Adult Support and Protection (Scotland) Act 2007

Code of Practice

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Foreword from the Minister for Mental Wellbeing and Social Care
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Since the introduction of The Adult Support and Protection (Scotland) Act 2007 in 2008, and publication by the Scottish Government of the Adult Support and Protection Code of Practice in 2014, there have been a number of policy, legislative and practice developments, both in the overall context of adult support and protection and in day-to-day activity.

This revised version of the Code of Practice aims to capture these changes and inform the development of local and national multi-agency adult protection procedures, processes and training across Scotland. It will also help to support the care and protection of adults who may be at risk of harm. This Code is for all those who may know adults at risk of harm whether they work in the local authority, health, police, or the third sector. The approaches set out build on the culture and ethos of partners who believe, as I do, that while there are specific duties associated with certain professional roles and public bodies, adult support and protection is “everyone’s business”. We all have a part to play in supporting the care and protection of adults who may be at risk of harm and are unable to safeguard themselves.

I am pleased that the Code of Practice has been developed collaboratively, through engagement with stakeholder groups, practitioners and a wider public consultation. This has helped us to shape our understanding of best practice and 'what works' from a variety of sources, including practitioner and stakeholder experience, inspections, research and learning from Learning Reviews (previously referred to as Significant Case Reviews).

Finally, I would like to offer my thanks to everyone who contributed to the revised Code and especially to those working in this field, for your continued commitment and efforts to support and protect adults at risk of harm.

Kevin Stewart, MSP

Minister for Mental Wellbeing and Social Care

Preface

The Adult Support and Protection (Scotland) Act 2007 (the Act) was implemented in 2008, at which time the Scottish Government published an Adult Support and Protection Code of Practice (which included a section on Adult Protection Committees) and also Guidance for Adult Protection Committees. A revised Code of Practice was last published in 2014.

Since the implementation of the Act there have been a number of developments, both within the overall context of Adult Support and Protection and in day-to-day practice, that are not fully reflected in the Code of Practice (which was last revised in 2014) or in the previous Guidance for Adult Protection Committees. We have also now revised the Guidance for Adult Protection Committees.

There is now a growing appreciation that Adult Support and Protection can have direct relevance to a broader range of people than originally anticipated, including some people who have substance dependency problems or who are homeless. It can also potentially apply to people who may be being placed at risk, and whose human rights may be infringed, through inappropriate arrangements for their care.

APCs are now firmly located within local public protection governance structures that in all areas include reporting arrangements to Chief Officer Groups, and then variously through Integration Authorities and/or Community Planning Partnerships, matters which were not reflected in the previous Code of Practice or Guidance. Chief Social Work Officers are also very important to public protection arrangements, advising and assisting local authorities and their partners in relation to governance and fulfilment of statutory responsibilities, including adult protection.

The Adult Support and Protection National Strategic Forum, chaired by the Minister for Mental Wellbeing and Social Care, has recognised the changed landscape within which Adult Support and Protection now operates. It therefore proposed that this was an appropriate time to undertake a review of the Adult Support and Protection Code of Practice. It further proposed that similar work will be undertaken to revise the guidance for APCs. These proposals were then agreed by the Minister.

The Code has been redrafted and refreshed after full consultation with members of the ASP National Strategic Forum and a range of other key stakeholders such as Social Work Scotland, ASP Conveners and ASP Lead Officers, NHS Chief Executives, GP committees etc. A number of national workshops have been held to help identify and refine key areas for amendment, and feedback on these draft amendments was also widely sought through public consultation via the Citizenspace website.

If there is one overarching theme to have come from this engagement process it is the need to continue to emphasise the message that **adult support and**

protection is everyone's business and that it involves support as well as protection.

This revised Code of Practice therefore seeks to strengthen the guidance given regarding inter-agency co-operation and related matters. It also seeks to clarify guidance and processes, and to achieve greater clarity in relation to capacity and consent in so far as these terms apply to adult support and protection.

The Act requires that a Code of Practice be published containing guidance about the performance of functions under the Act by councils, their officers and health professionals, and these are therefore the primary audience for this Code. However some parts of the Act have specific relevance to the Police of which councils, their officers and health professionals should be aware, and these aspects are therefore included in the Code.

Other public bodies, and other agencies in the statutory, third and voluntary sectors will have a direct interest in the contents of this revised Code which should also inform their own internal procedures for adult support and protection.

What changes have been made to the Code of Practice?

A range of updating amendments have been made across many chapters.

The substantive amendments are:

- More detail about the three-point criteria in section 3 of the Act
- Clarification on capacity and consent
- Emphasis on the duty to refer and co-operate in inquiries
- Clarification regarding information sharing expectations
- Clarification of relationship between inquiries and investigations
- New sections on referrals and related matters
- Further detail and clarification on visits and interviews
- New chapter on assessing and managing risk including case reviews and large scale investigations
- New section on chronologies

Chapter 1: Introduction to the Act and the Code of Practice

The Act

The Adult Support and Protection (Scotland) Act 2007 (referred to as the Act) was passed by the Scottish Parliament in spring 2007. The Act introduced provisions intended to protect those adults who are **unable to safeguard their own interests,** who are **at risk of harm** and, **because** they are affected by disability, mental disorder, illness or physical or mental infirmity, **are more vulnerable to harm** than those who are not so affected.

The review of Scottish Mental Health Legislation which was commissioned in 2019 will be considering the Mental Health (Care and Treatment) (Scotland) Act 2003, the Adults with Incapacity (Scotland) Act 2000 and the Adult Support and Protection (Scotland) Act 2007. There are strong links between the three Acts, and the provisions of each Act are often considered when establishing or reviewing the needs of a particular individual.

The principal aim of this review is to ensure a person-centred rights-based approach to the protection of persons who may be subject to the existing provisions of mental health, incapacity or adult support and protection legislation.

The Act is in five parts, and all the aspects relevant to Adult Support and Protection are contained in Part 1 of the Act. In this Code of Practice references to the Act therefore refer to Part 1 of the Act.

The Act provides measures to identify, and to provide support and protection for, those individuals who are vulnerable to being harmed whether as a result of their own or someone else's conduct. These measures include:

- a set of principles which must be taken into account when performing functions under the Act;
- placing a duty on Councils to make the necessary inquiries to establish whether or not an adult is at risk of harm and whether further action is required to protect the adult's well-being, property, or financial affairs;
- placing a duty on certain public bodies and office holders to cooperate in inquiries;
- introducing a duty to consider the provision of advocacy or other services after a decision has been made to intervene;
- permitting, in certain circumstances, the medical examination of a person known or believed to be at risk of harm;
- requiring access to records held by agencies in pursuance of an inquiry;
- introducing a range of protection orders which are defined in the Act, namely:
    - assessment orders;
    - removal orders;
    - banning orders
- requiring the establishment of multi-agency Adult Protection Committees.

The European Convention on Human Rights and the United Nations Convention on the Rights of Persons with Disabilities

Human rights in Scotland are the subject of important legal safeguards, in particular as a result of the Human Rights Act 1998 and the Scotland Act 1998. These give domestic legal effect to internationally-recognised rights and freedoms found in the European Convention on Human Rights (ECHR). For example, legislation passed by the Scottish Parliament is not law if it is incompatible with these "Convention rights". The powers of Scottish Ministers are also subject to important limitations. More generally, it is unlawful for any public authority (including both central and local government) to act in a way that is incompatible with the Convention rights. It is therefore important that all public bodies and practitioners ensure that they carry out their functions in a way that is ECHR-compatible.

Additionally, the Scottish Government has committed to incorporate four United Nations treaties into Scots law, as far as possible within devolved competence, including the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). This Convention promotes non-discriminatory, inclusive participation for all, with respect for the individual's dignity and differences, reinforcing equal rights of people with disabilities. Incorporation of UNCRPD will place greater impetus on public bodies to remove barriers and support disabled people to fully participate in society.

These domestic and international legal requirements are further reflected in Scotland's National Performance Framework, including in an overarching human rights National Outcome. This establishes a shared vision for a Scotland in which "we respect, protect and fulfil human rights and live free from discrimination".

The Code of Practice

The Act was passed by the Scottish Parliament in Spring 2007 and implemented in 2008. Section 48 of the Act imposed a duty on Scottish Ministers to prepare a code of practice containing guidance about the performance of functions under the Act by councils, their officers and health professionals, and placed a duty on these individuals to have regard to the Code of Practice, if relevant. The Scottish Government published an Adult Support and Protection Code of Practice in 2008. The Act also places Scottish Ministers under a duty to review the Code from time to time and provides a power following such review to revise it, and a revised Code of Practice was published in 2014.

The Act provides the legislative framework for Adult Support and Protection in Scotland. This code of practice (referred to as the Code) provides guidance about the performance of functions by councils, their officers, public bodies, and other professionals under the Act. It provides information and guidance on the principles of the Act, and about the measures contained within the Act including when and where it would be appropriate to use such powers. Those using this Code are advised to check the relevant measures themselves and to seek their own legal advice as required, when referring to the relevant provisions of the Act.

It is for local partnerships* to develop their own inter agency procedures for Adult Support and Protection, either for themselves or in conjunction with other partnerships. In so doing they should, as above, have regard to this Code of Practice, if relevant.

*By “partnerships” we mean the group of partners who work together – operationally and strategically—to:

- receive all intimations of adult protect concerns;
- determine which concerns require investigative activity and investigate them;
- determine actions required to make sure that adults at risk of harm are safe, protected, supported, involved, and consulted;
- and are responsible and accountable for the implementation of these actions.

This Code must be used in conjunction with other relevant codes of practice as appropriate, such as those developed to support the Mental Health (Care and Treatment) (Scotland) Act 2003 and the Adults with Incapacity (Scotland) Act 2000, and any other relevant professional codes of practice.

Who is this Code for?

This Code is addressed to councils, their officers and health professionals who perform any of the functions under the Act. There are a range of other statutory bodies identified later in this Code, including the Police, who will have an interest in the contents of the Code. It should also be considered by those working in the independent and third sector.

Note: The Act, which places particular duties on Councils and makes frequent references to Councils and their officers, was passed and enacted prior to Health and Social Care integration. In the Code references to Councils should therefore be taken to include bodies and partnerships that have delegated social work functions.

Chapter 2: Principles and definition of adult at risk

This chapter provides a description of the principles of the legislation as set out in sections 1 and 2 of the Act and outlines the definitions of ‘adults at risk’ and ‘harm’ (Sections 3 and 53 of the Act).

Taking account of the principles of the Act

Sections 1 and 2 set out the general principles of the Act. These apply to any public body or office holder authorising any intervention in an adult’s affairs or carrying out a function under the Act in relation to an adult. For example, they apply to any social worker, care provider or health professional intervening or performing functions under the Act.

This means that the following persons are not bound by these principles: the adult; the adult’s nearest relative; the adult's primary carer; an independent advocate; the adult's legal representative; and any guardian or attorney of the

adult. (These latter groups will, however, be bound either by their own codes of conduct and principles, or the principles of the legislation that resulted in their appointment).

The Act requires the principles to be applied when deciding which measure will be most suitable for meeting the needs of the individual. Any person or body taking a decision or action under the Act must be able to demonstrate that the principles in sections 1 and 2 have been applied.

The **principles in section 1** require that any intervention in an adult's affairs under the Act should:

- provide **benefit** to the adult which could not reasonably be provided without intervening in the adult's affairs; and be the option that is **least restrictive** to the adult's freedom.

The **principles in section 2** require that any public body or office holder performing a function under the Act must have regard to the following:

- The **general principles** in Section 1;

- **the wishes of the adult** - any public body or office holder performing a function or making a decision must have regard to the present and past wishes and feelings of the adult, where they are relevant to the exercise of the function, and in so far as they can be ascertained. Efforts should be made to assist and facilitate communication using whatever method is appropriate to the needs of the individual. Where this communication support is not provided, reasons for this should be recorded clearly. Also, where the adult has an Advance Statement made under Section 275 of the Mental Health (Care and Treatment) (Scotland) Act 2003 then this should be given due consideration. Advance Statements should be considered as part of any care plan. Further, regard should always be had to wishes, feelings and directions recorded in powers of attorney (particularly where these follow some recommended styles in having a schedule that records wishes and feelings) and advance directives.

- **the views of others** – the views of the adult's nearest relative, primary carer, a guardian or attorney, and any other person who has an interest in the adult's well-being or property, must be taken into account if such views are relevant. Cognisance, when weighing the merits of such views, must be taken of any possibility of undue pressure[1], or increase of risk, if the views of others are sought. It is important that the adult has the option to maintain existing family and social contacts, should they wish to do so.

[1] Section 35(4) of the Act gives an example of what may be considered to be undue pressure. An adult at risk may be considered to have been unduly pressurised to refuse to consent to the granting of an order, or the taking of an action, if it appears that the harm which the intervention is intended to prevent is being, or is likely to be, inflicted by a person in whom the adult at risk has confidence and trust; and that the adult at risk would consent to the intervention if the adult did not have confidence and trust in that person.

- The Act seeks to **provide support** additional to that of existent networks. Thus, a person, who may be an adult at risk, might have neighbours, friends or other contacts who have an interest in their wellbeing and are willing to give support (noting the caveat that consideration should be given to whether undue pressure from those contacts is a suspected or known risk factor). Every effort should be made to ensure that action taken under the Act does not have an adverse effect on the adult's relationships.

- **the importance of the adult participating as fully as possible** (also refer to Chapter 4) – the adult should be enabled to participate as fully as possible in any decisions being made. It is therefore essential that the adult is also provided with support and information to aid that participation, and in a way that is most likely to be understood by the adult. Any needs the adult may have for help with communication (for example, translation services or signing) should be met. Any unmet need should be recorded. Wherever practicable the adult should be kept fully informed at every stage of the process. This includes information about their right to refuse to participate.

- **that the adult is not treated less favourably** – there is a need to ensure that the adult is not treated, without justification, any less favourably than the way in which a person who is not an 'adult at risk' would be treated in a comparable situation.

- **the adult's abilities, background and characteristics** – including the adult's age, sex, sexual orientation, religious persuasion, racial origin, ethnic group, and cultural and linguistic heritage. So as to more fully assess the abilities, background and characteristics of the adult, users of this Code may find it helpful to consider the wider protected characteristics list and definitions set out in the Equality Act 2010 for the purposes of that Act.

These principles should always be considered when decisions are required about action that may be taken to protect an adult. However, there will be situations where their consideration produces potential conflicts, such as occasions when the adult at risk expresses a preference not to engage with any form of intervention, but the professionals involved believe that adult protection interventions would provide a benefit to them. In such circumstances, the expectation is that decision-making should take place on a multi-agency basis to enable full and complete discussion of potential protective actions, and the application of the principles set out above.

For the purposes of these principles, making a decision not to act is still considered as taking a decision. The reasons for taking this course of action should be recorded as a matter of good practice.

Who is an adult at risk?

The Act refers throughout to an 'adult'. In terms of Section 53 of the Act, 'adult' means a person aged 16 years or over.

Section 3(1) defines an 'adult at risk' as someone who meets **all** of the following three-point criteria:

- they are unable to safeguard their own well-being, property, rights or other interests;
- they are at risk of harm; **and**
- because they are affected by disability, mental disorder, illness or physical or mental infirmity they are more vulnerable to being harmed than adults who are not so affected.

It should be noted and strongly emphasised that the three-point criteria above make no reference to capacity. For the purposes of the Act, capacity should be considered on a contextual basis around a specific decision, and not restricted to an overall clinical judgement. It is recognised that, due to many factors in an individual's life, capacity to make an authentic decision is a fluctuating concept. Thus, even if deemed to possess general capacity, attention must be paid to whether a person has clear decisional and executional ability (i.e. to both make and action decisions) to safeguard themselves in the specific context arising.

Unable to safeguard or unwilling to safeguard?

The first point of the three-point criteria set out in section 3(1) of the Act relates to whether the adult is unable to safeguard their own well-being, property, rights or other interests. Most people will be able to safeguard themselves through the ability to take clear and well thought through decisions about matters to do with their health and safety, and as such could not be regarded as adults at risk of harm within the terms of the Act.
However, this will not be the case for all people, and when a person is deemed **unable** to safeguard themselves they will meet the first point of the three-point criteria.

- '**Unable**' is not further defined in the Act, but is defined in the Collins English Dictionary as "lacking the necessary power, ability, or authority (to do something); not able".
- '**Unwilling**' is defined in the Collins English Dictionary as "unfavourably inclined; reluctant", and may thus describe someone who is aware of the potential consequences but still makes a deliberate choice.

A **distinction may therefore be drawn** between an adult who lacks these skills and is therefore **unable to safeguard** themselves, and one who is deemed to have the power, ability or authority to safeguard themselves, but who is apparently **unwilling** to do so.

Note: An adult who is considered **unwilling to safeguard** themselves, rather than unable to safeguard themselves, may not be considered an adult at risk.

This distinction requires careful consideration. All adults who have capacity have the right to make their own choices about their lives and these choices should be respected if they are made freely. However, for many people the effects of **trauma and/or adverse childhood experiences** may impact upon both their

ability to make and action decisions, and the type of choices they appear to make. In this context it is reasonable to envisage situations in which these experiences, and the cumulative impact of them through life, may very well have rendered some people effectively **unable**, through reliable decision making or action, to safeguard themselves.

Similar considerations apply to **coercive control or undue pressure**. In such situations the control exercised over a vulnerable person may also effectively render them **unable** to take or action decisions that would protect them from harm.

It is therefore important, as part of the assessment, to understand the person's decision-making processes. This should include an understanding of any factors which may have impacted upon them with the effect of impinging on, or detracting from, their ability to make and action free and informed decisions to safeguard themselves. This could therefore mean that in these circumstances they should be regarded as unable to safeguard themselves.

Other circumstances can impact on the extent to which a person is meaningfully able to safeguard themselves. Refusing to give a random stranger money is, for example, very far removed from the situation where it is the person's relative who is making such a request, and where the adult is dependent upon that relative for support. For fear of repercussions or removal of support, they may feel afraid of refusing the request.

It is also important to bear in mind that an inability to safeguard oneself is **not the same as an adult lacking mental capacity**. For example a person may have relevant mental capacity, but also have physical limitations that restrict their ability to implement actions to safeguard themselves. Capacity applies to both decision making and the implementation of decisions. A person can have the capacity to make a particular decision but through illness or infirmity may not have the physical capacity to implement that decision.

Thus, in all circumstances, one should consider that even where a person can make a decision, are they able to action that decision to safeguard themselves?

The examples offered above demonstrate that practitioners must take a person's overall circumstances into account, and take great care, before determining whether or not an adult is genuinely able to take and implement decisions about safeguarding themselves.

Where an individual is deemed not to meet the three-point criteria or there exist factors or complexities that may be relevant to legislation other than the Act, thought should be given to other legislation which may provide alternative or additional pathways, e.g. the Adults with Incapacity (Scotland) Act 2000 or the Mental Health (Care and Treatment) (Scotland) Act 2003.

Regard should also be given to the possible relevance of the Social Work (Scotland) Act 1968, to ensure that assessments of need and promotion of social welfare are considered, where appropriate. If domestic abuse is a factor,

consideration may also be given to the relevance of a Multi-agency Risk Assessment Conference ('MARAC'), in which information about domestic abuse victims at risk of the most serious levels of harm is shared on a multi-agency basis to inform a coordinated action plan.

What is "harm" and who may be considered "at risk"?

To meet the second point of the three-point criteria the adult must be assessed as being at risk of harm. Section 3(2) of the Act defines an adult as being at risk of harm if:

- another person's conduct is causing (or is likely to cause) the adult harm; or
- the adult is engaging (or is likely to engage) in conduct which causes (or is likely to cause) self-harm.

Adults can be at risk of harm in various settings, be it in their own home, in the wider community, or in a hospital setting. They also may be placed at risk through inappropriate arrangements for their care in a range of social or health care settings. Perpetrators of harm can include families and friends, informal and formal carers, fellow users of residential and day care services, fraudsters and members of the public.

Section 53 states that "harm" includes all harmful conduct and gives the following examples:

- conduct which causes physical harm;
- conduct which causes psychological harm (for example by causing fear, alarm or distress);
- unlawful conduct which appropriates or adversely affects property, rights or interests (for example theft, fraud, embezzlement or extortion);
- conduct which causes self-harm.

The list is not exhaustive and no category of harm is excluded simply because it is not explicitly listed. In general terms, behaviours that constitute harm to a person can be physical, sexual, psychological, financial, or a combination of these. The harm can be accidental or intentional, as a result of self-neglect, neglect by a carer or caused by self-harm and/or attempted suicide. Other forms of harm can include domestic abuse, gender-based violence, forced marriage, female genital mutilation (FGM), human trafficking, stalking, scam trading and hate crime. Some such cases will result in adults being identified as at risk of harm under the terms of the Act, but this will not always be the case.

Types of Harm

The Act defines harm as "all harmful conduct". The Social Care Institute for Excellence ("SCIE") has a comprehensive downloadable resource illustrating types of harm in detail: Types of abuse: Safeguarding adults.

Evidence of any one indicator should not be taken on its own as proof that abuse is occurring. Conversely, practitioners must remember that individuals may well be subject to more than one type of abuse at a time, and the way that these types of abuse interact and compound should be taken into account. With this in mind, practitioners should consider making further assessments, consider other associated factors, and ascertain which referral(s) may be the most appropriate for that individual.

The SCIE identify some commonly recognised types of 'harm', but note this list is not exhaustive. More information is provided on each harm, via the link:

Physical harm
Sexual harm
Psychological or emotional harm
Financial or material harm
Modern slavery
Discriminatory harm
Organisational or institutional harm
Neglect or acts of omission
Self-neglect
Also see:
NHS inform: Self-harm

Some forms of harm may result in criminal charges being brought, under appropriate legislation, against the person perpetrating the harm. If, in dealing with a person under the terms of the Act, there is reason to suspect that a crime has been committed then the police should be advised without delay. Such legislation may include, for example, Section 315 of the Mental Health (Care and Treatment) (Scotland) Act 2003.

