



**THE ADULT SUPPORT AND PROTECTION  
(SCOTLAND) ACT 2007  
PART 1**

**GUIDANCE FOR ADULT PROTECTION  
COMMITTEES**

Effective from October 2008

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The Adult Support and Protection (Scotland) Act 2007

## 1. Introduction

1. This guidance is issued under section 47 of the Adult Support and Protection (Scotland) Act 2007 (the ASP Act) which requires Adult Protection Committees (APCs) and councils to have regard to any guidance issued by Scottish Ministers about their functions under sections 42 to 46 of the Act.

2. The ASP Act was passed by the Scottish Parliament in February 2007. It is in five parts. Part 1 deals with the protection of adults at risk of harm. Parts 2, 3 and 4 streamline and improve existing legislation by amending the Adults with Incapacity (Scotland) Act 2000; Mental Health (Care and Treatment) (Scotland) Act 2003; and the Social Work (Scotland) Act 1968. Part 5 is mainly procedural, to ensure that the Act operates effectively.

3. This guidance principally relates to Part 1 although the Annex covers other provisions in more detail. It should be read in conjunction with the Act itself, the associated Code of Practice and other related legislation including the Adults with Incapacity (Scotland) Act 2000 and the Mental Health Care and Treatment (Scotland) Act 2003. These Acts can be accessed through the following links:

[Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#)

[Adults with Incapacity \(Scotland\) Act 2000 \(asp 4\)](#)

[Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#)

### **Main provisions of Part 1**

4. Part 1 introduces new measures to identify and protect ‘adults at risk of harm’ which include:

- placing a duty on Councils to make inquiries and investigations to establish whether or not action is required to stop or prevent harm occurring;
- a requirement for specified public bodies to co-operate with local councils and each other in investigating suspected or actual harm;
- the introduction of a range of protection orders including assessment orders, removal orders and banning orders; and
- **a legislative framework for the establishment of local multi-agency Adult Protection Committees (APCs) across Scotland.**

### **Role of Adult Protection Committees**

5. APCs have a significant role in ensuring cooperation and communication within and between agencies to promote appropriate support and protection for adults as set out in section 42 (2) of the Act. While sections 4 to 38 of the Act provide for specific interventions, the principles of the Act set down in sections 1 and 2 of the Act, require that such interventions must provide benefit to the adult which could not

reasonably be provided without intervention and must be the least restrictive option available which benefit the adult.

6. Some councils have APC-type structures already in place, but the Act creates a duty for councils across Scotland to establish APCs. The statutory requirements relate to the establishment, membership and functions of the Committees and provide a general framework for how APCs should operate. However, policies and procedures are to be developed and agreed locally to reflect local needs, with each APC Convener providing a biennial report to the Scottish Ministers which reports on the exercise of the Committee's functions and enables effective monitoring of committees' work.

7. APCs will need to reach an initial view about the management information requirements to be in place from the date the legislation is implemented.

8. The following pages set out the provisions relating to APCs in full, with guidance on meeting statutory obligations.

## **2. Adult Protection Committee functions**

### **Section 42**

9. Section 42 of the ASP Act states that:

*(1) Each council must establish a committee (an "Adult Protection Committee") with the following functions-*

*(a) to keep under review the procedures and practices of the public bodies and office-holders to which this section applies which relate to the safeguarding of adults at risk present in the council's area (including, in particular, any such procedures and practices which involve co-operation between the council and other public bodies or office-holders to which this section applies),*

*(b) to give information or advice, or make proposals, to any public body and office-holder to which this section applies on the exercise of functions which relate to the safeguarding of adults at risk present in the council's area,*

*(c) to make, or assist in or encourage the making of, arrangements for improving the skills and knowledge of officers or employees of the public bodies and office-holders to which this section applies who have responsibilities relating to the safeguarding of adults at risk present in the council's area,*

*(d) any other function relating to the safeguarding of adults at risk as the Scottish Ministers may by order specify.*

*(2) In performing its functions, an Adult Protection Committee must have regard to the desirability of improving co-operation between each of the public bodies and office-holders to which this section applies for the purpose of assisting those bodies*

*and office-holders to perform functions in order to safeguard adults at risk present in the council's area.*

(3) *The public bodies and office-holders to which this section applies are-*

- (a) the council,*
- (b) the Care Commission,*
- (c) the relevant Health Board,*
- (d) the chief constable of the police force maintained in the council's area,*
- (e) any other public body or office-holder as the Scottish Ministers may by order specify.*

10. In summary, the Act places a duty on councils to set up APCs that will be responsible for monitoring and advising on adult protection procedures, 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.

