



Law Society
of Scotland

Consultation Response

Adult Support and Protection (Scotland) Act 2007:
updated Code of Practice and Guidance for Adult
Protection Committees

1 October 2021



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Mental Health and Disability sub-committee welcomes the opportunity to consider and respond to the Scottish Government consultation: *Adult Support and Protection (Scotland) Act 2007: updated Code of Practice and Guidance for Adult Protection Committees*.¹ The sub-committee has the following comments to put forward for consideration.

General Comments

Adult Support and Protection (Scotland) Act 2007: code of practice

Chapter 1

Paragraph 5 of Chapter 1 is incorrect in its references to “supported decision-making”. UN Convention on the Rights of Persons with Disabilities² does not address narrow issues of support to decision-making only. It refers to “support for the exercise of legal capacity”, matching Scotland’s definitions of capacity/incapacity referring to both acting and deciding, not (as in some jurisdictions such as England & Wales) deciding only. Moreover, it is quite clear from the travaux préparatoires that the drafting committee deliberately avoided entering any arguments about supposed contrasts between supported and substitute decision-making, in particular deliberately avoiding either prohibiting or endorsing so-called “substitute decision-making”. We recommend that this reference to CRPD should be revised.

¹ <https://consult.gov.scot/health-and-social-care-integration/adult-support-and-protection-updated-guidance/>

² <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>

Chapter 2

In Chapter 2, paragraph 5, the reference to advance statements under section 275 of the Mental Health (Care and Treatment) (Scotland) Act 2003 is unduly narrow, and inappropriately so. Regard should always be had to wishes, feelings and directions in powers of attorney (particularly where these follow some recommended styles in having a schedule that records wishes and feelings) and advance directives generally, not limited to the narrow speciality of advance statements under the 2003 Act. We recommend that this reference should be revised.

For further information, please contact:

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