

Adult Support and Protection (Scotland) Act 2007 Part 1

Guidance For Adult Protection Committees

July 2021

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Preface

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The first edition of this guidance was issued by the Scottish Government, effective from October 2008, when the [Adult Support & Protection \(Scotland\) Act 2007](#) (“The Act”) was implemented. It focused on elaborating on the expectations relating to the duties and workings of Adult Protection Committees as outlined in the Act.

Since then, there has been the integration of health and social care; changes introduced in terms of the governance of public protection at a local level; refinement of the expectations of the Scottish Government in relation to child protection (which has implications for adult protection); and the issuing of new guidance relating to case reviews.

Practice and practice expectations have also developed significantly over the past 12 years, with there now being a much greater appreciation of the breadth of work that can fall within the provisions of the Act, and of the implications this has for the work of Adult Protection Committees.

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 both the [Adult Support and Protection revised Code of Practice](#) and the guidance for Adult Protection Committees.

Note:

The Act and the original guidance make frequent references to Councils and their officers. The Act was passed and enacted prior to Health and Social Care integration. In this guidance references to Councils should therefore be taken to include bodies and partnerships that have delegated social work functions.

The Act and the original guidance also refer to other statutory bodies who have since be reorganised and renamed. In this guidance reference is therefore made to their current titles, for example Police Scotland and the Care Inspectorate.

Introduction

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1. This revised guidance is issued under [section 47](#) of the Adult Support and Protection (Scotland) Act 2007 which requires Adult Protection Committees (APCs) and councils to have regard to any guidance issued by Scottish Ministers about their functions under sections 42 to 46 of the Act.
2. The [Adult Support and Protection \(Scotland\) Act](#) was passed by the Scottish Parliament in February 2007 and is referred to in this guidance as the Act. It is in five parts and Part 1 deals with the protection of adults at risk of harm.
3. This guidance relates to Part 1 of the Act. It should be read in conjunction with the Act itself, the associated Code of Practice [link to be inserted when revised version published] and other related legislation including the [Adults with Incapacity \(Scotland\) Act 2000](#) and the [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003](#).

Main provisions of the Act

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4. Part 1 of the Act introduces new measures to identify and protect adults at risk of harm which include:
 - placing a duty on Councils to make inquiries and investigations to establish whether or not action is required to stop or prevent harm occurring;
 - a requirement for specified public bodies to co-operate with local councils and each other in investigating suspected or actual harm;
 - the introduction of a range of protection orders, namely assessment orders, removal orders and banning orders; and
 - a legislative framework for the establishment of local multi-agency Adult Protection Committees (APCs) across Scotland.
5. The principles of the Act are set down in sections 1 and 2 of the Act, and require that any interventions under the Act must provide benefit to the adult which could not reasonably be provided without intervention and must be the least restrictive option available which benefit the adult.

6. [Section 42](#) of the Act states that:
- (1) Each council must establish a committee (an "Adult Protection Committee") with the following functions-
 - (a) to keep under review the procedures and practices of the public bodies and office-holders to which this section applies which relate to the safeguarding of adults at risk present in the council's area (including, in particular, any such procedures and practices which involve co-operation between the council and other public bodies or office-holders to which this section applies),
 - (b) to give information or advice, or make proposals, to any public body and office-holder to which this section applies on the exercise of functions which relate to the safeguarding of adults at risk present in the council's area,
 - (c) to make, or assist in or encourage the making of, arrangements for improving the skills and knowledge of officers or employees of the public bodies and office-holders to which this section applies who have responsibilities relating to the safeguarding of adults at risk present in the council's area,
 - (d) any other function relating to the safeguarding of adults at risk as the Scottish Ministers may by order specify.
 - (2) In performing its functions, an Adult Protection Committee must have regard to the desirability of improving co-operation between each of the public bodies and office-holders to which this section applies for the purpose of assisting those bodies and office-holders to perform functions in order to safeguard adults at risk present in the council's area.
 - (3) The public bodies and office-holders to which this section applies are-
 - (a) the council,
 - (b) the Care Inspectorate,
 - (c) Healthcare Improvement Scotland (HIS),
 - (d) the relevant Health Board,
 - (e) the chief constable's representative for the relevant area, in practice this is usually the Divisional Commander,
 - (f) any other public body or office-holder as the Scottish Ministers may by order specify.
7. It is important to note that the terms of the Act are such that it is only the public bodies referenced above that are covered by the duties of the APC in

terms of reviewing procedures and practice, giving advice or making proposals, and improving skills and knowledge.

