

# **ADULT SUPPORT AND PROTECTION (SCOTLAND) ACT 2007**

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## **EXPLANATORY NOTES**

### **THE ACT – AN OVERVIEW**

#### **Part 1**

#### **Protection of Adults at Risk of Harm**

#### **Protection orders and visits: supplementary**

#### ***Section 40 – Urgent cases***

61. 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 7. However, they can only do this if they think that it is not practicable to apply to the sheriff and an adult at risk is likely to be harmed if there is a delay in granting the order or warrant.
62. 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 harmed 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 harmed if he or she is not moved (i.e the provision contained at section 15(1) is also satisfied).
63. Where an application is made to a justice of the peace for a removal order then subsections (3) to (7) of section 41 do not apply (see below).
64. 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 7, if satisfied that it is not practicable to apply to the sheriff and that an adult at risk is likely to be harmed 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.
65. Subsection (7) places a reduced time limit on the duration of removal orders granted by a justice of the peace. The order to remove the person must specify a period of 12 hours, beginning when the order is made, as the period within which that person may be moved. The order must also specify a period of no longer than 24 hours as the period within which it is to take effect.
66. A warrant for entry granted under this section expires 12 hours after it is granted (subsection (8)).