The Counter-Terrorism and Security Act 2015 places a duty on those listed under specified authorities in Scotland, such as councils, to have due regard to the need to prevent people from being drawn into terrorism. It also places an obligation on councils to ensure that a panel of persons is in place for its area to assess the extent to which identified individuals are vulnerable to being drawn into terrorism and, where appropriate, arrange for support to be provided.

Guidance on Prevent Multi-Agency panels (PMAP) is now available. When assessing referrals to such panels, councils and their partners should consider how best to align such assessments with adult protection legislation and guidance. It should be borne in mind that Counter-Terrorism vulnerabilities **must** be dealt with by PMAP and cannot be managed by other safeguarding processes: if need be, separate processes can run parallel to each other.

Where Domestic Abuse is a factor, the Domestic Abuse (Scotland) Act 2018 should be consulted. This legislation relates to partners or ex-partners and defines abusive behaviour as that which a reasonable person would consider likely to cause physical or psychological harm. Psychological harm includes fear, distress, or alarm.

Being more vulnerable to harm

The third criteria point requires that because the adult is affected by disability, mental disorder, illness, or physical or mental infirmity they are more vulnerable to being harmed than adults who are not so affected. Physical or mental infirmity are distinct from disability and mental disorder, and are not defined in the Act. Infirmity is defined as a "physical or mental weakness". Infirmity does not, therefore, necessarily rely upon a medical diagnosis in the way that mental disorder or illness do.

To note: It is recognised that "infirmity" is a term that is no longer favoured when describing disability.
Having a particular condition or being a disabled person does not automatically mean someone is unable to safeguard their own wellbeing.
"Illness" can apply to physical or mental health. The impact of illness on an individual's ability to safeguard themselves, and the extent to which it makes them more vulnerable to harm, must be considered. Depending upon the nature and trajectory of an illness, the assessment of this criterion of the three-point criteria may change over time.

Use of the three-point criteria

Each of the three criteria **must be met** to enable intervention under the Act.

It should be recognised that an individual's vulnerabilities, health conditions and abilities can fluctuate and evolve over time. Practitioners should be alert to the need for re-assessment or for re-evaluation of an individual's circumstances against the three-point criteria.

While someone who lacks capacity may be unable to safeguard their own well-being, property, rights and other interests, it should never be assumed that an adult who has capacity is able to do so, nor should any decision made, regarding whether an adult is an adult at risk, ever be delayed for an assessment of capacity to be undertaken. Capacity assessments may, however, be of benefit as means of identifying other legislative options available to support the individual. Further guidance related to capacity in the context of adult support and protection activity can be found in Chapter 7.

The three-point criteria should be used to determine whether an adult is at risk of harm, and from this will follow decisions regarding what steps can be taken to protect that adult from harm. The three-point criteria is not, and should not be used as, an eligibility test for access to services.

An assessment that intervention under the Act is not necessary or appropriate does not absolve authorities of responsibility to consider intervention under any other legislation, including the general provisions in Section 12 of the Social Work (Scotland) Act 1968 (general social work services of local authorities), or to offer any other services in order to provide care and support. Consideration should be given to support provided by social work, health, independent and third sector providers.

In particular, where a person has been assessed as at risk of harm but does not meet either or both of the other two criteria of the three-point criteria, then partnerships – on a multi-agency basis - would still be expected to pursue all avenues in order to protect that person from harm. The individual should be a part of the decision-making process regarding next steps to be taken to address the risks identified.

Particular circumstances

Trauma

The majority of adults who are, or are believed to be, at risk of harm will be people for whom the application of the three-point criteria will be relatively straightforward. This will lead to consideration of options for intervention whether under the provisions of the Act and/or other relevant legislation.

As mentioned in the “unable or unwilling” section above there are, however, a number of people for whom straightforward application of the three-point criteria is not possible, and some may remain in situations which continue to compromise their health, wellbeing and safety. All adults who have capacity have the right to make their own choices about their lives, and these choices should be respected if they are made freely. Many people affected by trauma and adverse childhood experiences remain able to safeguard their own wellbeing. However, for some, the complexity, severity and persistence of post traumatic reactions may impact to the extent that these individuals repeatedly take decisions that place them at risk of harm.

Equally, issues with their sense of self and interpersonal relationships, seriously affecting all or many of their relationships across many areas of life, can severely compromise their ability to safeguard. These safeguarding challenges can be associated with patterns of chronic difficulties in experience of emotions, emotional expression and/or regulation, and associated coping strategies such as self-harm, care-seeking and use/misuse of alcohol and drugs.

As part of an assessment – which may require significant time to undertake - it is crucial to understand the person’s decision-making processes. Consideration should be given to any factors that may have impacted upon the adult with the effect of impinging on, or detracting from, their ability to make free and informed decisions to safeguard themselves. This could therefore mean that, in some circumstances, they should be regarded as unable to safeguard themselves.

Trauma informed practice is an approach to care provision that considers the impact of trauma exposure on an individual’s biological, psychological and social development. Delivering services in a trauma informed way means understanding that individuals may have a history of traumatic experiences which may impact on their ability to feel safe and develop trusting relationships with services and professionals.

Trauma informed practice is not intended to treat trauma-related issues. It seeks to **reduce the barriers** to service access for individuals affected by trauma, and to promote **understanding** of the **impact of trauma** on individuals.

Key principles of a trauma informed approach are:

- safety
- trustworthiness
- choice
- collaboration
- empowerment

Taking a trauma informed approach to adult support and protection practice enables all those who perform any of the functions under the Act to better understand the range of adaptations and survival strategies that people may make to cope with the impacts of trauma. Practitioners should be alert to the need to view behaviours that compromise health, wellbeing and safety as adaptations that may have played a useful role in the individual's life in helping them to survive, and cope with, their experiences of trauma. Examples of such adaptations can include: maintaining contact with an alleged harmer; use of drugs or alcohol; self-harm; hoarding, and avoidance of places and people, including professional relationships and services, which may trigger reminders of prior traumatic experiences. As above, in these circumstances, some people's ability to take and action decisions about safeguarding themselves may effectively be compromised.

The 2017 Transforming Psychological Trauma: A Knowledge and Skills Framework for the Scottish Workforce details the specific range of knowledge and skills required across the workforce, depending on their and their organisation's role and remit in relation to people who have experienced trauma. Those with direct and frequent contact with people who may be affected by trauma should be equipped to 'trauma skilled' level of practice. Those professionals with regular and intense contact with people affected by trauma and who have a specific remit to respond by providing support, advocacy or specific psychological interventions, should have adequate training and experience to practice at 'trauma enhanced' level. Practitioners with responsibilities under the Act should be trained to the appropriate levels, as noted in The Scottish psychological trauma training plan (page 22). This is to ensure their adult support and protection practice reflects the in-depth knowledge and understanding required to intervene in the lives of those affected by trauma.

Taking a trauma informed approach can result in better outcomes for people affected by trauma and seek to address the barriers that those affected by trauma can experience when accessing support. Adopting a trauma informed approach to adult support and protection work is good practice, even when applied to individuals who have not experienced, or been significantly impacted by, psychological trauma.

Professionals involved in the identification, support and protection of adults at risk of harm may wish to make use of the resources provided by the National Trauma Training Programme. For more information on trauma-informed practice,

practitioners can also access the trauma-informed practice toolkit produced by The Rivers Centre.

Suicide Prevention

A new suicide prevention strategy is being developed for Scotland, and is due to be published soon.
As outlined already, adults who are – or may be - at risk of harm can present in complex circumstances. In some cases this may result in an individual seeking to cause potential or actual harm to themselves, and showing suicidal ideation. Acute and immediate intervention may be required to keep the individual safe at the time of crisis. Suicide prevention training courses and resource information, are widely available in order to teach participants how to recognise when someone may be at risk of suicide and how to effectively work with them to create a plan that will support their immediate safety, until further appropriate intervention is available.

A range of NHS Education for Scotland **Ask Tell Respond** resources, which include responding to those with suicidal ideation (Mental health and suicide prevention information), are also available. These resources support practitioners to provide a trauma informed response to those in distress, whether that is from suicidal thoughts or as part of post-intervention support.

Substance dependency, homelessness and hoarding

Not all people with substance dependencies, or who are homeless, or who hoard, will be considered at risk of harm under the Act. However, many such people will find themselves leading difficult and at times chaotic lives. The long-term and cumulative nature of these problems can include periods when the person would not be regarded as being able to take authentic decisions affecting their health and wellbeing, and this can have serious consequences for their health and safety. They may then be more vulnerable to harm than others without such issues.

The concept of “executive capacity” is relevant where the individual has addictive or compulsive behaviours. This highlights the importance of considering the individual’s ability to put a decision to safeguard themselves into effect (executive capacity) in addition to their ability to make a decision (decisional capacity). Thus, for such a person an assessment of mental capacity would rarely be as simple as “yes” or “no.”

The problematic use of drugs or alcohol may take place alongside (and on occasions contribute to) a physical or mental illness, mental disorder or a condition such as alcohol related brain damage. If this is the case, an adult may be considered an adult at risk under the Act. It may also be that the impact of a person’s dependency renders them subject to physical or mental infirmity, and places them at risk of harm.
It is **essential** to move from a position of looking at substance dependency in isolation and, instead, to see it in terms of **relational causation and connection**, i.e. a shift from the view that dependency causes self-neglect, to one that

understands such dependency as an outward symptom or sign of deeper challenges and of self-neglect itself. As above, considerations of the impact of trauma on the individual's ability to safeguard should be a thread throughout ASP activity.

People who are homeless are increasingly being recognised as likely to be considered as adults at risk under the terms of the Act, as many homeless people will be affected by disability, mental and/or physical illness or infirmity, or may have substance dependency issues.

In the years since the inception of the Act, hoarding has been recognised as a classified disorder in its own right, often alongside other conditions. In extreme cases, it can lead to some people living in dangerous and/or unhealthy conditions, resulting in a risk of harm.

It is not appropriate to use the existence of any of the circumstances outlined above to conclude that a person would not fall within the scope of the Act. All the circumstances in a person's life must be considered together when applying the three-point criteria.

Financial harm

Financial harm takes many forms including theft, fraud (e.g. doorstep scammers, scamming by post, over the phone, online or through a combination of these methods), pressure to hand or sign over property or money, misuse of property or welfare benefits, stopping someone getting their money or possessions, etc. When considering whether financial harm is occurring, it is helpful to consider a person's past behaviours and views as this may offer insight to their current behaviours, and highlight changes. Not all people subject to financial harm will be regarded as adults at risk, but the Act can be used to protect those people who are so regarded. In such cases, the potential for coercive control should be considered by practitioners.

In cases where there may be a misuse of proxy powers (Power of Attorney or Financial Guardianship), in addition to any immediate matters that they may be addressing, practitioners should be alert to the need to refer matters with a financial element to the Office of the Public Guardian (Scotland) - (information and resources) ("OPG") for investigation. The OPG should be notified even if harm by the proxy was unintentional, and the risk was mitigated through actions taken by the proxy and/or via adult protection processes or intervention. This expectation applies to cases of financial guardianship and intervention, due to the OPG's supervisory role over financial guardians and interveners.

If an alleged harmer has financial decision-making powers for more than one person, consideration should be given to possible financial harm risks to others. This could be in the alleged harmer's role as attorney, guardian, intervener, Department of Work and Pensions appointee, or withdrawer as per the Access to Funds scheme within the Adults with Incapacity (Scotland) Act 2000.

Many Adult Protection Committees have instituted Financial Harm sub groups and developed local Financial Harm Strategies with the strong support and

assistance of the police, local Trading Standards officers, and other partners including third sector organisations and/or financial institutions.

Young people

The definition of an adult at risk includes people aged 16 years and over with disabilities, mental disorders, illness, or physical or mental infirmity and who are at risk of harm from themselves or others. Adult Protection practitioners should pay particular attention to the needs and risks experienced by young people in transition from youth to adulthood, who are more vulnerable to harm than others. As other legislation and provisions exist which include persons up to 18 years (and sometimes up to age 26 years or even beyond), support under these other provisions may be more appropriate for some young persons. The responsibilities of the council and other agencies for persons aged 16 -18 years will extend beyond adult protection legislation. Situations may arise, particularly for 16 and 17 year old people, where there are legitimate interests and engagement from services for both children and adults. Where a young person under 18 is at risk of harm, The National Guidance for Child Protection in Scotland (2021) is relevant for reference, alongside local procedures for sharing information across children's and adult services. Children also have rights under the United Nations Convention on the Rights of the Child (UNCRC). Additional information as relates to children's rights and the UNCRC in Scotland can be found in the UNCRC advice and guidance information pages.

Young people may already be receiving services from a range of children's services, or as looked after children. This is not to say that they will or will not become adults at risk in terms of the Act simply because they have reached a particular age. Each case will need to be considered individually.

Adult Protection Committees, in conjunction with Child Protection Committees, and similar partnerships or authorities, should ensure that young people who are considered at risk of harm are identified at the earliest possible stage and that appropriate support and protection is put in place during and after the transition to adult services. There will need to be robust systems in place for the sharing of information and any necessary transfer of responsibilities between agencies and services.

Local partnerships may wish to develop guidance for staff in relation to transitions between children and adult services where there are protection issues to be considered, which focuses upon the child's needs in relation to their transition to adulthood as opposed to their transition between services.

Local partnerships should also ensure that practitioners are alert to all forms of harm when dealing with particular cases. An adult may be deemed at risk of harm and may also be placing their children at risk of harm. Children may live in homes where there is an adult at risk of harm. When making inquiries as a result of either adult or child protection referrals, consideration should also be given to the potential vulnerability of other members of the household.

Guidance and further information on transitions - supporting disabled children, young people and their families, and the relevant legislation assisting with planning good transitions for young people with additional support needs forms a helpful guide.

Chapter 3: Duties and powers of the council and other agencies, the role of the council officer and the independent and third sectors, and cooperation and information sharing across organisations and professionals.

What are a council's duties under the Act?

The Act places duties upon the council to:

- make inquiries if it knows or believes that a person is an adult at risk of harm and that it might need to intervene under the Act or otherwise to protect the person's wellbeing, property or financial affairs (Section 4);
- undertake investigative activity, as part of its inquiries, involving council officers who have certain powers under the Act (Sections 7-10);
- co-operate with other councils and other listed (or specified) bodies and office holders (Section 5);
- have regard to the importance of the provision of appropriate services (including, in particular, independent advocacy services), where the council considers that it needs to intervene in order to protect an adult at risk of harm (Section 6);
- make visits, with right of entry, for the purpose of conducting interviews and arranging medical examinations (sections 7, 8, 9 & 36 - 40);
- protect property owned or controlled by an adult who is removed from a place under a removal order (Section 18);
- set up an Adult Protection Committee to carry out various functions in relation to adult protection in its area, and to review procedures under the Act (Section 42).

What are a council's powers under the Act?

Where it is known or believed that an adult is at risk from harm and the council might need to intervene, the Act places a duty on the council to make the necessary inquiries to establish whether or not action is required to stop or prevent harm occurring.

The Act makes frequent reference to actions that can be taken where a council 'knows or believes' that an adult is at risk of harm. It is clear that 'know' and 'believe' are not intended to be used interchangeably, and that the intention is to allow for engagement with people where it has yet to be determined whether they are an adult at risk. Partnerships should ensure that their procedures are clear that inquiries will often take place before a determination has been made that the adult is at risk of harm.

The Act enables a council to:

- through the offices of a council officer, visit any place necessary to assist with inquiries under section 4. Council officers may interview, in private, any adult found at the place being visited, and may arrange for a medical examination of an adult known or believed to be at risk to be carried out by a health professional. Health, financial and other records relating to an adult at risk may be requested and examined. Note that the Council Officer is empowered by the Act to identify, take or copy medical records held by a service but having obtained them must ensure they are interpreted by a health professional.; and
- apply to the sheriff for the granting of a protection order.

Council officers have rights of entry to places where adults are known or believed to be at risk of harm. If, following inquiries, a council officer believes that action is required, the council can apply to the sheriff for a protection order. The range of protection orders include assessment orders (which may be to carry out an interview or medical examination of a person); removal orders (removal of an adult at risk) and banning orders or temporary banning orders (banning of the person causing, or likely to cause, the harm from being in a specified place) (Sections 11-34).

Who can act as a council officer for the purposes of the Act?

Section 53 (1) of the Act defines a council officer as an individual appointed by a council under Section 64 of the Local Government (Scotland) Act 1973. Section 52(1) of the Act enables Ministers to restrict the type of individual who may be authorised by a council to perform council officer functions under the Act.

Scottish Ministers have made an order that prescribes that a council must not authorise a person to perform the functions of a council officer under sections 7 to 10 of the Act (investigative functions) unless the person:

- is registered in the part of the Scottish Social Services Council register maintained in respect of social workers or social service workers or is the subject of an equivalent registration;
- is registered as an occupational therapist in the register maintained under article 5(1) (establishment and maintenance of register) of the Health Professions Order 2001; or
- is a nurse; and
- the person has at least 12 months' post qualifying experience of identifying, assessing and managing adults at risk.

A council may withdraw the authority of a person to perform the functions of a council officer if the person no longer meets the relevant requirements.

The Public Bodies (Joint Working) (Scotland) Act 2014 placed a requirement on all Health Boards and councils to make arrangements for adult health and social care services to be provided in an integrated way within each local authority area.

Section 23 of the 2014 Act allows Ministers to make regulation to allow suitably qualified individuals who are employed by a Health Board to exercise the functions of a council officer.

Duty to refer and co-operate

While councils have the lead role in adult protection, effective intervention will only come about as a result of productive cooperation and communication between a range of agencies and professionals. What one person or public body knows may only be part of a wider picture. The multi-agency nature of adult support and protection work is crucial to the work of protecting adults from harm.

Section 5(3) of the Act places a duty on certain public bodies or office holders who know or believe that a person is an adult at risk of harm and that action needs to be taken to protect them from harm, to make a referral by reporting the facts and circumstances of the case to the council for the area in which the person is considered to be located. Public bodies should ensure that their staff are aware of the duty to refer and co-operate, and to encourage vigilance in relation to adults who may be at risk of harm.

Good practice would dictate that even if in doubt the referral should be made and should be counted as a referral by the council. The council must then determine if it knows or believes that the person is an adult at risk, and that it might need to intervene. It may take such investigative steps as considered necessary to establish whether the adult is an adult at risk of harm and what action should be taken.

Section 5 provides that certain bodies and office holders **must**, so far as is consistent with the proper exercise of their functions, co-operate with a council making inquiries under Section 4 of the Act and with each other where this is likely to enable or assist the council making the inquiries. A proper exercise of a public body's functions may include being bound by a duty of confidentiality.

The bodies listed in Section 5 are:

- The Mental Welfare Commission for Scotland;
- The Care Inspectorate;
- Healthcare Improvement Scotland;
- The Office of the Public Guardian;
- All councils;
- The Chief Constable of Police Scotland;
- All Health Boards (including Special Health Boards); and
- any other public body or office-holder as the Scottish Ministers may, by order, specify.

(As at July 2022, Scottish Ministers have not specified any other bodies)

As outlined above **all of these bodies have a duty to refer** where they know or believe an adult to be at risk of harm, and to co-operate with councils in their inquiries. Referrers do not need to have evidence that all elements of the three-

point criteria are met in order to make a referral. Their information may form part of a larger picture.

Where staff in named bodies have to report suspected cases of adults at risk of harm within their own organisations, they should be clear to whom they have a duty to report. Staff also have a duty to co-operate with those working in the wider services within councils, including services for adults, children and families, criminal justice, housing, education, trading standards and consumer protection, and a range of services provided by health and specialist health boards, including acute and psychiatric hospitals and community health services.

The public bodies and office-holders may have duties to undertake inquiry, investigation, or other activity under separate legislation, which could overlap with the duty of the council to undertake inquiries and investigations under the Adult Support and Protection Act 2007. For example, Section 33 of the Mental Health (Care and Treatment) Scotland Act 2003 places a duty on local authorities to inquire, in certain circumstances, into the situation of a person in the community who appears to have a mental disorder.

Simultaneous inquiry or investigation activity should never be used as a reason for failing to make adult protection referrals, whenever an adult is known or believed to be an adult at risk. All public bodies and office-holders named in the Act must make adult protection referrals and co-operate with subsequent adult protection inquiries and investigative activity, irrespective of their own specific functions under other legislation.

Good practice is that all relevant stakeholders will co-operate with making referrals and assisting with inquiries, not only those who have a duty to do so under the Act. Adult Protection Committees will wish to consider how best they can engage and encourage co-operation (Section 42(2)) with this broader group of agencies in order to ensure that such agencies are aware of the provisions of the Act, and that they have appropriate procedures in place.

While it is not specified in the Act, a wide range of other services also contribute to the protection of adults at risk. These include:

- GP Practices[2], dentists and pharmacists;
- Scottish Fire and Rescue Service;
- Agencies of the Scottish Government,
  e.g. The Scottish Prison Service; Social Security Scotland.

The above services and agencies may all become involved with adults whom they know or believe as being at risk, and may therefore have cause to refer people to the council, and as such have a direct part to play in protecting people

[2]*"General practices" (borrowing from paragraphs 33 and 34 of schedule 1 to the FOI (Sc) Act 2002):-*
(a) A person providing primary medical services under a general medical services contract (within the meaning of the National Health Service (Scotland) Act 1978)
(b) A person providing primary medical services under arrangements made under Section 17c of that Act.

from risk of harm. Such services and agencies are expected to co-operate with assisting inquiries and to provide services to support adults at risk of harm.

Some agencies, which have a UK-wide jurisdiction or remit, may not be bound by the Act. However, they are likely to be bound by other legislation or specific protocols agreed with the Scottish Government.

Section 49 of the Act provides that it is an offence to, without reasonable cause, prevent or obstruct any person from doing anything they are authorised or entitled to do under the Act (see Chapter 15 of this Code).

