

Implementation of The Adult Support and Protection (Scotland) Act 2007

4th edition: February 2009

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In this edition

Part 1 of the Act:

- Secondary legislation
- Amendments to the Code of Practice
- Training and awareness raising activities
- National Centre of Excellence
- Dumfries and Galloway's launch event
- Fife Council's Seminar for APC members
- Scottish care's Voluntary Code of Practice
- The Role of the Procurators Fiscal
- Registration with SSSC
- The role of the Care Commission

Part 3 of the Act:

- self-directed support update

Protection of Vulnerable Groups (Scotland) Act 2007:

- update on activities

SurvivorScotland

- Update on activities

The Same as you? Implementation Group

- Update on activities

Contact details and links

We hope you find this newsletter helpful and welcome your feedback.

**Adult Protection Legislation Team
Scottish Government**

Secondary Legislation

Scottish Ministers have made the following secondary legislation in support of Part 1 the Adult Support and Protection (Scotland) Act 2007 (the Act).

The Adult Support and Protection (Scotland) Act 2007 (Restriction on the Authorisation of Council Officers) Order 2008: No. 306

This order specifies the restrictions to be placed on persons before they may be authorised by a council to perform the functions of a council officer under the Act.

http://www.opsi.gov.uk/legislation/scotland/ssi2008/ssi_20080306_en_1

The Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) Amendment (Adult Support and Protection (Scotland) Act 2007) (No.2) 2008: No. 335

This sets out the court procedures to be followed under the Act. Subsequently amended.

http://www.opsi.gov.uk/legislation/scotland/ssi2008/ssi_20080335_en_1

The Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) Amendment (Adult Support and Protection (Scotland) Act 2007) (No.3) 2008: No. 375

This amends procedures in the Act of Sederunt 2008: No 335 relating to variation or recall of a banning order or temporary banning order and to the requirement to certify the delivery of documents.

http://www.opsi.gov.uk/legislation/scotland/ssi2008/pdf/ssi_20080375_en.pdf

The Adult Support and Protection (Scotland) Act 2007 (Commencement No. 3 and Related Amendments) Order 2008: No. 314

This order:

- commences the remaining provisions of Part 1 of the Act;
- amends mental health provisions to accommodate the fact that mental health legislation in England and Wales will now commence on 3rd November; and
- does not commence section 66. This section inserts section 87A into the Social Work (Scotland) Act 1968, which relates to persons placed in Scotland by an arrangement made by a local authority in any other part of the United Kingdom or in the Channel Islands or the Isle of Man. The powers in section 87A will not be required until work with colleagues in other parts of the UK is concluded. The work is ongoing and the effect of this will be that section 87A will remain extant.

http://www.opsi.gov.uk/legislation/scotland/ssi2008/ssi_20080314_en_1

Amendments to the Code of Practice

Following on from the national and regional training events, we undertook to clarify some of the provisions of the Act. The code of practice has therefore been amended to take account of the following:

Chapter 3 – Adult Representation - Page 18, paragraph 5

To make clear that an adult with a mental disorder is automatically entitled to access independent advocacy services under the provisions of the Mental Health (Care and Treatment)(Scotland) Act 2003.

Chapter 6 – Interviews - Pages 28 and 29, paragraphs 1 and 9

Section 8 provides that an adult may be interviewed by a council officer and anyone person accompanying the council officer.

Chapter 9 – Assessment orders - Pages 38 and 39, paragraphs 11, 21 and 22

Chapter 10 - Removals orders - Pages 44 and 46, paragraphs 15 and 24

Chapter 11 – Banning/ temporary banning orders - Pages 53 and 57, paragraphs 14 and 42

Further information on incapacity to consent and undue pressure provided to clarify that where the adult does not have capacity to consent then the requirement to prove undue pressure does not apply. However evidence of lack of capacity will be required by the sheriff.

The amended code of practice is available at:

<http://www.scotland.gov.uk/Publications/2009/01/30112831/18>

Adult Support and Protection Training and Awareness Raising Activities

Our last newsletter highlighted the series of multi-agency, multi-disciplinary training and awareness raising events which were taking place during August, September and October. Feedback from these events was particularly positive, especially in terms of the opportunity for participants to discuss the Act with people in other organisations. All of the questions raised at these events were forwarded to the Adult Protection Legislation Team for consideration and reply. They were also added to the "Frequently Asked Questions" section of the Adult Support and Protection website. Participant evaluations of the events have been very positive with evidence that the materials are now being used at local level.

