

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

## **Guidance For Adult Protection Committees**

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## Preface

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

Since then, there has been the integration of health and social care; changes introduced in terms of the governance of public protection at a local level; refinement of the expectations of the Scottish Government in relation to [Child Protection processes and practice](#) (which has implications for adult protection); and the issuing of new guidance relating to [Learning Review procedures and process](#).

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

The [Adult Support and Protection National Strategic Forum](#), chaired by the Minister for Mental Wellbeing and Social Care, has recognised the changed landscape within which Adult Support and Protection now operates. It therefore proposed that this was an appropriate time to undertake a review of the Adult Support and Protection Code of Practice. It further proposed that similar work will be undertaken to revise the guidance for APCs. These proposals were then agreed by the Minister.

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

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

\*By “partnerships” we mean the group of partners who work together – operationally and strategically—to:

- receive all intimations of adult protect concerns;
- determine which concerns require investigation and investigate them;
- determine actions required to make sure that adults at risk of harm are safe, protected, supported, involved, and consulted;

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- and are responsible and accountable for the implementation of these actions.

## Introduction

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

The [Adult Support and Protection \(Scotland\) Act](#) was passed by the Scottish Parliament in February 2007 and is referred to in this guidance as “the Act”. It is in five parts and Part 1 deals with the protection of adults at risk of harm.

This guidance relates to Part 1 of the Act. It should be read in conjunction with the Act, the associated revised [ASP Code of Practice](#) and other related legislation including the [Adults with Incapacity \(Scotland\) Act 2000](#) and the [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003](#).

## Main provisions of the Act

Part 1 of the Act introduces new measures to identify and protect adults at risk of harm which include:

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

The [principles of the Act](#) are set down in sections 1 and 2 (of the Act), and require that any interventions under the Act must provide benefit to the adult which could not reasonably be provided without intervention and must be the least restrictive option available which benefits the adult.

## Adult Protection Committees

Section 42 of the Act states that:

- (1) Each council must establish a committee (an "Adult Protection Committee") with the following functions-
  - (a) to keep under review the procedures and practices of the public bodies and office-holders to which this section applies which relate to the safeguarding of adults at risk present in the council's area (including, in particular, any such procedures and practices which involve co-operation between the council and other public bodies or office-holders to which this section applies),
  - (b) to give information or advice, or make proposals, to any public body and office-holder to which this section applies on the exercise of functions which relate to the safeguarding of adults at risk present in the council's area,
  - (c) to make, or assist in or encourage the making of, arrangements for improving the skills and knowledge of officers or employees of the public bodies and office-holders to which this section applies who have responsibilities relating to the safeguarding of adults at risk present in the council's area,
  - (d) any other function relating to the safeguarding of adults at risk as the Scottish Ministers may by order specify.
- (2) In performing its functions, an Adult Protection Committee must have regard to the desirability of improving co-operation between each of the public bodies and office-holders to which this section applies for the purpose of assisting those bodies and office-holders to perform functions in order to safeguard adults at risk present in the council's area.

The public bodies and office-holders to which this section applies are:

- (a) the council,
- (b) the Care Inspectorate,
- (c) Healthcare Improvement Scotland (HIS),
- (d) the relevant Health Board,
- (e) the chief constable's representative for the relevant area (in practice this is usually the Divisional Commander),

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

It is important to note that the terms of the Act are such that it is only the public bodies referenced above that are covered by the duties of the APC in terms of reviewing procedures and practice, giving advice or making proposals, and improving skills and knowledge.

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

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

## Establishment of the committee

APCs must be established for every council area. There may be different models to deliver this and local authorities should adopt the model that is most appropriate for their area. There is nothing in the Act that prohibits an APC being established that covers more than one council area, in which case the presumption is that each authority will remain accountable for their activities in their own council area. There is also nothing in the Act that prohibits the APC functions being aligned under wider committees, for example a combined Adult and Child Protection Committee. In such circumstances the duties that follow from the Act in relation to Adult Support and Protection must be followed by the wider committee.

## Membership of the committee

The council is responsible for appointing a convener (sometimes referred to as “APC chair”) and section 43(6) requires that this must not be an officer or member of the council. The ASP Code of Practice suggests that it would be good practice to appoint a convener who is independent of all bodies represented on the Committee, in particular to be independent of the council, the health board and the police. Although it is not a statutory requirement, this guidance strongly endorses that good practice expectation. The section of this guidance relating to with governance covers matters to do with the appointment of conveners in more detail.

