

## Standard Operating Procedure

Title	Section 13ZA		Page	1 of 2
<b>SOP Reference</b> ASW & ASC	<b>For:</b> Social Work staff		<b>Date</b> July 2024	<b>Review Date</b> Dec 2024

### Reason/background for SOP

This S.O.P should be read in conjunction with the S13ZA procedures, prior to completing the [S13ZA checklist](#), which should then be saved and recorded in the client's electronic files.

Section 13ZA assists Local Authorities in the provision of community care services when someone has been assessed as needing a service but lacks the capacity to consent to receiving a service. However, there are specific criteria, [LA Guidance](#) outlined by the Scottish Government that must be considered prior to its consideration and application, to ensure the legality of any planned intervention. If the criteria are not met or the action will constitute a deprivation of liberty, then alternative legislation should be considered to provide legal authority for the proposed intervention, care or treatment.

S13ZA should only be considered when a suitable residential placement has been identified, there is a vacancy and legal authority is required to support the move.

Where S13ZA is applied, it is essential that the decision is evidenced, documented and kept under review, using the following operating steps.

Step	Operating Step
1.	<b>Assessment</b> of adult's needs and detailing risks - taking account of their rights, will and preferences regarding their current and future care and support needs. This will include discussion and consultation with the adult, supported by a referral to independent advocacy (if not, document why not done), and include the views of relevant people (family, carers).
2.	<b>Initial assessment of capacity (decision specific)</b> in relation to the areas of decision making in question. This will be evidenced and supported by MDT assessments, identifying areas of risk and need.
3	<b>Case Conference</b> - MDT case discussion to include consultation with the adult, family/ carer, independent advocacy, Legal Services, MHO service, and professionals supporting the adult. Ideally this should be an arranged case conference but can be undertaken following consultation with all relevant parties, but this discussion/ consultation must be documented, and decisions recorded in client's electronic file. The principles of the 2000 Act must be taken into account in the provision of community care services under the 1968 Act to an adult with incapacity.
4	<b>Criteria</b>

	<ul style="list-style-type: none"><li>➤ <b>All</b> parties must be in agreement to the proposed intervention, including the Adult.</li><li>➤ Consideration must be given to whether the proposed action will constitute a deprivation of liberty, either immediately or in the future. This must be discussed with legal and MHO services. See Annexe A of <a href="#">LA Guidance</a></li><li>➤ S13ZA cannot be utilised if an application for welfare guardianship, with powers in relation to the areas of decision making in question, has been lodged in Court.</li><li>➤ S13ZA does not apply where the adult retains capacity to consent or withhold consent to receiving a service, even if no one else agrees.</li></ul>												
5	Where the proposed action may constitute a deprivation of liberty, legal services and the MHO service must be in agreement to the proposed intervention. All decisions must be evidenced, with clear actions agreed, e.g. an application for a welfare guardianship order to be sought to provide ongoing legal authority, in relation to the areas of decision making in question, whether that is a private application or a local authority welfare guardianship application.												
6	<p>S13ZA – must be utilised at the time it has been discussed and agreed. i.e. within a few days of it being agreed. There <u>must</u> be a placement available, in the care home of the adult’s choice, if specified.</p> <ul style="list-style-type: none"><li>➤ If there is any delay in the proposed placement commencing, then the application of S13ZA must be kept under review and discussed with the SW Team Manager, Legal and the MHO service, and recorded. This is to ensure the criteria are still met and are applicable and must take place to ensure any planned move or discharge from hospital has legal authority.</li><li>➤ If there is any change in the adult’s health or anyone’s views about the proposed intervention in the intervening period, then the criteria for the application of S13ZA must be reconsidered, discussed, and recorded.</li></ul>												
7	The use of this legislation must be kept under review, with consideration as to whether more formal measures under the AWI (S) Act 2000 may be required.												
8	Following the MDT discussion and minute, a formal letter should be sent to the Adult, the primary carer, advocacy (where involved) and relevant professionals to inform them of the decisions and actions, and their right to object/ seek legal advice, including the authority’s complaints procedure. (See sections 20 and 21 of LA Guidance.)												
<table><tr><td><b>Author</b></td><td><b>Date</b></td><td><b>Approved for Use by</b></td><td><b>Date</b></td><td><b>Review Date</b></td><td><b>Responsibility</b></td></tr><tr><td>Catriona Grant</td><td>July 2024</td><td>I.Thomson</td><td>28/08/24</td><td>Dec 2024</td><td>Catriona Grant</td></tr></table>		<b>Author</b>	<b>Date</b>	<b>Approved for Use by</b>	<b>Date</b>	<b>Review Date</b>	<b>Responsibility</b>	Catriona Grant	July 2024	I.Thomson	28/08/24	Dec 2024	Catriona Grant
<b>Author</b>	<b>Date</b>	<b>Approved for Use by</b>	<b>Date</b>	<b>Review Date</b>	<b>Responsibility</b>								
Catriona Grant	July 2024	I.Thomson	28/08/24	Dec 2024	Catriona Grant								