8. Adult Protection Committees have been statutorily assigned the lead role for overseeing cooperation and communication between agencies to promote appropriate support and protection for adults at risk of harm. Their functions are laid out in [section 42](#) of the Act as outlined above.

9. The annex to this guidance provides a summary of the wider and more operational provisions of the Act.

Establishment of the committee

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10. APCs must be established for every council area. There may be different models to deliver this and local authorities should adopt the model that is most appropriate for their area. There is nothing in the Act that prohibits an APC being established that covers more than one council area, in which case the presumption is that each authority will remain accountable for their activities in their own council area. There is also nothing in the Act that prohibits the APC functions being aligned under wider committees, for example a combined Adult and Child Protection Committee. In such circumstances the duties that follow from the Act in relation to Adult Support and Protection must be followed by the wider committee. There is nothing in the Act that prohibits the committee being a formal committee of the council though in practice this has never happened.

Membership of the committee

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11. The council is responsible for appointing a convener and section 43(6) requires that this must not be an officer or member of the council. The ASP Code of Practice published in October 2008, and revised in 2020, suggests that it would be good practice to appoint a convener who is independent of all bodies represented on the Committee, and certainly be independent of the council, the health board and the police. Although it is not a statutory requirement this guidance strongly endorses that good practice expectation. The section of this guidance relating to Governance covers matters to do with the appointment of conveners in more detail.

12. The Act states at [section 43\(2\)](#) that APC membership must include representatives of the public bodies outlined at paragraph 6 above, with the exception of the council and the Care Inspectorate. The omission of the council presumably reflects the fact that as the council has established the committee it will also have representation on the committee. In practice every APC has at least one, usually several, council representatives. Very few APCs have had HIS representation since the Act was implemented in 2008 although HIS do now sit as associate members of the National Conveners' Association.

13. The Care Inspectorate, the Mental Welfare Commission for Scotland and the Office of the Public Guardian may nominate a representative, but there is no requirement on them to do so. Should they make a nomination the APC must allow that person to attend.

14. In practice it is common for APCs to regard themselves as quorate if there is representation from the council, the NHS and Police Scotland. This is a pragmatic and appropriate position to take and is in keeping with the spirit of the legislation.

15. [Sections 43\(4\) & \(5\)](#) state that the council may also appoint any other such persons who appear to have skills and knowledge relevant to the functions of the committee. In practice across Scotland appointments to the committee are delegated to the APC itself, and this guidance regards this as being proportionate and appropriate. All committee members should be of sufficient seniority to represent their organisations in discussions and decisions about policy, resources and strategy.

16. A wide range of statutory services contribute to the protection of adults at risk. Effective adult protection can only be achieved when it is planned and delivered within the wider context of public protection and community safety. APCs should therefore consider membership that includes representatives from Child Protection services, Multi Agency Public Protection Arrangements (MAPPA), Criminal Justice and Scottish Fire & Rescue.

17. All APCs have a range of sub committees and membership of this need not be drawn from the APC itself. This gives the opportunity to engage other agencies in the work of the committee without having to be full committee members.

18. In this context it would be important to consider involvement and engagement with:

- services for adults, children and families
- other council services including housing, education, consumer protection, trading standards and community safety
- health services including general practitioners, allied health professionals, acute and psychiatric hospitals and community health services
- third and independent sector organisations e.g. care providers and carer groups
- the financial sector
- independent advocacy organisations

19. The need to support and protect adults at risk extends to adults within managed and registered care services, the NHS and independent hospitals and hospices. Where harm occurs or is suspected in these situations, the Care Inspectorate or HIS has a responsibility through its regulatory functions of inspection, investigating complaints and enforcement as well as a duty to make

adult support and protection referrals. APCs will want to ensure a proper understanding of roles and responsibilities between the Care Inspectorate, HIS and local agencies who will have their own monitoring arrangements.