11. APCs must be established for every council area. There may be different models to deliver this and local authorities should adopt the model that is most appropriate for their area. Where an APC covers more than one council area, each authority will remain accountable for the activities in their own council area. Local authorities are encouraged to work together with their partners to ensure APCs work effectively.

12. APC membership must include representatives of the relevant council(s), NHS Board and relevant Chief Constable. The Care Commission may also nominate a representative, with appropriate skills and knowledge, to be a member of an APC. 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. Section 3 below provides guidance on membership.

### **Procedures and practice**

13. One of the main aims of the Act is to improve co-operative working between agencies with responsibility for adult protection. APCs will be responsible for regulating their own procedures. They must also monitor practice and quality relating to the safeguarding of adults at risk and also audit performance of the agencies in the APC area in relation to adult protection. (Council, NHS Board, Police and Care Commission).

14. APCs may therefore wish to develop tools for doing this. These may build on existing policy and practice guidelines, provided they meet the requirements of, and include sufficient explanation of, the Act.

15. To improve cooperative working, APCs will have to ensure that their procedures and practices are both multi-agency and multi-disciplinary. A step process might be useful, addressing:

- referral and initial response
- investigation;

- assessment and risk assessment;
- adult protection conferences and protection planning;
- adult protection care management;
- adult support;
- risk monitoring; and
- review.

16. Procedures should also address arrangements for local interagency and intra-professional communication, information sharing and coordination. Similar arrangements should be considered between council areas. It is important for local guidelines that address communications with adults at risk, family members and others. Local guidelines 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.

### **Information, advice and proposals**

17. 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). This means that APCs will need expertise in standards of adult support and protection, and become knowledgeable about local professional practice and performance management. 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 be able to consider practice and performance trends from the information available.

18. 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. While there is no duty to do so, APCs are encouraged to evaluate and learn from critical incidents.

### **Improving skills and knowledge**

19. APCs have a duty to make or assist with arrangements for improving the skills and knowledge of the public bodies and office-holders that have responsibilities relating to the safeguarding of adults at risk in their area. A local strategy will therefore be required, recognising the different roles and responsibilities of staff and office holders in statutory, voluntary and private organisations. The Scottish Government has implemented phase 1 of its national training strategy to ensure that sufficient staff are able to fulfil their statutory duties on commencement. Phase 2 looks at training in the longer term.

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

- staff working in any sector who need to recognise the signs of harm, neglect or exploitation and require to know when and how to respond, what action to take,

including who to report their concerns to, and how they fit into a protection plan;

- the opportunity for staff working in any sector to reach an understanding of the importance of working with people in a way that supports them and promotes their wellbeing and health in the context of the ASP Act;
- staff working in any sector who will be playing a major part in communications, assessments (including about risk, capacity and consent), recording events, decision-making on actions to be taken, and have a major role in the implementation of protection plans, including legal processes;
- staff managing services who will be supervising others in contact with service users, who will be monitoring performance at a local or central level and who may be involved in decision-making in individual cases and chairing adult protection conferences and reviews;
- staff working in the statutory and legal sectors who will be taking a lead role in legal proceedings in relation to adult protection work; and
- staff in other areas of work including advocates in local organisations, members of APCs, regulatory staff within the Care Commission, council clerical/administrative staff who will act as minute takers in adult protection case conferences, guidance staff in secondary schools for those pupils aged 16 to 18 years and lecturing and tutoring staff within local education institutions.

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

### **Co-operation**

22. 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.

23. Formal inquiries consistently identify effective communication, information sharing and co-ordination as critical in protecting adults at risk of harm. APCs will have an opportunity to provide a model of joint working by the way they themselves operate, and will require to promote good working relations between agencies and staff working within them. All 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.

24. Clear guidance about information sharing should be reflected in procedures for:

- inter-agency referral discussions;

- inquiry and investigation;
- assessment;
- protection planning;
- risk assessment, monitoring and review; and
- any process related to protection orders.

25. 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.

