

Adult Support and Protection (Scotland) Act 2007

Code of Practice

July 2021

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1. 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 published in 2014.
2. 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 Adult Protection Committee (APC) guidance.
3. 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 addiction problems or who are homeless. It can also potentially apply to people who may be being placed at risk and having their human rights infringed through inappropriate arrangements for their care.
4. 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 are not reflected in the current Code of Practice or Guidance.
5. The [Adult Support and Protection National Strategic Forum](#), chaired by the Minister for Mental Health, has recognised this changing landscape within which Adult Support and Protection now operates. It therefore agreed that this was an appropriate time to undertake a review of the Adult Support and Protection Code of Practice. It further agreed that similar work will be undertaken to revise the guidance for APCs.
6. The Code has been redrafted and refreshed after full consultation with members of the Strategic Forum and a range of other key stakeholders, and a number of national workshops have been held to help identify and refine key areas for amendment.
7. 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.
8. 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 regarding some adult protection processes and to achieve greater clarity in relation to capacity and consent as these terms apply to adult support and protection.

9. 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 that councils, their officers and health professionals should be aware of, and these aspects are therefore included in the Code.
10. 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?

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

The substantive amendments are:

- More detail about the three-point test
- 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
- The sections on protection orders have been rationalised
- The chapter on Adult Protection Committees has been removed and is now contained within the redrafted Guidance for Adult Protection Committees

The Act

1. The Adult Support and Protection (Scotland) Act 2007 (referred to as [the Act](#)) was passed by the Scottish Parliament in spring 2007. The Act introduces provisions intended to protect those adults who are unable to safeguard their own interests and who are at risk of harm because they are affected by disability, mental disorder, illness or physical or mental infirmity.

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 Act 2007](#). There are strong links between the three Acts, and the provisions of each Act are often considered when considering the needs of a particular individual.

2. 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.
3. 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.
4. The Act provides new 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 from 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, for a medical examination of a person known or believed to be at 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

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5. All Acts of the Scottish Parliament under the terms of the [Scotland Act 1998](#) are required to comply with the requirements of the [European Convention on Human Rights \(ECHR\)](#). All bodies and practitioners must also ensure that they conduct their duties in a way, which would be ECHR compliant. The Scottish Government is currently looking to incorporate the principles of the [United Nations Convention on the Rights of Persons with Disabilities \(UNCPRD\)](#) into Scots law. While the UNCPRD does not expressly call for the abolition of substitute decision making regimes, there is an implicit requirement for their replacement with supported decision making regimes.

The Code of Practice

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6. 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 them 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 placed Scottish Ministers under a duty to review the Code from time to time and provided a power following such review to revise it, and a revised Code of Practice was published in 2014.
7. 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, 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.
8. 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.

9. 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?

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10. 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

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

Taking account of the principles of the Act

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1. [Sections 1 and 2](#) set out the general principles of the Act. These apply to any public body or office holder authorising any intervention 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.
2. 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).

3. 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.
4. 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.
5. 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. 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.
- **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. It is important that the adult has the choice to maintain existing family and social contacts. What the Act seeks to provide is support additional to the networks that may already be in place. Thus, a person who may be an adult at risk may have neighbours or friends who have an interest in their wellbeing and are willing to give support. Every effort should be made to ensure that any action taken under the Act does not have an adverse effect on this.
- **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 help 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. The full list of protected characteristics in the Equality Act 2010 is available [here](#).

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

Who is an adult at risk?

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9. The Act refers throughout to an ‘adult’. In terms of Section 53 of the Act, ‘adult’ means a person aged 16* or over.

[Section 3\(1\)](#) defines an ‘adult at risk’ as someone who meets **all** of the following three criteria (commonly known as the three-point test):

- that they are unable to safeguard their own well-being, property, rights or other interests;
- that they are at risk of harm; and
- that 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 criteria above make no reference to capacity. Capacity is not, and never should be, a consideration in the three-point test.

It should be noted that the Scottish Government is currently progressing plans to implement the [UNCRC \(Incorporation\) \(Scotland\) Bill](#). The Bill incorporates into Scots law rights and obligations set out in the United Nations Convention on the Rights of the Child. This includes defining a child as a human being below the age of eighteen years. [This will be updated in due course]

Unable to safeguard

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10. The first point of the three-point test relates to whether the adult is unable to safeguard their own well-being, property, rights and other interests. Most people will be able to safeguard themselves through being able 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 test.
11. 'Unable' is not further defined in the Act, but is defined in the Oxford English Dictionary as 'lacking the skill, means or opportunity to do something'. 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 skill, means or opportunity to keep themselves safe, but who may still then place themselves in unsafe situations.
12. **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 adverse childhood experiences can introduce levels of complexity into the circumstances within which adults are taking decisions, and which decisions they find themselves taking. 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 to safeguard themselves to the extent that some will repeatedly take decisions that place them at risk.
13. 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 free and informed decisions to

safeguard themselves. This could therefore mean that in these circumstances they should be regarded as unable to safeguard themselves.

14. 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 decisions that would protect them from harm.
15. 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 very far removed from the situation where it is the person's grandson who is making such a request and when the adult is dependent on the grandson for support and may feel fearful of refusing the request.
16. 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.
17. The considerations above require that practitioners should take a person's overall circumstances into account, and take great care before determining whether or not an adult is genuinely able to take decisions about safeguarding themselves.

Risk of harm and harm

18. To meet the second point of the three-point test the adult must be assessed as being at risk of harm. [Section 3\(2\)](#) 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.
19. Adults can be at risk of harm in various settings be it in their own home, or in the wider community. They also may be being 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.
20. 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.
21. 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 or 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.
22. Some forms of harm may result in criminal charges being brought against the person perpetrating the harm under appropriate legislation, including the provisions of the [Health \(Tobacco, Nicotine etc., and Care\) \(Scotland\) Act 2016](#) as it relates to the ill-treatment of wilful neglect of a mentally disordered person. 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. The [Counter-Terrorism and Security Act 2015](#) places a duty on specified authorities in Scotland such as local authorities to have due regard to the need to prevent people from being drawn into terrorism. It also places an obligation on local authorities 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](#) is now available. When assessing referrals to such panels, local authorities and their partners should consider how best to align such assessments with child protection legislation and guidance.

