

ADULT SUPPORT AND PROTECTION (SCOTLAND) BILL: PARLIAMENTARY CONSIDERATION PRIOR TO STAGE 3

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This briefing outlines the changes that have been made to the Bill since it was first introduced. These changes are the result of: recommendations made by the Health Committee at Stage 1 (and accepted by the Deputy Minister); and other amendments introduced at Stage 2 by Committee Members or the Deputy Minister. The briefing, which is presented in the form of a large table, also highlights commitments made by the Deputy Minister for Stage 3.

The most significant changes to the Bill since introduction are covered in a summary table.

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INTRODUCTION

[The Adult Support and Protection \(Scotland\) Bill](#) (the Bill) was introduced to the Scottish Parliament on 30 March 2006. It is accompanied by [Explanatory Notes](#) (2006) and a [Policy Memorandum](#) (2006).

Part 1 of the Bill seeks to protect and benefit adults at risk of being abused. It proposes introducing investigative rights and duties on local authorities and other public bodies, as well as a range of post-assessment interventions, including banning orders and removal orders. It further proposes to create local multi-disciplinary Adult Protection Committees (APCs) to both oversee and coordinate the work of various agencies involved in abuse investigations and to develop prevention strategies. Part 2 of the Bill seeks to amend the Adults with Incapacity (Scotland) Act 2000 (asp 4) with the aim of simplifying and streamlining the protections for adults with incapacity whilst improving access to them. Part 3 of the Bill proposes a number of amendments to the Social Work (Scotland) Act 1968 (ch 49) (the 1968 Act), regarding the liable relatives rule, direct payments and ordinary residence. In addition, it seeks to amend the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) to ensure that Mental Health Tribunal reviews take place every 2 years

There are two SPICe briefings for the Bill as introduced. The [first briefing](#) covers the adult protection measures in Part 1 of the Bill (Payne, 2006a), whilst the [second briefing](#) provides discusses Parts 2 and 3 of the Bill (Payne, 2006b).

Stage 1 commenced on 25 April 2006 with the Health Committee as the lead committee. The Committee published its [Stage 1 Report](#) (Scottish Parliament Health Committee, 2006a) on 10 November 2006, with the [Stage 1 debate](#) (Scottish Parliament, 2006) being held on 23 November 2006.

Stage 2 commenced on 12 December 2006 (Health Committee, 2006b) and was completed with one further meeting on 19 December 2006 (Health Committee, 2006c).

SUMMARY

The following tables summarise the most significant changes that have happened to the Bill since it was introduced. Table 1 lists the main changes recommended by the Health Committee in its Stage 1 report, and the response of the Deputy Minister at Stage 2. Table 2 lists the most significant amendments proposed by Committee members at Stage 2, how they were dealt with, and any outstanding Ministerial commitments on these issues.

Please note that these tables only list the most significant issues. A comprehensive view of changes is provided in the main briefing.

Table 1: Summary of Ministerial Responses to Health Committee Recommendations

Committee Recommendations	Substantially Accepted by Minister?	Ministerial Response
Definition of 'adult at risk' should be tightened, especially to remove reference to disabilities	Yes	Definition changed
The definition should not be amendable by subordinate legislation	Yes	Provision removed from Bill
The term 'abuse' in the bill should be replaced	Yes	Replaced with 'harm'
Adults at risk should have same rights to advocacy services as under Mental Health Act	Yes	Bill amended to include this
Tightening of definition of 'council officer' able to enter premises	Yes	The Executive will make an order to restrict definition – draft order available for Stage 3
Removal orders should be appealable	No	Not accepted by Minister
Make it clear that granting an order against the consent of an adult at risk is a last resort	Yes	Amendment introduced to make this clear
No one should be removed from their home without appropriate care and accommodation being available	No	No response

Table 2: Summary of Ministerial Responses to Significant Stage 2 Amendments

Amendment	Substantially accepted by Minister?	Ministerial Commitment
Council officer visiting an adult at risk must explain why they are there [77]	Yes	Will consider any other implications of the amendment
Council Officer visiting adult at risk must be accompanied by GP [45]	No	Not appropriate in all circumstances
Adult at risk must be made aware they can refuse medical exam [60 – withdrawn]	Yes	Will introduce amendment at Stage 3
Council officers and Sheriffs must give consideration to the general principles of the Bill [63]	No	Not necessary – already covered by Bill
Sheriff must be satisfied adult at risk can be taken to a suitable place [64, 46]	Yes	Will introduce further amendment at Stage 3
Orders should be able to be granted by a Sheriff not a JP	No	Not necessary due to amendment to limit JP orders to 12 hours maximum.
Removal orders should be appealable [55]	No	Orders only last 7 days + can be ‘recalled’
Adult Protection Committees must co-operate with Child protection Committees [52 - withdrawn]	Yes	Will include in Code of Practice
Independent advocates should be allowed at guardianship hearings [132]	Yes	
Transitional guardians should be informed when their orders will run out [138 withdrawn]	Yes	Will introduce amendment at Stage 3

PARLIAMENTARY CONSIDERATION

The following table summarises the key legislative and non-legislative recommendations made by the Health Committee in its Stage 1 Report and discusses any actions that have been taken as a result in the run up to and during Stage 2 proceedings. It includes a summary of commitments made by the Deputy Minister for Health and Community Care (the Deputy Minister), Lewis Macdonald MSP, in his [response](#) to the Committee's Stage 1 Report (Scottish Executive, 2006a and 2006b) and during the Stage 1 debate on 23 November 2006 (Scottish Parliament, 2006). In addition, the table provides information on amendments that were debated during Stage 2 but which did not originate from discussions at Stage 1. Finally, the table outlines any commitments made for Stage 3.

The table contains a number of links where Members can find further information on a number of topics. Members can find links to the Bill as amended at Stage 2, as well as other documents accompanying the Bill from the Scottish Parliament's Adult Support and Protection (Scotland) Bill [website](#).

