

20 May 2008

Dear Colleague

**CONSULTATION ON GUIDANCE FOR ADULT PROTECTION COMMITTEES (APCs)  
ESTABLISHED UNDER PART 1 OF THE ADULT SUPPORT AND PROTECTION (SCOTLAND)  
ACT 2007 (ASP)**

Part 1 of ASP, scheduled to commence in Autumn 2008, introduces new measures for the protection of adults at risk of harm. These include rights of entry to settings where adults are thought to be at risk of harm, the introduction of a range of protection orders including assessment, removal and banning orders and the creation of local multi-agency Adult Protection Committees (APCs) across Scotland. Further information about the Act can be accessed through this link:

<http://www.scotland.gov.uk/Topics/Health/care/VAUnit/ProtectingVA>

I invite you to comment on the attached draft guidance for APCs. It has been prepared under section 47 of ASP which requires APCs and councils to have regard to any guidance issued by the Scottish Ministers about their functions under sections 42 to 46 of the Act. Responses are required **by 19 August 2008**.

This consultation exercise aims to provide you with an opportunity to express your opinion about the proposed guidance and to do so in a way that will inform and enhance this. Although there are no specific questions on the guidance we welcome your views. **Please indicate clearly in your response which paragraph(s) you are commenting on as this will help our analysis of the responses received.**

Thank you in advance for your contribution to this important consultation.

Yours sincerely



Jean MacLellan  
Deputy Director  
Primary and Community Care Directorate

## HOW TO RESPOND TO THIS CONSULTATION

### Deadline for receipt of responses

We invite written responses to this consultation paper by 19 August 2008. **Please also complete and return the respondent information form attached to this letter at Annex A.**

### Address for responses

Please send your response, including completed respondent information form, to:

[ASPunit@scotland.gsi.gov.uk](mailto:ASPunit@scotland.gsi.gov.uk)

or

Adult Protection Committee Consultation  
Adult Protection Legislation Team  
Scottish Government  
Area 2-East Rear  
St Andrew's House  
Regents Road  
Edinburgh  
EH1 3DG

### Comments, queries, alternative formats

If you have any comments or queries about this consultation document or if you would like it in hard copy or in an alternative format, please contact Susie Watson on 0131 244 3633 or e-mail [ASPunit@scotland.gsi.gov.uk](mailto:ASPunit@scotland.gsi.gov.uk)

### Scottish Government website

Along with all other Scottish Government consultation exercises, this consultation document can be viewed online on the Scottish Government consultation web pages <http://www.scotland.gov.uk/consultations>. You can telephone Freephone 0800 77 1234 to find out where your nearest public internet access point is.

### Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return (either on-line or by post if you are completing the consultation manually) the **Respondent Information Form** as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

You should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Where respondents give permission for their response to be made public, these will be made available to the public in the Scottish Government Library and on the Scottish Government consultation web pages in Autumn 2008. We will check all responses where agreement to publish has been given for any potentially defamatory material before logging them in the library or placing them on the website. You can make arrangements to view responses by contacting the Scottish Government Library on 0131 244 4552. Responses can be copied and sent to you, but a charge may be made for this service.

## Analysis and reporting of responses

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us reach decisions. We will issue a report on this consultation process in the Autumn.

## Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to:

Susie Watson  
Adult Protection Committee Consultation  
Adult Protection Legislation Team  
Scottish Government  
Area 2-East Rear  
St Andrew's House  
Regents Road  
Edinburgh  
EH1 3DG

## THE SCOTTISH GOVERNMENT CONSULTATION PROCESS

Consultation is an essential and important aspect of Scottish Government working methods. Given the wide-ranging areas of work of the Scottish Government, there are many varied types of consultation. However, in general, Scottish Government consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

The Scottish Government encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors, and no two exercises are likely to be the same.

