

Adult Support and Protection (Scotland) Act 2007

Code of Practice

April 2014



**ADULT SUPPORT AND PROTECTION
(SCOTLAND) ACT 2007**

CODE OF PRACTICE

**FOR AUTHORITIES AND PRACTITIONERS EXERCISING
FUNCTIONS UNDER PART 1 OF THE ACT**

EFFECTIVE FROM APRIL 2014
(Amended April 2014)

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Chapter 1: About this code

What is the purpose of this code?

1. The Adult Support and Protection Act 2007 (referred to as the Act) was passed by the Scottish Parliament in spring 2007. This code of practice (referred to as the Code throughout) provides guidance about the performance of functions by councils and their officers, and other professionals under Part 1 of the Act.
2. It provides information and guidance on the principles of the Act, about the measures contained within the Act including when and where it would normally be appropriate to use such powers. Work on amending commenced in summer 2013 to bring it up to date and to outline the responsibilities that fall to a range of agencies in addition to council and health professionals.
3. 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.
4. Collectively the legislation giving rise to these codes has introduced significant changes in the ways that adults considered to be at risk of harm are supported and protected. The changes have brought about a range of powers that may be used to intervene in adults' lives. This includes a requirement to involve people who use services in decision-making regarding their care, treatment and support wherever possible.

What is the status of this Code?

5. Section 48 of the Act imposes a duty on Scottish Ministers to prepare a code of practice containing guidance for those exercising functions under Part 1 of the Act. It also places a duty on councils, council officers and health professionals performing functions under Part 1 to have regard to the Code of Practice, if relevant.
6. The Act also places Scottish Ministers under a duty to review the Code from time to time and provides a power following such review to revise it. Those using this Code are advised to check the relevant measures themselves and to seek their own legal advice as required, when referring to the relevant provisions of the Act.

Who developed this Code?

7. The original and revised Codes were prepared by a working group of professionals drawn from the public and the independent and third sector in

Scotland, in conjunction with several independent chairs of Adult Protection Committees and the Scottish Government.

Who is this Code for?

8. This Code is addressed to anyone who is authorised or required to perform any of the functions under Part 1 of the Act. This means primarily council officers from local authorities, but also health professionals and the police, as well as the statutory bodies identified later in this Code. It should also be considered by those working in the independent and third sector.

European Convention on Human Rights compliance

9. 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.

Subordinate legislation

10. The Act should be read in conjunction with all subordinate legislation made under the Act. Practitioners are advised to check the Adult Support and Protection pages on the Scottish Government website for current information and the Office of the Public Sector Information website for links to the subordinate legislation.

Chapter 2: Introduction to the Act

Background

1. The Act makes provision intended to protect those adults who are unable to safeguard their own interests and are at risk of harm because they are affected by disability, mental disorder, illness or physical or mental infirmity. Harm means all harm including self-harm and neglect.
2. Section 1 details the fundamental principles underpinning Part 1 of the Act; namely that any intervention must provide benefit to the adult, that this benefit could not be reasonably achieved without intervention and that any intervention is the least restrictive option with regard to the adult's freedom.

What does Part 1 of the Act do?

3. Part 1 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 Part 1 of the Act;
 - placing a duty on Councils to make the necessary inquiries and investigations to establish whether or not an adult is at risk from harm and further action is required to protect the adult's well-being, property, or financial affairs;
 - clarifying the roles and responsibilities of those involved in adult protection;
 - a duty to consider the provision of advocacy or other services after a decision has been made to intervene;
 - permitting practitioners to investigate circumstances where individuals may have capacity to choose but not the ability to exercise that choice because of undue pressure;
 - requiring specified public bodies and office holders to co-operate with local councils and each other about adult protection investigations;
 - a range of protection orders which are defined in the Act to include:
 - assessment orders;
 - removal orders; and

- banning orders.
- the establishment of multi-agency Adult Protection Committees.

How does Part 1 safeguard the adult?

4. There are a number of safeguards in place:

- 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. Any intervention must be reasonable and proportionate. It is recognised that, at times, there will be a need to carefully weigh and consider the various principles, particularly where the adult at risk does not wish support or they themselves are the source of the risk.
- Statements expressed in advance about an individual's preferred care or treatment must be taken into account in line with the guiding principles.
- The principles must always be taken into account when an intervention under Part 1 of the Act is being considered.
- Protection orders cannot be made if the court knows that the affected adult at risk has refused to consent to the granting of such an order. The only exception to this is where the adult at risk is found to have been unduly pressurised to refuse to consent and there is no other protective action, which the adult would consent to, which could be taken.
- The adult at risk may refuse to be medically examined or answer questions during an interview.
- Applications for all protection orders (except in emergency situations in relation to removal orders) will be heard before a sheriff, where there will be an opportunity to make representations to the sheriff. However the sheriff may decide not to hold a hearing where they are satisfied that this will protect an adult at risk from serious harm or not prejudice any persons affected.
- The adult at risk or someone on their behalf may apply for a banning order to ban a person from a specified place (e.g. the home of the adult at risk).
- An appeals mechanism allows relevant parties to appeal against the granting of, or refusal to grant, a banning or temporary banning order.

Chapter 3: Principles and definition of adult at risk

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

Taking account of the principles of the Act

2. 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 Part 1 of the Act in relation to an adult. For example, they apply to any social worker, care provider or health professional intervening or performing a Part 1 function under the Act.
3. This means that the following persons are **not** bound by these principles: the adult; the adult’s nearest relative; the adult’s primary carer; 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).
4. 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.
5. The principles in section 1 require that any intervention in an adult’s affairs under Part 1 of 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.

Principles for performing functions

6. The principles in section 2 require that any public body or office holder performing a function under Part 1 of the Act must have regard to the following:
 - the general principle 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.

- **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 his/her well-being 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** (refer to Chapter 5) – the adult should 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 (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 adults abilities, background and characteristics** – including the adult's age, sex, sexual orientation, religious persuasion, racial origin, ethnic group, and cultural and linguistic heritage

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 conflicting drivers, such as occasions when the adult at risk refuses any form of intervention but the professionals involved

believe that adult protection intervention would provide a benefit to them. In such circumstances, decision-making should while taking into account the principles do so on a multi-agency basis. This is to enable full and complete discussion of potential protective actions and the application of the principles set out above. Professionals have to balance the rights of the adult with their own legislative duties.

8. In all cases, it is important to be clear about the adult's capacity. 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. Any self-determination can involve risk, and staff working with the adult need robust risk assessment, management and risk enablement strategies to ensure that such risk is recognised and understood by all concerned and minimised whenever possible. Professionals should be aware of the risks of undue pressure being applied by a relative, carer or other professional. Further information on capacity and consent which is a complex area can be found in Chapter 8 and Annex A no 2-4, 12&20 (human rights) and 24 (Mental welfare commission – refer in particular to the publication 'Working with the Adults with incapacity Act'). Further information on advocacy is provided in Chapter 5 and undue pressure in Chapters 12 -14.
9. 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?

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

Adult at risk – Section 3(1) defines 'adults at risk' as those who:
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- | |
|---|
| <ul style="list-style-type: none">•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 adults who are not so affected. |
|---|

11. The first element of the above three-point criteria relates to whether the adult is unable to safeguard their own well-being, property, rights and other interests. 'Unable' is not further defined in the Act or guidance, but is defined in the Oxford English Dictionary as 'Lacking the skill, means or opportunity to do something'. A distinction should therefore be drawn between an adult who lacks these skills and is unable to safeguard themselves, and one who is deemed to have the skill,

means or opportunity to keep themselves safe, but chooses not to do so. An inability to safeguard oneself is not the same as an adult not having capacity. An adult may be considered unwilling rather than unable to safeguard themselves and so may not be considered an adult at risk.

12. The presence of a particular condition does not automatically mean an adult is an “adult at risk”. Someone could have a disability but be able to safeguard their well-being. It is important to stress that all three elements of this definition 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. This is helpful when considering what is meant by infirmity for example. Also there should not normally be a ‘once and for all’ categorisation of people as an adult at risk. An individual’s vulnerabilities, medical conditions and abilities can fluctuate and change over time.

Problematic alcohol and drug use

13. Similarly, vulnerability or a lack of ability to safeguard, which is due to temporary problematic alcohol or drug use, would not by itself result in an individual being considered an “adult at risk”. Adults have the right to make choices and decisions about their lives, including the use of alcohol and drugs, even if that means they choose to remain in situations or indulge in behaviour which others consider inappropriate. Without any additional vulnerability, such as an illness or disability, adult protection intervention would not normally be appropriate. Young people aged 16-18 can be particularly easily influenced and legislation places limits on children not in place for adults such as access to alcohol.
14. However, the ongoing problematic use of drugs or alcohol may take place alongside (and on occasions contribute to) a physical or mental illness, mental disorder or a condition such as alcohol related brain damage. If this is the case an adult may be considered an “adult at risk”. It must be stressed, however, that it is the co-existing illness, disability or frailty, which would trigger adult protection considerations, rather than the substance use itself.
15. A number of diagnoses are problematic when alcohol or drug use are regular features of an adult’s presentation, but in each case multi-agency inquiries should be made to gather as much information as possible about an adult’s condition. In addition, because an adult’s underlying condition may deteriorate with ongoing alcohol or drug use, inquiries should be made each time an adult protection referral is made and no assumption should be made about the adult’s condition on the information gathered during a previous inquiry.
16. An assessment that intervention under the Act is not necessary or appropriate taking into account local eligibility criteria, does not absolve authorities of

responsibility to consider intervention under other legislation, such as the NHS and Community Care (Scotland) Act 1990, or to offer other services. Actions taken or reason for no action should be recorded. Consideration should be given to practical and emotional support provided by social work, health, independent and third sector and private sector providers. For example the provision of mainstream health and social care services such as housing, independent living, financial, occupational therapy, counselling, support for carers, and Community Health Partnership services.

