

NHS Highland – Adult Social Work & Adult Social Care



The Highland Council – Care and Learning



PRACTICE GUIDANCE

SECTION 13ZA

June 2025

Practice Guidance - Section 13ZA

This guidance covers the use of powers under Section 13 of the Social Work (Scotland) Act 1968 and amended by Section 64 of the Adults Support & Protection (Scotland) Act 2007, by the insertion of Section 13ZA to the Adults with Incapacity (Scotland) Act 2000 to enable the provision of services to Adults with assessed needs who lack capacity to consent to receive services.

Staff should refer to [AWI Code of Practice for Local Authorities](#) which incorporates the Guidance for LAs. It sets out the powers the local authorities have under the Social Work (Scotland) Act 1968, to provide services to adults who lack capacity to consent to receive services.

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1. Introduction

1.1 What is S13ZA?

Section 13 of the Social Work (Scotland) Act 1968 was amended under Section 64 of the Adult Support & Protection (Scotland) Act 2007, by the insertion of Section 13ZA. This took effect in March 2007.

Section 13ZA assists Local Authorities (LAs) 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.

The Scottish Government issued [Guidance for LAs](#) which requires the Authority to take a range of factors into account, and to consider how to proceed in the light of its powers and duties under the 1968 Act and the Adults with Incapacity (Scotland) Act 2000.

The Authority is required to apply the principles of the Adults with Incapacity (Scotland) Act 2000 ([AWI Principles](#)) when making any decisions and/or when intervening in the Adult's affairs. The guidance sets out the decision-making process in circumstances in which a decision may require an order under the 2000 Act and those where it would be appropriate to use its powers under the 1968 Act.

1.2 How is the application of S13ZA decided?

Consideration of S13ZA requires a multi-disciplinary case discussion to consider whether S13ZA is applicable in respect of the Adult in question, at the time it is required to be utilised. i.e. a residential care placement is available. Legal services and the MHO service must be part of these discussions. It is the responsibility of professional social work team to lead this discussion, gather and record views, and record the decision. Appendix 1: S13ZA Checklist.

1.3 Who needs to be consulted and/ or invited to MDT case conference?

- The adult
- The adult's representative/ advocate
- The adult's family/ friend/ carer
- Solicitor from Highland Council Legal Services
- MHO from the Highland MHO Service
- Health professionals; Dr, OT, Physio, nurse – anyone providing regular medical care/ treatment
- Allocated member of social work
- Social work team manager/ senior social worker (Chair)

1.4 When is S13ZA not applicable?

S13ZA **cannot** be used if **any** of the following circumstances apply;

- the Adult with impaired capacity is opposed to the action as far as can be ascertained, **or**
- there is disagreement between health and social work professionals, **or**

- there is disagreement with or between family members
- the adult is not compliant
- there is deprivation of liberty (see section on DoL and consult with Legal services)
- an application has been made for a guardianship order but not yet determined. This means that an Authority cannot make decisions under section 13ZA once an application has been lodged with the Court.

2. Deprivation of Liberty (DoL)

2.1 UK Supreme Court Judgement – Implications for practice

In March 2014, a Judgement in the UK Supreme Court identified the need to review the use of Section 13 of the Social Work (Scotland) Act 1968, which was amended under Section 64 of the Adult Support & Protection (Scotland) Act 2007 by the insertion of Section 13ZA.

The judgement of the Supreme Court, which has become known as the [Cheshire West Case](#) adds further clarification to what may be defined as **Deprivation of Liberty** and this will have implications for a range of practice. This judgement (immediately) put into question whether the use of Section 13ZA of the 1968 Act was lawful, and whether the provision is in fact compliant with the European Convention on Human Rights [ECHR](#) and the principles of the Human Rights Act 1998.

‘The Human Rights Act 1998 incorporated the European Convention on Human Rights (ECHR) into UK law. It means that public organisations, such as the government, councils and the police, must protect and abide by human rights. If human rights have been breached, cases can be taken to UK courts.’ [Scottish Government](#)

The judgement clarifies that even if surroundings are homely and pleasant a person may be deprived of their liberty if not free to leave (even if they are not actively trying to do so).