Being more vulnerable to harm

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The third 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 disorder and are not defined in the Act. The Oxford English Dictionary defines infirmity as, ‘weakness (or want of strength), inability or lack of power to do something’. Infirmity does not therefore necessarily rely upon a medical diagnosis in the way that disorder or illness do.

It is recognised that “infirmity” is a term that is no longer favoured when describing disability.

23. Having a particular condition or being a disabled person does not mean automatically mean someone is unable to safe-guard their own wellbeing.

Use of the three-point test

24. It is important to stress that all of the three criteria must be met. It is the whole of an adult’s particular circumstances, which can combine to make them more vulnerable to harm than others.
25. It should be recognised that an individual’s vulnerabilities, medical conditions and abilities can fluctuate and change over time, and practitioners should be alert to the need for re-assessment or for re-evaluation of an individual’s circumstances against the three-point test.
26. Equally a person’s capacity can vary over time and in respect of different types of decision making. While not relevant to the three-point test, 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.
27. The three-point test 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 test is not, and should not be used as, an eligibility test for access to services.
28. 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, 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.
29. In particular where a person has been assessed as at risk of harm but does not meet either or both of the other two elements of the three-point test, then partnerships would still be expected to pursue all avenues in order to protect that person from harm.

Trauma

30. 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 test will be relatively straightforward. This in turn will lead to consideration of options for intervention whether under the provisions of the Act or otherwise.
31. There are however a significant number of people where this is not always the case and some of these people may remain in situations which continue to compromise their health, wellbeing and safety. This has in the past been particularly linked to the use of alcohol or drugs.
32. A [trauma informed approach](#) would understand the range of adaptations and survival strategies that people have made to cope with or survive trauma, for example maintaining contact with an abuser, use of drugs or alcohol, hoarding or non-engagement with services. This relates directly to the earlier suggestion that in these circumstances some people's ability to take decisions about safeguarding themselves may have effectively been compromised.
33. Practitioners should be trauma aware in their work in adult support and protection and alert to the impact trauma can have on people's lifestyles and their ability to make decisions regarding their own health and safety.

Addictions, homelessness and hoarding

34. Not all people with addictions, or who are homeless or who hoard, will be considered as 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 decisions affecting their health and wellbeing and this can have serious consequences for own health and safety. They will certainly be likely to be more vulnerable to harm than others.
35. The 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 addiction may render them subject to physical or mental infirmity, and place them at risk of harm.

36. 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 or physical illness of infirmity including addiction problems.
37. 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 unhealthy conditions and at risk of harm.
38. 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 when applying the three-point test.

Financial harm

39. Financial harm takes many forms including theft, fraud – including being scammed at the doorstep - by post, over the phone, online or through a combination of these methods, pressure to hand over or sign over property or money, misuse of property or welfare benefits, stopping someone getting their money or possessions. 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 will be a likely factor for consideration for agencies
40. In cases where there is thought there may be a misuse of formal 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 to the [Office of the Public Guardian \(Scotland\)](#) for investigation.
41. 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 and local Trading Standards officers.

Young people

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42. The definition of an adult at risk includes people aged 16 and over with disabilities and or 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 (and sometimes up to age 26 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 will extend beyond adult protection legislation.

43. 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.
44. 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 appropriate support and protection 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.
45. 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.
46. 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.

More information on the relevant legislation that supports planning around good transitions for young people with additional support needs is available [HERE](#).

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.

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What are a council's duties under the Act?

1. The [Act](#) places duties upon the council that relate to, or flow from, the duties 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 investigations, 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 prescribed) 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?

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2. 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.
3. 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.

4. 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.
5. 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 11-22).

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

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6. 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.
7. Scottish Ministers subsequently made an order that prescribed 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 SSSC 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.

8. 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.
9. The [Public Bodies \(Joint Working\) \(Scotland\) Act 2014](#) placed a new 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 will allow 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

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10. While councils have the lead role in adult protection, effective intervention will only come about as a result of productive co-operation 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.
11. Section 5(3) of the Act places a duty on 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.
12. 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 make inquiries and 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.
13. 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.
14. 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; and
- any other public body or office-holder as the Scottish Ministers may by order specify.

(As at December 2020, Scottish Ministers have not specified any other bodies)

As outlined above all **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.

15. 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.
16. Good practice should be 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 with this broader group of agencies in order to ensure that they are aware of the provisions of the Act, and that they have appropriate procedures in place.
17. 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:
 - Independent health practitioners, including GPs and some allied health professionals, who are not directly employed by health boards.
 - Scottish Fire and Rescue;
 - The Scottish Ambulance Service;
 - The Scottish Prison Service.
18. 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 from risk of harm. Such services and agencies are expected to co-operate with assisting inquiries and to provide services to assist adults at risk of harm.

19. 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.
20. [Section 49](#) of the Act 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 (see Chapter 15 of this Code).

General practitioners

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21. The Scottish Government is currently revising Adult Support and Protection Guidance on the involvement of GPs and Primary Care teams in multi-agency protection arrangements. This is intended to support the involvement of GPs Primary Care teams in fulfilling their roles which arise from the Act and in making a broader contribution to adult protection beyond that required by statute. [a link will be provided when available]
22. It is expected it will provide advice on how to make referrals and to note that
 - GPs and Primary Care Staff are well placed to identify adults at risk of harm and are a vital component in the multiagency 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, GPs do not need to have evidence that all elements of the three-point test 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
 - GPs and Primary Health Care staff will be expected to co-operate with inquiries including with the examination of records. This cooperation will be based upon the Council's knowledge or belief that that the person is at risk of harm. The purpose of providing the information will 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.

Scottish Fire and Rescue, the Scottish Ambulance Service and the Scottish Prisons Service

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23. Scottish Fire and Rescue 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. Scottish Fire and Rescue is represented on many Adult Protection Committees across Scotland.