General Practices

The Scottish Government has published revised Guidance for General Practice in tandem with the revised Code of Practice and revised Guidance for APCs . This is intended to assist the involvement of General Practitioners and their staff ("General Practices") in activities which arise from the Act, and aid them to support their patients in achieving the best outcome.

It provides advice on how to make referrals and notes that:

- General Practices are well placed to identify adults at risk of harm and are a vital component in the multi-agency arrangements to support and protect where it is necessary
- Adult support and protection applies to those with and without mental capacity
- As with other referrers, evidence is not required that all elements of the three-point criteria are met in order to make a referral. Their information may form part of a larger picture. In this regard, it is ultimately the responsibility of the council or delegated agency to decide whether an adult meets the definition of an adult at risk of harm
- General practices will be expected to co-operate with inquiries including with the examination of records under Section 10 of the Act. This co-operation is based upon the Council's knowledge or belief that that the person is at risk of harm. The purpose of providing the information is to assist the Council in determining whether or not the person is at risk, or later in the process to understand how to support and protect them from those risks.

The Scottish Fire and Rescue Service and the Scottish Ambulance Service

The Scottish Fire and Rescue Service ("SFRS") have a key role to play in keeping people safe from harm particularly in relation to fire safety. They are an important source of referrals in regard to adults as a result of their fire safety advice activity and can identify some people who may be at risk of harm for other reasons. The Scottish Fire and Rescue Service is represented on many Adult Protection Committees across Scotland.

The Scottish Ambulance Service ("SAS") is designated a special health board for the whole of Scotland, and is therefore included in the Section 5 duties as outlined above. It operates as an emergency service, and has contact with a wide range of people, many of whom may be adults at risk. They, therefore, can be a source of information; potential referrer and, as with Scottish Fire and Rescue Service, can act as an early warning system for some people at risk of harm. There is scope for greater understanding of the role SAS can play and for greater engagement between the SAS and Adult Support and Protection at both local and national levels.

The Scottish Prison Service ("SPS")

The SPS has a duty of care to ensure that reasonable steps are taken to support and protect from harm individuals in their care, and those who may visit or make other forms of contact with individuals in prisons.
The SPS Child Protection Policy applies to children under 18 years of age. However, as per the Act, a young person over the age of 16 requiring protection may be an adult at risk in some circumstances. As per all cases for young people aged between 16 and 18 requiring support and protection, Prison Based Social Workers, in partnership with SPS managers, must give consideration to which procedures, if any, need to be applied. This will depend on the young person's individual circumstances and the particular legislation or policy framework best able to meet their needs at the time*.* Further details can be found in the SPS Child Protection Policy.

When SPS staff members or others working in a prison know or believe that an adult is at risk of harm (e.g., the individual is known or believed to meet the 3-point criteria), including an individual in their care, a member of his/her family, or someone with whom they have regular contact through visits, telephone contact or correspondence, they will liaise with community-based adult support and protection services. If an adult in the community is being harmed by an individual in custody, either intentionally or unintentionally, an Adult Support and Protection referral to the local authority where the individual at risk lives may be appropriate. An individual in SPS care may also cause harm in the community whilst located in prison. It may also be appropriate to consider an ASP referral if the adult themselves is at risk of harm when in the community (e.g., when due for release). Any such activity will be undertaken alongside existent offender management procedures.

For example, there may be occasions where a partner, family member or friends are at risk of harm caused by the individual in SPS care, for example on Home Detention Curfew (HDC), temporary release or release on licence. An individual in SPS care may also cause harm in the community whilst located in prison by, for example:

- insisting the vulnerable person hand in money or property;
- pressuring someone to volunteer their address for HDC, temporary release or release on licence;
- threatening harm to an adult via:
  - the prison telephone system;
  - written correspondence, e.g. email or letter;

    - virtual or face to face visits;
- neglect where the individual in SPS care has previously provided care to an adult.

An ASP referral may also be appropriate if the adult themselves is at risk of harm when in the community. The SPS may be aware of adults who could be considered at risk of harm prior to their arrival to prison and/or as they are being readied for release (e.g. they may be at risk of harm in the community). As such, local services should have protocols in place for advising SPS of any new prisoners who are regarded as being at risk of harm and SPS should remain alert to the potential need for contact to be made with council adult support and protection services in preparation for a prisoner's release.

Independent and third-sector providers and other organisations

Additionally, and importantly:

- there will be a range of service providers and service user and carer organisations in the independent and third sectors who will have a direct service provision role in relation to adults who may be at risk of harm; and
- adults who may be at risk of financial harm may have dealings with a range of agencies including financial institutions such as banks, building societies, credit unions, post offices, Royal Mail and the Department of Work and Pensions.

While independent organisations such as these do not have specific legal duties or powers under the Act, care providers have a responsibility to involve themselves with the Act where appropriate by making referrals, assisting inquiries and through the provision of services to assist people at risk of harm. These organisations should discuss and share with relevant statutory agencies information they may have about adults who may be at risk of harm.

These providers and other service provider, and user and carer groups may also be a source of advice and expertise for statutory agencies working with adults with disabilities, communication challenges or other needs. Organisations should comply with requests for examination of records, as it is an offence to fail to do so without reasonable excuse (section 49(2)) of the Act).

Councils will wish to keep under constant review their contract agreements with the independent and third sector providers to ensure that their services are consistent with the principles of this Act.

Chapter 10 of the Code provides further guidance on the examination of records and refers to Social Work Scotland's 'Protocol for Requesting Information under Section 10' of the Act, which is for use by local partnerships as a template for their own procedures.

Information Sharing

We all have a responsibility, individually and collectively, to protect vulnerable people in our communities. This cuts across all aspects of private life and professional business. Supporting individuals at risk of harm is best done through collaboration and with a sense of community responsibility.

The Referral Process

Adult protection referrals can be made in writing (to be submitted electronically) or over the phone to the council for the area in which the adult at risk currently is. For most ASP referrals, this will be to the council for the area where the adult is habitually resident (where they live). Prompt action is vital.
Relevant contact details can be found here: Find your local contact - Act Against Harm. If you are working out of office hours, your local procedures and contacts will advise you of the relevant out of hours procedure, e.g. the Duty Social Worker.

Referral forms (sometimes referred to as an "AP1") – or the electronic link to them – can be requested from your local adult services team in advance; the form can then be saved in a place convenient for future use.

Referral information requested, either on a form or over the phone, may include:

- Details of the person completing the referral;
- Details of the person subject to the referral, including name, date of birth, address;
- The primary user group or client category of the patient, if known (e.g. learning disability, mental health, dementia, substance misuse, acquired brain injury, physical disability);
- Any communication needs of the adult at risk;
- Harm type(s) suspected;
- Whether the adult at risk is aware of the referral;
- Details of the concern, including as much information as possible about the incident(s), dates, alleged harmer(s), previous concerns, any safeguarding activity undertaken;
- An overview of the "three-point criteria"**:**
  I. In your opinion, is the adult able to safeguard their own wellbeing, property, rights or other interests?
  II. In your opinion, is the adult at risk of harm?
  III. In your opinion, is the adult affected by disability, mental disorder, illness or physical or mental infirmity, making them more vulnerable to harm?;
- Confirmation of whether police have been contacted if a crime is suspected;
- Any relevant relationships, proxy decision makers (guardian or Power of Attorney), and/or caring responsibilities of the adult;

Please note that this list is not exhaustive and a referral should still be made if you believe that the criteria are met for referral, even if lacking some of the information noted above. **It is not your responsibility to confirm that the adult meets the three-point criteria**; it is enough that you believe them to meet the criteria to warrant an ASP referral**.** Any information that can be provided at the referral stage will assist the local authority in undertaking adult protection inquiries.
As part of the inquiry process, it is possible that you will be asked to assist the council making the inquiries.

If there is **immediate danger to you or the adult at risk,** do not hesitate to **call 999.** You can make a subsequent Adult Protection referral, if relevant.

Referrals – prompt action is vital.

As well as your local contact's details, the Act Against Harm website carries lots of useful information, including how to recognise when an adult may be at risk of harm and examples of the type of support that can be provided once a concern has been reported.

Steps to Take – The "Four Referral Rs"

Recognise – be aware of adult protection issues and how an adult at risk of harm may present. Consider trauma, undue pressure etc., and the adult's ability to safeguard themselves.

Report – where you have an internal adviser for adult protection report the matter to them, discuss with appropriate colleagues the need to make a referral *but* ensure this does not adversely delay referring.

Refer – Refer the individual and their circumstances through your local adult protection referral process. Where the matter is urgent contact the relevant emergency services without delay.

Record – use the individual's record to note the issues that arose, the circumstances, the decisions made/actions you took, and the rationale for your actions.

If the matter is urgent e.g. there is imminent risk of danger or significant harm has happened please contact the relevant Emergency Service – Police/Fire/Ambulance.

Information - To Share or Not To Share – Checklist

With specific reference to the circumstances of the case, before making a referral, consider:

- Is the sharing justified at this time?
- Does the duty to protect the individual outweigh the duty of confidentiality?
- What are the benefits to the individual of sharing, or the risks of not sharing, information?
- Are there wider risks from sharing or not sharing (to other family members etc.)?
- Are you sharing special category data? (see section below under Data Sharing);
- Are you able to identify a condition for processing from Article 9 UK GDPR that you can you rely on?
- Do you need to identify an additional condition from the DPA 2018? – see section below on special category data;
- Are there relevant exemptions?
- Are there other relevant statutory requirements, legislation or restrictions to consider? e.g. Adults with Incapacity (Scotland) Act 2000; Mental Health (Care and Treatment) (Scotland) Act 2003; Child Protection Guidance 2021; reporting a crime etc.;
- Is there a legal obligation to share? (for example a statutory requirement or a court order)?
- Is there an organisational / in house protocol, e.g. a Data Sharing Agreement?
- Are there other similar, relevant, cases which ought to be considered?
- Is authorisation required within your organisation to make the decision?
- Should legal advice or other guidance be sought? E.g. ICO Helpline.

If you decide a referral is needed, and information is to be shared, consider:

- Has the individual's attorney or guardian, if relevant, been consulted?
- Should any other person be informed ahead of, or after, sharing?
- In terms of consent under UK GDPR see Why is consent important?
- Has the individual been consulted with openness and transparency? If not, reasons should be documented. Note that the controller's fairness and transparency obligations under data protection law must also be referred to
- Are there suspicions that alerting the patient to concerns could place them at greater risk?
- What information should be shared?
- What is fact and what is opinion?
- How should the information be shared / stored?
- **Record the decision, actions and reasoning.**
- What information was shared and for what purpose.
- Whom it was shared with.
- When it was shared.

- The justification for sharing (responses to the Share or Not To Share Checklist above can be used as a starting point).
- Whether the information was shared with or without the subject's consent.

Do you need the consent of the adult to make a referral?

No. Whilst adults with capacity have the right to consent or otherwise, there may be a lawful basis to share information under the 2007 Act without this consent. There is a **difference** between **medical consent and data sharing consent**. It is important to be open and transparent with the adult, and vital that all decisions and rationale are recorded. Further information around UK GDPR and consent in respect of data sharing can be found here - Why is consent important? | ICO

Why do we need to share adult protection information?

Organisations need to share safeguarding information with the right people at the right time to:

- prevent death or serious harm;
- coordinate effective and efficient responses;
- enable early interventions to prevent the escalation of risk;
- prevent abuse and harm that may increase the need for care and support;
- maintain and improve good practice in safeguarding adults;
- reveal patterns of abuse that were previously undetected and that could identify others at risk of abuse;
- identify low-level concerns that may reveal people at risk of abuse;
- help people to access the right kind of support to reduce risk and promote wellbeing;
- help identify people who may pose a risk to others and, where possible, work to reduce offending behaviour;
- reduce organisational risk and protect reputation.

Where someone is suspected of being an adult at risk of harm, an Adult Support and Protection **referral should be made to the council within 24 hours** – any delay should be recorded with reasons.
Once you have made a referral this places a duty on the council to make inquiries where they know or believe that an individual may be an adult at risk of harm.

Information Sharing: Legalities and Cooperation

Duty to Cooperate
A number of bodies have a duty to co-operate under the Act (Section 5), e.g. Health Boards and Healthcare Improvement Scotland, Police and Councils. Any information received in the course of an inquiry is treated with the utmost confidence and will not be disclosed to any third parties other than in accordance with the provisions of the Act.

(Section 5) outlines a further number of service providers who contribute to the protection of adults at risk. Bodies named in the Act have unequivocal

responsibilities to cooperate with the local authority undertaking ASP inquiries; to notify the council of an adult who may be at risk of harm; and to cooperate with others named. Other organisations who are not specifically named should also cooperate with ASP processes where requested, in order to achieve the best outcome for the individual at risk of harm.

Data Sharing

Data protection law enables organisations and businesses to share personal data securely, fairly and proportionately. The Information Commissioner's Office (the "ICO") has a Data Sharing Code of Practice and the resources available at their Data Sharing Information Hub provide detailed guidance and tools to aid data sharing in compliance with data protection law.

The ICO provide a Step by step guide to data sharing.

There are many **misconceptions and fears** around data sharing, and the ICO have a helpful page exploring these at Data sharing myths busted.

Forward planning for sharing information

It is strongly recommended that organisations take the time to consider all of the scenarios in which they may need to share data about vulnerable adults in their care and associated third parties. Some of this sharing may take place under the Act but other sharing may take place out-with it. Practitioners should be clear about whether they are a data controller, joint controller or processor for the personal data that they intend to share. A data controller has the responsibility of deciding how personal data is processed - they are the main decision-makers and exercise overall control over the purposes and means of the processing of personal data. Both a council and the person making the referral are likely to be controllers. The data subjects will be the adults to whom the information relates, and about whom the enquiry is being made/whose records are being examined.

Where data sharing is a regular occurrence, between organisations, there should be Data Sharing Agreements (DSAs), informed by Data Protection Impact Assessments (DPIAs), which will help to ensure that data sharing is carried out in compliance with the law.

The ICO recommend that as a first step you carry out a DPIA, even if you are not legally obliged to. Carrying out a DPIA is an example of best practice, allowing you to build in openness and transparency of ASP processes.

A DPIA will help you assess the risks in your planned data sharing and determine whether you need to introduce any safeguards.

It will assist you to assess those considerations, and document them. Having a DPIA in place will help to provide reassurance to both yourselves and those whose data you plan to share.

It is also recommended that organisations work with their local **Adult Support and Protection Committee** to plan for data sharing and develop local processes and templates etc. to reduce duplication and promote consistency. Some organisations may wish to develop processes and templates collectively, perhaps via a representative on the Adult Protection Committee, if applicable.

Data Sharing in Emergency Situations

Organisations can also carry out forward planning for emergency situations. In particular, organisations and practitioners should be confident that relevant personal information can be shared lawfully if it is to protect someone from serious harm, including safeguarding within a medical context. ICO guidance on Data sharing in an urgent situation or in an emergency emphasises that **in an emergency, practitioners should go ahead and share data as is necessary and proportionate**. It also advises what may constitute an emergency and that organisations should to plan ahead for such circumstances, i.e. consider training staff, consider DPIAs, assess the types of data that might be shared etc.
The **key point** is that the UK GDPR and the DPA 2018 do not prevent you from sharing personal data where it is appropriate to do so, and you have clear **documented records** to support your actions.
The ICO has a section on data sharing in an urgent situation or in an emergency in the Data Sharing Code of Practice.

The Code sets out that an emergency includes:

- preventing serious physical harm to a person;
- preventing loss of human life;
- protection of public health;
- safeguarding vulnerable adults or children.

In these situations, it might be more harmful not to share data than to share it. It is strongly recommended that controllers plan ahead for urgent or emergency situations as far as possible. Controllers should consider what data sharing might need to take place, what data should be shared and how this can be done in compliance with the law. This may involve preparing DPIAs and implementing DSAs to cover emergency situations which can include the relevant lawful bases and any conditions for processing as well what is likely to be necessary and proportionate in the context of the sharing. In an urgent or emergency situation, decisions have to be made rapidly and it can be difficult to make sound judgements about whether to share information. **Spending time forward planning is key**.

Special Category Data

What is special category data? This is personal data that needs more protection because it is sensitive and may affect an individual's rights and freedoms. This means data which:

- reveals racial or ethnic origin;
- reveals political opinions;
- reveals religious or philosophical beliefs;
- reveals trade union membership;
- is genetic data;
- is biometric data;

- is concerning an individual's health;
- is concerning an individual's sexual orientation or activity.

If you process special category data you must keep records, including documenting the categories of data. This does not include personal data about criminal allegations, proceedings or convictions, as separate rules apply (see below).
In order to lawfully process special category data you must identify a lawful basis for processing data, under Article 6 of the UK GDPR **and** a separate condition for processing under Article 9. These do not have to be linked.

Where Criminal Offence data , including data relating to alleged offences and to victims, is being processed, official authority or an additional condition under Article 10 of the UK GDPR is required. The Data Protection Act 2018 contains specific legal gateways for processing special category and criminal offence data for safeguarding purposes, namely those at Data Protection Act 2018 Schedule 1 Part 2, Paragraphs 18 (Safeguarding of children and of individuals at risk) and Paragraph 19 (Safeguarding of economic well-being of certain individuals).

Exemptions

The UK GDPR and the Data Protection Act 2018 set out guidance on exemptions from some of the rights and obligations in some circumstances. You should not routinely rely on exemptions; you should consider them on a case-by-case basis.

How do exemptions work?

Whether or not you can rely on an exemption generally depends on your purposes for processing personal data. If an exemption applies, you may not have to comply with all the usual rights and obligations.
Some exemptions apply simply because you have a particular purpose. However, others only apply to the extent that complying with the UK GDPR would:

- be likely to prejudice your purpose (e.g. have a damaging or detrimental effect on what you are doing); or
- prevent or seriously impair you from processing personal data in a way that is required or necessary for your purpose.

You should justify and document your reasons for relying on an exemption.
If no exemption covers what you do with personal data, you need to comply with the UK GDPR as normal.

Lawful Basis – resources and case studies

The ICO have a Lawful basis interactive guidance tool to help organisations determine the appropriate lawful basis for their data sharing, along with lawful basis resources , including slide presentations (lawful-basis-presentation), to refer to.

For processing to be lawful under the UK GDPR, controllers must identify (and document) a lawful basis for the processing.
The basis of consent is only one of six lawful bases and the UK GDPR sets a high standard for controllers to demonstrate that the conditions required for consent have been met. Thus, in this context, **consent is unlikely to be an appropriate lawful basis** for adult protection purposes, due to the perceived power imbalance between client and practitioner. However both Public Task and Legal Obligation would be more appropriate - through each link you will find detailed explanations and examples where each basis is appropriate. There are also a number of case studies showing different approaches to data sharing here: Case studies | ICO and here: Annex C: case studies | ICO.

Relying on a lawful basis other than consent does not prevent practitioners seeking the adult's input or views and being transparent about the sharing, indeed it is an important component of a controller's fairness and transparency obligations under data protection law.

Practitioners should, in advance of potential need, **determine and document which lawful basis** they can rely on in different scenarios. This should be done in consultation with their Data Protection Officer where available.

Chapter 4: Adult Participation

This chapter discusses the principle of ensuring that full regard is given to the wishes and feelings of the adult, and the principle of the adult participating as fully as possible in all aspects of the adult protection process. It also covers the importance of providing advocacy and other services. This chapter is relevant for all aspects of ASP activity, including an adult's participation in inquiries, investigative processes, risk assessment, case conferences, protection planning and implementation.

The adult's views and wishes are central to adult support and protection, and every effort should be made at each stage of the process to ensure that barriers to the adult's participation are minimised. Undue pressure on the adult from another party is one barrier which can occur. It is good practice to consider the best ways to check at various stages with the adult how included they feel and ensure they have the opportunity to highlight if they feel excluded at any point. All decisions must be clearly recorded and explained to the adult.

When considering an intervention under the Act, use of supported decision-making processes and principles may help determine the necessity and type of action to be taken, assisting the individual to participate in such decisions. The Mental Welfare Commission for Scotland has published guidance on supported decision making, which may be of assistance.

The adult should be provided with assistance or material appropriate to their needs to enable them to make their views and wishes known. Reasonable adjustments should be made to support the adult's needs wherever identified. The communication needs of the adult should be considered and the adult should

be asked what support, if any, they wish. It may be that they wish assistance from a relative or primary carer, or would prefer someone impartial.

The offer of a professional interpreter should be made to all of those who experience language barriers. The use of family members or friends as interpreters should be avoided as there is a risk of misinterpretation; concealed or minimised information sharing; and possible exacerbation of risk. Friends and family may not have the skills to accurately interpret health, care or risk related information, are less likely to maintain impartiality, and should be given the opportunity to provide support without the added pressure of needing to interpret.

It is **inappropriate to use children as interpreters**. Children are not likely to have the language competency to discuss complex risk concerns. They may also experience vicarious trauma through listening to and relaying sensitive and distressing information concerning their family member. Therefore a suitable adult should always be sought.

The adult may wish a particular format for communication. This could be technical aides to support communication or information to be interpreted, translated or adapted. It could be translation for persons whose first language is not English such as British Sign Language or other interpreters. The Royal Society of Speech and Language Therapists has developed a set of principles, standards and practical guidance for ensuring that an individual is enabled to understand and communicate effectively. . The Disability Unit of the Cabinet Office has guidance around accessible communication formats , whilst Inclusion Scotland offer further advice in their Making Communication Accessible Guide. Consideration should be given to the training and support needs of staff in order for the adult to make meaningful use of any communication aids provided.

Other aids and adaptations that can support and enable communication include lip speakers, Makaton, and deaf-blind communicators. Where possible, materials should also be available in alternative formats such as large print, audio tape, Braille and computer software. Consideration should also be given to the surrounding environment. This can greatly affect communication due to, for example, noise levels, provision of loop systems or lighting. These are just some examples of areas that should be taken into consideration.

