



Adult Support and Protection: Ensuring rights and preventing harm



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Multi-agency Guidelines

Issued August 2013



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Section 1

Foreword and Introduction

Foreword

Adult Support and Protection: Ensuring Rights and Preventing Harm
August 2013

This updated version of the multi-agency Adult Support and Protection guidelines replaces the guidelines that were initially published in January 2010.

The new guidelines take account of further changes to legislation; changes to agency structures and nomenclature, experiences of practitioners over the last two years and feedback from users of the guidelines on a number of issues. These issues include new information on protection orders; risk assessments and transition of users from Child Protection to Adult Support and Protection.

However, the changes that have been made are all minor and the important aspects of the guidelines relating to principles and the step-by-step good practice guide remain unchanged.

As with the original guidelines, this new document has undergone wide ranging consultation with key partners in the statutory, private and third sector organisations involved in supporting and protecting adults at risk of harm.

The guidelines have been written to take account of the wide range of agencies and disciplines that might use them as a source of guidance and **are not intended as a substitute for individual agency adult protection procedures that should be followed for your respective agencies.**

Introduction

The majority of adults who are affected by disability, mental disorder, illness, physical or mental infirmity live their lives comfortably and securely, either independently or with the help of caring relatives, friends, neighbours, professionals or volunteers. However, some adults affected in this way are unable to safeguard themselves.

Over recent years increased media coverage of individual incidents and public inquiries dealing with instances of harm and abuse have led to a growing concern about this issue among the general public.

The development of services for adults has created a more enlightened and empowering climate, which offers people choice and participation in making decisions about their own lives. This brings with it a dispersal of care within the community, of increasing reliance on unpaid carers and an expansion of the scope of responsibility of paid carers.

The support and protection of adults at risk of harm is a high priority for the statutory, private and third sectors. To provide such support in a way that promotes independence, choice and empowerment, it will be necessary for agencies to provide:

- ▶ information regarding what can be expected
- ▶ information regarding rights and responsibilities
- ▶ access to an independent advocacy service
- ▶ access to a responsive complaint process

In October 2008 the Scottish Government introduced new legislation, the Adult Support and Protection (Scotland) Act 2007 (ASP Act) followed a short time later by the Protection of Vulnerable Groups (Scotland) Act 2007 (PVG Act). These Acts were designed to complement and improve other legislation used by practitioners within the field of adult support and protection.

The ASP Act specified duties, responsibilities and powers to safeguard adults who may be at risk of harm. It also placed a duty on certain organisations to co-operate in investigating suspected or actual harm and introduced a number of protection orders.

The PVG Act introduced a Vetting and Barring Scheme for those who work or seek to work with vulnerable groups such as adults at risk of harm or children.

In addition, in March 2012 the Scottish Government launched a Bill in the Scottish Parliament relating to the provision of special care and support to a wide range of people. The Social Care (Self-directed Support) (Scotland) Act 2013 received royal assent in January 2013 and is planned to come into effect on 1st April 2014. The Act will empower people to direct their own care and have the choice about the manner in which their care and support are provided.

The new Act will introduce the language and terminology of self directed support into statute and provide a consistent, clear framework in law. It will impose firm duties on local authorities to provide the various options available to their clients - making it clear that it will be client's decision as to how much choice and control that they want to have.





Section 2

Definitions and Dilemmas in Adult Support and Protection

Definitions

Who is an adult at risk?

Under the Adult Support and Protection (Scotland) Act 2007 an “adult at risk” means a person aged sixteen years or over who:

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

All of the above criteria must apply to identify an individual as an “adult at risk”

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, property, rights or other interests; all three elements of this definition must be met. It is the entirety of an adult’s particular circumstances which combine to make them more vulnerable to harm than others.

What does “at risk of harm” mean?

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.

What is harm?

In the Adult Support and Protection (Scotland) Act 2007, harm “includes all harmful conduct” and, in particular, includes:

- (a) conduct which causes physical harm
- (b) conduct which causes psychological harm (e.g. by causing fear, alarm or distress)
- (c) unlawful conduct which appropriates or adversely affects property, rights or interests (for example: theft, fraud, embezzlement or extortion)
- (d) conduct which causes “self-harm”

Who is a carer?

There can be both paid and unpaid caring arrangements. A **paid carer** or care worker is employed by an employer, or by the adult themselves through Self Directed Support (SDS) direct payment, e.g.

- ▶ home care / personal care workers
- ▶ care homes
- ▶ sitters
- ▶ people employed within NHS day hospitals
- ▶ people employed within day centres
- ▶ support workers

An **unpaid carer** is a person of any age who provides, or intends to provide, unpaid help and support to a relative, friend or neighbour, who cannot live independently without the carer’s help, due to frailty, illness, disability or addiction.

All subsequent references to “carer” in these guidelines refer to both paid and unpaid carers.

Who may cause harm?

Adults at risk may be harmed by a wide range of people including relatives and family members, professional staff, paid care workers, volunteers, other service users, neighbours, friends and associates, strangers and people who deliberately exploit adults at risk. Evidence and research suggest that in most cases the adult will know the person who causes them harm.

There is particular concern when the harm is caused by someone in a position of trust, power or authority who uses his or her position to the detriment of the health, safety, welfare and general well-being of the adult at risk.

Agencies not only have a responsibility to all adults at risk of harm but also may have a responsibility towards organisations with whom the alleged perpetrator is employed or works as a volunteer, where other adults may be at risk of harm.

The roles, powers and duties of the various agencies in relation to the alleged perpetrator will vary depending on whether s/he is:

- ▶ a member of staff, proprietor or services manager
- ▶ a member of a recognised professional group
- ▶ a volunteer or member of a community group such as a place of worship or social club
- ▶ another service user, a spouse/partner, relative or member of the person's social network
- ▶ a paid or unpaid carer
- ▶ a neighbour, member of the public or stranger
- ▶ a person who deliberately targets adults at risk in order to exploit them, e.g. grooming behaviour
- ▶ a person whose mental health difficulties affect their behaviour in a way that may cause harm to themselves or others

Patterns of Harm

Harm means **all** harmful conduct. It is important to remember that harm means harmful conduct, regardless of whether the harm was deliberate or unintentional.

The following are forms of harm that have been identified. There may be other forms of harmful conduct not listed here.

Physical Harm

This involves physical contact intended to cause feelings of:

- Pain
- Injury
- Intimidation
- Other physical suffering

Examples include:

- Hitting
- Slapping
- Pushing or pulling
- Kicking
- Misuse of medication
- Restraint or inappropriate sanctions

Sexual Harm

This includes sexual behaviour such as:

- Rape
- Sexual assault
- Sexual acts to which the adult at risk has not fully consented, could not consent or was pressured into consenting
- Intimidation of a sexual nature

Examples include:

- Sexual harassment
- Inappropriate touching
- “Stalking” (see Glossary page 62)
- Human trafficking
- Indecent exposure
- Abuse of a position of trust for sexual purposes

Psychological Harm

This can be described as exposing someone to behaviour that is psychologically harmful or inflicting mental distress by threat, humiliation or other verbal / non-verbal conduct.

Examples include:

- Threats of harm or abandonment
- Deprivation of contact
- Humiliation
- Blaming
- Controlling
- Intimidation
- Coercion
- Harassment
- Verbal abuse
- Neglect
- Isolation or withdrawal from services or supportive networks

Harm caused by Financial, Material or Property Abuse

Examples include:

- Theft (see Financial Harm in Glossary page 59)
- Fraud
- Exploitation
- ‘Bogus caller’ activity involving the above
- Pressure in connection with wills, property, inheritance, financial transactions
- The misuse or misappropriation of property, possessions or benefits

Harm through Neglect and Acts of Omission

Examples include:

- Failure to meet appropriately and adequately an individual’s medical, physical, psychological and/or emotional care needs when expected to do so
- Failure to provide access to appropriate health, social care or educational services
- The withholding of the necessities of life, such as medication, adequate nutrition or heating
- An individual’s conduct which causes self-neglect

Harm through Discrimination

Actions (or omissions of action) and/or remarks of a prejudicial or discriminatory nature based upon a person's:

- Age
- Gender/Transgender
- Disability
- Race, colour, culture or ethnic/national origin
- Actual or perceived sexual orientation
- Faith, religion, belief, spiritual background, or lack thereof
- Any other aspect of a person's individuality

Harm through Information Misuse

Examples include:

- Failure to adhere to the relevant "Data Protection Act" guidance
- Failure to provide accurate information
- Misuse of personal information

Institutional Harm

Harm can be caused through neglect and acts of omission or poor professional standards of practice often as a result of structures, policies, processes and practices within the organisation.

Institutional harm can be described as repeated instances of harm to individuals or groups of individuals through poor or inadequate service within a care organisation.

Harm through denial of Human Rights

This can be described as denying access to the basic rights and freedoms to which all human beings are entitled.

Self-Harm

This is when an individual engages, knowingly or unknowingly, in any behaviour or activity that, directly or indirectly, can cause harm/serious harm to their physical, psychological or social well-being.

The definition of self-harm adopted by these guidelines is "intentional self-poisoning or injury, irrespective of the apparent purpose of the act". Self-harm includes poisoning, asphyxiation, cutting, burning and other self-inflicted injuries.

Any or all of these types of harm may be caused as the result of deliberate intent, negligence or ignorance.

Since the introduction of legislation in 2008 it has become apparent that the issue of self harm is a major factor in the daily work of those dealing with adult support and protection. Due to the complexity of some of these cases ELBEG has produced a set of guidelines to assist those working with this particular type of harm.

Serious Harm

The Adult Support and Protection (Scotland) Act 2007 introduced both duties and powers. Duties include the duty to inquire, investigate and co-operate where it known or suspected that an adult may be at risk of **harm**.

Powers, introduced by the legislation include three protection orders. Applications enacting these statutory powers require to be made through the Sheriff Court but will only be considered where there is evidence that an adult is at risk of **serious harm**.

These interventions are outlined fully in local authority adult protection procedures, which should be followed when such action is being considered.

Serious harm is not defined under the Act.

There are no absolute criteria on which to rely when assessing what might constitute serious harm.

Consideration of the severity of the ill treatment may include:

- ▶ The nature, degree and extent of physical harm
- ▶ The duration and frequency of the harm and neglect
- ▶ The degree of threat and coercion
- ▶ The impact on the person and the risk of repeated or increasingly serious acts involving them or other adults at risk
- ▶ The impact on the person concerned. Sometimes a single traumatic event may constitute serious harm

More often, serious harm is an accumulation of events, both acute and long-standing, which cause the impairment of, or an avoidable deterioration in, physical or mental health; and the impairment of physical, intellectual, emotional, social or behavioural development.

Signs of Potential Harm

Suspicious of harm to adults at risk can come to light in a number of ways.

The clearest indicator is a disclosure, statement or comment by the adult, by family members, by their carer, or by others reporting concerns of harm.

Such disclosures, statements or comments always warrant further inquiry whether they relate to a specific incident, a pattern of events or a more general situation.

However, there are many other factors and circumstances that can indicate harm. These may include:

- unusual or suspicious injuries
- unexplained or concerning behaviour of carers – this can include a delay in seeking advice, dubious or inconsistent explanations for injuries or bruises
- an allegation of harm, made by an adult at risk
- an adult at risk is found alone at home or in a care setting in a situation of serious but avoidable risk
- over-frequent or inappropriate contact / referral to outside agencies (many agencies such as NHS Accident and Emergency Department have a flagging system that assists in identifying frequent attenders)
- a prolonged interval between illness / injury and presentation for medical care
- if the adult at risk lives with another member of the household who is known to any of the statutory agencies in circumstances which suggest possible risk to the well-being of that adult
- misuse of medication, e.g.
 - (a) not administered as prescribed
 - (b) over-medication resulting in apathy, drowsiness and slurring of speech
 - (c) under-medication resulting in lack of sleep, continual pain etc
- unexplained physical deterioration in the adult at risk, e.g. loss of weight
- sudden increase in confusion e.g. dehydration can lead to confusion
- the adult demonstrates a fear of going home
- difficulty in interviewing the adult at risk e.g. another adult unreasonably insists on being present
- anxious/disturbed behaviour on the part of the adult at risk
- hostile/rejecting behaviour by the carer towards the adult at risk
- serious or persistent failure to meet the needs of the adult at risk

- financial/material/property abuse, e.g. a change in the ability of the adult at risk to pay for services, unexplained debts or reduction in assets
- carer as well as the adult at risk showing apathy, depression, withdrawal, hopelessness or suspicion
- unnecessary delay in staff response to residents' requests
- if a member of staff in a care service has a history of moving jobs without notice or has inadequate references
- important documents are reported to be missing
- pressure exerted by family, carer or professional to have someone admitted to or discharged from a care setting
- adult at risk's behaviour or ability to function independently deteriorating
- pressure exerted by family or carer or professional to agree to care arrangements which are not appropriate

Dilemmas in Adult Support and Protection

The support and protection of adults at risk of harm can raise a variety of complex issues. There may be a number of dilemmas which must be considered. Some of these are discussed in more detail below.

