SCOTTISH LAW COMMISSION

Discussion Paper No 96

Discussion Paper on Mentally Disordered and Vulnerable Adults: Public Authority Powers

August 1993

This Discussion Paper is published for comment and criticism and does not represent the final views of the Scottish Law Commission

EDINBURGH: THE STATIONERY OFFICE

£xx.xx

The Commission would be grateful if comments on this discussion paper were submitted by 30 November 1993. Comments may be made on all or any of the matters raised in the paper. All correspondence should be addressed to:

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PART 1 INTRODUCTION

Purpose of the discussion paper

1.1 The purpose of this discussion paper is to seek comments on proposals relating to powers of entry to premises and removal from premises of people suspected of being mentally disordered or vulnerable. These powers are currently exercised by local authorities, the Mental Welfare Commission for Scotland and the police in order to protect the mentally disordered and ensure that they receive appropriate care and treatment. However, there is little or nothing available for those who are vulnerable but not mentally disordered. This paper is not concerned with the provision of health care and social services for people who use them or the structure and funding of such services. The law in those areas has recently been radically changed following the coming into force of the National Health Service and Community Care Act 1990 in April 1993. Implementing the proposals in this paper will have resource implications but it is difficult to predict what these will be. The proposals may cost money in that extra staff may have to be trained or more paper work may be generated. On the other hand they may speed things up by removing the uncertainty surrounding the present procedures and the hesitation many feel about using them.

1.2 Throughout this paper we refer to the mentally disordered. We use this as a shorthand for those who are unable to make rational and informed decisions about their welfare and to safeguard themselves. The inability may arise from many causes; mental handicap, mental illness, stroke or head injury to give but a few examples. The term "abuse" also requires explanation. This is used in this paper to denote both positive actions, such as violence, physical restraint or misappropriation of DSS benefits and other property, and omissions, for example, restrictive regimes or infantilisation. The Mental Health (Scotland) Act 1984 is abbreviated to "the 1984 Act" for convenience.

Our previous proposals

1.3 In September 1991 we published a discussion paper *Mentally Disabled Adults: Legal Arrangements for Managing their Welfare and Finances.*[1] That discussion paper (which we refer to as our earlier discussion paper) put forward proposals for reform of the law relating to the legal capacity of mentally disabled[2] people and the ways in which decisions in the field of personal welfare and financial affairs might be made with them or for them. The major topics considered were:

> (a) guardianship under the 1984 Act, the appointment of tutors-dative and tutors-at-law under the common law and the Curators Act 1585 and the replacement of all these appointments by a new statutory scheme of personal orders and personal guardians;

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[1] Discussion Paper No 94.

[2] In this paper we use the term "mentally disordered" since it is used in the 1984 Act and is one with which people are familiar. No change of meaning is intended.

(b) medical treatment and research and the role of relatives, personal guardians, health care attorneys as well as the doctors and the courts in making decisions in this field;

(c) curators-bonis, tutors-at-law and other miscellaneous methods of managing the financial affairs of the mentally disordered and their replacement by a new statutory scheme of property orders and financial managers;

(d) attorneys in the personal welfare and financial fields;

(e) the type of decision-making body (court, tribunal or hearing) that should make the various orders required in the proposed new systems.

1.4 Nearly 100 responses were received to our earlier discussion paper and we also held many valuable meetings and seminars with those involved with the mentally disordered. There was a great deal of support for the proposed new statutory schemes relating to the personal welfare and finances of the mentally disordered. In our earlier discussion paper it was proposed that orders in the personal welfare field could be made only if the decision-making body was satisfied that:

> "(a) the person in question lacks wholly or partly the capacity to understand the nature of and to foresee the possible implications of personal welfare decisions or has such capacity but is unable to communicate or act consistently in accordance with such decisions, and
>
> (b) the appointment of a personal guardian or the making of some other order would result in a substantial benefit to, or necessary protection of, the person."

Furthermore, the fact that the person has acted or intends to act in a way that an ordinary prudent person would not act should not by itself be evidence of lack of capacity.[3] The proposed grounds of jurisdiction in the financial field were virtually identical.[4]

1.5 Some of those who responded, while expressing support for the new statutory schemes we had proposed, commented that the grounds of jurisdiction mentioned in the previous paragraph would exclude those who had some capacity but were nevertheless vulnerable or at risk because of their mental disorder. Guardianship under the 1984 Act is presently available to help the mentally disordered who are vulnerable or at risk, but if guardianship were to be replaced by a new statutory personal welfare scheme along the lines we proposed in our discussion paper these categories would be left to the somewhat unsatisfactory remedies of the common law or informal methods might have to be used to assist them. We accept the force of these comments and intend to widen the grounds of jurisdiction so as to include those who are vulnerable or at risk and who are also mentally disordered. This discussion paper is written on the assumption that the new statutory schemes with widened jurisdiction will be recommended.

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[3] Proposal 5 at para 2.62.
[4] Proposal 29 at para 4.40.

Inclusion of the vulnerable

1.6 Those who are vulnerable or at risk from other causes, such as old age or physical disability, would fall outwith our proposed scheme for managing the personal welfare and financial affairs of the mentally disordered. The scheme forms part of our work under an item in our *Fourth Programme of Law Reform "Judicial Factors, Powers of Attorney and Guardianship of the Incapable"*.[5] It would unduly extend that scheme to include those who are vulnerable for reasons other than mental disorder. However, at the initial stages, where matters of concern are being investigated and emergency steps may need to be taken, we think that vulnerable people who are not mentally disordered should be included. Accordingly, most of the proposals in this paper apply to vulnerable adults generally whatever the cause of their vulnerability. Distinguishing between mentally disordered and vulnerable people and providing remedies for only the former class would leave the vulnerable unprotected. This is likely to lead to more harm than intervening in a limited way with those who are vulnerable but mentally capable. There is an increasing awareness that abuse, deprivation and exploitation of vulnerable adults generally occurs[6] and that the existing law is often not capable of tackling it effectively.

1.7 Our earlier discussion paper considered what sort of decision-making body should make personal and property orders, appoint personal guardians and welfare managers and vary or recall such orders or appointments.[7] The advantages and disadvantages of the sheriff courts, new tribunals or new hearings were set out and views invited.[8] Our tentative conclusion at this stage is that the most suitable body to make decisions over the whole range of matters relating to personal welfare and financial affairs should be the sheriff courts using designated sheriffs. This present discussion paper assumes that the sheriff courts will assume this new role. Should another decision-making body be ultimately preferred the references in this paper to the sheriff courts would then require to be read as references to that other body.

1.8 Short term powers are needed to deal with sudden difficulties or crises. Public authorities, in pursuance of their statutory duties, need powers to intervene in order to resolve emergency situations such as physical abuse of a mentally disordered person at home by a carer or rapid deterioration in the mental abilities of a person living alone. But the situation may be less clear cut in that abuse or mental disorder may be only suspected. Public authority powers will still be needed to discover the extent of the problem and whether intervention is necessary. As already mentioned,[9] our earlier discussion paper dealt with the powers of the courts to make orders in the field of personal welfare and financial affairs. Although we did not put forward a detailed scheme in that discussion paper we did recognise the need for interim orders to deal with emergencies.[10] Many of the public authority powers discussed in this paper in so far as they relate to the mentally disordered could be seen as interim orders under our proposed new personal guardianship and financial management schemes.

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[5] Scot Law Com No 126 (1990), item 17.
[6] *Violence against Elderly People* (1992) Council of Europe; Homer, A C and Gilleard, C, "Abuse of Elderly People by their Carers", (1990) 301 BMJ 1359; *Confronting Elder Abuse*, SSI London Region Survey (1992); Channel 4, *Dispatches*, 19 May 1993.
[7] Part VI.
[8] Proposal 84 at para 6.9.
[9] See paras 1.3 and 1.7 above.
[10] Para 6.19.

The wider context

1.9 The Committee of Ministers of the Council of Europe has recently considered emergency measures concerning children, disabled adults and others in need of special protection and assistance.[11] It noted that existing measures do not always enable the courts and other competent bodies to deal satisfactorily with urgent cases and pointed out the need for prompt action to prevent adverse or even irreversible consequences. The recommendations set out a number of principles which member states should implement. These include the following:

1. Courts and other competent authorities dealing with family matters should have sufficient emergency powers and resources to protect children and other persons in need of special protection and assistance and whose interests are in serious danger.

2. The courts and competent authorities should be ready to act at any time in extremely urgent cases.

3. Simple and expeditious procedures should be available to ensure that decisions are reached quickly.

The proposals we put forward in this paper are in line with these principles and recommendations.

1.10 The Law Commission of England and Wales is also currently involved in the field of mental incapacity. In April 1991 it published a preliminary Consultation Paper *Mentally Incapacitated Adults and Decision-Making: An Overview.*[12] Since then it has followed up that preliminary paper with three further consultation papers: *Mentally Incapacitated Adults and Decision-Making: A New Jurisdiction,*[13] dealing with the "private law", *Mentally Incapacitated Adults and Decision-Making: Medical Treatment and Research,*[14] dealing with medical treatment and *Mentally Incapacitated and Other Vulnerable Adults: Public Law Protection*[15] dealing with the statutory powers and duties of public law authorities. In preparing this present discussion paper we have had regard to all of these papers, in particular to the Public Law Protection paper. We have modelled many of our present proposals for reform on those advanced in that paper because the existing powers in this field and the criticisms made of them are very similar throughout Great Britain.

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[11] Recommendation No R(91)9, "Emergency Measures in Family Matters", 9 September 1991.
[12] Consultation Paper No 119.
[13] Consultation Paper No 128 (1993).
[14] Consultation Paper No 129 (1993).
[15] Consultation Paper No 130 (1993).

