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SCOTLAND**

Keeping people safe

**POILEAS ALBA**

**Adult Support and Protection**

**Standard Operating Procedure**

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<b>Owning Department</b>	Specialist Crime Division
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1.01	Appendix E updated – Social Work Referral Form replaced by entry on the Interim Vulnerable Persons Database (iVPD).	24/03/2014
1.02	Section 5.5 - Incorporation of Victim and Witnesses (Scotland) Act 2014, Section 8 – Victim of specific offences afforded opportunity to specify gender of interviewing officer and iVPD system entries updated to incorporate change. Appendix 'I' updated with legislation.	15/08/2014
2.00	No change to content. SOP placed on new template in line with current governance process.	12/07/2017
3.00	SOP amended in line with the Criminal Justice (Scotland) Act 2016. Other minor changes made relating to responsibilities of Concern Hub and those involved is Adult Support and Protection processes.	25/01/2018
4.00	Updated to reflect changes in data protection legislation.	25/05/2018

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### 1. Purpose

- 1.1 All Adult Protection concerns reported to the Police Service of Scotland (hereinafter referred to as 'Police Scotland') will be thoroughly investigated. In addition Police Scotland is committed to working in partnership with other agencies, sharing relevant information to protect adults and providing support and intervention when required.
- 1.2 Legislation exists in Scotland to ensure adults are protected from harm. The Adults with Incapacity (Scotland) Act 2000, provides the means to protect those with incapacity, through financial and welfare guardianship, while the Mental Health (Care and Treatment) (Scotland) Act 2003 provides powers and duties in relation to people with mental disorder.
- 1.3 The Adult Support and Protection (Scotland) Act 2007 (ASP), hereinafter referred to as the Act introduced additional measures which place a duty on **councils** to make enquiries into the circumstances of adults at risk and to act with partners to protect them. It also places a statutory duty on other bodies, including the police, to refer any adult who may be at risk of harm and to cooperate with council inquiries, in line with local policies and procedures.
- 1.4 In practice this will involve accurately recording information, working effectively with key partners, sharing relevant information and ultimately supporting and protecting adults at risk of harm. It is not a Police function to provide support plans for Adults at Risk of Harm, although the Police will play a key role in the protecting adults at risk as part of a formal action plan.
- 1.5 The purpose of this Standard Operating Procedure (SOP) is to ensure that all Police Officers and members of Police Staff within Police Scotland are fully aware of their own individual roles and responsibilities in relation to Adult Protection.
- 1.6 Further guidance can also be obtained from the Scottish Government Adult Support and Protection (Scotland) Act 2007 - Code of Practice.
- 1.7 Police Scotland staff will also deal with adults who are not covered by the Act, but who are nevertheless vulnerable in that they require support and assistance from partner agencies. Adult Wellbeing concerns are shared by way of the Interim Vulnerable Persons Database (iVPD) and Divisional Concern Hubs.

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### 2. Definitions

2.1 The following terms are outlined in the Act and referred to throughout this SOP.

2.2 **'Adults at Risk'** are adults (aged 16 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 adults who are not so affected.

**Note:** **All three elements** above must be met to be an **'Adult at Risk'**. The presence of a particular condition alone does not constitute this.

2.3 It may not always be possible to determine if indeed an individual fits this specific definition. For the avoidance of doubt where **any person is suspected to be an Adult at Risk** then they should be treated as such until their status is deemed otherwise by Council Adult Protection professionals.

2.4 Where the adult does not meet the three point test in terms of the legislation, but is otherwise vulnerable and in need of support and protection, the action to be taken will be determined by the facts and circumstances presented. Police Officers should take appropriate action to protect them if they are at risk or vulnerable to abuse, criminality or exploitation.

2.5 Where the adult is not at 'Risk of Harm' but is a 'vulnerable person', considerations for support are shared through the iVPD and Divisional Concern Hubs.

2.6 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.

**Note:** This includes neglect or omission of care either by another person with carer responsibility or the adult themselves.

2.7 **'Harm'** includes all harmful conduct and, in particular, includes:

- Conduct which causes physical harm;
- Conduct which causes psychological harm (for example: by causing fear, alarm or distress);

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- Unlawful conduct which appropriates or adversely affects property, rights or interests (e.g. theft, fraud, embezzlement or extortion);  
and
- Conduct which causes self-harm.