PART 1: ADULT PROTECTION MEASURES

Para	Recommendation	Developments	Stage commitments
General			3
81	The Committee believes that there is a need to be careful in balancing the need to protect vulnerable people with the right of individuals to live their lives as they choose. It is important that the Bill does not become a mechanism to police lifestyles.	Responding to the Committee's Stage 1 Report, The Deputy Minister (Scottish Executive, 2006a, p 1) said the Bill is grappling with defining when it is appropriate for public authorities to intervene in the private lives of individuals and when it is not. Whilst contenting that "the barometer of a civilised society is it supports those who are unable to protect themselves", he accepted that interventions which seem patronising or discriminatory are inappropriate. He also recognised that given reservations of some disability organisations, the balance between protecting and enabling individuals to lead independent lives required further refinement. (See <i>General principles on intervention</i> , below).	
82	The Committee believes the provision to override the consent of the adult at risk should be used only as an absolute last resort. The Bill, as currently drafted, does not make this clear.	In response to the Committee's Stage 1 Report, the Deputy Minister (Scottish Executive, 2006a, p 1) stated that the Protection Orders were there to prevent individuals who cause harm intentionally from doing so. However, he considered that these should only be used only in circumstances where it is absolutely necessary, and he intended to make this position clearer. (See <i>General principles on intervention</i> , below).	
General principles on intervention (section 1-2)			
95	The Committee is happy to support the general principles under which the Bill should operate, as set out in sections 1-2.	<p>The Deputy Minister proposed Amendment 1 at Stage 2, which sought to ensure that the general principle of the Bill could not apply generally to people outwith the group of adults at risk whom the Bill was aiming to protect. This was agreed by the Committee (Scottish Parliament Health Committee, 2006b, col 3269).</p> <p>Nanette Milne MSP proposed Amendment 58, which sought to ensure that the positive influence of an adult's family, friendship, social contacts and support networks was taken into account when interventions were made in their lives. The Deputy Minister, whilst sympathetic to the aims of the amendment, considered the principle was already present in the Bill. He noted that the principles had been developed keeping in mind the principles of both the Mental Health (Care and Treatment) (Scotland) Act 2003 and the Adults with Incapacity (Scotland) Act 2000. However, he did commit to ensuring the issue was covered in the Code of practice that would accompany the Bill. The amendment was withdrawn with the agreement of the Committee (Scottish Parliament Health Committee, 2006b, col 3269-3270).</p>	

Para	Recommendation	Developments	Stage 3 commitments
Definition of those covered: “Adults at risk” (section 3)			
107	<p>The Committee believes that the definition of adults at risk of abuse currently contained within the Bill is not adequate. The Committee recommends that a new definition is provided that is not so all-encompassing, does not discriminate against particular groups and is operationally effective.</p>	<p>Responding to the Committee’s Stage 1 Report, the Deputy Minister (Scottish Executive, 2006a, p 1) committed the Executive to narrowing the definition of adults at risk to make clear that it will not relate to all people with disabilities. He reiterated this during the Stage 1 debate (Scottish Parliament 2006, col 29680). At Stage 2 the Deputy Minister proposed a new definition in Amendment 30. He believed this took account of the points made by the Committee in its Stage 1 Report and made clear the definition would neither cover the whole adult population, nor capture an individual on the basis of a single set of circumstances that apply to them (eg disability). He explained the amendment would put in place “a three-limb definition”, with each limb having to apply to the adult before intervention could take place. The amendment was agreed to by the Committee (Scottish Parliament Health Committee, 2006b, col 3271-3272).</p> <p>Nanette Milne MSP proposed Amendment 30A, which would have included people with “communication difficulties” in the revised definition. The Deputy Minister opposed the amendment, saying that it would potentially widen the definition beyond sensory impairment to those with language difficulties. He argued that the revised definition (in Amendment 30) would capture the people Nanette Milne was seeking to protect. The amendment was not agreed to by the Committee by 5 votes to 3. (Scottish Parliament Health Committee, 2006b, col 3271).</p>	
110	<p>The Health Committee supports the view of the Subordinate Legislation Committee that the definition of ‘adults at risk’ is so fundamental to the scope and impact of the Bill that it is inappropriate for it to be amendable by subordinate legislation. The Committee recommends that Section 3(2) of the Bill, which permits the definition to be amended by subordinate legislation, should be deleted.</p>	<p>At Stage 2 Amendment 30 (see above) replaced the whole of section 3 of the Bill. This new section did not include the clause permitting Scottish Ministers to amend the definition through subordinate legislation.</p>	

Para	Recommendation	Developments	Stage commitments
<i>The use of the term “abuse”</i>			3
120 -121	<p>It is the Committee’s view that the use of the term ‘abuse’ in the Bill is not appropriate or helpful, given that adults at risk may have been subject to benign neglect rather than deliberate abuse. Labelling someone an ‘abuser’ when they may themselves not be able to cope or simply have reached the end of their tether may discourage a resolution of the problems, or indeed the provision of care in the first place.</p> <p>The Committee recommends that the term ‘abuse’ is removed from the Bill and replaced by ‘serious harm’ or a similar term.</p>	<p>In response to the Committee’s Stage 1 Report, the Deputy Minister (Scottish Executive, 2006a, p 1) stated that he was willing to reconsider the use of the term “abuse” throughout the Bill to reflect the Committee's concern that this is potentially stigmatising to those who may have caused harm unintentionally.</p> <p>At Stage 2 the Deputy Minister proposed Amendment 6 and other consequential amendments, which replaced the term “abuse” with the term “harm”, to take account of the views of the Committee and others. This was agreed by the Committee. (Scottish Parliament Health Committee, 2006b, col 3275).</p> <p>Nanette Milne MSP proposed Amendments 72 and 80, to remove the term “serious” from “serious abuse”, as she believed it could cause significant problems in interpretation. The Deputy Minister argued that courts were accustomed to dealing with the concept of “serious”. The Committee did not agree with amendment 72, and Amendment 80 was not moved. (Scottish Parliament Health Committee, 2006b, col 3275, 3289 and 3294).</p>	
<i>The inter-relationship with other legislation</i>			
131	The Committee believes that those who are treated as adults at risk under this Bill should have the same rights to advocacy services as those subject to the similar provisions of the Mental Health (Treatment and Care) Act.	The Deputy Minister (Scottish Executive, 2006a, p 1), responding to the Committee’s Stage 1 Report, stated that he appreciated the importance of advocacy. At Stage 2, the Deputy Minister proposed Amendment 7 which stated that councils must have regard to the importance of appropriate services, including independent advocacy. “Independent advocacy” would have the same meaning as that provided for in the Mental Health (Care and Treatment) (Scotland) Act 2003. The amendment was agreed to by the Committee. (Scottish Parliament Health Committee, 2006b, col 3276).	
136	The Committee recommends that there should be a specific reference to advance statements within the Bill so that there is no danger of the provisions of the Mental Health (Treatment and Care) Act being inadvertently overridden.	In his response to the Committee’s Stage 1 Report , the Deputy Minister (Scottish Executive, 2006a, p 1) stated that he appreciated the importance of the role of an advance statement in making clear an individual’s wishes in circumstances where they may not be able to articulate these. In the Stage 1 debate (Scottish Parliament, 2006, col 29679) the Deputy Minister stated that it was not the intention of the Executive to override advance statements made under the Mental Health (Care and Treatment) (Scotland) Act 2003, and that he would further consider how best to make that clear. There were no developments in this area during Stage 2.	