Rights / Self Determination / Undue Pressure

All adults at risk are individuals in their own right and, if they are able / are assessed as having capacity, must be allowed to exercise their right to choose the way in which they live their life. This can mean that some people may choose to remain in a situation which others may consider to be inappropriate or harmful. If an adult at risk is choosing to remain in such a situation, every effort should be made to inform the adult at risk of the possible consequences of the choices they may be making.

However, adults at risk also have the right to be protected. The assessment of an adult's capacity is a complex task and is the responsibility of trained health and social care staff. If you are concerned about an adult who appears to be at risk you should refer to your agency's or your local authority's adult protection procedures.

The Adult Support and Protection (Scotland) Act 2007 introduced new powers and duties for the local authority that encourages practitioners to assess whether an adult identified as an adult at risk of harm, and who has been assessed as having capacity, might be being "unduly pressurised" not to cooperate with any support and / or protection being offered to them. In these situations and where there is evidence of serious harm it may be that council officers can / should seek to override the adults consent by intervening under the Adult Support and Protection (Scotland) Act 2007. The measures laid out in the Adult Support and Protection (Scotland) Act 2007 are compliant with Human Rights legislation. It is, however, essential that the principles of the Act are kept central to all such activities and intervention.

Duty to Report

No matter what agency, staff have a duty to report all concerns about an adult at risk, whether suspected, witnessed or disclosed. Under the Adult Support and Protection (Scotland) Act 2007, the local authority is required to make inquiries about and / or investigate a person's well-being, property or financial affairs if it knows or believes:

- (a) that the person is an adult at risk and
- (b) that it might need to intervene in order to protect the person's well-being, property or financial affairs

Staff must report these concerns to their line manager / supervisor, who in turn must report the facts and circumstances of the case to the council for the area it considers the adult at risk to be. In agencies / situations where it is not clear who one should report to, it is incumbent on all staff to make themselves aware of the appropriate person, usually by seeking advice from a senior member of staff.

This in itself may actually cause a dilemma if the line manager/supervisor is potentially involved in the allegation, in which case there will be a need for the staff member to raise the concerns via a different route. See section on “Whistle blowing” (page 16).

Whilst a number of challenging dilemmas may arise, in any set of circumstances a failure to report is a failure in the staff member’s duty of care.

Capacity and Consent

Informed consent is usually required to progress inquiries and investigations but there are a range of reasons why an adult at risk might not wish to give consent, such as a sense of loyalty where family members are involved, cultural backgrounds which don’t make complaints, fear of going into care and not being in control of their own actions and of course, undue pressure.

“Capacity” means the ability to use and understand information to make a decision. The adult at risk of harm should be given appropriate information provided in a way that they can understand and can make a decision based upon this information. That understanding should include the possible implications and consequences of their decisions.

They should understand the purpose of the proposed inquiries and why these are necessary. They need to be able to retain information long enough to use it to weigh up the possible outcomes in order to arrive at a decision.

They must be able to hold this decision consistently. This includes occasions when a person has difficulty in remembering a decision but, given the same information at another time, they make a consistent decision. This makes their decision valid.

Consideration may need to be given to the many other factors that can influence capacity. These factors, such as previously mentioned undue pressure, can potentially affect and compromise people’s capacity to make decisions.

Confidentiality / Disclosure

All staff who have contact with adults who may be at risk of harm have a responsibility to refer concerns or any disclosures made to them to an appropriate person or agency. At times, this may pose a dilemma for staff who may feel that by doing so this could alienate the adult at risk and / or the family, carer or others and damage the potential for further work.

NONETHELESS:

- ▶ To do nothing is not acceptable.
- ▶ To promise confidentiality is not acceptable.
- ▶ Relevant information will have to be shared in an adult support and protection situation.

Staff should explain to the individual their responsibility to report the information to their line manager and advise the individual what is likely to happen as a result.

Risks

Health and social care services will have policies and procedures in place to assist in determining a balance between an adult’s right to independence and choice, and the duty of care to avoid unacceptable hazards and risks. Risk-averse cultures can stifle and constrain and could lead to an inappropriate restriction of the individual’s rights. Life is never risk free. Some degree of risk taking is an essential part of good care (*Mental Welfare Commission, March 2013 Restraints, Rights and Responsibilities*).

Whistle blowing/raising concerns

Organisations should have policies and procedures in place to deal with employee concerns about unprofessional, dangerous or illegal activities which they become aware of through their work.

An essential element of such policies is the underpinning principle that staff who raise concerns reasonably, responsibly and in good faith will not be penalised or victimised in any way.

For further information staff should refer to the relevant “whistle blowing” policy for their own particular organisation.

Well publicised cases of adults at risk being harmed when the matter has been brought to the attention of the authorities through whistle blowing are a stark reminder of why such policies need to be in place.

Organisations need to do more than have whistle blowing policies. They should also reinforce these policies through induction training, refresher training and informing their workforces of cases where whistle blowing has been the catalyst for positive resolution of cases.

Whistle blowing can allow organisations, on receipt of information, to take swift and effective action. Whistle blowing can prevent further harm and its influence should not be underestimated.

Behaviour which challenges staff, restraint and limits to freedom

Some adults at risk display behaviour which can present a challenge either as a risk to themselves or to others. This behaviour may have to be managed by staff, whether the service is being provided in the person’s home, a day care setting, care home or other. This brings with it a number of dilemmas, including the use of restraint and issues such as the disguising of medication in food and drink.

Any decision to invoke any form of restraint should not be made by a single individual. Consultation and collaboration with all relevant professionals involved in the care of the adult at risk and with family and carers must be undertaken. The principles of the Adult Support and Protection (Scotland) Act 2007 and / or Adults with Incapacity (Scotland) Act 2000 should be applied to any intervention considered and a care plan should be identified which assists those working with the person to determine the least restrictive way to work with an individual whose behaviour poses a risk to themselves or to others. The care plan must be regularly monitored and reviewed.

It is not possible to cover this degree of complexity in these guidelines, however in some cases it may be appropriate for this type of situation to be managed through the local adult support and protection procedures.

Action which is overly restrictive, or restraint which is unnecessary is harmful and possibly unlawful.

Service providers should have policies and procedures for any actions that may restrict or restrain an adult. These should be based upon good practice guidance such as Rights, Risks and Limits to Freedom (*Mental Welfare Commission, March 2013*) and should also be in line with the standards and requirements of the Care Inspectorate and compliant with Human Rights legislation.

Allegations of harm against staff members

Allegations or suspicions of harm may be made against staff in a variety of ways, e.g. by letter, telephone, social media or in person. Organisations will have a range of procedures under which such allegations should be addressed, e.g. complaints and disciplinary procedures. Any disciplinary or complaints process must accord with parallel investigations into the alleged harm of an adult(s) at risk by agencies such as the police, the local authority or the Care Inspectorate.

Lone working policies and violence towards workers

Each organisation will have a lone working policy which provides a statement of the employer’s duty to protect staff. This should include the provision of guidance and/ or training on safe working practices, in particular where the person cannot avoid working alone. Guidance will outline the line manager’s responsibility to ensure risk assessments are carried out and that communication and contingency plans are in place.

Gender Based Violence

Gender based violence encompasses the spectrum of harm and abuse experienced disproportionately by women and perpetrated predominantly by men and includes:

- ▶ domestic abuse
- ▶ rape
- ▶ sexual harm
- ▶ harmful traditional practices such as female genital mutilation
- ▶ forced marriages
- ▶ so-called 'honour crimes'
- ▶ stalking and harassment
- ▶ trafficking
- ▶ commercial sexual exploitation

Who is at risk

While no woman is immune from any form of gender based violence, not all women are equally at risk. Factors such as age, financial dependence, substance misuse, poverty, disability, homelessness and insecure immigration can heighten women's vulnerability to abuse or entrap them further. Violence against women is a key violation of Human Rights and women may be affected by one or more types of abuse - with an estimation that one in four women will experience domestic abuse within her lifetime (Home Office 2007). It is estimated that domestic abuse costs the Scottish economy £2.3 billion per annum and the total cost of violence against women in excess of £4 billion.

Each local authority area in the Lothians and Borders has a multi-agency Violence Against Women Partnership (VAWP) working to both protect those affected and improve the quality of service responses and interventions to those known or suspected as being affected by the incidence of violence and abuse which is known to cause immense pain, injury and suffering, particularly to women and children. Each VAWP has key priority action areas and can give information regarding local protocols and care pathways as well as information regarding the wide range of new legislative changes relating to Sexual Offences, Trafficking and Forced Marriage etc.

To support this work the Scottish Government published a document, in 2009, entitled "Safer Lives: Changed Lives. A Shared Approach to Tackling Violence Against Women in Scotland". This strategy provided a shared understanding and approach designed to guide the work of all partners to tackle violence against women in Scotland. The document:

- ▶ provides a definition of violence against women
- ▶ highlights the links between different forms of violence against women
- ▶ guides the development of a shared approach for local and national work
- ▶ actively promotes the development of existing effective measures and the adoption of new measures
- ▶ ensures that the work on violence against women is carried out in the areas of Prevention, Protection, Provision and Participation

<http://www.scotland.gov.uk/Resource/Doc/274212/0082013.pdf>

The Adult Support and Protection (Scotland) Act 2007 may be considered in gender-based violence incidents when the adults at risk are adults who:

- (a) are unable to safeguard their own well-being, property, rights or other interests
- (b) are at risk of harm, and
- (c) 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

Other legislation may also need to be considered (when allegations of this nature are reported, suspected or witnessed) e.g. Matrimonial Homes (Scotland) Act; Sexual Offences (Scotland) Act; Forced Marriages legislation and obviously crimes at common law.

Matrimonial Homes (Family Protection) (Scotland) 1981
<http://www.legislation.gov.uk/ukpga/1981/59/contents>

Sexual Offences (Scotland) Act 2009
<http://www.legislation.gov.uk/asp/2009/9/contents>

Forced Marriage etc (Protection and Jurisdiction)(Scotland) Act 2011
<http://www.legislation.gov.uk/asp/2011/15/contents>

Prohibition of Female Genital Mutilation (Scotland) Act 2005
<http://www.legislation.gov.uk/asp/2005/8/contents>

Sexual Offences (Procedure and Evidence) (Scotland) Act 2002
<http://www.legislation.gov.uk/asp/2002/9/contents>





Section 3

Legal Framework

Legal framework

Context

The powers, duties and responsibilities of statutory agencies, including those which provide care, are all underpinned by Human Rights legislation. As well as protecting an individual's right to live his or her life peaceably and without fear, an authority must also (within the limits imposed by the rights of others) respect the manner in which the individual chooses to live his/her life.

There is a range of enabling legislation which must be considered in conjunction with Human Rights principles where staff are trying to balance the sometimes competing issues of the right to self determination and the right to protection.

Key legislation includes:

The Adults with Incapacity (Scotland) Act 2000

The Mental Health (Care and Treatment)(Scotland) Act 2003

The Adult Support and Protection (Scotland) Act 2007 which was specifically designed to fill gaps in the other protective Acts and in certain aspects covers adults with and without capacity including those with a mental disorder.

The Vulnerable Witnesses Act (Scotland) Act 2004, National Assistance Act, Matrimonial Homes (Scotland) Act, Criminal Procedures (Scotland) Act have all been used by practitioners in adult protection work. More recently newer legislation which can assist in certain aspects of support and protection of adults at risk of harm has been introduced. For example:

Protection of Vulnerable Groups (Scotland) Act 2007
<http://www.legislation.gov.uk/asp/2007/14/contents>

Sexual Offences (Scotland) Act 2009/2010
<http://www.legislation.gov.uk/asp/2009/9/contents>

Forced Marriage etc (Protection and Jurisdiction) (Scotland) Act 2011
<http://www.legislation.gov.uk/asp/2011/15/contents>

Criminal Justice and Licensing (Scotland) Act 2010
<http://www.legislation.gov.uk/asp/2010/13/contents>

It is important to realise and understand the full extent of the powers and duties provided by the suite of aforementioned legislation when deciding upon a course of action in relation to an adult at risk of harm.

In addition, national and local protocols and procedures which are not founded in legislation but which are just as important, such as the use of Appropriate Adults (**see Appendix 3**), must be considered where relevant.

In order to assist these deliberations the rest of this section will summarise and briefly describe the key aspects of the relevant legislation that will need to be taken into consideration. These guidelines emphasise the need to consider every available option and deal with a range of adult protection measures, not just the implementation of the Adult Support and Protection (Scotland) Act 2007.

This means that where there is a suspicion of harm that may require a legal intervention (civil or criminal) the first thing which must be determined is whether the adult at risk has the capacity to make a decision about the harmful situation they are in. If the person is assessed as not having the capacity to make decisions about their situation, the support or resources required to assist them in protecting themselves must be identified.

Where an individual has the capability to express his or her free will, care agencies can often do no more than give information about services and where appropriate advise the adult at risk of harm.

Further information regarding capacity can be found on page 28.

1. The Adult Support and Protection (Scotland) Act 2007

The Adult Support and Protection (Scotland) Act 2007 was introduced in October 2008. It provided duties, powers and measures for the support and protection of adults who may be at risk of harm.

