

ADULT SUPPORT AND PROTECTION (SCOTLAND) ACT 2007

EXPLANATORY NOTES

THE ACT – AN OVERVIEW

Part 1

Protection of Adults at Risk of Harm

Other provisions

Section 48 – Code of practice

76. 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 49 – Obstruction

77. 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 10 (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 under this section.

Section 50 – Offences by bodies corporate etc.

78. 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 under this Part.

Section 51 – Appeals

79. There can be no appeals made against the granting of an assessment order, a removal order or a warrant for entry.
80. A decision of a sheriff to grant, or refuse to grant a banning order or temporary banning order may be appealed to the sheriff principal. However an appeal against the granting

of, or a refusal to grant, a temporary banning order is competent only with the leave of the sheriff.

81. The sheriff principal's decision on an appeal under subsection (2) may be appealed to the Court of Session. However, an appeal relating to a temporary banning order is competent only with the leave of the sheriff principal.
82. Where a sheriff principal decides to quash a banning order or temporary banning order, the order will continue to have effect until either the end of the period for appeal (if no appeal is made) or, where an appeal is made, when it is abandoned or where the decision is confirmed. Alternatively, the order will continue to have effect until the order otherwise expires by virtue of section 19(5) or 21(4) or, in the case of a temporary banning order, the sheriff principal refuses leave to appeal against the decision to quash the order.

Section 52 – Persons authorised to perform functions under this Part

83. 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.
84. 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 made by the Scottish Ministers.

Section 53 – Interpretation of Part 1

85. This section lists the meaning of various terms used throughout this Part.
86. In particular, the section defines the meaning of 'harm'. 'Harm' is defined as including all harmful conduct and, in particular, conduct which causes physical or psychological harm, unlawful conduct which appropriates or adversely affects property, rights or interests (e.g theft, fraud, embezzlement or extortion), or conduct which causes self-harm. It should be noted that 'conduct' is also defined in this section as including neglect and other failures to act.