20. [The Mental Welfare Commission for Scotland \(MWC\)](#) has particular statutory responsibilities in relation to the care and treatment of people with mental disorders both in monitoring practice and carrying out inspections and inquiries as well as their duties to make adult support and protection referrals. APCs will want to ensure that arrangements are agreed and understood about the relationship between local agencies and the MWC in adult support and protection work. Similar understanding will need to be developed with the [Office of the Public Guardian \(Scotland\)](#). It may be that the National Conveners' Association can assist with this.

21. Each Committee should ensure that their discussion and decisions are fully informed and cognisant of the interests and concerns of local adults at risk and their carers. This may be achieved in a variety of ways, for example:

- there may be a number of places on the Committee reserved for representatives of adults who have received or might need adult protection services and carers. Every possible means of facilitating participation (such as advocacy, pre-meetings, supporters, interpreting services and the payment of travel expenses) should be considered.
- the Committee may establish regular contact with representative groups in their area, and ensure that such contact enables groups to explain their interests and concerns about adult protection as well as to give feedback on the extent to which they feel better protected by the Committees activities. It may be necessary and valuable to organise some ad hoc events where there are no established groups. Regular, carefully organised and facilitated events will ensure real exchanges of concerns and opinion.

22. Committees should consider inviting Advocacy and Carer organisations to be represented on the Committee, specifically charged with seeking out and representing the opinions of adults who may need or have needed protecting and their carers. It will be important to ensure that there is an adequate spread of interests represented, and that there is an exchange of information, rather than the Committee seeking feedback on its decisions and agenda.

23. Whichever options are chosen, it will be important for Committees as part of their regular self-assessments to consider whether it is enabling adults at risk to participate 'as fully as possible' in the carrying out of its functions (as required by the principles of the Act).

Procedures, practice and information sharing

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APC Terms of Reference

24. The Act allows APCs to regulate their own procedures. To enable APCs to meet their statutory duties, the committees should address those functions set out in section 42 of the Act, namely:

- reviewing adult protection procedure and practice;
- providing information and advice and making proposals;
- improving skills and knowledge; and
- all in the context of improving cooperation and communication between agencies.

These will need to be reflected terms of reference for the APC and any sub committees.

25. Since the implementation of the Act and the establishment of APCs a range of other developments in relation to the wider public protection agenda have achieved wider prominence and required multi-agency responses. The duty on councils to inquire into whether someone should be regarded as at risk of harm identifies many people who cannot be so regarded but who are nevertheless regarded as people in distress and who may require supports from a range of agencies. APCs should therefore ensure in such cases local procedures expect that people are offered or signposted to suitable services and to consider preventative options to avoid an adult's situation escalating to a point where they are or are likely to be at risk of harm.

26. In these and other areas APCs have become the main strategic forum in which these matters can be discussed. In doing so this reflects the interconnections between many aspects of public protection, and many of these will form agenda items on Chief Officer Groups.

27. Local Terms of Reference may therefore go beyond the statutory requirements of the Act, or allow APCs to address some matters not fully falling within the terms of the Act, if so approved by the APC.

Multi-agency procedures

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28. APCs are required to keep under review the procedures and practices of the public bodies which relate to the safeguarding of adults at risk, and in particular any such procedures and practices which involve co-operation between the council and other public bodies. They will therefore have to ensure that procedures and practices as they relate to the named public bodies are both multi-agency and multi-disciplinary. These should address

- referral and initial response;
- inquiry including an investigatory stage if required;
- assessment and risk assessment;
- adult protection conferences and protection planning;
- risk and protection planning monitoring; and
- risk and protection plan review.

29. Inquiries under the Act can range from the relatively straightforward to highly complex and therefore require different levels of engagement. However local procedures should identify indicative timescales for completion of identified tasks.

Single agency procedures

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30. Good practice will dictate that APCs should also monitor practice and quality relating to the protection of adults across agencies. Many agencies will have their own internal procedures, audit and monitoring systems. Where relevant to the responsibilities of the APC such procedures and systems should be advised to the committee.

Information sharing

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31. Given the importance of co-operation and information sharing it is important for local agencies and APCs to participate fully in the promotion of a culture of information sharing where adults may require protection, whilst recognising human rights issues with respect to data protection and confidentiality. This will involve agency and APC activity both in individual cases, and in relation to sharing information on practice issues and performance. APCs will also want to consider the relationship between the statutory agencies and other service providers and to promote the adoption by service providers of the same practices in information sharing and co-operative working as are required of statutory agencies.

32. 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 share 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, and also extends to participation in multi-agency audits. 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.