These measures include:

- ▶ A set of principles which must be taken into account when performing functions under the Act
- ▶ Placing a duty on councils to make the necessary inquiries and investigations to establish whether or not further action is required to protect the adult
- ▶ Clarifying the roles and responsibilities in adult protection
- ▶ A duty to consider the importance of 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 to co-operate with local councils and each other about adult protection investigations
- ▶ A range of protection orders which are defined in the Act:
 - Assessment orders
 - Removal orders
 - Banning orders
- ▶ The establishment of multi-disciplinary Adult Protection Committees

Principles of the Act

The Adult Support and Protection (Scotland) Act 2007 requires that any interventions into the life of an adult at risk must comply with certain principles which underpin the provisions of the Act.

These are:

- ▶ Any intervention in an adult's affairs must provide benefit to the adult
- ▶ Any intervention into the adult's affairs should be the least restrictive option to the adult's freedom
- ▶ This benefit could not be reasonably provided without intervention

In addition public bodies or office holders must also have regard to the following:

- ▶ Any intervention will take into account the wishes of the adult
- ▶ Any intervention will take into account the views of people who are important to the adult
- ▶ Any intervention will involve the adult's participation as much as possible
- ▶ Any intervention will not result in the adult being treated less favourably than someone who is not an adult at risk
- ▶ Any intervention will take into account the adult's abilities, background and characteristics (including the adult's age, sex, sexual orientation, religious persuasion, racial origin, ethnic group and cultural and linguistic heritage)

How does the Adult Support and Protection (Scotland) Act 2007 (Part 1) safeguard an adult at risk?

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
- ▶ 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 will only be considered, without an adult's consent, where it can be shown that the adult at risk lacks capacity to do so or has refused to give consent due to having been unduly pressurised (see Glossary) 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 interviewed
- ▶ Applications for all protection orders will be heard before a Sheriff, where there will be an opportunity to make representations to the Sheriff. However the Sheriff may elect to waive all or part of the standard court procedure, usually at the request of the local authority, where it can be shown that disapplying the procedures would protect the adult from serious harm or not prejudice any person affected by the disapplication. This could be where the adult's immediate safety is at risk and the court needs to grant any of the three orders more speedily. In urgent cases a Justice of the Peace may be requested to grant a removal order, or a warrant for entry in respect of a visit under Section 7
- ▶ The adult at risk 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

Definitions under the Act

"Adult at risk"

is an adult, aged 16 and over, who:

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

"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)
- ▶ conduct which causes self-harm

"Risk of harm"

An adult is at risk of harm if:

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

“Council Officers”

The Adult Support and Protection (Scotland) Act 2007 requires that many of the duties under the Act be carried out by council officers. A council officer is an individual appointed by the council under Section 64 of the Local Government (Scotland) Act 1973.

These duties include:

Section 7 - Visits

Section 8 - Interviews

Section 10 - Examination of records, etc.

Section 11 - Assessment orders

Section 14 - Removal orders

Section 16 - Right to move an adult at risk

Section 18 - Protection of moved person's property

Section 19/21 - Banning / temporary banning orders (although other persons including the adult can also apply for such orders)

Professional Responsibilities under the Adult Support and Protection (Scotland) Act 2007

ASP Act Section		Council Registered Staff “Council Officers”		Health Professionals	Police
		Social Workers, OTs, Nurses	Social Services Staff	Doctors, Nurses, Midwives	Constable,* Officer in Charge**
S7.	Visits	✓	✓		
S8.	Interviews	✓	✓		
S9.	Medical examinations			✓	
S10.	Examination - records	✓	✓		
S10.	Exam – health records			✓	
S11.	Assessment orders	✓			
S14.	Removal orders	✓			
S16.	Right to move	✓			
S18.	Protection of property	✓			
S28.	Arrest				✓*
S29/30/31.	Detention				✓**
S37/40.	Warrants for Entry	✓	✓		✓*

Duties under the Act

The Adult Support and Protection (Scotland) Act 2007 requires councils to make inquiries into an adult's well-being and financial affairs if the council believes the adult might be an adult at risk and might require measures of protection. The Act requires other agencies to assist the council with such inquiries including the sharing of relevant information and to inform them about adults at risk who may require protection. These other agencies include Police Scotland, Health Boards, Healthcare Improvement Scotland, the Public Guardian, the Care Inspectorate and the Mental Welfare Commission.

If an inquiry concludes that intervention is necessary to protect an adult at risk of harm, the Act requires councils to consider what services the adult might need to assist them to express their views and to protect them from further harm. This might include the provision of independent advocacy services or independent translation/interpreter services.

The Act requires that each council area establish an Adult Protection Committee. The aim of the Adult Protection Committee is to assist agencies to deliver consistent high level adult protection services in order to achieve better, long-term, positive outcomes for adults at risk through co-ordination of services. This includes overseeing the development of guidance, procedures and multi-agency training.

Investigations

As part of an inquiry it may be decided, on a single or multi-agency basis, that further investigation is required. The purpose of an investigation by the council is to establish if the adult at risk is suffering harm and to establish what measures can be provided to protect the adult from further harm. As part of such an investigation the Adult Support and Protection (Scotland) Act 2007 provides authority to council officers (see Glossary) to visit and interview

the adult, either on their own or with another person accompanying them. Where necessary, the Act allows the council officer to be accompanied by a health professional to conduct a medical examination. The adult must be informed of their right to refuse to be interviewed and/or examined before any interview or medical examination is carried out. As part of an investigation a council officer may require any person holding financial or other records in relation to the adult at risk, to provide these records or copies of them. When these records are "Health Records" (see Glossary), they can only be examined by a health professional (see Glossary).

An agency can refuse access to records only if it can provide a "reasonable excuse" for refusing or otherwise failing to disclose a written record. The Act specifically permits the Council the option to have that person/agency reported for "obstruction" under Section 49(2) of the ASP Act.

Warrants for Entry

If, during an investigation, a council officer is refused entry, or is likely to be refused entry, or is unable to enter the premises for some other reason, they may apply to a Sheriff for a warrant. An application for a warrant for entry and assessment should be requested at the same time as the removal order (see local procedures for more detailed explanations.) The warrant will allow them to enter the premises and allow a constable who accompanies the council officer to do anything, using reasonable force where necessary, which the constable considers to be reasonably required in order to fulfil the object of the visit. The warrant expires 72 hours after it has been granted. In urgent cases, an application for the warrant can be made to a Justice of the Peace. The Justice of the Peace will only grant the warrant, if s/he is satisfied that it is not practicable to apply to the Sheriff and that that adult is likely to be harmed if there is any delay in granting the warrant. It should be noted that a warrant granted by the Justice of the Peace will expire 12 hours after it has been granted.

Applications to court for Protection Orders

(see local procedures and Code of Practice for more detailed information)

Council officers can apply to the court for three types of order, if required, to assist in their investigation or to provide measures of protection to the adult. These orders are:

- ▶ **Assessment Order** - this allows the adult to be taken to a place where they can be interviewed by a council officer and examined by a specified health professional. The purpose of the assessment is to allow the council officer to establish whether the adult is an adult at risk who may require measures to protect them from harm. An assessment order expires seven days after the date specified in the order.
- ▶ **Removal Order** - this order allows the council officer to remove the adult to a specified place within 72 hours of the order being granted and for the council to take such reasonable steps as it thinks fit for the purpose of protecting the moved person from harm. The removal order expires seven days (or less if specified by the Sheriff) after it has been granted. The council has a duty to take reasonable steps to ensure that the property of any adult subject to a removal order is not lost or damaged. In urgent cases, an application for a removal order can be made to a Justice of the Peace. In such circumstances the removal order will specify a period of 12 hours from the granting of the order and will only allow a period up to 24 hours in which the order is to have effect. Any warrant for entry granted by the Justice of the Peace in connection with this removal order will also expire 12 hours after it has been granted. **This part of the Act replaces the powers previously available under section 47 of the National Assistance Act 1948 to remove individuals living in unsanitary conditions.**

- ▶ **Banning Order** - council officers and other interested parties, including the adult at risk, can apply for a banning order. The order bans the subject of the order from being in a specified area or place. It would also authorise the ejection of the person from any specified place and would authorise persons to do anything else which the Sheriff thinks necessary for the proper enforcement of the order. A banning order will expire 6 months (or less if specified by the Sheriff) after it has been granted.

Normal practice will be that the adult, and relevant others, would be notified of the application in order that the Sheriff may hear their views in relation to the application. The Sheriff will only dispense with such notification if doing so will protect an adult at risk from serious harm or will not prejudice any person affected by the application.

The Sheriff can only grant the order if it is shown:

- ▶ that the adult will be, or is likely to be, seriously harmed, unless the order is granted
- ▶ that the adult at risk consents to the order being granted or lacks the capacity to give consent or that the adult is only withholding their consent because they have been unduly pressurised (see Glossary) to do so by a person who is inflicting, or likely to inflict harm, and in whom the adult has confidence and trust or where the adult at risk is afraid of or being threatened by another person
- ▶ 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

2. The Adults with Incapacity (Scotland) Act 2000

The Adults with Incapacity (Scotland) Act 2000 provides a framework for safeguarding the welfare and managing the finances of adults who lack capacity due to mental disorder or inability to communicate.

Who the Act can help

Adults (age 16 and over) who lack capacity to act or make some or all decisions for themselves because of mental disorder or inability to communicate due to a physical condition. It allows other people to make decisions on behalf of these adults, subject to safeguards. The main groups to benefit include people with dementia, people with a learning disability, people with an acquired brain injury or severe and chronic mental illness, and people with a severe sensory impairment.

About Capacity

The law in Scotland generally presumes that adults are capable of making personal decisions for themselves and of managing their own affairs. Having a diagnosis of, for example, dementia, does not mean of itself, that a person is unable to make decisions for him/herself. Acting unwisely – whether or not mental disorder is present – does not mean that they lack capacity.

The Act defines capacity as decision specific. Adults who may lack capacity in certain areas are defined as being: *“incapable of acting, making decisions, communicating decisions, understanding decisions, or retaining the memory of decisions, by reason of mental disorder or physical disability.”*

An adult will not be deemed as lacking capacity if their inability to communicate or understand communications can be “made good by human or mechanical aid”. For example, an adult with speech difficulties may have an

inability to communicate their wishes or desires verbally, but this may be overcome by the use of a computer or other mechanism. Likewise where a family member or carer is able to interpret the wishes of an adult who is otherwise incapable of communication, then the adult will not be deemed to lack capacity.

How the Act can help

The Act aims to ensure that solutions focus on the needs of the individual: for example, a person with dementia may be able to decide what sort of support s/he would prefer to help with day to day living, but be unable to manage his/her money. In such a case, financial intervention may be all that is needed. In other circumstances a combination of welfare and financial measures may be necessary.

See Appendix 4 for further details in relation to the Adults with Incapacity (Scotland) Act 2000.

3. The Mental Health (Care and Treatment) (Scotland) Act 2003

This Act relates to people with a mental disorder who may require compulsory measures of treatment. The term mental disorder includes mental illness, personality disorder and learning disability.

Duties under the Act

Under section 33, councils are required to inquire into the circumstances of any person with a mental disorder who may be experiencing ill-treatment and neglect or who is unable to look after themselves or their property.

Under section 34, certain specified public agencies are required to assist the council to fulfil their responsibility to make inquiries into the circumstances of a person with a mental disorder.

Treatment under the Act

The Act allows for adults with a mental disorder to be treated on a compulsory basis in the following circumstances:

- ▶ Emergency detention – this allows someone to be detained in hospital for up to 72 hours where hospital admission is required urgently to allow the person's condition to be assessed. It will only take place if deemed necessary by a doctor. Wherever possible, the agreement of a mental health officer should also be obtained

- ▶ Short-term detention – this allows someone to be detained in hospital for up to 28 days. It will only take place where it is deemed necessary by a specially trained doctor (a psychiatrist) and agreed by a mental health officer
- ▶ Compulsory Treatment Order – this has to be approved by a mental health tribunal. A mental health officer must apply to the tribunal. The application has to include two medical recommendations and a care plan detailing the care and treatment proposed for the patient. The patient, the patient's named person and the patient's primary carer are entitled to have any objections that they have, heard by the tribunal. The patient and the named person are entitled to free legal representation for the tribunal hearing

A Compulsory Treatment Order lasts for 6 months initially, but can be extended for a further 6 months, and after that can be extended for 12 months at a time. It can be based in the hospital or in the community. If it is based in the community, it can include various requirements, e.g. that the patient lives at a certain address, attends certain services at particular times, or attends a particular place for treatment.

Warrants under the Act

Part 4 and Part 19 of the Act allow for various kinds of warrant to be applied for by a mental health officer to enter premises, interview and, if required, remove an adult with a mental disorder to a place of safety. In urgent circumstances, applications for warrants and removal orders can be made to a Justice of the Peace.

See Appendix 5 for further details in relation to the Mental Health (Care and Treatment) (Scotland) Act 2003

4. Vulnerable Witnesses (Scotland) Act 2004

The Vulnerable Witnesses (Scotland) Act 2004 makes provision for the use of special measures for the purpose of taking the evidence of children and other vulnerable witnesses in criminal or civil proceedings. The Act was passed on 4 March 2004.

The Act aims to improve the way in which witnesses are treated by the justice system. It provides better protection for children and vulnerable witnesses, many of whom are victims of crime. It also allows vulnerable witnesses to give their best possible evidence.

