

[Adult Support and Protection \(Scotland\) Bill](#)

Bill Number: SP Bill 62
Introduced on: 30 March 2006
Introduced by: Andy Kerr (Executive Bill)
Passed: 15 February 2007
Royal Assent: 21 March 2007

[2007 asp 10](#)

Passage of the Bill

The [Adult Support and Protection \(Scotland\) Bill](#) [SP Bill 62] was introduced in the Parliament on 30 March 2006. Stage 1 commenced on 25 April 2006 with the Health Committee as the lead committee. The Stage 1 debate took place on 23 November 2006 and the [Bill was passed](#) following the Stage 3 parliamentary debate on [15 February 2007](#).

Purpose and objectives of the Bill

The Bill took forward recommendations of the Scottish Law Commission's Report on Vulnerable Adults (Scot Law Com No 158, 1997), and those of the Social Work Services Inspectorate (now the Social Work Inspection Agency) and the Mental Welfare Commission following investigations into Scottish Borders Council. The Bill sought to protect and benefit adults at risk of being abused, by introducing investigative rights and duties as well as a range of post-assessment interventions. These measures were to be underpinned by the creation of local multi-disciplinary Adult Protection Committees to both oversee and coordinate the work of various agencies involved in abuse investigations and to develop prevention strategies.

In addition, the Bill sought to amend the [Adults with Incapacity \(Scotland\) Act 2000](#) with the aim of simplifying and streamlining the protections for adults with incapacity whilst improving access to them. It also sought to make a number of amendments to the Social Work (Scotland) Act 1968 regarding the liable relatives rule, direct payments and ordinary residence. Finally, it sought to amend the [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003](#) to ensure that Mental Health Tribunal reviews take place every two years.

Provisions of the Bill

Part 1 of the Bill proposed new provisions for the protection of adults at risk of abuse. The Bill defined an adult at risk and what was to be considered as abuse. It placed a duty on local authorities to inquire if it believes an adult is at risk of abuse. It also placed a duty of cooperation on a number of bodies

including the local NHS Board, to support the council with its inquiry or to inform the local authority of any adult it believes it is at risk of abuse. The Bill then provides local authorities with new powers to carry out assessments of the person and their circumstances; intervene to remove the adult or manage the risk of abuse; if necessary and in the last resort, to exclude the perpetrator; and, if necessary and in the last resort, to force entry to perform the above functions.

However, such interventions were to complement other interventions that did not require statute including informal mediation between victim and perpetrator to negotiate and agree future plans. The Bill also contained a principle to ensure that any intervention was essential for the welfare of the individual and the least restrictive possible.

Finally, Part 1 of the Bill proposed a duty on local authorities to establish a multi-agency Adult Protection Committee which would take a strategic overview in jointly managing adult protection policies, systems and procedures at a local level.

Part 2 of the Bill contained provisions to amend the Adults with Incapacity (Scotland) Act 2000. Following a two year consultancy, the work of the Parliament's Justice 2 Committee and an Executive consultation, Part 2 aimed to address issues arising from the early days of implementation and ensure that the legislation was better able to meet its objectives by simplifying and streamlining the protections for adults with incapacity and improving access to them. Amendments were proposed in a number of areas including powers of attorney, authority to intromit with funds, intervention orders and guardianship orders.

Part 3 of the Bill sought a number of amendments and appeals to the Social Work (Scotland) Act 1968, namely:

- amendments to the provisions on ordinary residence to clarify and update the legislation determining which local authority is financially responsible for providing community care services especially when a person moves between local authority areas
- to repeal provisions regarding the liable relatives rule as it applies to charging for care home fees in Scotland
- amendments to allow to allow Scottish Ministers to make provision for the delegation of functions to local authorities so that the local authorities can exercise flexibility in designing an individual's direct payments care package. It was proposed that the new power would allow local authorities to determine whether exceptional circumstances exist which would justify using direct payments to employ a close relative in a particular case.

Finally, Part 3 of the Bill sought to make an amendment to the Mental Health and Treatment (Scotland) Act 2003 to ensure that Mental Health Tribunal reviews take place every two years, as was the original intention of the Act.