Typically Scottish Government consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the issue, and they are also placed on the Scottish Government web site enabling a wider audience to access the paper and submit their responses. Consultation exercises may also involve seeking views in a number of different ways, such as through public meetings, focus groups or questionnaire exercises. Copies of all the written responses received to a consultation exercise (except those where the individual or organisation requested confidentiality) are placed in the Scottish Government library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4565).

All Scottish Government consultation papers and related publications (e.g., analysis of response reports) can be accessed at <http://www.scotland.gov.uk/consultations>

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process, along with a range of other available information and evidence. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review;
- inform the development of a particular policy;
- help decisions to be made between alternative policy proposals; and
- be used to finalise legislation before it is implemented.

Final decisions on the issues under consideration will also take account of a range of other factors, including other available information and research evidence.

**While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.**

## RESPONDENT INFORMATION

## CONSULTATION ON GUIDANCE FOR ADULT PROTECTION COMMITTEES ESTABLISHED UNDER PART 1 OF THE ADULT SUPPORT AND PROTECTION (SCOTLAND) ACT 2007

Respondent Information

Please complete the details below and return it with your response. This will help ensure we handle your response appropriately. Thank you for your help.

Name:

Job Title

Full postal address:

**1. Are you responding: (please tick one box)**

(a) as an individual  now go to question 2 and then question 4

(b) on behalf of a group / organisation  now go to question 3 and then question 4

**2. Responding as an individual (please tick one box)**

2a. Do you agree to your response being made available to the public in the Scottish Government library and / or on the Scottish Government website?

Yes  now go to question 2b

No  we will treat your response as confidential

2b. You have not requested confidentiality. We will therefore make your response available to the public on the following basis (please tick one of the following boxes)

Yes, make my response, name and address available

Yes, make my response and name available, but not my address

Yes, make my response available, but not my name or address

### 3. Responding on behalf of a group or organisation

The name and address of your organisation will be made available to the public in the Scottish Government library and / or on the Scottish Government website).

Are you also content for your response to be made available?

Yes

No  we will treat your response as confidential

### 4. Sharing responses / future engagement

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Government to contact you again in the future in relation to this consultation response?

Yes

No

## Consultee list

<p>ACPOS  Advocates Library  APEX Scotland  Association of Directors of Social Work  Association of Scottish Local Authority Health Improvement Officers  British Association of Social Workers  British Federation of Care Home Proprietors  British Medical Association Scotland  Care Commission  Carers Scotland  Chief Constables  Chief Executives, Local Authorities  Chief Executives, NHS Boards  Chief Executives, NHS Boards Operating Divisions  Citizen's Advice Bureau Scotland  Clerk of the Committee at the Scottish Parliament  Community Care Providers Scotland  Community District Nursing Association  Community Psychiatric Nurses Association  Convention of Scottish Local Authorities  Crown Office  Departmental Committee Liaison Officer (DCLO)  Directors of Housing, Local Authorities  Directors of Social Work, Local Authorities  Disclosure Scotland  Edinburgh, Lothian and Borders Executive Group (ELBEG)  Enable Scotland  Equality and Human Rights Commission  Equality Network  General Medical Council Scotland  Head of Children's Services, Local Authorities  Health Professions Council Scotland  Inclusion Scotland  Law Society of Scotland  Legal Services Agency  Lord President and Lord Justice General, High Court of Justiciary  Medical &amp; Dental Defence Union of Scotland  Medical Defence Union  Medical Protection Society  Mental Welfare Commission for Scotland</p>	<p>NHS Health Scotland  NHS National Services Scotland  NHS Quality Improvement Scotland  Nursing and Midwifery Council  Office of the Public Guardian  Princess Royal Trust for Carers  Royal College of General Practitioners  Royal College of Nursing and Midwifery  Royal College of Nursing Scotland  Royal College of Physicians  Royal College of Psychiatrists (Scottish Division)  Royal College of Speech Therapists  SACRO  SAMH  Scottish Association of Care Home Owners  Scottish Association of Health Councils  Scottish Care  Scottish Consortium for Learning Disability  Scottish Council for Community and Voluntary Organisations  Scottish Council of Independent Care  Scottish Federation of Housing Associations  Scottish General Practitioners Committee  Scottish Government Library  Scottish Health Services Centre  Scottish Human Rights Centre  Scottish Independent Advocacy Alliance  Scottish Information Commissioner  Scottish Legal Aid Board  Scottish Law Commission  Scottish Parliament Information Centre Library  Scottish Police College  Scottish Police Federation  Scottish Prison Service  Scottish Social Services Council  SENSE  Sheriff Principals  Sheriffs' Association  Scottish Independent Advocacy Alliance  Social Work Inspection Agency  State Hospital for Scotland  STUC  Unison  Vulnerable Adults Alliance Scotland</p>
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**THE ADULT SUPPORT AND PROTECTION (SCOTLAND)  
ACT 2007: PART 1**