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 UK 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. 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.

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.

Giving information or advice and making proposals

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32. The main forum for addressing the matters outlined in this section will be at the regular meetings of the Chief Officers for the council area. These are generally held quarterly with a standing item for report(s) on Adult Protection activity and issues. This is the opportunity for matters identified by APCs to be brought to the attention of Chief Officers.

33. The Biennial Reports and any routine interim overview reports will also be programmed into Chief Officer Group agendas and provide another forum for these matters.

34. The Act requires APCs to give information or advice, or make proposals to its statutory members on the safeguarding of adults at risk present in the council area(s). APCs do not have executive authority but in order meet this requirement they will need expertise in service standards as they apply to adult support and protection, and must be well informed about local professional practice and performance management.

35. The information advice and proposals duties will be undertaken based on the regular collection and analysis of activity and performance data, including the measurement of outcomes. APCs will therefore need to consider what information systems will have to be in place, what form of regular audit is needed, and what additional research would be helpful. Over time, APCs will be able to consider practice and performance trends from the information available.

36. The Scottish Government has established a data set that councils are required to report on annually. In addition to this APCs will have identified other activity information that they wish to collect. These data sets will provide valuable information determining trends and priorities for attention, as well as for the allocation of resources.

37. This information will be shared through APCs with the statutory bodies and will provide a potential source for advice to them in terms of protecting adult at risk of harm.

38. APCs have a strategic and monitoring function rather than an operational role and therefore routine case review under the auspices of the committee would not be appropriate. Planned audit programmes will however be an invaluable source of information on service standards and areas for improvement that can result in advice and proposals for change to the statutory bodies. Additionally, learning from case reviews, both internally and from elsewhere nationally, is an important way in which APCs can identify areas for improvement and increase the skills and knowledge of staff.

Audit activity

39. A regular programme of multi-agency audit and review should be part of the routine work of APCs, and included in this should be an awareness of any internal audit work that may be undertaken on a single agency basis. Multi-agency audits are most productive when staff from across agencies are engaged in auditing their own and other agency files. This requires good preparation and inter-agency agreement to the approach.

Case reviews

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40. While not referenced in the Act, it is now accepted practice across all APCs that case reviews are commissioned by APCs across Scotland. The purpose of such reviews is to gain a multi-agency understanding of the circumstances of a particular case and to identify what can be learnt in order to best inform future policy, practice and procedure.

41. The Scottish Government published the [Adult protection significant case reviews: interim framework](#) in November 2019. This places the responsibility for commissioning and overseeing such reviews with Adult Protection Committees, on behalf of the Chief Officer's Group. It confirms that APCs are responsible for agreeing recommendations within case reviews and for overseeing any improvement plans that may follow. These matters should be reported to the local Chief Officer Group (or equivalent) for approval and once approved reports of case reviews should be submitted to the [Care Inspectorate](#). As of 1 October 2020 the Care Inspectorate acts as the central collection point for all case reviews. They will support practice development through disseminating the learning from these.

42. Recommendations arising out of case reviews can have implications for all the statutory members of the APC (and for other agencies including care providers). In this regard through conducting their own case reviews, reflecting on the learning from other reviews, and identifying any recommendations for implementation at a local level, APCs are carrying out their function to give advice or make proposals to public bodies.

Large Scale Investigations

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43. A Large Scale Investigation (LSI) may be required where there is reason to believe that adults who are residents of a care home, supported accommodation, an NHS hospital or other facility, or who receive services in their own home may be at risk of harm due to another 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.

44. The Act makes no reference to 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. The updated Code of Practice provides some broad guidance for consideration by partnerships in developing their LSI procedures.

45. 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. The outcome of LSIs should be tabled Chief Officer Groups for their information.

Public information

46. Whilst not directly referenced in the Act it is now an accepted part of the role of APCs to ensure that there are strategies in place to ensure that they maintain an overview of levels of knowledge and confidence in child protection systems within their area within partner agencies and in public awareness of adult support and protection in the wider community.

Improving skills and knowledge

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47. APCs have a duty to make or assist with arrangements for improving the skills and knowledge of the public bodies and office-holders that have responsibilities relating to the safeguarding of adults at risk in their area. A local strategy will therefore be required, recognising the different roles and responsibilities of staff and office holders in the public bodies. Given the essential inter agency importance of adult support and protection work consideration should also be given to including the role of other statutory, voluntary and private organisations.