26. A wide range of statutory services contribute to the protection of adults at risk. It will be important to involve and engage with:

- services for children and families;
- criminal justice services;
- adult services;
- local community and specialist police such as family protection unit staff ;
- homeless services;
- housing services including private providers and homeless services;
- acute hospital services and primary care services, including general practitioners; and
- the prison service.

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

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

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

### **Authority and accountability**

30. It is important that local Councils, NHS Boards and Police recognise the statutory functions which will be carried by APCs in relation to:



- reviewing procedures and practices;
- improving skills and knowledge;
- improving co-operation;
- providing information and advice; and
- making proposals.

31. 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, NHS Boards and Police. To ensure that appropriate authority is delegated, some pre-existing APC-type arrangements have created direct lines of communication between themselves and local Chief Officers Groups. These usually have membership at Chief Executive and Director level from the Council, NHS and Police.

### **Child Protection Committees and MAPPAs**

32. Good practice involves information sharing, communication and coordination between services for adults, children and family services, and criminal justice services. Monitoring and oversight arrangements already exist for Child Protection Committees and Multiagency Public Protection Arrangements (MAPPAs). Whatever local decisions are made, communication and coordination within these Committee arrangements will be necessary.

### **Adult Protection Unit**

33. The Scottish Government's Regulatory Impact Assessment provided to Parliament to accompany the Bill's passage identified the need for adult protection units in each council area, including an Adult Protection co-ordinator, a training post and administrative support. This proposal was made both in recognition of the fact that the work of APCs will need to be serviced and supported, that good joint working will be fundamental to effective implementation, and that joint training will be an important part of that. Adult protection units, as proposed, were also seen as a means by which APCs could link in with local management, information and support systems. They are, therefore, to be the bridge between strategic oversight and front-line operations and should be formed in a manner that would best meet the needs of the local community.

### **Future functions**

34. The Act empowers the Scottish Ministers to specify other functions for APCs relating to the safeguarding of adults at risk, by statutory order. This is to allow Ministers to respond to practice findings as outlined in the biennial reports.

## **3. Membership**

### **Section 43**

35. Section 43 of the ASP Act states that:

(1) *It is for the council to appoint the convener and the other members of its Adult Protection Committee in accordance with this section.*

(2) *Each public body and office-holder to which section 42 applies (other than the council and the Care Commission) must nominate a representative who appears to the body or office-holder to have skills and knowledge relevant to the functions of the Adult Protection Committee to be a Committee member*

(3) *The Care Commission may nominate a representative who appears to it to have skills and knowledge relevant to the functions of the Adult Protection Committee to be a Committee member.*

(4) *The council must appoint the representatives nominated under subsections (2) and (3) as Committee members.*

(5) *The council may also appoint as Committee members such other persons who appear to it to have skills and knowledge relevant to the functions of the Adult Protection Committee.*

(6) *The Committee convener must not be a member or officer of the council.*

### **Convener**

36. Given its lead statutory role in undertaking inquiries and investigations, the Act requires the convener to 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 is good practice to appoint a convener who is independent of all representative bodies. The partnership organisations should endeavour to recruit for the convener position together.

### **Representatives: skills and knowledge**

37. As the lead statutory body, it is for the council to appoint those who are nominated. The relevant health boards and the relevant Chief Constable require to nominate at least one representative each whilst the Care Commission has the option to nominate a representative. All nominees must evidence relevant knowledge and skill including an understanding of the importance of working collaboratively and effectively in a multidisciplinary and multiagency context.

38. The Act gives councils discretion to appoint other representatives who can bring particular expertise to the Committee. For example, they may wish to include representatives from adult social care services, community health partnerships, police protection units, children's services, criminal justice, legal services, mental health, nursing, acute health services, housing, service provision, education and training, and from senior management to consultant and senior practitioner levels. In particular, the Procurator Fiscal Service has a key role in specific APC matters such as criminal justice issues, it is therefore good practice to invite representatives to that part of the meeting dealing with such matters.

39. Although not a statutory requirement, it is considered good practice to invite service providers from the independent sector to be represented on each Committee given their significant role in service delivery.

40. The involvement in the design and delivery of services by those people who use such services will be critical to the success of the policy. There are existing arrangements in a number of areas whereby regular contact with local service user and carer groups promotes discussion of adult protection issues. APCs are encouraged to make use of existing networks and ensure views are gathered and taken into full account when discussing design and delivery of services.

