



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

**A short introduction  
to  
Part 1 of the Act**

# The Adult Support and Protection (Scotland) Act 2007

## What's it all about?

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The Adult Support and Protection (Scotland) Act 2007 was passed by the Scottish Parliament in February 2007 and received royal assent on 22 March 2007.

Part 1 of the Act deals with the protection of adults at risk of harm. It is scheduled to come into effect in the autumn of 2008.

This booklet is a brief summary of the provisions of Part 1 of the Act. You should refer to the Act itself if you need more detailed information and seek legal advice if you have any queries on its interpretation.

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## What does Part 1 of the Act do?

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Part 1 introduces new measures to identify and protect individuals who fall into the category of '**adults at risk**'. These measures include:

- placing a duty on councils to make the necessary inquiries and investigations to establish whether or not further action is required to stop or prevent harm occurring;
  - a requirement for specified public bodies to co-operate with local councils and each other about adult protection investigations;
  - a range of protection orders including assessment orders, removal orders and banning orders; and
  - the establishment of multi-disciplinary Adult Protection Committees.
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## Who are 'adults at risk?'

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

- are unable to safeguard themselves, their 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.

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 etc. 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 susceptible to harm than others.

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### **What is meant by ‘harm?’**

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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.

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### **Principles underlying the Act**

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

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

- the 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 an active part 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).
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## **What duties and powers does the Act contain?**

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### **Inquiries:**

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.

### **Independent Advocacy and other support services:**

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

### **Investigations:**

In order to make inquiries, the Act authorises council officers 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 also allows a health professional (e.g. doctor or nurse) to conduct a medical examination. However, a person is not obliged to answer any questions put to them in an interview, and must be informed of their right to refuse to be examined before a medical examination is carried out.

### **Co-operation:**

The Act requires the following public bodies to co-operate with local councils and with each other, where harm is known or suspected:

- the Mental Welfare Commission for Scotland;
- the Care Commission;
- the Public Guardian;
- all councils;
- chief constables of police forces;
- the relevant Health Board; 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.

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## **Protection orders**

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Part 1 of the Act allows a council to apply to the sheriff for a protection order. This can take one of three forms:

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

The sheriff may grant an order only if satisfied that certain criteria are met.

**Assessment order:** This allows a council officer to take the adult from a place visited by the officer in the course of their investigations to conduct a private interview and for a health professional to conduct a medical examination in private. An application for an assessment order can only be made where it is necessary to establish if the person is an adult at risk and, if so, to establish whether further action is required to protect them from harm. An assessment order will only be necessary where it would not be possible to carry out a private interview or medical examination within the place being visited. Assessment orders are valid for up to seven days, but the assessment itself should be undertaken in the shortest time possible. It should be borne in mind that the assessment order does not have the power to detain the adult at risk in the place they are taken to and that the adult may choose to leave at any time.

**Removal order:** This authorises a council officer to remove an adult at risk to a specified place where there is a likelihood of serious harm if they are not moved. This type of order may be varied or recalled by the sheriff where this is justified by a change in facts or circumstance of the case. Removal orders are effective up to a maximum of seven days. Again, a removal order does not authorise the adult's detention therefore the adult may leave the place they have been removed to if they wish.

**Banning order:** This bans the subject of the order from being in a specified place, for up to six months. It can only be granted where an adult at risk is being, or is likely to be, seriously harmed by another person and the sheriff is satisfied that banning the subject of the order from the place will better safeguard the adult at risk's well-being or property than by moving the adult. The sheriff can also grant a

temporary banning order pending the determination of a full banning order.

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### **When might these measures be appropriate?**

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The fact that council officers will be given powers to visit and make inquiries where it is believed an adult may be at risk of harm should allow early intervention where necessary, with the emphasis on prevention of harm. By virtue of the power to get through the door for a visit, it may become clear what support or other actions would be beneficial for an individual's particular situation, for example, by providing practical or emotional support or by taking measures under Adults with Incapacity or Mental Health legislation.

It is anticipated that protection orders will be used sparingly. In most situations, and in line with the guiding principles of the Act, other less restrictive measures will be sufficient to protect the person concerned. However, in those circumstances where firmer action is required, this legislation puts in place sufficient powers to ensure those who need support or protection can have it.

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### **Undue pressure**

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A sheriff must not make a protection order if the sheriff knows that the affected adult at risk 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.

An example of undue pressurise is where it appears that harm 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. Another example of undue pressure would be where the adult is afraid of or being threatened by another person.

However, this does not authorise a council officer or a health professional or other council nominee to ignore a refusal by a person to consent to participation in an interview, or a medical examination.

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## What safeguards are in place to protect the rights of individuals?

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- The principles underlying the Act emphasise the importance of striking the 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.
- A sheriff must not make a protection order if they know that the affected adult at risk has refused to consent to the granting of the order, except where the adult at risk is found to be under undue pressure to refuse to consent. The adult is still entitled to refuse to be medically examined or interviewed.
- Applications for all protection orders will be heard before a sheriff, unless the sheriff decides that by not holding a hearing the adult will be protected from serious harm and that it will not prejudice any other person affected by the application.
- The adult at risk may apply for a banning order to ban a person from a specified place (e.g. their home).
- The relevant parties may appeal against the granting of, or refusal to grant, a banning or temporary banning order.
- Statements expressed in advance about an individual's preferred care or treatment must be taken into account in line with the guiding principles.

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## Adult Protection Committees

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Part 1 of the Act creates an obligation on councils to establish multi-agency Adult Protection Committees. These committees are responsible for overseeing local adult protection polices in their area and will each produce a biennial report on the exercise of the Committee's functions. They will also provide advice and information to those involved in adult protection work.

**Membership:** Councils are responsible for appointing the convener and committee members. While they may also appoint members to the Committee based on their relevant knowledge and skills, each committee must include nominated representatives from the relevant Health Board and police force. The Care Commission also has

the option to nominate a representative. Committee procedures must also allow representatives of the following bodies to attend meetings:

- the Mental Welfare Commission for Scotland;
- the Public Guardian;
- the Care Commission (where a representative has not already been nominated to be a member); or
- any other public body or office holder that Scottish Ministers may specify by order.

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### **More information about the Act**

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To keep up to date with progress on implementation of Part 1 of the Act, you can sign up to receive a copy of the quarterly newsletter. Please contact:

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