Young people in transition

17. 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 25), support under these other provisions may be more appropriate for some young persons. Further the responsibilities of the council and other agencies for persons aged 16-18 will extend beyond adult protection legislation. (Refer Annex A no 8).
18. 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.
19. 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.

Harm

Harm – Section 53 states harm includes all harmful conduct and, in particular, includes:

- 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); or
- conduct which causes self-harm.

20. The definition of “harm” in the Act sets out the main broad categories of harm that are included. The list in the definition 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 (refer Annex A for references). Domestic abuse, gender based violence, forced marriage, human trafficking, stalking, hate crime and ‘mate crime’ will generally also be harm.
21. The assessment of “harm” and the “risk of harm” are important elements under Part 1 of the Act. The definition of “adults at risk” requires an assessment to be made about the “risk of harm” to the individual at the outset.

Risk of harm – Section 3(2) makes clear that an adult is 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.

22. Adults can be at risk of harm in various settings – their own home, in the wider community, through services provided, such as the NHS, day care, residential or nursing care. The risk of harm can also arise through services provided by self-directed support.

Self-directed support

23. The Social Care (Self-directed Support) Scotland Act 2013 establishes a duty on local authorities to provide adults, children and families with choice over their care and support arrangements through the general principles of involvement, informed choice, collaboration, participation and dignity. The Scottish

Government, local authorities and providers are committed to significant expansion of opportunities for adults to take greater control over their support, either through a direct payment, individual service fund (or similar ‘notional budget’ option), directly provided services or any combination of these.

24. Local authorities are subject to the same duties and powers under the 2007 Act where a person chooses to direct their support, or elects to ask the council to arrange support on their behalf. The responsibility to assess risk, inquire, investigate or, where necessary, intervene to protect remains the same. The statutory guidance accompanying the 2013 Act includes a section on the development of links between adult protection and social care assessment arrangements. It reinforces the point that enablement through self-directed support rests on a return to the core principles of social care and social work practice. It emphasises the need to support adults to identify their personal outcomes as part of the assessment process and to decide how they wish to meet those outcomes. Effective self-directed support arrangements rest on good quality assessment, support, planning and review. They depend on the individual and where appropriate, their circles of support and any children living in the household, being fully involved in identifying, assessing and managing risks. In some instances, the subsequent choices made by an individual may increase risk but by providing the individual with greater control over their support and supporting them to make informed choices regarding potential risk, an individual can also develop and improve their ability to protect themselves.
25. Adult Protection Committees should review their procedures (in particular, those for risk assessment and management) and training programmes with partners to ensure an effective, positive and supportive link is established between arrangements for adult protection, social care assessment and review and self-directed support.

Assessing and managing the risk of harm

26. For some adults, the investigation process will reveal they are at ongoing risk of harm and will need continuing assistance with their support and protection. For those adults there will often be a need for multi-agency support. The range of measures to support an adult will vary depending upon the unique circumstances of the adult. All forms of ongoing intervention must follow the Act's principles and involve multi-agency working and cooperation to maximise the assistance that can be provided.
27. When risk of harm to an adult is identified, each Adult Protection Committee should ensure local multi-agency procedures to guide staff on how to respond are in place and should review them. These should include guidance to assist staff in carrying out assessments of risk, manage situations of ongoing risk (refer

paragraph 23 below). Procedures should also include or reflect:

- the principles of this Act (see above)
- protection of the rights of people who lack capacity in decision making processes;
- guidance on the purpose of convening meetings of agencies with the adult and good practice in holding these meetings (refer Chapter 5)
- enabling and ensuring effective and proportionate responses (including continuing community care support, and at adequate levels, where it is needed);
- the increasing prominence of self-directed support; and
- good cross-agency training for investigating staff and those delegated such powers.

28. Working Together to Improve Adult Protection – Risk Assessment and Protection Plan (2007) provides guidance on the completing of risk assessments and the development of adult support and protection plans to provide ongoing support and protection. The aim is to ensure risk assessment and management plans are both rigorous and comprehensive. The guidance within this document should be considered for incorporation into local multi-agency procedures and guidance to staff.

Chapter 4: Duties and powers of the council and other agencies, the role of the council officer and the independent and third sectors, and cooperation across organisations and professionals.

1. This chapter sets out the duties and powers of councils, and of a range of other agencies and professionals. It sets out who may act as ‘council officers’ undertaking investigations and other duties under Part 1 of the Act. The chapter provides information about the duty of other bodies to co-operate with the council and a short overview on the role of GPs, and independent providers.

General principles

2. Sections 1 and 2 of the Act set out the principles and other matters which need to be considered for those who propose to perform functions under the Part 1 of Act. The general principle on intervention is set out in section 1 of the Act and provides that it is only permissible where it is reasonably required to provide a benefit to the adult concerned and is, from the options available, the least restrictive to the adult’s freedom. (For further information on the principles, please refer to Chapter 1).

What are a council’s duties under the Act?

3. The Act places duties on the council to:

- make inquiries to establish whether action is required, where it is known or believed that an adult is at risk of harm and that intervention may be necessary to support and protect the adult (Section 4);
- undertake investigations when inquiries suggest an adult is at risk of harm and is (or is believed to be) in need of support and protection;
- 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);
- inform any adult interviewed that they may refuse to answer any question put to them (Section 8);
- inform an adult believed to be at risk that they may refuse to consent to a medical examination (Section 9);
- protect property owned or controlled by an adult who is removed from a place under a removal order. This may include moving property belonging to the adult from that place, where this is considered reasonably necessary

in order to prevent the property from being lost or damaged. The council must ensure the property is returned to the adult concerned as soon as reasonably practicable after the relevant removal order ceases to have effect (Section 18);

- visit a place at reasonable times only, to state the object of the visit and produce evidence of authorisation to visit. Council officers may not use force to facilitate, or during, a visit. However, a sheriff or justice of the peace may authorise the police to use force (Sections 36 to 40); and
- 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). (Note that the Adult Protection Committee may cover more than one council area).

What are a council's powers under the Act?

4. 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.
5. The Act enables a council to:
 - visit any place necessary to assist with inquiries under section 4 and investigations under section 7. 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. Only a health professional may inspect health records (Sections 7–10); and
 - apply to the sheriff for the grant of a protection order.
6. Council officers have rights of entry to places where adults are known or believed to be at risk of harm. If, following inquiries or investigations, 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?

7. Given the need to act with sensitivity and professionalism in situations where interventions must be carried out, it is important that those authorised to intervene are suitably qualified and trained to do so.
8. 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 Part 1 of the Act. .
9. 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.
10. The Order also provides that authorisation to perform the functions of a council officer under section 11 (assessment orders), 14 (removal orders), 16 (right to remove adult at risk) or 18 (protection of moved person's property) is restricted to registered social workers, occupational therapists and nurses who have at least 12 months relevant experience. 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.
11. The Community Care and Health (Scotland) Act 2002 (Incidental Provision) (Adult Support and Protection) Order 2012 provides that where a council and Health Board have made arrangements for joint working in relation to social care and health under the Community Care and Health (Scotland) Act 2002, the term "council officer" can apply to a person employed by the Health Board. The public Bodies (Joint Working) (Scotland) Act 2014 will place 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 co-operate

12. While councils have the lead role in adult protection, effective intervention will only come about as a result of productive cooperation and communication between a range of agencies and professionals. What one person or public body may know may only be part of a wider picture. The multi-agency nature of adult support and protection work is crucial and much of the work concerning individual adults will overlap with the work of for example registration and inspection bodies. Good practice should be that all relevant stakeholders would cooperate with assisting inquiries and investigations, 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.
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 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. Cooperation with each other is consistent with the duties that some of these bodies have under other legislation such as the improvement function of the scrutiny bodies under the Public Services Reform (Scotland) Act 2010.
14. Specifically, it should be noted that under Section 5(3), if the public body or office holder knows or believes that a person is an adult at risk of harm and that action needs to be taken to protect them from harm then the facts and circumstances of the case must be reported to the council for the area in which the public body or office holder considers the person to be located. The public body or office-holder who knows or believes an adult is at risk of harm has a legal duty to make a referral to the council, taking into account the principles of the Act. Even 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.
15. The bodies and office holders listed in Section 5 are:
 - Mental Welfare Commission for Scotland;
 - Care Inspectorate;
 - Healthcare Improvement Scotland
 - Public Guardian;

- all councils;
- Chief Constable of the Police Service of Scotland;
- the relevant Health Board; and
- any other public body or office-holder as the Scottish Ministers may by order specify.
- (As at April 2014, Scottish Ministers have not specified any other bodies)

16. Where staff have to report within their own organisations they should be clear to whom they have a duty to report. Staff also have a duty to cooperate 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.

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

- fire and rescue;
- the prison service; and
- independent health practitioners, including allied health professionals and GPs, who are not directly employed by health boards.

Additionally:

- 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.