The Act:

1. ensures vulnerable witnesses are protected and their voices heard
2. ensures the needs of vulnerable witnesses are considered throughout the court process
3. protects the rights of witnesses

Definitions

Under the Act a vulnerable witness is defined as:

- ▶ a child (i.e. a person under 16 at the time the complaint or indictment is served on the accused); or
- ▶ an adult witness, the quality of whose evidence as defined in subsection (4) may be diminished either as a result of a mental disorder (as defined by section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003), or due to fear or distress of the witness associated with giving their evidence

The “special measures” that can be applied for are:

- ▶ giving evidence via a live television link
- ▶ using a prior statement as evidence in chief (not in civil proceedings)
- ▶ using a screen in court
- ▶ giving evidence to a commissioner
- ▶ the use of a supporter

The measures available under this Act should be considered at the multi-agency planning stage of an investigation. Any adult support and protection case conferences that are held should consider measures of protection and support to an adult through the period of a trial.

Relationship between legislation

Adults at risk may be subject to a range of legislation and agencies have differing duties, responsibilities and powers in relation to them. All of the possible legal options will be considered during the course of an investigation.

Local adult support and protection procedures and duties relating to the use of Adults with Incapacity (Scotland) Act 2000 and the Mental Health (Care and Treatment) (Scotland) Act 2003 should be consulted as part of the decision making process during an investigation.

Some situations will require to be considered under more than one Act.

A summary of the inter-relationship between the key legislation is set out in Appendix 6.



Section 4

Principles of Practice and Case Conference Guidance

Principles of practice in the support and protection of adults at risk of harm

Agencies should adhere to the following guiding principles.

Agencies should act in a way which supports the rights of the individual to lead an independent life based on self determination and:

- 1) Actively work within the standards laid down by the Care Inspectorate:
 - ▶ dignity
 - ▶ privacy
 - ▶ choice
 - ▶ safety
 - ▶ realising potential
 - ▶ equality and diversity
- 2) Actively work together within a multi-agency framework
- 3) Actively promote the empowerment and well-being of adults at risk of harm through the provision of their services
- 4) Recognise that the right to self-determination can involve risk and ensure that such risk is acknowledged and understood by all concerned and minimised wherever possible. Organisations should aim to create a risk-enabling culture
- 5) Ensure that when the right to an independent lifestyle and choice is at risk, the individual receives appropriate help, including advice, protection and support from relevant agencies, e.g. independent advocacy
- 6) Ensure the safety of adults at risk of harm by developing and implementing strategies, policies and services relevant to reducing harm within the legislative and criminal justice framework
- 7) Ensure that statutory requirements are known and used appropriately so that adults at risk of harm receive the protection of the law and access to the judicial process
- 8) Ensure that the overarching and guiding principles of the Adult Support and Protection (Scotland) Act 2007, the Adults with Incapacity (Scotland) Act 2000 and the Mental Health (Care and Treatment) (Scotland) Act 2003 are central to all activities and interventions in supporting and protecting adults at risk of harm

Adult Protection Investigation Process

Each Adult Protection Committee area will have established local adult protection procedures to provide their staff with detailed instructions in relation to the investigation of allegations of harm or concerns about the safety of adults at risk. The step-by-step Good Practice Guide, **Appendix 2** describes the steps that will be common to all areas. It is intended to provide staff who may not be directly involved in carrying out investigations with enough information to understand the process and where this may interface with their role and responsibilities.

Staff who have concerns about an adult at risk **must follow their local adult protection procedures.**

See Appendix 1 for Summary of the Act and actions to be taken in certain cases.

Adult Support and Protection Case Conference Guidance

Purpose

An adult support and protection case conference is a formal multi-agency meeting at which information relevant to concerns about harm or risk of harm is shared and considered and an adult support and protection plan is agreed.

Status

There are no legal provisions relating to case conferences. The arrangements for case conferences detailed in these guidelines have been agreed by the partnership agencies and members of staff from the agencies are expected to adhere to them. Refer to local adult protection procedures for information relating to the conduct of adult protection case conferences in your area.

Time Scale

Once decided, an initial adult support and protection case conference should be held as soon as practicable. The urgency and complexity of the case will determine how quickly a case conference is required. Local procedures will indicate the agreed timescale for case conferences.

Organising and Chairing

The council social work services will take responsibility for the organising and chairing of case conferences. It will ensure that the time and venues are arranged and that all relevant people, e.g., GPs, district nurses, care staff, family members, social workers and the adult at risk (where appropriate) are invited and briefed about the purpose and format of the meeting. The person who will take the minutes of the meeting should be identified in advance, should not be the Chair, and should ideally have received training in minute taking.

Information Sharing

Confidentiality is required from each participant in a case conference and this will be made explicit by the Chair at the beginning of the meeting. Information will be shared in line with the appropriate "Open Access" policies.

Restricted Access Information

Restricted Access Information is information that cannot be shared freely with the adult at risk or anyone accompanying them to the case conference. It will only be shared with professionals present to enable a complete picture to be considered. Professionals will be asked to justify why information is being classed as Restricted Access Information and the reasons fully recorded.

Information may only be restricted on the following basis:

- ▶ Sub judge: information subject to legal proceedings, the sharing of which may compromise those proceedings. A report to the Procurator Fiscal or Children's Reporter by any agency for the consideration of legal proceedings would class the information concerned as sub judge
- ▶ Third party: information from or about a third party, which may identify them if shared; or information about an individual that may not be known to others, including those within close family relationships, e.g. medical history, previous convictions, police intelligence reports

Involvement of the adult at risk of harm and anyone accompanying them

The wishes and needs of the adult about whom there are concerns, are at the heart of the case conference process. It should be normal practice for the adult to be involved in discussions about them and their circumstances if they so wish, unless there is justification to exclude them. Significant family members and/or carers will also be invited to attend case conferences unless there is justification to exclude them.

If there is Restricted Access Information, which should be shared without the adult at risk being present this should be arranged. This will usually be done prior to them joining the case conference. It is important that the adult and their carers/family have comfortable surroundings in which they can wait and that the time spent on this section of the case conference is kept to a minimum.

Local procedures will guide the Chair to make decisions regarding the following:

- ▶ the capacity of the adult concerned
- ▶ the information likely to be shared at the case conference
- ▶ the likely effect on the adult, particularly when the person suspected of harming them may also require to have some involvement
- ▶ the views of the adult, carers and family

Exclusion of the adult at risk and persons accompanying them

Practice in this area should be characterised by a genuine wish for involvement of the adult at risk of harm and their carers/family.

Local procedures will dictate the various criteria to be considered by the Chair when considering exclusion.

Being an alleged perpetrator is not sufficient reason in itself to exclude someone, but this may be judged necessary by the Chair if their presence would seriously affect the consideration of the risk to the adult concerned.

Where the adult at risk has not attended or has been excluded for all or part of the case conference it is important that they are informed of the outcome as soon as practicable.

Involvement of a Friend / Advocate

There may be occasions when the adult concerned, a carer or family member may wish to be supported by the attendance at the case conference of a friend, other relative, professional person or member of an independent advocacy service. It is a requirement of the Adult Support and Protection (Scotland) Act 2007 to consider the use of independent advocacy for the adult concerned. Where the adult is deemed to have a mental disorder they are entitled to access independent advocacy services under the Mental Health (Care and Treatment) (Scotland) Act 2003.

Attendance of Professionals

Conferences should be attended by individual professionals from agencies who have a direct contribution to make and a role to play. These may include:

- ▶ council officers
- ▶ social work professionals carrying out the investigation or who are already involved in the care of the adult at risk and/or their carer/family, and their supervisor
- ▶ health care professionals who are involved in the investigation or who know the adult at risk and/or any carers and/or family concerned e.g. health visitor, general practitioner, district nurse, community psychiatric nurse, etc.
- ▶ police officers who are involved in the investigation
- ▶ voluntary or private sector staff who are directly involved with the adult at risk/carer/family
- ▶ residential or day care staff involved with the adult at risk
- ▶ members of interpretation/translation services
- ▶ housing representative
- ▶ advocacy services

Written reports are generally expected from all agencies involved in the case conference process, especially when the agency involved is not able to be represented in person at the conference.

Conduct of Case Conferences

The Chair is responsible for the conduct of the case conference in accordance with local procedures. This will usually include ensuring introduction of the participants, an explanation of the purpose and format of the meeting and clarifying the position in relation to open access information and where relevant, restricted information and how it will be dealt with.

The purpose of the meeting is to share relevant information from the participants, including the views of the adult at risk and his/her carers or representatives with a view to assessing and determining the level of risk and the actions required to minimise those risks. The discussion will cover protective factors, strengths, threats to the adult's well-being, risks, what supports can be provided and potential impact on the quality of life of the adult concerned if certain protective measures are taken.

Outcomes, decision making and minutes

The case conference will decide whether the adult and/or any other person is believed to be at risk of harm and if so what action should be taken by whom and whether it is appropriate to invoke any actions under the Adult Support and Protection (Scotland) Act 2007 or any other legislation. A protection plan will be developed, with clear responsibilities and timescales.

At the conclusion of the case conference or case conference review the Chair will summarise decisions made, identify owners of any actions required and ensure that all participants are aware of and confirm their particular actions where relevant.

The minutes of the conference should be completed, signed by the chair and circulated to those attending and to family and carers not present. The Chair is responsible for making any alterations to inaccuracies noted by those in attendance.

A case conference review can be called by anyone involved in the case including the adult at risk, his or her carers or advocacy worker.

For further details refer to your local adult protection procedures.

Significant Case Review

Where particular cases have highlighted issues that require clarification or resolution, consideration will be given to carrying out a Significant Case Review. Local Adult Protection Committees are responsible for the commissioning of Significant Case Reviews and for agreeing the criteria for their conduct.

Adult Protection Committees are responsible for ensuring that the dissemination of good practice examples as well as any areas for improvement identified throughout reviews are incorporated in staff learning and development programmes and embedded in future policy, procedure and practice. Sharing of such good practice examples across the ELBEG area is encouraged.



Section 5

Appendices

Appendix 1

ASP Information Leaflet

Adult Support and Protection: Ensuring Rights and Preventing Harm

The Adult Support and Protection (Scotland) Act 2007 was introduced on 20 October 2008. The purpose of this Act is to provide ways in which support and protection can be offered to adults at risk of harm, who are unable to safeguard themselves, because they are affected by disability, mental disorder, illness or physical or mental infirmity.

General Principles of the Act:

- any action taken through the Adult Support and Protection (Scotland) Act 2007 must provide benefit to the adult and be the least restrictive option available.

The Act provides:

- a duty to inquire and investigate where harm is suspected
- a requirement for public bodies to co-operate with local councils
- a range of protection orders: assessment, removal and banning, where serious harm is suspected
- a legislative requirement for local authorities to set up Adult Protection Committees to oversee the effectiveness of multi-agency prevention and protective practices

Edinburgh, Lothians and Borders Multi-agency Guidelines and Adult Support and Protection Procedures:

If you witness, suspect or receive information about an adult at risk of harm, you have a duty to report this. The Multi-agency Guidelines and the Adult Support and Protection Procedures for the local area where you work describe the steps you must follow and who should be contacted. These documents are available on your own organisation's Intranet site.

Who is an adult at risk of harm? An adult at risk is defined as a person aged 16 or over who is:

- unable to safeguard his or her own well-being, property, rights or other interests
- at risk of harm and
- because s/he is **affected** by disability, mental disorder, illness or physical or mental infirmity, is more vulnerable to being harmed than adults who are not so affected

What is harm? Harm is defined as **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 (e.g. theft)
- conduct which causes self-harm

Possible signs of harm: There are many signs of harm. It is important to consider any changes to the well-being of a person at risk. Some examples are:

- unexplained or unusual injuries
- misuse of medication, e.g. not giving medicines properly
- unexplained changes of behaviour, e.g. becoming anxious and withdrawn, fear of another person

- unexplained debt, not paying bills for services
- the use by another person of the adult's possessions, bank account or property without his or her informed consent
- pressure by family or professionals(s) to have someone moved into or taken out of care
- hostile or unkind behaviour by a care-giver
- the adult at risk is not receiving appropriate care, which would protect them from harm
- unexplained deterioration in health or appearance
- a long delay between illness/injury and the person getting appropriate treatment
- the deprivation of basic needs, such as adequate food or heating
- prejudicial actions or remarks to the adult at risk about age, gender, disability, race, colour, sexual or religious orientation
- failure to provide adequate information, not being informed of rights, or being misinformed

Where can harm occur? Anywhere. For example: in the family home, in any social or health care setting, hospital ward, care home, day service, social club, leisure activities, place of work or any public place.

Who can cause harm? Anyone. For example: a relative, carer, spouse/partner, professional carer, volunteer, another service user, stranger, member of the public or the "adult at risk" may be harming himself/herself.

This means that the Act can be used to deal with any harm, whether this has been perpetrated with out without deliberate intent. Categories of harm include, for example: physical; sexual; emotional/psychological; financial or material, neglect and acts of omission; discriminatory; human rights; or in relation to the misuse or withholding of information. The Act may also be used for "adults at risk" who are harming or neglecting themselves or who are experiencing gender based violence.

