

# Supporting and Protecting Adults From Harm

Community Planning Board  
10<sup>th</sup> November 2011

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# Aims of the session

- Give an overview of the legislation and the expectations of all staff who may come into contact with "adults at risk"
- Provide an overview of the role and function of the Adult Protection Unit, Moray.



# Legislation Drivers

## National Reports

- The 1997 Scottish Law Commission 'Report on Vulnerable Adults' recommended new legislation.

## UK context

- In England "*No Secrets*" Guidance was introduced in 1998.
- In Wales "*In Safe Hands*" was introduced in 2000.

## Inquiries

- Following the 2003 Inquiry into a case in the Scottish Borders, both the Mental Welfare Commission for Scotland and the Social Work Services Inspectorate of the Scottish Executive recommended the need for new legislation.



# The Adult Support and Protection (Scotland) Act 2007

The Adult Support and Protection (Scotland) Act 2007, which was passed by the Scottish Parliament in February 2007, provides powers and duties in relation to protecting adults at risk of harm. Part 1 of the Act went live in October 2008.



# Aims of the Act

Part 1 of the Act introduces new measures to identify and protect individuals who fall into the category of 'adults at risk of harm'.

It is also intended to fill gaps left by:

- The Adults with Incapacity (Scotland) Act 2000, which provides means to protect those with incapacity, for example through financial and welfare guardianship;

and

- The Mental Health (Care & Treatment) (Scotland) Act 2003, which provides powers and duties in relation to people with mental disorder, including those who are subject to ill-treatment or neglect.



# DUTIES

## Inquiries

Councils have a **statutory duty to make inquiries** about a person's 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 action.

## 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**.
- **Adults** have the right not to answer any questions and to refuse to be medically examined, and must be told of these rights.

Councils have a duty to consider the provision of appropriate services to the adult, including, in particular, **independent advocacy**.



# Duties of Cooperation

- The ASP Act sets out statutory duties of co-operation for certain public bodies and their officeholders: Councils; NHS services; the Police; Care Inspectorate; the Mental Welfare Commission; and Office of the Public Guardian.
- Members and staff of all of these bodies are subject to statutory duties to:
  - 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;
  - Co-operate with the council and each other to enable or assist the council in making enquiries.



# Protection Orders

- The ASP Act introduced three Protection Orders:
- **Assessment Order**
  - allows for an adult at risk of serious harm to be taken to a more suitable place in order to conduct a private interview or private medical examination.
- **Removal Order**
  - permits the specified person to be moved from any place for up to 7 days to protect them from further harm.
- **Banning Order (and Temporary Banning Order);**
  - bans the subject of the Order from being in a specified place, or moving any specified thing from the specified place (Sheriff can add Power of Arrest).
- **A Warrant For Entry** must also be granted when these Orders are made.
- Decisions about Protection Orders must reflect the principles of the ASP Act.
- Protection Orders should not be granted without consent of adult - but refusal to consent can be ignored 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.



# Offence of Obstruction

The ASP 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 was responsible for the offence because of their neglect; it is possible to take action against the person in control, not only the company or body itself.

A "relevant person" for the purposes of this section means:

- a director, manager, secretary or other similar officer of the body;
- a member, where the affairs of the body are managed by its members;
- an officer or member of the council;
- a partner in a Scottish partnership;
- a person who is concerned in the management or control of an unincorporated association other than a Scottish partnership.



# Adult Protection Committees

Councils have a duty to establish Adult Protection Committees (APCs). Their main functions are to:

- review procedures and practices;
- give information or advice, or make proposals;
- make, or assist and encourage the development of knowledge and skills; and
- improve cooperation between public bodies concerned.

Membership of APC's **must** include representatives of the Council, the NHS Board and the Chief Constable of the police force in the council area and **may** include a representative of the Care Inspectorate.

The chair of the committee is independent of the above bodies



# Moray Adult Protection Unit

based at Spynie Hospital  
part of The Moray Council  
Community Care Service, managed by  
Jane Mackie  
Head of Community Care.



# Moray Adult Protection Unit

Moray Adult Protection Unit consists of:

- Adult Protection Consultant Practitioner/Lead Officer
- Advanced Practitioner Adult Protection
- Adult Protection Administrator
- Adult Protection Training Officer
- They are part of The Moray Council Community Care Service
- We have 50+ Council Officers based in community services

Officers work closely with the police, health, care commission and others.



# Moray Adult Protection Unit Responsibilities

- Responsible on behalf of the council for overseeing any adult protection concerns
- Screening of referrals
- Consultation services
- Support joint working
- Offer training in adult protection
- Deal with adult protection cases
- Organise, coordinate and chair adult protection case conferences
- Support council officers in their duty to inquire/investigate
- Monitor audit and review quality of service



# Who is an Adult at Risk?

The three point test:

“Adults at risk” are adults (over the age of 16) who:

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

Section 3 (1) ASP 2007



IF YOU REQUIRE ADVICE ON AN ADULT SUPPORT and  
PROTECTION CONCERN

**The Moray Council: 0300 123 0897**  
Email: [adultprotection@moray.gov.uk](mailto:adultprotection@moray.gov.uk)



# Questions