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 should be expected to cooperate 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 Adult Support and Protection (Scotland) Act 2007. However they are likely to be bound by the requirements of the Data Protection Act 1998, other legislation or specific protocols agreed with the Scottish Government (for example, the

protocols recently agreed between Scottish Government and the Department of Work and Pensions).

General practitioners

20. The Scottish Government published Guidance on the involvement of GPs in multi-agency protection arrangements (2013). This is intended to support the involvement of GPs in fulfilling their roles which arise from the Act and in making a broader contribution to adult protection beyond that required by statute.
21. It notes that GPs may be the first professionals to see signs of potential harm, and confirms that a collaborative approach is vital as GP involvement is invaluable when developing or refining local adult protection policy, procedure and strategy. The new guidance recommends that GPs should be represented on Adult Protection Committees or, where this is not possible, expects that committees will ensure that there are clear lines of communication established with local GPs.

Independent and third sector providers

22. 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. 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.
23. Councils may wish to review their contract agreements with the independent and third sector providers to ensure that their services are consistent with the principles of this Act. (For further information about information sharing and confidentiality, please refer to Chapter 10).

A multi-agency approach to decision making

24. For some adults the investigation process will reveal they are at ongoing risk of harm and will need continuing assistance with their support and protection. For those adults there will usually be a need for coordinated multi-agency support and in the case of young adults there may be specific considerations. (Refer to Chapter 3). This multi-agency support may be required from agencies who do not have duties defined in the Act such as those in 3rd sector and independent

sector. The range of measures to support an adult will vary depending upon the unique circumstances of the adult, their views and wishes. All forms of ongoing intervention must follow the Act's principles and so involve multi-agency working and cooperation, to maximise the assistance that can be provided.

25. Multi-agency adult protection procedures should give guidance on the convening of meetings of agencies with the adult as the best approach to managing risk by agreeing a protection plan. Such meetings should be as inclusive as possible, wherever practicable involving the adult at risk, their representatives and all those people with a relevant contribution to make (refer to Chapter 5).

26. 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 detailed protection plan with timescales for addressing risks and providing services to support and protect the adult and any children living in the household.

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

- that the chairperson is well trained in the skills necessary for that role including training on communication support and the ability to take account of the wishes and feeling of the adult at risk and the outcomes which matter to them (the chair could be the person taking the lead role in relation to the individual adult at risk or independent or even the adult at risk if appropriate)
- that the meeting is correctly minuted and clearly sets out who has been invited and who is present (for audit purposes those who have not responded should also be noted);
- to record whether the adult at risk has not been invited, has chosen not to attend and reasons; and
- to identify who is responsible for which aspects of the protection plan, the anticipated timetable, reporting arrangements and review date(s)

28. Different methods, approaches and levels of staff will be involved at each stage, but for every stage the multi-agency discussion and decision should be fully recorded, information exchanged quickly and safely, and decisions implemented. It is important that individual staff and agency responsibilities to undertake particular tasks are clear and accepted within a system of shared accountability to reduce any possible conflict. Decisions should be made on a multi-agency basis. It would be recommended that 3rd and independent sector agencies (providers and service user and carer groups) also include good practice guidance or procedures for their staff on multi-agency working on adult support and protection.

29. 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. (See Chapters 3 and 5 for more detail).

Chapter 5: Adult Participation

1. 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.
2. 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 would be 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 records should be made available to the adult and decisions explained.
3. 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:

http://www.rcslt.org/asp_toolkit/adult_protection_communication_support_toolkit/welcome

The Office for Disability has guidance for alternative formats of communication:

<http://odi.dwp.gov.uk/inclusive-communications/alternative-formats/audio.php>

4. Other aids and adaptations that can support and enable communication include British Sign Language interpreters, lip speakers, Makaton, and deaf-blind communicators. Where possible, materials should also be available in alternative formats such as large print, audio tape, Braille and computer 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

5. 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.
6. 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 meeting.
7. The Mental Health (Care & Treatment) (Scotland) Act 2003 Section 259 (“the 2003 Act”) 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 definition and the 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 and Code of Practice Volume 1. This states 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
9. Advocacy safeguards people who are vulnerable and discriminated against or whom services find difficult to serve. For further information about advocacy, please refer to the Scottish Government Guide for Commissioners and the Scottish Independent Advocacy alliance (refer Annex B no 18).
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 safeguarder to report on the issue of consent.

Appropriate adult schemes

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. The use of an appropriate adult is extended to all categories of interview - witness, victim, suspect and accused. Appropriate adults are selected for their experience in the field of mental health, learning disabilities, dementia and/or acquired brain injuries. It is their role to pick up on clues and indicators that a person has not fully understood what they are being told or what they are being asked. The appropriate adult is not providing advocacy or speaking on behalf of a person with a mental disorder, but is about 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. In the context of a criminal investigation an advocacy worker would not be present. Further information can be obtained from: www.scotland.gov.uk/Topics/Justice/law/victims-witnesses/Appropriate-Adult

Meetings of agencies with the adult at risk.

12. If the fullest possible participation of the adult at risk in supporting and protecting them from harm is to be achieved, he or she needs to 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.
13. Thus 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 she or he can understand along with a method for the person to appeal the decision provided.
14. It should be the responsibility of the relevant adult protection practitioners to ensure that the adult has been invited to meetings, that they are involved to maximise the likelihood of their attending (for example by provision of information, by choice of venue, day/time, number of other attendees, video conference options, and travel arrangements); and that they get the best from the meeting through their participation and contribution to decisions (through pre meetings to

fully explain the purpose, plan agenda and options, discuss concerns re confidentiality, 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.

15. 'Working Together in Adult Support and Protection – Views and Tools of People who Access Support': <http://www.thistle.org.uk/sites/default/files/publication-files/altrumreport.pdf> provides advice on preparing for and holding meetings with an adult potentially at risk. Adult Protection Committees are encouraged to utilise this document in training staff on engaging adults at risk of harm and preparing for and holding meetings of the adult and agencies.
16. There will be occasions and circumstances where it is not in the adult's best interest to attend large multi-agency meetings or they do not wish to attend, due to illness or incapacity for example or where matters of great sensitivity will be explored (such as other possible victims, or the identity of the perpetrators). 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/family or relative to assist with the options and decision to attend.
17. The adult also has the right to refuse to attend, despite the best efforts at support and encouragement. 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.
18. Local procedures should include that the allocated adult support practitioner should offer to visit the adult and carer where it would be in their best interests after any meeting. This is to reflect on what happened, ascertain whether they understood the process and outcomes of the meetings; and to ascertain whether any issues remain unaddressed or new issues have arisen.

Carers

19. The Act (in section 2(c)) stresses 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.

20. 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.
21. It may be that someone in a caring role or a guardian can cause harm intentionally or unintentionally, by using their power inappropriately, exerting undue pressure or they can be the victim of harm. There may be significant complexity in a relationship creating the potential for both parties to be both victim and harmer at different times.
22. In both situations, considerable skill and patience will be needed, and information and assessments for both the carer and cared for person will need to be carefully considered in multi-agency meetings. Some carers, especially the most vulnerable may have needs for support in communication and/or may benefit from independent advocacy support. The carer advocacy worker will be independent of any advocacy worker for the cared for person and will represent the carer as a distinct voice from that of the person being cared for. The advocacy worker(s) may assist in considering and assessing any conflict of interest; for example, the cared for person may attempt to influence the views they wish the carer to express, and vice versa.
23. Caring often has a significant impact on a carer's health and wellbeing. It may be that the adult's carer requires support to sustain their caring responsibilities (thus preventing any unintentional stress related harm) and to lead a life alongside caring. The Community Care and Health (Scotland) Act 2002 gives carers providing regular and substantial care a right to an assessment of their needs. Councils have a duty to inform carers of this right to an assessment and it would be good practice to reassess needs as the caring role changes. It would also be good practice to provide any carer, with information about local carer centres and condition specific groups that may be able to provide support, information and advice.

Vulnerable Witnesses (Scotland) Act 2004

24. The Vulnerable Witnesses (Scotland) Act 2004 provides support measures to help vulnerable adults participate more fully in court proceedings. The measures are intended to help vulnerable witnesses by providing appropriate support when they give their evidence to reduce any anxiety and pressure. The procurator fiscal should fully consider alternative ways of the adult providing evidence. Further information is available at:
- <http://www.scotland.gov.uk/Publications/2005/04/04143522/35246>

Audit

25. 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. Uptake of advocacy services should also be included.

Chapter 6: Inquiries

1. 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?

2. 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:

- 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.

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

Referrals

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

5. It would be good practice to ensure that staff and office-holders, in any public body or agency, who may be a first point of contact with the public is aware of the main provisions of the Act and that they 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.

Inquiries

6. Inquiries under Section 4 of the Act will be carried out by the council's social work services and should follow local adult support and protection procedures. The council should consult and/or 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. In addition it may be beneficial to ask families and/or carers to assist by explaining to them their role, rights and how they could contribute. The system

must be both flexible and professional in its approach. Any inquiry must be person centred and based on an individual's personal circumstances.

7. For some individuals, the process of inquiry, collating and considering all relevant and available information will determine that they are not an adult at risk as defined by the Act (2007). However, this decision does not preclude considering other relevant legislation, local procedures or alternative services to respond to the individual's needs. Other services are not specifically defined in the Act, but consideration should be given to practical and emotional support provided by social work, health, and independent providers. For example the provision of mainstream health and social care services such as housing, independent living, financial, occupational therapy, counselling, support for carers, and Community Health Partnership services.
8. If the risk of harm is thought to arise from a carer particularly an unpaid carer, the inquiry should also try to gain an accurate 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.
9. 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.