The Act states at [section 43\(2\)](#) that APC membership must include representatives of the public bodies outlined above, with the exception of the council and the Care Inspectorate. In practice, every APC has at least one,

Adult Support and Protection Guidance for Adult Protection Committees 2022 usually several, council representatives. The Care Inspectorate may nominate a representative to be a member of the APC, where that person appears to have the skills and knowledge relevant to the functions of the APC. Healthcare Improvement Scotland ('HIS') now sits as an associate member of the Scottish Adult Support and Protection Independent Conveners Association ('SASPICA') but as HIS is named in Section 42 it must nominate a representative to be a Committee member.

The Care Inspectorate, the Mental Welfare Commission for Scotland and the Office of the Public Guardian may nominate a representative to attend APC meetings, but there is no requirement on them to do so. Should they make a nomination, the APC must allow that person to attend. It may be relevant for attendance at some, but not all, APC meetings.

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

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

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

To create an **ethos and environment of inclusion**, the committee membership should seek to be diverse in perspective, experience and culture – capable of change, flexibility and improvement, and ensuring equality and equity is embedded in its processes.

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

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

- services for adults, children and families;
- other council services including housing, education, consumer protection, trading standards and community safety;

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- health services including GP General Practices, allied health professionals, acute and psychiatric hospitals and community health services;
- third and independent sector organisations e.g. care providers and carer groups;
- the financial sector;
- independent advocacy organisations.

The need to support and protect adults at risk extends to all settings, including where adults are within managed and registered care services, the NHS and independent hospitals, and hospices. Where harm occurs or is suspected in these settings, the Care Inspectorate or HIS have responsibilities through their regulatory functions of inspection, investigating complaints and enforcement. Their inclusion in [Section 5 of the Act](#) means that they are also bound by the duties of cooperation, as defined by Section 5. APCs will want to ensure agreement and understanding about roles and responsibilities between the Care Inspectorate, HIS and local agencies who will have their own monitoring arrangements, when there is ASP activity within registered services.

[The Mental Welfare Commission for Scotland \(MWC\)](#) has particular statutory responsibilities (under mental health and incapacity law) in relation to the care and treatment of people with mental disorders, which includes learning disabilities, dementia, and related conditions. Their five main areas of work include: visiting people, monitoring the Mental Health (Care and Treatment) (Scotland) Act 2003 and the Adults with Incapacity (Scotland) Act 2000, investigations, providing information and advice, and influencing and challenging. They are involved in monitoring practice and carrying out inquiries, including those in relation to deficiencies of care.

MWC is a named body in Section 5 of the 2007 Act and therefore has a duty to cooperate and to make referrals, as per Section 5. APCs will want to ensure that arrangements are agreed and understood about the relationship between local agencies and the MWC in adult support and protection work.

Similar understanding will need to be developed with the [Office of the Public Guardian \(Scotland\)](#). Issues arising across APCs nationally may be relevant for consideration by the SASPICA.

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

- there may be places on the Committee reserved for representatives of adults who have received or might need adult support and protection services, and their carers. Every possible means of facilitating participation (such as advocacy, pre-meetings, supporters, assistive



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technology and/or assistance with technology, interpreting services and the payment of travel expenses) should be considered.

- the Committee may establish regular contact with representative groups in their area, and ensure that such contact enables groups to explain their interests and concerns about adult protection as well as to give feedback on the extent to which they feel better protected by the Committees activities. It may be necessary and valuable to organise some ad hoc events where there are no established groups. Regular, carefully organised and facilitated events will ensure real exchanges of concerns and opinion.

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

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

## Procedures, practice and information sharing

### APC Terms of Reference

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

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

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

Since the implementation of the Act and the establishment of APCs, a range of other developments in relation to the wider public protection agenda have

Adult Support and Protection Guidance for Adult Protection Committees 2022 achieved wider prominence and required multi-agency responses. The duty on councils to inquire into whether someone should be regarded as at risk of

harm identifies many people who cannot be so regarded but who are nevertheless regarded as people in distress and who may require supports

from a range of agencies. APCs should therefore ensure that local procedures support assessment of need, consideration of other relevant legislation, or alternative services to respond to the individual's needs. This could include practical support, health, social work or social care support provided on a single or multi-agency basis. Preventative options may be considered to avoid an adult's situation escalating to a point where they are or are likely to be at risk of harm.

In some areas, APCs have become the main strategic forum in which the above matters can be discussed. This reflects the interconnections between many aspects of public protection, and APCs may prompt wider public protection topics for Chief Officer Groups to consider.