PART 2 EXISTING POWERS IN THE PERSONAL WELFARE FIELD AND PROPOSALS FOR REFORM

The background

2.1 This part examines the duties laid upon public authorities and the powers available to them in relation to the personal welfare and safeguarding of the mentally disordered. Detention in hospital under sections 18 to 35 of the 1984 Act was excluded from our earlier discussion paper. We took the view that detention was primarily a matter of clinical practice which we were not the appropriate body to review. Furthermore, when we were preparing our earlier discussion paper the detention procedures had only recently been reviewed by Parliament in passing the Mental Health (Scotland) Act 1984. Although the legislation is now nearly 10 years old we still consider that this present project is not the proper place to carry out a review of the detention procedures. Another topic excluded from this present paper is guardianship under the 1984 Act. This is because guardianship was considered in our earlier discussion paper which proposed its replacement by a new statutory scheme.[1] We also exclude the inspection of private hospitals and nursing homes under Part IV of the 1984 Act and the Nursing Homes Registration (Scotland) Act 1938 respectively. The safeguarding of the property of the mentally disordered by public authorities is dealt with later in Part 3.

2.2 In outline the existing statutory provisions available to the public authorities are:-

(a) A power to demand admission to premises where a mentally disordered person is.[2]

(b) A power of forcible entry to premises where a mentally disordered person is and removal of that person to a place of safety.[3]

(c) A power to remove a person suffering from chronic disease who lacks proper care and attention from home to a hospital or other place.[4]

(d) A power to take mentally disordered people found in a public place and in need of care and control to a place of safety.[5]

2.3 There are also common law powers available. A private individual has "power lawfully to detain, in a situation of necessity, a person of unsound mind who is a danger to himself or others", but this power may not be exercised by employees of a health board since

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[1] See paras 1.3 and 1.5 above.
[2] 1984 Act, s 117(1).
[3] 1984 Act, s 117(2).
[4] National Assistance Act 1948, s 47 and National Assistance (Amendment) Act 1951.
[5] 1984 Act, s 118.

the board's powers of detention are exhaustively set out in the 1984 Act.[6] The police have limited powers of entry to premises without warrant. These powers are limited to dealing with serious disturbances or in hot pursuit of persons who have committed serious crimes.[7]

2.4 Local authorities (regional or islands councils) and the Secretary of State have powers and duties of inspection and entry to establishments registered under the Social Work (Scotland) Act 1968,[8] to establishments provided by the local authority, or a voluntary organisation or other person for the purposes of the 1968 Act or sections 7 and 8 of the 1984 Act or any place where a person is boarded out by the local authority or a voluntary organisation.[9] There is also a power to remove persons from establishments which are carried on in contravention of the registration requirements or in urgent situations.[10] These powers have been reviewed recently and been amended by the Registered Establishments (Scotland) Act 1987 and the National Health Service and Community Care Act 1990 and we are not aware of any criticism of them. We therefore do not make any proposals in relation to these powers and duties and the proposals in this paper are not to be taken as affecting them.

General approach to reform

2.5 The existing public authority powers set out in paragraph 2.2 above are discussed in detail later but are open to criticism on several counts. The Law Commission of England and Wales considered in its overview paper[11] and in its Public Law Protection paper[12] that the public authority powers in England and Wales were inadequate and in need of improvement. These powers are very much the same as those in Scotland so that the criticisms of the provisions relating to England and Wales apply with similar force to the Scottish provisions. In its Public Law Protection paper the Law Commission were of the opinion that the existing powers concentrated unduly on removing people from home.[13] It proposed a more flexible system of statutory powers.[14]

2.6 We find the Law Commission's general approach attractive and have adopted it as a basis for the proposals put forward in this paper for reform of Scottish public authority powers. There are, however, substantial differences between the two sets of proposals due to our respective legal backgrounds and concerns. For example, the Mental Welfare Commission for Scotland has a wider remit in relation to the mentally disordered than the Mental Health Act Commission in England and Wales. Also guardianship under the 1984 Act and other methods of appointing decision-makers to the mentally disordered in the personal welfare field would, under our proposals, be replaced by a new statutory scheme, whereas the Law Commission propose to retain the narrower guardianship in England and Wales as a separate public authority remedy.[15]

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[6] *B v Forsey* 1988 SLT 572, Lord Keith of Kinkel at p 576.
[7] See para 2.63 below.
[8] 1968 Act, ss 67 and 68.
[9] 1968 Act, s 6.
[10] 1968 Act, s 65.
[11] *Mentally Incapacitated Adults and Decision Making: An Overview*, No 119 (1991), para 1.9(iv).
[12] Para 1.5.
[13] Para 3.3.
[14] Part III.
[15] Public Law Protection Paper, Part IV. Guardianship in Scotland is available to any mentally disordered person. In England and Wales it is restricted to those suffering from mental illness, severe mental impairment, psychopathic disorder or mental impairment (Mental Health Act 1983, s 7(2)).

2.7 The main elements in our proposed scheme of public authority powers are as follows:-

(a) a duty to investigate where a mentally disordered or vulnerable person or a person suspected of being mentally disordered or vulnerable seems to be significantly at risk from abuse;

(b) a power to see the person and inspect the premises where he or she is;

(c) a power to carry out assessments on the person; and

(d) a power to remove the risk or abuse from the person or, in the last resort, to remove the person to a place of safety.

The age range

2.8 To what age range should the public authority powers be applicable? We suggest to those aged 16 and over. Children attain the full legal capacity of adults at 16 under the Age of Legal Capacity (Scotland) Act 1991 and those aged 16 or more may be subject to guardianship under the 1984 Act.[16] Making public authority powers applicable to those aged 16 or over may result in some overlap with the powers of regional (or islands) councils in relation to children in need of compulsory measures of care under the Social Work (Scotland) Act 1968. Children's hearings generally have no jurisdiction in relation to persons who have attained 16, but they have jurisdiction in relation to children up to the age of 18 where a supervision requirement is in force.[17] To this extent there is a slight overlap, but this seems preferable to the much larger gap that would exist if the public authority powers were applicable only in relation to those aged 18 or over. We therefore propose that:-

1. The public authority powers set out in this discussion paper should be applicable in relation to those aged 16 and over.

The vulnerable

2.9 For reasons explained in paragraph 1.6 above we consider that certain of the public authority powers should be exercisable in relation to the vulnerable. Those who are vulnerable due to mental disorder will clearly be included by reason of their mental disorder. Should one attempt to define those who are vulnerable otherwise? Section 25(1)(c) of the Housing (Scotland) Act 1987[18] gives a priority need for accommodation to those (among others) who are "vulnerable as a result of old age, mental illness or handicap or physical disability or other special reason". We are not convinced that it is helpful in the context of this paper to enumerate the possible causes of vulnerability. This paper is concerned with the powers of public authorities to protect various categories of people including those who cannot adequately protect themselves from physical violence, mental ill-treatment, deprivation or physical or financial exploitation. Chambers Twentieth Century Dictionary[19] defines "vulnerable" as follows:

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[16] 1984 Act, s 37(1).
[17] 1968 Act, s 30(1).
[18] Derived from the Housing (Homeless Persons) Act 1977.
[19] 1983 Edition.

> "capable of being wounded, liable to injury, or hurt to feelings: open to successful attack: capable of being persuaded or tempted ….."

Thus vulnerable has a meaning appropriate to this paper and accordingly we consider no further definition is necessary.

A duty to investigate

2.10 The first step a public authority needs to take in dealing with a case of suspected abuse or self neglect which involves a possibly mentally disordered person is to investigate the situation. The Mental Welfare Commission for Scotland has general investigative and protection functions in respect of mentally disordered persons and their interests. Section 3(2)(a) of the 1984 Act imposes on the Commission a duty:

> "to make enquiry into any case where it appears to them that there may be ill-treatment, deficiency in care or treatment, or improper detention of any person who may be suffering from mental disorder, or where the property of any such person may, by reason of his mental disorder, be exposed to loss or damage."

Section 3(2)(d) directs the Commission to bring to the attention of any local authority any cases where the Commission thinks the authority ought to exercise its functions so as to secure the welfare of the mentally disordered, and section 3(2)(f) requires the Commission to bring to the attention of the Secretary of State, a Health Board, a local authority or any other body any matter concerning the welfare of a mentally disordered person which the Commission considers ought to be so brought. The local authority or other body notified may then take appropriate action but the Commission does have direct powers of its own.[20]

2.11 The powers and the duties of local authorities and persons authorised by the Secretary of State in relation to registered establishments or persons boarded out by the local authority have already been noted.[21] Apart from these specific functions local authorities have no general duty to investigate matters of concern in relation to mentally disordered or vulnerable people living in their own homes or those of relatives or carers. Regional (or islands) councils have a duty to assess people's needs in relation to the provision of community care services under the new community care legislation.[22] This duty is not confined to the mentally disordered. There are similar duties in other legislation either targeted at the mentally disordered or more generally at the disabled. The following is not an exhaustive list but merely illustrates the types of provision which exist. Section 29 of the National Assistance Act 1948 gives regional (or islands) councils power to promote the welfare of the mentally disordered and a duty to do so when directed by the Secretary of State. Regional (or islands) councils, by their social work departments, have a duty, under section 12 of the Social Work (Scotland) Act 1968, "to promote social welfare by making available advice, guidance and assistance" to people in their area. The Chronically Sick and Disabled Persons Act 1970 lays a duty on regional (or islands) councils to make certain arrangements to meet the needs of those falling within the ambit of section 12 of the Social

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[20] 1984 Act, s 117, see paras 2.16 and 2.45 below. The Commission would also be entitled to apply to the court for certain powers and remedies under our proposed new statutory scheme for personal guardianship and financial management of the mentally disordered.

