

ADULT SUPPORT AND PROTECTION (SCOTLAND) ACT 2007

EXPLANATORY NOTES

THE ACT – AN OVERVIEW

Part 1

Protection of Adults at Risk of Harm

Introductory

Section 1 – General principle on intervention in an adult’s affairs

4. This section sets out the general principle on intervention in an adult’s affairs. It applies for the purposes of section 2 of the Act only. The general principle states that a person may intervene or authorise an intervention in an adult’s affairs, only where the person is satisfied that the intervention will provide benefit to the adult and that it is the least restrictive option of those that are available which will meet the objective of the intervention.

Section 2 – Principles for performing Part 1 functions

5. Any public body or official who carries out any functions under this Part must give consideration to the general principle set out above, the feelings of the adult at risk (as far as they can be ascertained) and the views of other significant individuals with an interest who are known to the public body or office-holder.
6. Consideration should also be given to the importance of the adult at risk participating as fully as possible by making sure that appropriate information and support is provided. The adult at risk should not be treated any less favourably than any other adult in a comparable situation and due regard should be given to the adult’s abilities, background and characteristics.

Section 3 – Adults at risk

7. This section defines ‘adults at risk’. These are adults (aged 16 or over) who are unable to safeguard their own well-being, property, rights or other interests, are at risk of harm, **and** because they are affected by disability, mental disorder, illness or physical or mental infirmity, are more vulnerable to being harmed than adults who are not so affected. ‘Harm’ is defined in section 53.

Inquiries

Section 4 – Council’s duty to make inquiries

8. This section places a duty on councils to make inquiries about an adult’s well-being, property or financial affairs in certain circumstances. These circumstances are where the

person falls within the definition of an adult at risk, and the council knows or believes it may have to intervene in order to protect the adult's well-being, property or financial affairs.

Section 5 – Co-operation

9. This section addresses the requirement for public bodies to co-operate with the council and each other, where harm is known or suspected.
10. Subsection (1) lists the public bodies as the Mental Welfare Commission for Scotland, the Scottish Commission for the Regulation of Care (the Care Commission), the Public Guardian, all councils, chief constables of police forces and the relevant Health Board. It also gives Scottish Ministers power to prescribe other public bodies or office-holders in regulations.
11. Subsection (2) requires these public bodies to co-operate both with each other and with the council making inquiries where this is likely to assist the council to make inquiries in accordance with the duty described in section 4 above. The duty to co-operate is subject to any other functions the bodies may have.
12. If one of the public bodies listed above knows or believes an adult is at risk from harm and believes action is required to protect that person from harm, then subsection (3) requires them to report the facts and circumstances to the council for the area in which it considers the person to be.

Section 6 – Duty to consider importance of providing advocacy and other services

13. This section applies where, after making inquiries under section 4, a council considers that it needs to intervene in order to protect an adult at risk from harm. It requires the council to have regard to the importance of the provision of appropriate services (including, in particular, independent advocacy services) to the adult concerned.

Investigations

Section 7 - Visits

14. This section enables relevant council officers, as defined in section 53, to enter premises to make the necessary investigations which will establish whether or not further action is needed to protect an adult at risk from harm.

Section 8 – Interviews

15. This section permits a council officer and anyone accompanying the officer to interview an adult in private within the place being visited under section 7. This right exists regardless of whether or not the sheriff has granted an assessment order. In circumstances where it is not practicable to carry out a private interview in the place of the visit and the council officer requires to take the person to other premises, an assessment order must be obtained from a sheriff (see section 11, Assessment Orders). Subsection (2) states that an adult interviewed under this section is not required to answer any question and the adult must be informed of this fact before the interview starts.

Section 9 – Medical examinations

16. This section allows a health professional, as defined in section 52(2), to conduct a private medical examination of the adult at risk in the place being visited under section 7. Where an assessment order is obtained (see section 11, Assessment Orders), the person may be taken to another place for a medical examination. This may be necessary if, for example, a health professional is not present during the initial visit, or where it is not practicable to conduct a private medical examination. Whether action is

taken under this section or in pursuance of an assessment order, the adult at risk must be informed of his or her right to refuse to be examined before the examination is carried out. A health professional is defined in section 52(2) as a doctor, a nurse, a midwife or any other suitably qualified individual described, by reference to appropriate skills, qualifications and experience, in an order made by the Scottish Ministers.

Section 10 – Examination of records

17. This section gives council officers the right to require those holding health, financial or any other records relating to an adult known or believed to be at risk to produce them for inspection, either at the time of the visit or subsequently, if this is required to establish whether further action is required to protect that adult from harm. Records may be examined by the council officer or an appropriate person, but health records can only be inspected by a health professional (as defined in section 52(2)).