In addition to making generic materials accessible to the adult, individualised documents and/or reports should also be made available in an accessible format. For example, consideration should be given to how risk assessments, support and protection plans, minutes and decisions from meetings, or other written materials can be made accessible for the person concerned.

If the fullest possible participation of the adult at risk in decision-making, supporting, and protecting them from harm is to be achieved, they should be included in ways that take into account their needs and ability to participate. Good practice in adult protection is no different from good practice in other areas such as care and treatment of mental illness, self-directed support, or commissioning of services to meet assessed individual needs.

Any unmet need relating to the individual's participation should be clearly recorded.

Independent advocacy services

Section 6 of the Act places a duty on the council, if it considers that it needs to intervene to protect an adult at risk of harm, after making inquiries under Section 4 of the Act, to have "regard to the importance of the provision of appropriate services (including, in particular, independent advocacy services) to the adult concerned". Independent advocacy aims to ensure that a person's voice is listened to and their views taken into account; to support access to information; and to assist people to navigate systems.

The adult should be asked if they know about and would like advocacy support. Where advocacy is offered, declined by the adult, or not deemed appropriate, the reasons for this should be clearly recorded, as should the reasons for not referring to any other 'appropriate' services. This decision should be re-visited and recorded at each formal review e.g. multi-agency meetings, reviews or professional meetings.

The definition and principles of independent advocacy services used in the Act is that given in Section 259 of the Mental Health (Care and Treatment) (Scotland) Act 2003 , which states that:

'Every person with a mental disorder shall have a right of access to independent advocacy; and accordingly it is the duty of –

- each local authority, in collaboration with the (or each) relevant Health Board; and;
- each Health Board, in collaboration with the (or each) relevant local authority, to secure the availability, to persons in its area who have a mental disorder, of independent advocacy services and to take appropriate steps to ensure that those persons have the opportunity of making use of those services'.

The duty in mental health legislation to provide access to independent advocacy therefore only extends to persons with a mental disorder. The duty in section 5 of the Act, as above, is to have regard to the importance of independent advocacy services. However, the **section 2 principles need to also be considered**. In particular, the principles to have regard to the ascertainable wishes and feelings of the adult, to enable the adult's participation, and of providing such information and support as is necessary to enable them to participate. It may be that independent advocacy in a particular case will be appropriate even where a person does not have a mental disorder as defined in the 2003 Act.

In sections 259 (4) and (5) of the 2003 Act it states (and these expectations should **apply to all advocacy services** in relation to adults at risk of harm irrespective of whether they fall within the ambit of the 2003 Act) that :

- "advocacy services" are services of support and representation made available for the purpose of enabling the person to whom they are available

to have as much control of, or capacity to influence, that person's care and welfare as is, in the circumstances, appropriate;

- advocacy services are "independent" if they are to be provided by a person who is not mentioned in the list at Section 259(5) which includes, among other persons, a local authority; a Health Board; a National Health Service trust; a member of (i) the local authority; (ii) the Health Board; (iii) a National Health Service trust, in the area of which the person to whom those services are made available is to be provided with them;
- The advocacy service is also only "independent" if it is not a person who is contracted to give medical treatment, or care or other services to the adult.

For further information about advocacy, please refer to the Scottish Independent Advocacy alliance .

Under Section 41(6) of the Act, the sheriff has discretion to appoint a person to safeguard the interests of the affected adult at risk in any proceedings relating to an application for an assessment order, a removal order, a banning order, a temporary banning order, or the variation or recall of any such order under the Act. Such an appointment may be made on such terms as the sheriff thinks fit.

Appropriate adults

Appropriate Adults provide communication support to vulnerable victims, witnesses, suspects and accused persons, aged 16 and over, during police investigations. The role of the Appropriate Adult is to facilitate communication between a person with mental disorder and the police and, as far as is possible, ensure understanding by the individual. It is recognised that not all individuals who may require Appropriate Adult support will have a formal diagnosis, nor may they be able or willing to share any diagnosis with the police. In circumstances where a diagnosis cannot be confirmed but it is clear that the individual cannot understand procedures or communicate effectively with the police, and that the cause of such difficulty is not solely because of substance use/intoxication, then Appropriate Adult support should be requested.

Section 42 of the Criminal Justice (Scotland) Act 2016 places a duty on the police to ensure this type of support is provided during custody procedures, while the Criminal Justice (Scotland) Act 2016 (Support for Vulnerable Persons) Regulations 2019 place a duty on local authorities to provide an Appropriate Adult when such a request is made by the police. The duty on the local authorities extends to requests made for support in relation to victims and witnesses, as well as to those made for support for suspects and accused persons. In addition to custody processes, Appropriate Adults can be used in any number of police procedures, including interviews, the taking of witness statements, identification procedures, medical examinations and property searches.

Appropriate Adults are selected for their experience of working with adults who have a mental disorder and/or experience of assisting vulnerable adults with communication. The Appropriate Adult is not providing advocacy or speaking on behalf of a person with a mental disorder, but is an independent third party

checking that effective communication is taking place and that the person being interviewed is not disadvantaged in any way due to their mental disorder. The appropriate adult's role is to provide support to help the individual to understand what is happening, and facilitate effective communication between the vulnerable person and the police.

If an Appropriate Adult has any concerns relating to the general wellbeing of the person they are supporting, separate from the police investigation and police procedures, they should make the concerns known to both the police and the Appropriate Adult Service Coordinator (or equivalent). Every local authority must ensure that persons involved in Appropriate Adult services have an understanding of how the 2007 Act and its Code of Practice relate to the Appropriate Adult function.
Further information is provided for local authorities can be obtained on the role and remit of appropriate adults.

Meetings of agencies with the adult at risk

There should be a basic assumption that the adult will be involved in all meetings that are about them. There will be times when this will not be appropriate but, in all cases, reasons should be recorded in the minute of the meetings explaining why the adult was not present.

The adult at risk should (unless it is considered not to be of benefit to them) be invited to and involved in setting up of meetings to consider risks to which they are exposed and how best they can be protected or enabled to make informed decisions concerning potential risks. If they are not invited, the reason should be recorded and communicated to the person in a format they can understand, along with a method for the person to appeal the decision provided.

It should be the responsibility of the relevant adult protection practitioners and of those chairing case conferences to ensure that the adult has been invited to meetings and that they are involved to maximise the likelihood of their attendance. This can include the provision of information, by asking them about the date, time and venue, discussing the number of other attendees, video conference options, and travel arrangements. Pre-meetings with the adult (and advocate, if appropriate) to fully explain the purpose of the meeting will assist in this, and can cover the agenda, discuss concerns regarding confidentiality or any other matters, consider language and communication needs, advocacy or other representation. The main aim is to assist the adult to understand the purpose of the meeting, their role within it and their participation.

There will be occasions and circumstances where it is not of benefit to the adult to attend meetings, or they may not wish to attend, due to illness or incapacity. It may be that such a meeting would be intimidating or distressing for an already distressed or traumatised adult. Support and information should be offered to the adult and, as appropriate, their carer or family, to assist with the options.

The adult also has the right to refuse to attend. It is important that the adult does not feel pressurised, however, and the possibility of undue influence affecting the

adult's hesitancy to participate should be considered. In all cases where the adult is not attending, the views and preferences of the adult should be sought and recorded in advance of the meeting, and another individual should represent those views on their behalf, such as an advocacy worker or other designated person. The reason for the adult not being present needs to be recorded as part of the minute of the meeting, and alternative methods identified for explaining fully to the adult what options were considered, what decisions were taken, and why.

Local procedures should stipulate that the allocated adult support practitioner should offer to visit the adult (and carer if appropriate) after any meeting to explain the discussions and decisions, and to ascertain whether any issues remain unaddressed or new issues have arisen.

Section 2(c) of the Act outlines the importance of having regard to the views of the adult's nearest relative, primary carer and any guardian or attorney, and any other person known to have an interest in the adult's wellbeing or property. The steps described above will help to meet this standard.

However, it will always be important to distinguish between the needs and perspectives of each person. There may be conflict between the needs of the adult and the carer due to differing perspectives and needs which will both require to be taken into account by workers throughout the adult support and protection process.

It may be that someone in a caring role or a guardian may cause harm either intentionally or unintentionally, and they might themselves also be at risk of harm. There can be significant complexity in a relationship, creating the potential for both parties to be both victim and harmer at different times.

In such situations information and assessments, for both the carer and adult at risk of harm, will need to be carefully considered. Some carers may have needs for support in communication and/or may benefit from independent advocacy support which must be independent of any advocacy worker for the adult.

Caring can have a significant impact on a carer's health and wellbeing. It may be that the adult's carer requires support with their caring responsibilities. The Carers (Scotland) Act 2016 , and associated guidance, provides information on the rights of carers to an adult carer support plan (or for young carers, a young carer statement) and associated matters.

Audit of adult participation

Adult Protection Committees should consider regular audits of the extent to which adults are enabled to participate fully in decision making, for example monitoring the number of meetings to which adults at risk are invited but do not attend, auditing the recording of reasons for non-attendance and including questions about this issue in regular audits of the experience of being protected. The uptake of advocacy services should also be included in audits.

Any audit of adult participation should seek to ensure contributions from adults themselves including their own comments on the process and outcomes.

Chapter 5: The information gathering process

This chapter covers Section 4 of the Act, which places a duty on councils to make **inquiries** about an adult at risk's well-being, property or financial affairs where the council **knows or believes** that it may need to intervene to protect the adult's wellbeing, property or financial affairs. **Good practice would ensure that a council officer is involved in overseeing or supervising all activity relating to the Act.**

The Act does not formalise a distinction between inquiries and investigations. Rather, an inquiry is the overarching process within which the investigatory powers set out in the Act (for instance the examination of records under section 10 of the Act) may be utilised to enable the council to fulfil its obligation to conduct inquiries. Initial information gathering may determine whether further action is required under ASP processes. If the determination is that the adult does not meet the 3-point criteria and/or that additional action under ASP is not required, inquiries would cease (with the caveat that other support or intervention activity may still be required, including onward referrals and involvement of services new or existent to the adult). All decision making and reasoning should be recorded. Initial information gathering may conclude that the adult meets the Act's three-point criteria and that intervention will be required to safeguard that individual under ASP processes. Further exploration, including risk assessment, will be needed (utilising **investigatory powers e.g. use of Sections 7-10 of the Act)** to determine the nature of the intervention(s) and safeguarding activity to be progressed. Investigatory powers may also be required to determine whether the adult is at risk, prior to determination of the interventions required. Investigative activity seeks to elicit more detailed, in depth information to contribute to decision making, risk assessment, and intervention planning without the use of Sections 7-10 of the Act.

Thus, where ASP intervention is, or may be, required to safeguard an adult at risk of harm after initial inquiries (information gathering), the exploration may need to utilise more investigative processes, some of which are defined by powers in the Act.

Referrals

A council's knowledge or belief that an adult may be at risk of harm, and which then triggers their duty under to inquire under section 4 of the Act, may arise from a referral. Any referral suggesting that an adult may be at risk of harm, including anonymous referrals, should be considered without assuming that harm has, or has not, occurred. All referrals warrant a carefully considered and measured response, and should be acted upon as a source of information that may or may not be presented as evidence at a later stage.

A referral may be made to a council in a number of ways, but most usually will be either:

- by a referrer who uses an ASP notification process or referral form, or otherwise specifies that they are referring an adult they think may be in need of support or protection under the Act; or
- by a referrer who is raising a more general concern, which is then escalated on receipt to be treated under adult support and protection procedures.

The adult's consent is not required for a referral to be made.

Councils should publish information that provides details of how an adult protection referral can be made, and this will vary from area to area. They should be flexible in how they deal with referrals. For example it should not be necessary for referrals from members of the public to be submitted in writing. Whist this will usually be the expectation from other agencies, it should not be an absolute requirement. Equally, there will be circumstances where it would be appropriate for a referral to be submitted by phone, and to be then converted into a written referral by the officer of the council taking the referral.

Staff and office-holders, in any public body or agency, who may be a first point of contact with the public should be made aware of the main provisions of the Act and must make appropriate referrals to the relevant council social work services, and in some cases the police, in line with local arrangements as detailed in the local adult protection guidelines. Similarly, councils must ensure that staff who will be receiving referrals from the public and other sources are aware of the main provisions of the Act in order that they can process referrals appropriately for further action.

Welfare concerns

Welfare concerns may now be submitted to councils. While these submissions were originally only from Police Scotland, many partnerships now also accept welfare concerns from a range of other agencies including the Scottish Fire & Rescue Service, the NHS, and provider organisations. These arise where the police or others are aware of a person about whom they have concerns, but who they think will not fall within the provisions of the Act. Welfare concern submissions can be a valuable way to share information and can contribute to chronology and risk assessment development.

All welfare concerns should be screened and a decision made about further action. Welfare concerns can be escalated to be dealt with as adult support and protection, if appropriate. Where a determination is made that the referral relates to a person that the council knows or believes to be an adult at risk then an inquiry should be initiated under Section 4 of the Act.

In cases where the referral relates to a person under 18 years of age, child protection processes may be appropriate. Welfare concerns allow for review and

update to chronologies; and review of previous contacts, allowing practitioners to track changes, look at patterns and undertake contextual analysis.

Welfare concerns may be dealt with as per the Social Work (Scotland) Act 1968; as noted in Chapter 2, they may trigger involvement of other agencies and/or the use of other legislation.

Other agencies

A council may be assisted in its duty to inquire through various sources, for example statutory bodies and independent and third sector providers.

Where inquiries under Section 4 have indicated that a **criminal offence** may have been committed against the adult, this should be reported to the police at the earliest opportunity. The role of the police in investigating crime should not be compromised. Particularly important is ensuring that evidence is not destroyed or contaminated before the police arrive at the scene. This does not remove the responsibility on the council to take any immediate action to protect the adult at risk in such cases but any proposed action should be taken in consultation with the police.

The adult should be kept fully informed at every stage of the process in a manner or format which best suits their needs. Any reason why this does not happen should be recorded.

Inquiries

Inquiries under Section 4 of the Act will be carried out by the council's social work service and should follow local adult support and protection procedures. An inquiry is used to gather information to determine if the person meets the three-point criteria and if any action is required to intervene. Inquiries may be triggered by an ASP notification process or referral form, or a referrer who otherwise specifies that they are referring an adult they think may be in need of support or protection under the Act.

The council should consult and work in partnership with other agencies and conduct inquiries to establish where there is a need for further investigation and intervention. Other professionals, such as the police, the Care Inspectorate, third or independent sector care providers or health professionals may be asked to assist.

It is best practice that the adult who is subject to the inquiry should be informed that they are subject to an ASP inquiry and that their views will be sought. It is recommended that these initial conversations – in any format - are undertaken by a Council Officer.

An inquiry does not need to be (but can be) undertaken by a council officer. Only when specific actions need to be taken is there a requirement for a council officer; these actions relate to when there is a need for a visit and direct contact with the adult for interview or medical examination, or for the examination of

records. **Good practice would ensure that a council officer is involved in overseeing or supervising all activity relating to the Act.**

An inquiry, insofar as it does not relate to any of these actions, will not need to be undertaken by a council officer, and can include the collation and consideration of relevant material, including consideration of previous records relating to the individual, and seeking the views of other agencies and professionals.

For some people, this process will allow a determination to be made as to whether or not the adult is at risk as defined by the Act. If it is determined that the adult is at risk it is likely that further adult support and protection activity requires to be undertaken by a council officer, including visits to and interviews with the adult at risk of harm.

If desktop inquiries do not provide sufficient information to determine whether or not the adult is at risk, then further steps should be taken to allow for such a determination to be made. If this involves a visit and direct contact with the adult for interview or medical examination, or for the examination of records, the Act requires that a council officer must be involved.

If the risk of harm is thought to arise from a carer, and particularly an unpaid carer, the inquiry should also try to gain a picture of the carer's situation. Workers should be aware that unpaid carers may also experience disabilities or ill health which may impact on their caring role. It is well evidenced that caring, particularly without appropriate support, can have a significant impact on carers' health, wellbeing and quality of life. It will therefore be important to recognise and acknowledge these strains on the carer and explore what support could be provided to them or to the adult which may alleviate these.

Similarly, the possibility that a Guardian or similar proxy might present some form of risk will need to be considered. This may bring additional complexity, particularly in relation to consent and undue pressure.

The Council should endeavour to inform referring individuals or agencies of the outcome of the inquiry, though this may vary by local arrangement for some referral sources, including Police Scotland, who may not be contacted following all referrals. This will be at a level of detail appropriate to the circumstances, and consistent with the need to maintain confidentiality in relation to the adult. This will also be influenced by the level of involvement of the referrer in the inquiry, and the interest they have in the outcome of the inquiry in terms of their responsibilities towards the individual. For example, should a member of the public ask for the outcome regarding a referral they had made, they would not be told any specific details that compromised confidentiality without the adult's consent.

It is best practice if, where an inquiry is commenced and the alleged harmer has Power of Attorney or is a Financial Guardian, that the Office of the Public Guardian is notified both of a potential issue and of the outcome of the inquiry.

Inter-agency Referral Discussions

Some areas in Scotland have procedures that involve Inter-agency Referral Discussions (sometimes also called Initial Referral Discussions). An IRD is a professional discussion held with relevant representatives from social work, health, police and any other agency with knowledge of the adult at risk of harm; IRD processes, including criteria for convening them, vary. The sharing of information and planning of approaches can be conducted by phone, electronically, or in person. IRDs provide a forum for inter-agency discussion and decision-making about the next steps in protecting an individual. As such, they will broadly address the same matters as outlined above in the initial stage of an inquiry but build in an expectation of inter-agency engagement and discussion to the process. It is for local partnerships to decide if they include IRDs in their processes.

It should be noted that, in the case of 16-17 year olds who may be considered as children and therefore treated according to child protection processes, the range of consideration within an IRD for a 16-17 year old who may be at risk of significant harm may be broader and less optional to those indicated above. More information is available in the Child Protection guidance.

Where an adult at risk declines to participate

An adult may appear to meet the criteria of an adult at risk under the terms of the Act, but may indicate that they do not want support and/or protection. This can mean that, in effect, the adult decides not to co-operate with inquiries or other actions being undertaken.

Such a decision not to co-operate does not absolve the council and its partners of responsibilities to make inquiries about the adult's circumstances and the degree of risk. Also, any inquiries should consider the adult's capacity to understand the risks they are exposed to and the possible consequences of not engaging with inquiries, risk assessment, or protective intervention. Practitioners should retain a trauma informed approach when considering reasons for an adult not engaging and remain alert to the possibility that undue pressure might have contributed to a decision to refuse co-operation.

Even if there are no concerns in relation to capacity or undue pressure, the adult's refusal to co-operate in an adult protection inquiry should not automatically signal the end of any inquiry, assessment or intervention. Whilst the adult has a right not to engage in any such process, the council and its partners should still work together to offer any advice, assistance and support to help manage any identified significant risks. Any assistance should be proportionate to the risk identified and any need to support carers' needs should be considered.

Where no further adult support and protection action is required

If it is determined that the adult does not meet the three-point criteria, this decision does not preclude considering other relevant legislation, local procedures or alternative services to respond to the individual's needs. This could include practical support, health, social work or social care support provided on a single or multi-agency basis.

The council may decide that nothing further needs to be done, either under the terms of the Act or otherwise. This conclusion would only be arrived at once inquiries have been carried out and all people with a relevant contribution have been consulted.

Where it is decided that no further action is required, the council should record this decision, the circumstances which gave rise to the inquiries, the actions taken and why they believed that action was not required under adult protection or other legislation. Good practice would assume that written consideration was given to the three elements of the three-point criteria. The record or report should then be added to the person's case file or in line with their standard procedures for recording actions on referrals.

Chapter 6: Adult protection investigative powers

This and the following three chapters provide guidance on sections 7 to 10 and the powers that council officers have when conducting adult protection investigations. This includes guidance on making visits, undertaking interviews, arranging medical examinations and examining records.

Investigations: Investigative powers used during inquiries

The purpose of investigative powers under the Act is to enable the council to fulfil its obligation to conduct inquiries under section 4. Investigative powers under Sections 7-10 can be used:

- to determine what action is required to protect the adult from harm;
- to gather further information not already captured in order to determine whether the adult is at risk; or
- to gather further information not already gathered to determine whether further action is required to protect the adult from harm.

An adult protection investigation will contain any or all of the following elements, all of which require the involvement of a council officer:

- a visit;
- an interview with the adult;
- a medical examination of the adult;
- the examination of records.

A combination of these actions may then lead on to an application for a protection order.
The Act states that:

- a visit may be undertaken to assist the council in conducting inquiries;
- interviews may be undertaken with any adult present during a visit;
- medical examinations and the examination of records may be undertaken when the council officer knows or believes the adult may be at risk of harm (i.e. examinations can be undertaken as part of an inquiry but before a determination has been made as to whether or not the adult is at risk of harm);
- the purpose of an assessment order is to establish whether the person is an adult at risk.

As per Section 4, a council has a duty to inquire to decide whether it needs to do anything in order to protect an adult at risk from harm. That harm may relate to their wellbeing, property or financial affairs. As part of those inquiries, there are some activities (use of investigative powers under the Act) which may only be undertaken by a council officer or by another person accompanying them, including visits, interviews, a medical examination, and examination of records.

Investigation activity should be carefully planned and managed to ensure that:

i. all available information is gathered and considered;
ii. the adult is fully supported to contribute;
iii. any medical evidence and medical intervention is provided; and
iv. the police are notified if it is thought a crime may have been committed
v. a determination can be made as to whether the adult meets the three-point criteria as an adult at risk; and
vi. appropriate arrangements can be made for support for, and protection of, the adult, by performing functions under the Act or otherwise.

What is the purpose of a visit?

It is likely that a visit to the adult and the interview with them will be central to adult support and protection processes, including information gathering, determination of the three-point criteria, risk assessment, and determination of actions to be taken.