In recent weeks we have also established a Training and Awareness Working Group with the objective of developing a set of core training material that can be used by key stakeholders to raise awareness amongst staff, client groups and families. The group comprises representatives from Scottish Consortium for Learning Disability, Council of Ethnic Minority Voluntary Sector Organisations, Scottish Association for Mental Health, Age Concern, DeafBlind Scotland, SENSE, Deaf Connections, Scottish Federation for the Blind, Momentum Care and the Private Care Sector Workforce Initiative (in co-operation with the independent sector). The group is working together on cross cutting activities to address any potential overlaps or gaps. The materials they produce will be in a variety of formats for use by these and other stakeholder groups.

National Centre of Excellence

On the 29th October 2008, the Public Health Minister Shona Robison announced that a National Centre of Excellence for Adult Support and Protection is to be established in Scotland.

A specification is currently being developed for the centre, the aims of which are:

- to be at the cutting edge of thinking on adult support and protection, acting as a catalyst for change and improvement;
- to create a Scotland-wide learning culture where users, social and healthcare supports and services are enabled to influence national and local policy;
- to shape and support individualised support in the community and more person-centred arranged services in day and residential settings focusing on risks and rights based approaches; and
- to provide opportunities for national dialogue and training as well as dissemination of good practice.

The centre, which will also take forward the work that was identified through the enabling risk conference, will complement rather than duplicate activities in other centres of excellence.

Dumfries and Galloway's launch event: It's Everybody's Business!

Phyllis Wright, Lead Officer Adult Support and Protection, Education and Social Work, writes "Within Dumfries and Galloway we held a launch event to celebrate the implementation of the Act and the commitment to partnership working from all the

agencies, statutory and non-statutory, the Care Commission and elected members, to better support and protect those adults who are seen to be at risk of harm.

Speakers from Social Work, NHS, Police, and Advocacy services for adults and young people offered a range of perspectives on the Act, the links to child and public protection and the impact for their organisations on service delivery.

Using the Mental Welfare Commission's Justice Denied Ms A report, we devised a short scenario focusing on Ms A and the agencies involved. Colleagues from across the agencies read their parts which were worded in the language of the report which indicated that Ms A was not treated as any other person in a similar situation. A principle unique to the Act is that the adult at risk of harm should not be treated without justification, any less favourably than the way in which a person who is not an "adult at risk".

Moreover, all 7 players by standing and not speaking to each other demonstrated how the agencies at the time placed Ms A at risk by not communicating and ultimately not respecting her right to justice.

Although the scenario had a sobering effect on the audience, the launch ended on a positive note with the recognition that this new legislation offers another tool to the range of measures available to us to support and protect adults at risk of harm.

John Alexander, our Service Director for Social Work, closed the launch by acknowledging that all of us in Dumfries and Galloway have a strong commitment to ensuring that those adults in our area who, at certain times and in certain situations can be seen to be at risk of harm, have a right to live their lives with choice and without fear of harm."

Fife Council's Seminar for APC members

On 8th December 2008, Fife Council Social Work Service hosted a well-attended seminar aimed at current and potential local Adult Protection Committee members. Representatives from 19 local authority areas participated and enjoyed the opportunity to take stock of what is happening elsewhere in Scotland and to share ideas and information relating to the challenge of implementation. The day was chaired by Doreen Bell, independent chair of the Fife Adult Protection Committee, and included a range of interesting speakers:

- Jean MacLellan (Scottish Government Adult Care and Support Division) explained the historic background of the legislation and outlined the role of Adult Protection Committees.
- Elaine Torrance (Scottish Borders Council) outlined the journey of improvement in adult protection work
- Marcia Ramsay (Care Commission) raised awareness of the role of the Care Commission in relation to adult protection investigations.
- Edmund Whiffen (Fife Council) highlighted the importance and legislative background of safe information sharing and protection.

Participants also took part in workshop sessions allowing them to share ideas such as:

- the need for a national awareness raising campaign;

- the formation of a committee member network; and
- how to ensure best practice when training strategies for committee members and operational staff vary nationally.

