

# Adult Support and Protection (Scotland) Bill

---

---

## Marshalled List of Amendments selected for Stage 3

The Bill will be considered in the following order—

Section 1 to 69  
Section 70 to 72

Schedule 1 and 2  
Long Title

Amendments marked \* are new (including manuscript amendments) or have been altered.

### Section 6

#### Dr Jean Turner

1 In section 6, page 3, line 33, at end insert—

<(1A) Subsection (1B) applies where—

- (a) a council officer visits, under subsection (1), a person whom the officer considers may be an adult at risk, and
- (b) the visit is being undertaken to assist a council, under section 4, to inquire about the person's well-being.

(1B) The officer must—

- (a) be accompanied by a doctor, and
- (b) take reasonable steps to ensure that the doctor is from the general practice with which the person is registered.>

### Section 8

#### Lewis Macdonald

2 In section 8, page 4, line 11, at end insert—

<( ) A person must be informed of the right to refuse to be examined before a medical examination is carried out (whether under this section or in pursuance of an assessment order).>

### Section 11

#### Lewis Macdonald

3 In section 11, page 5, line 25, at end insert <, and

( ) as to the availability and suitability of the place at which the person is to be interviewed and examined.>

## Section 49

### Dr Jean Turner

4 In section 49, page 21, line 32, at end insert—

<( ) In particular, an order made under subsection (1) must specify that any individual who has been authorised by a council to perform functions must have been registered as a social worker for at least 12 months on—

(a) the register maintained by the Scottish Social Services Council under section 44(1) of the Regulation of Care (Scotland) Act 2001 (asp 8), or

(b) a register prescribed by order under section 52(2)(b) of that Act.>

## After section 51

### Lewis Macdonald

9 After section 51 insert—

#### <Applications and proceedings: sheriff to consider adult’s wishes and feelings

After section 3(5) of the 2000 Act insert—

“(5A) In determining an application or any other proceedings under this Act, the sheriff shall, without prejudice to the generality of section 1(4)(a), take account of the wishes and feelings of the adult who is the subject of the application or proceedings so far as they are expressed by a person providing independent advocacy services.

(5B) In subsection (5A), “independent advocacy services” has the same meaning as it has in section 259(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13).”.>

## Section 53

### Mrs Nanette Milne

23 In section 53, page 24, line 19, at end insert <, by a person qualified and practising as a solicitor, notary public, commission for oaths or equivalent in a jurisdiction outwith Scotland (in this section and in section 16, a “foreign solicitor”),

( ) in sub-paragraph (i) at end insert “(and where he is a foreign solicitor, that he has witnessed that subscription)”,>

### Mrs Nanette Milne

24 In section 53, page 24, line 22, at end insert <, foreign solicitor”,>

### Mrs Nanette Milne

25 In section 53, page 24, line 35, at end insert <or a foreign solicitor”,

( ) in sub-paragraph (i), at end insert “(and where he is a foreign solicitor, that he has witnessed that subscription)”,>

**Mrs Nanette Milne**

- 26 In section 53, page 24, line 38, at end insert <, foreign solicitor”,>

**Section 54**

**Lewis Macdonald**

- 10 In section 54, page 37, line 18, at end insert—  
<( ) A notice under subsection (1) must be given within 7 days of the date of the change to which it relates.>

**Lewis Macdonald**

- 11 In section 54, page 38, line 18, at end insert—  
<( ) The Public Guardian must on suspending or terminating the authority of the withdrawer enter prescribed particulars in the register maintained by the Public Guardian under section 6(2)(b)(iii).>

**Lewis Macdonald**

- 12 In section 54, page 39, line 2, at end insert—  
**<31BB Duration of certificates issued under section 24C, 24D, and 26G etc.**  
(1) A certificate issued under section 24C, 24D or 26G is valid for such period as it may specify.  
(2) But the Public Guardian may cancel the certificate at any time before the end of any period so specified.  
(3) The Public Guardian must without delay intimate such a cancellation to—  
(a) the person to whom the certificate was issued,  
(b) where the certificate was issued under section 26G, the fundholder of the original account, and  
(c) such other persons as the Public Guardian thinks fit.>