Para	Recommendation	Developments	Stage 3 commitments
<i>Inquiries and investigations (sections 4-9)</i>			
-	There were no recommendations made by the Committee on this issue.	The Deputy Minister proposed Amendment 33 to clarify that a council officer has a duty to make inquiries about an adult at risk when concerns arise about an aspect of a persons circumstances rather than all of them which was inferred in the Bill as introduced. Thus, if the concern is financial then this will be the focus of the investigation and there will be no need to investigate the person’s health. The amendment was agreed to by the Committee. (Scottish Parliament Health Committee, 2006b, col 3273).	
<i>Inquiries and investigations (sections 4-9)</i>			
-	There were no recommendations made by the Committee on this issue.	Shona Robison noted that section 33 of the Bill stated that a council officer when making a visit must, if asked to do so, state the object of the visit and produce evidence of their authorisation. She proposed Amendment 77 to ensure council officers gave the information regardless of being asked, and Amendment 78 which sought to add to this that the officer would have to advise the adult of the consequences of non-compliance. The Deputy Minister accepted amendment 77, but did feel there could be unintended consequences, so said he would consider it further before Stage 3. However, he said he did not accept amendment 78 because it did not have the necessary clarity about the “adult” it refers to, arguing that the consequences would be different depending on whom that adult is. He pointed out that in section 46 the adult who is at risk cannot commit an offence by obstructing a council officer, so their doing so would have no legal consequence, but another adult who is being advised of the consequences of non-compliance may well be committing an offence by obstructing a council officer in the course of his or her duties. Amendment 77 was agreed to by the Committee and Amendment 78 was withdrawn. (Scottish Parliament Health Committee, 2006b, col 3292-3293).	Deputy Minister to further consider implications of the acceptance of Amendment 77.
<i>Cooperation (section 5)</i>			
-	There were no recommendations made by the Committee on this issue.	The Deputy Minister proposed Amendment 35 to include chief constables amongst those individuals and bodies that have a duty to cooperate, because of the police’s role in detecting crime and protecting individuals from harm. Other councils were also added to the list to ensure that if another council has prior knowledge of information relating to a case they will be required to pass that on to the lead council. The amendment was agreed to by the Committee (Scottish Parliament Health Committee, 2006b, col 3274). Nanette Milne MSP proposed Amendment 59 to ensure that section 5 more clearly denoted that it was the adult at risk, and not another person, whose case must be reported by a relevant body. The Deputy Minister was not against the amendment, which was agreed to by the Committee. (Scottish Parliament Health Committee, 2006b, col 3274).	

Para	Recommendation	Developments	Stage 3 commitments
<i>The power for council officers to enter premises (section 6)</i>			
150	The Committee would wish to see a tightening of the definition of who has the power to gain entry from the current broad one of 'a council officer'.	The Deputy Minister (Scottish Executive, 2006a, p 2), responding to the Committee's Stage 1 Report said this would be amended so that the council officer is to be limited to those who are competent to perform it in terms of their qualifications and experience. During the Stage 1 debate (Scottish Parliament, 2006, col 29679) the Deputy Minister clarified that Scottish Ministers would achieve this through the use of order-making powers. During Stage 2, Jean Turner MSP proposed Amendment 57 which would commit the Executive to providing a more restrictive definition through subordinate legislation. The Deputy Minister felt the amendment would have a potentially complex effect - Ministers would be required to make an order, but Parliament might choose to annul it, although the duty would still stand. Therefore, simply in relation to the legislative process, the amendment ran the risk of causing confusion. He assured the Committee that Ministers intended to use the power and said he would make a copy of the draft of the order available to the Committee before Stage 3. Jean Turner sought leave from the Committee to withdraw the amendment, which was agreed. (Scottish Parliament Health Committee, 2006b, col 3299).	Deputy Minister to provide a copy of the draft Order to the Committee prior to Stage 3.
-	There were no recommendations made by the Committee on this issue.	Jean Turner MSP proposed Amendment 45 , with a consequential amendment that sought to ensure that a council officer should be accompanied by a general practitioner when undertaking a visit. This, she argued, may help in what will be a stressful time for the adult at risk. The Deputy Minister argued that not all visits will be connected with the health of the adult at risk but may, for example, relate to the adult's finances, where it may not be appropriate for a GP to be present. In addition, the Deputy Minister pointed out that there is already provision requiring a health professional to undertake a medical assessment should it be required. The amendment was not agreed to by the Committee by 7 votes to 2. (Scottish Parliament Health Committee, 2006b, col 3276-3277).	
<i>Interviews (section 7)</i>			
-	There were no recommendations made by the Committee on this issue.	Nanette Milne MSP proposed Amendments 60, 61 and 76 to clarify that the provisions on interviews and medical examinations relate specifically to the adult at risk and not to any other adult. The Deputy Minister believed the amendments 60 and 61 on interviews would not be helpful, because in some circumstances, it would be in the interest of the adult at risk for another person to be interviewed, such as a care worker or another person they live with. The Deputy Minister proposed Amendment 9 to ensure that those who are interviewed are made fully aware of their right not to answer a question. He considered that amendment 76 largely replicated for medical examinations what Amendment 9 did for interviews and therefore asked Nanette Milne to withdraw that amendment so that he could lodge an amendment to medical examinations at Stage 3 to keep it in line with what was	Deputy Minister to bring forward amendment at Stage 3 clarifying the provisions on medical examinations.

		proposed for interviews. Amendment 60 was, with agreement of the Committee, withdrawn, and amendments 61 and 76 were not moved. Amendment 9 was agreed to by the Committee. (Scottish Parliament Health Committee, 2006b, col 3278 and 3292).	
Para	Recommendation	Developments	Stage commitments 3
Assessment orders (section 10-12) and removal orders (sections 13-17)			
-	There were no recommendations made by the Committee on this issue.	Shona Robison proposed Amendment 62 and other consequential amendments that sought to clarify that force could not be used against an adult at risk who was subject to an assessment order or removal order. She felt this was particularly important given that neither order carry any right of detention. Euan Robson MSP considered that there may be occasions when some form of force is inevitable, if for example the adult at risk is threatening someone else, and felt this was an issue that should be dealt with in the Code of Practice. The Deputy Minister said that he understood Shona Robison's concern but reiterated that such orders would only be used as a last resort. He also confirmed that this issue would be dealt with in the Code of Practice. Finally, he pointed out that the Bill as introduced prevented a council officer from using force during or in order to facilitate a visit. He considered that a police officer must be able to use their judgement in weighing the use of reasonable force against an adult at risk eg in situations where they may injure themselves. Shona Robison said she was reassured by the Minister and sought leave from the Committee to withdraw the amendment, which was agreed. (Scottish Parliament Health Committee, 2006b, col 3280).	
-	There were no recommendations made by the Committee on this issue.	Shona Robison MSP proposed Amendment 63 and a number of consequential amendments that sought to ensure that council officers who act under the legislation in seeking an assessment or other order must apply the general principles of the Bill. In addition, the amendments sought to make it clear that courts are expected to give specific consideration to the principles before an order is granted. She believed this would strengthen the principles behind the Bill. The Deputy Minister felt they were unnecessary amendments. He argued that existing provision already required the council to take the principles into account. He added that the sheriff would consider them as a matter of course. If the sheriff disagreed with the council's assessment in relation to the principles, it would be the sheriff's assessment that would prevail. Amendment 63 was not agreed to by the Committee by 5 votes to 4. (Scottish Parliament Health Committee, 2006b, col 3281 , 3282 and 3283).	
-	There were no recommendations made by the Committee on this issue.	Shona Robison MSP proposed Amendment 64 which sought to amend the criteria for granting an assessment order to require the sheriff to be satisfied that the place to which an adult at risk is taken is suitable for the purpose eg for a medical examination. Euan Robson MSP proposed Amendment 46 which sought to ensure the court considers the availability and suitability of a place when granting a removal order. The Deputy Minister	Deputy Minister to propose amendment at Stage 3 bringing assessment

