Adult Support & Protection Act:
A GUIDE FOR NHS STAFF

PSYCHOLOGICAL HARM
SEXUAL HARM
Neglect
FINANCIAL HARM
physical harm

Act Against Harm
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FOREWORD

People, who use NHS services, by virtue of their circumstances and needs, may be vulnerable to a range of possible harm. Other legislation covering mental health and incapable adults provided protection for defined groups of vulnerable adults. The fact that all adults in Scotland now have added protection under the Adult Support and Protection (Scotland) Act 2007, (subsequently referred to as the Act) is therefore very welcome.

As NHS staff we are in a privileged position of caring for people when they are at their most vulnerable. Most adults at risk of harm e.g. older people and those with dementia, people with physical or learning disabilities and impairments or mental health problems, manage their lives without experiencing harm. Often this is with the assistance of caring relatives, friends, NHS staff or social care providers or volunteers. However for some, dependence on another may result in conflict, exploitation or abuse, staff must be vigilant and observant.

For the Act and the accompanying procedural changes to have a real impact on protecting the most vulnerable NHS staff and other service providers need to know and understand both the spirit and the detail of the new legislation. Everyone in NHS Greater Glasgow and Clyde, who has contact with patients, needs to know how the Act works and what it requires of them.

In summary NHS staff now have not only have a moral and professional duty of care to patients but a legal duty to report, to the local authority, any case where they know or believe that a person is an adult at risk, and that protection is needed. NHS staff must co-operate with a Council making inquiries and with each other where that would assist the Council. This co-operation includes providing to an authorised Council Officer, when requested, information and health records.
I am confident that this booklet, our e-learning module and other training initiatives which we are utilising will equip NHS Greater Glasgow and Clyde staff to carry out their legal duties in relation to the Act.

Jane Grant

Chief Executive

NHS Greater Glasgow and Clyde.
INTRODUCTION

The aim of this booklet is to provide a brief and “easy to read” guide to the Adult Support and Protection (Scotland) Act 2007 for a general audience of NHS staff and NHS contractors, such as General Medical and Dental Practitioners, working in NHS Greater Glasgow and Clyde. The Act, aims to ensure that “adults at risk” of harm under the terms of the Act, receive protection and support. While the “lead agency” in terms of the Act is the local authority, it is essential that health workers are aware of their obligations under this legislation.

For those requiring a more detailed practice tool in their day to day work with “at risk” adults, the Guidance & Procedures for Adults at Risk of Harm endorsed by the local Adult Protection Committees can be accessed on the Board’s StaffNet in the Mental Health Partnership’s legislation pages i.e. Partnership/MHP/Legislation/Adult Support and Protection Act.
SECTION ONE

The Adult Support and Protection (Scotland) Act 2007 provides ways to offer support and protection to certain adults who may be at risk of harm or neglect. “Adults” means a person/s aged 16 years or over who is not subject to childcare legislation.

- The Act Provides greater protection to those thought or known to be at risk of harm through new powers to investigate and intervene in situations where concern exists;
- Places a duty on specified organisations, including the NHS, to co-operate in investigating suspected or actual harm;
- Places a duty on Councils to make inquiries and investigations to establish whether or not further action is required to stop or prevent harm occurring;
- Introduces a range of protection orders including assessment orders, removal orders and banning orders; and
- Provides a legislative framework for the establishment of Adult Protection Committees across Scotland.

Background

A number of reports informed the framing of this Act, one being the 2003 Inquiry into a case in the Scottish Borders when three men were found guilty of the assault, both physical and sexual, of a women considered to have learning difficulties. The report highlighted the need for procedures and guidance for interagency responses to adults at risk of abuse to be in place. It emphasised that the protection of adults at risk is the responsibility of all the statutory agencies, voluntary and private providers and that good communication is key to prevention. Both the Mental Welfare Commission for Scotland and the Social Work Inspectorate of the Scottish Executive recommended the need for legislation.

There was already in place legislation designed to support and protect adults at risk of harm such as the Adult with Incapacity (Scotland) Act 2000 and the Mental Health (Care and Treatment) (Scotland) Act 2003. The addition of the Adult Support and Protection (Scotland)
Act 2007 now means there is a concise legal framework to facilitate further the protection of adults at risk of harm through the new measures contained in the Act.