**DRAFT GUIDANCE ON ADULT  
PROTECTION COMMITTEES (APCs)**

Adult Care and Support Division  
May 2008

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## 1. INTRODUCTION

1. This guidance is issued under section 47 of the Adult and Protection Scotland) Act 2007 and requires councils to consider their responsibility to set up APCs as outlined in sections 42 – 46. The Act was passed by the Scottish Parliament in February 2007. It is in five parts. Part 1 of the Act deals with the protection of adults at risk of harm. Parts 2, 3 and 4 streamline and improve existing legislation by amending the Adults with Incapacity (Scotland) Act 2000; Mental Health (Care and Treatment) (Scotland) Act 2003; and the Social Work (Scotland) Act 1968. Part 5 is mainly procedural, to ensure that the Act operates effectively.

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

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

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

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

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

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

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

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

4. APCs have a significant role in ensuring cooperation and communication within and between agencies to promote appropriate support and protection for adults. While sections 4 to 38 of the Act provide for specific interventions, the principles of the Act, set down in sections 1 and 2, provide the need that such interventions must be proportionate and must provide benefit to the adult which could not reasonably be provided without intervention and must be the least restrictive option available which benefit the adult.

5. Some councils have APC-type structures already in place, but the Act creates a duty for councils to provide for APCs across Scotland. The statutory requirements relate to the establishment, membership and some procedures of the Committees and

provide a general framework for how APCs should operate. However, policies and procedures are to be developed and agreed locally to reflect local needs, with each APC providing a biennial report to the Scottish Ministers which will report on the exercise of the Committee's functions and will enable effective monitoring of committees' work.

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

- to determine the local role for the APC;
- to arrange for representation on the APC; and
- to make the arrangements for appointing its convener.

7. Annexes 2 and 3 provide examples of a potential dataset for reporting on adult protection and a potential framework for audit and evaluation.

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

## **2. ADULT PROTECTION COMMITTEE FUNCTIONS**

### **Section 42**

9. Section 42 states that:

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

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

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

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

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

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

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

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

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

10. In summary, the Act places a duty on councils to set up APCs that will be responsible for monitoring and advising on adult protection procedures, for ensuring appropriate cooperation between agencies and for improving the skills and knowledge of those with a responsibility for the protection of adults at risk.

### **Council duty to establish Adult Protection Committee**

11. Adult Protection Committees must be established for every council area. Local authorities are encouraged to work together to ensure adult support and protection committees work effectively in their areas. There may be different models to deliver this and local authorities should adopt the model that is most appropriate for their area

12. APC membership must include representatives of the relevant council(s), NHS Board and Chief Constable, and may include a representative of the Care Commission. The establishment of the APC should therefore be planned in consultation with these bodies, and any other partners the council wishes to involve. Section 3 below provides guidance on membership.