24. The Scottish Ambulance Service is designated a special health board which 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 will likely be adults at risk. They are therefore a source of information about some people, potential referrers in relation to other people and, as with Fire and Rescue, can often act as early warning system for some people at risk of harm. There is scope for greater understanding of the role they can play and for greater engagement between the Scottish Ambulance Service and Adult Support and Protection at both local and national levels.
25. The Prison Service will be aware of many adults who may be at risk of harm both as new and existing inmates and also as some people are being readied for release. As such they should remain alert to the potential for links to be made with Adult Protection services at a local level, and local services should have protocols in place for advising the Prison Service of any new prisoners who are regarded as being at risk of harm.

Independent and third-sector providers and other organisations

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26. 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.
27. While independent organisations 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.
28. 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 difficulties or other needs. Organisations will have a legal duty to comply with requests for examination of records.

29. 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.
30. 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

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31. **The protection of adults at risk of harm is everyone's responsibility and everyone's job.** This cuts across all aspects of private life and professional business. We all have a responsibility duty, individually and collectively, to protect vulnerable people in our communities.
32. Whilst confidentiality is important, it is not an absolute right. Co-operation in sharing information is necessary to enable a council to undertake the required inquiries and investigations.
33. Where there is concern about an adult at risk of harm, or an awareness of such a concern, there is a **responsibility to share and exchange relevant information with other professionals.** This should be done without delay and with confidence, following local agency or service procedures.
34. Information should be shared only when:
- it will provide benefit to the adult which could not reasonably be provided without such an intervention, and
 - the amount of information shared should be proportionate to addressing the concerns relating to protecting the adult from harm.
35. Existing legislation, including the [UK General Data Protection Regulation \(UK GDPR\)](#) and the [Data Protection Act 2018](#), **does not prevent sharing** and/or exchanging relevant information where there is belief or concern about the protection of adults at risk. In addition, an individual is lawfully able to process confidential information where disclosure is necessary to protect the individual or another third party in order to facilitate a 'public task'. This extends to all practitioners working with adults who may be at risk of harm. The Act provides a legal gateway for information sharing. Wherever possible, the adult who may be at risk should be informed of the sharing of the information and the reasons why. The information sharing must be necessary (i.e. proportionate and targeted) for the purpose of carrying out the task. Local Authorities may use a Section 10 request to facilitate the gathering of information to support their inquiry, to determine if further action is required to protect the adult of concern. It is worth noting here that section 49(2) of the ASP Act makes

refusal or failure to comply with a section 10 requirement, without reasonable excuse, an offence.

36. Where information contains **special categories of personal data**, having firstly identified a lawful basis for processing data, an additional condition (under Article 9 (2) of GDPR) must also be met in order to share data lawfully. Special Category data includes: Racial or ethnic origin; Political opinions; Religious or philosophical beliefs; Trade Union Membership; Genetic data; Biometric data (when used for ID purposes); Health (physical or mental); and, Sexual life or orientation. In the context of special category data, an individual should consider Article 9(2) UK GDPR together with paragraph 6 of Schedule 1 of the Data Protection Act 2018. These conditions do not replace or override the usual lawful basis for processing, they act as an additional layer of conditions on top of the usual rules.
37. The vires to share information should be considered carefully and UK GDPR/DPA 2018 applied, with particular regard to “special category data” ([The principles](#) set out at Article 5(1) UK GDPR). One potential lawful basis is [Public Task](#), and the ICO state that when considering Public Task as the lawful basis for sharing information this applies to “any organisation who is exercising official authority or carrying out a specific task in the public interest. The focus is on the nature of the **function**, not the nature of the **organisation**”
38. The Act specifically allows for disclosure of information with or without consent where a person knows or believes an adult is at risk of harm. This information should be shared only with those who need to know, be proportionate to the harm it will prevent, and be relevant to the concern. Each case should be considered individually.
39. When considering whether to share concerns, 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 and a referral should be made. This legal duty applies to all employees and officers of the relevant public bodies and overrides any general duty of confidentiality.
40. Many partnerships have circulated letters, signed by the Chief Officers, to staff of the main relevant public bodies locally (i.e. the Council, the Health Board and Police Scotland) affirming the position stated above, and advising their staff that their own agency will support them if they have shared personal information in these circumstances using their professional judgement. All partnerships should consider circulating such letters to their staff, confirming this position and the expectation as outlined in the section of the Code.
41. This section of the Code has already referenced a range of other agencies and services not specifically named as public bodies. These 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 from risk of harm. Such services and agencies are expected to co-operate with assisting inquiries and to provide services to assist adults at risk of harm.

42. If in any doubt as to the expectation that they are permitted to share information in regard to adults at risk of harm, these agencies and services should refer to their own Data Protection Officer for advice. The **presumption and expectation** is that there should be **no reason not to share** information under the terms of the Act.
43. Adult Support and Protection guidance for General Practitioners and Primary Care teams includes guidance for information sharing as it relates to primary care settings. It is important that GPs are aware of their local protocols for making adult protection referrals.
44. Local procedures should provide guidance to council officers on how to deal with emergencies including access to court officials and Justices of the Peace.
45. The Law Society of Scotland has advised that issues around client confidentiality exempt solicitors from the expectation that they will share information.

Chapter 4: Adult Participation

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This chapter discusses the principle of ensuring that full regard is given to the wishes 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.

1. 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 minimized. 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.
2. 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 adults

should be asked what support if any they wish. It may be that they wish assistance from a relative or primary carer. They 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. 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 Office for Disability has [guidance around accessible communication formats](#), whilst Inclusion Scotland have also produced a guide, available [here](#).

3. Other aids and adaptations that can support and enable communication include [British Sign Language](#) interpreters, lip speakers, [Makaton](#), deaf-blind communicators. Where possible, materials should also be available in alternative formats such as large print, audio tape, Braille and computer disc. Consideration should also be given to the surrounding environment. This can 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.

Independent advocacy services

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4. [Section 6 of the Act](#) places a duty on the council, if it considers that it needs to intervene after making inquiries under Section 4 of the Act, to protect an adult at risk of harm, and to have 'regard to the importance of the provision of appropriate services including independent advocacy services to the adult concerned'. Independent advocacy aims to help people by supporting them to express their own needs, gain access to information, understand the options available and make their own informed decisions.
5. The adult should be asked if they know about and would like advocacy. 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, review or professional meetings.
6. 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 –

- a. each local authority, in collaboration with the (or each) relevant Health

Board; and

- b. 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’.

