

# **RIGHTS, SUPPORT AND PROTECTION FOR PEOPLE WITH DEMENTIA,**

## **THEIR FAMILIES AND CARERS**

### **APPENDICES**

The Acts: The Mental Health (Care and Treatment) (Scot) 2003 (the 2003 Act); The Adults with Incapacity (Scot) Act 2000 (the 2000 Act); the Adult Support and Protection (Scot) Act 2007 (the 2007 Act); The Social Work (Scotland) Act 1968 (the 1968 Act); The NHS and Community Care Act 1990 (the 1990 act); the Community Care and Health (Scotland) Act 2002 (the 2002 Act); Equality Act 2010.

## Appendix 1: provision of support, protection, care and treatment across the Acts

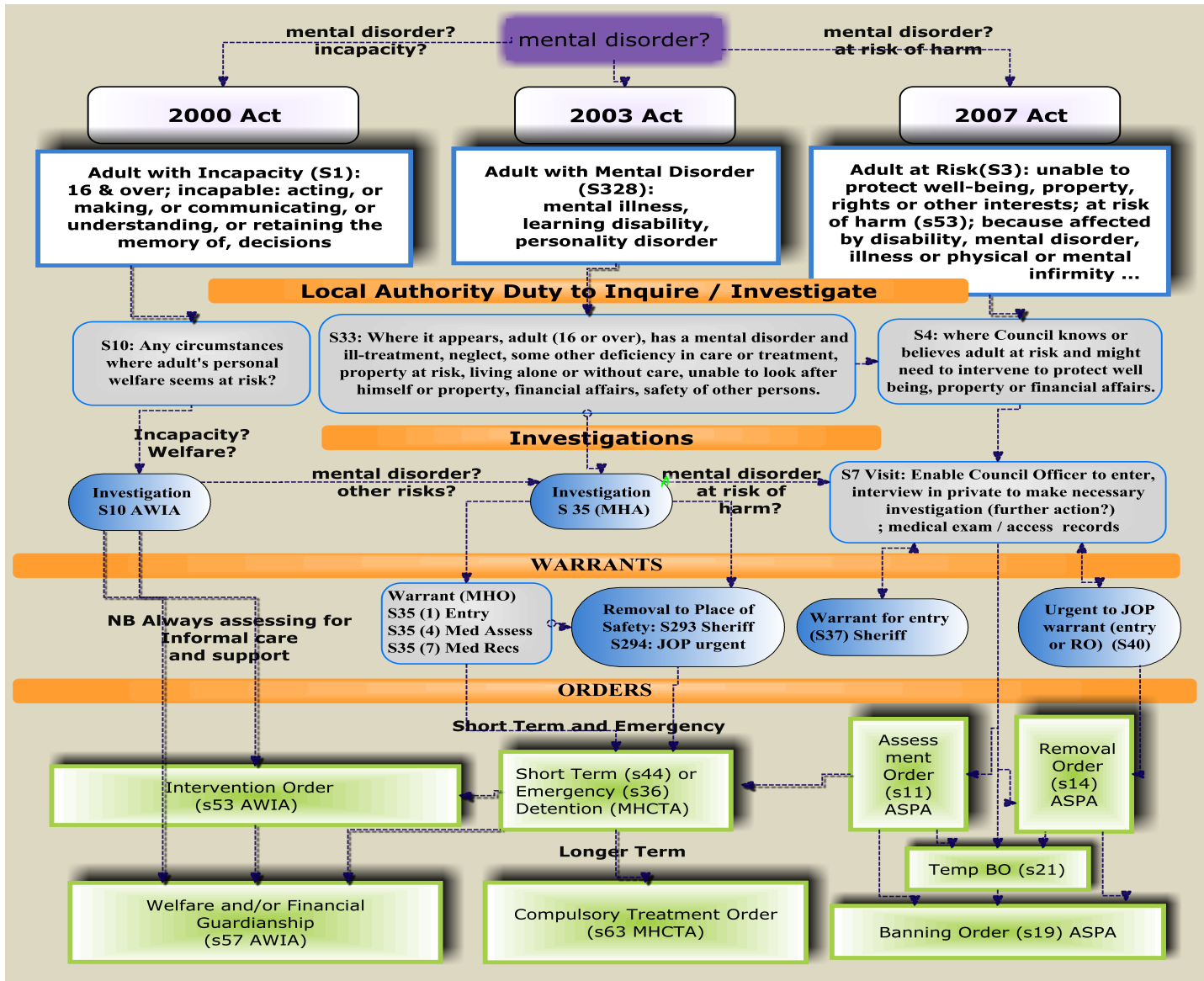
	2003 Act	2000 Act	2007 Act	Other Acts and Policy
<b>Support</b>	advocacy; MWC, LA, HB, MHTS duties; named person; social worker, MHOs; AMPs/RMOs; GPs	information and advice; OPG, LA, MWC, HB duties; social worker, MHO; GPs; AMPs	access to services (advocacy): LA & HB duties; cooperation; council officer.	assessment and access to services; care management
<b>Protection</b>	duty to inquire; risk to health safety, welfare;(finance/property) offences by others	duty to inquire; welfare, property & finance powers and provisions; proxy powers; offences	duty to inquire; duty to report; cooperation; risk of harm from others and self; assessment, removal, banning orders; access to records; offences	duty of care (protection); care programme approach
<b>Care</b>	assessment; care and support services / promotion of well-being and social development; compulsory powers (CTO)	welfare guardian powers	access to services	in the community; at home / residential and nursing home care; carer assessment/support; direct payment; care management; single shared assessment; care programme approach