Where an adult at risk declines to participate

10. An adult may appear to meet the criteria of an 'adult at risk' under the terms of the Act, but indicates that he/she does not want support and/or protection. In effect the adult refuses to cooperate with inquiries being undertaken.
11. Such a refusal to cooperate 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 cooperate; 'undue pressure' might have contributed to their decision to refuse cooperation.
12. Even if there are no concerns in relation to incapacity or undue pressure, the adult's refusal to cooperate 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. It is recognised the success of any intervention where an adult does not wish to cooperate may, by its nature, be limited in scope and effectiveness. Any assistance should be proportionate to the risk identified and any need to support carers' needs should be considered.

Possible intervention outwith or in conjunction with the Act

13. The next steps resulting from the duty to inquire could involve a wide range of statutory or non- statutory interventions. The "need to intervene" may also be met by using appropriate provisions contained in other legislation or by taking action on a non-statutory basis.
14. Where the person has a mental disorder, action under the Mental Health (Care and Treatment) (Scotland) Act 2003 may be appropriate. Where a person has impaired capacity, an order for the appointment of a proxy under the Adults with Incapacity (Scotland) Act 2000 may be appropriate. It may also be appropriate to provide care and support under the Social Work (Scotland) Act 1968. In some cases, particularly where the adult has capacity, assistance may be provided to the adult by ensuring that they have access to suitable advice and support, should they wish to access it. Where the person is between age 16 - 25 years the Children (Scotland) Act 1995, Children and Sexual Offences Act 2005, Sexual offence Act 2009 and the Children and Young persons (Scotland) Act 2014 may be appropriate. (Refer to Annex B no 8).
15. Practitioners will need to be aware of associated legislation, including the Public Health etc. (Scotland) Act 2008 and the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011. Such legislation offers additional mechanisms by which support and assistance can be provided and, as mentioned previously, other services and support should be considered (see Chapters 2 and 6).
16. Where inquiries under Section 4 have indicated that a criminal offence has been committed against the adult known or suspected to be at risk, this should be reported to the police at the earliest opportunity. The role of the police in investigating crime should not be undermined. Particularly important in this respect is ensuring that evidence is not destroyed or contaminated before they arrive at the scene. It would be good practice to seek assistance and co-operation from the police as the police may wish to carry out a criminal investigation. 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 would be taken in consultation with the Police.
17. The adult should be kept fully informed at every stage of the process in a manner or format which best suits their needs, unless in doing so there is a risk of

prejudicing investigations.

Where no action is required

18. The council may decide that nothing further needs to be done. It would be expected that this conclusion would only be arrived at once inquiries have been carried out and all people with a relevant contribution have been consulted.
19. Where it is decided that no further action is required, it would be expected that the council would 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. 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 7: Adult protection investigations

1. An adult protection investigation will generally be necessary where the information gathered as part of an adult protection inquiry suggests that the adult is at risk of harm and the council may need to take action to protect them. This and the following 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.
2. Generally, an adult protection investigation will be a carefully planned and managed process to ensure that:
 - a. all available information is gathered and considered;
 - b. the adult is fully supported to contribute; and
 - c. any medical evidence and medical intervention are provided.
3. If, at any stage of the investigation, it appears that a crime may have been committed, the relevant information should be passed to the Police at the earliest opportunity.

A visit as part of an adult protection investigation

4. It is likely that a visit to the adult and the interview with them will be central to the investigation. It is also likely to require the most careful planning and sensitive approach. The rest of this chapter provides details on the planning of the visit and the powers that a council officer has when making a visit under the Act.

What is the purpose of a visit?

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.

What should be considered prior to a visit?

6. 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.

7. 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.
8. 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. Consideration should be given to local inter-agency protocols and procedures.
9. Practitioners will also need to be aware of associated legislation, including The Public Health etc. (Scotland) Act 2008 and the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011. Such legislation offers additional mechanisms by which protection, support and assistance can be provided.

Who may undertake the visit?

10. A council officer, as defined in Section 53 of the Act and who meets the requirements of the Order described at Chapter 4 above, may undertake the 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; or
 - 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.
11. 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.

12. 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?

13. Section 7 permits a council officer to enter any place. In many 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 residential accommodation.

14. 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.

15. The council is allowed access to 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.

16. 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?

17. 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.

18. 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. In some cases visiting during the evening, at night or at the weekend may be the only way to make contact with the adult at risk, the primary carer or other individual.
19. 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?

20. A council officer must:
 - produce evidence of their own identity and that of any person accompanying them;
 - state the object of the visit, and
 - produce evidence of the officer's authorisation to visit the place.
21. 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.
22. 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?

23. 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 co-ordinate 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 fulfill the object of the visit.

Who can apply for a warrant?

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

Granting of a warrant

25. The sheriff may only grant a warrant for entry where they are satisfied that:

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

A warrant for entry granted by a sheriff 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?

26. Section 40 of the Act provides that 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.

27. 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.

What does a warrant allow?

28. 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 fulfill 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.

29. 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.

30. 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.

Large-scale investigations

31. A large scale investigation may be required where an adult who is a resident of a care home, supported accommodation, a NHS hospital ward or other facility, or receives services in their own home has been referred as at risk of harm and where investigation indicates that the risk of harm could be due to another resident, a member of staff or some failing or deficit in the management regime, or environment of the establishment or service.

32. The following should be alerted and be involved in the investigation with due regard given to sensitivities and conflicts of interest where staff are involved or commissioning or scrutiny processes are deficient:

- Care Inspectorate or Health Improvement Scotland (HIS) staff,
- contracting and commissioning staff within purchasing authorities,
- care management for the local authority in which the establishment is sited or the service is delivered.
- the police - where there is the possibility that a crime has been committed.

33. It will be important to establish who should lead any investigation, the responsibilities of partner agencies, and which statutes are the basis for effective proportionate and timely protective action. There may be cross boundary issues to consider.

34. It will be necessary to share information, collate intelligence and carefully consider the need for widening any investigation as evidence emerges of risk to the resident, patient or service group.

35. 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 adults at risk and other residents according to their best interests should be kept informed

36. The public should be kept informed that appropriate action is being taken to ensure that the users of the service remain safe.

37. Local multi-agency adult protection procedures should include a procedure for large-scale Investigations.

Chapter 8: Interviews conducted as part of an adult protection investigation

1. 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. It highlights the requirement for the adult to be made aware that they are not required to answer any questions. This interview can be carried out without applying for an assessment order.

What is an interview?

2. 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. (For further information on visits, please refer to Chapter 7)
3. 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.

What is the purpose of an interview?

4. The purpose of an interview is to enable or assist the council with an investigation under Part 1 of the Act, about the source, nature and level of any risk to the adult and also to establish whether action is needed to protect the adult. The aims of such an interview will therefore be to:
 - establish if the adult has been subject to harm;
 - establish if the adult feels his or her safety is at risk and from whom; and
 - discuss what action, if any, the adult wishes or is willing to take to protect him or herself.
5. 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?

6. 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.

7. 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

8. 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.
9. 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.
10. 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
11. 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.
12. 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

13. In any interview, gaining the consent of the adult to be interviewed should also consider the adult's capacity and promote the adult's participation in the interview.
14. 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 his or her wishes/choices?
 - does the adult have an awareness of the risks/benefits involved?
 - can the adult be made aware of his/her right to refuse to answer questions as well as the possible consequences of doing so?
15. The possible scenarios that may emerge include the following:
 - the adult has capacity and agrees to be interviewed
 - the adult has capacity and declines to be interviewed
 - the adult lacks capacity and is unable to consent to being interviewed
 - the adult has capacity but is thought to have been influenced by some other person to refuse consent

Participation

16. 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 (see Chapter 9).
17. 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
- a language interpreter
 - an independent advocate
 - an appropriate adult where police are interviewing an adult with a mental disorder
 - a family member or carer to help communication.

Can an adult be interviewed with others present?

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.
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?

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

1. This chapter provides guidance on Section 9 of the Act, which allows a health professional to conduct a medical examination of the adult at risk of harm in private. 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?

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 June 2013, Scottish Ministers have not made an order naming other individuals)

What is the purpose of a medical examination?

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 adults wishes with regard to a medical examination

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.
6. 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 completed a welfare power of attorney with the relevant powers. 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.
7. For all medical examinations undertaken, consideration should be given to the importance of where and how medical examinations are conducted.

Chapter 10: Examination of records as part of an adult protection investigation

1. This chapter provides guidance on Section 10 of the Act which permits council officers to obtain and inspect copies of health, financial or other records relating to an adult known or believed to be at risk, if this is required to establish whether further action is required to protect that adult from harm. Health records may be inspected only by a health professional (a doctor, nurse, midwife or other type of individual described by order of the Scottish Ministers).

