

02/07

GUIDANCE FOR COLLEGES  
ON THE ADULT SUPPORT AND  
PROTECTION (SCOTLAND) ACT  
2007

## Introduction

The purpose of this Guidance is to provide information to Boards of Management of Colleges of Further Education, regarding the general subject of adults at risk and also the terms of the recently enacted Adult Support and Protection (Scotland) Act 2007.

This guidance covers the following topics:-

- 1. The Adult Support and Protection (Scotland) Act 2007;**
- 2. Adult Protection Measures;**
- 3. Statutory Adult Protection Committees;**
- 4. Implications for Colleges of Further Education; and**
- 5. Status of Guidance.**

### 1. The Adult Support and Protection (Scotland) Act 2007

- 1.1 The Adult Support and Protection (Scotland) Bill was introduced to the Scottish Parliament on 30 March 2006. The intention of this legislation was to progress aspects of the Scottish Law Commission's 1997 draft Vulnerable Adults Bill that had not been enacted through subsequent legislation concerning health and community care (such as the Adults With Incapacity (Scotland) Act 2000 and the Mental Health (Care and Treatment) (Scotland) Act 2003). The Scottish Executive was the first government in the UK to introduce legislation to specifically protect adults at risk.
- 1.2 The Adult Support and Protection (Scotland) Act 2007 ("the Act") was passed by the Scottish Parliament on 15 February 2007. It received Royal Assent on 21 March 2007.
- 1.3 The main provisions of the Act are as follows:-
  - A new power of right of entry to settings where abuse of adults is thought to be taking place.
  - Creation of banning orders so that perpetrators of abuse are removed from those settings; and
  - Establishment of Statutory Adult Protection Committees to further develop strategic inter-agency working and collaboration.
- 1.4 The general objectives of the Act are 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, with these measures being underpinned by the creation of local multi-disciplinary Adult Protection Committees (as noted above).

### 2. Adult Protection Measures

- 2.1 In relation to adult protection measures, the Scottish Law Commission had previously observed in its 1997 Report on Vulnerable Adults that there was little or nothing available to protect adults who are vulnerable but do not have a mental disability. There was also an increasing awareness that abuse, deprivation and exploitation of vulnerable adults generally occurs and that the existing law was not often capable of tackling it effectively. The Act therefore aims to provide additional protections for those adults who might be vulnerable through the actions of others.
- 2.2 In order to maintain specific objectives, the Act provides new powers to:-
  - Investigate suspected abuse.
  - Carry out assessments of the person and their circumstances.
  - Intervene to remove the adult or manage the risk of abuse.
  - Exclude the perpetrator (if necessary and in a last resort).
  - Force entry to perform the above functions (again if necessary and in the last resort).

- 2.3 While the main emphasis of intervention must be to protect adults at risk, such intervention must be appropriate. The Act provides a set of guiding principles intended to assist those required to operate the provisions, and have regard to the intended purpose and outcomes desired.
- 2.4 Under Section 1 of the Act, anything done for an adult under these provisions should produce a benefit for the adult personally. It is specifically that the person proposing to intervene should ensure that the intended benefit to the adult concerned cannot reasonably be achieved in another, less intrusive way.
- 2.5 Under Section 2 of the Act, it is required that public bodies and office holders heed the matters listed above when performing adult protection functions. Those individuals investigating and intervening under the Act must have regard to the views and feelings of the adult and those connected to them (i.e. nearest relative, guardian etc) where these views are known. This Section also requires that the adult is not, without justification, treated less favourably than any other adult who is not at risk in a comparable situation.
- 2.6 Under Section 3 of the Act, “adults at risk” are defined as adults who are unable to safeguard their own wellbeing, property, rights or other interests; are at risk of harm; and because they are affected by disability, mental disorder, illness or physical or mental infirmity, are more vulnerable to being harmed than adults who are not so affected. It should be noted that “adults at risk” has been preferred to the previous use of the wording “vulnerable adults”. It should also be noted that for the purpose of this legislation, an adult is an individual who is over the age of 16 years.

### **3. Statutory Adult Protection Committee**

- 3.1 The Act also creates a duty to establish multi-agency Adult Protection Committees. The main functions of the Committees will be as follows:-
- Ensuring that local inter-agency guidelines on procedures to be followed in individual cases are produced.
  - Promoting good inter-disciplinary practice.
  - Assessing significant issues of collaborative working.
  - Reviewing arrangements for providing expert advice and inter-agency liaison.
  - Monitoring and reviewing information about the operation of the adult protection procedures.
  - Identifying inter-agency training needs and taking a lead role in developing and promoting inter-disciplinary training programmes.
  - Publishing an annual report for the Scottish Executive.
- 3.2 Each Local Authority must establish an Adult Protection Committee. In performing its functions, each Adult Protection Committee must have regard to the desirability of improving the co-operation between the Local Authority, the Care Commission, the relevant Health Board, the Chief Constable of the police force in the relevant area and any other public body or office-holder as the Scottish Ministers may later specify.

#### 4. Implications for the College Sector

- 4.1 While the main provisions of the Act do not directly impinge upon Colleges of Further Education, Colleges should still aim to build their capacity to meet the duties of this current legislation, pertaining to the protection of adults at risk of abuse.
- 4.2 Colleges should have a nominated member (or members) of staff with a remit for the welfare and protection of adults at risk of abuse. It is suggested that in most cases, this will be a member of staff who already has a remit for the welfare and protection of students, such as a child protection co-ordinator.
- 4.3 Colleges should be aware that it is likely to have a range of adults at risk of abuse, including individuals who are on the autistic spectrum, or who have learning, physical or mental disabilities. It is therefore important that Colleges put in place relevant policies and procedures which anticipate the potentially wide range of requirements which may be presented, and provide appropriate training and support for those members of staff with a remit for the welfare and protection of adults at risk.
- 4.4 Colleges should take all reasonable steps in relation to the safety and welfare of any adults at risk of abuse who come onto College premises (whether they are students, staff, visitors or any other persons it regularly comes into contact with) in order to protect those individuals and keep them safe from harm when in contact with College staff.
- 4.5 Colleges should note that the Scottish Executive had originally considered the operation of a list of persons disqualified from working with vulnerable adults, proposing that it be established in legislation for the protection of adults at risk. Although eventually deciding not to pursue the list through the Act, the Executive have since completed a consultation process where one of the key proposals included introducing a list of those unsuitable to work with adults at risk, to run alongside an extended Disqualified from Working with Children List (which was first established by The Protection of Children (Scotland) Act 2003). Further legislation on this matter is expected in due course.

#### 5. Status of Guidance Note

- 5.1 This Guidance is intended to give general advice only. It should not be treated, or relied upon as specific legal advice. Professional advice should be sought before acting on the material contained in this Guidance as it may not be appropriate for your circumstances.
- 5.2 This Guidance relates only to the specific obligations applicable to Colleges of Further Education in relation to the Adult Support and Protection (Scotland) Act 2007, and does not cover other legal obligations which may apply to colleges under any other legislation referred to in this Guidance Note or otherwise.

Thorntons Law LLP on behalf of ASC August 2007



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