		said he was content with either amendment but had a preference for Amendment 46 because it referred to availability and suitability. He said if Amendment 64 was withdrawn he would return at Stage 3 with an amendment that would bring assessment orders in line with removal orders. Shona Robison sought agreement from the Committee to withdraw Amendment 63, which was agreed. Amendment 46 was agreed to by the Committee. (Scottish Parliament Health Committee, 2006b, col 3281 , 3282 , 3283 and 3286).	orders into line with removal orders
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Para	Recommendation	Developments	Stage commitments	3
Assessment orders (section 10-12) and removal orders (sections 13-17)(cont.)				
-	There were no recommendations made by the Committee on this issue.	Shona Robison MSP proposed Amendment 65 to ensure the council had a duty to provide assistance for an adult to return to the place from where they had been removed following an interview or medical examination that had taken place as a result of an assessment order. She argued that if a council had exercised a power to remove the adult from their home, it should have the reciprocal duty to arrange their return home. The Deputy Minister was concerned that such a duty could be problematic if the assessment requires further intervention. He felt this could be adequately covered through the Code of Practice. Shona Robison argued that the amendment was aiming to support the person if they were to be taken back from the place they were removed from. The amendment was not agreed to by the Committee by 5 votes to 4. (Scottish Parliament Health Committee, 2006b, col 3283 , 3284 and 3285).		
-	There were no recommendations made by the Committee on this issue.	Shona Robison MSP proposed Amendments 66 and 70 to ensure that council officers would have a duty to provide certain information to adults when they were enforcing an assessment order and removal order eg what the order means, the powers it carries and what should happen if the adult refuses to comply. Whilst agreeing with the principle that an adult at risk should be kept informed of what is happening to them, he was concerned that the amendment could lead to a further legal hurdle which would be required to be tackled before action could be taken. He felt it would be more appropriate for this to be dealt with in the Code of Practice. Shona Robison responded arguing that the amendment should not be seen as a barrier but as an essential element of informing someone of their rights in a situation where they may be vulnerable. The amendment was not agreed to by 5 votes to 4. (Scottish Parliament Health Committee, 2006b, col 3285-3286)		
-	There were no recommendations made by the Committee on this issue.	The Deputy Minister proposed Amendment 16 to ensure that any property owned or controlled by the adult at risk removed as part of a removal order should be returned to the owner as soon as is practicable. Shona Robison proposed Amendment 16A was		

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		similar but sought to ensure that in all circumstances property should be returned within 72 hours. The Deputy Minister thought this may be impractical in certain situations and argued for his amendment together with provisions in the Code of Practice stipulating that property should be returned as quickly as possible. Given the assurance of the Minister Shona Robison did not move her amendment and Amendment 16 was agreed to by the Committee. (Scottish Parliament Health Committee, 2006b, col 3287).	
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Banning orders (sections 18-31)			
-	There were no recommendations made by the Committee on this issue.	Nanette Milne MSP proposed Amendment 71 which sought to change the term “banning order” to “exclusion order” as she considered it imprecise and unduly emotive. The Deputy Minister considered that “exclusion order” might be appropriate if the order only applied to excluding someone from their own property, to which they had a right of occupancy, as in the Matrimonial Homes (Family Protection) (Scotland) Act 1981. However, he argued that banning orders will be wider in scope in that an individual could be prevented from visiting an adult at risk’s home. Nanette Milne sought the agreement of the Committee to withdraw the amendment. (Scottish Parliament Health Committee, 2006b, col 3287-3288)	

Para	Recommendation	Developments	Stage commitments
Banning orders (sections 18-31) (cont.)			
-	There were no recommendations made by the Committee on this issue.	<p>The Deputy Minister proposed Amendment 17 and Amendment 19 which are technical amendments to clarify that breach of a banning order is not to be treated the same as breach of an interdict. These were agreed by the Committee. He also proposed Amendment 47, which related to the criteria that must be met before a banning order can be used. It clarified that a banning order can be used when the adult at risk is entitled to occupy the property and in some circumstances when that is not the case.</p> <p>Other Executive amendments relating to banning orders were Amendment 48, which clarified that where an adult at risk is a non-entitled spouse for the purposes of the Matrimonial Homes (Family Protection) (Scotland) Act 1981, his or her occupancy rights under that Act will not be suspended if a protection order is granted under the Bill, and Amendment 49 which proposed that the adult at risk, and persons interested in the adult’s well-being and property, must be notified about the granting of banning orders and powers of arrest following an application by a third party.</p> <p>These amendments were agreed to by the Committee. (Scottish Parliament Health Committee, 2006b, col 3288 and 3289).</p>	3
Orders - general			
-	There were no recommendations	During Stage 2 the Deputy Minister noted that section 37 of the Bill allows, on rare	

	made by the Committee on this issue.	occasions when a sheriff is not available, a Justice of the Peace (JP) to grant a removal order or warrant of entry. He proposed Amendment 23 which would limit the duration of a removal order or warrant of entry granted by a JP to 12 hours, which mirrors provisions in child protection legislation. Nanette Milne MSP proposed Amendment 51 as a probing amendment. This sought to remove the entire section relating to the granting of orders in urgent cases by a JP. Nanette Milne said she was proposing this because giving JPs this extra power was not discussed at Stage 1, and she wanted more information on it from the Deputy Minister. The Deputy Minister responded saying that the JP will be expected to use the power only in the unusual circumstances in which urgent action is required and a sheriff is not available. He gave the example of a remote rural area where there is not ready access to a sheriff but early action is required. Amendment 23 was agreed to and Amendment 51 was not moved. (Scottish Parliament Health Committee, 2006b, col 3293 - 3294).	
Orders and appeals			
160	The Committee recognises that a balance must be struck on protection orders between the desire to include an appeals procedure against them in order to be compliant with ECHR legislation and the need to make the orders practically workable.	During the Stage 1 debate (Scottish Parliament, 2006, col 29714) the Deputy Minister stated that the provisions in the Bill are compatible with the ECHR. He reiterated that the more restrictive provisions should be taken only in the last resort, if there is a risk of serious harm and all other options have been exhausted. He added that a sheriff would need to be clear that there is a risk of serious harm and that a code of practice, accompanying the legislation, would emphasise the importance of such tests.	