Section 7 of the Act allows a council officer to enter any place and adjacent place to make the necessary investigations to:

- enable or assist the council in conducting inquiries under Section 4 to decide whether the adult is an adult at risk of harm; and

- establish whether the council needs to take any action in order to protect the adult at risk from harm.

Circumstances may arise where an interview would not be undertaken as a physical visit to meet with the adult. The experience of the coronavirus pandemic in 2020 and 2021 showed that there were options for the use of telephone and new technology to allow for virtual meetings with both individuals and wider groups. In the context of an interview under Section 8 of the Act such options should only be used if there are strong reasons to do so (largely related to safety and infection control concerns arising out of a physical visit), and these reasons should be recorded.

It is reasonable to assume that a virtual encounter with an adult thought to be at risk of harm, for the purposes of inquiring into or investigating their circumstances, should be regarded as an interview in exactly the same way as if it had been a physical encounter. This means that in such cases all the requirements of a physical visit should still be met, including the council officer providing evidence of their authorisation.

The council officer's power to interview an adult found in a place being visited, is a power to interview them in private. Where such virtual meetings and interviews do take place, council officers should be alert to whether there may be other people in the room of the person being interviewed who may therefore be in a position to influence by word or gesture the responses from the adult.

What should be considered prior to a visit?

Any person performing a function under the Act must have regard to the principles of the Act. These include whether the action is the least restrictive option necessary whilst providing benefit to the adult. The views of the adult, the adult's nearest relative, primary carer, guardian, attorney, and others so far as relevant, must also be taken into account.

If the council considers intervention is necessary it must also have regard to the importance of providing appropriate services to the adult, for example independent advocacy or services to assist the adult, or other person in the household, to communicate.

Consideration should be given to the relevance of provisions contained in other legislation, for example the Adults with Incapacity (Scotland) Act 2000, the Mental Health (Care and Treatment) (Scotland) Act 2003, or other social work, police, health, housing or regulation of care legislation.

Who may undertake the visit?

Only a council officer, as defined in Section 53 of the Act and who meets the requirements of the Order described previously, can undertake a visit. The council officer may be accompanied by another person. A joint visit with another person could assist the investigation in a number of ways, for example by:

- allowing the council officer to jointly investigate concerns with, for example, a key worker, a police officer, health professional or representative from the Care Inspectorate or Office of the Public Guardian;
- assisting an assessment of the risk to the adult, such as with a general practitioner, community nurse, key worker or other person already known to the adult and any other members of the household;
- assisting in record taking of the interview, and potentially being available as a second witness in the event of court proceedings; and
- assisting communication with the adult (or any other member of the household) by being accompanied by an interpreter in British Sign Language, lip speakers, a Makaton communicator, a deaf-blind communications interpreter, or a language interpreter where English is not the visited person's first language.

Local multi-agency procedures should specify when it is appropriate for the council officer to be assisted in the investigation by appropriately qualified and trained staff from either within the council or from other identified bodies or agencies.
In circumstances where there is an indication that the council officer carrying out the visit may encounter resistance from the person believed to be at risk of harm or from others at the premises, including the threat of verbal or physical violence, steps should be taken to ensure that staff are protected and supported in planning and executing the visit. Reference should be made to the council's violence to staff or lone working procedures to assess any potential risks and measures, such as staff visiting in pairs or liaising closely with the police, where necessary.

What places may be visited?

Section 7 permits a council officer to enter any place. In the majority of cases this will mean visiting the place where the adult normally resides, for example:

- the adult's rented or owner-occupied accommodation;
- the home of relatives, friends or others with whom the person resides;
- supported or sheltered accommodation staffed by paid carers;
- temporary or homeless accommodation; or
- a care home or other care setting.

A place could also include entering premises where the person is residing temporarily or spends part of their time, for example:

- a day centre;
- a place of education, employment or other activity;
- respite residential accommodation; or

- a hospital or other medical facility.

The council officer is allowed access to, and can examine, all parts of the place visited which might have a bearing on the investigation into the welfare, care and safety of the adult at risk. This right also includes access to any adjacent places, such as sheds, garages and outbuildings.

In the case of the visited adult's place of residence, this could include all areas used by or on behalf of the adult such as sleeping accommodation, facilities for hygiene, meal preparation areas and general living space.

When can a council officer visit?

Section 36 makes supplementary provision for visits carried out under Part 1 of the Act. Section 36(1) states that a council officer may only visit a place at 'reasonable times'. The Act recognises that a balance needs to be struck between the investigation of allegations of harm and the requirement, where practicable, to fully involve the visited adult and any other individuals in the process of investigation and assessment.

It may be that the visit is timed to take into account the likelihood of being able to speak to the adult in private. However good practice would be to give notice of the proposed visit, and of the purpose of the visit, to the individual(s) concerned where this would not be prejudicial to the safety or welfare of the adult at risk.

Professional judgement will be required as to the level and nature of the suspected risk to the visited adult and whether the adult is at risk of imminent significant harm. It is recognised that there may be times when the concern is such that an immediate visit at a time that might not otherwise be regarded as reasonable may be reasonable in particular circumstances in order to assess the risk and, if necessary, take action to protect the individual.

What evidence must a council officer produce?

A council officer must:

- state the object of the visit; and
- produce evidence of the officer's authorisation to visit the place.

It is recommended that anyone supporting the Council Officer on a visit provide evidence of their professional identification, to ensure that the adult is fully aware of the identity of each individual attending for adult support and protection purposes. There is an obligation to be clear that the purpose of the visit is to investigate a suspected risk of harm. Wherever possible, other people in the household should also be offered an explanation as to what is happening and why, without breaching the adult's right to confidentiality.

Every effort should be made to ensure that any information provided is in an appropriate form that the adult, or other person present, can understand.

What if entry is refused?

There may be times when the council officer is refused entry to the premises. Where this happens, the council officer should initially consider how entry may be achieved, without resorting to seeking a warrant from a sheriff authorising entry as a first course of action. As stated in Section 36 (4) of the Act, a council officer may not use force during, or in order to facilitate, a visit. Provided delay would not increase the risk to the adult, it would be good practice to have a multi-disciplinary discussion and plan to coordinate action by those involved before deciding whether to apply for a warrant. Particular regard should be given to minimising distress and risk to the adult. The views of any other persons who may be concerned for the welfare of the adult should be taken into account. Where a warrant authorising entry to premises is sought and provided, this will allow a constable to accompany the council officer and to use reasonable force to fulfil the object of the visit.

What does a warrant allow?

A warrant authorises a council officer to visit (under section 7) any place specified in the warrant, accompanied by a constable. The accompanying constable may use reasonable force where necessary to fulfil the object of the visit. This may include the constable opening places which are secured by a lock, therefore it would be expected that the council would take all reasonable steps to ensure the security of the person's premises and belongings if force has been required to enter the premises.

Wherever possible, entry to premises should first be attempted without force. It must be borne in mind that the use of force is an absolute last resort, to be used in very exceptional circumstances, and only when all other options have been exhausted.

A warrant for entry does not entitle any person to remain in the place entered in pursuance of the warrant after the warrant has expired.

Granting of a warrant

Sections 37 and 38(2) of the Act make provision for warrants of entry in relation to section 7 visits. Only the council can apply for a warrant for entry.

The sheriff may only grant a warrant for entry in relation to a visit where they are satisfied that:

- a council officer has been, or reasonably expects to be, refused entry; or
- a council officer will otherwise be unable to enter; or

- any attempt by a council officer to visit the place without such a warrant would defeat the object of the visit.

The warrant expires 72 hours after it has been granted. Once a warrant has expired, the council officer must not re-enter or remain in that place on the basis of that warrant. **Once a warrant has been executed, it cannot be used again.**

What can be done in cases of urgency?

Section 40 of the Act provides that an application for a warrant for entry can be made to a justice of the peace, instead of the sheriff, only if it is impracticable to make the application to the sheriff and an adult at risk is likely to be harmed if there is any delay in granting the warrant. An application must be made to the sheriff wherever possible.

A warrant for entry granted by a justice of the peace expires 12 hours after it has been granted. Once a warrant has been executed, it cannot be used again.

Chapter 7: Interviews conducted as part of the adult support and protection process

This chapter provides guidance on Section 8 of the Act, which permits a council officer and any person accompanying them, to interview any adult present at the place of the visit under section 7. This therefore applies to any adult from the point at which an inquiry has been initiated until such times as adult support and protection procedures have ended.

What is an interview?

Section 8 permits a council officer, and anyone accompanying the officer, to interview an adult in private within the place being visited as part of undertaking adult protection inquiries.

This power applies regardless of whether a sheriff has granted an assessment order authorising the council officer to take the person to another place to allow an interview to be conducted.

The purpose of an interview is to enable or assist the council to gather information directly from an individual to assist the council in determining if the individual is at risk or harm, and/or what action may be required. The interview may include:

- establishing if the adult has been subject to harm;
- determining whether the adult is at risk of harm;
- establishing if the adult feels their safety is at risk and from whom;
- discussing what action, if any, the adult wishes or is able to take to protect themselves; and

- discussing what action, if any, others can take to protect the adult.

Officers conducting interviews will need to ensure appropriate recording of the content of the interview and any decisions made by the adult, including those about who attends e.g. a family member. Local multi-agency procedures will give guidance to such officers on the expectations of recording and what format this should take.

Where can an adult be interviewed?

An interview may take place within any place being visited. This could be, for example, the adult's home, a day centre, care home or hospital. The decision about where to conduct the interview will be taken by the council officer and all those involved in planning of the detailed investigations on the basis of information received. This will involve a judgement based on the wishes of the adult themselves and ensuring that the adult can participate as fully and freely as possible. The council officer may also make available an independent advocate to assist the adult with the interview.

The timing of the interview should be guided by a planned process of investigation, taking into account local inter-agency protocols and procedures.

Considering the adult's rights during an interview

Section 8(2) provides that the adult is not required to answer any questions. The adult **must** be informed of that fact before the interview commences. The adult can choose to answer any question put to them but the purpose of this section is to ensure that they are not forced to answer any question that they choose not to answer. Support must be provided where necessary in order to enable the adult to come to a decision on whether to answer any questions – for instance, where they have some level of incapacity.

In keeping with the Act's principles, an adult must be assisted to participate as fully as possible in any interview(s). Where an adult can make some contribution (or participate to some extent), the planning process for the interview must consider all appropriate ways of assisting the person to participate. This might include the use of communication aids, consideration of the location of the interview and of the personnel present during an interview. The purpose of support will be to assist the adult to contribute whilst always protecting the rights of the adult.

The use of independent advocacy and/or the presence of other support people during an interview are some options the planning process might consider.

Seeking the consent of the adult to be interviewed requires a more proactive approach than simply advising the adult that they are not obliged to answer questions. The point is to ensure that the adult is given reasonable opportunity and encouragement to answer questions whilst respecting their right not to.

Section 35(6) does not permit a council officer or medical practitioner to ignore an adult's refusal to be interviewed or medically examined even after an assessment order has been granted.

Capacity

In any interview, gaining the consent of the adult to be interviewed should be the norm. The council officer should also consider the adult's capacity and promote the adult's participation in the interview.

A person's capacity can vary over time and in respect of different types of decision making. While capacity or lack of capacity does not determine an assessment of the three-point criteria, capacity is relevant in relation to the ability to consent to, for example, a medical examination or to take decisions relating to care arrangements or financial dealings**. Capacity applies to both decision making and the implementation of decisions**. A person can have the capacity to make a particular decision but through illness, traumatic event, or infirmity may not have the physical or emotional capacity to retain a memory of a decision and/ or to implement that decision.

A person's capacity can be transient, vary over time and vary in respect of different types of decision making. As capacity can change over time, it should be assessed at the time that consent is required. When considering capacity, practitioners must also consider factors such as the adult's mood or state of mind, lack of confidence - or lack of experience - in making decisions or carrying out decisions, and the individual's ability to retain the memory of the decision.

In seeking advice regarding a person's capacity it is important that the determination of capacity is specific in relation to which areas of decision making and executive action the person may lack capacity.

Some or all of the following factors may be considered where there is doubt about the adult's mental capacity:

- does the adult understand the nature of what is being asked and why?
- is the adult capable of expressing their wishes/choices?
- does the adult have an awareness of the risks/benefits involved?
- can the adult be made aware of their right to refuse to answer questions as well as the possible consequences of doing so?

The possible scenarios that may emerge include the following:

I. the adult has capacity and agrees to be interviewed;
II. the adult has capacity and declines to be interviewed;
III. the adult lacks capacity and is unable to consent to being interviewed

IV. the adult has capacity but is thought to have been influenced by some other person to refuse consent

If the adult is thought to have been influenced to refuse consent, consideration should be given to whether there has been undue pressure applied . It may then be necessary to consider applying for an Assessment Order in order to, for example, interview the adult in private.
A lack of capacity to consent to being interviewed may not prevent the adult participating in the interview process.

If the adult lacks capacity to consent, or lacks capacity to refuse to consent to interview and/or interventions, such as protection orders under the Act, the council should contact the Office of the Public Guardian to ascertain whether the person has granted a welfare power of attorney or if there is a welfare guardian with the relevant powers to consent (or refuse to consent) on their behalf. Where no guardian or attorney has such powers, consideration may be given to whether it is appropriate to use provisions in the Adults with Incapacity (Scotland) Act 2000 or the Mental Health (Care and Treatment) (Scotland) Act 2003.

In relation to protection orders, the sheriff has discretion to appoint a safeguarder to safeguard the interests of the adult at risk before deciding the application, as per Section 41(6) of the Act.

Capacity and consent is a complex area. Additional resources can be found here: Adults with incapacity: guide to assessing capacity

The council also must promote the adult's participation in interview by taking account of the adult's needs, where these are identified. Further guidance regarding how to implement the principle of participation in adult support and protection activity can be found in Chapter 4.

Can an adult be interviewed with others present?

It is good practice to ask an adult whether they would wish another person to be present during the interview, and to facilitate this where possible. For example, a family member, paid carer or an independent advocacy worker may be requested by the adult. Consideration should be given to potential undue influence; be mindful of the situation and environment in which the adult is asked about their preferences for the presence of another person. Also be mindful of the impact of any interview on others. It is **inappropriate to use children as interpreters**. Children, for example, should not be present to discuss complex concerns or risks. Depending on the content of the interview, those present could also experience vicarious trauma through listening to sensitive and distressing information concerning the individual's experiences.

Section 8 allows a council officer, and any person accompanying the officer, to interview the adult in private. Whether or not the adult should be interviewed in private will be decided on the basis of whether this would assist in achieving the objectives of the investigation. The council officer or persons accompanying them may decide to request a private interview with the adult where:

- a person present is thought to have caused harm or poses a risk of harm to the adult;
- the adult indicates that they do not wish the person to be present;
- it is believed that the adult will communicate more freely if interviewed alone; or
- there is a concern of undue influence from others.

Can anyone else be interviewed?

Section 8 allows the interviewing of any adult found in a place being visited under Section 7 of the Act. For example, in some circumstances it may be in the interest of the adult for another person to also be interviewed. For example, an interview may be helpful with someone who shares their home with the adult or, in a regulated care setting, a care worker. Section 8(2) provides that anyone interviewed under this section is not required to answer any questions, and that they must be informed of this before the interview commences.

Chapter 8: Assessing and managing the risk of harm

The Act provides the legislative framework within which partnerships should establish and implement their own multi-agency procedures and processes. This chapter addresses some of the matters that partnerships should bear in mind in developing these procedures, particularly in relation to multi-agency risk assessment and decision making processes, and also with regard to large scale investigations and learning reviews (prior to May 2022, referred to as Initial and Significant Case Reviews).

Risk assessment and management

The provisions of the Act are concerned with adults at risk of harm. Local procedures should therefore concentrate on the following:

- an assessment of whether the adult is at risk of harm;
- an assessment of the nature and severity of any risks identified, including when and where the adult may be placed at risk and an identification of the factors that will impact on the likelihood of risk;
- the identification of reasonable and proportionate timescales for undertaking inquiries and assessments;
- the collation and analysis of a multi-agency chronology, and its contribution to risk assessment;
- the development of a support and protection plan (that can be single or multi-agency), that identifies actions and supports that will eliminate or reduce the risks identified;

- reviewing and amending support and protection plans as risks and circumstances change;
- reviewing whether the adult continues to meet the criteria for an adult at risk of harm, and if not, whether there are other supports that will still be required outside of the provisions of the Act.

Many referrals that are made concerning people who are believed to be at risk of harm will result in a determination that they are not at risk of harm and therefore require no further action under the provisions of the Act. This does not preclude other support or involvement through other relevant legislation, local procedures or alternative services to respond to the individual's needs.

For other adults the inquiries will determine that they are at risk of harm and will need continuing assistance with their support and protection. Such a determination will follow from an assessment process that should involve all relevant agencies. Some cases will involve few or single agency involvement. Others will require the involvement of a wide range of agencies.

To ensure robust risk assessment, any reports generated as part of, or at the conclusion of, inquiries, including use of investigative powers, should include all relevant information and a chronology, to be completed by the council officer. Analysis of risk and the adult's ability to safeguard themselves are key. Reports should also include information pertaining to significant others in the adult's life, and provide a clear overview of the risks, vulnerabilities and protective factors, as well as the adult's views.

Good practice suggests that any risk assessment is accompanied by a risk management plan. This can be developed at any point of the adult support and protection activity and should be updated to reflect emergent and relevant information. Partnerships may wish to embed risk management plans into their inquiry and investigation processes. Risk management/protection planning work should evolve over time and be adjusted as needed during activity.

A good risk management plan will clearly outline the risks, outline the protective factors, invite some analysis reflects multi-agency views including concerns, and say clearly what action was being taken to mitigate the risks identified. A good risk management plan will clearly demonstrate what support and protection measures are being put in place where, when and why.

Chronologies

Chronologies are an essential feature of risk assessment in adult support and protection activity.
A chronology is:

- a summary of events key to the understanding of need and risk, extracted from comprehensive case records and organised in date order
- a summary which reflects both strengths and concerns evidenced over time
- a summary which highlights patterns and incidents critical to understanding of need, risk and harm

- a tool which should be used to inform understanding of need and risk. In this context, this means risk of harm to an adult

A chronology may be:

- single-agency
- multi-agency

A multi-agency chronology must comply with information sharing guidance and protocols in the way that it is developed, held, shared and reviewed; reflecting information sharing guidance in this document, including duties to cooperate under Section 5 of the Act. It must be **accurate, relevant and proportionate** to purpose.

A multi-agency chronology:

- is a synthesis which draws on single-agency chronologies
- reflects relevant experiences and impact of events for the adult
- will include turning points, indications of progress and/or relapse
- will inform analysis, but is not in itself an assessment
- may evolve in a flexible way to integrate further necessary detail
- may highlight further assessment, exploration or support that may be needed
- is a tool which should be used in supervision

A chronology, whether single- or multi-agency:

- is not a comprehensive case record and cannot substitute for such records
- is not a list of exclusively adverse circumstances

A multi-agency chronology is most likely to be developed by the council officer as part of inquiries, to contribute to the risk assessment and subsequent decisions. Contribution to the chronology is a collective responsibility. Forming a chronology should assist a shared understanding with and between those involved in the risk assessment, as well as to contribute to any subsequent support and protection plan, if appropriate. The perspective of the adult at the centre of the adult protection process should be explored to gain understanding of the impact of events and to check their perception of accuracy.

The format of a chronology should record purpose, authorship and date of completion. It should include the nature and sequence of events; outcomes or impact on the adult; sources of information; and responses to events as necessary for the purpose of this adult support and protection assessment. Guidance is provided in the Care Inspectorate's Practice guide to chronologies 2017.

Case conferences

In all cases the assessment process should be based on information supplied by all relevant agencies. This will be coordinated through the Council, with the council officer having a key role in the process.

Subsequent to inquiries and investigative activity, the multi-agency assessment may be considered by an interagency Adult Support and Protection Case Conference. A case conference could be convened when there are concerns that an adult is at risk of harm and the engagement of the adult and all relevant agencies in the assessment of risks and strengths, and in planning for next steps, is required. This will be assisted by the collation, in advance of the case conference, of up to date and well balanced inter-agency chronologies. The collated chronology may be updated to reflect information arising from the case conference.

Multi-agency adult support and protection procedures should give guidance on the convening of meetings of agencies as the best approach to managing risk by agreeing a support and protection plan. The guidance should include reference to who chairs case conferences, noting that the chairperson role requires someone who is well-versed in the Act. The chairperson should have significant experience in adult protection practice; have sufficient authority, skill and experience to carry out the functions of the chair; and be able to challenge all contributing services on progress in supporting and/or protecting the adult at risk of harm. Local areas may wish to include in their ASP learning and development plans training for those responsible for chairing multi-disciplinary case conferences, supervision and support of practitioners, and decision-making.

The chair's role includes:

- agreeing who to invite and ensuring that all persons invited to the case conference (or review case conference) understand its purpose, functions and the relevance of their particular contribution
- sharing with the adult the nature of the meeting, and possible outcomes
- ensuring that the adult's views are taken into account
- facilitating information-sharing, analysis and consensus about the risks and protective factors
- facilitating decisions and determining the way forward, as necessary
- if progressing with a support and protection plan, facilitating the identification of a core group of staff responsible for implementing and monitoring the support and protection plan
- agreeing review dates
- following up on actions and responsibilities when these have not been met.

Such meetings should be as inclusive as possible with the presumption that, barring serious risks to attendance, the adult themselves will be in attendance or that arrangements have been made to ensure that the adult's views and wishes can be conveyed to the meeting. Consideration of timing, venue and accessibility of meetings can assist in making it easier for the adult to attend. The adult does have the right to decide not to attend and this should be respected, unless there is reason to believe that this decision has come about as a result of undue pressure.

The purpose of such meetings will be defined by local procedures, but should include the sharing of information relating to possible harm, the joint assessment of current and ongoing risk, the continued implementation of any existent management plan, and the need to consider and, if appropriate, agree a specific and detailed support and protection plan. Any plan should include timescales for addressing risks and providing services to support and protect the adult. The plan should include reference to the adult's views, strengths, needs and concerns over time, for the purpose of reducing risk of harm.