48. The elements of a local training strategy should address:

- staff working in any sector who need to recognise the signs of harm, neglect or exploitation and require to know when and how to respond, what action to take, including who to report their concerns to, and how they fit into a protection plan;
- the opportunity for staff working in any sector to reach an understanding of the importance of working with people in a way that supports them and promotes their wellbeing and health in the context of the ASP Act;
- staff working in any sector who will be playing a major part in communications, assessments (including about risk, capacity and consent), recording events, decision-making on actions to be taken, and have a major role in the implementation of protection plans, including legal processes;
- staff managing services who will be supervising others in contact with service users, who will be monitoring performance at a local or central level and who may be involved in decision-making in individual cases and chairing adult protection conferences and reviews;
- staff working in the statutory and legal sectors who will be taking a lead role in legal proceedings in relation to adult protection work; and
- staff in other areas of work including advocates in local organisations, members of APCs, regulatory staff within the Care Inspectorate, council clerical, administrative staff or other staff who will act as initial contacts for referrals or minute takers in adult protection case conferences, guidance staff in secondary schools

for those pupils aged 16 to 18 years and lecturing and tutoring staff within local education institutions.

49. The need to support and protect adults at risk extends to adults within managed and registered care services. Where harm is happening or suspected in these situations, the Care Inspectorate in the required format has a responsibility with its regulatory functions through inspection, complaints and enforcement. As with other aspects of practice, APCs will want to ensure a proper understanding of roles and responsibilities between the Care Inspectorate and local agencies through further development of existing Memoranda of Understanding.

50. The duties and powers of the Act relate to adults in all settings who are being harmed or may be being harmed. Within NHS services this includes inpatient, day or other services. These situations will involve health service managers and monitoring bodies. As with registered care services, APCs will want to consider how adult protection work relates to NHS services and how to ensure the Act's implementation in relation to these services.

51. The [Mental Welfare Commission for Scotland](#) (MWC) has particular statutory responsibilities in relation to the care and treatment of people with mental disorders, which includes learning disabilities, both in monitoring practice and carrying out inspections and inquiries. APCs will also want to ensure that arrangements are agreed and understood about the relationship between local agencies and the MWC in adult support and protection work. Similar understanding will need to be developed with the [Office of the Public Guardian](#).

52. It is equally important for people who use services to understand their rights and the supports available to them. APCs may also want to develop a broader communication strategy, encompassing general awareness raising and appropriate training for service users, carers and members of the public. They may also wish to consider asking service users to act as co-workers in delivering such programmes.

Biennial Report

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55. [Section 46](#) of the ASP Act states that:

The convener of an Adult Protection Committee must, as soon as practical after such date as the council may direct biennially-

- (a) prepare a general report on the exercise of the Committee's functions during the 2 years ending on that date, and
- (b) after securing the Committee's approval of the report, send a copy of it to-

- (i) each of the public bodies and office-holders represented on the Adult Protection Committee by virtue of section 43(4),
- (ii) the Scottish Ministers,
- (iii) the Mental Welfare Commission for Scotland,
- (iv) the Public Guardian,
- (v) the Care Commission (where it not represented on the Committee), and
- (vi) any other public body or office-holder as the Scottish Ministers may by order specify.

56. In practice the Scottish Government requested that the first Biennial Report should be submitted by the end of October 2010, two years after the implementation of the Act. Biennial reports have been submitted every two years thereafter.

57. Expectations for the content of the first report were set out in the Scottish Government's original guidance for APCs, which expected that the report would summarise the work of the APC, analyse achievements, identify current issues with services, practice and performance, and set out the required improvements and proposals for the APC programme for the next two year period.

58. In doing so it was expected that the report would analyse, review and comment on APC functions, and would therefore likely address:

- management information on activity, trends, inputs and outcomes in relation to the protection of adults at risk;
- details of support provided;
- the use of protection orders;
- public information;
- the management of services and staff;
- communication and cooperation between agencies;
- workforce issues; and
- progress with training.

This has broadly remained the same expectation for subsequent Biennial Reports, with amendments being made from time to time through deliberations between the National Convener's group, and National Adult Protection Coordinator and the Scottish Government.

