

## **APPENDIX 14 PROTECTION ORDERS (SECTIONS 11 - 28 OF THE ACT)**

### **1. Procedures for applying for a Protection Order**

There are three kinds of protection order that can be applied for to protect adults from harm. These are:

- Assessment Order
- Removal Order
- Banning Order

The decision to apply for a protection order will be taken after discussion with the Team Manager, Legal Services and the relevant Service Manager. Legal Services are responsible for preparing and presenting all applications to court.

It is envisaged that in most cases initial enquiries and/or investigations will have taken place.

### **2. Definition of serious harm**

Protection orders will only be granted where there is reasonable cause to suspect that the affected adult is at risk of serious harm. What constitutes serious harm will be different for different persons and is not defined in the Act. When assessing harm, areas that need to be taken into consideration are:

- impact of harm on the adult at risk and the outcome on his or her physical and mental health;
- personal perception;
- level of risk;
- injuries which are severe and /or life threatening;
- the need for urgent action;
- the frequency, consistency and severity of harm;
- the intent by the alleged or suspected perpetrator;
- history of harm; and
- the probable consequences of non-intervention.

### **3. Assessment Order (Sections 11 – 13 of the Act)**

An Assessment Order can be used in situations where there is concern that an adult may be at risk of serious harm and it has not been possible to undertake an assessment through informal means. An Assessment Order allows a Council Officer to interview the adult at risk in private and if necessary, arrange a medical examination. However the adult at risk must give their consent before the Order can be implemented. They must be advised that they are not obliged to answer any questions.

If it is likely that there will be a lack of privacy, the adult at risk can be taken elsewhere for the interview and the examination to be completed. The Sheriff can authorise a Council Officer to take an adult at risk from a place being visited under Section 7 to allow for an assessment. It may be necessary to consider an alternative place to undertake the assessment if someone is not allowing the interview to proceed or the adult is unwilling to talk freely and / or requires specialised equipment to facilitate the interview.

Before an Order is granted, the Sheriff must be satisfied that an assessment is necessary and meets the criteria (Section 12, Adult Support & Protection (Scotland) Act 2007) as follows:

- a) where the Council has reasonable cause to suspect that an adult at risk is being or is likely to be seriously harmed;
- b) that an Assessment Order is required to establish whether the person is an adult at risk who is being or is likely to be seriously harmed; and
- c) the availability and suitability of the place at which the person is to be interviewed.

A Sheriff may grant a Warrant for Entry in relation to a visit under Section 7 of the Act where the Council Officer has been, or reasonably expects to be, refused entry or to be unable to enter the place where the adult at risk is, or than an attempt to visit the place without a warrant would defeat the object of the visit.

When an Assessment Order is granted the Sheriff also grants a Warrant for Entry. The visit to implement the Assessment Order will be carried out in conjunction with the police. A police constable will be in attendance and if necessary can use reasonable force to fulfil the object of the Order. It is only the constable who can use reasonable force.

The Warrant expires 72 hours after it is granted and the Assessment Order will expire after a seven day period.

*The following factors should be considered before applying for an Assessment Order:*

- Has a risk assessment been completed?
- What type of harm might the adult be suffering or be likely to suffer?
- Is it of a serious nature?
- What steps have been taken to establish the extent of the harm or the likelihood of it?
- Why have these not been successful?
- Has there been non co-operation from the adult and/or their carer or relative or significant other?
- What steps have been taken to overcome this?
- What kind of assessment is needed?
  - Consider any communication difficulties
  - Consider any known health issues
- Where will the assessment take place?
  - At home or at an appropriate other place if it is not possible to interview the person in private
  - Need to establish the course of action if the adult at risk cannot be assessed at home
  
- Has the adult's capacity been assessed/established?
- If the adult at risk has a known mental disorder has a Mental Health Officer been consulted?
- Has consideration been given to any other legislation in order to intervene effectively? If so, why is it not appropriate?
- Has contact been made with the police?

- Has a referral to the Advocacy Service been considered?
- Have the principles of the Act been adopted throughout the decision making process when considering the proposed action?

The Council should re-consider the merit of the application if it considers that the adult will refuse consent to the granting of an Assessment Order, or compliance with any interview or medical examination.