The needs of many people may mean that a case conference convened as part of adult support and protection concerns may also need to consider other options for protecting people including under the provisions of the Mental Health (Care and Treatment) (Scotland) Act 2003, and the Adults with Incapacity (Scotland) Act 2000. However, such considerations should not compromise any actions that may need to be taken under Adult Support and Protection legislation. It may be helpful to have a Mental Health Officer present at a case conference.

During the Covid pandemic in 2020 greater use has been made of virtual meetings and case conferences. Such meetings will require special consideration in the context of enabling the adult to participate as fully as possible, not only in relation to how readily they can use new technology but also in preparation for what can feel very different to a face-to-face meeting.

If the meetings of the agencies with the adult are to be effective it is essential that:

- **the chairperson is trained in the skills necessary** for that role including training on communication support and the ability to take account of the wishes and feelings of the adult at risk and the outcomes which matter to them. Arrangements vary across Scotland but the chairperson is usually either a manager at team leader level or, in some areas an officer whose specific role is to chair such meetings and who has no direct involvement in service provision;
- where the **adult at risk has not attended, the reasons** for this are recorded;
- consideration should be given to the **size of the meeting** when the adult is present in order not to make the meeting overwhelming;
- the **meeting has accurate minutes** and sets out who has been invited and who is present (for audit purposes those who have not responded should also be noted) and who has contributed information either in person at the meeting or through previous submissions;
- a support and **protection plan** may be agreed across all relevant agencies, including identification of who is responsible for each aspect of the support and protection plan, the anticipated timetable, and reporting arrangements;
- **the adult has been able to contribute** to the fullest possible extent and they understand the actions in the support and protection plan. Where the adult has not attended, arrangements must be agreed for how the outcome of the meeting is explained to them, and who will be responsible for doing this;

- a **date for a review meeting** has been agreed, unless it has been agreed that no further actions are required under the terms of the Act.

There will be occasions where the alleged perpetrator of harm may be a carer or relative of the adult at risk of harm. In such circumstances there may also be a need to consider the provision of support to the alleged harmer as well as to the adult themselves.

If a review meeting has been agreed, the decision may also be taken to convene a **core group** between case conferences. A lead professional – likely to be the council officer - should be identified to be kept informed of relevant updates relating to the adult and implementation of the support and protection plan; and lead professionals to comprise the core group who will work with the plan should be identified.

The core group would be those who have direct and ongoing involvement with the adult, and may also include the adult. They are responsible for implementing, monitoring and reviewing the support and protection plan, in partnership with the adult. The core group should:

- be co-ordinated by the lead professional;
- meet on a regular basis to carry out their functions;
- keep effective communication between all services and agencies involved with the adult;
- activate contingency plans promptly when progress is not made or circumstances deteriorate;
- recommend the need for any significant changes in the plan to the case conference chair and provide updates to the review case conference, including any update to risk assessment and chronology;
- be alert, individually and collectively, to escalating concerns that may require immediate response and/or additional support.

Large scale investigations

The Act makes no reference to large scale investigations (LSIs), but these have become increasingly prevalent across Scotland since the implementation of the Act. LSIs may be viewed as an example of public bodies and other agencies / office-holders performing their functions under Section 5 and co-operating with each other to protect adults at risk of harm. Many partnerships have their own procedures, sometimes across a number of partnerships (e.g. within one Health Board area). LSIs frequently involve other agencies including the Care Inspectorate, the NHS and the police. At this time, there are no nationally agreed definitions of what warrants an LSI, nor guidance for conducting LSIs, or for governance arrangements locally. This section of the Code provides some broad guidance for consideration by partnerships in developing their LSI procedures.

An LSI may be required where there is reason to believe that adults who are service users of a care home, supported accommodation, an NHS hospital or other facility, or who receive services in their own home, may be at risk of harm

due to another service user, a member of staff, some failing or deficit in the management regime, or in the environment of the establishment or service. An LSI may also be indicated by the need to address structures or systems that lead to possible harm for all those under such structures. In such circumstances, this means that there is a belief that a particular service may be placing some or all of its residents or service users at risk of harm.

An LSI should be considered if one or more of the following applies:

- an adult protection referral is received that involves 2 or more adults living within or cared for by the same service;
- a referral is received regarding one adult, but the nature of the referral raises queries regarding the standard of care provided by a service;
- where more than one perpetrator is suspected;
- institutional harm is suspected;
- a whistle-blower has made serious allegations regarding a service;
- there are significant concerns regarding the quality of care provided and a service's ability to improve. These concerns could come from a regulatory body such as the Care Inspectorate;
- an adult or adults are living independently within the community but are subject to harm from a perpetrator or group of perpetrators, or it is strongly suspected that more than one adult is subject to such harm;
- concerns regarding an adult are raised following their admission to hospital or discharge. This may include concerns about a care service that are evidenced by an admission to hospital, or concerns regarding an NHS service area;
- concerns are raised via a complaint to the Care Inspectorate, NHS Board, or the local Council or Health and Social Care Partnership;
- concerns are raised by General Practices, District Nurses, Dentists, Allied Health Professionals etc. who attend a service.

Harm in a care setting may include:

- Financial, physical or sexual abuse;
- Neglect or omission of care;
- Exploitation, coercion or undue influence to the detriment of the adult;
- Psychological abuse, however subtle;
- Undignified or degrading treatment.

Initial consideration should take place regarding the need for an LSI, including discussion with all other relevant agencies. A decision whether to proceed to an LSI would be expected to take place in a multi-agency meeting, and such meetings would be expected to be chaired by a senior officer of the council with sufficient seniority to affect strategic and operational changes (e.g., Head of Service level or above).

The range of agencies involved in an LSI will vary but will always involve:

- the Council and HSCP, including contracts and commission staff;
- the Care Inspectorate;

- the service provider responsible for the care of the adults.

According to circumstances the following, amongst others, may also be involved:

- Police Scotland;
- the wider NHS;
- General Practices;
- the Office of the Public Guardian;
- the Mental Welfare Commission;
- Health Care Improvement Scotland;
- other councils and partnerships may become involved if they have people placed in the service subject to the LSI.

If an LSI is instituted a lead officer should be appointed and an oversight group established. All regulatory agencies and staff will have a role to play. Operational staff will have a high level of involvement as individual inquiries and any subsequent investigation activity is undertaken.

It is possible that a number of residents or service users will have support and protection plans put in place. There may also be a service-level action plan developed regarding areas identified for improvement. These may include themes such as quality of care; processes and procedures; leadership and management; or systemic issues arising across the service and/or service provider. Action to address structural and systemic harm will likely include the care provider and regulatory partners, such as the Care Inspectorate, to support service improvement while ensuring improved outcomes for residents and service users.

The large scale investigation, and subsequent protection planning and associated actions, must remain proportionate and reflect the individual needs of all the residents, including considerations related to continuity of care. The residents and families of residents should be kept informed of the progress of the investigation. Local procedures should also give consideration to how service providers will be engaged in LSI processes, including attendance at meetings, to promote collaboration in the reduction of harm and improved outcomes for service users.

The individual support and protection plans and service-wide improvement plan will remain in place until agreed that they are no longer necessary. Individual support and protection plans will be overseen through normal case conference processes. The improvement plan may be monitored by the oversight group.

Local procedures should make clear the process and governance arrangements by which an LSI can be concluded, based on progress against the protection plans, any improvement plan and activity, and any ongoing risk to service users.

LSIs often take place in parallel with other investigations, for example NHS-led Adverse Event Reviews or Care Inspectorate activity. Every effort should be made to coordinate such overlapping investigations to minimise duplication and maximise the opportunity for interagency learning.

Senior managers in partnerships are responsible for initiating and overseeing LSIs. They should keep Adult Protection Committees regularly appraised of the progress of any LSIs that may be underway, and provide the Committee with a final report once the LSI is concluded. Such reporting could include the identification of patterns or themes arising in regulated care settings. This will ensure that any necessary actions arising out of the LSI relating to the duties of Adult Protection Committee can be noted and necessary responses actioned, noting that regulatory bodies may have ongoing responsibilities in keeping with their remit.

Adult Protection Committees should advise Chief Officer Groups accordingly.

Learning Reviews

The approach to Significant Case Reviews has been revised, with key objectives to ensure that essential recommendations translate into **effective learning to prevent recurrence** of the most serious events regarding adults at risk of harm. To this end these reports are now called Learning Reviews.

An Adult Support and Protection Learning Review is a **means for public bodies and office holders** with responsibilities relating to the protection of adults at risk of harm **to learn lessons** from considering the circumstances where an adult at risk has died or been significantly harmed. It is carried out by the Adult Protection Committee under its functions of keeping procedures and practices under review, giving information and advice to public bodies and helping or encouraging the improvement of skills and knowledge of officers or employees of public bodies as set out in Section 42(1) of the Act.

The Scottish Government published Guidance for Adult Protection Committees in Conducting a Learning Review in May 2022. This places the responsibility for commissioning and overseeing such reviews with Adult Protection Committees and for submitting final reports to the Chief Officer Group for approval.

This guidance identifies the Care Inspectorate as the central repository for all adult protection learning reviews, enabling learning from these reviews to be shared more widely. As such, it is important that all case reviews or reflective learning reviews that are similar in purpose though not labelled as a learning review, are also submitted to the Care Inspectorate.

It is **important to note** that all reviews or reflective learning exercises serving the same purposes of a learning review – and meeting the criteria for a learning review – should use the learning review guidance, including the protocol for submission to the Care Inspectorate.

Chapter 9: Medical examinations

This chapter provides guidance on Section 9 of the Act, which allows a health professional to conduct a medical examination, in private, of the adult known or believed to be at risk of harm. This therefore applies to any adult from the point at which an inquiry has been initiated until such times as it has been determined that they are not an adult at risk of harm.

A medical examination includes any physical, psychological or psychiatric assessment or examination. The examination can take place either at a place being visited under Section 7 of the Act, or at the premises where the adult has been taken under an assessment order granted under Section 11.

If a medical examination is being progressed for someone under 18 years of age, it may be relevant to liaise with paediatric services and consider any possible overlap with child protection procedures that warrants further discussion with child protection services. Part 3 of the National Guidance for Child Protection in Scotland 2021 refers to medical examinations.

Who may conduct a medical examination and what is its purpose?

A medical examination may only be carried out by a health professional as defined under Section 52(2) as a doctor, nurse, midwife or any other type of individual described (by reference to skills, qualifications, experience or otherwise) by order made by Scottish Ministers.
(As at July 2022, no such order has been made)

A medical examination may be required as part of investigation activity for a number of reasons including:

- the adult's need of immediate medical treatment for a physical illness or mental disorder;
- to provide evidence of harm to inform a criminal prosecution under police direction or an application for an order to safeguard the adult;
- to assess the adult's physical health needs; or
- to assess the adult's mental capacity.

Examples of circumstances where a medical examination should be considered include:

- the adult has a physical injury which he or she states was inflicted by another person;
- the adult has injuries where the explanation (from the adult or other person) is inconsistent with the injuries and an examination may provide a medical opinion as to whether or not harm has been inflicted, or whether there are concerns around self-harm;

- there is an allegation or disclosure of sexual abuse and the type of assault may have left physical evidence (following local procedures for liaison with the police);
- the adult appears to have been subject to neglect or self-neglect and is ill or injured and no treatment has previously been sought.

Considering the adult's wishes with regard to a medical examination

Section 9(2) of the Act states that the person to be examined must be informed of their right to refuse to be examined before a medical examination is carried out. In an emergency and where consent cannot be obtained doctors can provide medical treatment to anyone who needs it, provided that the treatment is necessary to save life or avoid significant deterioration in a patient's health. However, doctors are advised to respect the terms of any valid advance refusal, which they know about, or is drawn to their attention. Doctors are also advised to tell the patient what has been done, and why, as soon as the patient is sufficiently recovered to understand. An example of an emergency situation where consent cannot be obtained is where the person is unconscious.

Where it is not possible to obtain the informed consent of the adult because they lack the mental capacity or have difficulty communicating in order to provide consent, the council should contact the Office of the Public Guardian to ascertain whether the person has appointed a welfare attorney, or has a court appointed welfare guardian. Where no guardian or attorney has such powers, consideration may be given to whether it is appropriate to use the provisions in the Adults with Incapacity (Scotland) Act 2000 or the Mental Health (Care and Treatment) (Scotland) Act 2003. Refer to Chapter 5 for advice on advocacy and addressing communication needs. For all medical examinations undertaken, consideration should be given to the importance of where and how medical examinations are conducted. Where a forensic medical examination is required/referred due to concerns around harm caused by rape or sexual assault, this must occur in a suitable healthcare facility i.e. a forensic medical suite in a Sexual Assault Referral Centre (SARC), where the suite has been properly decontaminated.

Chapter 10: Examination of records

This chapter provides guidance on Section 10 of the Act which provides that a council officer may require any person holding health, financial or other records relating to an adult known or believed to be at risk, to give the records, or copies of them, to the officer, if this is required to establish whether further action is needed to protect that adult from harm. This therefore applies to any adult from the point at which an inquiry has been initiated until such times as it has been determined that they are not an adult at risk of harm. In the case of health records, nothing in the Act authorises someone who is not a health professional to inspect health records.

Information sharing and confidentiality

The purpose of accessing records is to enable or assist the council to decide whether it needs to do anything in order to protect an adult at risk of harm.

Under Section 10 of the Act a council officer may require any person holding health, financial or other records relating to an individual whom the officer knows or believes to be an adult at risk, to give the records, or copies of them to the officer. This includes records held in audio, visual or other formats.

The type of records to be inspected will depend on the type of harm suspected and will need to be judged on an individual basis. Any information requested must be relevant.

Records should be accessed and information shared only where disclosure will provide benefit to the adult which could not reasonably be provided without such an intervention.

This Code makes clear that it is permissible for agencies to share information when the request arises from a Section 4 inquiry.

When a person is considering the information to be shared, it is important to consider the adult's right to confidentiality in relation to their personal healthcare information (including medical details, treatment options, and wishes) before information is supplied.

Does an adult have to consent to access to records?

If possible, the individual's consent should be attained prior to sharing information but, for the avoidance of doubt, where disclosing information to the appropriate authorities seeks to address a perceived risk of harm to that individual, it is in the public interest to do so. This legal duty applies to all employees and officers of the relevant public bodies and overrides any general duty of confidentiality.

Where the adult is incapable of consent, it would be good practice to approach the Office of the Public Guardian to ascertain whether a guardian or attorney may consent on their behalf. Where no guardian or attorney has such powers, consideration may be given to whether it is appropriate to use the provisions in the Adults with Incapacity (Scotland) Act 2000 or Section 34 of the Mental Health (Care and Treatment) (Scotland) Act 2003 .

Who may access and inspect records?

Section 10 (4) allows for records given to the council officer to be inspected by the officer and any other person whom the officer considers appropriate in relation to the content of the records.

Section 10(7) defines health records as records relating to an individual's physical or mental health which have been made by or on behalf of a health professional in connection with the care of the individual. The council officer, or

any other person whom the officer considers appropriate, may inspect health records only for the purpose of determining whether they are health records. In the case of health records, the council officer is empowered by the Act to identify, take, or take copies of, medical records held by a service but, having obtained them, must ensure they are interpreted by a health professional.

Section 10 refers to existing records held by a professional or organisation rather than information created specifically to meet a request.

Good practice would be for each council to nominate persons of a suitable seniority to have authority to make decisions regarding accessing records on behalf of the council. This decision should be made in discussion with relevant bodies responsible for keeping records such as general practitioners.

How may records be accessed?

A requirement to provide records may be made by the council officer during the time of a visit to the person holding the records or at any other time. The council officer should be able to demonstrate to the record holder that they require records to be given under section 10. The council should have procedures in place, agreed with relevant bodies which hold records, for obtaining and verifying authorisation.

If a request for information is made at a time other than during a visit, it must be made in writing. If the requirement is transmitted electronically it will be treated as having been made in writing if it is received in a legible form and is capable of being used for subsequent reference.

Usually only the relevant parts of a record will be copied to be given to the council officer. It is essential that copies of records are treated with the same degree of confidentiality as the original records. Good practice would be to discourage the use of original records except in circumstances where verifying the wording as it appears on the original source document (and is therefore verifiably unaltered) is pertinent to the investigation (for example if neglect has been alleged in a registered care setting).

It would be good practice for agreement to be reached with the record holder when records are obtained on how their records are to be treated. For example, whether copies of records should be kept for the minimum length of time necessary and then returned to the original record keeper or whether they should be destroyed.

A Protocol for Requesting Information under Section 10 was circulated by Social Work Scotland to partnerships in December 2020 for use as a template for local procedures. This includes a pro forma that should be used for all requests to a particular agency under Section 10, outlining details of the adult at risk, the nature of the information requested and the reason why this is being sought. It also includes guidance notes for council officers, and an information sheet for agencies/companies/organisations about the provisions of the Act.

Must the record keeper comply with a request for access?

Section 49 (2) of the Act provides that it is an offence for a person to refuse or otherwise fail to comply with a requirement to provide information under Section 10 , unless that person has a reasonable excuse for failing to do so.

Councils should make reasonable efforts to resolve disagreements when record holders refuse to disclose them. Informal or independent conciliation might be considered, depending on the circumstances and reasons given for refusal. Chapter 15 provides detail of the disposals available if a person or body is found guilty of obstruction or failure to comply with a request for information.

Chapter 11: Protection orders

General considerations for all protection orders

This chapter provides guidance on the sections of the Act which allow a council to apply to a sheriff for a protection order. Protection orders (a term used in section 35 of the Act) cover:

- assessment orders (which involve taking a person from a place in order to carry out an interview or medical examination),
- removal orders (removal of an adult at risk)
- banning orders or temporary banning orders (banning of the person causing, or likely to cause, the harm from being in a specified place and/ or preserving property) (the Act , Sections 11-34).

Applications for protection orders must be made by the council, save for banning orders where the application may also be made by or on behalf of the adult whose well-being or property would be safeguarded by the order or any other person who is entitled to occupy the place concerned. This section of the Code will apply to applications made by the council.

There is no requirement under the Act for the council to have previously arranged a visit under Section 7, an interview under Section 8, or medical examination under Section 9 prior to applying for a protection order. Protection orders may be applied for at any time in the process, depending on the individual circumstances of a case.

The decision to apply for a protection order will normally be taken at an Adult Support and Protection case conference. As such it will be a multi-agency decision, informed by a report from the council officer. The council will then arrange for the submission of the application. Evidence must then be given on oath to the sheriff, as per section 38(2).

Attention must be paid to timescales where an application for a further order is being considered. Timely discussions with the sheriff clerk, explaining the

concerns and seeking an agreement regards timing of requirements will assist in ensuring continuity of protection orders.

What to consider before applying for a protection order?

Before the council or any person makes a decision or undertakes any function under the Act, they must have regard to the general principles set out in sections 1 & 2 of the Act, and as outlined in Chapter 3 of the Code.

The use of other legislation may also be considered, for example, social work, child protection, mental health, civil law or criminal justice legislation.

Consideration must also be given to whether the adult should be referred to an independent advocacy organisation (see Section 6 of the Act) or provided with other services. The rationale for referring or not referring to advocacy must be clearly recorded and specifically referred to in any reports.

A sheriff must not make a protection order if the affected adult at risk refuses to consent to its grant. If it is considered that the adult will refuse consent to the granting of a protection order the council should re-consider the merit of the application. If the council decides to pursue an application where the affected adult has capacity to consent and their refusal to consent is known, then the council must prove that the adult has been “unduly pressurised” to refuse to consent to the granting of an order.

Where the adult does not have capacity to consent, the requirement to prove undue pressure does not apply. Evidence of lack of capacity will be required by the Sheriff. Where the adult is incapable of consent, it would be good practice to approach the Office of the Public Guardian to ascertain whether a guardian or attorney may consent on their behalf.

Wherever practicable, the adult must be kept fully informed at every stage of the process, for example, whether an order has been granted, what powers it carries, what will happen next, whether they have the right to refuse, or what other options are available. It is also good practice to ensure that carers’ providing care and support are kept up-to-date with the proceedings. This is also important where a carer is a Guardian or has power of attorney.

Can an order be granted or enforced without an adult’s consent?

It must be borne in mind that the principles emphasise the importance of striking a balance between an individual’s right to freedom of choice and the risk of harm to that individual. Where the adult at risk has refused to consent, Section 35 provides that the sheriff in considering making an order, or a person taking action under an order, may ignore the refusal where the sheriff, or that person, reasonably believes:

- that the affected adult at risk has been unduly pressurised to refuse consent; and

- that there are no steps which could reasonably be taken with the adult's consent which would protect the adult from the harm which the order or action is intended to prevent.

There are essentially three stages that require that the issue of consent be considered. Firstly, a council (or other person) must believe that there are no other steps available to protect the adult from harm, which could reasonably be taken with the adult's consent before proceeding to apply for an order. For example, the council may have previously tried an informal approach to move the adult to another place for interview and a medical examination. If the informal approach was unsuccessful, the option to formally apply to the court for an assessment order is available. Secondly, if an application is made and consent to the granting of the order is refused by the adult at risk, then the sheriff must consider the undue pressure test referred to above, and the onus will be on the applicant for the order to satisfy the sheriff in that regard. If the adult at risk refuses to consent to the granting of the order, the sheriff may only make the order if they reasonably believe the adult at risk has been unduly pressurised to refuse consent, and that there are no other steps it would be reasonable to take to protect the adult from harm, and to which the adult would consent. Thirdly, if an order is granted, a person must not take action to carry out or enforce that order without separately considering the same test. That person may only proceed if they reasonably believe the adult at risk has been unduly pressurised to refuse consent, and there are no other steps it would be reasonably to take to protect the adult from harm, and to which they would consent.