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

## Multi-agency procedures

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

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

Inquiries under the Act can range from the relatively straightforward to highly complex and therefore require different levels of engagement. However, local procedures should identify indicative timescales for completion of identified tasks. Review of the procedures of the named public bodies should ensure that each agency's ASP procedures align and are consistent on an inter-agency basis.

## Single agency procedures

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

## Information sharing

We all have a responsibility, individually and collectively, to protect vulnerable people in our communities. This cuts across all aspects of private life and professional business. Supporting individuals at risk of harm is best done through collaboration and with a sense of community responsibility.

## Why do we need to share adult protection information?

Organisations need to share safeguarding information with the right people at the right time to:

- prevent death or serious harm
- coordinate effective and efficient responses
- enable early interventions to prevent the escalation of risk
- prevent abuse and harm that may increase the need for care and support
- maintain and improve good practice in safeguarding adults
- reveal patterns of abuse that were previously undetected and that could identify others at risk of abuse
- identify low-level concerns that may reveal people at risk of abuse
- help people to access the right kind of support to reduce risk and promote wellbeing
- help identify people who may pose a risk to others and, where possible, work to reduce offending behaviour
- reduce organisational risk and protect reputation.

APCs will want to consider the information sharing dynamic between the statutory agencies and other agencies or organisations, to identify any gaps in information sharing related to safeguarding adults at risk and to promote, wherever possible, the adoption of information sharing practices and co-operative working as are required of statutory agencies.

Existing legislation, including the [UK General Data Protection Regulation - UK GDPR](#) and the [Data Protection Act 2018](#) does not prevent sharing and/or exchanging relevant information where there is belief or concern about the protection of adults at risk. Wherever possible, the adult who may be at risk

Adult Support and Protection Guidance for Adult Protection Committees 2022 should be informed of the sharing of the information and the reasons why. The information sharing must be necessary (i.e. proportionate and targeted) for the purpose of carrying out the task.

**Detailed guidance** around the required aspects of information sharing is available in the **main [ASP Code of Practice](#)**.

Many partnerships have circulated letters, signed by the Chief Officers, to staff of the main relevant public bodies locally (i.e. the Council, the Health Board and Police Scotland) affirming the position stated above, and advising their staff that their own agency will support them if they have shared personal information in these circumstances using their professional judgement. All partnerships should consider circulating such letters to their staff, confirming this position and the expectations around information sharing, as outlined in the Code of Practice (link above).

APCs may choose to publish minutes from their meetings, taking care to ensure that sensitive or confidential information is redacted prior to publication.

## **Giving information or advice and making proposals**

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

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

The Act requires APCs to give information or advice, or make proposals to its statutory members on the safeguarding of adults at risk present in the council area(s). APCs do not have executive authority but in order to meet this requirement they will need expertise in, and understanding of, service standards as they apply to adult support and protection. Detailed awareness of local professional practice and performance management enables APCs to measure performance and development, and identify areas for improvement.

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

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The Scottish Government has established a data set that councils are required to report on annually. As national data collection evolves to contribute to national understanding of ASP activity, learning and improvement, the frequency of national data collection may increase. In addition to this national data collection, APCs will have identified other activity information that they wish to collect on a local level. In keeping with its function to keep under review the procedures and practices of the public bodies named in 42(3),

APCs may wish to consider how ASP-related data from these public bodies contributes to the APC's overall dataset and understanding of local ASP activity.

Data collated by the APC will be shared by APCs with the statutory bodies, enabling them to use data to contribute to their own agency's improvement and practice development. These data sets will provide valuable information determining trends and priorities for attention, as well as for the allocation of resources.

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

## **Audit and quality assurance activity**

A regular programme of multi-agency audit, self-evaluation and review should be part of the routine work of APCs, directly influencing strategic development and practice improvement. Included in this should be an awareness of any internal audit work that may be undertaken on a single agency basis. Multi-agency audits are most productive when staff from across agencies are engaged in auditing their own and other agency files. This requires good preparation and inter-agency agreement to the approach. Views of individuals with experience of adult support and protection processes should be considered when undertaking audit activity.

Adult Protection Committees should also consider regular audits of the extent to which adults are enabled to participate fully in adult protection activity. Any audit of adult participation should seek to ensure contributions from adults themselves, including their own comments on the process and outcomes.

## Learning reviews

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

In May 2022, the Scottish Government published [National Guidance for Adult Support and Protection Committees Undertaking Learning Reviews](#).

This guidance document provides an update to the previously published [Adult protection significant case reviews: interim framework](#) (November 2019).

