

Standard Operating Procedure

Title	Section 13ZA		Page	1 of 2
SOP Reference ASW & ASC	For: Social Work staff		Date April 2026	Review Date Dec 2026
<p>Reason/background for SOP</p> <p>This SOP should be read in conjunction with the AWI Interagency Procedures 2025 before completing the S13ZA checklist, which should then be saved to the client’s electronic file.</p> <p>Section 13ZA assists local authorities to provide community care services where a person has been assessed as needing a service but lacks capacity to consent to receiving it. Specific criteria set out in Scottish Government local authority guidance must be considered before applying Section 13ZA, to ensure any planned intervention is lawful. If the criteria are not met, or if the proposed action would constitute a deprivation of liberty, alternative legislation should be considered to provide legal authority for the proposed intervention, care or treatment.</p> <p>S13ZA should only be considered once a suitable care placement has been identified, a vacancy is available, and the legal authority to support the move has been agreed.</p> <p>Where S13ZA is applied, it is essential that the decision is evidenced, documented and kept under review, in line with the operating steps below.</p>				

Step	Operating Step
1.	Assessment of the adult’s needs, including 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 to seek their views, supported by independent advocacy. Where an advocacy report is not obtained, record the reason why. The views of relevant people (for example, family and carers) should also be sought.
2.	Initial assessment of capacity (decision specific) 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.	Case Conference – MDT case discussion to include consultation with the adult, family/carer, independent advocacy, Legal Services, the MHO service, and professionals supporting the adult. Ideally this will be an arranged case conference; however, it may be undertaken through consultation with all relevant parties. In all cases, the discussion/consultation must be documented and decisions recorded in the 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.	<p>Criteria</p> <ul style="list-style-type: none"> • All parties must agree to the proposed intervention, including the adult. • Consider whether the proposed action will constitute a deprivation of liberty, either immediately or in the future. This must be discussed with Legal Services and the MHO service (see Annex A of local authority guidance). • S13ZA cannot be used if an application for welfare guardianship, with relevant powers in relation to the decision(s) in question, has been lodged in court. • S13ZA does not apply where the adult retains capacity to consent to, or withhold consent from, receiving a service (even if others do not agree). 				
5.	<p>Where the proposed action may constitute a deprivation of liberty, legal services and the MHO service must agree 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.</p>				
6.	<p>S13ZA must be applied at the time it is discussed and agreed (ideally within a few days). A placement must be available in the care home of the adult's choice, where this has been specified.</p> <ul style="list-style-type: none"> ➤ If there is any delay in the placement commencing, the application of S13ZA must be kept under review, discussed with the SW Team Manager, Legal Services and the MHO service, and recorded. This is to ensure the criteria continue to be met and that any planned move or discharge from hospital has legal authority. ➤ If there is any change in the adult's health, or in anyone's views about the proposed intervention, the criteria for applying S13ZA must be reconsidered, discussed and recorded. 				
7.	<p>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. A Guardianship order should be pursued following the move to residential care using S13ZA.</p>				
8.	<p>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 confirm the decisions and actions. The letter should also explain their right to object and/or seek legal advice and include the authority's complaints procedure (see sections 20 and 21 of local authority guidance).</p>				
Author	Date	Approved for Use by	Date	Review Date	Responsibility
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