Section 35(4) of the Act gives an example of what may be considered to be undue pressure. This states that an adult at risk may be considered to have been unduly pressurised to refuse to consent if it appears that:

- harm which the order or action is intended to prevent is being, or is likely to be, inflicted by a person in whom the adult at risk has confidence and trust; and
- that the adult at risk would consent if the adult did not have confidence and trust in that person.

In this scenario, the sheriff or the council officer pursuing the application must reasonably believe that there is a relationship of confidence and trust between the affected adult at risk and the person allegedly subjecting the adult to undue pressure, and that the adult would otherwise consent if the adult did not have that confidence and trust. The most obvious relationships to assume confidence and trust would be between parent and child, siblings, partnerships and friendships. The assessment of undue pressure may include the development of the relationship and how the suspected harmful circumstances may have resulted in the affected adult's refusal to consent.

Section 35 (5) makes it clear that this is not the only type of behaviour that would constitute undue pressure. Undue pressure can also be applied by an individual who may or may not be the person suspected of harming the adult, such as a neighbour, carer or other person. For example, a relative who is not suspected of causing the harm but does not, for whatever reason, wish the council to apply for an order may place undue pressure on the affected adult to refuse consent.

Undue pressure may also be applied by a person that the adult is afraid of or who is threatening them and whom the adult does not trust.

As noted above, where the adult does not have capacity to consent, the requirement to prove undue pressure does not apply. Evidence of lack of capacity will be required by the sheriff. Where the adult is incapable of consent, it would be good practice to approach the Office of the Public Guardian to ascertain whether a guardian or attorney may consent on their behalf.

Where the adult demonstrates a preference not to consent, but where s/he is believed not to have the capacity to make that decision, next steps must be considered. Similarly, where an adult may be unable to express an opinion, or unable physically to resist an order, that inaction is not necessarily acquiescence.

If an adult with incapacity does not or will not comply with a protection order, and where an adult does not have capacity in that context, it may be better practice to take action under other legislation, rather than under this Act, e.g. under the Adults with Incapacity (Scotland) Act 2000, to pursue the appointment of a guardian with the power to take whatever action is necessary to protect or support the adult. Alternatively, if the adult with incapacity has a mental disorder, it may be more appropriate to consider the Mental Health (Care and Treatment) (S) Act 2003, which can permit an assessment, medical examination and, if necessary, the removal of the person at risk to a place of safety without her/ his consent.

While simultaneously using measures in other legislation, it may be appropriate to consider an application for a protection order under this Act; protection orders can be in effect concurrently with orders granted from other legislation.

Chapter 12: Assessment orders

This chapter provides guidance on Section 11 of the Act which allows a council to apply to a sheriff for an assessment order. This allows a council officer to take a person from a place being visited under section 7 in order to allow a council officer, or any council nominee, to conduct a private interview, or a health professional to conduct a medical examination in private. This order would be necessary only if it were not possible to carry out the interview or examination at the place of the visit. An assessment order will be granted only where there is reasonable cause to suspect that the subject of the order is an adult at risk of serious harm, and that the action specified is necessary to establish this and to identify what further action may be required.

What is an assessment order?

The purpose of an assessment order is to determine whether the adult is an adult at risk; and whether any action should be taken to protect the adult from harm.

The council may make an application to a sheriff for an assessment order to help the council to decide whether the person is an adult at risk and to take an adult at

risk of serious harm to a more suitable place in order to allow a council officer or council nominee to conduct a private interview. The order also provides that a health professional may carry out a medical examination in private.

When an assessment order is granted, the sheriff must also grant a warrant for entry under Section 37 in relation to a visit under Section 7. The warrant for entry to accompany an assessment order will detail a specified place and only that place can be entered using the warrant. The warrant permits a constable to accompany a council officer and take any action which the constable considers to be reasonably required, in order to fulfil the object of the visit. **Only the constable has a right to use reasonable force and only when deemed necessary.**

The affected adult can be taken to the place specified on the order but whilst there, the adult still retains the right to refuse to answer all or some of the questions when interviewed. The adult may similarly refuse a medical examination. The affected adult must be informed of these rights before an interview or a medical examination takes place.

The protection element of the assessment order allows the council to conduct an assessment in private. This could also be beneficial to the adult where the adult may be under undue pressure to refuse consent.

An assessment order does not have the power to detain the adult in the place they are taken to. The adult may choose to leave at any time.

What are the criteria for granting an assessment order?

Section 12 sets out the circumstances in which a sheriff may grant an assessment order. The sheriff must be satisfied that:

- the council has reasonable cause to suspect the subject of the order is an adult at risk who is being, or is likely to be, seriously harmed;
- the order is required to establish whether the person is an adult at risk who is being, or is likely to be, seriously harmed; and
- the place at which the person is to be interviewed and examined is available and suitable.

The council must therefore be able to satisfy the sheriff that a suitable place will be available to take the adult. This may in some circumstances require written confirmation from the person who owns or manages this place that they are willing to receive the adult for assessment purposes. For example, the place could be a friend's or relative's house or a care home. The suitability of the place to conduct a private examination could also be confirmed in writing. This would be desirable but it may not always be practicable in potentially urgent or emergency situations.

Under Section 13 , an order should only be sought where it is not practicable during a visit under Section 7 (due to a lack of privacy or otherwise) to:

- interview the person under Section 8 ; or
- conduct a medical examination of the person under Section 9 .

It may be that the adult needs to be taken from a threatening environment with the prospect the adult may then relax and agree to an interview and/or medical examination. Given that the adult is to be taken to a place where they may be interviewed and medically examined, it would be good practice for the council to provide full details of the actions to be undertaken under the order and the estimated length of time that the assessment and interview may take. This approach would support the application in demonstrating that the council is taking into account the principle of least restriction.

Notification

Under Section 41(3), the Act provides that the applicant for an order "must give notice of an application to the subject of the application, and the affected adult at risk (where that person is neither the applicant nor the subject of the application)"

Under Section 41(4), the sheriff must, before determining an application, invite the subject of the application, and the affected adult at risk (where that person is neither the applicant nor the subject of the application) to be heard by, or represented before, the sheriff. The affected adult may be accompanied in court by a friend, a relative or any other representative (including legal) chosen by the adult.

Section 41(2) provides that the sheriff may disapply the above requirements where the sheriff is satisfied that by doing so this will protect the adult from serious harm or will not prejudice any other person affected by the disapplication.

In cases where the council becomes aware that the person suspected of harming the adult may also attend a hearing, for example where the adult wishes to be accompanied by that person, it would be good practice for the council to inform the sheriff prior to the hearing being held. The sheriff will then be able to decide whether to apply any relevant provisions available under the Vulnerable Witnesses (Scotland) Act 2004.

Where the adult concerned has indicated that they do not wish to have legal representation, or it appears that they do not understand the process, this should be recorded and indicated to the court by the council. The court retains a common law power to appoint a Curator ad Litem where a person is party to a case, but does not have full mental capacity.

Under Section 41(6), the sheriff has discretion to appoint a safeguarder before deciding on the order. The role of the safeguarder is to safeguard the interests of the affected adult at risk in any proceedings relating to an application. The person may be appointed on such terms as the sheriff thinks fit.

Timescales within which an order must be carried out

The date specified in the order may be different from the date the order is granted. The assessment order is valid for 7 days after the date specified in the order. For example, an order with a specified date of 13 November would expire at 23:59 on 20 November.

The assessment order authorises the council officer to take the adult to a more suitable place to enable the adult to be interviewed or medically examined. The adult must only be taken to the place specified on the order. There may be circumstances where, before the order is executed, the adult consents to being taken to another place. This does not invalidate the original terms of the order.

The key focus should be on carrying out an assessment given the suspicion of serious harm. It should be explained to the adult that the application for an assessment order was made due to concern for the adult. The adult has the right to refuse consent to the interview or the medical examination. After the interview or examination has been conducted or where the adult has refused to give their consent, the adult is free to leave.

The assessment must be undertaken in the shortest time practicable to minimise any possible distress or confusion to the adult. For example, a medical examination may only require an adult to be removed to the General Practice surgery for an hour while an examination is carried out. However it may be that the adult would be happy to consent to remaining in a place overnight.

Once the order has been executed, it cannot be used again i.e. it does not provide for the adult to be taken from a place more than once to be interviewed or for a further medical examination.

The adult should be informed that an assessment order does not permit detention or allow a refusal to participate in an interview or medical examination to be over-ridden.

To note: An assessment order cannot be appealed.

Warrant for entry

In granting an assessment order, the sheriff must also grant a warrant for entry that authorises a police constable to use reasonable force where necessary. It must be borne in mind that the use of force is an absolute last resort, to be used in very exceptional circumstances, and only when all other options have been exhausted.

It is important that a multi-disciplinary plan be prepared in advance on how to carry out the assessment order. In order to minimise distress and risk to the adult, the procedure should be carefully planned and co-ordinated with all those involved in the process. The plan should include contingencies in case the adult does not respond as expected. Where it is anticipated that there may be a risk of violence, a multidisciplinary assessment of the risk should be undertaken. It may

be that the management of the process should be passed on to the police to enable them to address the issue of the safety of all parties concerned. However, all parties involved should bear in mind the principle of "least restrictive alternative" at all times.

To note: Once a warrant has been executed, it cannot be used again.

What can be done in cases of urgency?

Section 40 makes provision for cases of urgency. An application can be made to a justice of the peace for a warrant to enter premises in cases of urgency where it is not practicable to make application to a sheriff. (For further information on warrants for entry, please refer to chapter 7).

An application may be made to a justice of the peace where:

- it is not practical to apply to the sheriff; and;
- the adult at risk is likely to be harmed if there is a delay in granting the warrant.

Local procedures should provide guidance to council officers on how to deal with emergencies including access to court officials and Justices of the Peace.

What happens after the order expires or the adult wishes to leave?

Although the Act does not make explicit what happens after an assessment order expires or the adult chooses to leave, the council continues to have a duty of care to return the adult safely to the place from which they were removed or to a place of their choice, within reason. To this end, the council may consider discussing some form of support plan with the adult at risk or, where appropriate, convene a multidisciplinary meeting to discuss further care and protection issues.

Chapter 13: Removal orders

This chapter provides guidance on Section 14 of the Act which allows a council to apply to the sheriff for a removal order, which, if granted, allows the council to remove the adult at risk to a specified place. The purpose of a removal order is to assess the adult's situation and to support and protect them. This is a short-term order and, although effective for a maximum of seven days, it is envisaged that it will not be required to last that long in the majority of cases. A removal order will be granted only where the sheriff is satisfied that the adult is likely to be seriously harmed if not moved to another place and that there is a suitable place available to remove the adult to. The council must protect any property owned or controlled by an adult who is removed from a place under a removal order.

What is a removal order?

A removal order can only be granted in respect of an adult at risk of harm and is primarily for protection purposes and not for a council interview or a medical examination. It permits the person named in the order to be moved from any place to protect them from harm. For example, the place in which the adult at risk

actually lives may be a contributory factor in the harm and the move may provide "breathing space" for that specified person.

Action can only be considered where the person is an adult at risk who is likely to be seriously harmed if not moved and suitable accommodation is available to which that person can be moved. (For further information on what constitutes an adult at risk, please refer to Chapter 3).

Section 14 provides that a council may apply to the sheriff for a removal order which authorises:

- a council officer, or any council nominee, to move a specified person to a specified place within 72 hours of the order being made; and
- the council to take such reasonable steps as it thinks fit for the purpose of protecting the moved person from harm.

There is a 72 hour period in which to execute the removal order. It expires 7 days (or such shorter period as may be specified in the order) after the day on which the person specified in the order is moved in pursuance of the order.

Who can apply for a removal order?

Although the application for the order must be made by the council, the council may choose to nominate another person, for example, someone from one of the co-operating bodies to actually move the adult at risk. This may be important if, for example, the nominated person is more familiar to the adult at risk than the council officer. It may be more reassuring for the person being removed if this was done by someone who they already know rather than a stranger. However, only the council officer and police constable have the right to enter the premises where the adult is located to remove the adult (see Sections 37 and 39 of the Act).

The removal order will specify where the adult is to be removed to. Good practice suggests a protection plan could be submitted by the council with the application.

What are the criteria for granting a removal order?

Under Section 15 , the sheriff may grant a removal order only if satisfied:

- that the person in respect of whom the order is sought is an adult at risk who is likely to be seriously harmed if not moved to another place; and
- as to the availability and suitability of the place to which the adult at risk is to be moved.

The place from which the adult at risk is removed may not necessarily be their own home. They could be in public, private or commercial premises. The adult can be removed from any place in pursuance of a removal order. The adult is to be removed to the place specified in the order.

Good practice would be that the council provides a suitability report of both the place and the person willing to care for the adult at risk. The council should also obtain a written agreement from the owner of the proposed specified place where it is, for example, a private home or independent care provider to confirm the owner's willingness to receive the adult at risk for up to 7 days. The place to which the adult should be taken will be specified in the order.

Notifications and hearing

As stated previously, under Section 41(3), "the applicant must give notice of an application to the subject of the application, and the affected adult at risk (where that person is neither the applicant nor the subject of the application)".
Under Section 41(4) and (5), the affected adult may be heard or represented before the granting of a removal order and has the right to be accompanied in court by a friend, a relative or any other representative (including legal) chosen by the adult.

The council should, if appropriate, advise any other persons who are known to have an interest in the person's well-being or property that the application is to be made. This would enable any such person to enter the proceedings.

Under Section 41(2), the sheriff may disapply the requirement to invite participation in a hearing, or representation at one, and the right to be accompanied at a hearing where the sheriff is satisfied that, by doing so, this will:

- protect the adult from serious harm; or
- not prejudice any other person affected by the disapplication.

Section 15(2) provides that the sheriff may require the council to allow a specified person to have contact with the adult at risk subject to specified conditions. Before doing so the sheriff must under section 15(3) have regard to:

- representations of the council as to whether persons should be allowed contact with the adult at risk; and
- any relevant representations made by:
    - the adult at risk;
    - any person who wishes to be able to have contact with the adult at risk; and
    - any other person who has an interest in the adult at risk's well-being or property.

There may also be times when a person who is concerned for the adult's welfare would wish to enter the proceedings and be heard by the sheriff, for example, to ask that the adult be taken to a place other than that chosen by the council as the "suitable place".

Where the adult concerned has indicated that they do not wish legal representation, or it appears that they do not understand the process, this should be indicated to the court.

Under Section 41(6), the sheriff also has discretion to appoint a safeguarder to safeguard the interests of the affected adult at risk before deciding the application. The role of the safeguarder is to safeguard the interests of the affected adult at risk in any proceedings relating to an application. The sheriff may instruct the safeguarder to report on the issue of consent.

In cases where the council becomes aware that the person suspected of harming the adult may also attend, for example, where the adult wishes to be accompanied by that person, it would be good practice for the council to inform the sheriff prior to the hearing being held. The sheriff will then be able to decide whether to apply any relevant provisions available under the Vulnerable Witnesses (Scotland) Act 2004.

Where the council considers that it would protect an adult at risk from serious harm, or will not prejudice any person affected by the disapplication, then the council may ask the sheriff to dispense with intimation to the adult who is the subject of the application and other parties.

Can conditions be attached to a removal order?

Section 15(2) provides that the sheriff may attach a requirement to the granting of a removal order. A council can be required to allow any specified person to have contact with the adult at risk to whom the order relates:

- at any specified time during which the order has effect; and
- in accordance with any specified conditions.

Whether the sheriff attaches such a requirement to an order will depend on the circumstances of each application. The purpose of such a requirement may be to permit certain persons to have contact with the moved person to help maintain family or social relationships. The conditions specified in relation to the requirement may also stipulate that this conduct takes place under supervision arrangements where there is concern that harm may continue if contact was unsupervised. It should be borne in mind that representations may be made to the sheriff by any of the parties, either orally or in writing, for contact to be granted.

It may be inappropriate to have the adult at risk exposed to the alleged perpetrator during the period of the removal order, but contact with other persons may be beneficial, for example, relatives or friends. This issue could be addressed in advance with the adult.

Where conditions for contact have been specified by the sheriff, good practice would be for the council to prepare some form of access plan. This would include dates/times and may, for example, provide that any contact takes place in an alternative location from that to which the adult has been moved.

Warrant for entry

The sheriff (or justice of the peace) must grant a warrant that authorises a police constable to use reasonable force where necessary to achieve the purpose of the visit. Wherever possible, entry to premises should first be attempted without force. The use of force is an absolute last resort, to be used in very exceptional circumstances, and only when all other options have been exhausted.

In order to minimise distress and risk to the adult at risk, the procedure should be carefully planned and co-ordinated with all those involved in the process. Ideally, a multi-disciplinary plan would be prepared in advance on how to carry out the entry and removal of the person. The plan should include contingencies in case the adult or a person present does not respond as expected. Where it is anticipated that the use of force may be necessary to execute the order, a multi-disciplinary assessment of the risk should similarly be undertaken. In such circumstances, management of the process should be passed on to the police to enable them to address the issue of safety of all parties concerned. However, all parties involved should bear in mind the principles in Sections 1 and 2 of the Act.

To note: Once a warrant has been executed, it cannot be used again.

Timescales within which an order must be carried out

Given the purpose of the order, the adult must be removed within 72 hours of the order being made. The order will expire up to seven days after the day on which the adult is moved, not counting the day the adult is moved, and it expires at 23:59 at the end of the final day. The order can be specified by the sheriff to expire in a shorter period than 7 days. The adult at risk cannot be returned home and then removed again within this period.

A further application for a removal order must not be made with a view to extending the order. This is to avoid the unintended consequence of an adult being out of their home for longer than is necessary.

The council should always consider as short a removal period as possible in line with the general principles of benefit, least restriction and the adult's wishes.

What if the adult at risk moves before the removal order can be carried out?

It may be that the adult at risk has either left the premises or been moved by another person to avoid the consequences of the removal order.

The removal order may not always specify the place from which the adult must be removed, however the warrant for entry always does. This means that if a person is moved to a second place in the period between the removal order and warrant being actioned, and it is anticipated that entry by warrant will be necessary, then a fresh application for a warrant must be made. Where the original removal order specified the place from which the adult must be removed, a fresh application can be made for a new removal order or a variation of the existing order can be applied for (under Section 17).

Can a removal order be varied or recalled?

Section 17 provides that an application may be made to the sheriff to recall or vary a removal order. An application may be made by:

- the adult at risk;
- any person who has an interest in the adult at risk's well-being or property; or
- the council.

The sheriff may vary or recall the removal order if satisfied that the variation or recall is justified. The sheriff would have to be satisfied that there has been a change in the facts or circumstances in respect of which the order was granted or, as the case may be, last varied.

Where the sheriff has recalled the removal order, and the adult at risk has already been moved under that order, the sheriff may direct the council to:

- return the adult to the place from which the adult was removed; or
- take the adult to any other place which the sheriff, having regard to the adult's wishes, may specify.

As with the initial application, in an application for the variation or recall of a removal order, the sheriff has the discretion to disapply the notification and other requirements where the sheriff considers that by doing so it will protect the adult at risk from serious harm or will not prejudice any person affected by the disapplication.

Who has responsibility for caring for the adult's property?

Section 18 deals with protecting the adult at risk's property, whether this is owned or controlled by the adult, from being lost or damaged. The Act (section 18(1)) provides that the council must take reasonable steps to prevent any property owned or controlled by person moved in pursuance of a removal order from being lost or damaged because:

- the moved person is unable to protect, care or otherwise deal with the property; and
- no other suitable arrangements for the property have been or are being made.

A council officer has a right to enter any place, or adjacent place, which the council knows or believes to contain any property which it has a duty under the Act to protect in order to enable or assist the council in performing that duty (sections 18(2) and (3)). If the council officer finds such property, the officer may do anything reasonably necessary to prevent the property from being lost or damaged. In particular the officer may move the property to another place (section 18(4)).

Property could include the contents of a house, vehicles, animals, livestock, cash, credit cards and clothing.

The council is not entitled to recover any expenses it incurs in relation to property owned or controlled by the adult removed. The council must return the property to the adult at risk as soon as is reasonably practicable after the removal order ceases to have effect. This could be agreed in advance with the adult at risk and included within the protection plan.

What happens after the order expires or the adult wishes to leave?

Although the Act does not make explicit what happens after the order expires or the adult chooses to leave, the council continues to have a duty of care to return the adult safely to the place from which they were removed or to a place of their choice, within reason. To this end, the council may consider agreeing some form of support plan with the adult, or where appropriate, convene a multi-disciplinary meeting to discuss further care and protection issues.

The adult must only be taken to the place specified on the order. There may be circumstances where, before the order is executed, the adult consents to being taken to another place. If the person has moved from their original location, this does not necessarily invalidate the Removal Order and the person can be removed from this “new” place to go to the safe place specified in the order. If the Removal Order is no longer required, application to recall it can be made. If the “new” place, where the person has agreed to go, is assessed as safe, the order may no longer be necessary.

What can be done in cases of urgency?

Section 40 provides that, for a removal order, a council can apply to a justice of the peace of the area in which the adult is located, where:

- it is not practicable to make an application to the sheriff; and
- an adult at risk is likely to be harmed if there is any delay in granting the order.

The justice of the peace must be satisfied that the person is an adult at risk who is likely to be seriously harmed if not moved to another place and that the adult is to be removed to a place that is suitable and available.

The adult at risk must be removed within 12 hours of the grant of this type of removal order and such an order expires after 24 hours.

Good practice would be that the council should advise any person with an interest in the adult’s welfare that the adult has been removed.
Local procedures should provide guidance to council officers on how to deal with emergencies including access to court officials and justices of the peace.

Chapter 14: Banning and temporary banning orders

This chapter provides guidance on applications for banning orders and temporary banning orders. These orders will only be granted where the adult at risk is in danger of being seriously harmed, and where banning the subject of the order from a specified place is likely to safeguard the adult's well-being and property more effectively than would the removal of the adult at risk. Any decision to grant or refuse to grant a banning or temporary banning order can be appealed to the sheriff principal.

What is a banning order or temporary banning order?

