (c), two consequences flow. First, if the provider is a local authority, then any cost incurred by the provider is recoverable from the responsible authority: where the provider is a third party, payment will be governed by the contract between the responsible authority and the third party provider. Secondly, any period during which the person is accommodated under the arrangement is to be disregarded in determining the person's ordinary residence for the purposes of determining which local authority should fund the net cost of the accommodation.

115. New section 86(6) to (8) also supplement the provisions of section 86(1) of the 1968 Act. They apply when one local authority (“the other authority”) arranges with another local authority (“the providing authority”) that the provider authority will arrange services in the providing authority’s area so that the other authority can fulfil its obligations under the provisions listed in new section 86(6)(a) to (c). The new subsections provide the Scottish Ministers with the power to make regulations specifying when the provider authority may recover from the responsible authority expenditure incurred in arranging the relevant services where the person for whom the services are provided is not ordinarily resident in the provider authority’s area.

116. New section 86(7) provides the Scottish Ministers with the power to make regulations specifying circumstances which are to be taken into account or disregarded when determining a person’s ordinary residence for the purposes of section 86 of the 1968 Act.

117. New sections 86(8) and (9) supplement the regulation making powers in amended section 86 of the 1968 Act to provide the flexibility needed to keep up to date with changes in the way services and accommodation are delivered and require any regulations made under new section 86(6) in relation to arrangements dealing with services to be subject to affirmative resolution.

118. New section 86(10) ensures that “local authority” has the same meaning in new section 86(4) to (6) as it does in section 86(1) to (3) of the 1968 Act.

119. Section 66(2) amends section 2 of the Community Care and Health (Scotland) Act 2002 which allows Ministers to determine what is and is not to be regarded as accommodation provided under section 86 of the 1968 Act so that the meaning of “accommodation” in section 86 of the 1968 Act can remain the same as for section 87(2) and (3) of the 1968 Act.

Section 65 – Application of Social Work (Scotland) Act 1968: persons outwith Scotland

120. Section 65 inserts section 87A into the 1968 Act. This section relates to persons placed in Scotland by an arrangement made by a local authority in any other part of the United Kingdom or in the Channel Islands or the Isle of Man. It provides for the Scottish Ministers to make regulations to amend the 1968 Act as it applies to such persons. Section 5 of the Community Care and Health (Scotland) Act 2002 provides powers to enable Scottish local authorities to make placements to other parts of the United Kingdom, the Channel Islands and the Isle of Man. Section 5 has not yet been commenced but should these section 5 powers be required, the powers provided by section 87 of the 1968 Act will also be required to make provision for reciprocal cases of those placed in Scotland from such other countries. Section 87(2) and (3) supplements the regulation-making power in section 87(1) of the 1968 Act and requires any regulations made under section 87(1) to be subject to affirmative resolution.

Section 66 – Public Guardian: interaction with courts

121. This section extends the powers of the Public Guardian to take part in or initiate court proceedings, when it appears to him or her to be necessary, to safeguard the property or financial affairs of an adult with incapacity. This new provision will complement the existing provision in section 12 of the Adults With Incapacity (Scotland) Act 2000 which limits the Public Guardian’s ability to enter into court proceedings to where this is explicitly tied to an investigation he or she

has carried out. An example of when these new powers might be used is where the Public Guardian is aware of particular facts about an applicant for guardianship which he or she considers may impact adversely on an adult's property or financial interests, derived from prior dealings with the adult's affairs rather than from an investigation. In such circumstances the Public Guardian will be able to inform the court of these facts to protect the adult's interests, if it is necessary to do so.

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

122. This section amends s101(2)(b) of the Mental Health (Care and Treatment) (Scotland) Act 2003 ("the 2003 Act"). Section 101 applies where a patient is subject to a Compulsory Treatment Order ("CTO") made under section 64(4)(a) of the 2003 Act and the patient's responsible medical officer makes a determination under section 86 of the 2003 Act extending the CTO.

123. Section 101(2)(a) requires the Mental Health Tribunal for Scotland ("the Tribunal") to review such a determination if the record submitted to the Tribunal with the determination states that there is a difference between the type(s) of mental disorder that the patient has and the type(s) of mental disorder recorded in the CTO in respect of which the determination is made, or that the patient's mental health officer disagrees with the determination (or has failed to inform the patient of the matters set out in section 85(2) of the 2003 Act (including the patient's rights in relation to the determination)).

124. The amendment to section 101(2)(b) of the 2003 Act (together with new subsections (3) and (4)) provides a further ground for reviews of determinations under section 86. This ground comes into play 2 years from the original granting of the CTO if there is a determination under section 86 extending the CTO for a further year. The effect of this is that there is not to be a review by the Tribunal under the new section 101(2)(b) of determinations under section 86 in respect of the first two year period from the granting of the CTO (i.e. there is not to be a review of the first two determinations from the granting of the CTO under that section).