**Section 60**

**Lewis Macdonald**

- 13 In section 60, page 40, leave out from line 39 to line 6 on page 41

**Section 61**

**Lewis Macdonald**

- 14 In section 61, page 42, line 33, leave out subsection (1A)

**Mrs Nanette Milne**

- 27 In section 61, page 42, line 33, after <Act> insert—  
<( ) in subsection (1)(b) after <Act> insert “or any other enactment”>

**Lewis Macdonald**

- 15 In section 61, page 47, line 13, at end insert—
- <(3D) The Public Guardian must take reasonable steps to give notice of the effect of sub-paragraph (3A) to any person who—
    - (a) is a guardian to an adult by virtue of this schedule;
    - (b) was a curator bonis to that adult; and
    - (c) has not applied for renewal of guardianship.
  - (3E) A local authority must take reasonable steps to give notice of the effect of sub-paragraph (3A) to any person who—
    - (a) is a guardian to an adult residing within the local authority’s area by virtue of this schedule;
    - (b) was a tutor dative or tutor-in-law to that adult; and
    - (c) has not applied for renewal of guardianship.”.>

**After section 63**

**Lewis Macdonald**

- 16 After section 63 insert—

**<Power to help incapable adults to benefit from social services etc.**

After section 13 of Social Work (Scotland) Act 1968 (c.49) insert—

**“13ZA Provision of services to incapable adults**

- 5 (1) Where—
- (a) a local authority have decided under section 12A of this Act that an adult’s needs call for the provision of a community care service, and
  - (b) it appears to the local authority that the adult is incapable in relation to decisions about the service,
- 10 the local authority may take any steps which they consider would help the adult to benefit from the service.
- (2) Without prejudice to the generality of subsection (1) above, steps that may be taken by the local authority include moving the adult to residential accommodation provided in pursuance of this Part.
  - (3) The principles set out in subsection (2) to (4) of section 1 of the 2000 Act apply in relation to any steps taken under subsection (1) above as they apply to interventions in the affairs of an adult under or in pursuance of that Act.
  - (4) Subsection (1) does not authorise a local authority to take steps if they are aware that—
- 15

- 20 (a) there is a guardian or welfare attorney with powers relating to the proposed steps;
- (b) an intervention order has been granted relating to the proposed steps; or
- 25 (c) an application has been made (but not yet determined) for an intervention order or guardianship order under Part 6 of the 2000 Act relating to the proposed steps.
- (5) In this section—
- (a) “the 2000 Act” means the Adults with Incapacity (Scotland) Act 2000 (asp 4);
- 30 (b) “adult” has the meaning given in section 1(6) of the 2000 Act;
- (c) “community care service” has the meaning given in section 5A of this Act;
- (d) “incapable” has the meaning given in section 1(6) of the 2000 Act;
- (e) “intervention order” is to be construed in accordance with section 53 of the 2000 Act”;
- 35 (f) the reference to a guardian includes a reference to—
- (i) a guardian appointed under the 2000 Act; and
- (ii) a guardian (however called) appointed under the law of any country to, or entitled under the law of any country to act for, an adult during his incapacity, if the guardianship is recognised by the law of Scotland;
- 40 (g) the reference to a welfare attorney includes a reference to—
- (i) a welfare attorney within the meaning of section 16 of the 2000 Act; and
- 45 (ii) a person granted, under a contract, grant or appointment governed by the law of any country, powers (however expressed) relating to the granter’s personal welfare and having effect during the granter’s incapacity.”.>

**Mrs Nanette Milne**

- 16A** As an amendment to amendment 16, line 25, at end insert <or  
( ) it is likely that such an application will be made.>

**After section 67**

**Lewis Macdonald**

- 17** After section 67, insert—

**<Compulsion orders: revocation**

- (1) In section 183(5)(b)(ii) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) substitute—
- “(ii) either—