Further information about this event can be obtained from ; Franki.Campbell@fife.gov.uk

Learning Development Officer Community Care – Adults, or tel 08451 555555 ext 470699

Scottish Care's Voluntary Code of Practice

Ian S. MacMaster, Senior Manager, Scottish Care, writes "Residential care providers recognise that they have an integral part to play in the care, support and protection of adults who may be at risk, through the care of 'older people', adults with learning difficulties or those with mental health problems. Scottish Care's national committee therefore drew up and adopted the voluntary code of practice. Through this voluntary code of practice, we seek to participate in, co-operate with and offer professional consultation to any current or anticipated legislation designed to protect those most disadvantaged or at risk in our society. The code of practice was welcomed by the Act's Implementation Group."

Role of the Procurator Fiscal

Linda Cockburn, Crown Office, advised "The Crown Office and Procurator Fiscal Service (COPFS) is committed to working with other agencies in assisting adults who need support and protection, both under the terms of the Act and in other ways. The Procurator Fiscal and staff in each local Procurator Fiscal Office work with agencies in their area and staff at the prosecution headquarters (Crown Office) liaise with national agencies. There are three aspects of the Adult Support and Protection (Scotland) Act 2007 which have particular relevance to the Procurator Fiscal. These are:

Banning Orders in terms of sections 19 - 34 These provisions allow the Sheriff to grant a banning order in respect of people who cause harm to adults at risk. The Sheriff may attach a power of arrest to the banning order and if it is suspected the subject is breaching or has breached the order they may be arrested and reported to the Procurator Fiscal, who decides whether proceedings are appropriate.

Adult Protection Committees in terms of section 42 An experienced prosecutor will either attend a meeting of the APC twice a year at which relevant criminal justice issues will be considered or will be invited to attend other meetings only for agenda items which have relevance to COPFS. The COPFS representative should receive selected APC papers which concern criminal justice matters and will be available to assist with any criminal justice related training. Outwith meetings PF staff will be available to assist with concerns or questions.

This followed on from the recommendations contained in *Justice Denied: Report of the investigation into the care and treatment of Ms A* published by the Mental

Welfare Commission on 16 April.

http://www.mwcscot.org.uk/web/FILES/Publications/Justice_Denied_Summary_FINAL.pdf

Offences under section 49 This section includes offences of obstruction and failing to comply with a requirement made under section 10. Where someone has committed an offence, they will be reported to the Procurator Fiscal, who decides whether proceedings are appropriate.”

Registration with the SSSC

The Adult Support and Protection (Scotland) Act 2007 (Restriction on the authorisation of council officers order 2008) - No. 306. This Order specifies the restrictions to be placed on persons before they may be authorised by a council to perform the functions of a council officer under the Act. In summary,

A person requires to be registered as a social worker or social services worker in the relevant part of the SSSC register or as an occupational therapist in the register maintained under article 5(1) of the Health Professions Order 2001 or to be a nurse, and to have had at least 12 months relevant experience, to be authorised to perform the functions of a council officer under sections 7 to 10 of the Act (article 3).

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 who have at least 12 months relevant experience (article 4). A council may withdraw the authority if the person no longer meets the relevant requirements (article 5).

Jess Alexander, SSSC, writes “Registration of the social service workforce commenced in April 2003 with the registration of social workers. Since then there has been a phased approach to register other groups of workers employed in the social service sector. Scottish Ministers now intend to introduce final dates for achievement of registration for all groups for whom the SSSC register is opened. The recent consultation on the proposed final dates and proposals for new staff closed on 31 December 2008.”

Adult Support and Protection – the role of the Care Commission

Gill Swapp writes “The Care Commission’s role in promoting the protection of adults, using registered care services, is enshrined in the principles set out in The Regulation of Care (Scotland) Act 2001. This states that “the safety and welfare of all persons who use, or are eligible to use care services are to be protected and enhanced”. All activity associated with the regulatory process, including the registration of services, is carried out in accordance with this principle.

The process for registering a service is to ensure the fitness of the provider to carry out this function. A variety of checks are carried out including the examination of the proposed policies and procedures for a service. It is required of all services that they have an adult protection policy in place plus, arrangements in place to ensure staff awareness of the policy and wider adult protection issues.

Care service providers and local authorities which commission services have the primary responsibility for ensuring the safety and well-being of adults in their care.

The majority of regulated services keep the Care Commission informed when adult protection issues arise. However, this is not always the case.

To close this gap, we are asking local authorities who commission adult services and place adults in regulated services to notify us when adult support and protection referrals arise in regulated services. An e-form notification process has been set up, which local authorities can access, to enable this to be done quickly and efficiently. Once submitted, this information will go direct to the team manager for the service.”