8. The duty in the legislation therefore only extends to persons with a mental disorder. However, the **section 2 principles need to also be considered**. It may well be that independent advocacy in a particular case will be appropriate even where a person does not suffer from a mental disorder as defined in the 2003 Act.

9. The 2003 Act also 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 :

- independent advocacy providers cannot be involved in the welfare, care or provision of other services to the individual for which it is providing advocacy
- independent advocacy should be provided by an organisation whose sole role is independent advocacy or whose other tasks either complement, or do not conflict with, the provision of independent advocacy.

For further information about advocacy, please refer to the [Scottish Independent Advocacy alliance](#) .

10. 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 under the Adult Support and Protection (Scotland) Act 2007. It may be that the sheriff will instruct the safe-guarder to report on the issue of consent.

Appropriate adults

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11. The role of the Appropriate Adult is to facilitate communication between a mentally disordered person and the police and, as far as is possible, ensure understanding by both parties.

12. 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 in relation to victims and witnesses, as well as to those made 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.

13. 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. Appropriate Adult services are informed by the expectations related to supported decision making through the commitment to ensuring that that appropriate measures are taken to provide access to the support individuals may require in exercising their legal capacity.

14. 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.

15. Appropriate Adults should not be requested for individuals who lack capacity, as defined in the Adults with Incapacity (Scotland) Act 2000. If an Appropriate Adult attends a request and feels that this definition applies to the person they are supporting the Appropriate Adult should relinquish their participation and the police should obtain assistance from a relevant specialist.

16. Further information on Appropriate Adults can be obtained [here](#).

Meetings of agencies with the adult at risk

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17. 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.

18. If the fullest possible participation of the adult at risk in supporting and protecting them from harm is to be achieved, they should be included in the best way taking into account their needs and capacity, in all decision-making processes about their support and protection. 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.

- The [Social Care \(Self-directed Support\) \(Scotland\) Act 2013](#) was founded on the principles of dignity, empowerment and collaboration enshrined in law that people have the right to be involved in decisions about what their support looks like and how it is delivered.
- Its introduction means that people receiving social care support in Scotland have the right to choice, control and flexibility to meet their personal

outcomes. Health and social care partnerships are required to ensure that people are offered a range of choices on how they receive their social care support.

19. The adult at risk should (unless it is considered not to be in their best interests) 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.
20. 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 attending. This can include the provision of information, by asking them about the date, time and venue, 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.
21. There will be occasions and circumstances where it is not in the adult's best interest to attend meetings or 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.
22. The adult also has the right to refuse to attend. It is important that the adult does not feel pressurised, however, 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 of the adult should be sought and recorded in advance of the meeting and another individual should represent those views 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.
23. 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.

24. [Section 2\(c\)](#) of the Act outlines the importance of the views of the adult's nearest relative, primary carer and any guardian or attorney. The steps described above will help to meet this standard.

25. 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.

26. 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.

27. In such situations information and assessments, for both the carer and cared for person, 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.

28. Caring often has 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 a carer support plan (or for young carers a carer statement) and associated matters.

Audit of adult participation

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29. 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 which adults at risk are invited but do not attend, auditing the recording of reasons why and including questions about this issue in regular audits of the experience of being protected. The uptake of advocacy services should also be included.

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

Chapter 5: Inquiries

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This chapter covers Section 4 of the Act that 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 intervention may be necessary to protect the adult.

When should a council make inquiries?

[Section 4](#) of the act places a duty on councils to make inquiries about a person's well-being, property or financial affairs **if it knows or believes**:

- that the person is an adult at risk; and
 - that it might need to intervene (under the Act or otherwise) in order to protect the person's well-being, property or financial affairs.
1. A council may be assisted in its duty to inquire through various sources, for example statutory bodies and independent and third sector providers.
 2. 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.
 3. 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.

Referrals

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4. 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.
5. 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.
6. The adult's consent is not required for a referral to be made.

7. For the first category, the council will be expected to initiate an inquiry under the Act, as they will have grounds for believing that the person referred may be an adult at risk of harm. In the second category some initial consideration may be needed in order for the council to determine whether they have grounds for believing that the person referred may be an adult at risk of harm.
8. 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. Whilst 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.
9. 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 must be aware of the main provisions of the Act in order that they can process referrals appropriately for further action.

Welfare concerns

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10. Since 2014 referrals relating to welfare concerns may now be submitted to councils from Police Scotland. These arise where the police are aware of a person about whom they have concerns, but who they think will not fall within the provisions of the Act. Many partnerships now also accept welfare concern referrals from a range of other agencies including Scottish Fire & Rescue, the NHS, and provider organisations. All welfare concern referrals should be screened and a decision made about further action and can be escalated to be dealt with as adult support and protection if appropriate.
11. 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 instituted under Section 4 of the Act.
12. In all cases the Council should endeavour to inform referring individuals or agencies of the outcome of the inquiry. 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.

13. It would be particularly helpful if where an inquiry is undertaken and where there the alleged harmer has Power of Attorney or is a Financial Guardian, that the Office of the Public Guardian is notified of the outcome of the inquiry.

Inquiries

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14. 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 must be instituted once it is clear that the council knows or believes the adult to be at risk of harm and, as outlined at 5.8 above, this would be the case if a referral has been received using an ASP notification process or referral form, or a referrer otherwise specifies that they are referring an adult they think may be in need of support or protection under the Act
15. 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.
16. The initial stages of an inquiry do 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 to be involved. 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.
17. The initial stage of the 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.
18. 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 then in practice there will be extremely few further interventions that will not require to be undertaken by a council officer, and the inquiry will progress to the investigation stage.
19. If it is determined that the adult does not meet the three-point test, this decision does not preclude considering other relevant legislation, local procedures or alternative services to respond to the individual's needs. This

would include practical and emotional support provided by social work, health, and independent providers.

20. If initial 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 then the inquiry will progress to the investigation stage, and the Act requires that a council officer must be involved.
21. 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.
22. 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.

Inter-agency Referral Discussions

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23. 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. The sharing of information and planning of approaches can be conducted by phone 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.
24. 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 here ([LINK TO CHILD PROTECTION GUIDANCE WHEN AVAILABLE](#)).

Where an adult at risk declines to participate

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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.