**Note:** This list is not exhaustive and no category of harm is excluded simply because it is not explicitly listed. In general terms, behaviours that constitute 'harm' to others can be physical (including neglect), emotional, financial, sexual, or a combination of these. What constitutes harm will be determined on a case by case basis.

- 2.8 A **Vulnerable Person** could be someone who may not have a medical diagnosis confirming a physical or mental condition, however, their behaviour or position at a particular time can place them in vulnerable situations. They may not fit the three point test, however, if they were to receive additional support from the Council or third sector organisations, they would be able to safeguard themselves. This may include adults who misuse substances, self-harm or are disadvantaged through circumstances.
- 2.9 A **Council Officer** is an individual appointed by a Council under Section 64 of the Local Government (Scotland) Act 1973, but the term must, where relevant, also be interpreted in accordance with any order made under Section 52 (1) of the Act.
- 2.10 A **Council Nominee** is an individual who is not a Council Officer under Section 52 of the Act, nominated by the Council to either interview the adult under an Assessment Order or to move the adult under a Removal Order.
- 2.11 A **Health Professional** includes a Doctor, a Nurse, a Midwife or other type of individual prescribed by the Scottish Ministers.

### 3. Principles

- 3.1 The overarching principle of the Adult Support and Protection (Scotland) Act 2007 is that any intervention in an adult's affairs should provide benefit to the adult and be the least restrictive option of those available to meet the purpose of the intervention.
- 3.2 Any public body (including the Police) or office holder performing a function under the Act, must also take into account:
- The present and past wishes and feelings of the adult, where relevant. Efforts must be made to assist and facilitate communication using whatever method is appropriate to the needs of the individual;
  - The views of the adult's nearest relative, primary carer and any guardian or attorney and any other person who has an interest in the adult's wellbeing or property, so far as it is practical and reasonable to do so;

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- The importance of the adult participating as fully as possible. Where the adult needs help to communicate (for example, an interpreter – including British Sign Language – or information in an alternative language / format or an Appropriate Adult or other communication support) then these needs should be considered. It would be best practice to ensure that, wherever practicable, the adult is kept fully informed at every stage of the process. (Please refer to the Interpreting and Translating Services SOP);
- The adult's abilities, background and characteristics. This includes the adult's age, sex, sexual orientation, religious persuasion, racial origin, ethnic group and cultural and linguistic heritage.
- There is a need to ensure that the adult is not treated any less favourably, without justification, than a person who is not an Adult at Risk would be treated in a comparable situation.

### **4. Adult Protection Committees**

- 4.1. The role of Adult Protection Committees (APCs) is to take an overview of adult protection activity and to make recommendations to make sure that this activity is effective. APCs take account of the views of service users, families, carer representatives and local voluntary and private sectors.
- 4.2. The Chief Constable of Police Scotland and the Chief Executives of Health Boards and Councils, collectively known as Chief Officers' Groups (COGs), have responsibility for ensuring that their agencies, individually and collectively, work together to protect adults at risk as effectively as possible. COGs are also responsible for maximising the involvement of other key agencies, for example Crown Office Procurator Fiscal Service (COPFS) and the voluntary sector. Some Local Policing Commanders have been delegated responsibility on behalf of the Chief Constable to represent Police Scotland at COGs.
- 4.3. A Local Police Commander or their delegated representative will attend local APCs. This ensures that the Police representatives on APCs have sufficient authority to influence decision making, resource allocation and funding arrangements.
- 4.4. When it is necessary for a delegated representative to attend, it is imperative that the highest ranking Officer, available to attend, does so.
- 4.5. Each Council must appoint an independent convener and other members of the APC.
- 4.6. APCs must take into account guidance issued by the Scottish Government in relation to their functions.
- 4.7. The Act directs that each Council must establish an APC to carry out the following functions in relation to the safeguarding of adults at risk present in the Council's area:

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- Produce Inter-Agency guidelines and procedures, which fully document local systems in place for information sharing and protecting adults at risk;
  - Review the procedures and practices of the public bodies/key partners (including, in particular, any such procedures and practices which involve co-operation between the Council and other public bodies / key partners);
  - Give information or advice, or make proposals, to any public body / key partner on the exercise of their functions in terms of the Act; and
  - Make/assist in arrangements for improving the skills and knowledge of Officers or employees.
- 4.8. Police Scotland has a duty to provide local APCs with any relevant information which the committee may reasonably require for the purposes of performing committee functions.