Assessment orders

Section 11 – Assessment orders

18. This section allows a council to make an application to a sheriff for an assessment order to allow a council officer to conduct a private interview or a health professional to conduct a private medical examination. Such orders will be valid for up to 7 days. An assessment order would only be necessary where it was not possible to carry out a private interview or medical examination within the place being visited under section 7 (see section 13). Applications can only be made where this action is required to establish whether the person is an adult at risk, and if so, to establish whether further action is required to protect them from harm.

Section 12 – Criteria for granting assessment orders

19. This section prescribes the circumstances in which a sheriff may grant an assessment order. The sheriff must be satisfied that the council has reasonable cause to suspect the subject of the order is an adult at risk who is being, or is likely to be, seriously harmed and that an order is necessary to establish this. He or she must also be satisfied as to the availability and suitability of the place at which the person is to be interviewed and examined.

Section 13 – Restriction on exercise of assessment order

20. This section states that an assessment order must only be used in those circumstances where it is not possible for the adult at risk to either be interviewed or medically examined during the course of a visit.

Removal orders

Section 14 – Removal orders

21. This section deals with applications to the sheriff for removal orders, which allow the removal of an adult at risk to a specified place. Such orders are effective for a maximum period of 7 days. The council can also take such steps during that period as the council thinks reasonable in order to prevent the adult from suffering harm. The application for the removal order must be made by the council, but the council may choose to nominate another person (e.g. someone from one of the co-operating public bodies) to actually move the adult at risk. This may be important if, for example, the nominated person is more familiar to the adult at risk concerned than the council officer. The removal must be made within 72 hours of the order being made.

Section 15 – Criteria for granting removal order

22. This section specifies that a sheriff may only grant a removal order if satisfied that the person for whom the order is sought is an adult at risk and that person is likely to be seriously harmed if he or she is not moved. In addition, the sheriff must be satisfied that the place to which the adult at risk is to be moved, in pursuance of the order, is available and suitable.
23. Subsection (2) allows the sheriff to specify in the removal order whether a named individual can have contact with the adult at risk during the period of the removal order, and whether this should be subject to specified conditions. Before including such requirements, subsection (3) states that the sheriff must have regard to representations from the council and any relevant representations from the subject of the order (the adult at risk), anyone who wishes to have contact with the adult at risk or any other person who has an interest in the adult at risk's well-being or property.
24. However, a sheriff can decide to disapply the provisions contained within subsection (3) in relation to representations if he or she can be satisfied that doing so will protect an adult at risk from serious harm or will not prejudice any person affected by the disapplication (see section 41(2), Applications: procedure).

Section 16 – Right to move adult at risk

25. This section gives the council officer the right to enter any place to remove a person from that place in accordance with a removal order.

Section 17 – Variation or recall of removal order

26. This section allows the sheriff to vary or recall a removal order. Applications for variation or recall can only be made by the subject of the removal order, or anyone claiming an interest in his or her well-being or property, or by the council. Variation or recall can only be done where the sheriff is satisfied that the circumstances in respect of which the removal order (or subsequent variation order) was granted have changed. However, the variation cannot permit the council to do anything beyond 7 days after the adult is first moved. Where an order is recalled, the sheriff can direct the council to return the person to the place he or she was removed from, or to any other place which the sheriff, having considered the adult's wishes, may specify.

Section 18 – Protection of moved person's property

27. This section requires a council which has secured a removal order in respect of an adult at risk to take reasonable steps to prevent any property owned or controlled by the removed person being lost or damaged for the duration of the removal order, where no other arrangements to protect such property have been, or are being, made. A council officer may enter any place where the council believes that property belonging to the adult at risk is contained in order to carry out his or her duty under this section. A council which moves property must return any property to the adult concerned as soon as is reasonably practicable after the removal order ceases to have effect. The council is not entitled to recover expenses incurred. "Property owned or controlled" can include pets.

Banning orders

Section 19 – Banning orders

28. This section deals with applications to the sheriff for banning orders, which specify the place from which, and the length of time for which, a person is banned. The specified place may, for example, be the adult at risk's home or place of residence.
29. Subsection (2) enables a banning order to ban the subject from the vicinity of the specified place, permit the summary ejection of the subject from the specified place or

its vicinity, and prohibit the subject from moving anything set out in the order from the place. The banning order may also direct any specified person to take measures to preserve the moveable property of the subject which remains in the premises during the order. The subsection also gives the sheriff flexibility to specify other conditions, or to place requirements on individuals to allow proper enforcement of the order.