Watch the Supreme Court Judgement here:

<https://www.youtube.com/watch?v=Nq1G9C7hKWk&list=UUdkf93h71xVAI28v467Hk7w>

2.2 What are the criteria for deciding if there is a deprivation of liberty?

The judgement stated the criteria to be used in considering whether a person has been deprived of their liberty as,

- whether the person is under continuous supervision and control and not free to go
- everyone has the equal protection of human rights and to be deprived of their liberty is the same for all, whether or not one has a physical or mental disability.

Each case needs to be considered on its own circumstances and evidenced accordingly. The judgement does not suggest that deprivation of liberty is not permissible, but it should have legal authority and should be subject to regular review.

The judgement is critical of the lack of judicial oversight and review of deprivation of liberty safeguards in the English Capacity legislation, as the cases before the Court were English, not Scottish.

2.3 How does this judgement impact on practice in Scotland?

Whilst the case had immediate direct implications for English capacity legislation, in Scotland, there were no immediate changes to practice or legislation. It did highlight the need to review the application of S13ZA, and to ensure the appropriate legal safeguards were in place, as judgements of the Supreme Court should be taken into account in Scotland.

The Scottish Law Commission published a report in 2014, recommending amendments to the Adults with Incapacity (Scotland) Act 2000,

‘to include a legal process to authorise measures preventing an adult from going out of a hospital and a more detailed legal process for the scrutiny of significant restriction of liberty of an adult in a care home or other placement in the community. Further, the Act should also be amended to provide for a right to apply to the sheriff court for release of an adult who may lack capacity from unlawful detention in certain care settings.’ [Scottish Law Commission](#)

For some time, there has been a view that the AWI Act is not human rights compliant due to the lack of regular judicial review: S13ZA is a Local Authority administrative process and has no judicial review and is therefore thought to be more open to challenge.

2.4 What steps should be taken to ensure practice is compliant with legislation?

Consultation with Legal Services in respect of the implications of the Cheshire West judgement is strongly advised and need to carefully consider the situations where S13ZA may be used to place an Adult. Legal Services and MHO Service must be involved in decision making process.

We should be rigorous in following the Scottish Government [Guidance for LAs](#), and in particular, follow the guidance on the process for decision making, recording and notifying the decision.

S13ZA should not be used where there are repeated decisions requiring to be made. If Guardianship is required, then this should be for a defined period rather than indefinite.

Whilst we will continue to consider S13ZA to facilitate a discharge from hospital for people who lack capacity in appropriate circumstances, and to facilitate admissions to care homes from the community, it is important that that this is followed up and kept under review, and consideration given to more formal measures under the AWI 2000 Act.

The following Scottish Government Guidance points should be considered:

- Preparatory meeting with the Adult; advocate and carer to discuss possible steps that might be taken
- Initial assessment of capacity in relation to the area of decisions making in question.
- Multi-disciplinary review should include;
 - Assessment of the adult’s care and support needs, including detail of any risks
 - Where adult lacks capacity, what areas of decision making require legal intervention, e.g. is S13ZA applicable or is intervention under AWI legislation required. [Appendix 2](#)
- The Principles of the AWI 2000 Act must be adhered to
- Deprivation of Liberty – individual case circumstances must be explored

- Assessment of financial arrangements
- Recording of S13ZA discussion and decision, including minute of MDT meeting and/ or if an AWI Case Conference is held. The minute of the meeting should detail the least restrictive methods of intervention considered and the outcome of these discussions
- All interested parties should be informed of the decision
- All decisions should be recorded in Adult's electronic file and social work database
- Monitor and Review – Deprivation of Liberty should always be kept under review.

3. Professional advice

3.1 Legal advice

Adult Social Work and Adult Social Care staff can contact Highland Council legal services for legal advice and guidance in respect of the Adult's legal situation. They can only provide advice on the information available to them and should be provided with sufficient background information prior to being requested to attend any AWI case conference or case discussion.

Email: legal.hq@highland.gov.uk

3.2 MHO advice

The Highland MHO service has a duty MHO available between the hours of 9am to 5pm, Mon-Frid. The duty MHO can be contacted for advice and discussion in respect of a particular case or situation, where it would be deemed relevant to obtain specialist advice. They can provide advice and guidance on issues regarding the potential use of mental health legislation (AWI 2000 Act, MHCT 2003 Act, ASP 2007 Act) or the interface between these. This service is open to all staff from teams and professionals across Health & Social Care in Highland.