### **5. Police Roles and Responsibilities**

- 5.1. It is essential that every Police Officer and member of Police Staff who has contact with members of the public is fully aware of their own individual role and responsibilities in relation to Adult Support and Protection.
- 5.2. The protection of Adults at Risk is the responsibility of each and every employee of Police Scotland. There are a number of specialists deployed across the Force who can provide advice and assistance when required.

#### **5.3 Service Centre**

- 5.3.1 The Service Centres are responsible for the initial gathering, recording and management of information reported to the Police from members of the public or outside agencies by telephone.

#### **5.4 Area Control Room**

- 5.4.1 The Area Control Room will:
- Grade any incidents and thereafter dispatch and manage resources deployed to an Adult Protection incident;
  - Notify a Supervisor as appropriate to provide Supervisory oversight of the investigation, enquiry and referral.
- 5.4.2 Some initial reporting of concerns relating to Adults at Risk may also come in via the '999' system.

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### 5.5 Enquiry Officer

5.5.1 The enquiry officer will:

- Raise, update and apply appropriate Adult at Risk disposal codes on Command and Control incidents;
- Ensure the incident is fully investigated and the necessary paperwork as has been completed.

5.5.2 In terms of Section 8 of the Victims and Witnesses (Scotland) Act 2014 a person who is, or appears to be, the victim of (offences listed below) must be afforded the opportunity to specify the gender of the interviewing officer (deemed to be the officer noting a full statement).

- An offence listed in any of paragraphs 36 to 59 ZL of Schedule 3 to the Sexual Offences Act 2003;
- An offence under Section 22 of the Criminal Justice (Scotland) Act 2003 (traffic in prostitution etc.);
- An offence under Section 4 of the Asylum and Immigration Act (Treatment of Claimants, etc.) Act 2004 (trafficking people for exploitation);
- An offence, the commission of which involves Domestic Abuse;
- Stalking;
- Honour Based Violence, Female Genital Mutilation and Forced Marriage.

5.5.3 The victim's response will be recorded in the officer's police issue notebook or PDA. In **all** cases, a vulnerable persons report **must** be created and processed on the iVPD. It will be the responsibility of supervisory officers to monitor any decisions made in relation to the use of the statutory exemptions (if complying with it (the request) would be likely to prejudice a criminal investigation, or it would not be reasonably practicable to do so) and satisfy themselves that in all cases it was appropriate. (Further information and guidance can be found on the Victims and Witnesses (Scotland) Act 2014 Guidance Flowchart, hosted on the Force Intranet.

- Ensure that the interim Vulnerable Persons Database (iVPD) incident/Concern Report/referral has been created and completed; and
- Submit Crime Reports, SID logs and Standard Prosecution Reports (SPR) as appropriate.

### 5.6 Enquiry Officer's Supervisor

5.6.1 The enquiry officer's supervisor will:

- Ensure the VPD incident/Concern Report/referral is updated and submitted accurately and timeously as per local recording procedures;
- Provide oversight of subsequent investigation, enquiry and referral;

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- Ensure that Crime Report, SID logs and SPRs are submitted as appropriate;
- check the quality of reports and enquiries prior to completion

### **5.7 Concern Hub**

5.7.1 The functionality of a Concern Hub is to provide:

- A swifter holistic assessment of wellbeing concerns, through accurate and proportionate research and decision-making by trained staff and swifter sharing of relevant information to partners
- Appropriate, relevant and consistent research reports in response to requests from partners, both internal and external
- early and effective intervention and prevention presenting the best opportunities for a more positive outcome to keep people safe.

5.7.2 The Concern Hub therefore has a primary role in identifying and sharing information about children and adults who may have wellbeing needs that require intervention or support from statutory partners.

5.7.3 The fundamental purpose of the Concern Hub is to facilitate information sharing within the legal parameters through legislation and the Data Protection Act 2018. A significant part of the work entails the triage, research, assessment and processing of Concern Reports. Proportionate research is required to inform decision-making and assist in the appropriate disposal or distribution of information.

