

# **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 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.