Information sharing and confidentiality

2. Existing law allows information to be disclosed without consent where such disclosure is required by law (either a court order or statute) or where such disclosure is in the public interest. If it is the public interest test that is relied upon, then such disclosure must be proportionate to the harm it is being sought to prevent. Crime detection and prosecution, as well as prevention, may provide legitimate grounds for disclosure. NHS Boards are required to ensure that their staff are aware of and can operate local procedures for sharing of information with the police to promote the prevention and detection of crime, while respecting and safeguarding the interests of patients and the public in the confidentiality of personal health information.
3. 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. The records may then be inspected by the officer and any other person whom the officer considers appropriate having regards to the content of the records to enable or assist the council to decide whether it needs to do anything to protect an adult at risk from harm.
4. In accordance with the principles in Sections 1 and 2 of the Act, the adult's consent should be obtained prior to the information being obtained. Where such consent cannot be obtained, the adult should, if possible be informed about the information sharing.
5. There may be some areas of cross-over between child protection and adult protection information, particularly when dealing with families which may have both children and adults at risk. Information which originates as child protection information may ultimately trigger an adult protection investigation and vice versa. Although they may be investigated separately, a link between the two needs to be maintained. A further area of overlap may exist where an

individual is aged 16 or 17 and could be classed as both a child and an adult at risk. It is important that transitional arrangements between child and adult protection services are in place, including co-operation between Adult Protection Committees and Child Protection Committees.

6. The Section 2 principles require that any decision or course of action being considered should, as far as possible, take into account the adult's views as well as the views of the adult's nearest relative, primary carer, guardian or attorney of the adult and any other person who has an interest in the adult's well-being or property. This reflects the importance of providing information that may assist such persons to support or care for the adult. However adults who may be being harmed may be anxious about the information being shared with others.
7. 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. In particular, the relevant requirements of the regulatory body must be followed.
8. 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. Information should only be shared with those who need to know and only if it is relevant to the particular concern identified. The amount of information shared should be proportionate to addressing that concern.

What records may be examined?

9. Section 10 allows examination of health, financial or other records relating to an adult at risk. This includes records held in audio, visual or other formats. The purpose of inspecting records should be to enable or assist the council to decide whether it needs to take any further action in order to protect the adult at risk from harm. The type of records to be inspected will therefore depend on the type of harm suspected and will need to be judged on an individual basis. Any information requested must be relevant. (For further information on adults at risk please refer to Chapter 3).
10. Health records may only be inspected by a health professional. In some cases it will be sufficient for a health practitioner to inform the investigation by providing a summary of his or her 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.

Does the Act provide any safeguards for an adult?

11. Any person performing a function under the Act must take account of the principles. (For further information on the principles, please refer to Chapter 3).
12. 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.

Does an adult have to consent to disclosure?

13. When a person is considering accessing information, it is important to consider carefully the adult's right to confidentiality about their private medical details, finances or their wishes before such information is requested. Wherever possible and insofar as practicable the adult's consent should be obtained.
14. However, it may not be possible to obtain consent where:
 - the adult lacks the mental capacity to consent;
 - the person acting as proxy with the relevant powers for an adult lacking capacity is unavailable or unwilling to give consent; or
 - the situation is so urgent that attempting to obtain consent would cause undue delay.
 - the consent would put someone at risk of serious harm
 - the purpose of the disclosure would be undermined for example by prejudicing the prevention or detection of a crime
15. In the case of health professionals, the record holder must act in line with professional guidance. For example, guidance by the General Medical Council advises that doctors should seek patients consent to disclosure and where disclosure is required by statute, doctors should still inform patients about the disclosure wherever that is practicable and would not undermine the purpose of the disclosure or put anyone at risk of serious harm.
16. 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?

17. 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.
18. Section 10(5) provides that only a health professional can inspect health records. Section 10(7) defines health records as records relating to an individual's physical or mental health which have been made by or on behalf of a health professional in connection with the care of the individual.
19. The council officer or any other person whom the officer considers appropriate may determine whether records are health records. In the case of health records only a registered health professional (a doctor, nurse, midwife or other type of individual described by the Scottish Ministers) can be given the authority to inspect records or copies of records.
20. 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?

21. 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.
22. 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.
23. 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).
24. 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.

Must the record keeper always comply with a request for access?

25. 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.
26. Councils should make reasonable efforts to resolve disagreements when record holders refuse to disclose them. Informal or independent conciliation might be considered, depending on the circumstances and reasons given for refusal.

Chapter 11: Assessment orders

1. 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?

2. 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.
3. 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 an assessment order. Protection orders may be applied for at any time in the process, depending on the individual circumstances of a case. Any proposed action must be judged on a case by case basis, including the use of other legislation, and be of benefit to the individual.
4. 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.
5. 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 fulfill the object of the visit. Only the constable has a right to use reasonable force.

What to consider before applying for an assessment order?

6. Before the council or any person makes a decision or undertakes any function under the Act, they must have regard to the principles of the Act. (Refer to Chapter 3).
7. Consideration must also be given to whether the adult should be referred to an independent advocacy organisation or provided with other services. (Refer to Chapter 3 and 5).
8. 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.
9. 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.
10. If it is considered that the adult will refuse consent to the granting of the assessment 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. (For further information, see paragraphs 20 to 25).
11. Where the adult does not have capacity to consent, the requirement to prove undue pressure does not apply. However evidence of lack of capacity will be required by the Sheriff. Where the adult is incapable of consent, it would be good practice to approach the Office of the Public Guardian to ascertain whether a guardian or attorney may consent on their behalf. Where 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.
12. The information gathered from the assessment order may point to further action being required, for example by providing the adult with support, advice or other services, or by taking further action under this Act or other legislation.
13. 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.

14. 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.

Who can apply for an assessment order?

15. An application for an assessment order will be made by the council's legal department. Evidence must be made on oath with both the council's solicitor and the authorised council officer appearing before the sheriff to present evidence.

What are the criteria for granting an assessment order?

16. 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.

17. 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.

18. 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.

19. 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.

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

20. 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, with the principles in sections 1 and 2 of the Act taken into account. 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.
21. 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 20 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 test referred to in paragraph 20 above.
22. Section 35(4) 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.

23. 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.
24. However 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.
25. Where the adult does not have capacity to consent, the requirement to prove undue pressure does not apply. However evidence of lack of capacity will be required by the Sheriff.

Notification

26. 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.
27. 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.
28. 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.

29. 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.
30. 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.
31. 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

32. 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.
33. 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.
34. 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.
35. 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.

36. 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.
37. 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.
38. An assessment order cannot be appealed.

Warrant for entry

39. 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.
40. 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.
41. Once a warrant has been executed, it cannot be used again.

What can be done in cases of urgency?

42. 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).
43. 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.

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

44. 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.
45. The information gathered may point to further action being required, for example by providing the adult with support, advice or other services, or by taking further action under this Act or other legislation.

Chapter 12: Removal orders

1. 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?

2. A removal order is primarily for protection 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.
3. 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 or to have applied for an assessment order. Protection orders may be applied for at any time in the process, depending on the individual case. Any proposed action must be judged on a case by case basis, including the use of other legislation, and be necessary to provide benefit to the individual.
4. 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.
5. The adult at risk must however, be removed to a "specified place" which has been assessed as being both available and suitable for the purpose. The council must also protect any property owned or controlled by an adult who is removed from a place under a removal order.

Expiry of a removal order

6. 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.

What to consider before applying for a removal order

7. 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 1).
8. Before the council or any person makes a decision or undertakes any function under the Act, they must have regard to the principles of the Act. In particular, any action should be the least restrictive and should be necessary to provide a benefit to the adult. The adult's wishes and needs must always be considered. (Further information on the principles of the Act is provided in Chapter 1).
9. The use of other legislation may also be considered, for example, social work, child protection, mental health, civil law or criminal justice legislation.
10. Consideration must also be given as to whether the adult should be referred to independent advocacy. (For further information on adult support please refer to Chapter 3).
11. It is good practice to ensure that wherever practicable the adult is kept fully informed at every stage of the process. For example, they should be made aware of what the order means for them, what powers it carries, what will happen next, whether they have the right to refuse, what other options are available. The council may also consider discussing with the adult at risk the need for some form of support plan. Another option would be to convene a multi-disciplinary meeting to discuss further care and protection issues.
12. The information gathered may point to further action being required, for example, by providing the adult with support, advice or other services, or by taking further action under this Act or other legislation.
13. Removal will need careful consideration by all practitioners. If it is considered that the adult will refuse consent to the granting of the removal order, the council should re-consider the merit of the application. This may be in the form of a multidisciplinary multi-agency meeting. Protection orders should be only used when all other options have been explored and exhausted.

14. If the council decides to pursue an application where the affected adult has capacity to consent and has made known their refusal to consent, then the council must prove that the adult has been “unduly pressurised” to refuse to consent to the granting of an order. (For further information on undue pressure, please refer to paragraphs 23 to 28).
15. Where the adult does not have capacity to consent, the requirement to prove undue pressure does not apply. However evidence of lack of capacity will be required by the Sheriff. Where the adult is incapable of consent, it would be good practice to approach the Office of the Public Guardian to ascertain whether a guardian or attorney has powers to 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 Mental Health (Care and Treatment) (Scotland) Act 2003.

Who can apply for a removal order?

16. Only the council can apply for a removal order.
17. An application for such an order must be made to a sheriff, or in urgent cases a justice of the peace.
18. 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.
19. 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?

20. 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.
21. 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.
22. 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.

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

23. 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. Any intervention must be reasonable and proportionate, with the principles in sections 1 and 2 of the Act taken into account. 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.
24. 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. If the informal approach was unsuccessful, the option to formally apply to the court for a removal order is available. Secondly, if an application is made and consent to the granting of the order is refused, then the sheriff must consider the test referred to in paragraph 23 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 test referred to in paragraph 23 above. Where the adult does not have capacity to consent, the requirement to prove undue

pressure does not apply. However evidence of lack of capacity will be required by the Sheriff.