Para	Recommendation	Developments	Stage commitments
Orders and appeals (cont.)			
162	The Committee recommends that the Minister amend the Bill to allow removal orders to be appealed in the same manner as banning orders.	Euan Robson MSP proposed Amendment 55 , which was a probing amendment, which would allow an appeal against a removal order. The Deputy Minister said the Bill did not provide for an appeal against a removal order, primarily because a removal order would last for a maximum of seven days. He believed it was not practicable for an appeal to be made to a higher authority—the sheriff principal—and for it to be heard within that time. However, the adult at risk, any person with an interest in their well being or property, or the council in question could instead seek to vary or recall the order by making an application to the sheriff. This would be decided before the expiry of the original order. He added that any one of those persons could go back to the court the day after the order was granted	3

		<p>and ask the sheriff to change or annul it. The Deputy Minister considered that, in effect, the process provides an opportunity for the sheriff to look again at the circumstances of the case to see whether anything has changed. If the sheriff decides that it has, they could act accordingly. He also felt this complied with Article 6 of the ECHR. Euan Robson said he would consider the matter further before Stage 3 and sought leave from the Committee to withdraw the amendment, which was agreed. (Scottish Parliament Health Committee, 2006b, col 3297-3298).</p> <p>The Deputy Minister proposed Amendment 56 which clarifies that both banning orders and temporary orders can be appealed, and that the order will remain in force until the appeal is expired. This was agreed to by the Committee. (Scottish Parliament Health Committee, 2006b, col 3298).</p>	
<i>The power to override consent (section 32)</i>			
181	<p>The Committee believes that the power to override an adult's consent should only be used as an absolute last resort when all other options have been tried and when it is necessary to avoid immediate harm. The Committee has been somewhat concerned that many of the case studies referenced by witnesses including the Deputy Minister refer to intervention in circumstances that do not equate to a last resort and include for instance self-harm.</p>	<p>During the Stage 1 debate (Scottish Parliament, 2006, col 29680) the Deputy Minister discussed how the Bill was attempting to balance rights and protection. He pointed out that to override an adult's consent, a sheriff would have to be persuaded that consent is being withheld because of undue pressure and could only be done so as a last resort. He added that he did not expect such circumstances to arise very often. However, he believed that if a professional believed that an adult was declining support and intervention because they were under undue pressure, it was important that evidence could be presented to a sheriff for urgent consideration. He further added (Scottish Parliament 2006, col 29712) that in most cases public authorities would use the powers in the Bill with the full approval of the adult at risk.</p>	
Para	Recommendation	Developments	Stage 3 commitments
<i>The power to override consent (section 32)</i>			
182	<p>The Committee recommends that section 32 of the Bill be amended to tighten the test which a Sheriff must apply before making a protection order against the wishes of the adult at risk, to ensure that this action is only taken as a last resort. This section should include the requirement that, for removal and</p>	<p>At Stage 2 the Deputy Minister proposed Amendment 20 which aimed to address the concerns of the Committee. Principally, it is intended to strengthen the part of the Bill that says that any intervention under the Bill is a last resort. The Committee agreed to the amendment. (Scottish Parliament Health Committee, 2006b, col 3290, 3291 and 3292).</p> <p>Nanette Milne MSP proposed Amendments 73 and 74, which sought to add the concept of undue influence to the consideration of whether or not an adult at risk has consented to a protection order. The Deputy Minister responded by pointing out that "undue influence" was already used in slightly different circumstances, where, typically, a stranger seeks to</p>	

	<p>banning orders, the local authority demonstrates that it has attempted all other options prior to seeking to override the wishes of an adult at risk.</p>	<p>sell something to or otherwise influence a person. He felt the concept of “undue pressure” was different in that the pressure would often be put on an adult at risk by a member of their own family. He also thought that “pressure” may be a tougher test than “influence”. Nanette Milne pressed Amendment 73 but it was not agreed to by the Committee by 5 votes to 4. Amendment 74 was not moved. (Scottish Parliament Health Committee, 2006b, col 3290, 3291 and 3292).</p> <p>Nanette Milne MSP proposed Amendment 75 to widen the scope of the provisions on consent to recognise that when abuse occurs there may be a number of abusers. She argued that whilst only one of them may be in a position to exert undue influence or pressure that may be enough to shield them all, including the individual who is abusing the adult at risk. Nanette Milne considered that the amendment recognised that the adult at risk might have confidence and trust in a person within a group of people that includes the person who is inflicting or is likely to inflict abuse. The presence of the person who inspired confidence and trust in the adult at risk may influence them to refuse consent even though that person might be in a group of people that includes the person who is inflicting or is likely to inflict abuse. The Deputy Minister believed that the amendment was not necessary. He said that one person using undue pressure is enough to trigger the measures in the Bill as introduced, and the legal position is not altered if other people are taking shelter behind that person. Nanette Milne sought leave from the Committee to withdraw the amendment, which was agreed. (Scottish Parliament Health Committee, 2006b, col 3290 and 3291).</p>	
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Para	Recommendation	Developments	Stage 3 commitments
<i>Resources and Reciprocity</i>			
199	The Committee shares the concern of the Finance Committee in regard to the availability of resources to implement the Bill. It seeks assurances from the Minister that appropriate resources will be available to ensure that the Bill, if enacted, can be implemented	In giving evidence to the Health Committee at Stage 1 (Scottish Parliament Health Committee, 2006d, col 3109-3110) the Deputy Minister was asked by Euan Robson MSP what assessment the Executive had made of the possible requirement for additional resources, particularly for accommodation support services and respite care. The Deputy Minister accepted that resources will be required in a couple of areas – firstly, in the provision of adult protection mechanisms, including APCs, and secondly the provision of additional care managers, who would conduct investigations and manage subsequent services and support. He said the Executive had estimated that each of these areas would	

	effectively. Their availability may indeed be as important in assisting adults at risk as the Bill itself.	require around £5 million, based on the work of the adult protection unit in the Borders. Concerns regarding resources were raised by various Members during the Stage 1 debate (Scottish Parliament, 2006). However, the Executive made no further comment on resources either during the Stage 1 debate or in correspondence between the Deputy Minister and the Convener of the Health Committee.	
200	The Committee is also concerned that some aspects of resources, for example respite care, may not be easily available. For this reason the Committee recommends that a firm principle of 'reciprocity' is built into the general principles of part 1 of the Bill to ensure that no one is removed from their home without appropriate care and accommodation being available.	See above.	
Adult Protection Committees (sections 39-44)			
216	The Committee is fully supportive of the creation of APCs believing that they will improve the focus on adult protection and provide a useful tool for monitoring how the issue is being dealt with.	During the Stage 1 debate (Scottish Parliament, 2006, col 29713) the Deputy Minister stated that it would be the duty of APCs to review the use of all protection orders and to report their findings biannually to Ministers to ensure that those orders are not being used inappropriately.	
217	The Committee has sympathy for the view that the voluntary sector should be represented on APCs, provided that consideration is given to the balance of membership overall.	The Deputy Minister (Scottish Parliament, 2006, col 29715) stated that the code of practice accompanying the legislation would provide further guidance on the structure and operation of APCs.	