**Basic Principles of the Act and The Values Underpinning It**

The Adult Support and Protection Act 2007 (Part 1) determines that intervention must take place only where the **Benefit** to the adult could not otherwise have been provided and that the intervention is the **Least Restrictive** option consistent with achieving the object of the intervention.

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

**These are:**

- The past and present wishes and feelings of the adult where they are relevant to the exercise of the function;
- The views of other significant individuals, such as the adult’s nearest relative; their primary carer, guardian, attorney; or any other person with an interest in the adult’s well-being or property, must be taken into account if relevant;
- The importance of the adult participating as fully as possible in any decisions.
- 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) are taken fully into account.
SECTION TWO

Definition of “Adult at Risk”

The 2007 Act refers throughout to “adult” and means a person aged 16 or over. If 16 to 17 year old and subject to child care legislation consideration should be given to Child Protection Procedures.

The Three Point Test:

“Adults at risk” are defined in the Act as adults who:

• are unable to safeguard their own well-being, property, rights or other interest;
• 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 adults who are not so affected.

The presence of a particular condition does not automatically mean an adult is an “adult at risk”. Someone could have a disability but be able to safeguard their well-being etc. It is important to stress that all three elements of this definition must be met, or that there are grounds for believing all three elements may be met, for an adult to be an “adult at risk” and for interventions to take place under the ASP Act. It is the whole of an adult’s particular circumstances which can combine to make them more vulnerable to harm than others.
SECTION THREE

Definition of harm

An adult is at “Risk of Harm” if-

- another person’s conduct is causing (or is likely to cause) the adult to be harmed,

or

- the adult is engaging (or is likely to engage) in conduct which causes (or is likely to cause) self-harm.

Harm includes all harmful conduct and, in particular, includes:

1. Conduct which causes physical harm;
2. Conduct which causes psychological harm (e.g. By causing fear, alarm or distress);
3. Unlawful conduct which appropriates or adversely affects property, rights or interests (e.g. Theft, fraud, embezzlement or extortion);
4. Conduct which causes self-harm.
Signs of Harm

Possible signs of harm include:

- Unexplained or unusual injuries;
- A delay in seeking treatment for injuries or illness;
- Sudden increase in confusion;
- Unexplained deterioration of health or appearance;
- People being anxious or afraid;
- Misuse of medication, e.g. Not giving medicines properly;
- Unexplained changes of behaviour, e.g. Becoming anxious and withdrawn, fear of another person;
- Pressure by family or professional(s) to have someone moved into or taken out of care
- Hostile or unkind behaviour by a person;
- Unexplained debt, not paying bills for services;
- Not having their basic needs met, such as adequate food or heating;
- Not being provided with adequate information about their rights or entitlements, or being misinformed;
- Prejudicial actions or remarks to the adult at risk about age, gender, disability, race, colour, sexual orientation or religious beliefs;
- Another person using the adult’s possessions, bank account or property without his or her informed consent; and
- The adult at risk not receiving appropriate care, which would protect them from harm
Who Can Cause Harm?

Anyone can cause harm. For example it could be:

- Member of staff in a health/care setting;
- Carer;
- Relative;
- Spouse or partner;
- Friend or neighbour;
- Volunteer; or
- Stranger
SECTION FOUR

Where Healthcare Staff Have Initial Concerns
Your Duty to Report and How to Report

All Health Board staff have a duty to report suspected or actual harm to an “adult at risk” immediately to their line manager or supervisor. If your line manager or supervisor is not available do not wait for them to return from leave. Notify the next person in the chain of command.

In addition, there is a legal duty to report any concerns to Council Social Work Services, if it’s known or believed that a person is an “adult at risk” and that proactive action is needed. Where a criminal offence has or may have been committed the Police must be notified. Where the alleged abuse occurred or is occurring within an establishment registered the Care Commission they must be notified.

If possible you should discuss with the adult at risk their view of the situation. Inform them that you will report concerns to your line manager and that these will be recorded. It is preferable to obtain consent to take further action from the adult concerned but, even without the consent of the adult, you will be required to take further action as you have a legal and professional duty to report.