### **Procedures and practice**

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

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

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

- referral and initial response;
- assessment and risk assessment;
- adult protection conferences and protection planning;
- care management;
- adult support;
- risk monitoring; and

- review.

16. Procedures should also address arrangements for local interagency and intra-professional communication, information sharing and coordination. It is also important for local guidelines to address communicating with adults at risk, family members and others, and to be clear about expectations in relation to advocacy, representation for adults at risk and support services, especially where any intervention is pursued under the Act.

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

17. The Act requires APCs to give information or advice to its statutory members on the safeguarding of adults at risk present in the council area(s). This means that APCs will need expertise in standards of adult support and protection, and become knowledgeable about local professional practice and performance management. Monitoring and evaluating local practice will involve data collection and data analysis, including the measurement of outcomes.

18. APCs will therefore need to consider what information systems will have to be in place, what form of regular audit is needed, and what research would be helpful. Over time APCs will be able to consider practice and performance trends from the information available.

19. The Act does not require APCs to become involved in individual case reviews. APCs have a strategic and monitoring function, rather than an operational role, and therefore routine case review may well be seen as inappropriate. However, joint consideration of individual cases may help APC members to develop greater joint understanding of service user concerns and professional practice. While there is no duty to do so, APCs should evaluate and learn from critical incidents.

### **Improving skills and knowledge**

20. APCs have a duty to make or assist with arrangements for improving the skills and knowledge of the public bodies and office-holders that have responsibilities relating to the safeguarding of adults at risk in their area. A local strategy will therefore be required, recognising the different roles and responsibilities of staff and office holders in statutory, voluntary and private organisations. The Scottish Government will also provide some national training to ensure that sufficient staff are able to fulfil their statutory duties on commencement. A longer term strategy is currently being devised to include qualifying and post-qualifying components.

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

- staff working in any sector who need to recognise the signs of abuse, neglect or exploitation and require to know when and how to respond, what action to take and how they fit into a protection plan;
- staff working in any sector who will be playing a major part in communications, assessments (including about risk and capacity), recording events, decision-making on actions to be taken, and have a major role in the implementation of protection plans, including legal processes;

- staff managing services, who will be supervising others in contact with service users, who will be monitoring performance at a local or central level, and who may be involved in decision-making in individual cases and chairing adult protection conferences and reviews;
- staff working in the statutory and legal sectors who will be taking a lead role in legal proceedings in relation to adult protection work; and
- staff in other areas of work including advocates in local organisations, members of APCs, regulatory staff within the Care Commission, lecturing and tutoring staff within local colleges, and council clerical/administrative staff who will act as minute takers in adult protection case conferences.

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

### **Co-operation**

23. Any actions undertaken by an APC must have regard to improving co-operation between its members.

24. Formal inquiries consistently identify effective communication, information sharing and co-ordination as critical in protecting adults at risk of harm. APCs will have an opportunity to provide a model of joint working by the way they themselves operate, and will require to promote good working relations between agencies and staff working within them. All staff in all sectors will need to understand and accept the absolute necessity of sharing information about adults at risk, and be clear about their roles and responsibilities in supporting those adults.

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

- Assessment;
- protection planning;
- risk monitoring and review; and
- within any process related to protection orders.

26. APCs will also need to ensure that there are effective arrangements in place for resolving disagreements and disputes between agencies about decisions in individual cases and about their roles and responsibilities.

27. A wide range of specialist areas of statutory services have a contribution to the protection of adults at risk. It will be important to involve and engage with:

- services for children and families;
- criminal justice services;
- adult services;
- local community and specialist police;
- housing services; and

- acute hospital services and primary care services, including General Practitioners.

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

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

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

### **Authority and accountability**

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

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

32. APCs will need to be given the authority by local agencies to be able to carry out these functions effectively, and will need lines of accountability to local Councils, NHS Boards and Police. To ensure that appropriate authority is delegated, some pre-existing APC-type arrangements have created direct lines of communication between themselves and local Chief Officers Groups. These usually have membership at Chief Executive and Directorate level from the Council, NHS and Police.