[21] See para 2.4 above.

[22] Social Work (Scotland) Act 1968, s 12A, inserted by s 55 of the National Health Service and Community Care Act 1990.

Work (Scotland) Act 1968.[23] Section 65B of the Education (Scotland) Act 1980 places a local authority under a duty to consider a child's needs for educational and welfare services after he or she ceases to be of school age if the child has been assessed as having special needs. Finally, section 4 of the Disabled Persons (Services, Consultation and Representation) Act 1986 provides that a regional (or islands) council shall decide whether a person's needs call for the provision of local authority welfare services to him or her. In order to carry out an assessment some prior investigation on the part of local authorities will be needed. But there is a difference between an investigation to see whether services are needed and an investigation as to whether an individual is at risk of significant harm.

2.12 Should public authorities other than the Mental Welfare Commission for Scotland have a duty to investigate? We suggest that the regional (or islands) councils should also have a duty to investigate. Although there would be a certain tidiness in confining the duty to a single body we doubt whether this is feasible. The Mental Welfare Commission does not have sufficient resources to carry out investigations throughout Scotland, nor does it have any functions in relation to vulnerable people who are not mentally disordered. To confer such functions would be a very significant enlargement of its role. Furthermore, the regional (or islands) councils, via their social work departments, have staff in contact with many of those who are mentally disordered or vulnerable and so are well placed to carry out investigation into matters of concern and to a great extent are doing so already. On the other hand, we would not wish to place sole responsibility for investigation on regional (or islands) councils by removing investigative functions of the Mental Welfare Commission. The Commission has a valuable role as an independent investigator, especially where there is suspicion of lack of care on the part of a regional (or islands) council. We would be against spreading the duty to investigate further than the Commission and the regional (or islands) councils. Too many bodies being under a duty could give rise to a wasteful duplication of effort or each body assuming that one of the others was acting, resulting in no-one doing anything. Bodies without a duty to investigate would still have a valuable role to play by alerting the Commission or the local authority to the existence of people who might be at risk and providing further information once an investigation was under way. We would hope that conferring concurrent investigative functions on the Commission and local authorities would not endanger the working relationships that have been established between them.

2.13 In what circumstances should regional (or islands) councils have a duty to investigate? Their duty has to be different from that of the Mental Welfare Commission set out in paragraph 2.10 above. First, the Commission carries out investigations into hospitals and other health service institutions where its expertise and authority are recognised. We consider that no good purposes would be served by conferring concurrent powers on local authorities who are not involved to any significant extent in medical or health care matters. Second, the Commission should not have functions in relation to those who are vulnerable without being mentally disordered since that would constitute a considerable expansion of its field of activity. Imposing a duty on a regional (or islands) council to make enquiries where a suspected mentally disordered person's property is at risk is justified since a council is currently under a duty to apply to the court for the appointment of a curator bonis if one is needed and no-one else is applying.[24] The local authority would also have a title to apply

[23] S 2(1), extended to Scotland by the Chronically Sick and Disabled Persons (Scotland) Act 1972.
[24] 1984 Act, s 92(1).

to the court for appropriate orders under our proposed new scheme for financial management. Imposing a duty to investigate on councils would not add greatly to their workload since many cases of suspected abuse are currently investigated by members of the social work department and other council officials once the matter is brought to their attention.

2.14 If the investigative duty is to lie with the Mental Welfare Commission and regional (or islands) councils should other bodies or individuals who suspect abuse or exploitation be placed under a new statutory duty to pass on information to an investigating authority? Such mandatory reporting is a feature in some other jurisdictions, especially in the area of child abuse. For example the Ontario Child Welfare Act provides[25] that

> "every person who has reasonable grounds to suspect in the course of the person's professional or official duties that a child has suffered or is suffering from abuse shall forthwith report the suspected abuse …..".

We would agree with the Law Commission for England and Wales that most of the people who would be covered by any mandatory reporting requirement would be public employees. The question of whether a person suspecting abuse should disclose information ought, in the Law Commission's view, to be left to codes of practice issued by the various professional bodies.[26] We would endorse that approach.

2.15 We propose that:

2. Without prejudice to the powers and duties of local authorities and the Secretary of State in relation to registered establishments and persons boarded out under the Social Work (Scotland) Act 1968,

(a) Regional (or islands) councils should be under a duty to investigate cases of suspected ill-treatment, lack of care or loss or damage to property of persons who are, or appear to be, mentally disordered or vulnerable, except where such cases relate to hospitals or other health care institutions.

(b) The Mental Welfare Commission for Scotland should retain its existing duty to investigate cases of suspected ill-treatment, deficiency in care or treatment, improper detention or loss or damage to property of persons who are, or appear to be, mentally disordered.

(c) Apart from regional (or islands) councils and the Mental Welfare Commission for Scotland, no other public authority should be under a statutory duty to investigate such cases.

Right to demand access

2.16 In order to investigate possible ill-treatment or abuse of a person who is or may be mentally disordered or vulnerable the investigating authority requires to have access to that

[25] RSO 1980 c 66, s 49(2).
[26] Public Law Protection paper, para 3.19.

person and his or her surroundings. It may be prevented from doing so either by the person himself or herself or those looking after him or her. Several matters seem to be required. First, the investigator needs to be able to gain entry to the place where the person is. Secondly, the investigator needs to be able to see and talk to the person without interference from others. The investigator may also need to be accompanied by a medical practitioner or other professional in order to carry out an examination of the person or to assess whether any further action is justified. Thirdly, relevant records and documents may need to be examined and copies taken. Section 117(1) of the 1984 Act provides:-

> "Where a mental health officer or a medical commissioner has reasonable cause to believe that a person suffering from mental disorder -
>
> > (a) has been or is being ill-treated, neglected or kept otherwise than under control, in any place; or
> >
> > (b) being unable to care for himself, is living alone or uncared for in any place,
>
> he may, on production of some duly authenticated document showing that he is so authorised, demand admission at all reasonable times and, if admission is not refused, may enter and inspect that place."

2.17 Admission may be demanded only to any place where there is reasonable cause to believe "a person suffering from mental disorder" is. The use of this phrase rather than the word "patient" (which means a person suffering or appearing to suffer from mental disorder[27]) suggests that the right to demand admission is limited to those cases where an assessment of a person's mental capacity has been made and he or she has been found to be mentally disordered. It would seem not to be available where there is only reasonable cause to believe that someone is suffering from mental disorder. We suggest that any new formulation should make it clear that the right to demand admission is available also in respect of those reasonably believed to be mentally disordered. The right should also be available in respect of those who are vulnerable or reasonably believed to be vulnerable.

2.18 The right to demand admission is restricted to a mental health officer of the regional (or islands) council or a medical commissioner of the Mental Welfare Commission. The person seeking admission must also be duly authorised by his or her parent body. These requirements may be too restrictive if an investigation has to be carried out as a matter of urgency. There could well be occasions where an investigation might have to be postponed because of the absence or prior commitments of those currently entitled to demand admission. On the other hand, there are dangers in permitting relatively untrained junior staff to deal with sensitive issues like demanding admission to people's homes. We suggest that the right to demand admission should be available to any duly authorised mental health officer of a regional (or islands) council or any medical or social work commissioner or officer of the Mental Welfare Commission. The current requirement that the person demanding admission should be duly authorised in writing should we think be retained. A certain degree of formality is desirable, particularly since refusal of admission constitutes an offence.[28] A written authorisation should be available to show on request to the person

[27] 1984 Act, s 125(1).
[28] 1984 Act, s 109.

dealing with the demand for admission[29] and would serve to impress on him or her that the demand was a lawful one. In view of recent cases involving bogus social workers the person demanding admission should perhaps be required to carry, and exhibit on request, an official identity card which bears a photograph.[30]

2.19 In terms of section 117(1) of the 1984 Act a duly authorised person may demand admission "at all reasonable times". We doubt whether it is necessary to specify reasonable times in greater detail such as not before 8.00am or after 8.00pm and not on Sundays or public holidays.[31]

2.20 The right to demand admission is at present exercisable only by the authorised person. We suggest that one other individual should be entitled to accompany the authorised person. For example, a local authority mental health officer may need the medical expertise of a doctor. Moreover, in tense situations the authorised person may be glad of a colleague's presence.

2.21 On what grounds should authorised persons be entitled to demand admission? The existing grounds are that there is reasonable cause to believe that a person suffering from mental disorder has been or is being ill-treated, neglected or kept otherwise than under control or being unable to care for himself or herself is living alone or uncared for.[32] We are unaware of any criticisms of these grounds or that they have caused difficulties in practice. However, we suggest some minor modifications. First, we would delete the words "kept otherwise than under control". These reflect an outdated attitude and anyway are superfluous. Secondly, we would confer a right to demand admission in relation to persons who are vulnerable or reasonably believed to be vulnerable. Thirdly, in line with the proposed division of investigative duties between local authorities and the Mental Welfare Commission[33] we consider that a local authority mental health officer should not have any right to demand admission to a hospital or health care institution. The grounds, amended as suggested, would seem to cover those who may be removed under the National Assistance Acts 1948 and the National Assistance (Amendment) Act 1951.[34] This would solve the problem created by the absence of any express statutory right of entry to premises under these Acts.