Parliamentary consideration

Following its stage 1 scrutiny of the Bill the Health Committee published its [Stage 1 Report](#) on 10 November 2006. The Committee had major concerns with Part 1 of the Bill contending that the provisions raised fundamental issues about the balance between the reach of the state in its duty to protect, as against the rights of the individual. On the one hand the Committee accepted that this part of the Bill contained specific provisions which could be genuinely useful and help to counter the abuse of vulnerable people, especially the elderly. However, on the other hand it considered that the provisions were very widely drawn, potentially encompassing every adult member of the population. It also noted that a number of the groups that the Bill intended to help, in particular disability groups, were opposed to it and had raised some serious issues in evidence before the Committee.

The Committee recommended the following changes to Part 1 of the Bill:

- that the definition of who is covered by Part 1 of the Bill be amended so that it is not so all-encompassing and discriminatory in terms of those with disabilities
- the term 'abuse' should be removed from the Bill and replaced with a less pejorative term so that it does not stigmatise and alienate those who have only been guilty of benign neglect, resulting in attempts to improve circumstances for the adult at risk being hindered
- the Bill should be amended so that it does not override rights established in other pieces of legislation, in particular the rights to advocacy and advanced statements contained in the Mental Health Act
- the same right to appeal that is proposed for banning orders should be extended to removal orders to reduce the risk of challenge under the European Convention of Human Rights
- the definition of the person who has the power to enter premises should be made more specific than 'a council officer'
- the test which a Sheriff must apply before making a protection order against the wishes of the adult at risk should be tightened

The Committee welcomed the proposals in Part 2 of Bill, though did make one recommendation on an aspect of the amendments to the application to intrude with funds. It also supported the proposals in Part 3 of the Bill, though following evidence received did recommend that the Executive establish transitional arrangements under the 'ordinary residence' provisions of the Community Care and Health Act by order so that a recipient of a care package continues to receive that package whilst the relevant local authorities agree the financial aspects.

On 17 November 2006 the Deputy Minister for Health and Community Care, Lewis Macdonald MSP, [responded](#) to the recommendations of the Committee on Part 1 of the Bill. He made commitments on all the recommendations, apart from that concerning the right of appeal to a removal order. Such

commitments were reiterated during the [Stage 1 debate](#) on 23 November 2006.

On 11 December the Deputy Minister for Health and Community Care sent a [letter](#) to the Committee regarding its recommendations on Parts 2 and 3, and explained his reasoning for not supporting these. He also advised the Committee of a large amendment at Stage 2 which would seek to consolidate the proposed changes to the Adults with Incapacity Act in one amendment.

Stage 2 took place on [12 December 2006](#) (Part 1) and [19 December 2006](#) (Parts 2 and 3). As regards Part 1, the Minister made a number of amendments that he had committed himself to, including the definitions of “an adult at risk” and the term “abuse”, and making it clear that granting an order against the consent of an adult at risk is a last resort. In addition he either accepted at Stage 2 or said he would come forward with amendments at Stage 3 a number of issues raised by Members of the Committee. These included:

- that the Council officer visiting an adult at risk must explain why they are there
- the adult at risk must be made aware they can refuse medical examinations
- the Sheriff must be satisfied adult at risk can be taken to a suitable place

As regards Parts 2 and 3 a number of amendments were proposed by the Minister and accepted by the Committee. In addition a number of amendments were proposed by Members of the Committee. Some of these were agreed to, or the Deputy Minister gave assurances he would come forward with amendments at Stage 3. These amendments as well as all those concerning Part 1 are discussed in more detail in the SPICe Briefing 07/07 [‘Adult Support and Protection \(Scotland\) Bill: Parliamentary Consideration Prior to Stage 3’](#).

[Stage 3](#) took place on 15 February 2003. Prior to it on 7 December 2007 the Deputy Minister for Health and Community Care sent a [letter](#) to the Convener of the Health Committee advising of a further amendment he intended to propose regarding the Adults with Incapacity Act 2000. The Deputy Minister also proposed amendments that he previously committed himself to taking account of the issues raised by Members of the Committee at Stage 2.