25. 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 their refusal to co-operate. Practitioners should remain alert to the possibility that 'undue pressure' might have contributed to a decision to refuse co-operation.
26. 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 action is required

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27. 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.
28. 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 test. 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 investigations and visits

[\[contents\]](#)

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

1. An investigation can take place:
 - following a determination in the initial inquiry stage that the adult is at risk; or
 - in order to gather more information in order to determine whether the adult is at risk; and
 - to determine whether further action is required to protect the adult from harm.

2. 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.

3. 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 (ie 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.

An investigation is therefore part of, and not subsequent to, a Section 4 inquiry. The investigation stage starts when a council officer makes a visit, undertakes an interview, arranges a medical examination or examines records (see also para 8 below).

4. An adult protection investigation should be a carefully planned and managed process 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 are 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 test as an adult at risk
 - vi. appropriate arrangements can be made for support and protect the adult, by performing functions under the Act or otherwise.

What is the purpose of a visit?

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It is likely that a visit to the adult and the interview with them will be central to the investigation.

5. [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.

6. Circumstances may arise where an interview would not take place as part of a physical visit to meet with the adult. The experience of the coronavirus pandemic in 2020 and 2021 was 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 4 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.

7. 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 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.

8. 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?

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9. Any person performing a function under the Act must have regard to the principles. 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 and others so far as relevant must also be taken into account.

10. 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 an adult, or other person in the household, to communicate.

11. Consideration may have to be given to the use of the appropriate 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?

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12. Only a council officer, as defined in Section 53 of the Act and who meets the requirements of the Order described at Chapter 4 above, 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, Makaton communicator, deaf-blind communications interpreter or a language interpreter where English is not the visited person's first language.

13. 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.

14. In circumstances where there is 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?

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15. 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

16. 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.

17. 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.

18. 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?

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19. [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.

20. 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.

21. 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?

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22. A council officer must:

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

23. 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.

24. 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?

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25. There may be times where 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 authorising entry as a first course of action. 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?

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26. 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.

27. 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.

28. 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

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29. Section 37 of the Act makes provision for warrants of entry. Only the council can apply for a warrant for entry.

30. 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.

What can be done in cases of urgency?

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31. [Section 40](#) of the Act provides that an application for a warrant for entry can be made to a justice of the peace only if it is impracticable to make the application to the sheriff and that 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.

32. 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 an adult protection investigation

[\[contents\]](#)

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 it has been determined that they are not an adult at risk of harm.

What is an interview?

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1. 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 an investigation.
2. 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.
3. The purpose of an interview 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. This will include:
 - establishing if the adult has been subject to harm;

- establishing if the adult feels their safety is at risk and from whom;
 - discussing what action, if any, the adult wishes or is willing to take to protect themselves; and
 - determining whether the adult is at risk of harm.
4. 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?

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5. 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 investigation 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.
6. 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

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7. Section 8(2) provides that the adult is not required to answer any questions, and that 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
8. 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, the location of the interview and the personnel present during an interview. The purpose of supports will be to assist the adult to make a contribution whilst always protecting the rights of the adult.

9. In some situations, an adult might not fully comprehend the purpose of the interview and some or all of the possible consequences but may be able to contribute in some way. Where such situations arise the planning process must give careful consideration to ensuring the adult can make a contribution, while also protecting the rights of the adult. The use of independent advocacy or the presence of other support people during an interview are some options the planning process might consider
10. Seeking the consent of the adult to be interviewed is 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.
11. [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

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12. 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.
13. A person's capacity can vary over time and in respect of different types of decision making. While not relevant to the three-point test, 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 or infirmity may not have the physical capacity to implement that decision.
14. 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.
15. 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?

16. 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

Participation

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17. A lack of capacity to consent to being interviewed is not an automatic bar on the adult participating in the interview process. The principle of the adult participating 'as fully as possible' should be adhered to. In addition, if the adult is thought to have been influenced to refuse consent, consideration should be given to whether there has been 'undue pressure' applied and therefore a need to consider application for an Assessment Order.

18. The council also has to promote the adult's participation in the interview by taking account of the adult's needs where these are identified, for example:

- communication skills or attention span
- sensory impairment
- the adult's first language being other than English
- any other relevant factors

This may require:

- a specialist in sign language or other form of non-verbal communication such as [Talking Mats](#)
- a language interpreter
- an independent advocate
- an appropriate adult where police are interviewing an adult who would meet the definition of a mental disorder under the [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003](#)
- a family member or carer to help communication.

Can an adult be interviewed with others present?

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18. It is good practice to ask an adult whether they would wish another person to be present during the interview. For example, a family member, paid carer or an independent advocacy worker, and to facilitate this where possible.
19. [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?

[\[contents\]](#)

20. 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, 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 are informed of this before the interview commences.

Chapter 8: Assessing and managing the risk of harm

[\[contents\]](#)

1. 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 initial and significant case reviews.

2. 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 development of a 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 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 out with the provisions of the Act.

3. 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, though this does not preclude other support or involvement through other relevant legislation, local procedures or alternative services to respond to the individual's needs.

4. For other adults the inquiry and investigation process 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.

Case conferences

5. 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. The multi-agency assessment should be considered by an interagency Adult Support and Protection Case Conference. This will be assisted by the collation of up to date and well balanced inter agency chronologies.

6. Multi-agency adult protection procedures should give guidance on the convening of meetings of agencies as the best approach to managing risk by agreeing a protection plan.
7. Such meetings should be as inclusive as possible, with the presumption that the adult themselves will be in attendance (unless it is considered not to be in their best interests) 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.
8. 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 and the need to agree a specific and detailed protection plan with timescales for addressing risks and providing services to support and protect the adult.
9. 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 may also be helpful. However such considerations should not compromise any actions that may need to be taken under the Adult protection legislation.
10. During the Covid pandemic in 2020 greater use has been made of virtual meetings and case conferences. This 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 in advance for what can feel very different to a face to face meeting.
11. 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 is correctly minuted** 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 **protection plan** is agreed across all relevant agencies, including identification of who is responsible for which aspects of the 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 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.

12. 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.

Large scale investigations

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The Act makes no reference to large scale investigations (LSIs), but these have become increasingly prevalent across Scotland since the implementation of the Act. 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, but there are no nationally agreed definitions of what warrants an LSI, or 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.