30. Subsection (3) permits the inclusion of conditions within a banning order which allow the subject of a banning order, under certain specified circumstances, to be in the place from which he or she is banned. Examples of such circumstances are when the subject is being supervised by another person (e.g. a council officer) or during specified times only. Subsection (4) states that before including this type of condition within a banning order, the sheriff must have regard to the views of the applicant of the order, the adult at risk, the subject of the order and any other person with an interest in the adult at risk's well-being or property.
31. However, a sheriff can decide to disapply the provisions contained within subsection (4) in relation to representations if he or she can be satisfied that doing so will protect an adult at risk from serious harm and will not prejudice any person affected by the disapplication (see section 41(2), Applications: procedure).
32. The sheriff has the power to attach a power of arrest to any banning order (see section 25). Subsection (5) states that the period of the banning order may not exceed 6 months.

Section 20 – Criteria for granting banning order

33. This section specifies that a sheriff may only grant a banning order where satisfied that an adult at risk is likely to be seriously harmed, and that banning the other person from a place occupied by the adult (for example, their home or place of residence) would better safeguard the adult's well-being and property than the removal of the adult at risk. In addition, the sheriff must also be satisfied that the adult at risk is entitled, or permitted, to occupy the place from which the subject is to be banned or, alternatively, that neither the adult at risk nor the subject is so entitled or permitted. This means that a person who is entitled to occupy a place cannot be banned from that place by someone who is not so entitled.

Section 21 – Temporary banning orders

34. This allows for temporary banning orders to be granted by a sheriff pending determination of a banning order. Temporary orders may include any of the provisions contained in a banning order. If a temporary banning order is granted, the sheriff must grant or refuse the full banning order within a time limit to be fixed in court rules. The expiry of a temporary banning order will be the earliest of: the date specified at the time of granting; the date the order is recalled; the date on which the sheriff determines the banning order or the date by which the sheriff is required to determine the banning order by virtue of court rules.

Section 22 – Right to apply for banning order

35. This section limits those who are able to apply for a banning order to particular persons. These are the adult at risk, any other person entitled to occupy the property from which the subject would be banned, or the council. These persons are also entitled to apply for a temporary banning order in respect of the same case. An application can also be made by those who are acting on behalf of those listed above.
36. The council can only apply for a banning order under certain circumstances. Where a council applies, it must be satisfied that an adult at risk is being, or is likely to be, seriously harmed by another person and that the adult would be more effectively safeguarded by banning the subject of the order than being removed themselves.

37. In addition, the council must be satisfied that no other person is likely to apply for a banning order and no other proceedings are before a court to eject or exclude the subject of the order from the place concerned. Where so satisfied, a council must apply for a banning order.

Section 23 - Banning orders: occupancy rights of adult at risk

38. The granting of a banning or temporary banning order does not affect the adult at risk's rights, as a non-entitled spouse, to occupy a home within the place from where the subject of the order is banned under the Matrimonial Homes (Family Protection) (Scotland) Act 1981.

Section 24 – Variation or recall of banning order

39. This section allows the sheriff to vary or recall a banning order or temporary banning order, but only if he or she is satisfied that there has been a change in the facts or circumstances in respect of which the banning order was made or last varied.
40. An application for variation or recall can only be made by the banned person, the person who originally applied for the order, the adult who is being protected by the order, or any other person claiming an interest in the well-being or property of the adult at risk. An application can also be made by those who are acting on behalf of those listed above.

Section 25 – Powers of arrest

41. This section allows a sheriff to attach a power of arrest to any banning order or temporary banning order. The power of arrest becomes effective only when served on the subject of the order and it will expire at the same time as the order.

Section 26 - Notification to adult at risk etc.

42. Where the applicant seeking a banning order or temporary banning order (or its variation or recall) is not the adult at risk, this section imposes a duty on the applicant, or such other person who may be specified, to notify the adult at risk of the order by delivering a copy of the order (and any power of arrest attached) to the adult or any other person with an interest in the adult's well-being or property. Failure to deliver the order does not, however, invalidate it.

Section 27 – Notification to police

43. This section states that the police, via the chief constable, must be notified as soon as possible after any power of arrest attached to a banning order or temporary banning order becomes effective. This should be done by the applicant for the order (or another prescribed person e.g. sheriff officers). The police must also be notified in the event of a variation or recall of a banning order.

Section 28 - Arrest for breach of banning order

44. Subsection (1) sets out the two-step test that must be satisfied if a police constable is to carry out an arrest. The subject of a banning order or temporary banning order, to which a power of arrest is attached, may be arrested without warrant if a constable reasonably suspects the subject to be in breach of the order and that he or she is likely to breach the order again if not arrested. Subsection (2) states that the arrested person must be told immediately the reason for the arrest and then taken by the constable to a police station as soon as is reasonably possible.