### **3.1 Consent of Adult at Risk:**

It is also necessary to consider whether the adult has given consent or not to the action being considered. You must evidence this to the Sheriff. Therefore it may be helpful to consider the following steps;

- Step 1            Is the adult able to give consent?
- Step 2            If not, demonstrate efforts made to try to gain consent and the reasons why this has not been achieved.
- Step 3            If the adult specifically refuses to give consent, consideration must be given as to whether they have been unduly pressurised, unless the adult at risk does not have capacity.

### **3.2 Urgent Cases**

A Warrant for Entry under Section 37 of the Act may be applied for in an emergency. Therefore, there may not be sufficient time to arrange an Initial Referral Discussion meeting or Adult Protection Case Conference. In such instances, the application will be determined through discussions with relevant professionals and appropriate managers. Discussion and decision making should be recorded and attributed in Detailed Records.

Where someone has been hurt and sustained a physical injury, it may be necessary to contact the emergency services.

## **4 Removal Order (Sections 14 - 18 of the Act)**

A Removal Order can be used in situations where there is concern that an adult may be at risk of serious harm and it is necessary to move the person to a specified place and take reasonable steps to protect that person from harm.

Before a Removal Order is granted, the Sheriff must be satisfied that it is necessary and meets the criteria (Section 15 of the Act):

- a) that the adult at risk is likely to be seriously harmed if not moved to another place; and
- b) that there is an available suitable place where the adult at risk can be moved to.

When a Removal Order is granted, the Sheriff also grants a Warrant for Entry. A police constable will be in attendance and, if necessary, can use reasonable force to fulfil the object of the order. It is only the constable who can use reasonable force.

The warrant expires 72 hours after it is granted.

The Order expires seven days from when the adult at risk is moved, or after any shorter period that the Sheriff has decided upon when granting the Order.

#### **4.1 Consent of Adult at Risk:**

When considering applying for a Removal Order, it is necessary to establish whether the adult at risk is able to consent to the action. The following steps should be considered:

- Step 1            Is the adult able to give consent?
- Step 2            If not, demonstrate the efforts made to try to gain consent and the reasons why this has not been achieved.
- Step 3            If the adult specifically refuses to give consent consideration must be given as to whether they have been unduly pressurised, unless the adult at risk does not have capacity.

*The following factors should be considered before applying for a Removal Order:*

- Has a risk assessment been completed ?
- Has a network meeting, an IRD or case conference taken place or is one necessary? (The situation may not allow for this due to the immediacy of circumstances.)
- What type of harm might the adult be suffering or be likely to suffer?
- Is it of a serious nature?
- What steps have been taken to establish the extent of the harm or the likelihood of it?
- What attempts have been made to minimise the harm?
- Why have these not been successful?
- Has there been non co-operation from the adult and/or the carer/relative or significant other.
- What steps have you taken to overcome this?
- Have you tried to establish whether the adult at risk has capacity?
- If the adult at risk has a known mental disorder has an MHO been consulted?
- Have you considered any other legislation in order to intervene effectively? If so, why is it not appropriate?

- Have you contacted and liaised with the Police?
- Has a referral to the Advocacy Service been considered?
- Have you applied the principles of the Act throughout your decision making process when considering the proposed action?

The Council should re-consider the merit of the application, if it considers that the adult will refuse consent to the granting of a Removal Order, or is not likely to remain in the place to which he or she has been taken. This is because a Removal Order only permits the removal of the adult. It does not authorise the keeping of the adult in the place for the duration of the order.

## 4.2 Planning

A Removal Order will expire after seven days or such shorter period as may be specified in the order from when the person is removed. This is a short period of time to complete an assessment and establish a plan. It is therefore necessary to formulate a plan at the earliest point. This should be when you are considering your application. The following factors will assist the planning stages when invoking a Removal Order.

- Why does the adult at risk need to be removed?
- How will the adult at risk be removed?
  - Has consideration been given to:
    - the means of accessing an adult at risk through attendance at day care?
    - transport needs?
    - the safety of Council Officers?
    - any immediate health needs?
    - the need for liaison with Police regarding the execution of a Warrant for Entry?
    - who will secure the property? (See Section 4.8 - Safeguarding of Property)

Where will the adult at risk be removed to?

- Has consideration been given to:
- the availability of a specified place?
  - the suitability of a place of safety?
  - the need for specialised equipment?
  - cultural needs?
  - communication needs?
  - care needs?

What conditions should be considered?

- Has consideration been given to:
- who should have contact?
  - the identification of any other relevant parties – guardian, relatives, etc?
  - the need to consider a plan for those who should have access?