The Learning Review guidance, now much aligned to the equivalent guidance for learning reviews undertaken by Child Protection Committees, places the responsibility for commissioning and overseeing such reviews with Adult Protection Committees, on behalf of the Chief Officer's Group. It confirms that APCs are responsible for agreeing recommendations within case reviews and for overseeing any improvement plans that may follow. These matters should be reported to the local Chief Officer Group (or equivalent) for approval and, once approved, reports of case reviews that meet the criteria laid out in the guidance should be submitted to the [Care Inspectorate](#) (including any case review or reflective learning review that referred to by a different name but meets the criteria for a learning review). As of 1 October 2020 the Care Inspectorate is the central repository for all learning reviews. They will support practice development through disseminating the learning from these.

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

Situations may arise for learning reviews, particularly for 16 and 17 year old people, where there are legitimate interests and engagement from services for both children and adults. In such circumstances there should be discussions between the Child and Adult Protection Committees to determine which is the most appropriate to lead on a Learning Review, with agreement reached as to how each of the committees will be involved and updated on progress of the Review. This will require consideration on a case by case basis, and the involvement of the Chief Social Work Officer may be helpful in these deliberations.

## Large Scale Investigations

A Large Scale Investigation (LSI) may be required where there is reason to believe that adults who are residents of a care home, supported accommodation, an NHS hospital or other facility, or who receive services in their own home may be at risk of harm due to another resident, a member of staff, some failing or deficit in the management regime, or in the environment of the establishment or service. In such circumstances, there may be concern that multiple adults are at risk of harm, arising from the same alleged source of harm.

The Act makes no reference to LSIs, but these have become increasingly prevalent across Scotland since the implementation of the Act. Many

partnerships have their own procedures, sometimes across a number of partnerships (e.g. within one Health Board area). LSIs frequently involve other agencies including the Care Inspectorate, the NHS and Police Scotland. However, there are no nationally agreed definitions of what warrants an LSI, nor guidance for conducting LSIs, nor guidance for governance arrangements locally. The updated Code of Practice provides some broad guidance for consideration by partnerships in developing their LSI procedures.

Senior managers in partnerships are responsible for initiating and overseeing LSIs. They should keep Adult Protection Committees regularly apprised of the progress of any LSIs underway, and provide the Committee with a final report once the LSI is concluded. This will ensure that any necessary actions arising from the LSI relating to the duties of Adult Protection Committees can be noted and necessary responses actioned. The outcome of LSIs should be brought to Chief Officer Groups for their information.

**Additional operational guidance** related to LSIs can be found in the main [Code of Practice](#).

## Public awareness

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



## Improving skills and knowledge

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

The elements of a **local training strategy** should address:

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



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

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

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

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

## Biennial Report

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

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

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

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

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

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

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

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

This has broadly remained the same expectation for subsequent Biennial Reports, with amendments being made from time to time through deliberations between key stakeholders and the Scottish Government.

The Biennial Reports are prepared by the independent convener who, after approval by the APC, is expected to submit the report to the bodies named above. The report now serves two main functions. The first is to provide information to the bodies listed above. In practice, submission of Biennial Reports has been limited to formal submission to the Scottish Government, and sharing amongst partners at a local level. Submission of reports to the bodies named in Section 46(b), including the Care Inspectorate, Healthcare Improvement Scotland, the Mental Welfare Commission for Scotland and the Office of the Public Guardian **must** occur as per Section 46 of the Act. As noted above, the APC **must** send a copy of the Biennial Report as part of the exercise of its functions. It is up to each APC as to whether it publishes its Biennial Report.

The other main function is to provide the means by which APCs reflect on past performance and identify areas (both locally and nationally) for improvement that are incorporated into development or business plans for the APC over the coming two years. In essence this requires the report to reflect a commitment to continuous improvement. As a reflection of this, many APCs now produce reports every year with the intervening reports being for governance and

Adult Support and Protection Guidance for Adult Protection Committees 2022 accountability within their own areas. In such cases, business plans become rolling programmes that are added to as new actions and improvements are identified.

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

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

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

## Governance

Since the implementation of the Act the governance arrangements for public protection at a local level have become much more strongly established. APCs are now firmly located within these local public protection governance structures that in all areas include reporting arrangements to Chief Officer Groups, and then variously through Integration Authorities and/or Community Planning Partnerships.

Chief Officer Groups (COGs) in the context of adult protection are the Chief Executives of Local Authorities, the Chief Executives of Health Boards and Police Scotland Divisional Commanders. Chief Officers, both individually and collectively, are responsible for the leadership, direction and scrutiny of adult protection services and public protection more broadly. Ownership and accountability by Chief Officers is required to ensure that protecting adults at risk of harm remains a priority within and across agencies.