13. An LSI may be required where there is reason to believe that adults who are resident of a care home, supported accommodation, an NHS hospital or other facility, or who receives services in their own home may be at risk of harm due to another resident, a member of staff, some failing or deficit in the management regime, or in the environment of the establishment or service. In such circumstances this means that there is a belief that a particular service may be placing all its residents or service users at risk of harm.

14. 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 GPs, District Nurses, Dentists, Allied Health Professionals etc. who attend a service.

15. Harm in a care setting can 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

16. 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 at Head of Service level or above.

17. 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;
- 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.

18. 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 all residents or service users will need to minimally have an initial inquiry undertaken, and some of this may move through to the investigation stage.

19. It is likely that a number of residents or service users will have protection plans put in place, and that there will also be an improvement plan put in place for the service provider regarding staffing, practice, procedural and other issues.

20. The investigation, and subsequent protection planning and action must remain proportionate and reflect the individual needs of all the residents for continuity of care. The families of residents should be kept informed, and the residents themselves kept informed in keeping with their best interests.

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

22. The oversight group will be responsible, on the basis of the progress against the protection plans and improvement plan, for determining when the LSI can be concluded.

23. 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.

24. Senior managers in partnerships are responsible for initiating and overseeing LSIs. They should keep Adult Protection Committees regularly apprised of the progress of any LSIs that may be underway, and provide the Committee with a final report once the LSI is concluded. This will ensure that any necessary actions arising out of the LSI relating to the duties of Adult Protection Committees can be noted and necessary responses actioned. Adult Protection Committees should advise Officer Groups accordingly.

Initial and significant case reviews

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25. A significant case review is a means for public bodies with responsibilities relating to the support and 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. An initial case review is an opportunity to consider information relating to the case, and recommend whether significant case review or other response is required.
26. The Scottish Government published an [Adult protection significant case reviews: interim framework](#) in November 2019. 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 is therefore referenced in greater detail in the revised *Guidance for Adult Protection Committees*, publication of which will coincide with publication of this revised Code of Practice.
27. This guidance identifies the [Care Inspectorate](#) as the central repository for all ICRs and SCRs as a way of supporting learning from these reviews to be shared more widely. As such, it is important that all learning reviews that are similar in purpose though not labelled as an ICR or SCR are also submitted to the Care Inspectorate.

Chapter 9: Medical examinations conducted as part of an adult protection investigation

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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.

1. 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.

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

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2. 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 March 2021, no such order has been made)
3. A medical examination may be required as part of an investigation 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 application for an order to safeguard the adult;
 - to assess the adult's physical health needs; or
 - to assess the adult's mental capacity.
4. 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

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5. [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 as part of an adult protection investigation

[\[contents\]](#)

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 required 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

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1. The purpose of accessing and examining 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.
2. 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.
3. 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.
4. 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.
5. Chapter 4 of this Code makes clear that it is permissible for agencies to share information when the request arises from a Section 4 inquiry.
6. 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?

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7. 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.
8. 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 the [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003](#).

Who may access and inspect records?

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9. [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.
10. 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 determine whether records are health records.
11. In the case of health records, 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.
12. In some cases it will be sufficient for a health practitioner provide a summary of their involvement with the adult and of the adult's physical or mental health, along with any relevant documents or reports. It should be noted however that Section 10 refers to existing records held by a professional or organisation rather than information created specifically to meet a request.
13. 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?

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14. 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.

15. 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.
16. 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 the validity of the original wording is pertinent to the investigation (for example if neglect has been alleged in a registered care setting).
17. 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.
18. A draft Protocol for Requesting Information under Section 10 was circulated by Social Work Scotland to partnerships in December 2020 for use as a template for use on local procedures. This includes a draft pro forma that should be used for all requests of 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 about the provisions of the Act.

Must the record keeper comply with a request for access?

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19. [Section 49](#) of the Act provides that it is an offence for a person to fail to comply with a requirement to provide information under Section 10, unless that person has a reasonable excuse for failing to do so.
20. 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.

21. 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

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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 cover 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 11-22).

1. 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.
2. 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.
3. The decision to apply for a protection order will normally be taken at an Adult Support & Protection case conference. As such it will be a multi-agency decision, informed by a report from the Council Officer. The council's legal department will then be asked to arrange for the submission of the application. Evidence must be made on oath with both the council's solicitor and the authorised council officer appearing before the sheriff to present evidence.
4. A council cannot apply for a Protection Order until the expiry date of the previous order. This means 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 what needs to be done and when will assist in ensuring continuity of protection orders.

What to consider before applying for a protection order?

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5. Before the council or any person makes a decision or undertakes any function under the Act, they must have regard to the general principles outlined in sections 1 & 2 of the Act, and as outlined in Chapter 3 of the Code.
6. The use of other legislation may also be considered, for example, social work, child protection, mental health, civil law or criminal justice legislation.
7. Consideration must also be given to whether the adult should be referred to an independent advocacy organisation 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.
8. 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, see paragraphs 10 -15 of the Chapter.
9. 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?

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10. 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.
11. 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 steps, 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 test referred to in paragraph 10 above and the onus will be on the applicant for the order to satisfy the sheriff in that regard. 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.
 12. 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.
 13. 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 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-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.
 14. 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 that the adult does not trust.

15. 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 there is an *active refusal* of consent, what should properly happen where an adult clearly refuses to consent but where s/he is believed not to have the capacity to make that decision must be considered. 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 refuses to comply with a banning 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 ASPA, e.g. under the Adults with Incapacity (Scotland) Act, 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.

Chapter 12: Assessment orders

[\[contents\]](#)

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?

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1. The purpose of an assessment order is to determine whether the adult is an adult at risk; and whether there is reasonable cause to suspect that the adult at risk is being, or is likely to be, seriously harmed; and whether any action should be taken to protect the adult from serious harm.
2. 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.

3. 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 to do anything, including the use of reasonable force, where necessary which the constable considers to be required in order to fulfil the object of the visit. Only the constable has a right to use reasonable force.
4. 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.
5. 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.
6. 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?

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7. [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.
8. 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.