125. Thereafter there is to be a review of a determination by the Tribunal if, within the two year period ending just before the CTO would expire if not extended by that determination, no application has been made to the Tribunal under section 92, 95, 99 or 100 of the 2003 Act, nor has there been a review under section 101.

PART 4

FINAL PROVISIONS

Section 68 – Ancillary provisions

126. This allows the Scottish Ministers to make provision ancillary to the Bill in subordinate legislation.

Section 69 – Minor and consequential amendments and repeals

127. This section gives effect to the schedules to the Bill which amend and repeal provisions in other Acts.

Section 70 – Orders

128. This sets out the procedure under which the Scottish Ministers can exercise powers which the Bill gives them to make subordinate legislation.

129. All orders are to be made by statutory instrument (and will be published as such). Most will be subject to the Scottish Parliament's negative resolution procedure. Orders under section 3(2) (modification of section 3's definition of "adult at risk") and orders under section 68 which make changes to primary legislation will be subject to the Scottish Parliament's affirmative resolution procedure. Commencement orders will not be subject to parliamentary procedure.

130. Subordinate legislation powers which the Bill adds to other Acts will be regulated by the procedures set out in the Acts into which they are inserted.

Section 71 – Commencement

131. This section commences sections 68, 70, 71 and 72 on the day on which the Bill receives Royal Assent. It gives the Scottish Ministers power to by order appoint the days on which other provisions are to be commenced.

Section 72 – Short title

132. This section gives the Act its short title.

Schedule 1 – Minor and consequential amendments

Paragraph 2

133. Subparagraph (a) amends the Criminal Procedure (Scotland) Act 1995 ("the 1995 Act") to provide that a guardianship order cannot be made under the 1995 Act if there is an existing guardianship order made under the 2000 Act which makes the same provision as that applied for.

Paragraph 4

134. This paragraph amends the Mental Health (Care and Treatment) (Scotland) Act 2003 to reduce the minimum number of medical commissioners which the Commission is required to appoint to one. This change reflects the Commission's reduced role in relation to the discharge of patients under the new Act.

Schedule 2 —Repeals

135. The repeals to the Solicitors (Scotland) Act 1980 provide that disqualification is no longer to be linked to guardianship and remove obsolete references to curators bonis.

FINANCIAL MEMORANDUM

INTRODUCTION

136. The Policy Memorandum, which is published separately, explains in detail the policy intentions within the Adult Support and Protection (Scotland) Bill. The purpose of the Financial Memorandum is to set out the costs associated with the measures introduced by the Bill. .

ADULT PROTECTION MEASURES

137. This element of the Bill proposes to create local statutory Adult Protection Committees (APCs) to further develop inter-agency working and collaboration. The Committee's powers will range from the implementation of preventative measures to developing interventions to manage risk. Local authorities will be most directly affected by the proposed adult protection measures.

Costs on the Scottish Administration

138. Costs to the Scottish administration are expected to be limited to a programme of training and awareness raising for stakeholders prior to commencement of the measures. This will help to explain and advise on the new measures that the Bill will introduce and will include publicity material and information events. Work is currently ongoing to develop audit tools and training materials. The need for this work has been anticipated and as a result the cost of this (£80,000) is being met within existing resources. This one-off cost represents good value for money as the results of this work will produce a useful resource that will be both available and applicable nationally.

Costs on local authorities

139. The Bill requires that all local authorities establish formally constituted Adult Protection Committees, similar to those which already exist for children and young people. In most cases, it is expected that the local authority will be the lead agency involved in the setting up and running of an APC although the membership of an APC will also include, amongst others, representatives from the police and health boards. Implementation of the Bill provisions is planned for early 2008, so costs relating to the set up and running of APCs and additional staffing are expected to be incurred by local authorities from that date.

140. At a strategic level, there will be costs associated with the establishment of over-arching APCs. It is anticipated that in practice, local Adult Protection Units would act as a bridge between the strategic (APC) level and the operations level. At an operational level, additional

staff will be required to conduct additional investigations and manage subsequent services and support. Given the recent work that has been completed in the Borders, their current model is used here as an illustrative example of the type of costs that are likely to result.