The time frame for initial referral to Social Work Services is within 1 normal working day from the time of adult at risk consents or having evidence the person lacks or may lack capacity in recognising their vulnerability or there is an issue about the vital interests or protection of the person and you” know or believe that a person is an adult at risk and that protective action is needed”

Reports should be submitted to the local Social Work Services office first by phone and then followed up using the referral form AP1 which can be found at the NHSGG&C website.

All referrals must be recorded on a Datix Incident Form.

By reporting harm you:

- Exercise your duty of care
- Help stop the abuse
- Ensure that those involved get supported
- Stop any potential risk to others.
- Support the person being abused who may be unable to report the matter themselves.
- Meet your legal duty under the Act.

CONTACT INFORMATION

Contact in the first instance must by telephone, the AP 1 is best sent by email to the secure addresses below or handed to social work directly. The contact details for local authorities within the boundaries of NHS Greater Glasgow and Clyde are detailed below.

**Glasgow City Council**

socialcaredirect@glasgow.gov.uk

Tel: 0141 287 0555  Fax: 0141 276 1201
Out of Hours: 0300 343 1505

**Renfrewshire Council**

Adultservicesreferral.sw@renfrewshire.gcsx.gov.uk

Tel: 0300 300 1199  Fax: 0141 886 3460
Out of Hours: 0300 343 1505
Text/SMS: 07958 010325

**East Renfrewshire Council**

adultprotection@eastrenfrewshire.gcsx.gov.uk

Tel: 0141 451 0755
Out of Hours: 0300 343 1505
If the person is in immediate physical danger then a direct 999 call should be made to request urgent assistance or advice from Police. If it is suspected that a crime has been committed then in the case of physical or sexual harm, immediate referral to the Police is essential. This is to ensure that the person receives appropriate medical attention and that vital evidence is not lost.

The Police will make any subsequent decisions with regard to possible criminal proceedings under the legislation.

Social Work services will make any subsequent decisions with regard to protection, care and support under the legislation available to them.
Where there are grounds for concerns that a person could be at risk of harm the key tasks for NHS personnel are: observing, reporting, recording, supporting the individual at risk and co-operating with the local authority’s designated Council Officer. It is not your responsibility to:

1. Investigate suspected or alleged harm.
2. Evaluate the grounds for concern or
3. Seek proof before making a referral to the Social Work Department.

Observing and Supporting.

Observing is critically important to ensure that an individual at risk is guarded against any harmful behaviour. All staff should respond to disclosure in an appropriate and sensitive manner as possible. You should listen attentively and try to put the individual at ease, stay calm, show support, make the person feel safe and secure and importantly take notes. It is also important to preserve any evidence of alleged harm having occurred. The individual at risk should be advised what the staff member will do and most importantly action should be taken immediately with a report being provided to the line manager.

It is also vitally important to consider the needs of any child who may reside or have contact with adult(s) suspected of any form of harmful behaviour and to consider if Child Protection Procedures should be followed.

Communication Guidance

- Stay calm. Try not to show shock, anger or upset.
- Do not dismiss the concern or leave to others, ITS YOUR JOB TO ACT.
- Listen carefully
• Ask simple questions:
  » What happened
  » When was this
  » Who was there
  » Where was this
  » **NEVER ASK WHY**

• Reassure the person you will try and help but don’t promise anything.

• Be honest, inform the person that information cannot be given in confidence and you must advise your manager where harm is suspected.

• Write down all details, immediately after.

**Recording**

An Incident report should be completed. Information should be recorded promptly and accurately, detailing what has been said in the precise words used. When making a referral by telephone staff must:

• Complete an **AP1 form** and forward this to the relevant local authority by email.

• Record the referral on **Datix**.

• Complete any clinical notes. (These notes may be used as evidence therefore accuracy and detail is important)

Confidentiality should be respected while remembering that there is a legal duty to report concerns which will override confidentiality.