<b>Treatment</b>	for mental disorder; definition of medical treatment; informal and compulsory treatment (STD/CTO); advance statements	treatment for physical and mental health on a non-compulsory basis	medical examination	access to treatment following community care assessment; care programme approach
<b>Rights and Principles</b>	<ul style="list-style-type: none"> <li>providing maximum benefit;</li> <li>present / past wishes / feelings</li> <li>the views of relevant others;</li> <li>patient's participation;</li> <li>information and support of patient to participate;</li> <li>considering a range of</li> </ul>	<ul style="list-style-type: none"> <li>provide benefit ;</li> <li>least restrictive option;</li> <li>account shall be taken of the present and past wishes and feelings of the adult;</li> <li>the views of others;</li> <li>to encourage the adult to exercise whatever skills he/she has; and</li> </ul>	<ul style="list-style-type: none"> <li>provide benefit;</li> <li>least restrictive option;</li> <li>regard to the adult's wishes/feelings;</li> <li>views of nearest relative, primary carer, etc</li> <li>the adult participating as fully as possible;</li> <li>information and support as is necessary to participate;</li> </ul>	Equality Act 2010 Alzheimer Scotland's Charter of Rights: <ul style="list-style-type: none"> <li>Participation</li> <li>Accountability</li> <li>Non-discrimination and equality</li> <li>Empowerment</li> <li>Legality</li> </ul>

