



Adult Support and Protection (Scotland) Act 2007

2007 asp 10

PART 1

PROTECTION OF ADULTS AT RISK OF HARM

Other provisions

48 Code of practice

- (1) The Scottish Ministers must prepare a code of practice containing guidance about the performance of functions under this Part by—
 - (a) councils and their officers, and
 - (b) health professionals.
- (2) The Scottish Ministers must review the code of practice from time to time and may, following such a review, revise it.
- (3) Before preparing the code of practice, and when reviewing it, the Scottish Ministers must consult—
 - (a) such councils (or persons representing councils),
 - (b) such health professionals (or persons representing health professionals), and
 - (c) such other persons appearing to them to be interested in the code of practice, as they think fit.
- (4) The Scottish Ministers must publish the code of practice and any revisions to it.
- (5) Councils, council officers and health professionals performing functions under this Part must, if relevant, have regard to the code of practice.

49 Obstruction

- (1) A person commits an offence by, without reasonable excuse, preventing or obstructing any other person from doing anything which the other person is authorised or entitled to do by virtue of—

Status: This is the original version (as it was originally enacted).

- (a) an assessment order,
 - (b) a removal order,
 - (c) a banning order,
 - (d) a temporary banning order,
 - (e) a warrant for entry, or
 - (f) any provision of this Part.
- (2) A person commits an offence by, without reasonable excuse, refusing or otherwise failing to comply with a requirement made under section 10.
- (3) A person who is guilty of an offence under this section is liable, on summary conviction—
- (a) to a fine not exceeding level 3 on the standard scale,
 - (b) to be imprisoned for a term not exceeding 3 months, or
 - (c) to both such a fine and such imprisonment.
- (4) Nothing done by a person whose well-being or property another person is attempting to investigate or safeguard constitutes an offence under this section.

50 Offences by bodies corporate etc.

- (1) Where—
- (a) an offence under this Part has been committed by—
 - (i) a body corporate,
 - (ii) a Scottish partnership, or
 - (iii) an unincorporated association other than a Scottish partnership, and
 - (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
 - (i) a relevant person, or
 - (ii) a person purporting to act in the capacity of a relevant person,
- that person as well as the body corporate, partnership or, as the case may be, unincorporated association is guilty of the offence and is liable to be proceeded against and punished accordingly.
- (2) In subsection (1), “relevant person” means—
- (a) in relation to a body corporate other than a council—
 - (i) a director, manager, secretary or other similar officer of the body,
 - (ii) where the affairs of the body are managed by its members, a member,
 - (b) in relation to a council, an officer or member of the council,
 - (c) in relation to a Scottish partnership, a partner, and
 - (d) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

51 Appeals

- (1) No appeal is competent against the granting of—
- (a) an assessment order,
 - (b) a removal order, or
 - (c) a warrant for entry.

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- (2) Any decision of a sheriff to grant, or to refuse to grant, a banning order or temporary banning order may be appealed to the sheriff principal.

But an appeal under this subsection against the granting of, or a refusal to grant, a temporary banning order is competent only with leave of the sheriff.

- (3) The sheriff principal's decision on an appeal under subsection (2) may be appealed to the Court of Session.

But an appeal under this subsection against a decision relating to a temporary banning order is competent only with leave of the sheriff principal.

- (4) Where a sheriff principal decides to quash a banning order or temporary banning order, the order concerned is (despite the sheriff principal's determination) to continue to have effect until—

- (a) the end of the period during which the decision to quash the order may be appealed to the Court of Session (if no such appeal is made),
- (b) where such an appeal is made, the day on which—
 - (i) the appeal is abandoned, or
 - (ii) the Court of Session confirms the sheriff principal's decision to quash the order, or
- (c) any other day on which—
 - (i) the order otherwise expires by virtue of section 19(5) or 21(4), or
 - (ii) in the case of a temporary banning order, the sheriff principal refuses leave to appeal against the decision to quash the order.

52 Persons authorised to perform functions under this Part

- (1) The Scottish Ministers may by order restrict the type of individual who may be authorised by a council to perform functions given to council officers by virtue of this Part.
- (2) For the purposes of this Part, a person is a “health professional” if the person is—
- (a) a doctor,
 - (b) a nurse,
 - (c) a midwife, or
 - (d) any other type of individual described (by reference to skills, qualifications, experience or otherwise) by order made by the Scottish Ministers.

53 Interpretation of Part 1

- (1) In this Part—
- “adult” means an individual aged 16 or over,
 - “adult at risk” has the meaning given by section 3,
 - “Adult Protection Committee” means a committee established under section 42,
 - “assessment order” has the meaning given by section 11,
 - “attorney” means a continuing attorney or welfare attorney (within the meaning of the Adults with Incapacity (Scotland) Act 2000 (asp 4)),
 - “banning order” has the meaning given by section 19,
 - “Care Commission” means the Scottish Commission for the Regulation of Care,

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- “child” means an individual under the age of 16,
- “conduct” includes neglect and other failures to act,
- “council” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39); and references to a council in relation to any person known or believed to be an adult at risk are references to the council for the area which the person is for the time being in,
- “council officer” means an individual appointed by a council under section 64 of the Local Government (Scotland) Act 1973 (c. 65) (but “council officer” must, where relevant, also be interpreted in accordance with any order made under section 52(1)),
- “court day” means a day which is not—
- (a) a Saturday,
 - (b) a Sunday, or
 - (c) a court holiday prescribed for the relevant court under section 8 of the Criminal Procedure (Scotland) Act 1995 (c. 46),
- “doctor” means a fully registered person within the meaning of the Medical Act 1983 (c. 54),
- “fiscal” means the procurator fiscal,
- “harm” includes all harmful conduct and, in particular, includes—
- (a) conduct which causes physical harm,
 - (b) conduct which causes psychological harm (for example: by causing fear, alarm or distress),
 - (c) unlawful conduct which appropriates or adversely affects property, rights or interests (for example: theft, fraud, embezzlement or extortion),
 - (d) conduct which causes self-harm,
- “health professional” has the meaning given by section 52(2),
- “midwife” means an individual registered in the register maintained under article 5 of the Nurses and Midwives Order 2001 (S.I. 2002/253) by virtue of qualifications in midwifery,
- “nearest relative” has the meaning given by section 254 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13),
- “nurse” means an individual registered in the register maintained under article 5 of the Nurses and Midwives Order 2001 (S.I. 2002/253) by virtue of qualifications in nursing,
- “officer in charge” has the meaning given by section 29(1)
- “parental responsibilities and rights” has the same meaning as in the Children (Scotland) Act 1995 (c. 36),
- “prescribed” means prescribed by rules of court,
- “primary carer” has the same meaning as in the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13),
- “relevant Health Board”, in relation to any council, means any Health Board or Special Health Board constituted by order under section 2 of the National Health Service (Scotland) Act 1978 (c. 29) which exercises functions in relation to the council’s area,
- “removal order” has the meaning given by section 14,
- “specified”, in relation to any order or warrant, means specified in the order or warrant,
- “temporary banning order” has the meaning given by section 21,

“visit” has the meaning given by subsection (2),

“warrant for entry” has the meaning given by section 37.

- (2) References in this Part to visiting any place are, unless the contrary intention appears, to be read as references to a council officer exercising a right of entry conferred by section 7, 16 or 18 (including any such right which is authorised by a warrant for entry).