It is important to record only information relevant and necessary to the allegation or incident such as times and to record whether information has been visually observed or has been given verbally, when recording it is best to use the adults words in the notes,
Duty to Co-Operate

The Act sets out statutory duties of co-operation for certain public bodies and their office-holders i.e. Councils; NHS Boards; the Police; the Care Commission; the Mental Welfare Commission; and the Public Guardian. This means that NHS staff must:

- Report the facts and circumstances to the local Council when they know or believe that someone is an adult at risk and that action is needed to protect that adult from harm; and
- Co-operate with a Council making inquiries and each other to enable or assist the council making inquiries.

In addition the Act makes it a legal duty that NHS staff must comply with requests to provide information and records. Health records may be sought and obtained by a Council Officer but a health professional will need to inspect and interpret health records.

Health professionals holding records must act within their professional guidance.

Medical Examinations

A doctor, nurse or midwife may be asked to conduct a medical examination in private either during a visit under the Act or elsewhere under an assessment order. They may be asked by a Council Officer to examine health records which are defined as:

- Relating to an individual’s physical and mental health;
- Made by or on behalf of a health professional.

It is an offence to refuse access for the examination of records by the council officer, or a person authorised by the council officer, without reasonable excuse.
Where the adult does not have capacity to consent, the Council should contact the Office of the Public Guardian to ascertain whether the person has completed a welfare power of attorney with the relevant powers. If not it would be expected that the medical practitioner would conduct an assessment or examination under other legislation e.g. adults with incapacity, mental health, emergency situations.
SECTION FIVE

Inquiries and Investigations: Statutory Duties

Inquiries

Under the Act, Councils have a statutory duty to make inquiries about the well-being, property or financial affairs if they know or believe that the person is an adult at risk and that they might need to intervene to take protective actions. Councils also have a duty to consider the provision of appropriate services to the adult concerned, including, in particular, independent advocacy.

Investigations

Council Officers have the power to carry out investigations through visits and interviews and through examination of records (except health records).

Health professionals have the power to carry out medical examinations as part of investigations and to examine health records.

Local authorities may also request a GP or other health professional to provide a report about the adult relating to the circumstances leading to or relevant to its inquiries.

Adults’ Rights

Adults have the right to refuse to be interviewed, to answer any questions and to refuse to be medically examined.

They must be told of these rights, during a visit and also when under an assessment order before an interview or medical examination starts.

Protection Orders

The Act introduces three types of protection orders: assessment orders; removal orders; and banning orders or temporary banning orders. Decisions about any protection order must reflect the principles of the Act.
An **assessment order** allows for a Council Officer to conduct an interview in private and/or a health professional to conduct a medical examination in private. This may be required to determine whether the person is an adult at risk and if further action is required to protect him/her.

A **removal order** permits an adult, who is likely to be seriously harmed, if they are not moved, to be moved to a suitable place for up to **7 days**.

A **warrant for entry** must also be granted when either of these orders is made.

A **banning order**, or **temporary banning order**, bans the subject of the order from being in a specified place, or subject to specified conditions, for up to **six months**. The Sheriff can also attach a power of arrest.

Protection orders should not be granted where the adult refuses to consent. However the sheriff can ignore the refusal where it is believed the adult has been unduly pressurised to refuse consent, and there are no other steps which could reasonably be taken with the adult's consent to protect the adult from the harm.

**Adult Protection Committees**

Councils have a duty to establish an Adult Protection Committee (APC), with the following functions:

- Review procedures and practices.
- Give information or advice, or make proposals on the safeguarding of adults at risk.
- Make, or assist and encourage the development of knowledge and skills;
and
- Improve co-operation between the public bodies concerned.
Membership of APCs must include representatives of the Council, the NHS Board and the Chief Constable of the police force in the council area. Membership may also include the Care Commission. These bodies and also the Mental Welfare Commission and the Public Guardian must provide any information reasonably required by the APC in carrying out its functions.

The Convener must be independent of the Council and must prepare a biennial report on the work of the Committee. Scottish Ministers and others must be sent a copy of the report.

**Offences**

The Act provides that it is an offence to prevent or obstruct any person from doing anything they are authorised or entitled to do under the Act. It is also an offence to refuse, without reasonable excuse, to comply with a request to provide information made under the provisions for the examination of records. This offence does not apply to adults at risk.