Section 29 – Police duties after arrest

45. Following an arrest under section 28, the officer in charge of the police station must detain the arrested person in custody until the person is either brought before the sheriff

or accused on petition or charged on complaint with a criminal offence arising from the incident for which he or she is arrested. The officer in charge must also ensure that the facts and circumstances which gave rise to the arrest are communicated to the procurator fiscal as soon as is practicable. This is linked to the procurator fiscal's duty to present a petition to the sheriff setting out the relevant facts and circumstances on the first available court day after arrest (see section 33).

Section 30 – Notification of detention

46. Where a person has been detained under section 29 above, this section sets out a series of entitlements that may be accessed by the arrested person including the right of access to a solicitor. Subsection (2) provides that where the arrested person appears to be a child then intimation of the detention and place of detention must be given without delay to any person known to have parental responsibilities for the person.

Section 31 – Duty to keep record of detention

47. This section lists the information that the police must record in connection with the detention of a person under section 29.

Section 32 – Duty to bring detained person before sheriff

48. In this section, subsection (1) makes it clear that the procedure under the Act would only apply in circumstances where the procurator fiscal has not yet decided to take criminal proceedings against the arrested person as a result of the facts leading to the arrest. The arrested person should be brought to court on the next court day on which it is practicable to do so.

Section 33 – Information to be presented to sheriff

49. This section sets out the matters that should be referred to in the procurator fiscal's petition to the court. This allows the procurator fiscal to present to the court information that will assist the sheriff in deciding whether it would be appropriate to order the arrested person's further detention.

Section 34 – Criteria for authorising longer detention

50. This section sets out the test that the sheriff must apply in deciding whether or not to order the further detention of the arrested person for a maximum of two days. The sheriff must be satisfied, based on the information provided by the fiscal, that a breach of the banning order or temporary banning order has taken place and also that there is a substantial risk that the detained person will breach the order again. Subsection (3) provides that the arrested person must be given an opportunity to make representations before the sheriff decides whether or not to grant an order under this section. If the sheriff decides not to authorise the further detention, the detained person must be released (unless he or she is to be detained in custody in respect of another matter).

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.

Adult Protection Committees

Section 42 – Adult Protection Committees

70. Subsection (1) states that each council must establish an Adult Protection Committee to carry out the functions listed in relation to the safeguarding of adults at risk present in the council's area. It is possible to establish an Adult Protection Committee which covers more than one council area. The Committee, in carrying out its functions, should also be seeking to improve co-operation between each of the public bodies involved in order to better safeguard adults at risk. The public bodies involved are the relevant council, the Care Commission, the relevant Health Board, the chief constable of the police force in the council area, and any other public body as may be specified by Scottish Ministers.

Section 43 – Membership

71. The council must appoint a convener, who must be independent of the council, and other members of its Adult Protection Committee. The public bodies listed in section 42 above (other than the council and the Care Commission) must nominate a representative with the relevant knowledge and skills to be a Committee member. The Care Commission may choose to nominate a representative if it wishes to do so. The council must then appoint those nominated representatives as members of the Adult Protection Committee. The council may also appoint such other persons to be members of the Committee as appear to it to have skills and knowledge relevant to the Committee.

Section 44 – Committee procedure

72. Each Adult Protection Committee will be responsible for regulating its own procedures but these procedures must allow a representative from the Mental Welfare Commission, the Public Guardian, the Care Commission or any other public body or office-holder to be specified by Scottish Ministers, to attend Committee meetings if they so wish.

Section 45 – Duty to provide information to the Committee

73. The public bodies represented on the Adult Protection Committee together with the Mental Welfare Commission for Scotland, the Public Guardian, the Care Commission, and any other public body or office-holder to be specified by Scottish Ministers, must provide the Committee with any information which it requires in carrying out its functions.

Section 46 – Biennial Report

74. The convener of an Adult Protection Committee must prepare a general report on the Committee's work every two years. After obtaining the Committee's approval of the report, a copy should be sent to each of the public bodies and office-holders represented on the Committee, the Scottish Ministers, the Mental Welfare Commission for Scotland, the Public Guardian, the Care Commission, and any other public body or office-holder to be specified in regulations by Scottish Ministers.

Section 47 – Guidance

75. This section states that Adult Protection Committees must take into account any guidance issued by Scottish Ministers in relation to their functions.

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.

*These notes relate to the Adult Support and Protection (Scotland)
Act 2007 (asp 10) which received Royal Assent on 21 March 2007*

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.