41. There is also the broader issue of public involvement in the work of APCs. Modernised councils require to ensure public participation. The NHS also has statutory duties for public involvement. Councils and their partners must consider how public concerns and views are represented and taken into account within the work of APCs. If this general interest is not directly represented on APCs then local partners should consider how public involvement and participation can be enabled through other means.

#### **Links with Child Protection Committees and MAPPA**

42. 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.

#### **4. Committee procedures**

##### **Section 44**

43. Section 44 of the ASP Act states that:

- (1) *It is for an Adult Protection Committee to regulate its own procedures.*
- (2) *But those procedures must allow a representative of-*
  - (a) *the Mental Welfare Commission for Scotland,*
  - (b) *the Public Guardian,*
  - (c) *the Care Commission (where it has not nominated a representative to be a member of the Committee), and*
  - (d) *any other public body or office-holder as the Scottish Ministers may by order specify,*

*to attend Committee meetings.*

## **Adult Protection Committee procedures**

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

- reviewing adult protection practices;
- improving co-operation;
- improving skills and knowledge;
- providing information and advice; and
- promoting good communication.

45. They will need to reflect terms of reference for the APC and any subgroups, which may go beyond the statutory requirements, and support programme planning for the Committee and its cycle of activities. It is considered good practice for APCs to agree arrangements with The Mental Welfare Commission, the Public Guardian, and for those APCs where a member has not been nominated under section 43 above, the Care Commission, the circumstances in which these bodies might wish to attend meetings.

## **5 Information sharing**

### **Section 45**

46. Section 45 of the ASP Act states that:

*(1) Each of the public bodies and office-holders set out in subsection (2) must provide the Adult Protection Committee with any information which the Committee may reasonably require for the purposes of performing the Committee's functions.*

*(2) Those public bodies and office-holders are-*

- (a) each of the public bodies and office-holders represented on the Adult Protection Committee by virtue of section 43(4),*
- (b) the Mental Welfare Commission for Scotland,*
- (c) the Public Guardian,*
- (d) the Care Commission (where it is not represented on the Committee), and*
- (e) any other public body or office-holder as the Scottish Ministers may by order specify.*

### **Good practice in information sharing**

47. It is important for local agencies and APCs to participate fully in the promotion of a culture of information sharing where adults may require protection, whilst recognising human rights issues with respect to data protection and confidentiality. This will involve agency and APC activity both in individual cases, and in relation to sharing information on practice issues and performance. APCs will also want to consider the relationship between the statutory agencies and other service

providers and to promote the adoption by service providers of the same practices in information sharing and co-operative working as are required of statutory agencies.

48. In order to evaluate practice performance, APCs will wish to consider an information framework that includes data gathering, analysis, monitoring and review arrangements. Information for particular periods of time and trends over time will inform a committee's work. It is likely that members will have an interest in the adoption of a consistent approach to data sets and information gathering over their respective geographic areas of responsibility. APCs may therefore work jointly in the development of information frameworks, or may collectively wish to consider a national framework to inform local analysis and allow comparisons with incidence, practice and performance elsewhere across the country.

49. APCs may decide to audit particular aspects of support and protection activity, to commission or engage in occasional case reviews (particularly when there have been critical incidents) or to commission research on particular aspects of protection work.

50. In view of the importance of information sharing in adult protection, it is good practice for APCs to set out their general expectations and their specific requirements, for agreement by the agencies involved. This information would also support APCs in reviewing their own performance and progress, in order to validate and improve their own approaches.

### **Publication of information**

51. Consideration must be given as to how publicly the APC is to carry out its scrutiny and advisory functions. Local decisions will be required about the publication of APC meeting minutes, about what APC reports should be published, and the form of publication. These decisions will need to take account of the issues of confidentiality concerning sensitive and personal information shared with the APC, but provide public access to information where possible.

## **6. Reporting**

### **Section 46**

52. Section 46 of the ASP Act states that:

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

- (a) prepare a general report on the exercise of the Committee's functions during the 2 years ending on that date, and*
- (b) after securing the Committee's approval of the report, send a copy of it to-*
  - (i) each of the public bodies and office-holders represented on the Adult Protection Committee by virtue of section 43(4),*

- (ii) *the Scottish Ministers,*
- (iii) *the Mental Welfare Commission for Scotland,*
- (iv) *the Public Guardian,*
- (v) *the Care Commission (where it not represented on the Committee), and*

(vi) *any other public body or office-holder as the Scottish Ministers may by order specify.*

### **Biennial Report**

53. The Act requires the convener of the APC to produce a biennial report on a date directed by the council, for approval by the Committee. The Scottish Ministers expect APC's to be established by October 2008. The expectation is that APCs will produce their first biennial reports two years from this commencement date.