Where an offence, for example obstruction, is committed by a "relevant person" e.g. a company or similar body, and it can be proved that someone in control of the company knew about the offence or it was attributable to their neglect, it is possible to take action against the person in control, not only the company or body itself.

**Code of Practice**

Anyone authorised or required to perform any functions under the Act, including health professionals must have regard to the code of practice issued by the Scottish Government.
APPENDIX 1

Links to Issues and Agencies referenced in Adult support and Protection Act Guide.

Adult Support and Protection (Scotland) Act 2007

Scottish Government Adult Support and Protection webpage
www.gov.scot/Topics/Health/Support-Social-Care/Adult-Support-Protection

Care Inspectorate
www.careinspectorate.com/

Learnpro

NHSGG&C Adult Support and Protection

Adult Support and Protection (Scotland) Act 2007 – Code of Practice
www.scotland.gov.uk/Publications/2008/07/17115228/0

Adults with Incapacity
www.scotland.gov.uk/Topics/Justice/Civil/awi

Adults with Incapacity – Communication and Assessing Capacity
www.gov.scot/Publications/2008/02/01151101/0

Child Protection
www.gov.scot/Publications/2004/04/19082/34410

Mental Health (Care and Treatment) (Scotland) Act 2003
Office of Information Commissioner’s
https://ico.org.uk/
Office of the Public Guardian
www.publicguardian-scotland.gov.uk/
Scottish Independent Advocacy Alliance
www.siaa.org.uk/
The Mental Welfare Commission (MWC) for Scotland
www.mwcscot.org.uk
Resources for Victims of Forced Marriage
National Domestic Abuse Helpline 0800 027 1234
Hemat Gryffe Women’s Aid
www.hematgryffe.org.uk/
www.mensadvicehelpline.org.uk
Visit www.equality.scot.nhs.uk for more information on forced marriage and related issues.
## Glossary

### Introduction

This glossary is for illustrative purposes only. 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.

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<td>Adult (Section 53)</td>
<td>An individual aged 16 or over.</td>
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<td>Adult Protection Committee (Section 42) (APC)</td>
<td>A committee established by a council to safeguard adults at risk in its area.</td>
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<td>Assessment Order (Section 11)</td>
<td>Order granted by a sheriff to help the Council to decide whether the person is an adult at risk and, if so, whether it needs to do anything to protect the person from harm.</td>
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<tr>
<td>Banning Order (Section 19)</td>
<td>Order granted by a sheriff to ban a person from being in a specified place or area. The order may have specified conditions attached. The banned person can be any age, including a child.</td>
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<tr>
<td>Care Commission (Section 53)</td>
<td>The Scottish Commission for the Regulation of Care</td>
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<tr>
<td>Child (Section 53)</td>
<td>A person under the age of 16</td>
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Conduct  
(Section 53)  
Includes neglect and other failures to act

Council  
(Section 53)  
A Council constituted under the Local Government (Scotland) Act 1994. References to a Council in relation to any person known or believed to be an adult at risk mean the Council for the area where the person is currently located.

Council Officer  
(Section 53)  
An individual appointed by a Council under Section 64 of the Local Government (Scotland) Act 1973 (c.65) but the term must, where relevant, also be interpreted in accordance with any order made under Section 52 (1).

Harm  
(Section 53)  
Includes all harmful conduct. This includes conduct that causes physical or psychological harm, unlawful conduct that adversely affects property rights or interests, possessions, conduct that causes self harm.

Health Professional  
(Section 52(2) and 53)  
The person is a doctor, nurse, midwife or other type of individual prescribed by the Scottish Ministers.
An inquiry is any process that has the aim of gathering knowledge and information. This could include inquiries of any relevant party and the cooperation of the public bodies and office-holders under Section 5 of the Act. The purpose of making inquiries is to ascertain whether adults are at risk of harm and whether the Council may need to intervene or provide any support or assistance to the adult or any carer.

An order granted by a sheriff authorising a Council Officer or Council nominee to move a named person to a specified place within 72 hours of the order being made and the Council to take reasonable steps to protect the moved person from harm. The order can be for any specified period up to 7 days.

A warrant that authorises a Council Officer to visit any specified place under Section 7 or 16 together with a constable. The constable may use reasonable force as an absolute last resort to fulfil the object of the visit.