2.22 Summing up the discussion in the previous section we seek views on the following proposal:

> **3. (1) A mental health officer of the regional (or islands) council or a medical or social work officer or commissioner of the Mental Welfare Commission for Scotland, duly authorised in writing by the council or Commission respectively, should be entitled to demand admission to premises where he or she reasonably believes:**
>
> **(a) there is a mentally disordered or vulnerable adult, and**

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[29] S 117(1) of the 1984 Act requires production of the authorisation when demanding admission.
[30] Messengers-at-Arms and sheriff officers when performing their official functions are required to exhibit their official identity card when requested to do so, Debtors (Scotland) Act 1987, s 86.
[31] Permitted times of poinding are regulated in this fashion by s 17 of the Debtors (Scotland) Act 1987.
[32] 1984 Act, s 117(1).
[33] See Proposal 2 at para 2.15 above.
[34] See paras 2.44-2.55 below.

(b) that adult has been or is being ill-treated or neglected or, being unable to care for himself or herself, is living alone or uncared for.

(2) Admission may be demanded at all reasonable times. The person demanding admission should be required to show the written authorisation if requested to do so. He or she should be entitled to be accompanied by one other person.

(3) A mental health officer should not be entitled under paragraph (1) to demand admission to any hospital or health care institution.

(4) These powers should be in addition to any other statutory powers under the Social Work (Scotland) Act 1968 or other legislation.

Right of inspection and interview

2.23 Section 117(1) of the 1984 Act merely provides that after gaining admission the duly authorised person may inspect the premises. One would have thought that the main purpose in gaining admission would be to have a look at the suspected mentally disordered person in order to come to some view of his or her mental and physical state and whether he or she was at risk of significant harm. The person demanding admission has no express power to see the suspected mentally disordered person or have an interview with him or her in private. Inspectors of registered establishments may examine any registers or records (excluding medical records) which are required to be kept by the establishment.[35] We doubt whether it is necessary to confer such a right on persons inspecting ordinary dwelling-houses. Where a medical practitioner accompanies the mental health officer or the duly authorised person is a medical commissioner or medical officer of the Mental Welfare Commission he or she should be entitled to carry out a medical examination in private. We think it would be helpful in any new formulation if these rights were expressly conferred. Being able to point to express statutory powers would be of assistance in overcoming any reluctance on the part of those looking after a mentally disordered or vulnerable person to allow officials to carry out their duties.

2.24 We propose that:

4. The duly authorised person and any accompanying person who has gained admission to premises under Proposal 3 should be entitled:

(a) to inspect the premises,

(b) to have access to the suspected mentally disordered or vulnerable person,

(c) to interview him or her in private, and

(d) if the duly authorised person or accompanying person is a medical practitioner, to examine him or her in private.

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[35] Social Work (Scotland) Act 1968, s 67(1).

Are there any other rights, such as the right to inspect records, which might usefully be conferred?

2.25 Section 109(1) of the 1984 Act provides that a person commits an offence if he or she "refuses to allow the inspection of any premises, or without reasonable cause refuses to allow the visiting, interviewing or examination of any person" by an authorised person. Subsection (2) also makes it an offence for any person to refuse to withdraw so that the authorised person can conduct an interview or examination in private. This section would cover obstructing the exercise of any of the new powers we propose if the new provisions were to be contained in the 1984 Act, either by way of amendment of the existing provisions or by substituting new provisions for the existing provisions. But if the new provisions were to be enacted in a new statute then offence provisions along the above lines would need to be included.

Warrant for forcible entry

2.26 The authorised official may be denied entry even though it is an offence to refuse admission when demanded. Powers of forcible entry are therefore necessary. Section 117(2) empowers a justice of the peace, which includes a sheriff or a stipendiary magistrate,[36] to issue a warrant authorising any constable named therein to enter specified premises if need be by force. Sworn information in writing must be submitted to the justice by a mental health officer or medical commissioner to the effect that admission in pursuance of subsection (1)[37] has been demanded and refused or refusal is apprehended. The application for a warrant is not intimated to the suspected mentally disordered person or to the occupier of the premises. The constable is to be accompanied by a medical practitioner.[38]

2.27 The existing provision is open to many criticisms. First, the warrant authorises the removal of the person "if it appears proper so to do". We propose later[39] that removal should be a remedy granted by the sheriff after proper consideration of the risks involved. Removal should not be an incidental to a warrant for entry which is left to the discretion of those carrying out the warrant. Of course there will be situations where prompt removal is justified. In these cases an application could be made for removal without any preliminary inspection in terms of a warrant for entry.

2.28 Secondly, a warrant under section 117(2) can be granted only where there is a right to demand admission under subsection (1). The scope of subsection (1) is set out in paragraph 2.16 above and our suggested amendments in paragraph 2.17. The effect would be that admission could be demanded, and a warrant for entry granted, to premises where there was a mentally disordered or vulnerable person or one reasonably believed to be mentally disordered or vulnerable and the person is suspected of being abused or uncared for.

2.29 Third, the warrant has an indefinite life in that once granted it remains in effect and may be used at any time in the future. Indeed it may not be used at all, but its existence may serve to strengthen the applicant's position in dealing with the mentally disordered person

[36] S 117(7)(a).
[37] See para 2.16 above.
[38] S 117(5).
[39] Proposal 7 at para 2.55 below.

or the occupier of the premises. A similar situation arises in relation to the removal of children to a place of safety under section 37(2) of the Social Work (Scotland) Act 1968. There the indefinite nature of the authorisation was regarded by Lord Clyde as part of the excessive scope of the discretion conferred by the statutory provision.[40] We suggest that a warrant to enter should be used within 72 hours of its being granted otherwise it should lapse. The same time limit applies to the validity of an emergency recommendation for admission to hospital made by a medical practitioner under section 24 of the 1984 Act. A warrant should not be capable of being kept in a drawer until the appropriate official decides to use it. The information supplied in support of the application for a warrant to the sheriff or justice ought to be as up to date as is reasonably practicable. Operating a state warrant circumvents this requirement.

2.30 Fourth, section 117(5) refers only to a medical practitioner accompanying the constable carrying out the warrant under section 117(2). But the purpose of the visit may cover more than medical matters. The regional (or islands) council or the Mental Welfare Commission have their statutory duties to perform so that the duly authorised official of either body ought to accompany the constable as well. A medical practitioner may not be needed in every case. His or her attendance should be optional, but the authorised official should be present in every case.

2.31 Fifth, the purpose of entry, initially at any rate, is to inspect the premises and see the person suspected of being mentally disordered or vulnerable. There is no explicit mention in the present provision of the power to see the person or inspect the premises, although this could be implied from the power to remove the person "if it appears proper to do so". The warrant therefore should authorise the constable to take such steps as are necessary to ensure that the accompanying officials can inspect the premises and interview (and any doctor can carry out an examination) of the person in private. We think clarification along the lines suggested would be helpful. The warrant should simply enable those authorised to gain entry and carry out the same functions[41] as if they had been admitted on demanding admission. Thus, as in Proposal 3, a mental health officer should not be entitled to enter and inspect any hospital or health care institution.

2.32 Sixth, the warrant is granted by a justice of the peace, although the term includes a sheriff or a stipendiary magistrate.[42] The granting of a warrant for forcible entry is a judicial act requiring the exercise of discretion after evaluating the information supplied by the applicant in the application or orally. We think this is a task for which sheriffs or stipendiary magistrates are best fitted. "Sheriff" means a permanent, temporary or honorary sheriff. Honorary sheriffs are appointed by the sheriff principal, hold office during pleasure and are entitled to exercise the jurisdiction and powers of a sheriff.[43] We seek views as to whether it is necessary to extend the power to grant a warrant of forcible entry to persons other than sheriffs or stipendiary magistrates. We note that (apart from the sheriffdom of Glasgow and Strathkelvin where there are very many permanent and temporary sheriffs) most sheriff court districts have a reasonable number of honorary sheriffs available for granting warrants and performing other duties. If alternative provision is necessary then

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[40] The Report of the Inquiry into the Removal of Children from Orkney in February 1991 ("the Orkney Report"), para 16.2.
[41] See Proposal 4 at para 2.24 above.
[42] 1984 Act, s 117(7)(a).
[43] Sheriff Courts (Scotland) Act 1907, s 17.

justices of the peace seem the obvious choice. Justices grant warrants for forcible entry at present under the 1984 Act and many other statutes,[44] although some warrants may be granted only by sheriffs.[45] In all cases the applicant should be required to appear personally before the sheriff, stipendiary magistrate or justice.

2.33 Seventh, the requirement in the present provision that the constable be named in the warrant gives rise to practical problems. Because of police duty rotas it may not be possible to obtain the services of the named constable at a time convenient for others involved. We consider it unnecessary for the constable to be named. The warrant should be addressed to any constable of the police force for the area in which the premises to be entered are situated.

2.34 Lastly, should the information supplied by the applicant have to be in writing or sworn? Requiring an affidavit would be too time consuming for urgent cases. We doubt whether the current requirement that the information has to be sworn to by the applicant is any greater guarantee of its accuracy than a simple signed statement. The application should be required to be in writing but need not necessarily give the full details. It should be competent for the applicant to present further information orally in support of the application.

2.35 We tentatively propose that:

5. Section 117(2) of the Mental Health (Scotland) Act 1984 should be replaced by the following provisions:

(a) A sheriff (including a honorary sheriff) or a stipendiary magistrate should be empowered to grant a warrant, on application by a person on behalf of the regional (or islands) council or Mental Welfare Commission for Scotland, authorising a constable to enter specified premises. The constable should not be named.

Should a warrant be capable of being granted by a justice of the peace?