Cost of Adult Protection Committees

141. It is expected that no significant additional costs would be associated with this requirement as support for the Committees, in terms of administration and professional advice, could be included in the costs of the Adult Protection Units described below. There could be some costs associated with the appointment of an independent chair and existing child protection guidelines do recommend that consideration be given to this. The Scottish Borders have appointed independent chairs to both adult and child protection committees. The cost of this is approximately £3,000 per year including expenses (equal to £96,000 nationally if each local authority area had an APC, although this is excessive given that some smaller local authorities are likely to join together to have a single APC covering their area). Additionally, some members of the APC may require to claim a small remuneration in respect of travel and subsistence arrangements.

Cost of Adult Protection Units

142. The Scottish Borders have also established an Adult Protection Unit. This consists of an Adult Protection co-ordinator, a training post and administrative support. The total cost of the Unit is estimated at £150,000 per year, which is shared between the NHS, Scottish Borders Council and Lothian and Borders Police. This provides an estimate of the additional resources that may be required by other authorities across Scotland. If scaled up to cover Scotland on a population pro-rata basis (e.g. the Borders represents approximately 1/50th of the Scottish population), then this element would total in the region of £7,500,000. This is thought to be a fairly realistic estimation of the likely costs which allows for the fact that some larger authorities, with a greater population density or geographical area, may require a larger Adult Protection Unit.

Costs for additional operational staff to undertake investigations and provide appropriate support.

143. At an operational level, it is anticipated that the overall effect of including the new duty to investigate and the powers to intervene, remove and exclude will be to increase the need for care manager posts to conduct investigations and manage subsequent services and support.

144. There may be costs if other staff become involved in the investigative process and any subsequent action arising from the investigation e.g. care providers, although this will not be required in all cases. Some cases may also require the provision of additional support for families following an investigation or assessment of the needs of the individual causing the abuse as they too may require help and support depending on their circumstances. Many of these additional costs will need to be judged on a case-by-case basis. For some individuals, low cost intervention may prove sufficient to meet needs, stabilise the situation and so reduce the risk of further abuse.

145. In order to cost the additional staff who will be required to investigate, assess risk and care manage complex abuse situations we first need to estimate the incidence of referrals. It can

be seen that referral figures in the Scottish Borders are much higher in absolute terms and pro-rata the population than in other parts of the country, reflecting a greatly increased awareness in the Borders since the recent inquiry. However, figures from the wider Lothian and Borders Protection of Vulnerable Adults group show that the number of referrals in East and West Lothian have also risen following internal audits earlier this year. Perth and Kinross Council also saw a rise in referrals following the implementation of an initiative designed to protect vulnerable adults from abuse. This suggests that across the country, as the levels of public and in-service awareness rise, this growth in referrals is likely to be replicated.

146. Taking the Scottish Borders figures as a basis, in 2004/05 they were required to investigate 60 new cases and a further 29 in the first quarter of 2005/06, therefore the incidence of referrals for the Scottish Borders can be approximately calculated as 1 new referral per 1000 of the adult population.

147. The Scottish Executive report "*Review of Care Management in Scotland*", published in 2002, suggests that around 23 complex cases per care manager is a norm (although clearly practice will vary slightly between different authorities). The figures suggest that, by 2008, it would not be unreasonable to anticipate levels in the region of 4,000 new referrals per annum across all age and client groups which will require investigation and, perhaps in some cases, additional protection measures and continuing care management. This would result in an estimated 174 additional care managers across Scotland at a cost of £29,375 per annum each (2005/06 cost). The total cost of which would be £5,111,250 per year. While it is likely that the incidence of referrals will initially rise, as a result of extensive awareness raising within appropriate agencies, figures could be expected to stabilise once all agencies are sufficiently familiar with the procedures.

Training costs

148. There are likely to be some additional training costs although it is difficult to separate out what will actually be additional given that substantial investments in training on joint work, assessment and care management have taken place in recent years. It is expected that there will be a need for additional specialist training on risk assessment, risk management, effective investigation and case conference chairing. Some of the costs of this training could be contained within the costs of the Adult Protection Unit (outlined above) and existing training budgets. The training costs provided below have greater margin of uncertainty than those relating to the set up of APCs and additional staffing described above. This is due to the fact that different agencies will want to approach training in different ways and that some will already be carrying out this type of training. The costs provided are only an illustration of the types of costs that could be expected.

149. This training need will be addressed in a number of ways. For example, the Scottish Social Services Council (SSSC) has agreed to 5 days mandatory training on child and adult protection issues as part of the qualification programme content for social workers. This will ensure that all new staff have a greater awareness of the types of issues involved. Other agencies may choose to take a similar approach.

150. In one model, currently being used in Lothian and Borders, a new post has been created to address inter-agency training issues across the region. Under this model, Lothian and Borders

NHS, the police service and the five local authorities have joined together to create a regional development worker post to undertake common tasks across the region and agencies including the review and updating of procedures and the development and implementation of training across the region.

