

# Protection of Adults in Care (Prevention of Harm and Exploitation) Bill

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**B I L L**

TO

Amend the Human Rights Act 1998 to extend the definition of public authority to include any body acting pursuant to a contract with a public body to perform a function of a public nature; to confer new functions on local authorities in relation to persons in need of care or protection provided by such authorities; and for connected purposes.

**B**E IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

**PART 1**

DEFINITION OF PUBLIC AUTHORITY

**1 Meaning of public authority**

For the purposes of section 6(3)(b) of the Human Rights Act 1998 (c. 42), a function of a public nature includes a function performed to a contract or other arrangement with a public authority which is under a duty to perform that function.

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**PART 2**

PERSONS IN NEED OF CARE OR PROTECTION

**2 Purpose and Interpretation**

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- (1) This Act has effect for conferring powers and duties on local authorities and their officers for the protection of vulnerable persons against significant harm or serious exploitation.
- (2) In this Act “vulnerable person” means any person who has attained the age of sixteen and—
  - (a) is or may be in need of community care services by reason of mental or other disability, age or illness; and

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- (b) is or may be unable to take care of himself or to protect himself against significant harm or serious exploitation.
- (3) In this Act “community care services” means services which a local authority may provide or arrange to be provided under any of the following provisions – 5
- (a) Part III of the National Assistance Act 1948 (c. 29);
  - (b) section 45 of the Health Services and Public Health Act 1968 (c. 46) (promotion by local authorities of the welfare of old people);
  - (c) section 21 of and Schedule 8 to the National Health Service Act 1977 (c. 49) (local social services authorities); 10
  - (d) section 117 of the Mental Health Act 1983 (c. 20) (after-care);
- and, in relation to a person who has not attained the age of eighteen, includes services provided by a local authority in the exercise of functions conferred by section 17 of the Children Act 1989 (c. 41) (provision of services for children in need, their families and others). 15
- (4) In this Act “authorised officer of a local authority”, in relation to any action to be taken by such an officer, means an officer of the authority authorised by them to take actions of that description.
- (5) In this Act “harm”, in relation to a vulnerable person, means ill-treatment of that person (including sexual abuse and forms of ill-treatment that are not physical), the impairment of, or an avoidable deterioration in, the physical or mental health of that person or the impairment of his physical, intellectual, emotional, social or behavioural development. 20
- 3 Investigations**
- (1) Where a local authority has reasonable cause to believe that a vulnerable person in its area is suffering or likely to suffer significant harm or serious exploitation the authority shall make such enquiries as it considers necessary to enable it to decide – 25
- (a) whether that person is in fact suffering or is likely to suffer such harm or exploitation; and 30
  - (b) if so, whether it should provide or arrange for the provision for that person of community care services or take any other action (including action under the subsequent provisions of this Part of this Act) to protect that person from such harm or exploitation.
- (2) Where enquiries are made under subsection (1) with respect to any person the local authority shall (with a view to enabling it to decide what action, if any, to take with respect to that person) take such steps as are reasonably practicable to enable an authorised officer of the authority to gain access to that person unless the authority is satisfied that it already has sufficient information with respect to that person. 35  
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- (3) Any person mentioned in subsection (5) must assist the authority with their enquiries under this section (in particular by providing relevant information and advice) if called upon to do so by the authority.
- (4) But subsection (3) does not oblige a person to assist the local authority if it would be unreasonable to do so. 45
- (5) The persons referred to in subsection (3) are –
- (a) any local authority;