	<p>options;</p> <ul style="list-style-type: none"><li>• ensuring equality;</li><li>• respecting diversity;</li><li>• minimum restriction;</li><li>• needs and circumstances of the carer;</li><li>• provision of appropriate services and continuing care</li></ul>	<p>the development of new skills.</p>	<ul style="list-style-type: none"><li>• adult not to be treated less favourably than any other in a comparable situation</li><li>• respecting the adult's abilities, background and characteristics.</li></ul>	
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**Appendix 2: Harm / risk / and relative powers across the Acts (all potential aspects and examples only)**

Harm	Acts	Risk of	Warrants; access & entry; assessment	Removal	Emergency and short term powers	Long term orders	
From others	2007 Act	Abuse Assault	Access and entry; Assessment order.	Removal order (SH or JOP);		Banning order;	
	2003 Act	Neglect Offence Assault	Access and entry; Assessment / medical examination.	s293/4 or 297;	Emergency or short term detention;	CTO;	Access; Residence;
	2000 Act	Personal welfare				Welfare Finance	W Guardianship; Part 3; F Guardianship;
From self	2007 Act	Harm	Access and entry; Assessment order.	Removal order (SH or JOP)			
	2003 Act	Self	Access and entry; Assessment / medical examination.	s293/4 or 297;	Emergency or short term detention;	CTO;	
	2000 Act	Neglect / personal welfare				Finance Health Welfare	Part 3/ F Guardianship; Part 5; W Guardianship;
From lack of (or deficiency in) care or treatment; or neglect; or living alone and unable to care; unable to protect oneself	2007 Act	Unable to protect	Access and entry; Assessment order.	Removal order (SH or JOP);			
	2003 Act	Unable to care	Access and entry; Assessment / medical examination.	s293/4 or 297;	Emergency or short term detention;	CTO;	Access; Treatment / care; Residence;
	2000 Act	Personal welfare				Health Welfare	Part 5; W Guardianship;
To property and Finances	2007 Act	Financial Abuse	Access and entry; Assessment order;			Banning order;	
	2003 Act	Risk to	Access and entry; Assessment.				
	2000 Act	Risk to			Intervention Orders	F Guardianship;	Funds & Accounts;
To Others	2007 Act	To carers	Access and entry; Assessment order;	Removal order (SH or JOP);			
	2003 Act	From mental disorder	Access and entry; Assessment / medical examination (incapacity?).	s293/4 or 297;	Emergency or short term detention;	CTO;	Treatment; Residence; Access;
	2000 Act	From Incapacity				Welfare guardianship.	

### Appendix 3: The links across the Acts



## Appendix 4: A range of formal provisions

Act	Power (for example)	Provision (for example)	Task / purpose
2003 Act	To require adult to attend for treatment	CTO (community)	To improve mental health / treat depression
	To admit adult to hospital for treatment	Short term detention / Emergency detention	To treat under compulsion
	To access (and enter premises) in emergency	Warrant of entry under S35 (1)	To assess
	To medical examine	Warrant to medically examine under S35 (4)	To establish mental disorder and need for treatment
	To remove to a place of safety	S293 (Sheriff) S294 (JOP)	To protect adult at risk
	To require the adult to reside in another place for treatment	CTO (community)	To improve mental health and health
	To access adult (long term)	CTO (community)	To monitor mental disorder
2000 Act	To require adult to attend community care services	CTO (community)	To develop skills and abilities /access leisure & recreation
	To authorise treatment	Part 5	To treat physical health problems / depression
	To authorise the management of funds	Part 3	To protect finances
	To access adult (long term)	Welfare Guardianship	To monitor health and welfare
	To require the adult to reside in another place for care	Welfare Guardianship	To protect health and welfare (and safety)
	To require adult to refrain from alcohol/drug use	Welfare Guardianship	To improve health and welfare (and safety)
	To require adult to attend day care	Welfare Guardianship	To improve health and welfare (and safety)
	To require adult not to consort with another	Welfare Guardianship	To protect welfare of adult at risk
To manage adult's financial estate / property	Financial Guardianship	To protect finances/property of adult	
2007 Act	To access to assess	Warrant for entry to premises under s37 (sheriff) or s40 (JOP)	To establish if adult at risk
	To require the adult to transfer to a suitable place for assessment	Assessment order (S11)	Remove to assess or medically examine in a suitable place
	To require the adult to transfer to a suitable place for protection	Removal order (S14) (Sheriff) Urgent Removal Order (s40) (Just of the Peace)	Remove to protect
	To require subject of banning order	Banning order (S19) on named subject(s)	To protect adult at risk

	not to be in adult's house & subject to conditions		
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## Appendix 5: Risk profile / types / examples / Acts