What to do immediately:

When harm is suspected, witnessed or reported

YOU HAVE A DUTY TO REPORT

You must immediately report suspected or actual harm to your line manager or supervisor. In addition, there is a legal duty to report any concerns to the Council Social Work Services, if it is known or believed that a person is an "adult at risk" and that protective action is needed. Ref: Adult Support and Protection (Scotland) Act 2007 Section 5[3]

ALWAYS RECORD EVERYTHING IN WRITING: Actions, discussions, referrals, decisions, etc.

► In an EMERGENCY

- If the person is in immediate physical danger telephone 999. Urgent assistance or advice can also be obtained through contacting NHS 24 or Social Work Services (and outside office hours, the Emergency Social Work Service).

► If you suspect a crime has been committed:

This should always be reported to the police as soon as possible:

- In the case of physical or sexual harm, immediate referral is essential. This is to ensure that the person receives appropriate medical attention and that vital evidence is not lost (refer to the Multi-agency Guidelines and your council's Adult Support and Protection Procedures).

Get the person's consent

If possible, discuss with the adult at risk their view of the situation. Inform them that you will report concerns to your line manager. It is preferable to obtain consent to take further action. However, even without the adult's consent, you will be required to take further action - refer to 'If consent is not given' section adjacent.

Useful Phone Numbers

- **Emergency – 999**
- **NHS 24 - 08454 242 424**
- **Police Scotland
Non Emergency 101**
- **Edinburgh Social Work Services
Social Care Direct
0131 200 2324**
- **East Lothian
Social Work Services
0845 603 1576**
- **Midlothian
Social Work Services
0131 271 3900**
- **Edinburgh, East & Midlothian
Social Work Services
Out of hours 0800 731 6969**
- **West Lothian
Social Work Services
01506 775 000
Out of hours 01506 281 028**
- **Scottish Borders Council Social
Work Services – contact the
local social work office
or 0300 100 1800
out of hours 01896 752 111**

If consent is not given:**You have a legal and professional duty to report:**

- The person's circumstances and their view of their situation must always be reported to your line manager.
- The law states that staff within the Council, Health, Police, Care Inspectorate, Mental Welfare Commission, and the Public Guardian, have a legal duty to report the facts and circumstances to the council social work department, if they know or believe that a person is an "adult at risk" and that protective action is needed. This means that even without the adult's consent, information must be shared in this instance – this is a legal requirement. The Code of Practice for the Adult Support and Protection (Scotland) Act 2007 makes it clear that all staff, including staff within the voluntary and independent sector also have a duty to cooperate and report any concerns about an "adult at risk" to the council social work department.

Ref: Section 5[3] Adult Support and Protection (Scotland) Act 2007 & Code of Practice for the Act.

**Even if you are unsure if a person is an "adult at risk",
action must be taken in the following circumstances:**

- imminent physical threat to the person
- risk to public safety (i.e. is anyone else at risk from being harmed?)
- a person who provides a service is suspected of causing the harm (e.g. a care worker, nurse, doctor, ambulance driver, police officer, teacher or volunteer)
- if you are unsure of the person's ability or capacity to make a decision about the situation, discuss with your line-manager or supervisor and/or refer to the Social Work Services without delay
- you are concerned that the person is not able to consent or co-operate because they are being pressurised by another person or afraid of another person
- if the person lacks the capacity to make a decision about further action, you must take action and report your concern to local Social Work Services.

Line managers and supervisors can contact the local Police Public Protection Unit or Duty Inspector to discuss or get advice.

Remember, all concerns must be reported to your line manager. Referrals to local Social Work Services must be made as soon as possible.

► What happens next?

An Adult Support and Protection Case Conference may be arranged by the local Social Work Service to plan ongoing work with the adult at risk of harm. The Multi-agency Guidelines and local Adult Support and Protection Procedures will provide more detail.

Appendix 2

Step-by-Step Good Practice Guide

The following is not a substitute for your local adult support and protection procedures, which must be used in the event of concerns regarding an adult who may be at risk of harm.

Step One

You witness or receive information about harm involving an adult at risk

Person Responsible

Person/staff member who witnesses, suspects or receives information about harm involving an adult at risk (in this document this person will be referred to as the 'staff member' for simplicity), this includes volunteer carers

You should record any discussion and action taken

If you witness, suspect or receive information about harm involving an adult at risk – if possible discuss with the adult at risk their view of the situation. Ensure communication is ongoing and inform the adult at risk what course of action will be taken and that you will report concerns to your line manager. It is preferable to obtain consent to take further action. If you do not get consent, you must explain that the concerns raised will be reported anyway to line manager, in order that the appropriate ongoing action can be taken to ensure support and protection.

- ▶ If the person is unconscious, in immediate physical danger, or appears to be a victim of a crime, **go straight to Step 3**, Emergency Services, e.g. police and ambulance
- ▶ If the situation is not an emergency and you witness/suspect harm, you must report your concerns to your line manager/supervisor, (see Glossary) **Step 4**

- ▶ Speak to the adult at risk of harm about your concerns and the risks involved
- ▶ Any disclosure made by the adult at risk of harm and any discussions within this setting should not take the form of an interview". The adult at risk of harm should be allowed to provide a voluntary account but should not be questioned by the staff member at this stage. If it is essential for staff to ask questions the questions should be open ended questions for clarification purposes only e.g." what happened?" or "how do you feel?"
- ▶ If possible, ask the person to agree that you have made an accurate record of the conversation
- ▶ If possible, seek their consent for any subsequent steps you believe are necessary. **Go to Step 4 and proceed**
- ▶ If consent is not/cannot be given, **go to Step 2**

Notes:

- a) Individuals should normally retain the right to decide whether and/or how they wish to be helped **(see Step 2 for exceptions)**
- b) If the adult at risk has specific communication needs these should be taken into account during any discussions, and highlighted to your line manager
- c) If the allegation of harm concerns a staff member you have a duty to report this to your line manager as soon as possible **(See Section 2 – Dilemmas)**

Step Two

If the person does not/cannot give consent

Person Responsible

Staff member/line manager in consultation with other services as appropriate

You should record any discussion and action taken

If consent is not given:

- ▶ The person's circumstances and their view of their situation must be reported to your line manager
- ▶ **If the person appears to lack capacity to make a decision about further action then you must report your concern to local social work services**
- ▶ Further action must be taken in the following circumstances:
 - Imminent physical threat to the person
 - Public safety, e.g. is anyone else at risk of harm? A person who provides a service is suspected of causing the harm, e.g. a care worker, nurse, doctor, ambulance driver, police officer, teacher or volunteer
 - If you are unsure of the person's ability or capacity to make a decision about the situation, discuss with your line manager or supervisor and/or refer to the social work services without delay
 - You are concerned that the person is not able to consent or co-operate because they are being pressurised/intimidated by another person
- ▶ **If it is considered that a crime may have been committed**, the line managers and supervisors must contact the local Police Public Protection Unit or duty inspector to discuss or obtain advice
- ▶ If the person is a tenant, resident, patient, etc., in a statutory, voluntary, or private institutional setting, it is important for any suspected or actual incident of harm to be reported regardless of the adult's wishes, as this incident may impinge on others' rights and/or may involve situations where the alleged harm comes from a member of staff (see Section 2, Dilemmas/Whistle blowing/reporting concerns)
- ▶ Within institutions a large scale inquiry may be required to safeguard all residents. See local procedure

In certain circumstances it may be appropriate to refer the situation to the Care Inspectorate (if the adult receives services from a care provider registered with the Care Inspectorate), the Mental Welfare Commission (if the person has a mental disorder) and/or NHS Quality Improvement Scotland (if the person receives a health care service).

Step Three Emergency Services

Person Responsible
Staff member

You should record any discussion and action taken and proceed to Step 4

- ▶ **Contact the appropriate emergency service (if required these are detailed in Appendix 8)**

If the person is in immediate physical danger telephone 999. Urgent assistance or advice can also be obtained by contacting NHS24, social work services (and outside office hours, the emergency social work service.)

Physical or sexual abuse should always be reported to the police as soon as possible, in order to preserve vital evidence.

Staff members should not put themselves at risk and should have due regard to appropriate policies, e.g. lone working:

Step Four

You have a duty to report this information to your line manager

Person Responsible
Staff member/line manager in consultation with supervisor

You should record any discussion and action taken and proceed to Step 5

Discuss suspected or actual harm with your supervisor/line manager as soon as possible. If s/he is not available discuss your concerns with an alternative manager. The full facts and circumstances of the situation together with all available options and clear courses of action should be identified and progressed. This should include all information identified in Steps One to Three.

- ▶ The line manager/supervisor must follow the local adult support and protection procedures and guidelines
- ▶ **Part 1 Section 5 of the Adult Support and Protection (Scotland) Act 2007 imposes a duty to inform council social work services of any concerns regarding an adult at risk, and a duty to report to the police if it is suspected that a crime may have been committed.**

Step Five

Duty to inform social work services

Person Responsible

Staff member/line manager

You should record any discussion and action taken

Timing: If there is an allegation of harm or clear evidence of harm, a referral to social work services **should be made without delay**. Local adult support and protection procedures will provide you with details of who to contact within social work services and / or the police if appropriate.

Note:

Information provided to social work services should include information gathered in Steps One to Three:

- ▶ Personal details, name, address, date of birth, ethnic origin, gender, religion, GP, type of accommodation, family circumstances, support networks, physical health, any communication difficulties, mental health including whether the person is subject to any order under the Mental Health or Adults with Incapacity Acts

- ▶ The referrer's job title and reason for involvement
- ▶ Nature/substance of the allegation
- ▶ Context of the circumstances
- ▶ Details of care givers/significant other
- ▶ Details of alleged perpetrator and current whereabouts and likely movements within the next 24 hours, if known
- ▶ Details of any specific incidents, e.g. dates, times, injuries, witnesses, evidence such as bruising
- ▶ Background of any previous concerns
- ▶ Awareness or not/consent or not by the adult concerned, carers, alleged abusers of the subject of the referral
- ▶ Information given to the person, expectations, wishes of the person, if known
- ▶ Lack of some or any of this information should not prevent you from fulfilling your duty to contact social work services as the adult at risk may need support and/or protection

Step Six

Council duty to inquire

Person Responsible

Council social work services

Ensure that all steps are recorded and review dates planned

Responsibilities of social work services staff:

Local adult support and protection procedures must be followed. This will assist to:

- ▶ ensure that the appropriate officer undertakes the inquiry
- ▶ consider notifying the employing organisations and/or professional bodies of the alleged perpetrator
- ▶ establish whether the person is an adult at risk as defined in the Adult Support and Protection (Scotland) Act 2007, Section 3(a). Ensure the provision of support and protection for the adult at risk, establish whether immediate action is required to protect the adult and whether other services, such as aids to communication are required
- ▶ consider whether anyone else is at risk of being harmed and whether a large scale inquiry (see Glossary) is necessary. Coordinate action in respect of an inter-agency referral discussion (IRD) involving relevant agencies
- ▶ where appropriate, inform senior management and other agencies, including the Mental Welfare Commission, the Office of the Public Guardian and Care Inspectorate

Role of senior members of staff:

Consider the adult's level of capacity in regard to the concerns. Seek evidence to support this by ensuring that the appropriate health professional is involved in the IRD.

- ▶ The council may consult and/or work in partnership with other agencies and conduct preliminary inquiries to establish whether there is cause for concern or intervention
- ▶ Ensure the IRD considers the need for an adult support and protection case conference

- ▶ To consider what kind of inquiry/investigation should be undertaken. This should include visits, interviews, medical examinations and examinations of records under the Adult Support and Protection (Scotland) Act 2007
- ▶ To consider whether any urgent protection orders under the Adult Support and Protection (Scotland) Act 2007 may be required
- ▶ Review the situation regularly

Step Seven

Inter-agency Referral Discussion (IRD)

Person Responsible Social Work Manager

You should record any discussion and action taken

- ▶ An Inter-agency Referral Discussion (IRD) may be initiated by any of the statutory agencies in line with the local adult support and protection procedures
- ▶ IRDs are a vital stage in the process of joint information sharing, assessment and decision making about adults at risk of harm. This is not a single event, but takes the form of a series of discussions where information is discussed and a co-ordinated response agreed by the relevant agencies. This could occur during the duty to inquire procedures at Step 6 and indeed throughout any investigation into the circumstances of the case

When it has been reported that an adult may be at risk of harm the local adult support and protection procedures will be adopted. An IRD will usually take place in relation to the adult at risk between social work services, the relevant representative from the local Police Public Protection Unit, a relevant health representative, if appropriate and where necessary any other agency providing a service to the adult or with an interest in the adult's welfare.

IRDs might need to be initiated at any time. When an IRD takes place out-with office hours, an appropriate member of the emergency social work service will undertake the IRD on behalf of the council social work services.

If the adult at risk is aged between 16 and 21, there needs to be liaison with the manager of the local Children and Families department of social work services to ascertain whether they have information to assist in the process. Likewise consideration should be given to the possibility of the adult at risk being a subject of Multi-agency Public Protection Arrangements (MAPPA) procedures.