(b) The warrant should be capable of being granted if

(i) a person entitled to demand admission has been refused admission to the premises or a refusal is apprehended, and

(ii) there are reasonable grounds for believing that a mentally disordered or vulnerable person or a suspected mentally disordered or vulnerable person within the premises has been or is being ill-treated, neglected, or, being unable to take care of himself or herself, is living alone and uncared for.

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[44] For example, persons instructed by a local authority in connection with houses in multiple occupancy, Housing (Scotland) Act 1987, s 173; authorised officers, Rights of Entry (Gas and Electricity Boards) Act 1954 as applied by the Gas Act 1986 and the Electricity Act 1989; Customs and Excise officers, Customs and Excise Management Act 1979, s 161.

[45] Wireless Telegraphy Act 1949, s 15 applied by Telecommunications Act 1984, s 79; Taxes Management Act 1970, s 20C, D.

(c) A warrant should not be granted to a mental health officer in respect of entry to any hospital or health care institution.

(d) The warrant should cease to have effect unless used within 72 hours of it being granted.

(e) The constable should be accompanied by a duly authorised person from the regional (or islands) council or Mental Welfare Commission entitled to demand admission under Proposal 3 who may in turn be accompanied by another person.

(f) The constable should be empowered by virtue of the warrant to enter the premises and to ensure that those accompanying him or her are able to enter the premises, inspect them, and to interview (and examine if a medical practitioner accompanies the constable) the suspected mentally disordered or vulnerable person in private. The warrant should authorise the use of reasonable force to achieve these purposes.

Order for assessment and examination

2.36 Exercise of the powers of entry and access to a suspected mentally disordered or vulnerable adult may result in an adequate assessment of the person's vulnerability or mental state to enable further action to be planned. However, a more detailed examination or assessment may be necessary. At present should these be opposed the person has to be removed to a place of safety by virtue of the warrant granted under section 117(2) of the 1984 Act. This warrant not only authorises the constable to enter the premises by force but also:

> "to remove, if it appears proper so to do, any person suffering from mental disorder to whom subsection (1) of this section applies to a place of safety with a view to the making of an application or emergency recommendation in respect of him under Part V of this Act, or of other arrangements for his treatment or care."

2.37 The opposition to further examination and assessment may stem from the suspected mentally disordered or vulnerable person or from those looking after him or her. The regional (or islands) council or Mental Welfare Commission presently face a choice, either to leave the person or to remove him or her from home to a place where an examination or assessment can be carried out free from interference.

2.38 Examination and assessment should not require a person's compulsory removal from home for several days. Removal should be a last resort remedy reserved for those cases where the person is likely to be at risk of significant harm unless removed forthwith and removal is the only reasonable practicable way of providing protection.[46] It might be argued that people should not be subjected to compulsory measure in their own homes, so that if compulsory assessment is needed they should be removed from home. But we consider that it would be more traumatic for a person to be compulsorily removed from home and assessed in a hospital or some other place than to be compulsorily assessed at home.

[46] See Proposal 7 at para 2.55 below.

Moreover, the opposition to assessment may come from others rather than the person sought to be assessed. Where the circumstances do not justify removal, some other powers are needed to deal with those cases where assessment and further examination is required, but there is opposition to this.

2.39 We would not be in favour of permitting an examination or assessment against the wishes of the person concerned or those looking after him or her without some independent authorisation. An application should be made to the sheriff for an order. An application should not be restricted to the regional (or islands) council; the Mental Welfare Commission should also be entitled to apply. At present the Commission has a duty to investigate matters of concern involving the mentally disordered and is entitled, through a commissioner, to demand admission to premises and to apply for a warrant of forcible entry and removal. We are proposing in this paper that the Commission retain these powers and duty[47] and that they may be exercised by persons acting on behalf of the Commission. Unlike an application for a warrant of entry[48] an application for authority to examine and assess should be required to be intimated to the suspected mentally disordered person. If the sheriff is satisfied that the person does not wish to be assessed or examined and has sufficient understanding of what is involved no order should be made.

2.40 The terms of the order should be left to the court to decide, after hearing representations from the regional (or islands) council or the Mental Welfare Commission, the person and his or her carers. For example, the order might require access to be given at home to various professionals for the purpose of examining and assessing the person, or the person might be ordered to attend a clinic or other premises for short periods during the day. The order should not authorise removal from home overnight or for several extended periods.

2.41 An assessment and examination order should last only for a short period. Three days is currently allowed when a person is removed to a place of safety (usually a hospital) under sections 117(4) and 118(2) of the 1984 Act. But assessments can be carried out more quickly in hospital where the facilities and personnel are present than at home. Time is needed for assessments to be carried out in as calm an atmosphere as possible. This requirement has to be balanced against excessive interference in the lives of those who may turn out to be not sufficiently mentally disordered or sufficiently at risk to warrant compulsory intervention. Somewhere about five to seven days seems a reasonable compromise, but we seek views from those with practical experience of these matters. An extension should be capable of being granted by the sheriff on application.

2.42 We propose that:

6. (1) A person acting on behalf of a regional (or islands) council or the Mental Welfare Commission for Scotland should be entitled to apply to the sheriff for an order authorising the examination and assessment of a mentally disordered or vulnerable person (or one reasonably suspected of being mentally disordered or vulnerable) who appears to be in need of care or protection.

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[47] See Proposal 3, 5, 6 and 7.
[48] See para 2.35 above.

(2) The application should be intimated to the suspected mentally disordered person and any others to whom the sheriff orders intimation to be made.

(3) The order should last for seven days unless extended on later application. It should not authorise removal from home except for a short period or periods during the day.

2.43 We imagine that obstructing the carrying out of an examination and assessment order would only arise rarely. Section 109 of the 1984 Act makes it an offence to obstruct "the visiting, interviewing or examination of any person" by an authorised person. We doubt whether there is any need to create a new offence in relation to our proposed examination or assessment order or apply section 109. The local authority or the Mental Welfare Commission should be entitled to report any obstruction which prevents an assessment being carried out to the court with a view to having the matter dealt with as contempt of court or other orders made.

Compulsory removal from home

2.44 Section 65 of the Social Work (Scotland) Act 1968 empowers a local authority to remove persons from a residential or other establishment providing personal care and support. The local authority may so remove if the establishment is being carried on without being registered with it or after it has given notice of intention to cancel the registration. Where the establishment is registerable with the Secretary of State, the Secretary of State may in like circumstances direct the local authority to remove persons. In urgent cases the Secretary of State may direct the local authority to remove persons from any establishment.[49] In both cases the local authority is bound to comply with the Secretary of State's directions.[50] The criticisms of, and proposals made in relation to, powers of removal in the remainder of this section do not concern these powers of the local authority or the Secretary of State.

2.45 At present, a justice of the peace, after consideration of sworn information in writing by a local authority mental health officer or a medical commissioner of the Mental Welfare Commission, may issue a warrant under section 117(2) of the 1984 Act authorising a constable named therein to enter the premises where a person suffering from mental disorder is and:

> "to remove, if it appears proper so to do, any person suffering from mental disorder to whom subsection (1) of this section applies to a place of safety".

Subsection (1) applies to a person who:

> "(a) has been or is being ill-treated, neglected or kept otherwise than under control, in any place; or
>
> (b) being unable to care for himself, is living alone or uncared for in any place".

[49] 1968 Act, s 65(2).
[50] 1968 Act, s 65(1).

A person who is removed to a place of safety may be detained there for a period not exceeding 72 hours.[51] The object of removal is to allow the making of an application for detention in hospital under section 18 of the 1984 Act, an emergency recommendation for detention in hospital by a medical practitioner under section 24, a guardianship application or other arrangements for the person's treatment or care.

2.46 Section 47 of the National Assistance Act 1948 empowers a sheriff to order the removal from home to suitable premises and detention there of persons in need of care and attention. Persons liable to be removed are those who:

> "(a) are suffering from grave chronic disease or, being aged, infirm or physically incapacitated, are living in insanitary conditions, and
>
> (b) are unable to devote to themselves, and are not receiving from other persons, proper care and attention."

2.47 The designated medical officer certifies to the regional (or islands) council concerned that it is necessary to remove the person in his or her own interests or for preventing injury to the health of, or serious nuisance to, others. The council then applies to the sheriff for a removal order. The order for removal lasts up to three months but may be renewed. There is a right of appeal, but only after the order has been in force for at least six weeks. At least seven days notice of the council's application to the sheriff has to be given to the person sought to be removed.

2.48 An expedited procedure is also available under the National Assistance (Amendment) Act 1951. Most removals are carried out under the expedited procedure rather than under the 1948 Act. The designated medical officer and another medical practitioner have to certify that in the interests of the person sought to be removed he or she should be removed without delay. The application to the sheriff is then made by the council or the medical officer on its behalf. The sheriff has power to dispense with intimation of the application to the person in question and usually does so. An order for removal lasts for up to three weeks but may be renewed on an application requiring seven clear days notice to the removed person. There is no appeal against a removal order under the expedited procedure.

2.49 Section 47 of the National Assistance Act 1948 and the National Assistance (Amendment) Act 1951 are not confined to the mentally disordered. However, grave chronic disease is taken to include those suffering from dementia or mental illness. In England and Wales it has been estimated that up to half the people removed under the 1948 and 1951 Acts are mentally disordered and some of the rest may well be on the border line.[52] The 1951 Act can be, and has been, used to remove people to mental hospitals who should have been the subject of an application for detention under the 1984 Act. The Mental Welfare Commission have commented adversely on this practice[53] because it deprives the patients of the protection of the 1984 Act and the protection of the Commission.