Risk	Type	Examples	Predominate Acts (secondary Acts)
<b>from others</b>	abuse / harm	targeted abuse	2007
	assault	physical, sexual, financial, psychological harm	2007
	offences	sexual offences and rape, etc	2007 (2003)
	neglect	not providing care	2007 (2003)
	deficiency in care / omissions to act	not acting to protect or safeguard a person with mental disorder	2007 (2003)
<b>from self</b>	self neglect or lack of care	lack of hygiene, not eating appropriately;	2003 (2007)
	behaviours (incapacity)	disinhibition, scratching, head hitting	2000
	harming	taking pills, cutting, parasuicide / suicide attempts	2003
<b>to personal welfare</b>	unable to self care	not looking after self, house, finances	2003 (2000)
	living alone without care	not looking after self, house, finances	2003 (2000)
	deficiency in care and treatment	poor or inadequate care provision	2003
	incapable in respect of	lack of capacity to act or make decisions about person welfare	2000 (2003)
<b>to health</b>	lack of treatment	medication /assessment / detention	2003 (2000)
<b>to property and finances</b>	not paying bills	lack of ability or capacity to manage finances	2000 (if lacks capacity) (2003)
	abuse	theft, extortion, fraud, misappropriation of funds, etc	2007 (2000 if lacks capacity)
<b>to others</b>	from behaviours	harming carers	2000 (if lacks capacity) (2003)
	assault	posing harm to others	2003 (2000 if lacks capacity)



## Appendix 6: risk assessment and adult protection plans

RISK ASSESSMENT	PROTECTION PLAN
<p><b>1. COMMUNICATION, CAPACITY, AND INVOLVEMENT</b>  <b>e.g.</b> Has the person being assessed any particular communication and support needs? (e.g. for interpreter, advocate, appropriate adult, Makaton, sign, speech and language therapist; or as a result of dementia, head injury etc)</p> <p><b>2. CHRONOLOGY OF SIGNIFICANT EVENTS</b>            Chronology of relevant events/significant event history (Attach if available; <b>or</b> list significant relevant events under: date, brief detail, agencies/people involved, and outcome/consequences)</p> <p><b>3. CURRENT RISKS OR CONCERNS</b>            e.g. Physical injury; violence/aggressive behaviour</p> <p><b>4. CURRENT RISK DESCRIPTION</b>            e.g. What behaviour, allegation, complaint, circumstances or event has prompted this risk assessment? (detail the nature of the behaviour or incidents which put the person at risk, e.g. the nature and extent of sexual/physical/financial abuse; the specific areas of self neglect (eating, medication, wandering))</p> <p><b>5. RISK ASSESSMENT</b>            e.g. What is your assessment of the risk? How severe might the consequences/injuries/harm/damage be if no action is taken to reduce the risk, or increase protection? How probable is it that these circumstances will recur? What is your view and any agreed view about the degree of risk and urgency of action?</p> <p><b>6. RECOMMENDATION/ACTIONS</b>  <b>e.g.</b> Detail any immediate actions that have already been taken in order to protect, or reduce the risk (include whether this situation/risk/concern been referred to another service, or agency, and if so, with what result)</p>	<p><b>1. PERSONAL DETAILS – ADULT AT RISK</b></p> <p><b>2. AGENCY/STAFF INVOLVEMENT</b></p> <p><b>3. ACTIONS</b>            Actions and Roles, which define services to be in place and procedures to be followed, with responsibilities, timescales and outcomes identified involving service users, carers, members of the core group and all other agencies involved in the Protection Plan. These should include immediate or longer term actions; both benefit enhancing and harm reducing measures, and roles of services, the adult, advocates, unpaid carers attorneys and guardians, as appropriate.</p> <p><b>4. VIEWS AND ROLES OF ADULT AT RISK AND OTHERS</b></p> <p><b>5. CONTINGENCY PLAN</b>            To identify significant changes which might occur and what additional or alternative action should be taken in that event, such as case conference or legal action.</p> <p><b>6. DISTRIBUTION OF PROTECTION PLAN</b>            Distribution to be identified which takes account of confidentiality and third party information issues.</p>

## Appendix 7: Powers across in the Primary Acts in brief

### Immediate and short term powers

**A short term detention** certificate (STDC) allows for a person to be detained in hospital for up to 28 days (either directly from the community or if already in hospital) (2003 Act: s44). The STDC allows for the determining or giving of medical treatment, and is granted by an approved medical practitioner (AMP) who has consulted and obtained consent from a MHO.