5.7.4 To ensure a standardised consistent approach to managing concern reports and sharing information, a business process has been developed, clearly outlining the three separate stages through which a concern form will travel.

### **5.8 Local Area Commander**

5.8.1 The Local Area Commander will:

- Have overall responsibility for the supervision, audit and monitoring of Adults at Risk incidents;
- Ensure front-line Officers respond to operational demands on behalf of the respective Local Police Commander;
- Identify repeat victims/offenders and direct appropriate responses;
- Provide an accountable management structure, both internally and externally;
- Represent Police Scotland at strategic levels with multi-agency partners and Scottish Government;
- Provide a recognised senior lead on Adult Protection;
- Nominate an Officer to attend Adult Protection Case Conferences. This Officer should be chosen after having considered the following:
  - Experience and knowledge of the case;

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- Knowledge of any risk assessment;
- Ability to make decisions;
- Ability to fulfil any tasks;
- and
- Suitably trained.

## 6. Process

### 6.1 Incident Management – Reporting

6.1.1 Information in respect of Adults at Risk will come to the attention of the Police from a variety of sources including:

**Police Incident**      **Highlighted during the course of operational duties** e.g. where the Police identify an Adult at Risk as a result of dealing with a crime / offence or any other operational matter.

**External Report**      **Information reported to the Police by another agency where a crime or offence is suspected**

This would be investigated as a normal criminal inquiry. If the Police receive a report from partner agencies in any other context, the referral should be made by that agency to the Social Work Department. Where an agency, for example, Fire and Rescue Service/Health has already made an Adult at Risk referral directly to the Social Work Department; there is no requirement for the Police to make the referral.

**3<sup>rd</sup> Party Reporting**      **Information reported to the Police on behalf of an Adult at Risk** e.g. by a family member or any other member of the public. Reports may come from an anonymous source, for example by letter or telephone call.

6.1.2 Any allegation that an adult is at risk of harm, including anonymous reports, should be taken seriously. Each case must be considered with an open mind without assuming that harm has, or has not, occurred. All reports warrant a carefully considered and measured response and should be acted upon as a source of information that may or may not be used as evidence at a later stage.

6.1.3 If a report of an Adult at Risk is received through the Service Centre where a crime is suspected the matter should be actioned as per the National Call Grading Protocol. However, the attending Officers should first consider checks of Police systems to establish relevant background information. It **must** be remembered that Adult Protection issues might not be obvious to begin with and should always be borne in mind, regardless of the call type.

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### 6.2 Incident Management – Response

- 6.2.1. Appropriate information management recording systems are used to manage Adult at Risk incidents.
- 6.2.2. In **any** incident involving an Adult at Risk, a Supervisory Officer should be notified at the earliest available opportunity in order to provide supervisory oversight of the subsequent investigation, enquiry or referral.
- 6.2.3. When closing a command and control incident, ACR staff will confirm that Officers have provided a sufficient and accurate update, **utilising the appropriate disposal code for Adult at Risk.**

### 6.3 Initial Attendance - Adult in Immediate Need of Support

- 6.3.1 On occasions where an officer deems an Adult at Risk to be in urgent need of support then it is the responsibility of the Enquiry Officer to inform a Supervisor and thereafter make **immediate** contact with the appropriate Social Work Department (including the out of hours service). The Police Officer / Supervisor at the time of dealing with the incident will ensure background checks are undertaken and discussed with Social Work to assess the immediate risk of harm to the adult.
- 6.3.2 The Officer should thereafter ensure the individual's safety until alternative measures are in place.
- 6.3.3 The full details of the incident will then be recorded on the iVPD Concern Form / Referral and formally shared with the relevant Social Work Department by the Concern Hub at the earliest opportunity.

### 6.4 Initial Attendance - Adult not in Immediate Need of Support

- 6.4.1 On attendance at any incident involving an established/potential Adult at Risk, a command and control incident should be updated with the relevant coding.
- 6.4.2 When an Officer is already in attendance at an incident and during the course of their enquiries they identify an Adult at Risk, they will ensure that the existing incident is updated to reflect the involvement of an Adult at Risk. The source and seriousness of the incident will thereafter determine the subsequent Police action taken.
- 6.4.3 The Police role is not to provide ongoing care and support to the Adult at Risk and their family. Police will risk assess the incident and take action to mitigate any foreseen risk, provide advice and share relevant information to allow other statutory and voluntary agencies to undertake this role. Police will investigate any criminality identified or reported.