9. 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](#).
10. 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

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11. Under [Section 41\(3\)](#) and (5), the Act provides that the applicant for an order must notify the affected adult in writing of the application and should advise them of their right to be heard or represented before the sheriff and to be accompanied by a friend, relative or any other representative chosen by the adult.
12. Under [Section 41\(4\)](#) the affected adult may be heard or represented before granting an assessment order. Under section 41(5) the affected adult may be accompanied in court by a friend, a relative or any other representative (including legal) chosen by the adult.
13. 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.
14. 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 the provisions available under the [Vulnerable Witnesses \(Scotland\) Act 2004](#).

15. 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.
16. 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 sheriff may instruct the safeguarder to report on the issue of consent.

Timescales within which an order must be carried out

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17. 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 midnight on 20 November.
18. The purpose of the assessment order is 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.
19. 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.
20. 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 GP's 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.
21. 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.

22. 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.
23. An assessment order cannot be appealed.

Warrant for entry

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24. In granting an assessment order, the sheriff must also grant a warrant for entry that authorises a police constable to use reasonable 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.
25. 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.
26. Once a warrant has been executed, it cannot be used again.

What can be done in cases of urgency?

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27. [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).
28. 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.
29. 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?

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30. 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

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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?

1. 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 the adult at risk actually lives may however be a contributory factor in the harm and the move may provide "breathing space" for the specified person.
2. 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).
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.
4. 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?

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5. 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.
6. 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?

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7. 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.
8. The place where the adult at risk is removed from 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

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9. Under [Section 41\(3\)](#), the applicant for an order should notify the affected adult in writing of the application and advise them of their right to be heard or represented before the sheriff and to be accompanied by a friend, relative, carer or any other representative of their choice in accordance with section 41(4) and (5).
10. 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.
11. 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.
12. Under Section 41(2), the sheriff may disapply the requirement (at paragraphs 28 to 30) 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.
13. [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.
14. 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”.

15. 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.
16. 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.
17. 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 the provisions available under the Vulnerable Witnesses (Scotland) Act 2004.
18. Where the council considers that it would be prejudicial to the adult’s welfare for the adult to attend a hearing, then the council may ask the sheriff to dispense with intimation to the adult who is the subject of the application and other parties (see also paragraphs 28 to 36).

Can conditions be attached to a removal order?

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19. Section 15(2) provides that the sheriff may attach a requirement to the granting of a removal order. This may require a council 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.
20. Whether the sheriff attaches such a requirement to an order will depend on the circumstances in 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.

21. 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.
22. 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 where the adult has been moved to.

Warrant for entry

[\[contents\]](#)

23. The sheriff (or justice of the peace) must grant a warrant that authorises a police constable to use reasonable force 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.
24. 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 general principles in Sections 1 and 2 of the Act.
25. Once a warrant has been executed, it cannot be used again.

Timescales within which an order must be carried out

[\[contents\]](#)

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

27. 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.
28. 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?

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29. 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.
30. 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 where the adult must be removed, a fresh application will also be needed for a new removal order.

Can a removal order be varied or recalled?

[\[contents\]](#)

31. [Section 17](#) provides that an application may be made to the sheriff to recall or vary a removal order. 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.
32. 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.
33. Where the sheriff has recalled the removal 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.

34. As with the initial application, 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?

[\[contents\]](#)

35. [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.

36. 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 on 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)).

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

38. The council is not entitled to recover any expenses it incurs in relation to property owned or controlled by the adult removed. The council has to return the property to the adult at risk as soon as is reasonably practicable. This could be agreed in advance with the adult at risk in the form of a Protection Plan.

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

[\[contents\]](#)

39. 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.

40. 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.

What can be done in cases of urgency?

[\[contents\]](#)

41. [Section 40](#) provides that a council can apply to a justice of the peace of the commission area in which the adult is located, where:

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

42. 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.

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

44. 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

[\[contents\]](#)

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?

[\[contents\]](#)

1. A banning or temporary banning order can only be granted in respect of an adult at risk of 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 more effectively than would removing the adult from a place where they are at risk of harm from another person.
2. [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 of the order may be a child. [Section 21](#) allows the sheriff to grant a temporary banning order pending determination of an application for a banning order.
3. 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.
4. A condition specified in 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?

[\[contents\]](#)

5. [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.
6. Under Section 22 (2) the council is under an obligation to apply for a banning order if it is 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.
7. The applicant may also apply for a temporary banning order at the same time as making application for a banning order, or at a later date. This allows an 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.
8. 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?

[\[contents\]](#)

9. [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, or
 - 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.
10. 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.
11. The order allows a person to be banned from being in a specific place, usually where the adult at risk lives. The main test of 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?

[\[contents\]](#)

12. [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.
13. 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.
14. 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.
15. 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.

How long can a banning order be granted for?

[\[contents\]](#)

16. A banning order can last for any period up to a maximum of six months.
17. The applicant should consider what would be the shortest period possible in line with the general principles of the adult at risk's wishes and what would be beneficial to the adult.

18. 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?

[\[contents\]](#)

19. [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; or
- the date the sheriff is required to determine the banning order within the period specified in Court Rules;
- the date on which it is recalled; or
- any specified expiry date.

20. A temporary banning order may also be recalled or varied.

What conditions can be attached to an order?

[\[contents\]](#)

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

22. [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

[\[contents\]](#)

23. [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.

24. 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.

25. 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 by way of a motion in the process may subsequently be made to the sheriff to attach a power of arrest.

Notifications and hearings

[\[contents\]](#)

26. Under [Section 41](#), the applicant for the banning order or temporary banning order (or application for variation or recall) should give notice in writing of the application to the subject of the order, and to the affected adult at risk (where that person is not the applicant). This notification should advise the subject of the order of their right to be heard or represented before the sheriff. Notification to the affected adult at risk (where that person is not the applicant), should advise of their right to be heard or represented before the sheriff, and to be accompanied by a friend, relative or any other representative chosen by the adult.
27. [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 banned during 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.
28. 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.
29. 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.
30. 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 the provisions available under the [Vulnerable Witnesses \(Scotland\) Act 2004](#).

Disapplication of notification and intimation

[\[contents\]](#)

31. 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.