The purpose of the IRD is to:

- ▶ establish what information agencies already have about the people involved
- ▶ share all available information in order that it can be determined whether a criminal investigation may be required
- ▶ establish whether an investigation by the council social work services is required
- ▶ decide whether a large scale inquiry is needed because potentially more than one adult at risk is involved
- ▶ agree an initial action plan and establish which agencies are to be involved, also identify the lead agency
- ▶ conduct and agree an initial risk assessment and an adult support and protection plan

The IRD will also consider:

- ▶ the possible need to use the Appropriate Adult Scheme for interviewing victims, witnesses or suspected persons **(see Appendix 3)**
- ▶ the IRD will examine the evidence available, and how further evidence will be obtained. What medical/ forensic evidence is available and how further medical/ forensic examination should be undertaken

There are several possible actions that can emanate from the IRD such as single agency investigation, an adult support and protection case conference, or indeed a decision that no further action is necessary

Step Eight

Adult support & protection case conference

Person Responsible

Social Work Manager

You should record any discussion and action taken

Consideration should always be given to holding an adult support and protection case conference, particularly in situations where there is actual harm or the threat or opportunity for ongoing harm. It is also important where the individual concerned has little or no insight into the risk to which he/she may be placing him/herself or others. For specific guidance please see page 33 (Adult Support and Protection Case Conference Guidance).

Step Nine

Duty to consider the importance of providing advocacy and other supportive services

Person Responsible

Staff member in consultation with the line manager

You should record any discussion and action taken

At all stages throughout the process consideration must be given to the provision of appropriate services to empower the adult to protect themselves. This can include:

- ▶ independent advocacy services, mediation, etc.
- ▶ trying to establish a 'life line' for the person, e.g. a named person or organisation where help can be sought if there is further risk of harm
- ▶ information and advice on minimising harm/increasing safety of person(s)
- ▶ encouraging the adult to participate in the development of the adult and support protection plan

Step Ten

Support for the staff member

Person Responsible
Line Manager/Supervisor

The line manager may need to:

- ▶ de-brief staff
- ▶ clarify the staff member's role and level of responsibility
- ▶ be accessible/supportive in following through the steps above
- ▶ identify another manager/supervisor to cover in their absence
- ▶ offer assistance/advice on any organisational procedures, e.g. completing significant occurrence forms/advising senior management within the organisation
- ▶ offer help, advice and appropriate support in recording

Step Eleven

Recording

Person Responsible
Staff member in consultation with the line manager

You should record any discussion and action taken

The making of records should be made as soon as practicable after an event, if not actually taken at the time.

Record discussions, decisions, actions, dates and the people involved.

This may include any information associated with:

- ▶ What you have done, for example
 - the nature of the incident
 - what information you received from the adult at risk or any other person
 - what is the adult at risk's personal circumstances
 - who you consulted with
 - were there any external referrals – if so, to whom and what information was provided, if not why no referral was made and the reason for that decision
 - whether the adult has / or you suspect they have capacity issues
 - was there any evidence of serious harm / or undue pressure, if so describe
 - the adults at risks own wishes and views
 - decisions made and action taken
 - who was involved, their roles and responsibilities and clarification as to who is lead officer, if appropriate
- ▶ What you are planning to do:
 - what the ongoing work includes
 - plan for ongoing monitoring and review
 - whether there are any issues of restriction / confidentiality
 - if, when and why it has been decided that no further action is required

Note: These records should be evidence based, accurate and legible, and should be kept up to date during all stages.

These records might be required as evidence in any subsequent court proceedings.

Appendix 3

The Appropriate Adult Scheme

Context

The rights and obligations conferred by statute and common law apply equally to any individual who comes into contact with the police.

Appropriate Adult Schemes are provided by the local authority to the police, to be utilised when the police are dealing with adults (those who have attained the age of 16 years) who suffer, or are suspected of suffering, from a “mental disorder”.

“Mental Disorder” is defined within the Mental Health (Care and Treatment) (Scotland) Act 2003.
(See Glossary)

In 1998 the then Scottish Office instructed that all Scottish Police Forces should put in place Appropriate Adult Schemes.

Appropriate Adult Schemes are the result of interagency work involving local authorities, Health and Police.

There are five Appropriate Adult Schemes within the ELBEG area.

In Scotland, Appropriate Adult Schemes have no statutory basis. The absence however of an Appropriate Adult within criminal justice proceedings that involve a person with a mental disorder may be examined in relation to the admissibility of any statement made by the interviewee.

In November 2007 revised Guidance was produced by the then Scottish Government entitled “Guidance on Appropriate Adult Services in Scotland”.

The Role of the Appropriate Adult

The role of an Appropriate Adult is to facilitate communication between an adult with a mental disorder and the police.

The role of the Appropriate Adult also includes:

- ▶ assessing or aiding understanding of interview and related processes
- ▶ monitoring levels of stress and distress
- ▶ asking for interview to be suspended if necessary
- ▶ ensuring interviewee is not disadvantaged due to mental disorder
- ▶ reading any documentation signed by the interviewee and where appropriate countersigning

The services of an Appropriate Adult are utilised to facilitate and ease communication with all categories of persons involved in the criminal justice system, i.e. victims, witnesses, suspects or accused persons.

The role of the Appropriate Adult is not to advise an interviewee how to answer questions, to object to questions or to prompt the interviewee.

The Appropriate Adult does not provide follow-on support to the interviewee, e.g. follow on referrals or home visits. The Appropriate Adult can ask the police to make a referral if necessary to the relevant agency.

The services of an Appropriate Adult can be required throughout any police procedure, including:

- ▶ custody procedures
- ▶ interviewing
- ▶ taking photographs
- ▶ search of premises
- ▶ identification parades
- ▶ medical examination (if appropriate)
- ▶ body searches (if appropriate)
- ▶ obtaining forensic samples

The Appropriate Adult should, after being involved in any police interview or process, be able to tell a Court whether, **in their opinion**, a person did or did not understand the police processes they were involved in.

The Appropriate Adult is a witness to the conduct of the interview, not the content.

The Appropriate Adult should provide a witness statement to the police on every occasion they are utilised.

Who should be an Appropriate Adult?

All Appropriate Adults within the ELBEG area are persons who have been trained to fulfil or perform the role of an Appropriate Adult within the structure of the local Appropriate Adult Schemes.

An Appropriate Adult should be:

- ▶ someone who is completely independent of the police service
- ▶ where possible, someone who is completely independent of the interviewee
- ▶ individuals who understand mental disorder, who are experienced and/or trained in dealing with people with mental disorder and are able to communicate with people with mental disorders

When is an Appropriate Adult required?

The responsibility for identifying when an Appropriate Adult is required rests with the investigating police officer.

An Appropriate Adult may be utilised for a witness, victim, suspect or accused.

Appropriate Adult services are utilised for adults, i.e. those who have attained the age of 16 years.

Information which is available from the interviewee, relatives, friends or carers, should be taken into consideration when deciding whether or not an Appropriate Adult is required.

At times, the presence of a mental disorder will not be obvious to an investigating officer, therefore if an interviewee displays any of the under-noted indicators, they should be taken into consideration when making a decision about the involvement of an Appropriate Adult:

- ▶ excessive anxiety
- ▶ unusual mood level
- ▶ incoherence (other than that associated merely with controlled drugs/alcohol)
- ▶ inability to understand
- ▶ unusual behaviour
- ▶ agitation leading to physical activity not in keeping with the current situation

Officers should bear in mind that at times excessive drug/ alcohol intake or addictions of this type cause or are accompanied by mental disorder.

Access to an Appropriate Adult Service

The local authority provides specific contact numbers for police officers to utilise when requesting the services of an Appropriate Adult.

Appendix 4

Adults with Incapacity (Scotland) Act 2000

1. Definition

An adult with incapacity is a person (16 years and over) who is incapable of acting, or making decisions, communicating decisions, or understanding decisions, or retaining the memory of decisions, on the basis of mental disorder or ability to communicate (without appropriate aids).

Note

- (1) Mental disorder as defined under the Mental Health (Care and Treatment) (Scotland) Act 2003 (see Glossary).
- (2) For the purposes of the Act, capacity is not all or nothing. It is decision specific, e.g. where an individual is incapable of making some decisions whilst able to make others.

2. Principles

- ▶ Interventions must be of benefit to the person
- ▶ Minimum/least restrictive intervention is applied
- ▶ The person's wishes are taken into account
- ▶ Other relevant parties are consulted
- ▶ The adult is encouraged, as far as reasonably practicable, by any proxy (e.g. guardian, attorney, manager) to exercise and develop skills in the relevant areas of decision-making

3. Brief Outline of Powers/Functions

Power of attorney (Part 2 of the Act)

This is a means by which individuals, whilst they have capacity, can grant someone they trust, powers to act as their continuing (financial) and/or welfare attorney. A continuing (financial) power of attorney continues or commences (where specified) on the granter's loss of capacity. A welfare power of attorney only comes into effect in the event of the granter's loss of capacity. All powers of attorney under the Act must be registered with the Public Guardian.

- ▶ **Local authorities have a duty to investigate complaints about attorneys**

Access to Funds scheme (Part 3 of the Act)

This is a way of individuals or organisations accessing the adult's bank or building society account/s in order to meet his/her living costs. This scheme is best suited to small estates where income and outgoings are easily regulated. If little is known about the adult's finances then the Office of the Public Guardian can provide authorisation for such information to be disclosed.

Management of (care home/hospital) residents funds (Part 4 of the Act)

The Act allows authorised care establishments and hospitals to manage a limited amount of the funds and property of residents who are unable to do this for themselves and have no one else available to do so. A certificate of authority may be granted to a care home manager by the supervising body (local authority or health board).

Medical treatment decisions (Part 5 of the Act)

The Act allows treatment to be given to safeguard or promote the physical or mental health of an adult who is unable to consent. The principles apply to medical treatment decisions as to other areas of decision-making. Where a welfare attorney or guardian has been appointed with health care decision-making powers the doctor must seek his/her consent where practicable. Where the adult has no proxy a doctor is authorised to provide medical treatment, subject to certain safeguards and exceptions.

Consent to Research (Part 5 of the Act)

The Act permits medical research involving an adult incapable of giving consent subject to certain safeguards and exceptions.

Note: This section does not overrule the provisions of the Mental Health Act, i.e. compulsory treatment for mental disorder.

Guardianship order (Part 6 of the Act)

Guardianship can cover property and financial matters or personal welfare, including health, or a combination of these. It is likely to be suitable where the person has long-term needs in relation to these matters and has lost or has never had, capacity to take decisions or to action these matters for him or herself. An application may be made to the Sheriff Court by individuals, or by the local authority where no one else is applying and the adult has been assessed as needing a guardian.

Intervention order (Part 6 of the Act)

This would normally be suitable where there is a single action or decision to be taken on behalf of the adult. This could, for example, be a financial or property transaction or a legal action on behalf of the adult such as signing a tenancy agreement. Intervention orders can cover both financial and welfare matters. An application may be made to the Sheriff Court by an individual or local authority.

4. Supervision and Regulation

The Office of the Public Guardian (Scotland)

A main function of the Office of the Public Guardian (Scotland) is to supervise those authorised to manage the finances and property under the access to funds scheme, intervention and guardianship orders.

Other important functions are to:

- provide information and advice on financial matters in relation to the Act
- register powers of attorney, intervention and guardianship orders
- authorise access to funds, register withdrawers and issue certificates
- supervise continuing (financial) attorneys where ordered to do so by the Sheriff
- investigate complaints against anyone authorised to manage the finances of an adult, including continuing attorneys

The Mental Welfare Commission

The Commission has an important role in protecting the interests of adults with incapacity due to mental disorder. In relation to the Act the Commission:

- ▶ contacts and sometimes visits welfare guardians and people subject to welfare guardianship orders
- ▶ has the power to investigate complaints
- ▶ provides a range of guides for carers, service users and professionals and a freephone helpline

The Court

The court is responsible for the appointment of financial and welfare guardians. The Sheriff decides on the powers to be granted, and how long the powers should last. The adult him/herself and anyone else with an interest can appeal to the court against an order or any aspect of it. A complaint against an intervener, guardian or attorney can also be taken to the Sheriff Court and investigated.

The Local Authority

Under the Act, local authorities have a duty to supervise welfare interveners and guardians and provide advice and information to welfare guardians and welfare attorneys. Local authorities also have a duty to investigate complaints against welfare guardians and attorneys and, in certain circumstances, the court can order the local authority to supervise a welfare attorney.

Legal Aid

An adult, someone authorised to act on his or her behalf under the Act, or anyone with an interest in the adult's welfare or affairs may be able to apply for legal aid. Two sorts of legal aid are available:

- ▶ Advice and Assistance, subject to financial eligibility test being satisfied, to enable people to seek advice from a solicitor on any aspect of the Act
- ▶ Civil Legal Aid is available without a means-test in respect of applications for an intervention or guardianship order which include welfare powers

Scottish Legal Aid Board website <http://www.slabb.org.uk> provides information by region on solicitors registered for legal aid work.

A fact sheet on the Adults with Incapacity (Scotland) Act 2000 and legal aid is available at: <http://www.scotland.gov.uk/topics/justice/civil/awi>

(Contact details in Appendix 8)

Appendix 5

The Mental Health (Care and Treatment) (Scotland) Act 2003

1. Definition

The Mental Health (Care and Treatment) (Scotland) Act 2003 applies to people with a 'mental disorder'. This term is used to cover mental illness, personality disorder and learning disability.