2.50 In our view removal from home should take place only when there is no other reasonably practicable way of caring for or protecting the mentally disordered person. The

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[51] S 117(4).
[52] Public Law Protection paper, para 2.10.
[53] Mental Welfare Commission for Scotland, *An nual Report 1987*, paras 10.16 and 10.17.

provisions in question[54] date from an era when institutional care was the main method of looking after those who for whatever reasons were not receiving proper care and attention. Nowadays the policy is community care; supporting people in their own homes so far as possible with the provision of services. A person who is living alone and unable to manage could be supported at home by home helps, "meals on wheels" and health visitors rather than removed to an institution. Powers exist under the Public Health (Scotland) Act 1897[55] to deal with filthy houses without permanently removing the occupants. Abuse or exploitation by carers may be capable of being prevented otherwise than by removal of the mentally disordered person and these methods[56] should generally be tried first. In some cases forcible removal from home causes greater trauma and distress to the mentally disordered person and his or her family than the continuance of the unsatisfactory state of affairs at home. In short one should try to remove the risk from the person instead of the person from the risk.

2.51 Article 5 of the European Convention of Human Rights provides that no-one shall be deprived of liberty save in accordance with a procedure prescribed by law and in certain circumstances, one of which (article 5(1)(e)) is:

> "the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;".

There are no circumstances specified in the Convention that would permit the compulsory removal from home, and deprivation of liberty, of a person who was vulnerable but not mentally disordered or in any of the above categories,[57] and we consider that this should not become competent. The general extension of public authority powers to vulnerable adults who are not mentally disordered should not include the power of compulsory removal from home and deprivation of liberty. Removal of mentally disordered persons from home under a warrant granted under section 117(2) of the 1984 Act, section 47 of the National Assistance Act 1948 or the National Assistance (Amendment) Act 1951 is in accordance with a procedure prescribed by law. However, article 5(4) of the Convention provides that anyone deprived of liberty shall be entitled to take proceedings by which the lawfulness of the action is determined speedily by a court. The 1951 Act precludes any appeal and the 1948 Act allows review only after the removal order has been in force for at least 6 weeks.[58]

2.52 Article 8 of the European Convention of Human Rights provides:

> "(1) Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

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[54] S 117(2) of the 1984 Act is derived unchanged from s 103 of the Mental Health (Scotland) Act 1960.
[55] Ss 16, 18 and 40.
[56] Proposal 10 at para 2.73 below suggests that abusers could be ordered to leave the home.
[57] Unless a crime has been committed, a court order disobeyed or the person is subject to deportation or extradition (art 5(1)(a), (b), (c) and (f)).
[58] S 47(6).

Removal of a person from his or her home is clearly a breach of the right to respect for his or her home. Therefore it can be justified under the Convention only if it is in accordance with the law and is necessary in a democratic society for one or more of the stated purposes. Removal under section 117 of the 1984 Act or under the National Assistance Acts is for one or more of the stated purposes, protection of health or the rights and freedoms of others and perhaps also for the prevention of crime or in the interests of public safety. The question is whether the statutory provisions are "necessary in a democratic society" to achieve the purposes. The European Court of Human Rights has regarded this as a question of whether the interference is proportionate to the legitimate aims being pursued.[59] Removal from home where there is no immediate risk of significant harm could be regarded as a disproportionate response - an overkill - and hence unnecessary in a democratic society.

2.53 A parallel exists with removal of children from their homes. Section 37(2) of the Social Work (Scotland) Act 1968 empowers a constable or any person authorised by a court or a justice of the peace to remove a child to a place of safety if certain conditions exist. Many of the conditions relate to the past circumstances and are not necessarily associated with the likelihood of significant immediate harm to the child if not removed. The regional (or islands) council has a discretion, once one of the conditions exists, of applying for removal. This discretion has been criticised as being too wide and capable of being used in circumstances where emergency removal is not clearly justified.[60] The Government recently issued a Consultation Paper *Emergency Protection of Children in Scotland*[61] which proposed that authority to remove should be granted only "where there is reasonable cause to believe that the child is likely to suffer imminent and significant harm and where immediate removal and detention is necessary for the child's protection". It is for consideration whether this ought to be adopted for the emergency removal of mentally disordered adults or whether a less exacting formula should be used. We have previously noted that people are removed from home for the purposes of assessment or examination and we proposed that assessments and examinations could be conducted on the authority of a court order without removal if they cannot be carried out on a voluntary basis.[62]

2.54 In our view removal should be a last resort remedy. The provision of help or services or the removal of risks otherwise may avoid the need for removal. Provisionally we suggest removal should be authorised only in order to prevent significant and imminent harm to the person sought to be removed. Removal should (save in exceptional circumstances[63]) require prior authorisation. We consider that applications for a removal order ought to be made to a sheriff as forcible removal from home is a very serious deprivation of liberty. The term sheriff includes an honorary sheriff. In the context of warrants for forcible entry to premises we asked for views as to whether a warrant should be capable of being granted by justices of the peace as well as sheriffs.[64] The same question arises here, although forcible removal of people from their homes is a more serious matter than forcible entry. It should be competent to grant an application for removal without the application having been intimated to the person sought to be removed or those looking after

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[59] *Silver and Others v UK* (Judgment 25 March 1983).
[60] Orkney Report, paras 16.1-16.6.
[61] Issued by the Scottish Office Social Work Services Group on 3 February 1993.
[62] Proposal 6 at para 2.42 above.
[63] See para 2.63 below.
[64] See para 2.32 above.

him or her, but this should be done only if the sheriff dispenses with intimation because of the need for immediate action.

2.55 Summing up the discussion so far we propose that:

7. Section 47 of the National Assistance Act 1948, the National Assistance (Amendment) Act 1951 and section 117(2) of the Mental Health (Scotland) Act 1984 (compulsory removal to hospital or other place) should be repealed and replaced with the following provisions:

(1) A person acting on behalf of a regional (or islands) council or the Mental Welfare Commission should be entitled to apply to the sheriff for an order to remove a mentally disordered person or a suspected mentally disordered person from the place where he or she is.

(2) Should an application be capable of being dealt with by a justice of the peace?

(3) The application should be intimated to the person sought to be removed and others the sheriff thinks should receive intimation, unless the sheriff dispenses with intimation because of the need for immediate removal.

(4) An order for removal may be granted provided the sheriff is satisfied that:

(a) there are reasonable grounds for believing that the person ought to be removed is mentally disordered,

(b) that the person is at risk of significant harm unless removed, and

(c) prompt removal and detention in a place of safety is the only reasonably practicable way of protecting the person.

2.56 Since the order for removal is to be granted on the basis of present need it is reasonable for it to have to be carried out promptly. It should not be possible for a regional (or islands) council or the Mental Welfare Commission to obtain an order and then hold it over until a later date. We suggested earlier that a warrant for forcible entry should be required to be carried out within three days.[65] A similar time limit seems appropriate for a removal order also. Arrangements may have to be made for removing and accommodating the person once removed and if police, doctors or social workers have to be at hand then this may take some time to arrange.

2.57 The effect of the order should be to authorise removal of the person in question to a place of safety and his or her detention there for a period specified in the order, being not more than seven days. Seven days is longer than the existing period of three days under sections 117(2) or 118(2) of the 1984 Act, but is considerably shorter than the three months

[65] Proposal 5, para 2.35 above.

allowed under the National Assistance Act 1948. Seven days seems a reasonable length of time in which to carry out any assessments or examinations and to make the necessary arrangements for long term accommodation or return of the person to his or her own home. A removal order should include a warrant authorising a constable to use reasonable force to carry out the terms of the order. Entry to the premises may be refused as well as there being opposition to the removal of the person.

2.58 The present definition of a place of safety[66] for the purpose of detention after removal under the 1984 Act is:

> "a hospital as defined by this Act[67] [the 1984 Act] or residential home for persons suffering from mental disorder or any other suitable place the occupier of which is willing temporarily to receive the patient; but shall not include a police station unless by reason of emergency there is no place as aforesaid available for receiving the patient."

A person removed from home under the National Assistance Act 1948 or the National Assistance (Amendment) act 1951 is to be detained in "a suitable hospital or other place in, or within convenient distance of, the area of the appropriate authority ...".[68] The Mental Welfare Commission has commented adversely[69] on the practice of removing patients to mental hospital under the 1948 or 1951 Acts. Use of this legislation deprives the patient of the protections in the 1984 Act, and, because the making of the order is not notified to the Commission, the Commission is unable to exercise its protection functions. However, the Commission's concern is in the context of detention lasting up to three months with the possibility of extension.[70] What we are proposing is a removal and detention order lasting no more than seven days. Mental hospitals may be the most suitable place for mentally disordered people to be removed to on a temporary basis while long term arrangements are made for their care. We seek views on this.

2.59 We have suggested that the order for removal should authorise detention in a place of safety for up to seven days. Should the seven day period be capable of extension on application to the sheriff? We tend to think not. Removal from home and detention in a place of safety is an emergency protective measure. During this period it should be possible to make other arrangements for the person's future care. Depending on the extent of his or her mental disorder and personal circumstances this may involve admission to hospital informally or under the detention procedure in the 1984 Act, the making of a personal order or the appointment of a personal guardian under our new proposed statutory scheme of person guardianship or accommodation in a hostel or home. We invite views on whether the local authority should be under a positive statutory duty to re-establish the person in his or her home with the appropriate services in so far as this is reasonably practicable.