- (b) any local education authority;
    - (c) any local housing authority;
    - (d) any health authority; and
    - (e) any person specified by the Secretary of State for the purposes of this section. 5
  - (6) Where a local authority is conducting enquiries under this section with respect to a person who appears to be ordinarily resident in the area of another authority, it shall consult that other authority, who may undertake the necessary enquiries in its place.
- 4 Officer’s powers of entry 10**
- (1) If an authorised officer of a local authority has reasonable cause to believe that a vulnerable person living in any premises in the authority’s area is suffering or likely to suffer significant harm or serious exploitation he may at any reasonable time –
    - (a) enter and inspect those premises; and 15
    - (b) interview that person in private.
  - (2) The officer shall, if requested to do so, produce evidence that he is an authorised officer of the local authority.
  - (3) The powers conferred by this section shall not be exercised in respect of any person if the officer knows or believes that the person objects or would object to their exercise but that restriction shall not apply if he has reasonable cause to believe that the person is or may be suffering from mental disability. 20
  - (4) This section does not confer any powers of entry to a health service hospital within the meaning of the National Health Service Act 1977 (c. 49) or any accommodation provided by a local authority and used as a hospital by or on behalf of the Secretary of State under that Act. 25
- 5 Entry warrants**
- (1) The court may, on the application of an authorised officer of a local authority, issue a warrant authorising a constable, accompanied by such an officer, to enter any premises in the authority’s area which are specified in the warrant if satisfied – 30
    - (a) that the applicant has reasonable cause to believe that a vulnerable person living in those premises is suffering or likely to suffer significant harm or serious exploitation;
    - (b) that granting the warrant is necessary to enable the officer to gain access to that person; and 35
    - (c) that the application is competent under subsection (2).
  - (2) An authorised officer shall not make an application under this section in respect of any person if he knows or believes that the person objects or would object to entry being obtained but that restriction shall not apply if he has reasonable cause to believe that the person is or may be suffering from mental disability. 40

## 6 Assessment orders

- (1) The court may, on the application of an authorised officer of a local authority, make an order under this section (an “assessment order”) in respect of any person in the authority’s area if satisfied –
- (a) that the applicant has reasonable cause to believe that the person concerned is a vulnerable person suffering or likely to suffer significant harm or serious exploitation; 5
  - (b) that the order is required so that all or any of the matters referred to in section 4(1)(a) and (b) above can be properly assessed; and
  - (c) that the application is competent under subsection (2). 10
- (2) An authorised officer shall not make an application under this section in respect of any person if he knows or believes that the person objects or would object to the making of the order but that restriction shall not apply if he has reasonable cause to believe that the person is or may be suffering from mental disability. 15
- (3) An assessment order shall specify the steps to be taken for carrying out the assessment but nothing to which the person concerned objects shall be done pursuant to the order unless the court when making the order, or at any time while it is in force, expressly authorises it to be done notwithstanding the objection. 20
- (4) An assessment order shall –
- (a) specify the date by which the assessment is to begin; and
  - (b) specify a period beginning with that date for which the order is to be in force, being the shortest period considered by the court to be necessary for the purposes of the assessment and not in any event exceeding eight days. 25
- (5) The person to whom an assessment order relates may only be removed from his place of residence pursuant to the order –
- (a) in accordance with directions specified in the order;
  - (b) if it is necessary for the purposes of the assessment; and 30
  - (c) for such period or periods as are specified in the order.
- (6) The court may treat an application for an assessment order as an application for a temporary protection order if the requirements for the making of such an order are satisfied and the court considers that such an order is more appropriate than an assessment order. 35

## 7 Temporary protection orders

- (1) The court may, on the application of an authorised officer of a local authority, make an order under this section (a “temporary protection order”) in respect of any person in the authority’s area if satisfied –
- (a) that the person concerned is a vulnerable person; 40
  - (b) that he is likely to suffer significant harm or serious exploitation unless removed to and kept in, or prevented from leaving, protective accommodation for a short period; and
  - (c) that the application is competent under subsection (2).
- (2) An authorised officer shall not make an application under this section in respect of any person if he knows or believes that the person objects or would
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object to the making of the order but that restriction shall not apply if he has reasonable cause to believe that the person is or may be suffering from mental disability.