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6.4.4 To this end, on every occasion involving a potential Adult at Risk the enquiry Officer must ensure that the command and control system is updated accordingly and that the appropriate disposal code is used for Adult at Risk. It is the responsibility of the attending Officer to ensure that the iVPD Concern Form / Referral has been created. It is the responsibility of the Supervisory Officer to ensure that the iVPD Concern Form / Referral has been fully updated and endorsed.

### **6.5 Inter-agency Referral Discussion**

6.5.1 An Inter-agency Referral Discussion (IRD) is an exchange of information between Supervisors from Police, the appropriate Local authority Social Work Department (SWD) and Health Service staff where applicable. The purpose of the IRD is for each agency to share all relevant information known in relation to the adult and other relevant persons and to discuss and agree how the concern or investigation will be further progressed.

6.5.2 The discussion normally takes place by telephone, however, it can take place in person, particularly in more complex and protracted cases. Any information sharing should take cognisance of consent issues (refer to Section 6.7) and appropriate management of Police information.

6.5.3 The IRD should be conducted by a suitably qualified operational Supervisor within either a concern hub, PPU, or local policing. In exceptional circumstances the IRD can be undertaken by the Enquiry Officer. The appropriate Supervisor should be notified at the earliest available opportunity in order to endorse the previous actions and decisions of the initial Enquiry Officer and to ensure that there is effective Supervisory oversight and involvement in subsequent decision making. This exchange of information must not be delayed unnecessarily pending the availability of a Supervisor.

6.5.4 It may also be beneficial to consider the involvement of other relevant agencies, including any relevant health professional, in this early discussion, information gathering and decision making process. This is particularly relevant where there is a clear indication of significant information being held by another agency. This will normally be undertaken by staff of SWD.

6.5.5 Before making contact with the SWD it is imperative that a full and thorough search of all available Police databases is conducted in relation to the adult under consideration, and any other significant individuals involved unless the case is so critical that to do so would place the adult at additional risk. (Refer to Section 6.6).

6.5.6 The appropriate details of this exchange and all decisions made will be recorded on the iVPD or alternative IRD recording system.

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### 6.6 Adult Protection Case Conferences

- 6.6.1 During, or at the conclusion of an Adult Protection investigation a Case Conference may be convened, the purpose of which is to put in place appropriate protection measures in respect of the adult. A Case Conference is convened and chaired by a senior representative of local authority SWD. All agencies involved in the care or protection of the adult will be invited to attend. The adult, their representative and/or carer may be present for all or part of the Case Conference.
- 6.6.2 Where Police representation is required, it is the responsibility of the Local Police Commander to nominate an Officer to attend after having considered the following:
- Experience and knowledge of the case;
  - Knowledge of any risk assessment;
  - Ability to make decisions;
  - Ability to fulfil any tasks;
  - and
  - Suitably trained.
- 6.6.3 Where the requirement on the Police is for information only and no attendance is required, then this information will be provided in accordance with local procedures.
- 6.6.4 All requests to attend Case Conferences should be co-ordinated through local procedures. This will ensure that the relevant and appropriate information is made available taking cognisance of all information previously shared.
- 6.6.5 In terms of the Act, nominated representatives of Police Scotland, like all other professionals in attendance at Case Conferences, are required to share all information in their possession which is pertinent to the facts and circumstances **of the case only**. This may include relevant previous convictions and appropriate intelligence information.
- 6.6.6 Any confidential, restricted or third party information that cannot be shared in an open forum may be shared in a closed confidential session or a professionals meeting.
- 6.6.7 Should the Police fail to share any information the reason for this must be fully justified, agreed by a Supervisor and recorded.
- 6.6.8 Relevant information gleaned from the interrogation of the Police databases and information systems should be collated and submitted to the Chairperson in advance of the meeting taking place.