151. The cost of this post (including accommodation and admin support) is £65,000 per year and it is estimated that around five of these posts would be required to cover Scotland (at a total cost of £325,000 per year). To illustrate some of the specific staff training and development that may be required, the training package that has recently been introduced in a systematic way across Lothian and Borders is described below. This has been undertaken on an inter-agency basis and has targeted staff from a range of services, including criminal justice, children and families, community care, the voluntary and the private sector. It recognises the benefit that can be gained from this multi-agency approach resulting in increased cross over work, networking, communication and an understanding and appreciation of the role of other agencies.

152. Inter-agency training could be divided into 3 levels and the training programme that has been operational in West Lothian since 2004 is given as an illustrative model below showing the actual costs incurred. The programme could be rolled out in stages over a period of time, initially targeting key staff in the relevant agencies.

- Level 1 – aimed at frontline staff incorporating briefing session, awareness raising and signposting. Each session, lasting 2-3 hours, would accommodate approx 40-50 people. Approx cost of £100 per person including day release arrangements, venue, catering and training materials. This may not necessarily cover the cost of a trainer and, if purchased externally, this would cost around £500 per day.
- Level 2 – aimed at managers and those close to or in a position of undertaking and/or leading an investigation incorporating referral through to action planning. This is run as a full day session at an approx cost of £200 per person.
- Level 3 – this is just being considered and will be targeted at the Level 2 audience but will tackle the more skills based training elements such as case conference chairing, joint interviewing, and managing conflict. This is run as a full day session at an approx cost of £300 per person.

153. In addition, consideration should be given to the cost of developing appropriate training and induction packages e.g. CD-ROMs, videos, publicly available information. Lothian and Borders have produced a video (approx cost of £3,500), are in the process of finalising a CD-ROM (approx cost £3500), have published 3,000 posters for Units/Offices/Wards (30p per unit) and have circulated around 30,000 pocket-sized quick guides (20p per unit) for all front line staff. This represents a total cost of approximately £13,900. If each regional development worker post were to produce similar types of training materials for their local area, the total one-off cost would be in the region of £69,500.

154. The potential costs for local authorities described above, based largely on current practice in the Scottish Borders and the wider Lothian and Borders, can be summarised approximately for a national picture as follows:

Adult Protection Units (plus Chair of APC)	£7,596,000 (annual cost)
Investigation, assessment, protection & care management	£5,111,250 (annual cost)
Training & Materials (not including inter-agency training)	£ 394,500 (annual cost for regional development worker post but also includes one-off cost for training materials)
TOTAL	£13,101,750

Costs relating to information exchange

155. In addition to the above, the requirement to share information is likely to result in additional costs arising from the creation and implementation of systems of information exchange and the related costs of conferences, records etc which arise from the consideration, investigation and response to concerns. This could mean minor improvements to existing information sharing systems to ensure that they operate more effectively or establishing new systems.

156. An assessment of those local vulnerable adult protection policies which are already in place has shown that many do include a basis for information-sharing. Indeed, the need for agencies to share appropriate information has been recognised as important in a wider context beyond adult protection and, in some cases, work will already be ongoing to address this need. Specific costs are difficult to quantify at this stage particularly as some methods will be low cost (e.g. ensuring that appropriate protocols are in place to pass on relevant information) while others may incur some costs (e.g. the upgrading or production of appropriate IT systems). It will be for the each authority to decide on the most suitable systems for their organisation.

Costs relating to the protection of moveable property

157. If a local authority applies for a removal order in respect of an adult at risk of abuse, although this is not expected to routinely be the case, then the local authority must take reasonable steps to prevent any property owned or controlled by the removed person being lost or damaged for the duration of the removal order. This may result in some additional costs to the local authority but these will be of a short-term nature and are not expected to be significant. The type of measures envisaged range from those incurring no cost (e.g. ensuring a property is secure and lockfast) to those with minor cost implications (e.g. putting a pet into kennels for a short time).

Cost on courts

158. It is difficult to identify how many additional court cases would arise purely as a result of investigations carried out by Adult Protection Committees particularly given that much of this work is already being done by local authorities and that not all investigations will actually result in criminal prosecutions. The legislation will help to ensure that there is consistency of practice across Scotland. As a result, the additional cost impact on the courts is not expected to be high and could be met from within existing resources. There may be some additional training required for procurator fiscals to assist with decisions regarding prosecutions.

159. There will be some costs related to summary applications for each type of application contained within the legislation including assessment orders, removal orders, banning orders and for any application for variation or recall of these orders. This would cost approximately £31 per case which includes staff and judicial salaries and running costs. This is not expected to place

significant additional costs on the court service particularly as the vast majority of summary applications to the court go undefended.

