



23 September 2009

Dear Colleague

The Adult Support and Protection (Scotland) Act 2007: GPs undertaking duties under the Act

Summary

1. This circular provides a summary of the information regarding the Act and also confirms current arrangements for those seeking payment for undertaking duties associated with the Act.

Information

2. Information about the Act was published in February 2009 and is summarised in **Annex A**.

Funding

3. The Scottish General Practitioner Committee has agreed that funding should continue under current Collaborative fee arrangements. However, as these fees are no longer negotiated at a national level, Medical Practitioners are advised to approach their Health Board or Local Authority to establish and agree their own fees in advance of undertaking the work. Details on Collaborate arrangements can also be viewed at: www.bma.org.uk/sc/

Action

4. NHS Boards are requested to bring this Circular to the attention of all relevant staff.

Yours sincerely

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Addresses

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ADULT SUPPORT AND PROTECTION (SCOTLAND) ACT 2007

The Adult Support and Protection (Scotland) Act 2007 (“the ASP”) became law on 29 October 2008. The ASP introduces new measures for the protection of adults at risk of harm, including, where required, medical examinations by a health professional. For the purposes of the ASP, a health professional is defined as a doctor, nurse or midwife.

The ASP defines adults at risk as adults over 16 years of age 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.

All three of these criteria must be met.

NHS Boards, and those working with them providing an NHS service, have a duty to:

- co-operate in investigating suspected or actual harm
- report the facts and circumstances of the case to the local authority (social work department) where they know or believe that a person is an adult at risk, and that protective action is needed.
- co-operate with a local authority making inquiries and with each other where that would assist the local authority.

It is an offence to prevent or obstruct any person from acting under the Act and to refuse without reasonable excuse to provide information. (S 49)

Inquiries/investigations

Section 4 places a duty on local authorities to make inquiries if it knows or believes that the person is an adult at risk and that it might need to intervene. As part of this, the local authority may request a GP or other health professional to provide a report about the adult relating to the circumstances leading up to or relevant to its inquiries.

Medical examination

Section 9 of the ASP allows a health professional to conduct a medical examination of the adult at risk in private either during a visit under the ASP or elsewhere under an assessment order under section 11. The request for an examination would usually be made by the local authority social work department. Adults at risk have the right to refuse to be interviewed or medically examined. Where the adult does not have capacity to consent, it would be expected that GPs would conduct an assessment or examination under other legislation e.g. adults with incapacity, mental health, emergency situations. There is no standard examination form.

Health records

Under section 10, health professionals may be asked by an authorised Council Officer to examine health records relating to an individual’s physical or mental health and/or made by or on behalf of a health professional.

Only a health professional may examine health records. The Council Officer should be able to provide evidence of their identity.

Health professionals holding records must act within their professional guidance.

Protection orders

GPs may be requested to write reports, attend adult protection case conferences or required to attend court. Protection orders do not authorise the adult to be detained.

- An **Assessment order** allows a council officer to conduct an interview in private and/or a health professional to conduct a medical examination in private. This may be required to establish whether the person is an adult at risk and if further action is required to protect him/her.
- A **Removal order** allows the local authority to remove the adult at risk to a specified place for up to 7 days where the adult is likely to be seriously harmed if not moved to another place.
- **Banning orders and Temporary Banning orders** ban the subject of the order from a specified place for up to 6 months. Conditions may be attached, for example contact under specified circumstances.
- **Warrants for entry** authorise a council officer to visit any place specified in the warrant accompanied by a constable.

Where an adult at risk has capacity to consent to an order and refuses consent, then the local authority must satisfy the sheriff that they have been unduly pressurised to refuse consent. Examples of this would where the adult is afraid of or being threatened by an individual, a person is applying undue pressure as they do not wish the order granted, perhaps to protect another individual, or where the adult has confidence and trust in that person and would otherwise consent.

Code of Practice

Anyone authorised or required to perform any functions under the Act, including health professionals, must have regard to the code of practice issued by the Scottish Government. <http://www.scotland.gov.uk/Resource/Doc/232219/0063534.pdf>

Further information can be obtained from:

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