### **Child Protection Committees and MAPPA**

33. Good practice involves information sharing, communication and coordination between services for adults, children and family services, and criminal justice services. Monitoring and oversight arrangements already exist for Child Protection Committees and Multiagency Public Protection Arrangements (MAPPA). Local partner agencies will determine whether to establish any formal organisational

arrangements to bring the various Committees together, or to establish cross representation by each one on the others. Whatever local decisions are made, communication and coordination within these Committee arrangements will be necessary.

### **Adult Protection Unit**

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

### **Future functions**

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

## **3. MEMBERSHIP**

### **Section 43**

36. Section 43 states that:

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

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

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

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

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

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

**Convener**

37. The duty is on councils to appoint an independent APC convener and APC members. There is also a duty on other public bodies (currently only health boards and the police) to nominate members.

38. As the Council is the lead statutory body, the Committee convener must not be a member or officer to avoid any potential conflict of interest. The individual must be seen to be independent in thought and action as well as someone who has the necessary knowledge and skill. The partnership organisations should endeavour to recruit for these positions together.

**Representatives: skills and knowledge**

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

40. The Act gives councils discretion to appoint other representatives who can bring particular expertise to the Committee. For example, they may wish to include representatives from adult social care services, community health partnerships, police protection units, children's services, criminal justice, legal services (including Procurator Fiscals), mental health, nursing, acute health services, housing, service provision, advocacy, education and training, and from senior management to consultant and senior practitioner levels.

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

42. The involvement of people who use services in the design and delivery of services will be critical to the success of the policy. There are existing arrangements whereby regular contact with local service user and carer groups promotes discussion of adult protection issues. Committees have then taken full account of this discussion in developing policy, practice and training.

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

**Lnks with Child Protection Committees and MAPPA**

44. There are important procedural and practice links to be made between adult protection, child protection and the public protection role of criminal justice services.

Monitoring and advising on these links will be a function for APCs. Councils and their partners may wish to consider whether these links would be strengthened by representation from child protection and criminal justice on APCs.

#### **4. PROCEDURES**

##### **Section 44**

45. Section 44 states that:

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

*to attend Committee meetings.*

##### **Meeting arrangements**

46. Some public bodies with functions relating to the protection of adults at risk are not required to nominate members to APCs, but this section requires APCs to allow representatives from these bodies to attend Committee meetings. At present, these are the Mental Welfare Commission and the Public Guardian, and in APCs where a member has not been nominated under section 43 above, the Care Commission.

##### **Adult Protection Committee procedures**

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

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

48. They will need to reflect terms of reference for the APC and any subgroups, which may go beyond the statutory requirements, and support programme planning for the Committee and its cycle of activities.

## 5 INFORMATION SHARING

### Section 45

49. Section 45 states that:

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

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

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

### Agency responsibilities

50. This section places a duty on certain public bodies to provide the APC with information it requires to perform its functions. These public bodies currently are councils, health boards the police, and the Care Commission.

### Good practice in information sharing

51. It is important for local agencies and APCs to participate fully in the promotion of a culture of information sharing where adults may require protection, whilst recognising human rights issues with respect to data protection and rights to confidentiality. This will involve agency and APC activity both in individual cases, and in relation to sharing information on general practice issues and performance. APCs will also want to consider the relationship between these statutory agencies and other service providers and to promote the adoption by service providers of the same practices in information sharing and co-operative working as are required statutory agencies

52. In order to evaluate practice performance, APCs will wish to consider an information framework that includes data gathering, analysis, monitoring and review arrangements. Information for particular periods of time and trends over time will inform a Committee's work. It is likely that members will have an interest in the adoption of a consistent approach to data sets and information gathering over their respective geographic areas of responsibility. APCs may therefore work jointly in the development of information frameworks, or may collectively wish to consider a national framework to inform local analysis and allow comparisons with incidence, practice and performance elsewhere across the country. **Annex 2** lists information, which might provide many of the items for such a national information dataset.