- (A) that the conditions mentioned in paragraphs (b) and (c) of section 182(4) of this Act continue to apply in respect of the patient; or
  - (B) that it continues to be necessary for the patient to be subject to the compulsion order,”.
- (2) In section 184(4)(b)(ii) of that Act substitute—
- “(ii) either—
  - (A) that the conditions mentioned in paragraphs (b) and (c) of section 182(4) of this Act continue to apply in respect of the patient; or
  - (B) that it continues to be necessary for the patient to be subject to the compulsion order,”.
- (3) In section 188(4)(b)(ii) of that Act substitute—
- “(ii) either—
  - (A) that the conditions mentioned in paragraphs (b) and (c) of section 182(4) of this Act continue to apply in respect of the patient; or
  - (B) that it continues to be necessary for the patient to be subject to the compulsion order,”.
- (4) In section 193(4)(b)(ii) of that Act substitute—
- “(ii) either—
  - (A) that the conditions mentioned in paragraphs (b) and (c) of section 182(4) of this Act continue to apply in respect of the patient; or
  - (B) that it continues to be necessary for the patient to be subject to the compulsion order,”.>

**After section 67C**

**Lewis Macdonald**

**18** After section 67C, insert—

**<Applications to the Mental Health Tribunal for Scotland**

After paragraph 13 of schedule 2 to the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), insert—

*“Withdrawn applications to be disregarded for certain purposes*

13A For the purposes of sections 101(3)(c), 189(2)(a)(ii) and (b)(ii) and 213(2)(a)(ii) and (b)(ii) of this Act, an application to the Tribunal which is withdrawn by the applicant before it is determined is to be treated as not having been made.”.>

## Schedule 2

### Lewis Macdonald

- 19 In schedule 2, page 58, line 23, column 2, at beginning insert—  
<Section 142.>

## Section 71

### Lewis Macdonald

- 21 In section 71, page 55, line 2, at end insert—  
<( ) Sections (*Power to help incapable adults to benefit from social services etc.*), (*Compulsion orders: revocation*) and 67A come into force on the day after Royal Assent.>

### Lewis Macdonald

- 22 In section 71, page 55, line 3, after <3A> insert <(except sections (*Power to help incapable adults to benefit from social services etc.*), (*Compulsion orders: revocation*) and 67A)>

## Long Title

### Lewis Macdonald

- 20 In the long title, page 1, line 9, leave out from <adjust> to <reviewed;> on line 10 and insert <amend the law relating to mentally disordered persons;>



© Parliamentary copyright. Scottish Parliamentary Corporate Body 2007.

Applications for reproduction should be made in writing to the Licensing Division,  
Her Majesty's Stationery Office, St Clements House, 2-16 Colegate, Norwich NR3 1BQ  
Fax 01603 723000, which is administering the copyright on behalf of the Scottish Parliamentary Corporate  
Body.

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by  
RR Donnelley

---

Published in Edinburgh by RR Donnelley and available from:

**Blackwell's Bookshop**

**53 South Bridge  
Edinburgh EH1 1YS  
0131 622 8222**

**Blackwell's Bookshops:**  
243-244 High Holborn  
London WC1 7DZ  
Tel 020 7831 9501

All trade orders for Scottish Parliament documents should be placed through Blackwell's Edinburgh

**Blackwell's Scottish Parliament Documentation Helpline may be able to assist with additional information on publications of or about the Scottish Parliament, their availability and cost:**

**Telephone orders and inquiries  
0131 622 8283 or  
0131 622 8258**

**Fax orders  
0131 557 8149**

**E-mail orders  
business.edinburgh@blackwell.co.uk**

**Subscriptions & Standing Orders  
business.edinburgh@blackwell.co.uk**

**Scottish Parliament**

**RNID Ttypetalk calls welcome on  
18001 0131 348 5000  
Textphone 0845 270 0152**

sp.info@scottish.parliament.uk

All documents are available on the Scottish Parliament website at:

www.scottish.parliament.uk

**Accredited Agents**  
(see Yellow Pages)

and through good booksellers

---

Printed in Scotland by RR Donnelley

ISBN 978-1-4061-3153-6

£1.20

ISBN 978-1-4061-3153-6



9 781406 131536