**An emergency detention** certificate (EDC) where a short term detention cannot be pursued, which may be necessary to protect the person (2003 Act: s36). The EDC detains a patient in hospital for up to 72 hours.

### Removal to a place of safety

**From a private place where a removal order** may be sought by a MHO to a Sheriff for the removal of the adult at risk 'from a private place' to a 'place of safety' for up to seven days, where the person is subject to, or exposed, to ill-treatment, neglect or some other deficiency in care and treatment (2003 Act: s293); or

**Removal from a public place**, where the police may take a person to a place of safety if the person is in a public place and appears to be mentally disordered, in immediate need of care or treatment, for a period of up to 24 hours (2003 Act: s297); or

**Urgent application for a removal order** may be made to a justice of peace where it is impracticable to apply to a Sheriff and where any delay in obtaining a removal order is likely to be prejudicial to the person (2003: s294).

**A 'place of safety'** (2003 Act: s300) is defined as: a) a hospital; b) premises which are used for the purpose of providing a care home service (as defined in section 2(3) of the Regulation of Care (Scotland) Act 2001 (asp 8)); or c) any other suitable place (other than a police station) the occupier of which is willing temporarily to receive a mentally disordered person.

### Intervention orders (2000 Act: s53)

Under this provision, it is possible to apply to the Sheriff for an intervention order to deal with clearly defined, 'one-off' financial, property or personal welfare matters in relation to an adult. An intervention order is not an emergency provision, because it may take significant time to pursue through court. It does, however, offer a short term power to effect an action regarding a person's welfare, health, money or property. Intervention orders can be used where the need for action is time-limited or to deal with one-off decisions or single issue concerning the adult's property, finance or personal welfare.

**A removal order** (2007 Act: s14) which authorises a council officer or any council nominee to move an adult at risk to a specified place to protect him/her from harm; or

**An 'urgent cases' removal order** (2007 Act: s40 1a) allows an urgent application to go before a Justice of Peace where it is not practical to approach a Sheriff and the adult is likely to be harmed by any delay caused in granting the removal order; or

**An assessment order** (2003 Act: s11) to take an adult at risk of serious harm to a more suitable place to allow a council officer or council nominee to conduct a private interview or where a medical practitioner can conduct a medical examination.

**Compulsory treatment orders** (2003 Act: s63) offer long term powers to provide compulsory treatment and care of a person with mental disorder. The order can either be expedited in hospital (as the majority of them are) offering detention and treatment under compulsion, or in the community offering a range of compulsory measures, such as attendance with a view of receiving mental treatment and/or community care services, residing at a specified place, and allowing access to the RMO, MHO, etc., etc. They last for up

to 6 months initially, and then can be renewed for another 6 months, and renewed on a 12 months basis. The orders are made by the Mental Health Tribunal (MHTS) following an application by a MHO.

**Guardianship orders** (2000 Act: s57) provide a suite of powers to respond to the problems associated with an adult's incapacity across welfare (and medical treatment), financial and property matters (or a combination of these, including the risks thereof the adult's welfare, health and finances. The orders are granted by the Sheriff in the Sheriff court and provided in three forms: singular welfare or financial orders, or combined welfare / financial orders.

**A Banning Order** (2007 Act: s19) may ban a subject of the order from being in an adult's premises (and if necessary an area of residence) for up to six months, which may include a range of conditions applied on the subject, and may include a power of arrest.