Costs on other bodies, individuals and businesses

Police

160. The increase in number of referrals, arising from the implementation of the adult protection measures, may also require additional police resources, from 2008 onwards, in order to assist with investigations and enquiries (although it should be remembered that not all referrals will necessarily result in a criminal investigation). Based on the assumption of one referral per 1000 of the adult population, Dumfries and Galloway Constabulary have estimated that the resulting number of cases together with associated case conference and strategy meeting attendance would equate to the work of two additional full-time members of staff - at a total cost of around £60,000 per year (£30,000 per year for each officer) for suitably experienced constables.

161. It is likely that some officers specialising in this work would be based within the existing Family Protection Unit and would be supervised by a Detective Sergeant as part of the role which has primary responsibility for the domestic abuse unit – at a cost of £18,000 for half the cost of a supervisor. Additional costs of £2,500 are estimated for office accommodation and set-up costs. Therefore, total additional costs would equal £80,500 and if this increase in staffing was replicated nationally (i.e. across eight forces) then an approximate cost would be £644,000 per year. This cost is thought to be a fairly accurate representation of the actual costs that will be incurred. In addition, forces, particularly those based in rural areas, may require additional transport costs which may equate to an additional vehicle at a cost of approximately £10,500 together with associated running costs.

162. While the cost of criminal enquiries will be borne from the police budget, if an increase in referrals/investigations is assumed, there may be an associated rise in the wider costs as well (e.g. medical examinations, forensic lab tests, expert witnesses). Complex or serious enquiries may require additional staff to be brought in to provide a robust and proportionate response. This is not possible to quantify as each referral will be dealt with on a case-by-case basis with varying levels of investigation and intervention required.

163. All forces contribute to the cost of training at the Scottish Police College. Whilst there is no existing course looking specifically at vulnerable adult issues, as part of developing investigatory skills, officers would have to attend initial detective officer training for four weeks as a minimum. There would also be a requirement to attend any future identified specialist training (possibly as part of some inter-agency training of the type described at paragraph 151).

Health authorities

164. The additional financial impact on health authorities as a result of the adult protection measures is judged to be low. Primary care staff, such as GPs, will continue to have a role in making sure appropriate referrals are made and appropriate information shared for the benefit of their patients and so it is important that they are involved in specialist multi-agency training. They may also, in some cases, be involved in subsequent investigations, case conferences and in

supporting adult protection plans. However, GPs do already carry out these functions and so this is not expected to have a significant additional cost impact.

Private business and the voluntary sector

165. Initial assessments for the independent care sector indicate that the main impact is likely to be on the need to determine the appropriateness of making a referral for an investigation to take place and then post-investigation by putting the necessary supports in place, if required. This could only be determined on a case-by-case basis and costs could range from minimal to significant, however, many of these costs would not be additional as they would form part of a range of existing processes and support.

166. On occasion, representatives from the voluntary and/or private sector may be involved in attending adult protection case conferences, professional concern meetings and helping to support and monitor adult protection plans and there may be a cost element associated with this e.g. administration costs to prepare for meetings and travel costs.

AMENDMENTS TO ADULTS WITH INCAPACITY (SCOTLAND) ACT 2000

167. The Bill amends the Adults with Incapacity (Scotland) Act 2000 (the 2000 Act) to:

- Improve access to and take-up of Part 3 of the Act (intromission with funds). This includes: more flexible arrangements for countersigning of applications; more flexible arrangements for managing the bank accounts of adults with incapacity; authority to open a bank account for an adult with incapacity as only those with bank accounts can benefit from the provisions; the provision of authority for access to confidential information about an adult's bank account to enable an application to be taken forward – this is a major barrier at the moment because of restrictions on the banks. We also propose to extend access to intromission with funds to organisations as well as individuals so that adults with incapacity without family members/other individuals to act for them will be able to benefit from this provision.
- Allow sheriffs the discretion to dispense with caution (bonds of insurance) for guardianships and intervention orders, which can be expensive and has been difficult for some applicants to find. Other provisions will address difficulties which have arisen with the operation of this part of the 2000 Act, including inflexibility in the requirements for reports to accompany applications to court.
- Make limited changes to powers of attorney relating to certification that the granter is of sound mind and evidencing of incapacity for the power to become effective.
- Broaden the provision for an adult's nearest relative to be displaced to allow for an application by a person with an interest in the adult and also for an order to be made on the court's own initiative. There is provision in the Act, but the only person who can apply for an order to do this is the adult with incapacity him/herself. This is not reasonable and is out of step with provisions in the Mental Health (Care and Treatment)(Scotland) Act
- There are also a number of technical and minor amendments.