- (3) A temporary protection order shall authorise the removal of the person concerned to protective accommodation specified in the order and the keeping of that person in that accommodation or, as the case may be, preventing that person from leaving the accommodation, for such period as is so specified, being the shortest period considered by the court to be necessary for achieving the purpose of the order and not in any event exceeding eight days. 5
- (4) On the making of a temporary protection order or at any time while it is in force the court may give directions for the assessment of all or any of the matters mentioned in section 4(1)(a) and (b) and, if such directions are given, subsection (3) shall have effect in relation to the directions as it has effect in relation to an assessment order. 10
- (5) An application for a temporary protection order may be made *ex parte* but the person in respect of whom it is made on any such application, and any person who is the donee of a lasting power of attorney granted by him or appointed by the court to be his deputy, may apply for the order to be discharged. 15
- (6) The court may treat an application for a temporary protection order as an application for an assessment order if the requirements for the making of such an order are satisfied and the court considers that such an order is more appropriate than a temporary protection order. 20
- (7) In this section “protective accommodation” means –
- (a) residential accommodation provided by a local social services authority under Part III of the National Assistance Act 1948 (c. 29); 25
  - (b) a health service hospital within the meaning of the National Health Service Act 1977 (c. 49) or accommodation provided by a local authority and used as a hospital by or on behalf of the Secretary of State under that Act;
  - (c) a care home within the meaning of Part I of the Care Standards Act 2000 (c. 14); 30
  - (d) any other suitable place the occupier of which is willing temporarily to receive the person concerned.
- (8) Where a person has been removed to protective accommodation pursuant to a temporary protection order it shall be the duty of the local authority to return him to the place from which he was removed as soon as that is practicable and consistent with his interests. 35

## 8 Offences

- (1) It is an offence for a person without reasonable excuse to obstruct an authorised officer of a local authority in the execution of his powers under this Part of this Act. 40
- (2) It is an offence for a person without reasonable excuse to obstruct any person acting pursuant to an assessment order or a temporary protection order or to any directions given in connection with such an order.
- (3) Subsections (1) and (2) above do not apply to the person for whose benefit the powers are sought to be exercised or, as the case may be, in respect of whom the order is made or the directions are given. 45

- (4) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 4 on the standard scale or both.
- (5) Proceedings for an offence under this section may be brought by a local authority. 5

## 9 **Protection of property of persons removed from home**

In section 48 of the National Assistance Act 1948 (duty of local authority to protect property of person removed from home) after subsection (1)(b) insert –

- “(ba) is admitted to accommodation provided or arranged by a council in pursuance of an order made on the application of the authority under the Protection of Adults in Care (Prevention of Harm and Exploitation) Act 2007, or 10
- (bb) is removed from his place of residence in pursuance of an assessment order or a temporary protection order under that Act.”

## 10 **Meaning of “the court”**

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- (1) Subject to the provisions of this section “the court” means a magistrates’ court or a single justice of the peace.
- (2) The Lord Chancellor may by order make provision for determining whether proceedings under this Act are to be instituted in the Court of Protection, in a magistrates’ court or before a single justice; and proceedings under this Part shall be treated as family proceedings for the purposes of sections 66, 67, 69(1) and 70 of the Magistrates’ Courts Act 1980 (c. 43). 20
- (3) The power to make an order under subsection (2) is exercisable by statutory instrument.
- (4) A statutory instrument containing an order under subsection (2) shall be subject to annulment in pursuance of a resolution of either House of Parliament. 25

## 11 **Expenses**

*There shall be paid out of money provided by Parliament –*

- (a) *any expenditure under this Act of a Minister of the Crown, and* 30  
 (b) *any increase attributable to this Act in the sums so provided under any other enactment.*

## 12 **Extent**

This Act extends to England and Wales only.

## 13 **Short title and commencement**

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- (1) This Act may be cited as the Protection of Adults in Care (Prevention of Harm and Exploitation) Act 2007.
- (2) This Act comes into force at the end of the period of two months beginning with the day on which it is passed.

# Protection of Adults in Care (Prevention of Harm and Exploitation) Bill

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## B I L L

To amend the Human Rights Act 1998 to extend the definition of public authority to include any body acting pursuant to a contract with a public body to perform a function of a public nature; to confer new functions on local authorities in relation to persons in need of care or protection provided by such authorities; and for connected purposes.

*Presented by Mr Paul Burstow  
supported by  
Mrs Joan Humble and Sandra Gidley.*

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*Ordered, by The House of Commons,  
to be Printed, 13th June 2007.*

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