- the need to apply the principles of the Act throughout the decision making process when considering the proposed action?

### **4.3 Case Conference Procedures**

An Adult Protection Case Conference should be arranged within 24 hours of the adult being removed. The Case Conference should:

- consider how the removal order was enforced and ensure any issues are addressed;
- Review the outcome of the removal order;
- Determine possible alternatives to returning home, if applicable;
- Determine what action is necessary to facilitate the person's return home;
- Ensure that a risk assessment is completed or reviewed;
- Ensure that a protection plan is established or reviewed;
- Establish the core group and a communication plan;
- Determine clear roles and responsibilities for the period that the adult is removed; and
- Consider the need for any other measures within the Act (e.g. Banning Order) or any other relevant legislation.

### **4.4 Variation or Recall:**

Whilst there is no right of appeal, it is possible for the Order to be varied or recalled. The adult who is subject to the Order, the Council or any other person who has an interest can apply for the Order to be varied or recalled.

### **4.5 Representation**

Council Officers should consider supporting the adult to seek representation through advocacy and a solicitor.

### **4.6 Financial Implications**

It is envisaged that where an adult at risk is removed to a care home for the period of the Order, he or she will not be charged. The Council has an overriding responsibility to protect the adult at risk. The costs of securing the property of the adult at risk during the period of the Order will also be the responsibility of the Council.

### **4.7 Warrant for Entry**

A police constable will be in attendance and if necessary can use reasonable force to fulfil the object of the Order. It is only the constable who can use reasonable force.

#### **4.8 Safeguarding of Property**

Section 18 of the Act obliges the Council to take reasonable steps to prevent loss or damage to any property owned by someone removed under a Removal Order.

The Act authorises entry to any place where the property that is owned or controlled by the adult at risk is known, or believed to be, for the purposes of preventing loss or damage.

Where a person is removed the Council must ensure that the property is locked fast, and that water and heating are safe in terms of the maintenance of the property. The Council should also make provision for animal welfare and ensure any valuables and monies are securely stored. There may be storage issues for the Council and there is no entitlement to recover any costs as long as the Order is in force (seven days).

This duty would allow Council Officers to remove any personal papers or bank books and adequate storage should be identified for these. The adult should be informed of their location if unable to take care of them.

The police should be advised that a property is vacant, particularly where the adult has been targeted.

#### **5 Banning Orders (Sections 19 - 28 of the Act)**

A Banning Order or a temporary Banning Order can be considered where the adult at risk is in danger of being seriously harmed, and where it would be better for the adult to remain where they are than be removed.

Before a Banning Order can be granted, the Sheriff must be satisfied that it is necessary and meets the criteria under Section 20 of the Act as follows:-

- That the adult at risk is being or is likely to be seriously harmed by another person.
- That the adult at risk's wellbeing or property would be better safeguarded by banning the other person from a place occupied by the adult than it would be by moving the adult from that place.
- That the adult at risk is entitled or permitted by a third party to occupy the place the subject is being banned from (or that neither the person to be banned or the adult is entitled to occupy the place from which the subject is to be banned).

The subject may be banned from being in a specified place and in a specified area in the vicinity of the specified place.

A Banning Order can be made:

- by or on behalf of the adult whose well being or property would be better safeguarded by the Order;
- by any other person who is entitled to occupy the place concerned; and/or

- by the Council if there is no-one else to make the application and the grounds are met.

A Banning or temporary Banning Order which bans the subject of the order from a specified place may have conditions attached to it, and may last up to six months.

### **5.1 What can a Banning Order or Temporary Banning Order do?**

A Banning Order or Temporary Banning Order can:

- ban the subject from being in a specified place;
- authorise the summary ejection of the subject from the specified place and specified area;
- prohibit the subject from moving any specified thing from the specified place;
- direct any specified person to take specified measures to preserve any moveable property owned or controlled by the subject which remains in the specified place while the order has effect;
- be made subject to specific conditions; and
- require or authorise any person to do, or refrain from doing, anything else that the Sheriff thinks necessary for the proper enforcement of the Order

A condition specified in an order may authorise the subject of the Order to be in a place from which they are banned for a specific reason e.g. supervised contact.

### **5.2 Consent of the affected adult (adult at risk)**

- Step 1 Is the adult able to give consent?
- Step 2 If yes - have they refused?
- Step 3 If they have refused – have they been unduly pressurised?
- Step 4 Has consideration been given to alternatives where the adult may agree to work with the Council under different terms?