This service is intended as a support, to facilitate professional discussion and enable appropriate decisions to be made. Social Work staff should discuss the case with their line manager in the first instance and agree that it is appropriate to discuss with an MHO. The advice does not replace any formal AWI Case Conference or ASP Case Conference that may be required under NHS Highland procedures but may assist to clarify issues. If an MHO is already involved in the case, they should be contacted in the first instance.

This is intended as an aid to help inform practice and provide a consistent approach for social work staff and should not be viewed as constituting legal advice on behalf of the Local Authority. Contact with the MHO service and any advice provided will be recorded on the client's electronic record by the MHO consulted. Email: HSCMHO.Managers@highland.gov.uk

3.3 The Mental Welfare Commission

The Mental Welfare Commission also operate an advice line for both professionals and service users and carers. [MWC](#)

Section 13ZA CHECKLIST

Name of client:

DOB:

CareFirst ID:

Personal Outcome Plan - Assessment completed

Yes ☐

No ☐

Date completed:

Risk Assessment completed:

Yes ☐

No ☐

If no, give reasons:

Assessment of/professional view of decision specific mental capacity

Name & designation of assessor:

Yes ☐

No ☐

Date of assessment:

MDT discussion/ case conference (inc adult, Legal & MHO etc)

Yes ☐

No ☐

Date completed:

Names of participants and designation:

Review Meeting held

Yes ☐

No ☐

Date held:

Criteria for the application of S13ZA or indicating need for further action under AWI, including case conference*

Agreement to 13ZA care plan from all professionals involved (as listed above)

Yes ☐

No ☐

Adult is consenting (or is likely to be compliant with) the 13ZA care plan

Yes ☐

No ☐

Agreement to 13ZA care plan by significant others involved with adult

Yes ☐

No ☐

Has an advocacy worker been appointed for the Adult? If not, why not?

Yes ☐

No ☐

If YES, does the report from advocacy worker

Yes ☐

No ☐

indicate the adult's consent to / compliance with 13ZA care plan.

***If any of the above questions are answered 'NO', then an AWI case conference should be arranged to discuss whether any interventions under AWI legislation are necessary.**

Proposed care intervention constitutes a 'deprivation of liberty'. (Discuss with Legal in first instance) Yes ☐ No ☐

If yes, give details:

Financial/ property considerations**

Have any risks to property, financial affairs and/or personal welfare been identified requiring formal intervention under AWI (also consider whether an Intervention Order is required, to undertake one off actions, e.g. terminate a tenancy/ sign a tenancy, pay outstanding bills, cancel/set up direct debits to pay fees, etc. Yes ☐ No ☐

If yes, give brief details:

Arrangements for managing finances of Adult (including payment of fees for service provided) are unresolved. Yes ☐ No ☐

If yes, give details:

****If any of the above questions are answered 'YES', then arrange an AWI case conference.**

Other actions

Has an application for guardianship already been lodged with the court which would not allow for implementation of the 13ZA care plan. Yes ☐ No ☐

If yes, give details:

Is there an application for guardianship in process/ planned? Yes ☐ No ☐

Is this a:

Private application ☐ Welfare powers ☐ Financial powers ☐
Local Authority application ☐ Welfare powers ☐ Financial powers ☐

DECISION

I authorise implementation of care plan under Section 13ZA of Social Work (Scotland) Act 1968

Yes ☐ No ☐

Signed:

Designation:

Date:

Appendix 2:

STATEMENT OF CAPACITY
Section 13ZA, Social Work (S) Act 1968

A: Adult's Details:

Name	
Date of Birth	
Home Address	
Current Address if Different	

B: Authority being considered under Section 13ZA and statement of capacity:

Details of community care service to be accessed.	
Does the adult have capacity to make an informed decision which supports the introduction of the community care service(s) identified above?	

C: Assessing Doctor's Details:

Name	
Designation	
Address	
Contact Details	
Date of Assessment	

D: Please return the completed form to:

Name of Social Worker or Social Work Assistant Practitioner	
Contact details/email address	