2. Principles

The Mental Health (Care and Treatment) (Scotland) Act 2003 is based on a set of guiding principles. These help to set the tone of the Act and guide its interpretation. As a general rule, anyone who takes any action under the Act has to take account of the 10 principles.

- (1) Non-discrimination
- (2) Equality
- (3) Respect for diversity
- (4) Reciprocity
- (5) Informal care
- (6) Participation
- (7) Respect for carers
- (8) Least restrictive alternative
- (9) Benefit
- (10) Child welfare

3. Powers

The Act allows for people to be placed on different kinds of compulsory order according to their particular circumstances. There are three main kinds of compulsory powers:

- ▶ **Emergency detention** – This allows someone to be detained in hospital for up to 72 hours where hospital admission is required urgently to allow the person's condition to be assessed
- ▶ **Short-term detention** – This would allow someone to be detained in hospital for up to 28 days. It will only take place where it is deemed necessary by a specially trained doctor (a psychiatrist) and agreed by a mental health officer (a specially trained social worker)
- ▶ **Compulsory Treatment Order** – This has to be approved by a Mental Health Tribunal. A mental health officer has to apply to the Tribunal. The application must include two medical recommendations and a plan of care detailing the care and treatment proposed for the patient

Other powers under the Mental Health (Care and Treatment) (Scotland) Act 2003 include:

- ▶ **Nurses' holding power** – if a patient is in hospital receiving treatment for a mental disorder on a voluntary basis and decides to leave the hospital, an appropriately qualified nurse can hold the patient for up to 2 hours to allow a doctor to come and assess the patient and decide whether detention in hospital is necessary
- ▶ **Removal to place of safety** – if someone in a public place appears to have a mental disorder, and be in need of care and treatment, then the police can take that person to a place of safety. The person can be kept there for up to 24 hours to allow an assessment to be carried out about whether arrangements need to be made for the person's care and treatment

4. When can these powers be used?

There are strict conditions in the Mental Health (Care and Treatment) (Scotland) Act 2003 about when these powers might be used. These are that:

- ▶ The person has a mental disorder
- ▶ Medical treatment is available which could stop their condition getting worse, or help treat some of their symptoms
- ▶ If that medical treatment was not provided, there would be a significant risk to the person or to others
- ▶ Because of the person's mental disorder, his/her ability to make decisions about medical treatment is significantly impaired
- ▶ The use of compulsory powers is necessary

5. Safeguards

The Mental Health Tribunal Service

This is the forum for hearing cases under the Mental Health (Care and Treatment) (Scotland) Act 2003. The Tribunal is involved in considering care plans, deciding on compulsory treatment orders and carrying out reviews. Each Tribunal has three members: a legally qualified person, a doctor with experience in mental health and a third person with other skills and experience.

Named person

Service users aged 16 or over, are able to choose someone, a "named person", to support them and to protect their interests in any proceedings under the Mental Health (Care and Treatment) (Scotland) Act 2003. The named person has the same rights as the service user to be notified of, attend and be represented at Tribunal hearings.

Advocacy

Under the Mental Health (Care and Treatment) (Scotland) Act 2003 every person with a mental disorder has a right of access to independent advocacy and Health Boards and local authorities have a duty to ensure that independent advocacy services are available. This right to access advocacy applies to all mental health service users, not just to people who are subject to powers under the Act.

Advance statements

People can make advance statements, setting out how they wish to be treated if they become unwell and unable to express their views clearly at some point in the future. The Tribunal and any person responsible for giving treatment under the Mental Health (Care and Treatment) (Scotland) Act 2003 would have to take an advance statement into account.

Mental Welfare Commission

The Mental Welfare Commission has a vital role in protecting the rights of service users and promoting the effective operation of the Mental Health (Care and Treatment) (Scotland) Act 2003.

Further information about this legislation can be found at <http://www.scotland.gov.uk/Resource/Doc/55971/0015983.pdf>

Appendix 6

A summary of the inter-relationship between the key legislation

Adult Support and Protection (Scotland) Act 2007

Relationship of the Adult Support and Protection (Scotland) Act 2007 (ASP) with the Adults with Incapacity (Scotland) Act 2000 (AWI) and the Mental Health (Care and Treatment) (Scotland) Act 2003 (MHCT)

Comparisons of ASP - AWI - MHCT

Comparisons can be made in relation to:

- ▶ Definitions of those covered
- ▶ Principles
- ▶ Duties to inquire and investigate
- ▶ Potential intervention

Subject of ASP – AWI - MHCT		
ASP	AWI	MHCT
Adults at Risk	Adults with Incapacity	Mentally Disordered Adults
<p>Adults, aged 16 years or over, who are:</p> <ul style="list-style-type: none"> • unable to safeguard their own well-being • at risk of harm (whether from another person or self-harm) • because affected by disability, mental disorder, illness or physical or mental infirmity, are more vulnerable to being harmed than adults who are not so affected. 	<p>Adults, aged 16 years or over, incapable of:</p> <ul style="list-style-type: none"> • acting • making decisions • communicating decisions • understanding decisions, or • retaining the memory of decisions • because affected by mental disorder or inability to communicate because of physical disability (this physical disability incapable of being made good through human or mechanical aid). 	<p>Adults and children, with a mental disorder.</p> <p>The term mental disorder covers mental illness, personality disorder or learning disability.</p>

Principles of ASP – AWI - MHCT		
ASP	AWI	MHCT
Adults at Risk	Adults with Incapacity	Mentally Disordered Adults
<p>Intervention must:</p> <ul style="list-style-type: none"> • benefit the adult; • be the least restrictive option; • take account of adult's wishes and feelings (past and present); • take account of views of adults nearest relative, primary carer, guardian or attorney and any other person with interest in the adults well-being or property; • not treat the adult less favourably; • ensure adult participate as fully as possible, and provide information to facilitate this; • take account of the adult's abilities, background and characteristics. 	<p>Intervention must:</p> <ul style="list-style-type: none"> • benefit the adult; • be the least restrictive option; • take account of adult's wishes and feelings (past and present); • take account of views of adult's nearest relative, primary carer, guardian or attorney, person(s) identified by Sheriff and any other person with interest in adults welfare or the intervention; • encourage adults to use existing skills or develop new skills. 	<p>Intervention must:</p> <ul style="list-style-type: none"> • provide maximum benefit to the person; • be least restrictive option; • take account of adult's wishes and feelings (past and present); • take account of views of patient's named person, carer, guardian and welfare attorney; • do not treat the adult less favourably than would a non-patient; • ensure adult participates as fully as possible, and provide information and support to facilitate this; • have regard to adult's abilities, background and characteristics; • have reciprocity; • have regard to other options available. <p>Under 18</p> <p>Intervention must:</p> <ul style="list-style-type: none"> • provide the best method of securing the patients welfare.

Duty to inquire and investigate		
ASP	AWI	MHCT
Adults at Risk	Adults with Incapacity	Mentally Disordered Adults
<p>Local authorities have a duty to make inquiries:</p> <ul style="list-style-type: none"> • if they know or believe that a person is an adult at risk; and • that it might need to intervene in order to protect the person's well-being, property or financial affairs. 	<p>Local authorities have a duty to investigate:</p> <ul style="list-style-type: none"> • any circumstances made known to them in which the personal welfare of an adult seems to them to be at risk; and • any complaints with respect to the exercise of functions relating to the personal welfare of an adult in relation to welfare attorneys, guardians or persons authorised under intervention orders. <p>The Office of the Public Guardian has a duty to investigate financial concerns.</p> <p>Mental Welfare Commission has a duty to investigate under the Act.</p>	<p>Local authorities should cause inquiries to be made:</p> <ul style="list-style-type: none"> • when it appears that a person with a mental disorder aged 16 or over is in their area as and certain circumstances apply; • these circumstances include, amongst others, that the person has been subject to ill treatment, neglect, some other deficiency in care or the safety of some other person may be at risk.

The Office of the Public Guardian

The Public Guardian has a **duty to investigate**:

- complaints about the **actions of those appointed under the AWI Act concerning financial issues** (financial attorneys, Access to Funds, Withdrawers, financial guardians or interveners); and also
- **any concern** raised where there appears to be a **risk to adult's property or financial affairs** (i.e. there is no AWI appointment but funds do not appear to be managed for benefit of the adult).

The Public Guardian **can only intervene** when an adult is deemed by a medical professional to **lack capacity to safeguard his/her own property or financial affairs**.

There is an **overlap of investigative roles between the local authorities and the Office of the Public Guardian** in relation to ASP and AWI, and local arrangements are required to determine referral routes, roles, communication and joint working.

Inquiry or investigation actions		
ASP	AWI	MHCT
Adults at Risk	Adults with Incapacity	Mentally Disordered Adults
<p>In order to decide if further action is required to protect an adult at risk from harm, a council officer may:</p> <ul style="list-style-type: none"> • visit any place; • interview anyone at the place visited; • when accompanied by a health professional, the health professional may conduct a medical examination of the person known or believed to be an adult at risk; • request and examine any records relating to the individual believed to be an adult at risk of harm (except health records which can only be examined by a health professional). 	<p>Not specified in the Act other than duty to investigate welfare matters.</p>	<p>Not specified in the Act other than duty to investigate. (Medical examinations not an MHO role.)</p>

Appendix 7

Glossary of terms

These guidelines will be read and used by staff and carers from the statutory, independent and voluntary sectors. They are devised to be applicable to all of these sectors and therefore the language and terminology used is as non-specific as possible. However, inevitably, not every term or designation will be understood by everyone. This glossary of terms has been compiled to assist with this potential problem.

Appropriate Adult *Please see Appendix 3*

Assessment Order

This order 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 a 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. The assessment order **does not** provide the power to detain the adult at risk, in the place that they are taken to, and the adult may choose to leave at any time. The adult may refuse to be interviewed or examined.

Banning Order

This order bans the subject of the order from being in a specified place, for up to six months. It will 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's well-being or property, than by moving the adult. A banning order can be made subject to any specified conditions. The Sheriff can also grant a temporary banning order pending the determination of a full banning order.

Capacity

The ability to make an informed choice. (For further information see Pages 16 and 28)

Care Inspectorate

The Care Inspectorate (formerly the Care Commission) is an independent regulator of Social Care and Social Work Services across Scotland. They regulate, inspect and support improvement of care, social work and child protection services for the benefit of the people who use them. Various kinds of organisations provide the services that the Care Inspectorate regulate: local authorities, individuals, businesses, charities and voluntary organisations.

Code of Practice

The Code of Practice is a document provided by the Scottish Government to assist organisations and their staff when dealing with adult protection matters and especially in regard to the use of the Adult Support and Protection (Scotland) Act 2007. The code provides information and guidance on the principles of the Act, about the measures contained within the Act, including when and where it will normally be appropriate to use such measures. The code is to be used in conjunction with other relevant codes of practice as appropriate, such as those associated with the Mental Health (Care and Treatment) (Scotland) Act 2003 and the Adults with Incapacity (Scotland) Act 2000. The current code will undergo review during 2013.

Council Nominee

As mentioned in Sections 11(1)(a) and 14(1)(a) of the Adult Support and Protection (Scotland) Act 2007 – is an individual who is not a “Council Officer” under Sections 52 of the Act nominated by the council to either interview the adult at risk under an Assessment Order (Section 11) or to move the adult under a removal order (Section 14).

Council Officer

The Adult Support and Protection (Scotland) Act 2007 defines a “Council Officer” as an individual appointed by the Council under Section 64 of the Local Government (Scotland) Act 1973. A person who is authorised to fulfil the functions under Sections 7,8, 9, 10,11, 14, 16 and 18 of the Adult Support and Protection (Scotland) Act 2007.

The person will need to be employed by the relevant council and must be:

- (a)
 - ▶ registered in the part of the register maintained by the Scottish Social Services Council (SSSC) in respect of social service workers
 - ▶ registered as an occupational therapist in the register maintained under Article 5(1) of the Health Professionals Order 2001, or
 - ▶ a nurse, and
- (b) have at least 12 months post qualifying experience of identifying, assessing and managing adults at risk

A council may also authorise a council officer to fulfil a restricted role in respect of the investigative functions under the Adult Support and Protection (Scotland) Act 2007, in Sections 7-10 only. Again they must be employed by the Council and be:

- (a) registered in the part of the register maintained by the SSSC in respect of social service workers, and
- (b) have at least 12 months post qualifying experience of identifying assessing orders and managing adults at risk

Financial Harm

Adults at risk of harm, irrespective of the cause of their vulnerability, are often easy victims of financial abuse.

Financial harm covers a wide range of activity which can have serious consequences for the adult concerned. Such harm can range from exploitation by bogus callers who may demand thousands of pounds for work to houses or gardens, to family/friends/carers taking informal control of the adult’s financial affairs for their own gain. Theft of money or personal property without the victim’s knowledge or open explicit demands for money are often main factors in financial harm. Financial harm often goes unreported and hidden behind closed doors but is now one of the most common types of harm inflicted upon adults at risk.

