

## **Adult Support and Protection (Scotland) Bill**

*Alison Presly examines the impact of new legislation in relation to the protection of vulnerable adults which imposes investigative rights and duties on local authorities and other public bodies involved in the provision of care services.*

The Adult Support and Protection (Scotland) Bill was passed by the Scottish Parliament on 15 February 2007 and currently awaits Royal Assent. The Bill gives greater protection to vulnerable adults and gives local authorities and related public bodies new powers and duties to investigate any risk of harm or abuse to those living in care homes or in the community.

Part 1 of the Bill introduces measures to identify and protect adults at risk from harm. Specifically, where it is known or suspected that an adult is being harmed, the appropriate local council is now obliged to make the necessary enquiries to establish whether or not further action is required to prevent or stop harm from occurring.

In terms of the Bill, "adults at risk" are defined as adults 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.

### **Co-operation between public bodies**

Although it is local councils which are primarily affected by the new legislation, other public bodies will have a statutory duty to inform and cooperate with the relevant council where such a body knows or believes an adult is at risk and that action needs to be taken to protect that adult from harm. The public bodies or office-holders affected by the new Bill are the Mental Welfare Commission for Scotland, the Care Commission, the public guardian, chief constables of police forces and the relevant Health Board. This list may be extended by the Scottish Executive at a later date.

In line with these new investigative duties, local councils will be equipped with a range of powers in order to protect an adult at risk of harm including conducting visits and interviews, authorising medical examinations, procuring medical, financial or other records where necessary and applying to the sheriff for a range of protection orders.

### **Adult Protection Committees**

In addition to these investigative duties, part 1 of the Bill obliges local councils to establish "Adult Protection Committees" to oversee and coordinate the work of various agencies involved in abuse investigations and to develop prevention strategies. The Committees will be tasked with reviewing the practices and procedures of the Care Commission, the relevant Health Board, the chief constable of relevant police force and of the councils' themselves in relation to the safeguarding of adults at risk. The Committee will also give information and advice to such bodies and arrange for relevant training to be given to staff where required. 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.

Adult Protection Committees will be multi-disciplinary, composed of representatives, appointed by the local council, of the relevant Health Board, police force and any other public body or office holder as the Scottish Ministers may prescribe. Representatives from the local council and Care Commission may also sit on the 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.

In terms of Committee procedures, 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.

### **Amendments to existing legislation**

Parts 2 and 3 of the Bill clarify and amend certain provisions of the Adults with Incapacity (Scotland) Act 2000 and the Mental Health (Care and Treatment) (Scotland) Act 2003. The key provisions in these parts of the Bill relate to changes to the regime for intromission with the funds of an adult with incapacity, powers of attorney, intervention and guardianship orders and orders about incapable adults' nearest relatives. Furthermore the Bill amends the Social Work (Scotland) Act 1968 to enable Scottish Ministers to delegate powers to councils in relation to direct payments for social care services and defines responsibility for provision of social services where a person receives a service outwith the council area or outwith Scotland.

### **Background to Parliamentary Process**

The Adult Support and Protection (Scotland) Bill was introduced into the Scottish Parliament on 30 March 2006 by Andy Kerr MSP, Minister for Health and Community Care. The Health Committee's [Stage 1 Report](#) on the Bill, published on 10 November 2006, highlighted concerns among stakeholders over Part 1 of the Bill and in particular the new powers contained in sections 3-38, which, in certain circumstances, permit adults at risk to be removed from their homes against their will. The Committee requested assurances from the Deputy Minister for Health on several matters set out in the report and these were addressed at Stage 2. A copy of the Bill as passed can be read [here](#).

*Anderson Strathern's Parliamentary and Public Law Unit are monitoring the Adult Support and Protection (Scotland) Bill. If you have any queries please contact [alison.presly@andersonstrathern.co.uk](mailto:alison.presly@andersonstrathern.co.uk)*