25. Section 35(4) 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.

26. 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.

27. However 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 a person that the adult does not trust.

Notifications and hearing

28. 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).

29. 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.

30. 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.
31. 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.
32. 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 to have 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.
33. 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".
34. 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.
35. 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.
36. 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.

37. 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).
38. The council should provide the sheriff with their reasons to assist the sheriff in reaching a decision.

Can conditions be attached to a removal order?

39. Section 15(2) provides that the sheriff may attach a requirement to the grant 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.
40. 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.
41. It may be inappropriate to have the adult at risk exposed to the alleged 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.
42. 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

43. 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.

44. 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.

45. Once a warrant has been executed, it cannot be used again.

Timescales within which an order must be carried out

46. 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.
47. 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. For example, if someone has been harmed it may be necessary to take them to another place temporarily so that they can be given food and rehydrated. The intention as far as is practically possible would be to return them to their own environment as soon as possible.
48. 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. This removal period is a very short time interval so may only be used for very specific purposes. It may be that the removal order can be used to resolve any issues between the affected adult and the person suspected of harming the adult. In some cases this could be due to carer stress. However, the removal must be for the purpose of preventing serious harm.

What if the adult at risk has moved location before the removal order can be carried out?

49. 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.
50. 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?

51. 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.
52. 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.
53. The removal order may not be varied so as to authorise the council to do anything seven days after the day on which the adult at risk is moved in pursuance of the order.
54. 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.
55. 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. (See also paragraphs 29 – 31).

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

56. 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.

57. 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)).

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

59. 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?

60. 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.

61. 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?

62. 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.

63. 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.

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

65. 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.

Chapter 13: Banning and temporary banning orders

1. 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?

2. A banning or temporary banning order, which 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.

3. 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 or to have applied for either an assessment or removal order. Protection orders may be applied for at any time in the process, depending on the individual case. Any proposed action must be judged on a case by case basis, including the use of other legislation, and be necessary to provide benefit to the individual.

4. 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.

5. 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.
6. 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.
- What to consider before applying for a banning order or temporary banning order?**
7. Action can only be considered where an adult is an adult at risk for the purposes of the Act. In terms of the order, the adult in these circumstances becomes the “affected adult at risk” in terms of section 41 of the Act. (For further information on what constitutes an adult at risk please refer to Chapter 3).
 8. Before the council or any person makes a decision or undertakes any function under the Act, they must have regard to the principles of the Act, in particular that any action will be the least restrictive option and be necessary to provide benefit to the adult. The adult’s wishes and needs must always be considered. (For further information on the principles of the Act, please refer to Chapter 3).
 9. Where a Council is applying for an order it must consider whether the adult at risk should be referred to an independent advocacy organisation or provided with other services. (For further information on advocacy and other support services, please refer to Chapter 5).
 10. The use of other legislation may also be considered, for example, social work, child protection, mental health, civil law or criminal justice legislation.
 11. It would be good practice to ensure, wherever practicable, the adult is kept fully informed at every stage of the process e.g. whether an order has been granted, what powers it carries, what will happen next, whether they have the right to refuse, what other options are available etc.
 12. If it is considered that the adult will refuse consent to the granting of the order the council should re-consider the merit of the application. This may be in the form of a multi-disciplinary multi-agency meetings. Protection orders should be only used when all other options have been explored and exhausted.

13. If the council decides to pursue an application where the affected adult has capacity to consent and has made known their refusal to consent, then the council must prove that the adult has been “unduly pressurised” to refuse to consent to the granting of an order.
14. Where the adult does not have capacity to consent, the requirement to prove undue pressure does not apply. However evidence of lack of capacity will be required by the Sheriff. Where the adult is, or appears to be, incapable of consent, it would be good practice to approach the Office of the Public Guardian to ascertain whether a guardian or attorney has powers to 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 Mental Health (Care and Treatment) (Scotland) Act 2003.
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 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.

Who can apply for an order?

16. 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.
17. Under Section 22 (2) the council is under an obligation to apply for a banning order if it is satisfied:
 - as to the matters set out in section 20 of the Act;
 - 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.
18. 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.

19. 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?

20. 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.

21. 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.

22. 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?

23. 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.

24. 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.
25. 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.

How long can a banning order be granted for?

26. A banning order can last for any period up to a maximum of six months.
27. 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.
28. The period for a banning order will be specified by the sheriff. A banning order may be recalled or varied. (See also paragraphs 47 to 50).

How long can a temporary banning order be granted for?

29. 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.
30. A temporary banning order may also be recalled or varied.

What conditions can be attached to an order?

31. A banning order may specify a number of matters and may have conditions attached.
32. 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

33. 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.
34. 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. (See also paragraphs 59 to 63).
35. 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. (See also paragraphs 47 to 50).

Notifications

36. 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. (See also paragraphs 40, 45 and 46).

Court hearing

37. 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.
38. 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.
39. 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.
40. 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.

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

41. The principles in sections 1 and 2 of the Act must always be taken into account. 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.
42. 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. Secondly, if an application is made and consent to the granting of the order is refused, then the sheriff must consider the test referred to in paragraph 41 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 test referred to in paragraph 41 above. Where the adult does not have capacity to consent, the requirement to prove undue pressure does not apply. However evidence of lack of capacity will be required by the Sheriff.

43. Section 35(4) 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.

44. However 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 in whom the affected adult has confidence and trust. 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 a person whom the adult does not trust.

Disapplication of notification and intimation

45. 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; or
- this will not prejudice any other person affected by the disapplication.

46. 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

47. 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.

48. 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.

49. 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.

50. 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

Banning order

51. 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.

Temporary banning order

52. 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?

53. 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.
54. 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?

55. 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.
56. 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?

57. 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.

58. 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?

59. 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.

60. 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.

61. 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.

62. 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. The examples given are not exhaustive and are in no way recommendations in all cases. However they may be applicable depending upon the circumstances of individual cases. These include:

- Where a crime has been committed and the Crown Office and Procurator Fiscal Service (COPFS) intends to prosecute, multi-agency partners could consider asking the Sheriff to consider bail conditions to protect the adult at risk from further harm.
- Section 17 of the Sexual Offences (Scotland) Act 2009 in relation to mental disorder.
- Guardianship under Adults with Incapacity, where there is a task or issue specific capacity concern regarding the person's ability to

- protect themselves from those placing them at risk.
- Anti-social Behaviour Order (ASBO)
- Breach of the Peace
- Non-harassment Order
- Forced Marriage Protection Order
- Common Law crime of threats

63. Some Local Authorities have published resources providing extensively detailed legal options that could be considered. Consult your Lead Officer to ascertain if a copy is available locally.

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

64. 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.

65. 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.

66. In other words, the constable cannot simply arrest the subject for having breached the order alone.

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

67. 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.

68. 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.

69. 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.

70. 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

71. 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

72. 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

73. 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.
74. 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

75. Under section 33, the fiscal must present a petition to the sheriff setting out various details of the case and requesting the sheriff to consider whether a longer period of detention is justified. The petition should:
- give the detained person's particulars;
 - state the facts and circumstances which gave rise to the arrest;
 - give any information known to the fiscal:
 - about the circumstances which gave rise to the banning order or temporary banning order concerned, and
 - which is relevant to an assessment of whether the detained person is likely to breach that order: and
 - request the sheriff to consider whether a longer period of detention is justified.

Authorisation of further detention period by Sheriff

76. 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).
77. 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).

78. The sheriff must provide the detained person with an opportunity to make representations prior to making any decision.
79. 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

80. 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.
81. 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 14: Offences

Obstruction

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.

3. 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.
4. 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.
5. 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.

Chapter 15: Adult Protection Committees

1. The Act creates an obligation on councils to establish multi-agency Adult Protection Committees (APCs). This chapter covers Sections 42 to 47 of the Act which set out the provisions relating to the establishment, composition and functions of these committees. Section 47 requires APCs and councils to have regard to guidance issued by the Scottish Ministers about their functions under Sections 42 - 46, namely:
 - functions;
 - membership;
 - procedures;
 - information sharing; and
 - reporting.
2. The Act provides a framework for how APCs should operate. The intention is that each committee will evolve its own procedures to reflect local arrangements and Ministers will monitor effectiveness through the biennial reporting system.
3. APCs must be established for every council area, although they are not formal committees of the council. There may be different models to deliver this and local authorities should adopt the model that is most appropriate for their area, especially where there are shared boundaries with Health authorities, and to work with Police Scotland. Where an APC covers more than one council area, each authority will remain accountable for the activities in their own council area. Local authorities will need to work together with their partners to ensure APCs work effectively.

Functions

4. In summary, Adult Protection Committees (APCs) are responsible for monitoring and advising on adult protection procedures and practice, for ensuring appropriate cooperation between agencies and for improving the skills and knowledge of those with a responsibility for the protection of adults at risk. This includes:
 - developing and introducing arrangements and protocols for inter-agency working, and auditing and evaluating the effectiveness of these arrangements;
 - developing procedures, policies and strategies for protecting adults at risk and reviewing these;
 - developing and introducing arrangements to monitor, review,

- disseminate and report activity data in relation to the protection of adults at risk;
 - raising awareness and providing information and advice to the wider community and to professionals;
 - training and development activities;
 - improving local ways of working in light of knowledge gained through local and national experience, case review and research; and
 - undertaking any other functions relating to the safeguarding of individuals as the Scottish Ministers may specify by order.
5. APCs will need to be given the authority by local agencies to be able to carry out these functions effectively, and will need lines of accountability to local councils, health Boards and Police. To ensure that appropriate authority is delegated, it is good practice for there to be a Chief Officers Group. This would be expected to have a core membership at Chief Executive, Director or Senior officer level from the Council, NHS and Police.