Para	Recommendation	Developments	Stage 3 commitments
Adult Protection Committees (sections 39-44) (cont.)			
218	The Committee also shares the view expressed by some witnesses that	The Deputy Minister (Scottish Parliament, 2006, col 29715) stated that the code of practice accompanying the legislation would provide further guidance on the structure and	

	APCs should not automatically cover only one local authority area, but should be more broadly based where this is appropriate.	operation of APCs.	
-	There were no recommendations made by the Committee on this issue.	Euan Robson MSP proposed Amendment 52 as a probing amendment to discuss how it can be ensured that APCs co-operate with child protection committees. The Deputy Minister said he would expect APCs to co-operate with a range of bodies including child protection committees. However, he added that the situation was complicated slightly by the absence of a statutory basis for child protection committees comparable to that which the bill provides for APCs. He asked Euan Robson to withdraw the amendment so he could consider further how to ensure that what he seeks is delivered under the code of practice. Euan Robson sought leave of the Committee to withdraw the amendment, which was agreed. (Scottish Parliament Health Committee, 2006b, col 3294-3295).	Deputy Minister to further consider the issue through the Code of Practice.
-	There were no recommendations made by the Committee on this issue.	Nanette Milne MSP proposed Amendment 81 to ensure that the Mental Welfare Commission and the Office of the Public Guardian co-operate with APCs. The Deputy Minister said that the Mental Welfare Commission did not wish to be a member of all APCs, and the Office Public Guardian being even smaller in size would probably take the same view. He said he felt that it would be appropriate for them to be involved as and when this is necessary, particularly given many of the cases will not relate directly to their areas of interest. Amendment 81 was not moved. (Scottish Parliament Health Committee, 2006b, col 3295 and 3296)	
-	There were no recommendations made by the Committee on this issue.	Euan Robson MSP proposed Amendment 53 to make it a requirement on the face of the Bill that relevant agencies keep proper records. These could then be inspected by regulatory agencies. The Deputy Minister agreed with the importance of keeping records but considered this could be dealt with in a Code of Practice. Euan Robson sought the leave of the Committee to withdraw the amendment, which was agreed, pending further discussions with the Deputy Minister. (Scottish Parliament Health Committee, 2006b, col 3296 and 3297).	

PART 2: AMENDMENTS TO THE ADULTS WITH INCPACITY (SCOTLAND) ACT 2000

Para	Recommendation	Developments	Stage 3 commitments
General			
-	The Committee was supportive of all the proposals in this Part of the Bill.		
Powers of attorney (section 53)			

-	There were no recommendations made by the Committee on this issue.	At Stage 2 the Deputy Minister noted that the Bill as introduced had contained a number of procedural refinements to the legislation on powers of attorney. Amendment 82 , which was grouped with amendments 83 to 89 and 93, proposed a further such refinement. It sought to clarify that only a solicitor who is in practice can sign the certificate that is to accompany registration of a welfare or continuing power of attorney. They also add a requirement for a similar certificate to accompany a document that revokes a power of attorney. The Deputy Minister said this would provide confirmation that the person understands what he or she is doing and will streamline the process for notifying powers of attorney to the Mental Welfare Commission for Scotland and local authorities. The Committee agreed to the amendments (Scottish Parliament Health Committee, 2006c, col 3303 and 3308).	
-	There were no recommendations made by the Committee on this issue.	The Deputy Minister proposed Amendments 90, 96 and 106 which clarified that an attorney or a guardian cannot consent to treatment that is not authorised under section 47(2) of the 2000 Act ie section 47 authorises treatment that is reasonable in the circumstances, to safeguard or promote the physical or mental health of the adult but, in addition, section 48(2) provides that Scottish Ministers may by Regulation specify medical treatment or classes of medical treatment to which the authority under section 47(2) shall not apply. He argued that this amendment is to improve the readability of section 47(2)) The Committee agreed to the amendments (Scottish Parliament Health Committee, 2006c, col 3309 , 3315 and 3321).The Deputy Minister proposed Amendments 90, 96 and 106 which clarified that an attorney or a guardian cannot consent to treatment that is not authorised under section 47(2) of the 2000 Act ie treatment that is reasonable in the circumstances, to safeguard or promote the physical or mental health of the adult. This was to take account of other changes proposed in the Bill. The Committee agreed to the amendments (Scottish Parliament Health Committee, 2006c, col 3309 , 3315 and 3321).	
-	There were no recommendations made by the Committee on this issue.	The Deputy Minister proposed Amendments 91 and 92 . Amendment 91 related to the duty on the public guardian to notify the Mental Welfare Commission for Scotland and the relevant local authority of the registration of a welfare power of attorney. The Deputy Minister noted that, currently, a copy of that power of attorney should be sent to the Mental Welfare Commission. The amendment provides that notification only will be sent to the local authority and the Mental Welfare Commission and a hard copy will only be sent if requested. This will streamline the process for notifying powers of attorney to the Mental Welfare Commission for Scotland and local authorities, the Minister argued. Amendment 92 adds a requirement for a certificate to accompany a document that revokes a power of attorney. This will be similar to the certificate required for registration of a power of attorney. The Deputy Minister said this would provide confirmation that the person understands what he or she is doing. The Committee agreed to the amendments. (Scottish Parliament Health Committee, 2006c, col 3309).	

Para	Recommendation	Developments	Stage commitments
Intromission with funds (Section 54-59)			
230	Section 55 proposes that the Public Guardian be permitted, on application, to issue a certificate of authority to a person who wishes to apply to intromit with funds but who can not do so because of a lack of information as to the adult's accounts. This certificate authorises a bank or other financial institution to provide confidential information. The Scottish Legal Aid Board stated: 'Clarification is required as to whether the provisions contained with Section 55 will allow applicants to obtain the necessary financial information to complete an application for Advice and Assistance or civil legal aid, where the resources of the adult are required to assess financial eligibility.' The Committee notes the concerns of the Scottish Legal Aid Board, and asks the Scottish Executive to provide the clarification sought by the Scottish Legal Aid Board.	<p>The Executive, in the Bill as introduced, had proposed a number of amendments that affected Part 3 of the Adults with Incapacity (Scotland) Act 2000 on accounts and funds, including intromission with funds. At Stage 2, the Deputy Minister proposed Amendment 107. This was a very large amendment that sought to replace Part 3 of the 2000 Act. The revised Part 3 also includes further amendments to allow for the opening of bank accounts, the authorisation of a wider range of one-off transfers and withdrawals, a key change to how organisations may apply and how their fitness is to be judged and the possibility of using a third account as part of the scheme. The aim of introducing the new part was to simplify and streamline the 2000 Act's provisions as well as improving access to them. The Deputy Minister believed that the amendment would help to make the legislation easier to understand and work with, both for the Parliament and those that use it. The amendment was agreed to by the Committee (Scottish Parliament Health Committee, 2006c, col 3302 - 3305, 3309 – 3310).</p> <p>As regards the point raised by the Scottish Legal Aid Board, the Deputy Minister (Scottish Executive, 2006b p 1-2) stated that whether or not the information can be used for purposes other than an application to intromit with funds would depend on whether the Data Protection legislation applied to the information after it has been released. He said this would be determined in part by how the information is processed and stored by the recipient. In the case of an individual who is seeking to intromit with the funds of a single adult, the information is unlikely to be subject to the Data Protection legislation and so may be able to be used. However, the Data Protection legislation may apply in the case of an individual who intromits with more than one adult's accounts, or in the case of an organisation which may hold the information as part of a filing system. If this is the case, the Deputy Minister stated that it cannot be used for any purpose other than in relation to an application to intromit.</p>	3