2.60 Where the emergency removal order has been granted without the application being intimated to the person removed he or she should be entitled to apply to the sheriff for recall of the order forthwith. Although the order lasts for only seven days we think it right to give

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[66] 1984 Act, s 117(7)(b).
[67] Ie any hospital vested in the Secretary of State under the National Health Service (Scotland) Act 1978, any private hospital registered under the 1984 Act, any State hospital and any NHS trust hospital (1984 Act, s 125(1) as amended by the National Health Service and Community Care Act 1990, Sch 9, para 28(4)(a)).
[68] 1948 Act, s 47(3).
[69] *Annual Report 1987*, para 10.17.
[70] The period is three weeks under the 1951 Act, s 1(4)(a).

an immediate right of review. Applications for review would obviously have to be heard promptly and in some cases it would prove impossible to hear the application in time. The sheriff in considering the application should be entitled to take account of developments and information obtained after the removal.

2.61 We seek views on the following proposals and questions.

8. (1) An order for removal and detention should lapse unless carried out within 72 hours of its being granted. An order should contain a warrant authorising a constable to use reasonable force to ensure that the order is carried out.

(2) The period of detention should be specified in the order and should not exceed seven days. The period should not be capable of extension.

(3) It should be competent to apply to the sheriff for an immediate review of the order.

(4) Should a person removed from home be detained in a place of safety as defined in section 117(7)(b) of the Mental Health (Scotland) Act 1984 or should it be incompetent to detain under a removal order a person in a mental hospital?

(5) Should the regional (or islands) council be under a duty to re-establish the person removed in his or her own home so far as reasonably practicable?

Other powers of removal to a place of safety

2.62 Section 118 of the 1984 Act authorises a constable to remove to a place of safety a person found in a place to which the public have access appearing to be mentally disordered and in immediate need of care and control. No warrant is necessary. The person may thereafter be detained in the place of safety for up to 72 hours for the purpose of medical examination and arranging treatment and care. We understand that this provision is sometimes interpreted as authorising detention for 72 hours, even though the examination has been carried out and arrangements for any necessary treatment and care have been made. Apart from this we are not aware of any defects in the provision, although, in line with our earlier views on grounds for demanding entry,[71] we would delete the reference to control.

2.63 It might be useful to extend the provision to give the police powers to remove people appearing to be mentally disordered or vulnerable from a house or other private premises without a warrant in exceptional cases. The police may be the first on the scene of an accident or a violent situation within the home. They may need to take immediate action to protect persons suspected of being mentally disordered or vulnerable and it might be impracticable to obtain a warrant first. The police have limited common law powers to enter premises without a warrant. They may enter to enquire into the nature of a serious disturbance and suppress any disorder or in hot pursuit of persons who have committed or

[71] Para 2.21 above.

attempted to commit a serious crime. Force may be used to gain entry if admission is refused.[72] Any detention in a place of safety should last for up to 72 hours. We do not consider it is worthwhile providing for an immediate challenge of detention by way of application to the sheriff in view of the shortness of the period.

2.64 We would welcome views on the following question:

9. Should the police have power without a warrant to remove a person suspected of being mentally disordered or vulnerable from premises to a place of safety where removal was necessary for that person's immediate protection from serious harm?

Removal of abuser

2.65 The Matrimonial Homes (Family Protection)(Scotland) Act 1981 provides for the court to grant on application by a spouse an exclusion order. An exclusion order suspends the other spouse's right to occupy the matrimonial home. Ancillary orders granted along with the exclusion order may deal with the excluded spouse's ejection from the matrimonial home and interdict his or her return. An exclusion order must be granted if:[73]

> "… it appears to the court that the making of the order is necessary for the protection of the applicant or any child of the family from any conduct or threatened or reasonably apprehended conduct of the non-applicant spouse which is or would be injurious to the physical or mental health of the applicant or child."

unless the court considers it would be unjustified or unreasonable in the light of all the circumstances of the case (including certain specified matters).[74] Child of the family means a child of any age and could therefore include a grown-up mentally disordered or vulnerable child living at home.[75] Exclusion orders may be granted to cohabitants - those living together as if they were husband and wife.[76] Interim exclusion orders are also available on similar grounds.[77]

2.66 The Matrimonial Homes Act could be used to exclude a husband, wife or cohabiting partner who was abusing his or her mentally disordered or vulnerable spouse, partner or child. For persons outwith these relationships the remedies available are interdict and the criminal law.

2.67 Use of these remedies may enable some mentally disordered or vulnerable people to live in or return to their own homes once the abuser has been excluded, interdicted or arrested. But in many cases the remedies will not be available or if available will not be satisfactory. Even if the remedies are available victims will often not have the capacity or initiative to initiate proceedings.

2.68 There are various ways in which it could be made easier to exclude abusers. For example, public authorities (the regional (or islands) council or the Mental Welfare

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[72] *Scottish Criminal Law: Police Duties and Procedure*, Grampian Police, Section 3, p 8/1.
[73] 1981 Act, s 4(2).
[74] 1981 Act s 4(3).
[75] 1981 Act, s 22.
[76] 1981 Act, s 18.
[77] 1981 Act, s 4(6); *Bell v Bell* 1983 SLT 224, *Ward v Ward* 1983 SLT 472.

Commission) could be given power to provide assistance to enable a victim to take any proceedings, under the existing law to remove those abusing him or her from the home,[78] or they could be entitled to bring proceedings on the existing grounds in their own name. Another possibility is to widen the scope of exclusion so that any person (not just a spouse, cohabitant or parent) who abuses a mentally disordered or vulnerable person in his or her own home could be excluded from it, either at the instance of the mentally disordered or vulnerable person (assisted as necessary by a public authority) or at the instance of a public authority.

2.69 The justification for removal of abusers is that this would enable victims of abuse to remain at home rather than have to seek shelter elsewhere. Where serious abuse occurs then it ought to be the abuser who has to face the upheaval of removal rather than the victim. In the context of children a recent consultation paper *Emergency Protection of Children in Scotland*[79] sought views on whether the courts should have power to exclude abusers of children from their homes on grounds very similar to those in the Matrimonial Homes (Family Protection)(Scotland) Act 1981 quoted in paragraph 2.65 above.

2.70 On the other hand, extending the remedy of exclusion may make people more reluctant to look after their mentally disordered or vulnerable relatives at home. It has to be recognised that looking after such people can be very stressful. Allegations of abuse would be easy to make and difficult to disprove. Even if the allegations were shown to be groundless the litigation would be extremely unpleasant and disruptive for all those concerned. Furthermore, the "abuser" may be the only person who is willing to look after the mentally disordered or vulnerable person so that exclusion could result in the person having to be moved into local authority care. Finally, creating a radical new exclusion regime for the mentally disordered while leaving the existing law in place for others at risk from their fellow residents (for example, two sisters living together or flatmates) would create anomalies which many would regard as unjustifiable.

2.71 We would not be in favour of giving either the regional (or islands) council or the Mental Welfare Commission a direct entitlement to apply to the courts for exclusion orders. In our view that would extend the role of public authorities too far.

2.72 If exclusion orders were to be introduced the grounds for granting the order would have to be specified, since abuse is too vague a term. We would suggest that the Matrimonial Homes Act formula quoted in paragraph 2.65 above should be adopted with modifications. We would not be in favour of the two-stage approach of the 1981 Act whereby the court is directed to grant an exclusion order if the grounds are met and then directed not to grant an order if it would be unjustified or unreasonable to do so. The court should be given a simple discretion whether or not to make the order if the grounds are met. Thus exclusion should be competent if it appears to the court that the making of the order was necessary for the protection of the applicant from any conduct or threatened or reasonably apprehended conduct of any person living with the applicant which is or would be injurious to the physical or mental health of the applicant.

2.73 We invite views on the following questions.

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[78] Voluntary agencies could also provide assistance without any statutory enabling power.
[79] Issued by the Scottish Office Social Work Services Group on 3 February 1993, para 2.20.

10. **(1) Should the court have the power to exclude a person from the home in which he or she lives along with a mentally disordered or vulnerable adult if it considers that exclusion is necessary for the protection of the adult from any conduct or threatened or reasonably apprehended conduct of the person which is or would be injurious to the physical or mental health of the adult?**

(2) Should the regional (or islands) council or the Mental Welfare Commission be entitled, under either the existing law or paragraph (1) above, to:

(a) assist the mentally disordered or vulnerable adult seeking protection from abuse to bring proceedings, or

(b) take proceedings in its own name?

PART 3 PROPERTY PROTECTION AND OTHER ISSUES

Property protection

3.1 Section 48 of the National Assistance Act 1948 as amended by section 92(2) of the 1984 Act imposes a duty on a local authority to take steps to protect the property (heritable as well as moveable) of mentally disordered persons. The duty arises when the person is admitted to hospital (including a private hospital or local authority accommodation), subject to guardianship or removed from home in terms of an order under section 47 of the 1948 Act.[1] Using this provision the regional (or islands) council may, for example, ensure the person's home is secure, that essential repairs are carried out and their personal possessions are stored in a safe place. The council is entitled to recover its reasonable expenses in carrying out these functions.[2] No action by the council is necessary if others are already taking steps to safeguard the property.

3.2 We proposed in Part 2 of this paper that people may be removed from home under an emergency protection order.[3] The above provisions should be extended to ensure the removed person's property is protected. Extension also seems necessary to deal with the case where a mentally disordered or vulnerable person is removed from a public place to a place of safety by the police.[4] The police should be required to notify the council immediately. The police already are required to notify the person's nearest relative and some responsible person residing with the person.[5] The role of the regional (or islands) council is only a protective one to prevent or mitigate loss or damage. Where more active steps need to be taken and no-one else is taking them the council is currently under a duty to apply to the court for the appointment of a curator bonis.[6] Under our proposed new statutory scheme the local authority could apply for a property order or the appointment of a financial manager.[7] Apart from these minor amendments the provisions seem to be satisfactory, but we invite views from those more closely involved in their operation.