The proposed changes do not deviate from the original policy intention of the 2000 Act but aim to ensure that the legislation is better able to meet its objectives by simplifying and streamlining the protections for adults with incapacity.

168. Uptake of intromission with funds has been less than 200 people per year. With only this level of applications per year, there must be many adults who are not benefiting currently from this option who could do so. Powers of attorney are one of the early successes of the Act with over 64,500 already registered with the Public Guardian. In addition 2,355 guardianship orders and 522 intervention orders were granted in the period April 2002 to December 2005.

Costs on the Scottish Administration

Costs on the Office of the Public Guardian

169. The enhanced scheme for intromission with funds will incur additional costs for the Office of the Public Guardian, which administers the scheme and is part of the Scottish Courts Service. An increase in fee will therefore be necessary to maintain progress towards meeting the objective that the scheme should be self financing. The current fee for an application under Part 3 is £35. This has not been increased since its introduction several years ago. There is also a renewal fee of £35. Financial modelling by the Office of the Public Guardian points to a future fee of £60 covering the 3 year period with a renewal fee at the end of that period of around £30. The increase is likely to be from a particular date to coincide with the introduction of the remodelled scheme reflecting the additional input that will be required from the Office of the Public Guardian. As the additional costs to the Office of the Public Guardian will be met via an increase in fees, there will be no net cost arising. No other changes under the Act involving the Office of the Public Guardian will incur any significant costs.

Costs on local authorities

170. The amendments do not impose new duties on local authorities and should enable them to carry out existing duties more effectively; there are therefore unlikely to be any significant additional staffing costs. It is anticipated that by making intromission with funds more accessible, fewer financial guardianships will need to be applied for by local authorities. Applying for guardianship is considerably more expensive than applying for intromission with funds under Part 3 of the 2000 Act. In addition, local authorities already manage funds for adults with incapacity through Department for Work and Pensions (DWP) appointeeships. It is envisaged that they will be able to build on the processes they have in place for managing these procedures for the intromission with funds scheme.

Costs on other bodies, individuals and businesses

Costs on business

171. The amendment to empower the Public Guardian to authorise applicants to request the necessary information from the adult's bank or banks for the purpose of completing the intromission with funds application; and to authorise banks to release the requested information, will have implications for banks. Currently banks cannot release this information because they are bound by the banks' common law duty of customer confidentiality, the Data Protection Act 1998 and by the ruling in *Tournier v National Provincial and Union Bank of England* (1924).

This amendment will allow the banks to legally release information where it is requested under the 2000 Act. The banks support this change. It is something which they themselves have been pressing for because they do not wish adults with incapacity to be disadvantaged in relation to proper management of their finances. Banks may charge for the provision of information and other administrative tasks associated with such requests and any charges levied will be in accordance with the relevant bank's charging policy.

172. Other amendments will lead to more flexible arrangements for managing the bank accounts of adults with incapacity such as combining multiple accounts, the transfer of funds between accounts and the naming of reserve withdrawers. The Office of the Public Guardian is working closely with banks on these changes. Any charges to be levied will be made in accordance with the relevant bank's charging policy.

Costs on the voluntary sector

173. Many voluntary sector organisations working with adults with incapacity and their carers already provide a care package. Voluntary sector community care providers are often contracted by local authorities to provide financial management support to service users and some also act as DWP corporate appointees for service users. Established practice and accountability systems are therefore already in place which could be built on for the management of intromission with funds. This should not incur additional costs for these providers.

Costs on individuals

174. At present adults with incapacity will usually bear the costs of measures taken under the legislation for their protection. In general, the amendments do not increase the likely costs on individuals and may produce savings e.g. use of intromission with funds rather than guardianship (which is a far more costly and restrictive measure), sheriff's discretion to waive need for caution. As detailed at paragraph 169, financial modelling by the Office of the Public Guardian, in relation to the intromission with funds scheme, suggests a likely future fee of £60 covering the 3 year period with a renewal fee at the end of that period of around £30. This cost will be borne by the adult with incapacity.

175. The intromission with funds scheme does not allow payment for managing an adult's money under intromission with funds. This is because it was designed to help family members and friends to provide support for an adult whose assets are not substantial. We have indicated that we are not minded to change these arrangements if the scheme is extended to organisations. However, out-of-pocket expenses (e.g. to pay for transport to visit the adult) may be paid from the adult's funds if they have been anticipated in the application to the Public Guardian, and may include costs associated with making the application.