In addition, there are senior officers from a range of agencies and organisations, including the Chief Social Work Officer, who will advise and assist local authorities and their partners in relation to governance and fulfilment of statutory responsibilities, including adult protection. The Convener of Adult and Child Protection Committees will also be members of COGs. Many COGs also include representatives from MAPPAs, Violence Against Women partnerships, alcohol and drug partnerships (ADPs), community safety and other areas.

## Adult Protection Committees and Chief Officer Groups

In 2019 the Scottish Government published updated guidance [Protecting Children and Young People, Child Protection Committee and Chief Officer Responsibilities](#). This concentrated on matters to do with child protection but has direct relevance to adult protection. This section of the Guidance for APCs therefore reflects the content of this document as it applies to Adult Support and Protection.

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

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

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

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

Unlike in Child Protection, APCs are a statutory requirement, and the convener is responsible for, among other things, producing a Biennial Report that after approval by the APC, should be submitted to the Scottish Government and other named bodies. The general practice now is that the report is shared with the Chief Officers' Group and any agreed amendments are made prior to final submission to the Scottish Government and other named bodies.

## Case reviews and large-scale investigations

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

## Annex - The Adult Support and Protection (Scotland) Act 2007

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

### Sections 1-2: Principles

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

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

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

### Section 3: Definition of adult at risk

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

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

This is commonly known as the **three-point test** but reference to **three-point criteria** is preferable.

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

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

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

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

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

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

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

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

- Protection Orders.

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

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

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

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

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

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

## Sections 7-10: Investigatory powers and council officers

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

[Sections 52 & 53](#) and a subsequent order made by Scottish Ministers define who may perform the functions of a council officer.

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

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

A protection order can take one of three forms:

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

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

## Section 48: Code of Practice

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



## Glossary

This glossary is for illustrative purposes only and is not intended to be prescriptive. Full statutory definitions of many of the terms are contained in Section 53 of the Act, and it is those that should be used in any process or situation where precise definition is required.

<b>Adult</b>	An individual aged 16 years or over
<b>Adult at risk</b>	“Adults at risk” are adults who - a) are unable to safeguard their own well-being, property, rights or other interests; b) are at risk from harm, <b>and</b> , 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.
<b>Adult Protection Committee</b>	A committee established by a council to safeguard adults at risk in its area.
<b>Assessment Order</b>	An order granted by a sheriff to help the council decide whether the person is an adult at risk and, if so, whether it needs to do anything to protect the person from harm.
<b>Attorney</b>	A continuing attorney or welfare attorney.
<b>Banning/ Temporary Banning order</b>	Order granted by a sheriff to ban a person from being in a specified place or area. The order may have specified conditions attached.
<b>Conduct</b>	Includes neglect and other failures to act.
<b>Council Officer</b>	An individual appointed by a council to perform certain specified function under the terms of the Act.
<b>General Practices</b>	(a) A person providing primary medical services under a general medical services contract (within the meaning of the <a href="#">National Health Service (Scotland) Act 1978</a> ) (b) A person providing primary medical services under arrangements made under <a href="#">Section 17c</a> of that Act.
<b>Health Professional</b>	In terms of the Act, this refers to a doctor, nurse, midwife or any other type of individual prescribed by Scottish Ministers.
<b>Inquiry</b>	The overarching process, as per section 4, to gather information to establish whether or not an adult is at risk of harm (as per the three-point criteria of the Act); conduct risk assessment; develop risk management plans; determine what, if any, action is required to be taken to safeguard that adult.

**Investigative powers (investigation activity)**

Powers under the Act that enable or assist councils to determine whether or not an adult is at risk of harm and to determine whether it needs to do anything to protect an adult at risk of harm (for example medical examinations under section 9 or the examination of records under section 10).

**Primary Carer**

The individual who provides all or most of the care and support for the person concerned. This could be a relative or friend, but does not include any person paid to care for the person.

**Removal order**

A council may apply to a sheriff for an order which authorises –  
a) A council officer, or any council nominee, to move a specified person to a specified place within 72 hours of the order being made and;  
b) The council to take such reasonable steps as it thinks fit for the purpose of protecting the moved person from harm.

**Warrant for entry**

A “warrant for entry” is a warrant which authorises –  
a) A council officer to visit any specified place under section 7 or 16 of the act with a constable and;  
b) a constable who so accompanies a council officer to do anything, using reasonable force where necessary, which the constable considers to be reasonably required in order to fulfil the objective of the visit.



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