11. Should any changes be made in the duty of regional (or islands) councils to safeguard the property of mentally disordered persons admitted to hospital or council accommodation, subject to guardianship or removed from home? If so what changes should be made?

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[1] See para 2.46 above.
[2] 1948 Act, s 48(3).
[3] Proposal 7 at para 2.55 above.
[4] 1984 Act, s 118, see para 2.62 above.
[5] 1984 Act, s 188(3).
[6] 1984 Act, s 92(1). Normally an official in the council's finance department is appointed.
[7] See para 1.3 above.

Recall from leave of absence

3.3 A person detained in hospital under the 1984 Act may be granted leave of absence but may be recalled at any time by written notice. A recalled patient who fails to return may:

> "be taken into custody and returned to the hospital or place by any mental health officer, by any officer on the staff of the hospital, by any constable, or by any person authorised in writing by the managers of the hospital."[8]

Section 117(3) of the 1984 Act provides that a constable or any other person authorised to take or retake a patient may apply to a justice of the peace for a warrant authorising a constable named therein to enter the premises, by force if necessary, in order to remove the patient. We understand that the police are sometimes reluctant to return a recalled patient to hospital using force without a warrant.

3.4 We tend to think the existing provisions are satisfactory. A constable (or other person) has power without a warrant to return a patient to hospital by force if necessary. However, if admission to premises is refused or if refusal is apprehended a warrant authorising forcible entry by a constable is necessary. This seems reasonable. Powers of forcible entry to homes should be restricted to those who have demonstrated the need for them to some judicial authority. We have already commented in the context of other provisions[9] on the practical difficulties that arise when the constable has to be named and proposed that this should not be necessary. Accordingly we propose that:

> **12. A warrant granted under section 117(3) of the Mental Health (Scotland) Act 1984 (authorising a constable to enter premises by force to retake a patient absence without leave) should not be required to name the constable.**

Powers of guardian to convey and detain patients

3.5 A guardian appointed under the 1984 Act has power to require a patient to reside in a specified place.[10] However, the guardian has no express power to enforce this requirement by forcibly conveying a patient who refuses to go voluntarily or forcibly entering the patient's home in order to remove him or her. Similarly, a guardian has no power to detain a patient in a specified place of residence. All the guardian can do is to retake (or have retaken) a patient who is absent without leave.[11] We do not make any proposals for dealing with these situations in this paper as we intend to deal with them in our forthcoming report as part of our new statutory scheme of personal guardianship.

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[8] S 28(1).
[9] Para 2.33 above.
[10] S 41(2)(a).
[11] 1984 Act, s 44.

PART 4 LIST OF PROPOSALS AND QUESTIONS

1. The public authority powers set out in this discussion paper should be applicable in relation to those aged 16 and over.

(Paragraph 2.8)

2. Without prejudice to the powers and duties of local authorities and the Secretary of State in relation to registered establishments and persons boarded out under the Social Work (Scotland) Act 1968,

(a) Regional (or islands) councils should be under a duty to investigate cases of suspected ill-treatment, lack of care or loss or damage to property of persons who are, or appear to be, mentally disordered or vulnerable, except where such cases relate to hospitals or other health care institutions.

(b) The Mental Welfare Commission for Scotland should retain its existing duty to investigate cases of suspected ill-treatment, deficiency in care or treatment, improper detention or loss or damage to property of persons who are, or appear to be, mentally disordered.

(c) Apart from regional (or islands) councils and the Mental Welfare Commission for Scotland, no other public authority should be under a statutory duty to investigate such cases.

(Paragraph 2.15)

3. (1) A mental health officer of the regional (or islands) council or a medical or social work officer or commissioner of the Mental Welfare Commission for Scotland, duly authorised in writing by the council or Commission respectively, should be entitled to demand admission to premises where he or she reasonably believes:

(a) there is a mentally disordered or vulnerable adult, and

(b) that adult has been or is being ill-treated or neglected or, being unable to care for himself or herself, is living alone or uncared for.

(2) Admission may be demanded at all reasonable times. The person demanding admission should be required to show the written authorisation if requested to do so. He or she should be entitled to be accompanied by one other person.

(3) A mental health officer should not be entitled under paragraph (1) to demand admission to any hospital or health care institution.

(4) These powers should be in addition to any other statutory powers under the Social Work (Scotland) Act 1968 or other legislation.

(Paragraph 2.22)

4. The duly authorised person and any accompanying person who has gained admission to premises under Proposal 3 should be entitled:

(a) to inspect the premises,

(b) to have access to the suspected mentally disordered or vulnerable person,

(c) to interview him or her in private, and

(d) if the duly authorised person or accompanying person is a medical practitioner, to examine him or her in private.

Are there any other rights, such as the right to inspect records, which might usefully be conferred?

(Paragraph 2.24)

5. Section 117(2) of the Mental Health (Scotland) Act 1984 should be replaced by the following provisions:

(a) A sheriff (including a honorary sheriff) or a stipendiary magistrate should be empowered to grant a warrant, on application by a person on behalf of the regional (or islands) council or Mental Welfare Commission for Scotland, authorising a constable to enter specified premises. The constable should not be named.

Should a warrant be capable of being granted by a justice of the peace?

(b) The warrant should be capable of being granted if

(i) a person entitled to demand admission has been refused admission to the premises or a refusal is apprehended, and

(ii) there are reasonable grounds for believing that a mentally disordered or vulnerable person or a suspected mentally disordered or vulnerable person within the premises has been or is being ill-treated, neglected, or, being unable to take care of himself or herself, is living alone and uncared for.

(c) A warrant should not be grated to a mental health officer in respect of entry to any hospital or health care institution.

(d) The warrant should cease to have effect unless used within 72 hours of it being granted.

(e) The constable should be accompanied by a duly authorised person from the regional (or islands) council or Mental Welfare Commission entitled to demand admission under Proposal 3 who may in turn be accompanied by another person.

(f) The constable should be empowered by virtue of the warrant to enter the premises and to ensure that those accompanying him or her are able to enter the premises, inspect them, and to interview (and examine if a medical practitioner accompanies the constable) the suspected mentally disordered or vulnerable person in private. The warrant should authorise the use of reasonable force to achieve these purposes.

(Paragraph 2.35)

6. (1) A person acting on behalf of a regional (or islands) council or the Mental Welfare Commission for Scotland should be entitled to apply to the sheriff for an order authorising the examination and assessment of a mentally disordered or vulnerable person (or one reasonably suspected of being mentally disordered or vulnerable) who appears to be in need of care or protection.

(2) The application should be intimated to the suspected mentally disordered person and any others to whom the sheriff orders intimation to be made.

(3) The order should last for seven days unless extended on later application. It should not authorise removal from home except for a short period or periods during the day.

(Paragraph 2.42)

7. Section 47 of the National Assistance Act 1948, the National Assistance (Amendment) Act 1951 and section 117(2) of the Mental Health (Scotland) Act 1984 (compulsory removal to hospital or other place) should be repealed and replaced with the following provisions:

(1) A person acting on behalf of a regional (or islands) council or the Mental Welfare Commission should be entitled to apply to the sheriff for an order to remove a mentally disordered person or a suspected mentally disordered person from the place where he or she is.

(2) Should an application be capable of being dealt with by a justice of the peace?

(3) The application should be intimated to the person sought to be removed and others the sheriff thinks should receive intimation, unless the sheriff dispenses with intimation because of the need for immediate removal.

(4) An order for removal may be granted provided the sheriff is satisfied that:

(a) there are reasonable grounds for believing that the person sought to be removed is mentally disordered,

(b) that the person is at risk of significant harm unless removed, and

(c) prompt removal and detention in a place of safety is the only reasonably practicable way of protecting the person.

(Paragraph 2.55)

8. (1) An order for removal and detention should lapse unless carried out within 72 hours of its being granted. An order should contain a warrant authorising a constable to use reasonable force to ensure that the order is carried out.

(2) The period of detention should be specified in the order and should not exceed seven days. The period should not be capable of extension.

(3) It should be competent to apply to the sheriff for an immediate review of the order.

(4) Should a person removed from home be detained in a place of safety as defined in section 117(7)(b) of the Mental Health (Scotland) Act 1984 or should it be incompetent to detain under a removal order a person in a mental hospital?

(5) Should the regional (or islands) council be under a duty to re-establish the person removed in his or her own home so far as reasonably practicable?

(Paragraph 2.61)

9. Should the police have power without a warrant to remove a person suspected of being mentally disordered or vulnerable from premises to a place of safety where removal was necessary for that person's immediate protection from serious harm?

(Paragraph 2.64)

10. (1) Should the court have the power to exclude a person from the home in which he or she lives along with a mentally disordered or vulnerable adult if it considers that exclusion is necessary for the protection of the adult from any conduct or threatened or reasonably apprehended conduct of the person which is or would be injurious to the physical or mental health of the adult?

(2) Should the regional (or islands) council or the Mental Welfare Commission be entitled, under either the existing law or paragraph (1) above, to:

(a) assist the mentally disordered or vulnerable adult seeking protection from abuse to bring proceedings, or

(b) take proceedings in its own name?

(Paragraph 2.73)

11. Should any changes be made in the duty of regional (or islands) councils to safeguard the property of mentally disordered persons admitted to hospital or

council accommodation, subject to guardianship or removed from home? If so what changes should be made?

(Paragraph 3.2)

12. A warrant granted under section 117(3) of the Mental Health (Scotland) Act 1984 (authorising a constable to enter premises by force to retake a patient absence without leave) should not be required to name the constable.

(Paragraph 3.4)