Membership

6. APC membership must include representatives of:
 - council(s)
 - Health Board
 - Healthcare Improvement Scotland (HIS)
 - the chief constable of Police Scotland
7. The Care Inspectorate may also nominate a representative with appropriate skills and knowledge.
8. All nominees must have relevant knowledge and skill including an understanding of the importance of working collaboratively and effectively in a multidisciplinary and multiagency context. Nominees should be of sufficient seniority to represent their organisations in discussions and decisions about policy, resources and strategy.
9. The council must appoint to the APC anyone nominated by these bodies. The establishment of an APC should therefore be planned in consultation with all of these bodies, and any other partners the council wishes to involve.
10. The Act gives councils discretion to appoint other representatives who can bring particular expertise to the Committee. A wide range of statutory services contribute to the protection of adults at risk. There are important procedural and practice links to be made between adult protection, child protection and

the public protection role of criminal justice services. In addition, effective adult protection can only be achieved when it is planned and delivered within the wider context of public protection and community safety. APC's should ensure that their activity and experience is shared across the public protection community, Child Protection, MAPPA, Consumer Protection, Trading standards, Criminal Justice Authorities, and the roles of other agencies and services. This should be in the context of the Guidance on Single Outcomes for Community Planning Partnerships:

<http://www.scotland.gov.uk/Topics/Government/local-government/CP/SOA2012>

11. In considering membership, it will be important to involve and engage with:

- services for adults, children and families
- criminal justice services
- other council services including housing, education and consumer protection
- local community and specialist police
- British Transport Police
- Scottish fire and rescue service
- health services including general practitioners, allied health professionals, acute and psychiatric hospitals and community health services
- the prison service
- procurator fiscal
- Office of the Public Guardian
- the Mental Welfare Commission
- third sector organisations e.g. care providers, carer groups
- independent sector organisations e.g. care providers, the financial sector, independent advocacy organisations

12. The need to support and protect adults at risk extends to adults within managed and registered care services and independent hospitals such as psychiatric 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, complaints and enforcement. APCs will want to ensure a proper understanding of roles and responsibilities between the Inspectorate, HIS and local agencies through, inter alia further development of existing Memoranda of Understanding, regardless of whether the Care Inspectorate nominate a representative to a Committee.

13. The duties and powers of the Act relate to adults in all settings who are, 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, particularly NHS Health Improvement Scotland. As with registered care services, APCs will want to ensure the Act's full implementation

in relation to these services and ensure adequate representation of the full range of NHS services and monitoring bodies.

14. 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. 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.
15. Similar understanding will need to be developed with the Office of the Public Guardian.
16. The Act requires that, should they so request it, APCs allow attendance of representatives from the Mental Welfare Commission for Scotland, the Public Guardian and the Care Inspectorate (where it is not already represented on the committee).
17. The Procurator Fiscal Service has a key role in specific APC matters, and it is therefore good practice to invite representatives to meetings dealing with such matters.
18. It is also considered good practice to consider representation from service providers, given their significant role in service delivery.
19. There are important procedural and practice links to be made between adult protection, child protection and the public protection role of criminal justice services. Monitoring and advising on these links will be a function for APCs. Councils and their partners may wish to consider whether these links would be strengthened by representation from child protection and criminal justice on APCs.

Representation of the interests of adults receiving services and carers

20. 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.
21. 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. If this option is chosen, the committee will need to ensure that the full range of groups of adults at risk is represented, and that the Committee procedures, language and agendas are carefully designed to ensure, rather than limit full participation. Every possible means of facilitating

participation (such as advocacy, pre-meetings, supporters, interpreting services and the payment of travel expenses) should be considered. Refer to Chapter 5 also.

22. 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 will be important to ensure that there is contact with the full range of service user groups. 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.
23. 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.
24. 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).

Convener

25. The Act requires the convener to be appointed by, but be independent of, the council. The individual must be seen to be independent in thought and action as well as someone who has the necessary skills and knowledge. It follows from this that it is good practice to appoint a convener who is independent of all bodies represented on the Committee. The council, health board and police should seek to develop arrangements for recruiting to the post of convenor on a collective basis.
26. Some Committees may decide to appoint a vice convenor. Similar principles and criteria could be applied to that appointment.

Procedures and practice

27. The Act allows APCs to regulate their own internal procedures, which should be articulated through governance arrangements that will include terms of reference for the APC and any sub committees.

28. APCs are also expected to ensure that there are robust operational local adult support and protection procedures in place for staff from all agencies. This will be both single- and multi-agency. A list of what these procedures should include can be found Chapter 3.

Joint working, communication and information sharing

29. Any actions undertaken by an APC must have regard to improving cooperation amongst its members. An APC should also have regard to the need for communication and cooperation activities with other APCs.
30. Formal inquiries consistently identify effective communication, information sharing and co-ordination as critical in protecting adults at risk of harm. As well as developing robust information sharing protocols, APCs have an opportunity to provide a model of joint working by the way they themselves operate, and should promote good working relations between agencies and staff working within them. Staff in all sectors will need to understand and accept the absolute necessity of sharing information about adults at risk, and be clear about their roles and responsibilities in supporting those adults.
31. In addition to formal interagency information sharing protocols, adult protection procedures should address arrangements for local interagency and intra-professional communication, recording of actions and interventions, information sharing and coordination. Similar arrangements should be considered between council areas. They should also be clear about expectations in relation to support services such as advocacy and representation for adults at risk, especially where any intervention is pursued under the Act.
32. APCs will also need to ensure that there are effective arrangements in place for resolving disagreements and disputes between agencies about decisions in individual cases and about their roles and responsibilities.
33. The Act requires APCs to give information or advice to its statutory members on the safeguarding of adults at risk present in the council area(s). APCs cannot make decisions about how adult protection will be carried out in practice. Rather, the APC should make recommendations to those bodies, which have formal duties and obligations under the Act. The Scottish Government expects statutory bodies to treat the recommendations of an APC with due regard.

Monitoring, review and reporting

34. APCs should also monitor practice and quality relating to the safeguarding of adults at risk through, for example, regular audits of performance of the agencies in the APC area in relation to adult support and protection. This means that APCs will need expertise in standards of adult support and protection, and to become knowledgeable about local professional practice and performance management.
35. Monitoring and evaluating local practice will involve data collection and data analysis, 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 research would be helpful. Over time, APCs will then be able to consider practice and performance trends from the information available. This might, for example, include gathering key information relating to:
 - numbers of inquiries and investigations;
 - the number of adult protection inquiries by age, client group, gender;
 - types of harm ;
 - involvement of other agencies and users and carers; and
 - outcome of referrals and recommendations; and number of and attendance of the adult at risk and other representatives at multi-agency meetings.
36. Each council will be required to complete a data return template from Scottish Government for the Adult support and protection national data set. Committees are recommended to also identify their own information needs and establish systems to meet them.

Individual case reviews

37. The Act does not require APCs to become involved in individual case reviews. APCs have a strategic and monitoring function rather than an operational role and therefore routine case review may well be seen as inappropriate. However, joint consideration of individual cases may help APC members to develop greater joint understanding of service user concerns and professional practice.
38. While there is no duty to do so, APCs are encouraged to evaluate and learn from significant cases or critical incidents: the development of a critical/significant incident and case review procedure, which is endorsed by all the statutory agencies, and interfaces effectively with relevant internal review procedures, is strongly recommended. The national framework for significant

case reviews will also be recommended for use when it is published. It is important to ensure that the Committee is regularly appraised of relevant conclusions and recommendation of national Inquiries, reports from the Mental Welfare Commission, for example, to ensure that appropriate lessons and improvements can be adopted in the local area.

Biennial reports

39. The Act requires the convener of the APC to prepare a general report on the exercise of the committee's functions over the previous 2 years, for approval by the Committee. The report should summarise the work of the APC related to its functions, analyse achievements, identify current issues with services, practice and performance of public bodies and office holders, and set out the required improvements and proposals for future APC programmes. In addition, if the council and its local partners have established terms of reference for APCs which go beyond the requirements of the legislation, they may report on those other matters set out in those terms of reference. The report is therefore likely to address:

- executive summary;
- details of support provided;
- the use of protection orders;
- progress with training;
- communication and cooperation between agencies
- provision of information to the public;
- the management of services and staff/ workforce issues;
- audit and self-evaluation;
- improvements made in last 2 years and improvement action plan for next two years;
- management information on activity, trends, inputs and outcomes in relation to the protection of adults at risk;

40. The Act requires that following approval by the APC, the report must be forwarded to:

- the Council
- the relevant Health Board
- the chief constable of Police Scotland
- Scottish Ministers
- the Mental Welfare Commission for Scotland
- the Public Guardian
- the Care Inspectorate
- any other public body or office holder as the Scottish Ministers may by order specify.

41. APCs will also want to consider how they make the findings set out in the convener's report more widely available within the agencies represented on the committee, to other agencies with a role and responsibilities for the support and protection of adults at risk, to service users and carers and to the general public. APCs will want to consider the issue of publication and the formats in which the report findings are made available.