59. The Biennial Reports are prepared by the independent convener who after approval by the APC is expected to submit it to the bodies named above. The report now serves two main functions, the first being to provide information to the bodies listed above. In practice submission of Biennial Reports has been limited to formal submission to the Scottish Government, and sharing amongst partners at a local level. Submission of reports to the Care Inspectorate, HIS or the Office of the Public Guardian has not become routine.

60. The other main function is to provide the means by which APCs reflect on past performance and identify areas (both locally and nationally) for improvement that are incorporated into development or business plans for the APC over the coming two years. In essence this requires the report to reflect a commitment to continuous improvement. As a reflection of this many APCs now produce reports every year with the intervening reports being for governance and accountability within their own areas. In such cases business plans become rolling programmes that are added to as new actions and improvements are identified.

61. At a local level the reports should be shared with members of Chief Officer Groups (COGs) and then other Boards as appropriate for the individual partnerships. Biennial Reports are frequently also used as the basis for more public facing information on adult protection work in the committee's area, and to provide a means to promote the work of adult support and protection across agencies.

62. Good practice dictates that this commitment by APCs to continuous improvement should be reflected in their Terms of Reference, and that all Biennial Reports should contain a Development or Business Plan for the next reporting period.

63. This guidance recognises that in conjunction with the statutory requirement for the submission of Biennial Reports, they provide maximum benefit to APCs and local partnerships themselves in reviewing their past work and planning their future work.

Governance

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64. Since the implementation of the Act the governance arrangements for public protection at a local level have become much more strongly established. APCs are now firmly located within these 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.

65. Chief Officer Groups (COGs) comprise the council Chief Executive, the NHS Chief Executive (or nominee) and a representative of Police Scotland (usually the Divisional Commander). In addition, there are senior officers from a range of agencies and organisations including the Chief Social Work Officer who will advise and assist local authorities and their partners in relation to governance and fulfilment of statutory responsibilities including adult protection. The Convener of Adult and Child Protection Committees will also be members. Many COGs also include representatives from MAPPAs, violence against women, community safety and other areas.

Adult Protection Committees and Chief Officer Groups

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66. In 2019 the Scottish Government published updated guidance [Protecting Children and Young People, Child Protection Committee and Chief Officer](#)

Responsibilities. This concentrated on matters to do with child protection but has direct relevance to adult protection. This section of the Guidance for APCs therefore reflects the content of this document as it applies to Adult Support and Protection.

67. Working within the accountability structures of their respective organisations, members of the Chief Officers Group in each local authority area must work collectively to identify and commission inter-agency activity for public protection. Included in this within all partnerships is the protection of adults at risk of harm. Chief Officers are ultimately responsible and accountable for improving the experience of and outcomes for adults who may need protection. The local APC is the statutorily mandated inter-agency mechanism to take forward this work.

68. The Act does not specifically reference governance matters other than to require that each council must establish an APC, must appoint an independent convener who must not be an officer or member of the council, and must also appoint all other members of the APC.

69. Current practice and a commitment to strong inter-agency working has moved beyond these expectations in relation to processes for appointing conveners, and the independence of the convener. Good governance now expects that:

- Conveners should be appointed after an open recruitment process involving an interview with the three Chief Officers or their nominees
- Conveners should not be an officer or member of the council and should also be independent of the NHS and Police Scotland
- Conveners should be appointed for fixed terms, with the option for renewal if agreed by Chief Officers, and based on ongoing appraisal, at a frequency to be determined locally.
- The appointment of other members to APCs can be delegated to the convener and the APC

70. Unlike in Child Protection, APCs are a statutory requirement, and the convener is responsible for, among other things, producing a Biennial Report that after approval by the APC, should be submitted to the Scottish Government and other named bodies. The general practice now is that the report is also available to members of the Chief Officers Group in advance of submission.

71. Good governance now requires that:

- After approval by the APC, Biennial Reports should be shared with Chief Officers, and any agreed amendments made prior to final submission.

Case reviews and large-scale investigations

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72. Paragraphs 43 – 48 above make reference to case reviews and large-scale investigations, and highlight the role of Chief Officers in these. Minimally the APC should report initial case reviews to Chief Officer Groups, and recommendations from significant case reviews should be agreed between the APC and the COG. The APC should notify the COG of the outcome of large scale investigations.