32. 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 persons listed in paragraph 37 of this Code 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 an order

[\[contents\]](#)

33. [Section 24](#) provides that application may be made to the sheriff to recall or vary an order by:

- 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.

34. The sheriff may vary or recall an 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.
35. 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.
36. 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 [\[contents\]](#)

37. [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.
38. 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? [\[contents\]](#)

39. 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 is confirmed.
40. Alternatively, the order will continue to have effect until it expires or, in the case of a temporary banning order, the sheriff principal refuses leave to appeal against the decision to quash the order.

Who does the applicant have to notify of the granting, variation or recall of an order?

[\[contents\]](#)

41. 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 person specified by the sheriff, by delivering a copy of the order (and any power of arrest attached) or the varied order or order of recall to the adult and/or other person(s) specified by the sheriff. However, failure to deliver an order does not invalidate it.
42. Where a power of arrest has been attached, section 27 provides that the police, via the chief constable, must be notified, 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?

[\[contents\]](#)

43. [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.
44. 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, where 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?

[\[contents\]](#)

45. 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.

46. 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.
47. 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 Local Authority 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.
48. 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?

[\[contents\]](#)

49. 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.
50. 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?

[\[contents\]](#)

51. Section 28(2) requires that the arresting officer must immediately inform the arrested person of the reason for the arrest and take the arrested person as quickly as is reasonably practicable to a police station.

52. [Section 29](#) requires that the officer in charge must detain the arrested person in custody until the person is accused on petition or charged on complaint with an offence in respect of the facts and circumstances which gave rise to the arrest or brought before the sheriff under [Section 32](#) of the Act.
53. [Section 30](#) requires the officer in charge to ensure that the detained person is informed immediately of:
- their right to have, on request, intimation of detention and the place of detention given, without delay, to a solicitor, and one other person reasonably named by the person,
 - the right to have, on request, intimation given to a solicitor that the solicitor's professional assistance is required;
 - the right to have, on request, the solicitor informed, as soon as the information is available, of the court to which the person is to be taken and the date when that is to happen; and
 - the right to have, on request, a private interview with the solicitor before any appearance before the sheriff.
54. The police must pass the facts and circumstances to the procurator fiscal. The fiscal will then decide if there is sufficient evidence to take any criminal proceedings (e.g. assault towards the adult at risk) regarding the incident which gave rise to the arrest for breaching the banning order.

Breaching of order with an attached power of arrest - child

[\[contents\]](#)

55. The subject of the banning order may be a child. Section 30 provides that where the officer in charge knows or believes that an arrested person is a child, then the officer must, where practicable, give intimation without delay of the detention and place of detention to any person known to have parental responsibilities and rights in relation to the child. Such person must be permitted reasonable access to the child. It would be expected that the police would also make a referral to the Children's Reporter.

Police duty to keep record of detention

[\[contents\]](#)

56. Under [Section 31](#), the officer in charge must ensure that the following matters are recorded in connection with the detention of the subject of the order:
- the time at which the person was arrested; the police station to which the person was taken;
 - the time when the person arrived at that police station;

- the address of any other place to which the person is, during the detention, taken;
- the time when the person was informed of their rights; the time and nature of any request made by the person to exercise any of those rights; and
- the time and nature of any action taken by a police officer under section 30.

Duty to bring detained person before sheriff

[\[contents\]](#)

57. [Section 32](#) makes clear that the procedure under the Act would only apply in circumstances where the procurator fiscal has not yet decided to take criminal proceedings against the arrested person as a result of the facts leading to the arrest.

58. 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 or criminal business.

Information to be presented to sheriff

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59. 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; and
- 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

[\[contents\]](#)

60. 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 2 days (not counting days which are not court days).

61. 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).
62. The sheriff must provide the detained person with an opportunity to make representations prior to making any decision.
63. 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

[\[contents\]](#)

64. 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](#) .
65. 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

[\[contents\]](#)

1. [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. 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.
2. 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.

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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 organization 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.

[Adult protection significant case reviews: interim framework](#)

[Adult Support and Protection Act 2007.](#)

[Adult Support and Protection National Strategic Forum](#)

[Adults with Incapacity \(Scotland\) Act 2000](#)

[Appropriate adults - guidance for local authorities](#)

[ASP Code of Practice \(revised\)](#)

[British Sign Language](#)

[Care Inspectorate](#)

[Carers \(Scotland\) Act 2016](#)

[Counter-Terrorism and Security Act 2015](#)

[Criminal Justice \(Scotland\) Act 2016](#)

[Data Protection Act 2018](#)

[Equality Act 2010](#)

[European Convention on Human Rights \(ECHR\)](#)

[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](#)

[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

Annex B

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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 to safeguard adults at risk in its area. |
| Advance Statement | A statement made under the provisions of 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 | 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 | Order granted by a sheriff to ban a person from being in a specified place or area. The order may have specified conditions attached. |
| Council Officer | An individual appointed by a council to perform certain specified function under the terms of the 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 | An inquiry is any process that has the aim of gathering knowledge and information. This could include inquiries of any relevant party and the cooperation of the public bodies and office holders under Section 5 of the Act. The purpose of making inquiries is to ascertain whether adults are at risk of harm, and whether the council may need to intervene, provide support, or any other assistance to the adult or any carer. |

| | |
|----------------------|--|
| Investigation | That part of an inquiry which requires the involvement of a council officer. |
| 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. |

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We are inviting responses to this consultation by **28 September 2021**

Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space (<http://consult.gov.scot>). Access and respond to this consultation online at <https://consult.gov.scot/health-and-social-care-integration/adult-support-and-protection-updated-guidance>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 28 September 2021.

If you are unable to respond using our consultation hub, please complete the Respondent Information Form to:

Adult Support and Protection Policy Team
Scottish Government
GE
St Andrews House
Edinburgh
EH13DG

Handling your response

If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document.

To find out how we handle your personal data, please see our privacy policy: <https://www.gov.scot/privacy/>

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.gov.scot>. If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or to Heather.Gibson@gov.scot

Scottish Government consultation process

Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.gov.scot>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

Respondent Information Form

Please Note: this form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy:

<https://www.gov.scot/privacy/>

Are you responding as an individual or an organisation?

- Individual
 Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
 Publish response only (without name)
 Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published. If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
 No



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