

ADULT SUPPORT AND PROTECTION (SCOTLAND) ACT 2007

EXPLANATORY NOTES

THE ACT – AN OVERVIEW

Part 1

Protection of Adults at Risk of Harm

Protection orders and visits: supplementary

Section 35 – Consent of adult at risk

51. 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.
52. 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 a 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, and that there are no steps which could reasonably be taken with the adult's consent which would protect the adult from the harm which the order or action is intended to prevent.
53. 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 harm 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 harm if he or she did not have confidence and trust in that person.
54. Subsection (6) makes clear that nothing in this Act 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 36 – Visits: supplementary provisions

55. This section sets out some supplementary provisions in relation to visits. Visits may only be carried out at reasonable times and a council officer must state the purpose of the visit and produce evidence of his or her authority to visit.
56. 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 37) 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 49(1).

Section 37 – Warrants for entry

57. 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 authorises the constable to use reasonable force in order to achieve the object of the visit.
58. 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 38 – Criteria for granting warrants for entry: section 7 visits

59. This section states that a sheriff who grants an assessment order (under section 11) must also grant a warrant for entry in relation to any visit taking place under section 7. Otherwise (i.e. where no assessment order made), the sheriff may only grant a warrant for entry in relation to a visit under section 7, 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 39 – Duty to grant warrants for entry: removal orders

60. This section states that a sheriff who grants a removal order (under section 14) must also grant a warrant for entry in relation to any visit taking place under section 16 (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 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)).

Section 41 – Applications: procedure

67. This section applies to applications for an assessment order, a removal order, a banning order, a temporary banning order or the variation or recall of a removal order, a banning order or a temporary banning order.
68. 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.
69. However, subsection (2) allows the sheriff not to apply the provisions described in paragraph 67 above in any application if satisfied that doing so will protect an adult at risk from serious harm or will not prejudice any person affected by the disapplication. In addition, the provisions in sections 15(3) and 19(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.