53. APCs may decide to audit particular aspects of support and protection activity, to engage in occasional case reviews (particularly when there have been critical

incidents) or to commission research on particular aspects of protection work. Annex 3 provides a potential framework for adult support and protection audit and evaluation.

54. In view of the importance of information sharing in adult protection, it may be useful for APCs to set out their general expectations and their specific requirements, for agreement by the agencies involved. This information will also support APCs in reviewing their own performance and progress, in order to validate and improve its own approaches.

### **Publication of information**

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

## **6. REPORTING**

### **Section 46**

56. Section 46 states that:

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

- (a) *prepare a general report on the exercise of the Committee's functions during the 2 years ending on that date, and*
- (b) *after securing the Committee's approval of the report, send a copy of it to-*
  - (i) *each of the public bodies and office-holders represented on the Adult Protection Committee by virtue of section 43(4),*
  - (ii) *the Scottish Ministers,*
  - (iii) *the Mental Welfare Commission for Scotland,*
  - (iv) *the Public Guardian,*
  - (v) *the Care Commission (where it not represented on the Committee), and*
  - (vi) *any other public body or office-holder as the Scottish Ministers may by order specify.*

### **Biennial Report**

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

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

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

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

60. In addition, if the council and its local partners have established a terms of reference for APCs, which go beyond the requirements of the legislation, they may expect the report to deal with the other matters, set out in this terms of reference.

61. The Committee convener should send a copy of the final report to the NHS Board, the Chief Constable, the Care Commission, the Mental Welfare Commission for Scotland, the Public Guardian, and the Scottish Ministers.

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

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

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

**Sections 1-2: Principles**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A protection order can take one of three forms:

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

The sheriff may grant such an order only if satisfied that certain criteria are met, and these grounds are specified in the Act. A sheriff must not make a protection order if the sheriff knows that the affected adult at risk of harm has refused to consent to the granting of the order, unless the sheriff reasonably believes that the affected adult at risk has been unduly pressurised to refuse consent and there are no steps which could reasonably be taken with the adult's consent which would protect the adult from harm. That is the underlying principle Section 34(4) gives an example of a situation where the adult may be considered to have been unduly pressurised as where it appears the action which the order is intended to prevent is being inflicted by a person whom the adult at risk trusts, otherwise the adult would consent. However section 35(5) makes clear that this is not the only type of behaviour that would constitute undue pressure.

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

**Section 48: Code of Practice**

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

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

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

**Annex 2****POTENTIAL DATASET FOR ANALYSIS AND REPORTING ON ADULT SUPPORT AND PROTECTION****Referral and activity data**By gender:

- female, male

By age group<sup>1</sup>:

- 16 – 20, 21 – 34, 35 – 49, 50 – 64, 65 – 74, 75 – 84, 85+

By Primary User Group ‘affected by disability, mental disorder, illness or physical or mental infirmity’<sup>2</sup>:

- Learning Disability, Mental Health, Physical Disability, Older Person without Dementia, Older Person with Dementia, Acquired Brain Injury, Substance Misuse, Other<sup>3</sup>

By ethnic group<sup>4</sup>:

White British; Asian, Asian Scottish or Asian British – Indian; Asian, Asian Scottish or Asian British – Pakistani; Asian, Asian Scottish or Asian British – Bangladeshi; Asian, Asian Scottish or Asian British – Chinese; Asian, Asian Scottish or Asian British – Other; Black, Black Scottish or Black British - Caribbean ; Black, Black Scottish or Black British – African; Black, Black Scottish or Black British – Other; White European; Mixed; Other ethnic background; Not disclosed; Not known/information not provided

By type(s) of abuse reported<sup>5</sup>:

- 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.