Para	Recommendation	Developments	Stage commitments
Intervention orders (section 60)			
-	There were no recommendations made by the Committee on this	Shona Robison MSP proposed Amendments 132 and 136 , which related to the independent advocate's role. Shona Robison noted that under the Mental Health (Care	3

	issue.	<p>and Treatment) (Scotland) Act 2003, the role of independent advocates is recognised and, in general, extends to participation in tribunals. However, she noted that provision does not exist in the 2000 Act and, following information supplied through Dundee Independent Advocacy Support, she had been made aware that sheriffs sometimes deny independent advocates' representation of patients at guardianship hearings. She noted that whilst the 2000 Act's code of practice says that it is good practice to involve an independent advocacy project to represent the adult's interests in their assessment and care management, she noted it was not always happening in practice. The amendments would therefore put into statute the right of the advocate to be present, to ensure that it is not left to the discretion of the sheriff.</p> <p>The Deputy Minister stated his view that the existing legislation already contains what is required to ensure that the adult's views are taken into account. However, he acknowledged that what Shona Robison is suggesting might clarify the position by drawing attention to the possibility of the adult taking advantage of the provisions to have an independent advocate. That might be helpful to the court, particularly where it has taken a different course. The Committee agreed to the amendments. (Scottish Parliament Health Committee, 2006c, col 3310 – 3312 and 3314).</p>	
-	There were no recommendations made by the Committee on this issue.	<p>In addition, the Deputy Minister proposed Amendment 113, grouped with a number of other amendments. The Deputy Minister discussed how, in guardianship and intervention orders, a sheriff might require the intervener or guardian to take out insurance known as a bond of caution to safeguard the estate of the adult from any loss due to the actions of the guardian or intervener. However, he noted that this can be quite expensive, and when the value of the estate is small the cost can be disproportionate. In some situations, another form of security, such as the guardian consigning a sum of money into court, would be acceptable, particularly in cases where the estate is not large. He said amendment 113 will allow that to happen. The Committee agreed to the amendment. (Scottish Parliament Health Committee, 2006c, col 3312).</p>	

Para	Recommendation	Developments	Stage commitments
<i>Guardianship orders (section 60)</i>			
-	There were no recommendations made by the Committee on this issue.	<p>Nanette Milne MSP proposed Amendment 135. This related to situations where an application is made in respect of an adult who is not living in Scotland eg a person may go to live abroad with members of their family but still have property in Scotland that needs to be managed. Nanette Milne noted that the Law Society of Scotland had argued that the changes in the Bill as introduced did not make it clear that the medical practitioner who</p>	

		provides the medical report has proper qualifications that are recognised in the country where the adult is living and considered to be equivalent qualifications that are recognised in this country. She said her amendment would make this clear. However, the Deputy Minister argued that the Bill was clear in this regard, and felt the amendment was unnecessary. The amendment was not moved. (Scottish Parliament Health Committee, 2006c, col 3312-3313).	
-	There were no recommendations made by the Committee on this issue.	Nanette Milne MSP proposed Amendment 133 . She noted that, at present, there is no provision to allow sheriffs to extend the appointment period of an interim guardian beyond three months. She said sheriffs had drawn attention to the problems that would be caused by the lack of such a provision. The amendment would therefore allow extension of the appointment of an interim guardian by motion on cause shown, which would allow interim guardians to remain appointed when a guardian is not yet appointed and when the three-month appointment period that is currently specified has expired. The Deputy Minister noted that the Bill already provided for an extension to six months. He argued that there should be an upper limit to such extensions as people should not be left in an uncertain position for an indefinite period. Nanette Milne said she was reassured by the Minister's response and sought the agreement of the Committee to withdraw the amendment. (Scottish Parliament Health Committee, 2006c, col 3313-3314).	
-	There were no recommendations made by the Committee on this issue.	The Deputy Minister proposed Amendments 115 and 137 , which sought to streamline the process for renewal of guardianship whilst ensuring that the adult's interests were still protected. The Committee agreed to the amendments. (Scottish Parliament Health Committee, 2006c, col 3314-3315).	
-	There were no recommendations made by the Committee on this issue.	The Deputy Minister proposed Amendment 121 , which sought to remove the current prohibition on local authorities recalling a welfare guardianship when the chief social worker is the guardian. He argued this would ensure that there are no barriers or delays in recalling guardianship when it is no longer needed. In addition, he proposed Amendment 122 which sought to ensure independent scrutiny of the process. Under this process the local authority would have to intimate the proposed recall to the Mental Welfare Commission and to the public guardian, as well as to the adult, the adult's nearest relative, their primary carer and anyone else who has an interest. If any objections are received, the local authority will have to remit the matter for consideration by a sheriff. The amendments were agreed to by the Committee. (Scottish Parliament Health Committee, 2006c, col 3315-3316).	
Para	Recommendation	Developments	Stage commitments 3
<i>Guardianship orders (section 60)</i>			
-	There were no recommendations made by the Committee on this	Nanette Milne MSP proposed Amendments 138 and 98 , which related to transitional guardians. She noted that, originally, it was proposed that transitional guardianships would	Deputy Minister to

	issue.	<p>be time limited, but that was not provided for in the 2000 Act, with the result that appointments continue indefinitely, sometimes for the lifetime of the person to whom the guardianship applies. She argued that there were good policy reasons for the introduction of a time limit, particularly in relation to guardians who have welfare powers. Although, under the 2000 Act, those guardians ought to be under the supervision of local authorities, she said that some have little or no contact with the relevant local authority and it is not certain that authorities have recorded properly all such transitional welfare appointments. Thus the amendments sought to ensure that all transitional guardians, including those who have welfare responsibilities, are told about the change, and to ensure that no adult who needs a guardian inadvertently loses their guardian because of a failure to notify. The Deputy Minister, whilst accepting the premise behind the amendments, was not convinced they would technically achieve the aims. He asked Nanette Milne to withdraw her amendment so he could consider the drafting of an amendment what would technically achieve the objectives that she wished. Nanette Milne sought to withdraw the amendment which was agreed to by the Committee. (Scottish Parliament Health Committee, 2006c, col 3316-3317).</p>	further consider an amendment.
-	There were no recommendations made by the Committee on this issue.	<p>The Deputy Minister proposed Amendment 99 with the aim of strengthening the Public Guardian's powers to investigate complaints about proxies under the 2000 Act and to look into circumstances where the property or financial affairs of an adult seem to be at risk. It would give the public guardian power to require proxies or former proxies to provide their record or other relevant information, and would require banks and other financial institutions to provide relevant information. The amendment was agreed to by the Committee (Scottish Parliament Health Committee, 2006c, col 3318).</p>	