Annex

The Adult Support and Protection (Scotland) Act 2007

The following summarises the provisions of Part 1 of the [Act](#) other than those previously set out in this guidance. This should be read in conjunction with the Code of Practice.

Sections 1-2: Principles

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The **overarching principle** underlying Part 1 of the Act is that any intervention in an individual's affairs should provide benefit to the individual and should be the least restrictive option of those that are available which will meet the purpose of the intervention.

This is supported by a set of **guiding principles** which, together with the overarching principle, must be taken account of in performing functions under Part 1 of the Act. These are:

- the ascertainable wishes and feelings of the adult at risk (past and present);
- the views of other significant individuals, such as the adult's nearest relative; their primary carer, guardian, or attorney; or any other person with an interest in the adult's well-being or property;
- the importance of the adult taking as active a part as possible in the performance of the function under the Act;
- providing the adult with the relevant information and support to enable them to participate as fully as possible;
- the importance of ensuring that the adult is not treated less favourably than another adult in a comparable situation; and
- the adult's abilities, background and characteristics (including their age, sex, sexual orientation, religious persuasion, racial origin, ethnic group and cultural and linguistic heritage).

Section 3: Definition of adult at risk of harm

The Act defines 'adults at risk' as individuals, aged 16 years or over, who:

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

This is commonly known as the **three-point test**.

It should be noted that the Code of Practice makes clear that infirmity does not necessarily rely upon a medical diagnosis in the way that disorder or illness do, and neither is infirmity only related to age.

[Section 3\(2\)](#) makes clear than an adult is "at risk of harm" if:

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

For the purposes of the Act, 'harm' includes all harmful conduct and, in particular, includes:

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

Duties and powers of Councils, NHS, Police, and other bodies

The Act establishes certain duties and powers for Councils and other statutory bodies in relation to:

- Inquiries, which may require an investigatory stage (including co-operation, the duty to consider independent advocacy and other services); and
- Protection Orders.

Sections 4-5: Inquiries and co-operation

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The Act places a duty on councils to make inquiries about an individual's well-being, property or financial affairs where the council knows or believes that the person is an adult at risk and that it may need to intervene to protect him or her from being harmed.

The Act requires the following public bodies to co-operate with local councils and with each other, where harm is known or suspected: all councils; Chief Constables of police forces; the relevant NHS Board; the Care Commission; the Public Guardian; the Mental Welfare Commission for Scotland; and any other public body or office holder that Scottish Ministers specify. The public bodies or officers must advise the relevant council if they know or believe that a person is an adult at risk and that action needs to be taken in order to protect that person from harm.

Section 6: Adult representation including advocacy and support services

Councils have a duty to consider providing appropriate services, including independent advocacy, to support adults where an intervention under the Act is considered to be necessary.

The principles underlying the Act emphasise the importance of striking a balance between an individual's right to freedom of choice and the risk of harm. These must **always** be taken into account when an intervention under Part 1 of the Act is being considered.

Sections 7-10: Investigations and the powers of council officers

These sections of the Act gives a Council Officer powers in relation to making visits, entering premises and carrying out interviews within investigations concerning adults at risk. If a Council Officer is accompanied by a health professional, he/she may carry out a medical examination of the adult. An adult has the right not to respond to questions, and to refuse a medical examination. The Act gives a Council Officer the right to require the provision of medical, financial or other documents or copies of them related to an adult at risk, although medical records can only be inspected by a health professional. [Sections 52 & 53](#) and a subsequent order made by Scottish Ministers define who may perform the functions of a council officer.

Sections 11- 41 and 49-50: Protection orders and offences

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The Act allows a council to apply to the sheriff for a warrant for entry or a protection order. A protection order can take one of three forms:

- an assessment order;
- a removal order; or
- a banning or temporary banning order.

The Act establishes powers of arrest in relation to Banning Orders; offences of preventing or obstruction of a protection order; and offences committed by bodies corporate etc. in breach of the Act.

Section 48: Code of Practice

[Section 48](#) of the Act requires the Scottish Ministers to prepare a Code of Practice containing guidance about the performance of functions by councils and their officers and health professionals under the Act.

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Responding to this Consultation

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 (attached to the Code Of Practice document) to:

Adult Support and Protection Policy Team
Scottish Government
GE
St Andrews House
Edinburgh EH1 3DG

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 at 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

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

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.



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