A banning or temporary banning order can only be granted in respect of an adult at risk of serious harm, and bans the subject of the order from a specified place, may have other conditions attached to it, and may last for a period of time not exceeding 6 months. The purpose of these orders is to better safeguard the adult at risk's well-being and property than would be achieved by removing the adult from a place where they are at risk of harm from another person.

Section 19 provides for the granting of a banning order, and attachment of conditions to such an order, by the sheriff. A banning order bans the subject of the order ("the subject") from being in a specified place. The subject may be a child.
Section 21 allows the sheriff to grant a temporary banning order pending determination of an application for a banning order.

A banning or temporary banning order may:

- ban the subject from being in a specified area in the vicinity of the specified place;
- authorise the summary ejection of the subject from the specified place and the specified area;
- prohibit the subject from moving any specified thing from the specified place;
- direct any specified person to take specified measures to preserve any moveable property owned or controlled by the subject which remains in the specified place while the order has effect;
- be made subject to any specified conditions; and
- require or authorise any person to do, or to refrain from doing, anything else which the sheriff thinks necessary for the proper enforcement of the order.

A condition specified in such an order may authorise the subject of the order to be in a place or area from which they are banned, but only in specified circumstances, for example while being supervised by another person or during specified times.

Who can apply for an order?

Section 22 provides that an application for a banning order may be made by or on behalf of:

- an adult whose well-being or property would be safeguarded by the order; or
- any other person who is entitled to occupy the place concerned; or
- where section 22(2) applies, a Council.

Under Section 22 (2) the council is under an obligation to apply for a banning order if it is satisfied:

- that the criteria in section 20 are satisfied;
- that nobody else is likely to apply for a banning order in respect of the circumstances which caused the council to be satisfied as to the matters set out in Section 20; and
- that no other proceedings to eject or ban the person concerned from the place concerned are pending before a court.

The applicant may also apply for a temporary banning order at the same time as making an application for a banning order, or at a later date. This allows a temporary order to be granted pending final determination of a banning order application and may be used in cases where it is deemed inadvisable to wait until a full hearing on the banning order application takes place.

If the adult at risk is the applicant, it would be good practice for the council to assist with the application.

What are the criteria for granting a banning order or temporary banning order?

Section 20 of the Act provides that a sheriff may grant a banning order only if they are satisfied that:

- an adult at risk is being, or is likely to be, seriously harmed by another person;
- the adult at risk's well-being or property would be better safeguarded by banning the other person from a place occupied by the adult than it would be by moving the adult from that place; and
- that either:
- the adult at risk is entitled, or permitted by a third party.

Neither the adult at risk nor the subject of the order is entitled, or permitted by a third party to occupy the place from which the subject is to be banned.

The subject of the banning order may not necessarily be living with the adult at risk. The point of the banning order is to put some distance between them to protect the adult at risk from further serious harm.

The order allows a person to be banned from being in a specific place, usually where the adult at risk lives. The main test for the order is whether the person is, or is likely to be, seriously harming an adult at risk. The banning order may ban the subject from contact with the adult at risk for up to a maximum period of six months, and may include other conditions that a sheriff thinks appropriate. For example, this period could provide an opportunity for the adult at risk and the subject to undergo mediation to explore future living arrangements, or to secure the adult at risk's future on a permanent basis.

Who can be banned from a property?

Section 23 provides that the granting of a banning or temporary banning order does not affect the adult at risk's rights, as a non-entitled spouse, to occupy a home within the place from where the subject of the order is banned under the Matrimonial Homes (Family Protection) (Scotland) Act 1981. This means that a banning order, despite affecting the subject's right to occupy the property in question, does not affect any rights that the adult at risk has under the 1981 Act.

Where the adult at risk is entitled to occupy a place, their occupancy rights are not affected if their husband, wife, partner etc. is banned from the place. Where the adult at risk has no occupancy rights and the proposed subject of the order does have these rights, then the subject cannot be banned from the place.

Banning orders may also be applied in respect of public places and may also be used where neither the adult at risk nor the subject has a right to occupy a property.

Where consideration is being given to applying for an order which bans a child, this should include prior consideration of making a referral to the Children's Reporter where it is believed there would be an effective case to answer. If the circumstances are such that there is a need to act urgently, then a referral to the Children's Reporter should be made at the same time as the application for an order. Liaison with Children's Social Work services will promote information sharing, reduce the risk of duplication of efforts, and allow for clarity of roles and responsibilities.

How long can a banning order be granted for?

A banning order can last for any period **up to a maximum of six months**.

The applicant should consider what would be the shortest period possible in line with the general principles of the adult at risk's wishes, the least restrictive approach and what would be beneficial to the adult.

The period for a banning order will be specified by the sheriff. A banning order may be recalled or varied.

How long can a temporary banning order be granted for?

Section 21(4) of the Act provides that a temporary banning order expires on the earliest of the following dates:

- the date the sheriff determines the application for the related banning order;
- the date by which the sheriff is required to determine application for the related banning order (which is 6 months of the date of lodging the related application, see rule 3.35.3(3) of the Summary Applications- Statutory Applications and Appeals etc Rules);
- the date on which it is recalled; or
- any specified expiry date.

To note: A temporary banning order may also be recalled or varied.

What conditions can be attached to an order?

A banning order may specify a number of matters and may have conditions attached.

Section 19 enables the order to be tailored to allow contact between the subject and the adult at risk under supervised conditions, perhaps as a first step to resolving the issue. This may include supervision of the subject in the area or place they are banned from to allow some form of mediation between the subject and the adult at risk, or to allow the subject access to the adult at risk's children or family. The conditions for this contact could be specified in an Access Plan, showing dates, times and location.

Attaching a power of arrest

Section 25 permits the sheriff, at the time of granting the banning or temporary banning order, to attach a power of arrest. The sheriff will make such a decision based on the facts and circumstances of the case presented.

The evidence for this would be based on the likelihood of the subject breaching the banning order or any of the conditions attached to the banning order. If the order or any of these conditions were breached the subject may be arrested without warrant if a constable reasonably suspects them to be in breach of the order and that they are likely to breach the order again if not arrested.

Where a banning or temporary banning order has been granted without an attached power of arrest and the facts and circumstances of the case have changed since the order was granted, then application may subsequently be made as a variation to attach a power of arrest.

Notifications and hearings

Under Section 41, the applicant for the banning order or temporary banning order (or application for variation or recall) “the applicant must give notice of an application to the subject of the application, and the affected adult at risk (where that person is neither the applicant nor the subject of the application)”.
Under Section 41(4) and (5), the affected adult may be heard or represented before the granting of a removal order and has the right to be accompanied in court by a friend, a relative or any other representative (including legal) chosen by the adult.

The council should, if appropriate, advise any other persons who are known to have an interest in the person's well-being or property that the application is to be made. This would enable any such person to enter the proceedings.

Under Section 41(2), the sheriff may disapply the requirement to invite participation in a hearing, or representation at one, and the right to be accompanied at a hearing where the sheriff is satisfied that, by doing so, this will:

- protect the adult from serious harm; or
- not prejudice any other person affected by the disapplication.

Section 19(4) provides that, where it is proposed to attach a condition authorising the subject of the order to be in the place or area from which they are otherwise banned, in specified circumstances, the sheriff must have regard to any relevant representations made by:

- the applicant for the order;
- the adult at risk;
- any other person who has an interest in the adult at risk's well-being or property; and
- the subject of the application.

Where the adult concerned has indicated that they do not wish legal representation, or it appears that they do not understand the process, this should be indicated to the court.

Under Section 41(6), the sheriff also has discretion to appoint a safeguarder before deciding on the order. The role of the safeguarder is to safeguard the interests of the affected adult at risk in any proceedings relating to an application. The sheriff may instruct the safeguarder to report on the issue of consent.

In cases where the council becomes aware that the person suspected of harming the adult may also attend e.g. where the adult wishes to be accompanied by that person, the council should inform the sheriff prior to the hearing being held. The sheriff will then be able to decide whether to apply any relevant provisions available under the Vulnerable Witnesses (Scotland) Act 2004.

Disapplication of notification and intimation

Where the council (or other person applying for an order) considers that it would be prejudicial to the adult at risk's welfare for the certain persons to attend a hearing, then the council should ask the sheriff (under section 41(2)) to dispense with some or all of the requirements under Section 41 (3) to (7) of the Act. These provisions include the requirement to intimate the application to the person who is the subject of the application and to the affected adult at risk (section 41(3)). The council should provide the sheriff with its reasons in coming to this conclusion to enable the sheriff to decide whether it is appropriate to dispense with intimation and any other requirements in the circumstances. The sheriff must be satisfied that:

- by doing so this will protect the adult from serious harm;
- this will not prejudice any other person affected by the disapplication.

Section 41(2) also provides that the sheriff may disapply the requirement in Section 19(4) of the Act to have regard to any relevant representations made by the applicant, the adult at risk, other interested persons, and the subject of the order in those cases where a condition is to be specified in the banning order authorising the subject to be in the place or area from which they have been banned for specified circumstances (under Section 19(3)). Again the sheriff has to be satisfied as to the matters listed above.

Application for variation or recall of a banning order or a temporary banning order

Section 24 provides that application may be made to the sheriff to recall or vary a banning or a temporary banning order by an application by, or on behalf of:

- the subject of the order;
- the applicant for the order;
- the adult at risk to whom the order relates; or any other person who has an interest in the adult at risk's well-being or property.

The sheriff may vary or recall either type of order if satisfied the variation or recall is justified. The sheriff must be satisfied that there has been a change in the facts or circumstances in respect of which the order was granted or, as the case may be, last varied.

A variation may not vary the date on which the order expires:

(a) in the case of a banning order, beyond the date which is 6 months after the date on which the order was granted;

(b) in the case of a temporary banning order, beyond the date by which section 21(3) requires the sheriff to determine the related application for

a banning order (which is 6 months of the date of lodging the related application).

A banning or temporary banning order can be varied any number of times within the specified period. If the sheriff recalls the order then the terms of the order cease to have effect. The grounds therefore for recalling the order should show that further harm is not likely to take place.

Right of appeal against a decision to grant or a refusal to grant an order or temporary order

Section 51(2) provides for a right of appeal against a decision to grant, or a refusal to grant a banning order. An appeal must be made to the sheriff principal in the first instance. The sheriff principal's decision may be appealed to the Court of Session, but only by those who were party to the appeal to the sheriff principal.

An appeal against a sheriff's decision to grant, or refuse to grant, a temporary banning order may be made to the sheriff principal. However an appeal is only competent with the leave of the sheriff. An appeal against the sheriff principal's decision to the Court of Session is only competent with the leave of the sheriff principal.

How long does an order continue to have effect?

Where a sheriff principal decides to quash a banning order or temporary banning order, the order will continue to have effect until either the end of the period for appeal (if no appeal is made) or, where an appeal is made, when it is abandoned or where the decision to quash the order is confirmed.

Alternatively, the order will continue to have effect until it otherwise expires under section 19(5) (banning orders) or section 21(4) (temporary banning orders) or, in the case of a temporary banning order, the sheriff principal refuses leave to appeal against the decision to quash the order.

Whom does the applicant have to notify of the granting, variation or recall of a banning or temporary banning order?

Under Section 26 where the sheriff grants a banning order, temporary banning order, variation or recall, the applicant (where not the adult at risk) must notify the adult at risk and such other interested person(s) specified by the sheriff, by delivering a copy of the order (and any power of arrest attached) or the varied order or the order of recall to that adult and/or other interested person(s) specified by the sheriff. However, failure to deliver a copy of an order, variation, or recall does not invalidate it.

Where a power of arrest has been attached, section 27 provides that the police, via the chief constable, must be notified by the applicant for the banning order or

temporary banning order, as soon as possible, by delivering a copy of the order and any power of arrest attached.

Who is responsible for preserving the banned person's property during an order?

Section 19(2)(d) of the Act states that a banning order may also direct any specified person to take specified measures to preserve any moveable property owned or controlled by the subject which remains in the specified place while the order has effect.

The Act allows for specific measures to be taken to preserve the subject's property. The applicant should obtain an inventory of moveable property belonging to the subject of the banning order that can remain in the adult at risk's home or specified place, from which the subject is banned. It would be good practice to obtain a signature from the subject confirming that the inventory is correct. The subject can formally request any of these measures. This may be to protect property such as pets or computers.

What happens if an order without an attached power of arrest is breached?

Where the subject of the order breaches the order then this will be dealt with on the basis of a failure to comply with an order of court. As a result of this, if established, the subject of the order can be held in contempt of court. The applicant (and the adult at risk where not the applicant) may raise a normal action for breach of an order. Any proceedings in this regard should be accompanied by confirmation from the procurator fiscal that no criminal proceedings are to be commenced in respect of the facts and circumstances that are to form the subject matter of breach proceedings. An adult at risk is not required to report any breach of an order.

Where the person breaching the order has also committed a criminal offence, then this will be dealt with in the usual manner. Proceedings will be instigated by way of a petition by the procurator fiscal, following normal court procedures.

Where a banning order is breached and the basic sanctions are ineffective in deterring the subject of the order, other options may be considered. Where no powers of arrest are in place, application to vary the order under section 24 should be considered to include this power. In such cases the council and its partners may need to consider other civil and criminal law routes to protect the adult at risk of harm. As with any proposed action, there will be professional and ethical considerations that will require to be balanced against the principles of the Act.

Local procedures should provide guidance to council officers on how to deal with breaches including detail on the powers the Act gives the Police in such circumstances.

What happens if an order with an attached power of arrest is breached?

The power of arrest becomes effective only when served on the subject of the order and will expire at the same time as the order.
Under Section 28, where a banning order or temporary banning order has a power of arrest attached, a constable can arrest the subject of an order if the constable:

- reasonably suspects the subject to be breaching, or to have breached, the order; and
- considers that there would, if the subject were not arrested, be a risk of the subject breaching the order again.

What must the police do when someone is arrested under Section 28?

Section 29 requires that the officer in charge of a police station must detain the arrested person in custody until the person is brought before the sheriff under Section 32 of the Act. The facts and circumstances giving rise to the arrest must be reported to the fiscal as soon as is practicable.

Duty to bring the detained person before sheriff

Section 32 makes clear that the arrested person should be brought to court, in the district in which the person was arrested. This should be on the next court day on which it is practicable to do so but that does not prevent the sheriff dealing with the matter if sitting on a non-court day for the disposal of criminal business.

Information to be presented to the sheriff

Under Section 33, the fiscal must present a petition to the sheriff setting out various details of the case and requesting the sheriff to consider whether a longer period of detention is justified.

The petition should:

- give the detained person's particulars;
- state the facts and circumstances which gave rise to the arrest;
- give any information known to the fiscal:
    - about the circumstances which gave rise to the banning order or temporary banning order concerned, and
    - which is relevant to an assessment of whether the detained person is likely to breach that order: and
- request the sheriff to consider whether a longer period of detention is justified.

Authorisation of further detention period by Sheriff

Where the sheriff is satisfied, based on the information provided by the fiscal, that a breach of the banning order or temporary banning order appears to have taken place and that there is a “substantial risk” the subject will breach the order again, the sheriff may authorise the person to be detained for a further period of not more than 2 days (not counting days which are not court days).

Where the sheriff decides not to authorise further detention, then the detained person must be released (unless already in custody in respect of another matter).

The sheriff must provide the detained person with an opportunity to make representations prior to making any decision.

The banning or temporary banning order, any conditions attached, and power of arrest continue notwithstanding breach proceedings.

Expiry of an order prior to any criminal proceedings

If the subject was charged for committing an offence as a result of breaching the order and released on bail, the conditions of the order continue until its expiry, unless varied under Section 24 .

In cases where an order will expire prior to court proceedings, the applicant for the order, or the council if not the applicant, may wish to consider applying for a new banning order and temporary banning order until such time as the subject is tried. There is nothing in the Act from preventing fresh application being made. The decision to do so would depend on whether there is sufficient evidence to make an application and an order remains justified according to the statutory criteria. In cases where the council intends to act under its adult protection duties, it may wish to liaise with the police or procurator fiscal regarding the application.

Chapter 15: Offences

Obstruction

Section 49 provides that it is an **offence** to prevent or obstruct any person from doing anything they are authorised or entitled to do under the Act, without reasonable excuse. It is also an offence to refuse, without reasonable excuse, to comply with a request to provide information made under Section 10 (examination of records etc.). However if the adult at risk prevents or obstructs a person, or refuses to comply with a request to provide access to any records, then the adult will not have committed an offence.

A person found guilty of these offences is liable on summary conviction to:

- a fine not exceeding level 3 on the standard scale; and/or
- imprisonment for a term not exceeding 3 months.

Offences by corporate bodies etc.

Where it is proven that an offence under Part 1 of the Act was committed with the consent or connivance of, or was attributable to any neglect on the part of a 'relevant person', or a person purporting to act in that capacity, that person as well as the body corporate, partnership or unincorporated association is also guilty of an offence.

A 'relevant person' for the purposes of this section means:

- a director, manager, secretary or other similar officer of a body corporate such as limited company, a plc., or a company established by a charter or by Act of Parliament;
- a member, where the affairs of the body are managed by its members;
- an officer or member of the council;
- a partner in a Scottish partnership; or
- a person who is concerned in the management or control of an unincorporated association other than a Scottish partnership.

An unincorporated association is the most common form of organisation within the independent and third sector in Scotland. It is a contractual relationship between the individual members of the organisation, all of whom have agreed or "contracted" to come together for a particular charitable purpose. Unlike an incorporated body the association has no existence or personality separate from its individual members.

Links to other legislation and guidance

Adult Support and Protection (Scotland) Act 2007 (legislation.gov.uk)
Adult support and protection: learning review guidance - gov.scot (www.gov.scot)
Adult Support and Protection National Strategic Forum - gov.scot (www.gov.scot)
Adults with Incapacity (Scotland) Act 2000 (legislation.gov.uk)
advance_statement_guidancesep2018revision.pdf (mwcscot.org.uk)
Appropriate Adults: guidance for local authorities - gov.scot (www.gov.scot)
ASP Code of Practice (revised)
British Sign Language
Care Inspectorate
Carers (Scotland) Act 2016
Children's Rights and the UNCRC in Scotland: An Introduction
Clinical pathway for healthcare professionals working to support adults who present having experienced rape or sexual assault
Counter-Terrorism and Security Act 2015
Criminal Justice (Scotland) Act 2016
Data Protection Act 2018
Domestic Abuse (Scotland) Act 2018
Equality Act 2010
European Convention on Human Rights (ECHR)
Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021

Guidance on Prevent Multi-Agency panels
Health (Tobacco, Nicotine etc., and Care) (Scotland) Act 2016
Ico.org.uk (public-task)
Inclusion Scotland
Inclusive-communication and accessible-communication-formats
Learning from Adverse Events (healthcareimprovementscotland.org)
Local Government (Scotland) Act 1973
Makaton
Matrimonial Homes (Family Protection) (Scotland) Act 1981
Mental Health (Care and Treatment) (Scotland) Act 2003
National Guidance for Child Protection in Scotland 2021
Office of the Public Guardian (Scotland)
Public Bodies (Joint Working) (Scotland) Act 2014
Royal Society of Speech and Language Therapists
Scotland Act 1998
Scottish Independent Advocacy Alliance
Social Care (Self-directed Support) (Scotland) Act 2013
Supporting disabled children, young people and their families: guidance - gov.scot
Talkingmats.com
The Criminal Justice (Scotland) Act 2016 (Support for Vulnerable Persons) Regulations 2019
Trauma-informed practice: toolkit - gov.scot (www.gov.scot)
UK General Data Protection Regulation (UK GDPR)
UNCRC (Incorporation) (Scotland) Bill
United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)
Vulnerable Witnesses (Scotland) Act 2004

Glossary

Introduction

This glossary is for illustrative purposes only and is not intended to be prescriptive. Full statutory definitions of many of the terms are contained in Section 53 of the Act, and it is those that should be used in any process or situation where precise definition is required.

Adjacent place	A place near or next to any place where an adult at risk may be, such as a garage, outbuilding etc.
Adult	An individual aged 16 years or over
Adult at risk	Refer to Chapter 2 for the full definition
Adult Protection Committee	A committee established by a council, under Section 42 of the Act, to safeguard adults at risk in its area.
Advance Statement	A statement made under Section 275 of the Mental Health (Care and Treatment) (Scotland) Act 2003, setting out how a

person would, or would not, wish to be treated should they subsequently require care under that Act.

Assessment Order An order granted by a sheriff to help the council decide whether the person is an adult at risk and, if so, whether it needs to do anything to protect the person from harm.

Banning /Temporary Banning order
An order granted by a sheriff to ban a person from being in a specified place or area. The order may have specified conditions attached.

Coercive Control A pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim.

Council Officer An individual appointed by a council to perform certain specified function under the terms of the Act.

General Practices (a) A person providing primary medical services under a general medical services contract (within the meaning of the National Health Service (Scotland) Act 1978)
(b) A person providing primary medical services under arrangements made under Section 17c of that Act.

Health Professional In terms of the Act, this refers to a doctor, nurse, midwife or any other type of individual prescribed by Scottish Ministers.

Inquiry The overarching process, as per section 4, to gather information to establish whether or not an adult is at risk of harm (as per the three-point criteria of the Act); conduct risk assessment; develop risk management plans; determine what, if any, action is required to be taken to safeguard that adult.

Investigative powers (investigation activity)
Powers under the Act that enable or assist councils to determine whether or not an adult is at risk of harm and to determine whether it needs to do anything to protect an adult at risk of harm (for example medical examinations under section 9 or the examination of records under section 10).

Primary Carer The individual who provides all or most of the care and support for the person concerned. This could be a relative or friend, but does not include any person paid to care for the person.

Proxy A continuing or welfare attorney, or a guardian under the Adults with Incapacity (Scotland) Act 2000.

Undue Influence	Pressure by which a person is induced to act otherwise than by their own free will or without adequate attention to the consequences.
Undue pressure	Persuasion imposed on an individual by someone in whom the individual has confidence and trust.

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