

EXECUTIVE NOTE

THE ADULT SUPPORT AND PROTECTION (SCOTLAND) ACT 2007 (RESTRICTION ON THE AUTHORISATION OF COUNCIL OFFICERS) ORDER 2008 (S.S.I. 2008/306)

The above instrument was made in exercise of the powers conferred by sections 52(1) and 76(1) of the Adult Support and Protection (Scotland) Act 2007 (“the Act”). The instrument is subject to negative resolution procedure.

Policy Objectives

Section 52(1) of the Act enables Ministers to restrict, by order, the type of individual who may be authorised by a council to perform council officer functions under the Act.

The Order may prescribe the appropriate knowledge, skills and experience necessary to enable a person to be authorised as a council officer to undertake the functions set out in the Act under sections 7 – 10 (visits, interviews and examination of records), 11 (assessment orders), 14 (removal orders), 16 (right to move adult at risk) and 18 (protection of moved person’s property).

In considering who might be best able to undertake the council officer functions set out in the Act, we have acknowledged the need to create a system that is professional and flexible in its approach. Many councils have moved to multi-disciplinary working, with initial visits and inquiries undertaken by social workers, social services workers, occupational therapists or nurses, depending on a person’s circumstances and the Order reflects this. Given the nature of orders made under sections 11, 14, 16 and 18 of the Act however, the policy intention is that a council officer with responsibility for pursuing or acting on any order made under these sections must have a higher level of qualification and experience than is necessary to carry out functions under sections 7 to 10 of the Act.

The purpose of the instrument is to prescribe the classes of persons who may perform the functions of a council officer.

In order to perform the functions of a council officer under sections 7 to 10 of the Act, a person requires to be registered as a social worker or social services worker in the relevant part of the SSSC register, or requires to be registered as an occupational therapist in the register maintained under article 5(1) of the Health Professions Order 2001, or requires to be a nurse.

Authorisation to perform the functions of a council officer under section 11, 14, 16 or 18 of the Act is restricted to registered social workers, occupational therapists and nurses.

All those performing council officer functions are also required to have at least twelve months post qualifying experience of identifying, assessing and managing adults at risk.

A council may withdraw the authority of a person to perform the functions of a council officer if the person no longer meets the requirements specified in this Order.

Consultation

Policy on this instrument was consulted on formally in the “Consultation on the code of practice for Part 1 of the Adult Support and Protection (Scotland) Act 2007 (ASP) and associated regulations on performing council officer functions” published during December 2007. Further consultation has also taken place by way of discussions with the Act Implementation Group, comprised of a national group of key stakeholders working collaboratively with the Scottish Government, and the Scottish Social Services Council.

Financial Effects

The instrument has implications for local authorities in respect of additional frontline social work staff who will be required to investigate, assess risk and care manage complex situations. The Scottish Government and COSLA jointly agreed that additional funding be made available to local authorities based on the authority population as a proportion of the Scottish population over 16 years of age.

Scottish Government Health Directorates
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