Self directed support (Part 3 of the Act)

A reference group on self-directed support was convened and met in June and October 2008. Members are currently considering a draft strategy to radically increase the uptake of self-directed support in Scotland. Recommendations for action will be published early 2009. A key part of this strategy will be running test sites in Glasgow, Highland and Dumfries and Galloway, over 2 years to consider how well specific interventions improve uptake. Planning is at an early stage, but will cover the themes of cutting red tape, investing to save (bridging finance) and leadership and training. This work builds on the research conducted in June 2008 which demonstrated the flexibility, choice, control and independence that self-directed support is able to offer individuals. The research report can be found at: [A Review of Self Directed Support in Scotland](#) The Scottish Government will consider further guidance, explicit target setting or legislation if they prove necessary in the longer term.

Protection of Vulnerable Groups (Scotland) Act 2007 ('PVG Act)

Implementation activities continue to prepare for the Act's commencement, now scheduled for early 2010. On 6th October 2009, the Scottish Government published its policy proposals in response to a detailed consultation on the steps required to implement the new vetting and barring scheme (PVG scheme). The full document can be accessed at:

<http://www.scotland.gov.uk/Topics/People/Young-People/children-families/pvglegislation/consultation>

The detail of the PVG scheme will be defined in draft secondary legislation which will be introduced to the Scottish Parliament later in 2009. This includes how the definition of a 'protected adult' will be further defined. There will be a further opportunity for stakeholders to consider and comment on the most significant draft statutory instruments prior to their consideration by the Scottish Parliament.

The Scottish Government also published an [update bulletin](#) on 4th September last year to assist stakeholders keep track of progress activity. The bulletin includes a brief description of the scope of each of the projects that make up the overall implementation programme and highlights recent implementation activities and next steps. Further information on the PVG scheme (including FAQs) can be found at <http://www.scotland.gov.uk/pvglegislation>

SurvivorScotland

SurvivorScotland, sets out a strategic way forward to improve services for survivors, to ensure greater priority and joined-up working in national and local mainstream services, and improve the lives of all who have suffered childhood trauma. The SurvivorScotland website can be accessed at: www.survivorscotland.org.uk

The Scottish Government began earlier this year to explore the use of an acknowledgement and accountability model. We do not yet know the shape this will take as yet - the work is survivor led and we want to hear what they need and expect from it. Responses to the discussion paper on developing a model issued in October last year are now being analysed and will be published in due course.

The Same as you? Implementation Group

The Scottish Government's community care policy for adults with learning disabilities, *The same as you?*, seeks to improve services and support so that they can have the same opportunities and choices as other citizens. The current focus of the group is on tackling health inequalities and some of the issues facing people with profound and multiple disabilities and their families. Further information can be obtained from:

<http://www.scotland.gov.uk/Topics/Health/care/VAUnit/LearningDisabilities>

Contact details and links

If you would like to get in touch with any of the teams in the Scottish Government who are responsible for implementing the various parts of the Act, you can do so as follows:

Part 1: Protection of adults at risk of harm

Adult Protection Legislation Team
2 East Rear, St Andrew's House
Edinburgh EH1 3DG
Email: ASPUnit@scotland.gsi.gov.uk
Tel: 0131 244 3633

Part 3: Adult support etc.: miscellaneous amendments and repeals

Sections 62, 65 and 66 only:
Community Care Care Home
and Cross Cutting Policy Branch
2 East Rear, St Andrews House
Edinburgh EH1 3DG
Email: Jan.Raitt@scotland.gsi.gov.uk
Tel: 0131 244 3506

Part 2: Adults with incapacity

Family and property Law: Adults with Incapacity
2 West, St Andrews House
Edinburgh EH1 3DG
Email: adultswithincapacity@scotland.gsi.gov.uk
Tel: 0131 244 3581

Section 63: as Part 1 contact details Part 4: Mental health – miscellaneous

amendments and repeals
Mental Health Branch 3
3 East Rear, St Andrews House
Edinburgh EH1 3DG
Email: mentalhealthlaw@scotland.gsi.gov.uk
Tel: 0131 244 2283

Previous editions of the newsletter, together with a short introduction to the Act and other related material, can be accessed through the following link:
www.scotland.gov.uk/Topics/Health/care/VAUnit/ProtectingVA