Improving skills and knowledge

42. APCs have a duty to make or assist in or encourage the making of 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 training strategy will therefore be required recognising the different roles and responsibilities of staff and office holders in statutory, independent organisations. It should address the needs of the following:

- 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;
- staff working in any sector who will be playing a major part in assessments (including risk, capacity and consent), recording events, decision-making on actions to be taken, and involvement in the implementation of protection plans, including legal processes;
- staff managing services who will be supervising others in contact with service users, and who may be involved in decision-making in individual cases and chairing meetings and reviews; and
- staff working in the statutory and legal sectors who will be taking a lead role in legal proceedings in relation to adult protection work

43. APCs should develop a broader communication strategy encompassing general awareness raising and appropriate training for service users, carers and members of the public.

Links to other legislation and guidance

Annex A

The following are a selection of links to other legislation, guidance and organisations most relevant to the Code. A lot of other guidance and links are available on Scottish Government adult support and protection site, WithScotland site and of course via Local Councils and other agencies.

1. Adult Support and Protection (Scotland) Act 2007

<http://www.scotland.gov.uk/Topics/Health/Support-Social-Care/Adult-Support-Protection>

<http://www.legislation.gov.uk/asp/2007/10/contents>

2. Adults with Incapacity (AWI)

<http://www.scotland.gov.uk/Topics/Justice/Civil/awi>

3. Adults with Incapacity – communication and assessing capacity

<http://www.scotland.gov.uk/Publications/2008/02/01151101/0>

4. Comparison of ASP Act, AWI and Mental health Act

<http://www.scotland.gov.uk/Publications/2009/02/25110701/2>

5. Appropriate Adults Scheme

www.scotland.gov.uk/Topics/Justice/law/victims-witnesses/Appropriate-Adult

6. Alcohol and drug partnerships

<http://www.drugmisuse.isdscotland.org/dat/dat.htm>

7. Breathing space - depression and suicide

http://www.breathingspacescotland.co.uk/bspace/CCC_FirstPage.jsp

8. Child Protection and the Children and Young people (Scotland) Act 2014

<http://www.scotland.gov.uk/Publications/2010/12/09134441/6>

<http://www.scotland.gov.uk/Topics/People/Young-People>

9. Counselling, mediation, and victim support

<http://www.victimsupportsco.demon.co.uk/>

10. Criminal Injuries Compensation Scheme (CICS) 2001

www.cica.gov.uk

11. Choose life - reducing suicide

<http://www.chooselife.net/whatwedo.aspx>

12. Equality and human rights commission in Scotland.

<http://www.equalityhumanrights.com/scotland/>

13. Human trafficking/commercial sexual exploitation

<http://www.scotland.gov.uk/Topics/Justice/crimes/humantraffick>

14. Guidance on the Involvement of GPs in Multi-agency Protection Arrangements (2013)
<http://withscotland.org/resources/guidance-on-the-involvement-of-gps-in-multi-agency-protection-arrangements>
15. Mental Health (Care and Treatment) (Scotland) Act 2003
<http://www.scotland.gov.uk/Topics/Health/health/mental-health/mhlaw>
16. Office of the Information Commissioner's framework Code of practice for sharing information
http://ico.gov.uk/for_organisations/data_protection/the_guide
17. Office of the Public Guardian
<http://www.publicguardian-scotland.gov.uk/>
18. Public Concern at Work – provides legal, practical and policy advice on whistle blowing
<http://www.pcaw.org.uk/>
19. Scottish Independent Advocacy Alliance
<http://www.siaa.org.uk/>
20. Scottish Business resilience centre - for financial harm
<http://www.sbcc.org.uk/>
21. Scottish human rights commission
<http://www.scottishhumanrights.com/>
22. Scottish Womens aid (Domestic Abuse)
<http://www.scottishwomensaid.org.uk/>
23. Survivor Scotland (support for survivors of child sexual abuse)
<http://www.survivorscotland.org.uk>
24. Trading standards Scotland and Citizens advice - for financial harm
http://www.adviceguide.org.uk/scotland/consumer_s/consumer_protection_for_the_consumer_e/protection_trading_standards_e.htm
25. The Mental Welfare Commission (MWC) for Scotland
www.mwcscot.org.uk
26. The Princess Royal Trust for Carers
<http://www.carers.org/>
27. Victims of Crime in Scotland
http://www.scottishvictimsocialcrime.co.uk/exec_ccc/VC_FirstPage.jsp?pContentID=275&
28. Vulnerable Witnesses (Scotland) Act 2004

<http://www.scotland.gov.uk/Publications/2005/04/04143522/35246>

29. WithScotland - adult and child protection agency

<http://withscotland.org/>

Glossary

Annex B

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, outbuildings, etc.
Adult (Section 53)	An individual aged 16 or over.
Adult at risk:	Please refer to Chapter 1 for further information for an explanation of the full definition.
Adult Protection Committee (Section 42) (APC)	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 how a person would, or would not, wish to be treated should they subsequently require care and treatment under that Act.
Assessment order (Section 11)	Order granted by a sheriff to help the council to 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 order (Section 19)	Order granted by a sheriff to ban a person from being in a specified place or area. The order may have specified conditions attached. The banned

	person can be any age, including a child.
Care Commission (Section 53)	The Scottish Commission for the Regulation of Care.
Child (Section 53)	An individual under the age of 16.
Conduct (Section 53)	Includes neglect and other failures to act.
Council (Section 53)	A council constituted under the Local Government (Scotland) Act 1994. References to a council in relation to any person known or believed to be an adult at risk mean the council for the area where the person is currently located.
Council nominee (Section 11(1)(a) and 14(1)(a))	An individual who is not a council officer under Section 52 of the Act, nominated by the council to either interview the adult under an assessment order or to move the adult under a removal order.
Council officer (Section 53)	An individual appointed by a council under Section 64 of the Local Government (Scotland) Act 1973 (c. 65) but the term must, where relevant, also be interpreted in accordance with any order made under Section 52(1).
Court day (Section 53)	A weekday (Monday to Friday) unless it has been designated a 'court holiday' (usually a bank holiday or a local holiday).
Curator ad litem	Person appointed by the sheriff to protect the

	interests of the person who is the subject of proceedings relating to an application.
Disapply/Disapplication (Section 41)	To dispense with.
Harm (Section 53)	Includes all harmful conduct. This includes conduct that causes physical or psychological harm, unlawful conduct affects property, rights or interests possessions, conduct that causes self-harm.
Health professional (Sections 52(2) and 53)	The person is a doctor, nurse, midwife or other type of individual prescribed by the 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 co-operation 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 or provide any support or assistance to the adult or any carer.
Investigation	An investigation follows on from an inquiry. Investigations are carried out for the purpose of supporting or assisting the adult or making necessary interventions, whilst acting in accordance with the principles of the Act.
Nearest relative	Section 254 of the Mental Health (Care and

	Treatment) (Scotland) Act 2003, as applied by Section 53 of the Act, sets out a list of the people who will be considered in identifying a person's nearest relative.
Parental responsibilities and rights (Section 53)	As provided for in Sections 1 and 2 of the Children (Scotland) Act 1995.
Primary carer (Section 53)	A primary carer is 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. Section 329 of the Mental Health (Care and Treatment) (Scotland) Act 2003, as applied by Section 53 of the Act, defines primary carer.
Proxy	A continuing or welfare attorney, or a guardian under the Adults with Incapacity (Scotland) Act 2000. More commonly known as a proxy. Can have a combination of powers – welfare, property and/or finance.
Power of arrest (Section 25)	Can be attached to a banning order at the time when the order is granted or at the same time as an application is made to vary the order.
Referral	A referral is when an adult has been referred to a council Adult support and protection Team when the adult is known or believed** to be at risk of harm as defined in Part

1 section 3(1) of the Adult Support & Protection (Scotland) Act 2007. (**if in any doubt, the adult should be referred to the council) If the referral is made by an organisation or agency, and they have defined the referral as ASP, the referral should be counted.

Relevant Health Board (Section 53)

In relation to any council, means any Health Board or Special Health Board constituted by order under Section 2 of the National Health Service (Scotland) Act 1978 (c.29) which exercises functions in relation to the council's area.

Removal order (Section 14)

An order granted by a sheriff authorising a council officer or council nominee to move a named person to a specified place within 72 hours of the order being made and the council to take reasonable steps to protect the moved person from harm. The order can be for any specified period for up to 7 days.

Safeguarder (Section 41(6))

Person appointed by the sheriff to safeguard the interests of the person who is the subject of proceedings relating to an application.

Self-harm

National Self-Harm Working Group definition provided in the latest National Institute for Health and Clinical Excellence (NICE) guidelines on self-harm: "self-poisoning or self-injury, irrespective of the apparent purpose of the act

Subordinate legislation	Statutory legislation (usually in the form of regulations) which may be made by Ministers under enabling powers within an Act of the Scottish Parliament to clarify and implement the details of an Act.
Temporary Banning order (Section 21)	An order granted by a sheriff pending determination of an application for a banning order. The order may specify the same conditions as a banning order.
The Act	The Adult Support and Protection (Scotland) Act 2007.
Visit	A visit by a council officer under Sections 7, 16 or 18 (including warrant entry) unless the contrary intention appears.
Warrant for entry (Section 37)	A warrant that authorises a council officer to visit any specified place under Section 7 or 16 together with a constable. The constable may do anything, including the use of force where necessary, that the constable considers to be reasonable towards fulfilling the object of the visit.



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