176. Under the 2000 Act, applications may be made for advice and assistance to enable people to seek advice from a solicitor on any legal aspect of the Act. A regulatory change required to allow advice and assistance to be assessed on the resources of the adult with incapacity, (not the applicant, as previously), came into effect on 30 June 2005. Civil Legal Aid, subject to the usual statutory tests being satisfied, is also available for all proceedings under the 2000 Act. There have been some consultations held with interested stakeholders to ascertain how best to bring forward legislative changes to allow free legal aid to be available for welfare guardianships. The

outcome of these consultations was positive. The exact details of how such changes will be implemented are being taken forward. Draft regulations implementing such changes will be fully discussed with the Law Society of Scotland.

Summary

177. The proposals do not change the present general position that adults with incapacity bear the costs of measures taken under the legislation for their protection. The proposals will impact on a number of different bodies but are likely to have only a negligible effect on business, charities and the voluntary sector. They do not impose any significant new burden on local authorities but should assist them to carry out their existing duties. The proposed changes to the 2000 Act, detailed in the consultation paper *Improving with Experience*, are designed to streamline the processes, reduce bureaucracy and barriers to access. They received overwhelming support during consultation and no significant cost implications were raised. Many of the changes will be cost neutral and may in fact result in cost saving e.g. intromission with funds instead of financial guardianship, dispensing with caution.

AMENDMENTS TO THE SOCIAL WORK (SCOTLAND) ACT 1968 IN RESPECT OF DIRECT PAYMENTS

178. The intent is to make provision for the delegation of functions to local authorities so that they can exercise flexibility in designing a direct payments care package. For example, regulations made under 12B of the 1968 Act could provide that local authorities have the flexibility to allow direct payments to be used in exceptional circumstances only to secure such services from a category of close relative that is normally prevented.

Costs on the Scottish Administration

179. There will be no additional costs to the Scottish Administration arising from this amendment.

Costs on local authorities

180. No additional costs to local authorities will arise as this amendment simply introduces greater flexibility and formalises the position that local authorities currently operate.

Costs on other bodies, individuals and businesses

181. There will be no costs to other bodies, individuals or businesses arising from this amendment.

AMENDMENTS TO THE SOCIAL WORK (SCOTLAND) ACT 1968 IN RESPECT OF ORDINARY RESIDENCE

182. The purpose of the proposed changes is to clarify and update the legislation in the Social Work (Scotland) Act 1968 determining which local authority is responsible for providing a person's community care services. The Executive's long established policy is that where a local authority assesses care needs and arranges services for a person living in their area, it should

retain responsibility, even when it places that person in a care home in another local authority area. Current legislation does not support the policy intent and primary legislation is needed to give backing to the policy.

183. Two changes are proposed. The first is for provision which ensures that a placing authority retains all responsibility for community care services for persons placed by them. The second is for a power to amend or modify the 1968 Act, to regulate how it should apply to persons placed into Scottish local authority areas by other UK countries.

Costs on the Scottish Administration

184. There will be no additional costs to the Scottish Administration arising from this amendment.

Costs on local authorities

185. The amendments are designed to reduce the administrative burden on local authorities. The changes will not put pressure on the totality of local authority expenditure. There would however be financial implications for individual local authorities were legislation not put in place, as a consequence of the perverse financial incentives for local authorities to place people outwith their area to avoid funding them.

Costs on other bodies, individuals and businesses

186. The amendments will have no impact on other bodies, individuals and businesses as they reflect current practice.

AMENDMENTS TO THE SOCIAL WORK (SCOTLAND) ACT 1968 IN RESPECT OF LIABLE RELATIVES

187. An individual's contribution towards the care home fees paid for them by the local authority is normally calculated solely on the basis of his or her own resources. However, section 42 and 43 of the National Assistance Act 1948 state that a husband is liable to maintain his wife and children and the same duty applies equally to a woman who is liable to maintain her husband and children. This is known as the "liable relatives rule" and the amendment to the Social Work (Scotland) Act 1968 would be to remove application of the liable relatives rule from Scottish care charging legislation.

Costs on the Scottish Administration

188. There will be no additional costs to the Scottish Administration arising from this amendment.

Costs on local authorities

189. In response to a consultation on the removal of the liable relatives rule conducted in July 2003, only 2 local authorities said that they used the rule. One had no live cases in 2003 but

expressed some concern about the loss of a potential source of revenue; the other was collecting a total of just over £15,000 per annum but even so welcomed the proposal to remove the rule. The majority of the respondents positively welcomed the proposed removal of the rule and comments included references to: the cost of collection outweighing any financial benefit; the rule being unworkable because of difficulties of obtaining financial details of the liable relative; removal of inconsistencies; removal of distress for the few individuals concerned who are often elderly. The removal of the rule was linked to the introduction of pension credits and the consultation letter issued in July 2003 clearly presented the proposed removal of the liable relative rule as part of the Scottish Executive's overall cost neutral response to the pension credit and this was not challenged at that time. Pension Credit has more generous rules for assessing people's capital than the benefits that it replaced. This has meant increased income to care home residents, resulting in an increase of approximately £700,000 per year in charging income to local authorities in Scotland. This increase is considered to more than compensate for the cost of revoking the liable relatives rule.