Forced Marriage

A marriage in which one or both spouses do not (or in the case of children and some adults at risk, cannot) consent to the marriage and duress is involved. Duress can include physical, psychological, financial, sexual and emotional pressure.

Gender Based Violence

Is an umbrella term encompassing the spectrum of harm and abuse aimed at individuals and groups based on their specific gender role in society. It is experienced disproportionately by women and perpetrated predominantly by men and may manifest itself in many ways. It includes all forms of violence including what was previously known as domestic abuse, including same sex relationships, commercial sexual exploitation, harmful traditional practices, such as female genital mutilation, forced marriages and so-called “honour” crimes, sexual harassment, stalking and childhood sexual abuse.

Health Professional

A "Health Professional" for the purposes of the Act is (a) a doctor (b) a nurse (c) a midwife or (d) any other type of individual described (by reference to skills, qualifications, experience or other use) by an order made by the Scottish Ministers. The definition of doctor, nurse and midwife is as specified under their respective professionals Acts, i.e. Medical Act 1983 and Nurses & Midwives Order 2001.

Health Records

These are any records, in any format, which relate to an individual's physical or mental health which have been made by or on behalf of health professional in connection with the care of the individual.

Honour Based Crimes

The terms "honour crime", "honour-based violence" and Izzat (the concept of honour prevalent in the culture of North India and Pakistan which applies universally across religions, communities and genders) embrace a variety of crimes of violence (mainly but not exclusively against women), including physical abuse, sexual violence, abduction, forced marriage, imprisonment and murder where the person is being punished by their family or their community. They are punished for actually or allegedly "undermining" what the family or community believes to be the correct code of behaviour. In transgressing this, the person shows that they have not been properly controlled to conform to their family and this is to the "shame" or "dishonour" of the family. Honour crime may be considered by the perpetrator(s) as justified to protect or restore the 'honour' of a family.

Independent Advocate

A member of an advocacy service which operates independently of other service providers. Advocacy is about safeguarding individuals who are in situations where they are at risk of harm and who are not being heard. This often involves speaking up for the individual and helping them to express their views and assist them to make their own decisions and contributions. Contact with the appropriate advocacy service can be made through the local authority or NHS Lothian or NHS Borders.

Large Scale Inquiry/Investigation and ancillary protocols

A Large Scale Inquiry/Investigation is a multi-agency response to circumstances where there may be two or more adults at risk of harm within a care setting which could be residential care, day care, home based care or a health care setting.

Each local authority has developed their own or joint protocols to manage large scale inquiries. Such an approach, in these circumstances, is designed to:

- ▶ provide a standardised, consistent approach to carrying out a large scale inquiry.
- ▶ offer a framework for an alternative process to holding several individual inquiries and ensure that there is effective overview and co-ordination where there are a number of agencies involved.
- ▶ clarify responsibilities for following the protocol amongst partner agencies.

Line Manager/Supervisor

The person who has managerial responsibility for an individual worker.

Mental Health Officer

A local authority social worker who has undergone specific post qualifying accredited training in mental health legislation. This person then has certain delegated powers under such legislation to act in conjunction with medical practitioners in the compulsory treatment of individuals with mental disorder.

Mental Welfare Commission

A national body appointed by the Scottish Government to oversee and protect the rights of those with a mental disorder. The Mental Welfare Commission has a duty to investigate any complaint it receives concerning the welfare of anyone with a mental disorder including dementia, learning disability or acquired brain injury.

Mental Disorder

The Mental Health (Care and Treatment) (Scotland) Act 2003 defines "Mental Disorder" as: Any mental illness, personality disorder or learning disability, however caused or manifested. For the purposes of Appropriate Adult guidance it shall include people with acquired brain injury, autistic spectrum disorder and people suffering from dementia. It does not include those temporarily impaired through alcohol or drugs.

Place of Safety

This can be a formal or informal arrangement to allow an adult at risk to be accommodated safely without the risk of further harm e.g. hospital, care home or the home of another family member.

In the current ELBEG area the designated places of safety are:

- ▶ in Edinburgh: The Accident and Emergency Department of the Royal Infirmary and the Royal Edinburgh Hospital
- ▶ in East and Midlothian: The Royal Edinburgh Hospital
- ▶ in West Lothian: St. Johns Hospital, Livingston
- ▶ in Scottish Borders: Borders General Hospital, Melrose

A police station can be used as a place of safety but only when designated places are not available.

Public Guardian *Please see Appendix 4*

Protection of Vulnerable Groups (Scotland) Act 2007

This Act was introduced following the Sir Michael Richard review of child protection procedures in England and Wales. His report was published in June 2004 and both the Scottish Government and UK Government accepted all of the recommendations. This in turn led to a consultation process in Scotland outlining the Scottish Government views and proposals on a wide range of issues in adult and child protection (vulnerable groups).

It made provision for such matters as:

- ▶ Establishing a list of individuals unsuitable to work with children and establishing a separate list of individuals unsuitable to work with protected adults
- ▶ Replacing enhanced criminal record certificates with new disclosure records for those working with vulnerable groups whether paid or unpaid
- ▶ Establishing a scheme for those working with vulnerable groups, membership of which enables the ongoing collection of vetting information and assessment for unsuitability to work with these groups

The PVG Scheme was designed to be quick and easy to use, reducing the need for members to complete a detailed application form every time a disclosure request is made.

It also takes account of arrangements that are in place elsewhere in the United Kingdom so as to prevent cross-border loopholes developing which could be exploited by those who would harm vulnerable people.

Employers are now in a position to confirm that any individual that they wish to employ is a member of the Scheme and therefore not deemed as unsuitable for work with vulnerable children and adults.

Each agency has developed their own policies and procedures for checks in the recruitment process and for submitting referrals to the Scheme relating to discipline outcomes or inquiries.

Protection Order

This is the generic term used to describe the individual order created by the Adult Support and Protection (Scotland) Act 2007, i.e. assessment order, banning order (including temporary banning order) and removal order.

Removal Order

This order authorises a council officer to remove an adult at risk to a specified place if there is a likelihood of serious harm were they not moved. This type of order may be varied or recalled by the Sheriff where this is justified due to a change in facts or circumstances of the case. Removal orders are effective up to a maximum of seven days. As with an assessment order there is no authorisation to detain the adult at risk and they may therefore leave the place to which they have been removed if they so wish.

Safeguarder

The Sheriff has discretion to appoint a person to safeguard the interests of the affected adult at risk in any proceedings relating to a protection order application.

Self Harm

The definition of self-harm adopted by the guidelines is "intentional self-poisoning or injury, irrespective of the apparent purpose of the act". Self-harm includes poisoning, asphyxiation, cutting, burning and other self-inflicted injuries.

Social Care

A range of settings, statutory and voluntary including care homes, care at home and hospitals, where adults at risk are looked after or assisted with their essential living tasks.

Staff Member

For the purpose of these guidelines this includes anyone who is employed in a social care setting.

Stalking

Section 39 of the Criminal Justice and Licensing (Scotland) Act 2010 provides for a specific criminal offence of stalking.

The offence of stalking occurs when a person (A) engages in a course of conduct (involving conduct on at least 2 separate occasions) which causes person (B) to feel fear or alarm. In order for an offence to take place (A) does not actively have to act with the intention of causing (B) to feel fear or alarm, it is enough that (A) knew or ought to have known that engaging in the particular course of conduct would be likely to cause (B) to feel fear or alarm.

The Act provides various examples of the type of conduct concerned including:

- ▶ Following (B) or any other person
- ▶ Contacting or attempting to contact (B) or any other person
- ▶ Entering any premises
- ▶ Interfering with any property in possession of (B)
- ▶ Watching or spying on (B) or any other person

Sub Judice

Information subject to legal proceedings, the sharing of which may compromise those proceedings. A report to the Procurator Fiscal or Children's Reporter by any agency for the consideration of legal proceedings would class the information concerned as sub judice.

Undue Pressure

A Sheriff cannot make a protection order if s/he knows that the affected adult at risk has refused to the granting of the order **unless** the Sheriff reasonably believes that the adult 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. Undue pressure is where it appears that harm is being, or is likely to be, inflicted by a person in whom the adult has confidence and trust and that the adult at risk would consent if they did not have confidence and trust in that person. Undue pressure is also relevant where the adult at risk is afraid of or being threatened by another person. The likelihood of undue pressure being brought to bear should always be considered when the adult at risk refuses to give consent.

Violence against Women

See page 18

Vulnerable Witnesses

The Vulnerable Witnesses (Scotland) Act 2004 introduced a range of specific measures to provide improved support for child and adult vulnerable witnesses in the justice system. The various sections of the Act were introduced in a staged process between 2006 and 2008. These measures, which can be applied where there is a significant risk that the quality of their evidence may be diminished by reason of fear or distress in connection with giving evidence at a trial, are all detailed within the Scottish Government Pack relating to the Act. The Code of Practice for adult vulnerable witnesses encourages the delivery of therapeutic support to adult witnesses prior to and during court proceedings and to establish consistent best practice support which can be implemented across Scotland.

Warrant for Entry

A Sheriff who grants an assessment or a removal order must also grant a Warrant for Entry which authorises a council officer to visit any specified place under Section 7 or 16 of the Act, together with a constable. The constable is authorised to do anything, including using reasonable force where necessary, which is considered to be reasonably required to fulfil the object of the visit. Such a warrant expires 72 hours after it is granted and does not entitle anyone who has entered a place under the terms of the warrant to remain in that place after the warrant has expired.

Whistle Blowing

A means by which staff can safely raise their concerns within their organisation about matters of suspected or actual malpractice. This allows an individual to by-pass the formal line management arrangements if necessary.

Appendix 8

Useful contact details

Police Scotland

Detective Chief Inspector 'E' Division

Public Protection Unit
Vega House, Clocktower Estate
South Gyle Industrial Estate
Edinburgh EH12 9LB
Tel: 101

Detective Chief Inspector 'J' Division

Dalkeith Police Station
Newbattle Road
Dalkeith
EH22 3AX
Tel: 101

Public Protection Unit

Livingston Police Station
West Lothian Civic Centre
Howden South Road
Livingston
EH54 6FF
Tel: 101

Public Protection Unit

Hawick Police Station
Wilton Hill
Roxburghshire
TD9 8BA
Tel: 101

Local Authorities

City of Edinburgh Council

Waverley Court
4 East Market Street
Edinburgh
EH8 8BG
Tel: 0131 200 2000
Social Care Direct: 0131 200 2324
Emergency Social Work Services (out of hours): 0800 731 6969

East Lothian Council

John Muir House
Haddington
EH 41 3HA
Tel: 01620 827 827
Social Work Services: 0845 603 1576
Emergency Social Work Services (out of hours): 0800 731 6969

Midlothian Council

Midlothian House
Buccleuch Street
Dalkeith
EH22 1DJ
Tel: 0131 270 7500
Social Work Services: 0131 271 3900
Emergency Social Work Services (out of hours): 0800 731 6969

Scottish Borders Council

Council Headquarters
Newton St. Boswells
Melrose
TD6 0SA
Tel: 01835 824 000
Social Work Services: 0300 100 1800
Emergency Social Work Services (out of hours): 01896 752 111

West Lothian Council

West Lothian Civic Centre
Howden South Road
Livingston
West Lothian
EH54 6FF
Tel: 01506 281 912
Social Work Services: 01506 775 000
Emergency Social Work Services (out of hours): 01506 281 028

NHS Boards

NHS Borders

Newstead
Melrose
Scottish Borders
TD6 9DB
Tel: 01896 825 500

NHS Lothian

Waverley Gate
2-4 Waterloo Place
Edinburgh
EH1 3EG
Tel 0131 536 9000

Other Bodies

Mental Welfare Commission for Scotland

Thistle House
91 Haymarket Terrace
Edinburgh
EH12 5HE
Tel: 0131 313 8777

Office of the Public Guardian

Hadrian House
Callandar Business Park
Callandar Road
Falkirk
FK1 1XR
Tel: 01324 678 300

The Care Inspectorate

Stuart House
Eskmills
Musselburgh
EH21 7PB
Tel: 0131 653 4100

Advocacy Projects

Please contact through NHS or relevant local authority.

Appropriate Adult Network

Please contact the relevant local authority co-ordinator.

Appendix 9

Acknowledgements

City of Edinburgh Council

East Lothian Council

Midlothian Council

Scottish Borders Council

West Lothian Council

NHS Borders

NHS Lothian

Police Scotland

ELBEG Adult Support and Protection Advisory Group

Scottish Government Mental Health Legislation & Adult Protection Policy Team, Adult Support and Protection Unit

These guidelines are intended to assist in interpreting the various Acts relating to adult support and protection. Although every effort has been made to ensure their accuracy, this cannot be guaranteed. Accordingly, although the guidelines highlight which part of the relevant legislation may be pertinent in certain situations, it will still be necessary for the text of the legislation to be checked before reliance is placed upon them.

These guidelines were developed by the ELBEG multi-agency Adult Support and Protection Advisory Group. Wide ranging consultation was undertaken with key partners including the Care Inspectorate, the Mental Welfare Commission, the Office of the Public Guardian, national and local third and private sector agencies.



Coordinated by Edinburgh, Lothians and Borders Executive Group Public Protection Partnership Office (ELBEG PPPO),
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