By source of referral<sup>6</sup>:

- Service user, carer, member of general public, social work, police, health, independent sector service provider, housing, Care Commission, other

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<sup>1</sup> Source: National Learning Disability Data Set

<sup>2</sup> ASP Act

<sup>3</sup> Scottish Borders Data Set

<sup>4</sup> National Learning Disability Data Set

<sup>5</sup> ASP Act

<sup>6</sup> Scottish Borders Data Set

By outcomes from investigation:

- Unsubstantiated; ongoing Social Work involvement; Adult requested no further action; Changes in care arrangements; Welfare Guardianship application; Increased monitoring of situation; Admission to Care Service; New provision of Health Service; Specialist external service; Carer support; Admitted to hospital.<sup>7</sup>

By use of warrant for entry (visit) and protection orders<sup>8</sup>:

- Warrant for entry for a visit– applied for – granted - refused
- Assessment order – applied for – granted - refused
- Removal order – applied for – granted - refused
- Banning order – applied for – granted - refused
- Temporary banning order – applied for – granted - refused
- Incidence of ‘unduly pressurised’ adults
- Criminal proceedings
- Offences of obstruction against protection orders
- Offences by bodies corporate in breach of the Act

**Staff awareness, training and workforce development**

- Awareness of abuse and response
- Knowledge of principles, law, policies and procedures
- Knowledge of support services
- Communication needs and methods

Awareness raising and training delivered: Number involved and outcomes

- Awareness of general staff in social care and support services, acute and community health services, community police services, housing and other services (statutory, voluntary and private sectors)
- Specialist staff in social work, health and police involved in assessment, protection planning, support services and interventions including risk monitoring and legal processes (all sectors)
- Staff managing services, involved in staff support and supervision, decision-making and chairing protection conferences (all sectors)
- Minute takers in adult protection case conferences
- Staff in legal services
- Advocates in local organisations
- Regulatory staff within the Care Commission
- Lecturing and tutoring staff within local colleges
- Conveners and members of Adult Protection Committees

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<sup>7</sup> Scottish Borders Data Set

<sup>8</sup> ASP Act

**Annex 3****POTENTIAL FRAMEWORK FOR ADULT SUPPORT AND PROTECTION  
AUDIT AND EVALUATION****Service user outcomes: views**

- Confident about process
- More/less/same safe because of process
- More/less/same protected because of process
- Feel listened to
- Feel response was helpful
- Feel well supported in process
- Feel well informed
- Given access to advocacy and representation
- Percentage of users of community care services feeling safe<sup>9</sup>
- Percentage of community care users and carers satisfied with involvement in their health and social care packages<sup>10</sup>

**Procedures, practice and performance: quantity and quality**

- Information
- Service user involvement
- Carer involvement
- Advocacy
- Assessment, management, professional practice
- Referral, assessment, risk assessment
- Medical examination
- Police involvement
- Emergencies
- Adult protection conferences
- Care management plan / protection plans
- Specialist and legal advice and assistance
- Care management, risk monitoring and review
- Recording, case records, significant event histories and meeting minutes
- case transfers
- Use of services (support service [day services and care at home], housing support service, care home service)

**Relations between agencies**

- Information sharing
- Clarity about roles and responsibilities, quality of communication, information sharing and co-ordination, dispute resolution
- Council adults, criminal justice, children/families, housing, legal
- NHS acute hospital including A&E, community health including GPs
- Police protection units, community
- Care Commission
- Service Providers

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<sup>9</sup> National Outcomes Framework

<sup>10</sup> National Outcomes Framework

- All including ‘out of hours’ services

**Management of services and staff**

- Decision making
- Provision of qualified skilled staff and support resources
- Prioritisation of caseloads
- Supervision and support – supervision records
- Monitoring of performance
- Complaints monitoring and major incident reviews
- Senior manager review of individual cases in defined circumstances
- Management of poor practice and disciplinary proceedings