54. The contents of the biennial report should analyse, review and comment on APC functions. The report is therefore likely to address:

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

55. The report may summarise the work of the APC, analyse achievements, identify current issues with services, practice and performance, and set out the required improvements and proposals for the APC programme for the next two year period.

56. 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 expect the report to deal with the other matters set out in this terms of reference.

57. 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 therefore want to consider the issue of publication and the formats in which the report findings are made available.

## **The Adult Support and Protection (Scotland) Act 2007**

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

### **Sections 1-2: Principles**

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

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

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

### **Sections 3 and 53: Definition of adult at risk of harm**

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

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

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

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

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

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

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

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

- Inquiries (including co-operation, the duty to consider independent advocacy and other services);
- Investigations; and
- Protection Orders.

### **Sections 4-5: Inquiries and co-operation**

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

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

### **Section 6: Adult representation including advocacy and support services**

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

If a general inquiry progresses to an investigation councils require to take into account how to provide adults at risk of harm with the relevant information and support to enable them to participate as fully as possible. This needs to include consideration of their abilities, background and characteristics and ensure that their wishes and feelings are taken into account and that they are not, without justification, treated less favourably than the way in which any other adult (not being an adult at risk) might be treated in a comparable situation. Some people will be well able to represent their own views, either on their own or with existing forms of support. Having considered



this issue in all cases, councils require to determine where independent advocacy or the provision of other appropriate services, such as support with communication, is needed.

The principles underlying the Act emphasise the importance of striking a balance between an individual's right to freedom of choice and the risk of harm. These must always be taken into account when an intervention under Part 1 of the Act is being considered, and in any legal proceedings including appeals, within which statements expressed in advance about an individual's preferred care or treatment must be taken into account in line with the guiding principles. The affected adult at risk may be accompanied at any hearing conducted in respect of an application by a friend, a relative or any other representative chosen by the adult.

### **Sections 7-10: Investigations**

Regulations to be made under section 52 restrict the type of Council Officer who may be authorised by a council to carry out visits, conduct interviews or require health, financial or other records to be produced, in respect of an adult at risk.

The Act gives a Council Officer powers in relation to making visits, entering premises and carrying out interviews within investigations concerning adults at risk. If a Council Officer is accompanied by a health professional, he/she may carry out a medical examination of the adult. An adult has the right not to respond to questions, and to refuse a medical examination. The Act gives a Council Officer the right to require the provision of medical, financial or other documents or copies of them related to an adult at risk, although medical records can only be inspected by a health professional.

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

The Act allows a council to apply to the sheriff for a warrant for entry or a protection order.

A protection order can take one of three forms:

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

The sheriff may grant such an order only if satisfied that certain criteria are met, and these grounds are specified in the Act. A sheriff must not make a protection order if the sheriff knows that the affected adult at risk of harm has refused to consent to the granting of the order, unless the sheriff reasonably believes that the affected adult at risk has been unduly pressurised to refuse consent and there are no steps which could reasonably be taken with the adult's consent which would protect the adult from harm. That is the underlying principle. Section 35(4) gives an example of a situation where the adult may be considered to have been unduly pressurised as where it appears the action which the order is intended to prevent is being inflicted by a person whom the adult at risk trusts, otherwise the adult would consent. However section 35(5) makes clear that this is not the only type of behaviour that would constitute undue pressure.

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

### **Section 48: Code of Practice**

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

This provides information and guidance on the principles of the Act, and the measures contained within the Act, including when and where it would normally be appropriate to use such powers. The duty on councils, council officers and health professionals performing functions under Part 1 to have regard to the code of practice is not a strict duty to comply with the code in certain circumstances. However, there may be legal consequences arising from failure to observe the terms of the code.

The Code and this guidance should be read in conjunction with other relevant codes of practice as appropriate, such as the codes of practice for the Mental Health (Care and Treatment) (Scotland) Act 2003, the Adults with Incapacity (Scotland) Act 2000 and the Scottish Social Services Council's Codes of Practice for Social Service Workers and Employers of Social Service Workers