190. A circular was issued in April 2004 advising local authorities of the Ministers intention to remove the rule at the first appropriate legislative opportunity in the light of the clear support for the change received in response to the consultation. That circular could not prevent authorities from applying the rule before the legislation was revoked, but it did recommend they consider exercising their discretion not to apply it until the legislation was changed.

Costs on other bodies, individuals and businesses

191. The amendment will have no impact on other bodies or businesses. The application of the liable relatives rule has in the past caused great distress. Spouses who are often elderly can be put under considerable pressure to reveal their income and make contributions. Where contributions are collected, the amounts can vary enormously. The amendments will therefore reduce the costs and distress for some individuals.

AMENDMENTS TO THE MENTAL HEALTH (SCOTLAND) ACT 2003

192. Provision was made when implementing the 2003 Act for the establishment and running costs of the Mental Health Tribunal. This amendment seeks to ensure that the 2003 Act meets the original policy intention of Act and as such the costs of these reviews are already included in the estimates of the Tribunals costs. There will, therefore, be no additional costs arising from this amendment.

Costs on the Scottish Administration

193. There will be no additional costs to the Scottish Administration arising from this amendment.

Costs on local authorities

194. There will be no additional costs to local authorities arising from this amendment.

These documents relate to the Adult Support and Protection (Scotland) Bill (SP Bill 62) as introduced in the Scottish Parliament on 30 March 2006

Costs on other bodies, individuals and businesses

195. There will be no costs to other bodies, individuals or businesses arising from this amendment.

SUMMARY OF ADDITIONAL COSTS ARISING FROM THE BILL

Policy Area	Costs on Scottish Administration	Costs on Local Authorities	Costs on Other Bodies
Adult Protection Measures	Publicity & awareness raising – £80,000 – this one-off cost will be met from existing resources - <i>see para 138</i>	<p>Adult Protection Committees - £96,000 annually – <i>see para 141</i></p> <p>Adult Protection Units - £7.5m annually – <i>see para 142</i></p> <p>Investigation, assessment, protection & care management - £5,111,250 annually – <i>see para 147</i></p> <p>Training & awareness raising (annually including one –off material costs) = £394,500 – <i>see para 151 & 153</i></p> <p>Staff training: <i>see para 152</i> Level 1 - £100 per person Level 2 - £200 per person Level 3 - £300 per person</p>	<p>Courts Negligible – <i>see para 158 & 159</i></p> <p>Police Increased staffing - £644,000 annually; and in rural areas possibly additional transport requirements equating to an additional car at an approximate cost of £10,500 together with additional running costs – <i>see para 161</i></p> <p>Health Authorities Minimal additional costs – <i>see para 164</i></p> <p>Private Business and Voluntary Sector Minimal additional costs – <i>see para 165 & 166</i></p>
Amendments to Adults with Incapacity (Scotland) Act 2000	Office of the Public Guardian – will incur some costs but these will be met through an increase in fees – <i>see para 169</i>	None – <i>see para 170</i>	<p>Banks None – <i>see para 171</i></p> <p>Voluntary Sector None – <i>see para 173</i></p> <p>Individuals Likely increase in fee to £60 (covering a 3-year period) which will be partly balanced by the reduced renewal fee of £30 – <i>see para 174</i></p>

These documents relate to the Adult Support and Protection (Scotland) Bill (SP Bill 62) as introduced in the Scottish Parliament on 30 March 2006

EXECUTIVE STATEMENT ON LEGISLATIVE COMPETENCE

196. On 30 March 2006, the Minister for Health and Community Care (Mr Andy Kerr MSP) made the following statement:

“In my view, the provisions of the Adult Support and Protection (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

197. On 30 March 2006, the Presiding Officer (Right Honourable George Reid MSP) made the following statement:

“In my view, the provisions of the Adult Support and Protection (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

These documents relate to the Adult Support and Protection (Scotland) Bill (SP Bill 62) as introduced in the Scottish Parliament on 30 March 2006

ADULT SUPPORT AND PROTECTION (SCOTLAND) BILL

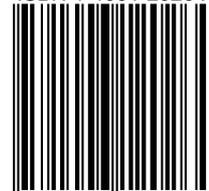
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