PART3: ADULT SUPPORT ETC: MISCELLANEOUS AMENDMENTS AND REPEALS

Para	Recommendation	Developments	Stage commitments
General			
-	The Committee was supportive of all the provisions in this Part of the Bill.		
Direct payments (section 63)			
230	The Committee notes the request by the Scottish Association for Mental Health that those subject to compulsory treatment under the Mental Health Act should not be excluded from direct payments and seeks the Executive's comments.	This issue was also raised by Euan Robson MSP during the Stage 1 debate (Scottish Parliament, 2006, col 29686). However, the Deputy Minister made no response to the recommendation during the Stage 1 debate, or in correspondence with the Committee. There were no amendments in this area discussed at Stage 2.	
Adjustments between councils in relation to social services (Ordinary Residence) (section 64)			
260	The Committee recommends that the Executive establishes 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.	During the Stage 1 debate (Scottish Parliament, 2006, col 29716) the Deputy Minister indicated that revised guidance would be used to address such issues. In a letter to the Convenor of the Health Committee (Scottish Executive, 2006b, p 2) the Deputy Minister, whilst having sympathy for the individual who wrote to the Health Committee at Stage 1 of the Bill, was not persuaded that a transitional fund was the answer for cases like this. He argued that the criteria for the fund would need to be clearly defined; administration of the fund would be costly; and the fund itself would be likely to divert funds away from front-line services. He also considered that it would be unlikely that a transitional fund could cater for cross-border placements unless England, Wales and Northern Ireland were prepared to set up similar funds and agree reciprocal arrangements. However, he added that no-one should have to experience long delays while two councils decide which one will pay. As such he said the Executive was working on revised guidance and regulations to help clarify where responsibility for funding lies, including work on cross border placements, and said it would look for ways to address the issues raised in revised guidance.	

Para	Recommendation	Developments	Stage commitments
Application of Social Work (Scotland) Act 1968: Persons outwith Scotland (section 65)			
-	There were no recommendations made by the Committee on this issue.	During the Stage 1 debate (Scottish Parliament, 2006, col 29705) Euan Robson MSP asked the Deputy Minister to reconsider proposed new section 87A of the Social Work (Scotland) Act 1968, which introduces a power to modify that act for persons placed from outwith Scotland, and appears to allow ministers to alter a statute. He argued that this needed further consideration. In response, the Deputy Minister (Scottish Parliament, 2006, col 29716) said the power to amend the provisions of the Social Work (Scotland) Act 1968 on placements from outwith Scotland would be subject to the affirmative procedure, and, therefore, it would be subject to scrutiny by the Parliament. He added that work on that area is already under way. The Deputy Minister followed this up in a letter to the Convenor of the Health Committee (Scottish Executive, 2006b, p 2) where he noted it was imperative that the Executive amended legislation to match the agreed arrangements and the regulations for England, Wales and Northern Ireland. He said that the Executive hoped to agree a consistent and equitable approach to funding cross-border placements, to be implemented simultaneously in all countries. He argued that without the proposed power to amend the 1968 Act a person could be placed in Scotland and the legal responsibility for providing care for the individual sits with both the placing authority and the Scottish local authority where the placement is located. He added that the power to make regulations would not be used lightly.	3
Amendment to Mental Health (Care and Treatment) (Scotland) Act 2003 (section 67)			
-	There were no recommendations made by the Committee on this issue.	The Deputy Minister proposed Amendment 101 , which related to the revocation of hospital directions and transfer for treatment directions. It sought to introduce an additional test to the criteria for revocation in circumstances where the decision maker is not satisfied that it continues to be necessary for the patient to be subject to the direction. This means that where the patient has a mental disorder and continues to require treatment, and where it is not necessary to detain the patient in hospital in order to protect any other person, the direction can be revoked. The patient may then be returned to prison to be treated on a voluntary basis. If, subsequent to the prisoner's being returned to prison from hospital, his or her mental health deteriorates, he or she may be transferred back to hospital for treatment. In such cases, the conditions for making another transfer for treatment direction will have to be met. The Committee agreed to the amendment. (Scottish Parliament Health Committee, 2006c, col 3318-3319).	3

Para	Recommendation	Developments	Stage 3 commitments
-	There were no recommendations made by the Committee on this issue.	The Deputy Minister proposed Amendments 126 and 127 . These related to Compulsory Treatment Orders (CTOs). The Deputy Minister noted that the opportunity was being taken to amend the 2003 act to reflect the fact that UK ministers are taking through the Westminster Parliament the Mental Health Bill. That Bill introduces provisions that would operate in a similar way to community-based CTOs in Scotland under the 2003 Act. He said Ministers were seeking to amend the 2003 Act to allow for the reception of patients subject to such orders upon their transfer into Scotland. He noted there were already regulation-making powers under the 2003 Act regarding absconding by patients who are subject to corresponding measures in other jurisdictions. However, the 2003 Act requires to be amended in order to put beyond doubt the fact that the powers of the person, or persons, escorting the patient in other parts of the UK continue once they arrive in Scotland. He added that the intention was to allow for the co-ordination of amendments to mental health legislation in Scotland and elsewhere in the UK in relation to the cross-border escorting of patients. Accordingly, the amendments provide for the repeal of the provisions of the 1983 act that are still in force in Scotland and which contain a power to take patients into custody. Instead, there will be a power for escorts to convey, retake and restrain patients, when required, as if the escorts were within their own jurisdiction. The offence of inducing or assisting a patient to abscond from another part of the UK would also be introduced. The Committee agreed to the amendments. (Scottish Parliament Health Committee, 2006c, col 3307-3319).	
-	There were no recommendations made by the Committee on this issue.	Finally, the Deputy Minister proposed Amendment 129 relating to prisoners on remand who are made subject to an assessment order if the court considers it is likely that they have a mental disorder and might need hospital treatment. He noted that under the Criminal Procedure (Scotland) Act 1995 a court has, at the first calling of a summary prosecution, the option of adjourning the first calling without calling on the accused to plead out to any charges against them. The Deputy Minister said that a problem has been identified in practice with the provisions as they relate to a person who is subject to an assessment order, which is that the person is required to plead at first appearance even although they might not be fit to do so. The effect of the amendment will be that the first calling for a person for whom an assessment order is made under the 1995 act may be adjourned without plea in those circumstances. The Committee agreed to the amendment. (Scottish Parliament Health Committee, 2006c, col 3319).	

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