### **5.3 Representation**

Section 19 (4) of the Act

- The Council Officer should consider organising a representative for the adult at risk. The Council has a responsibility to support the adult to access advocacy.

### **5.4 Intimidation**

It is the responsibility of Dundee City Council Legal Services to formally notify the subject and any other relevant person that the application has been made.

## **5.5 Factors to consider before making an application**

*The following factors should be considered before applying for a Removal Order:*

- Does the adult meet the criteria for an 'adult at risk'?
- Have the principles of the Act been applied?
- The type and severity of harm.
- Have any other legislation or options been considered?
- Has a Risk Assessment been completed?
- Does the adult at risk have capacity?
- Is an MHO required?
- Is there anyone else applying for a Banning Order?
- Who will be the subject of this Order, what length of time is required and what area should it cover?
- Are there any other places where the subject may gain access to the adult at risk?
- What conditions should be considered e.g. power of arrest, no contact by telephone, internet, third party, etc?
- Will the banned person have supervised contact with the adult – is there a need to develop an access plan?
- If the subject of the order makes contact, what action needs to be taken?
- How will the Order be implemented – consider safety issues to the adult and to staff?
- Is the subject of a Banning Order a child? Where the subject of the Order is a child, Children's Services must be contacted to discuss appropriate action. It may be necessary to consider an application to the Children's Reporter.
- How will the subject remove their own property from the specified place?
- Are there any removable items of the subject's, which remain in the property? – i.e. take an inventory and check with the subject to verify.
- Does the banned person reside in the same place? Does banned person have a key to the property they are banned from?

- Will the banned person need to be re-housed? How will their property be secured?

Consultation with all relevant agencies will be ongoing and documented.

## **5.6 Notifications**

If the application is granted, Legal Services will be responsible for notifying the subject of the Order, and the affected adult

There may be occasions when it is in the best interests of the adult for the intimation of the application or Order to be dispensed with. The Sheriff needs to be satisfied that by doing so this will protect the adult from serious harm; or will not prejudice any other person.

## **5.7 Serving the Order**

This should be coordinated between the Council Officer, Legal Services and the police. Where necessary, Sheriff Officers can be involved in implementing an Order or serving court papers. Legal Services will make initial contact with them and organise the service of papers. If the person subject to the Order needs to be ejected, Sheriff Officers will need to be present. It may be appropriate for the police to be present too.

**5.8** An Adult Protection Case Conference should be arranged within 48 hours with regular Core Group meetings arranged to review the situation.

- If the adult at risk is dependent on the subject of the order for his or her care needs, this will need to be considered and appropriate support provided.
- Safety issues will need to be assessed and addressed; and
- A clear protection plan put in place.

## **5.9 Occupancy Rights**

The Banning Order does not affect the adult at risk's rights, as a non-entitled spouse whose name is not on the occupancy agreement, to occupy a home within the place from where the subject of the Order is banned, under the Matrimonial Homes (FP) (Sc) Act 1981.

Where the adult at risk is entitled to occupy a place, their rights are not affected if their husband, wife, partner, etc is banned from the place.

Where the adult at risk has no occupancy rights and the proposed subject of the Order does have these rights, the subject cannot be banned from the place.

If you are unsure about the position, then this should be discussed with Legal Services prior to making a decision to apply for an Order.

### **5.10 Variations of the Banning Order, once granted**

Section 24 of the Act makes provision for an application to be made to the Sheriff to recall or vary an Order. It is possible to vary or recall an Order if there has been a change in circumstances where the Order is not required or it may be necessary to make a change to the Order either to add or delete conditions.

This can be carried out by:

- the person who applied for the Order;
- the subject of the order;
- the adult at risk; and/or
- any other person who has an interest in the adult at risk's well being or property.

### **5.11 Safeguarding of Property**

When a Banning Order has been made, the council's duties to protect relate only to moveable property belonging to the subject of the Banning Order which remains in the specified place, e.g. the adult at risk's home, while the Banning Order is in place. An inventory of such moveable items must be made and the best practice would be for the subject of the Banning Order to sign that this inventory is correct.

An inventory should be made and a copy given to the subject of the Order for signature. This will be carried out by the person delegated by the Team Manager. Costs incurred should be authorised by Team Manager / Service Manager (e.g. storage, pet care, locksmiths/joiners).