

ADULT SUPPORT AND PROTECTION (SCOTLAND) ACT 2007

EXPLANATORY NOTES

THE ACT – AN OVERVIEW

Part 1

Protection of Adults at Risk of Harm

Banning orders

Section 19 – 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 any specified person 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 the subject is being 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 of the order, the adult at risk, the subject of the order and any other person with an interest in the adult at risk's well-being or property.
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 doing so will protect an adult at risk from serious harm and will not prejudice any person affected by the disapplication (see section 41(2), Applications: procedure).
32. The sheriff has the power to attach a power of arrest to any banning order (see section 25). Subsection (5) states that the period of the banning order may not exceed 6 months.