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6.6.9 If the nominated representative of Police Scotland in attendance at a Case Conference has any concern regarding any of the decisions made, this should always be articulated clearly, explored and recorded, so that wherever possible agreement is achieved. Where this is not possible, dissent should be recorded in order to allow the decision to be further reviewed. Where professionals continue to disagree with a decision and all efforts at resolution have been unsuccessful, they should discuss the matter with a Supervisor. If necessary, local procedures for Dispute Resolution should be followed.

### **6.7 Background Checks**

6.7.1 When dealing with a potential Adult at Risk incident, a full and thorough check of all relevant Police databases and information systems must be carried out so an accurate assessment of all individuals concerned can be obtained. The gathering of information at this early stage is crucial and will serve to promote an informed decision making process.

6.7.2 Whilst it is acknowledged that difficulties may be encountered due to time constraints and limited access to some systems out of hours, efforts should be made to maximise the use of available Police information. As a minimum, the following information systems and databases should be checked and the results of such checks fully recorded in accordance with local recording procedures:

- Criminal History System (CHS);
- Police National Computer (PNC);
- Scottish Intelligence Database (SID);
- Crime Management System;
- Interim Vulnerable Persons Database (iVPD);
- and
- Storm Unity / Local Command and Control Systems.

6.7.3 Further checks can be carried out on the following information systems subject to local availability:

- Public Protection Unit files;
- Violent and Sex Offenders Register (ViSOR);
- Missing Person files;
- and
- Police National Database (PND).

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6.7.4 The results of this information gathering must be clearly recorded on the iVPD Concern Form / Referral, thus preventing duplication of effort at a later date. If the initial Enquiry Officer is unable to gain access to any of the information systems or databases, or decides not to do so because of the urgency of the matter under investigation, this should also be clearly recorded so that these checks can be conducted at a later stage.

**Note:** Information gained from SID or ViSOR should **not** be replicated on iVPD Concern Form / Referral, rather confirmation of a check carried out together with any relevant log and record numbers should be recorded.

6.7.5 Whilst there may be some emergency situations when action will be taken prior to having all available information to hand, all decisions made and actions taken must be reasonable, proportionate, fully justified and recorded on the iVPD or alternative IRD recording system.

### 6.8 Consent to Share Information with Partners

6.8.1 When dealing with an Adult at Risk, Officers must be mindful of the requirement in terms of the Act to seek consent from the individual for relevant information to be shared with partner agencies.

6.8.2 Where consent is given this should be noted within the Officer's Police issue notebook or Personal Digital Assistant (PDA), together with details surrounding the incident. Where consent is declined or cannot be provided then the adult or other relevant person should be informed of the action to be taken where any personal information is to be shared

6.8.3 Where it is necessary to override the wishes of the adult or make decisions on his/her behalf for their own safety, or the safety of others, this should be proportionate and be the least restrictive response to the identified risks to health, welfare, property or finances of the adult consistent with the current legislative framework.

6.8.5 Where possible an adult should be informed of any action to be taken unless to do so would prejudice a criminal investigation or proceedings.

6.8.6 Police Scotland is obliged to share all relevant information regarding an Adult at Risk with the local authority if action needs to be taken in order to protect that person from harm, regardless of whether the Adult at Risk provides consent or not.

### 6.9 Officer Safety

6.9.1 Officers may be deployed into a situation where there are unforeseen hazards. Therefore a dynamic risk assessment of the situation may be necessary.

6.9.2 Consideration should always be given to ensure officer safety when attending an incident and cognisance should be taken of available intelligence.

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### 6.10 Appropriate Adult Services

- 6.10.1 Appropriate Adult Services should be borne in mind when dealing with an Adult at Risk where a mental disorder is known or suspected. Not all Adults at Risk will require the services of an appropriate adult however this should be considered. The role of the Appropriate Adult is to facilitate communication between a mentally disordered person and the Police and, as far as is possible, ensure understanding by both parties.
- 6.10.2 The use of an Appropriate Adult is extended to all categories of interview - witness, victim and accused. Mental disorder is defined in the Mental Health (Care and Treatment) (Scotland) Act 2003 as 'any mental illness, personality disorder or learning disability however caused or manifested'. For these purposes this includes people with acquired brain injury, autistic spectrum disorder and people suffering from dementia.
- 6.10.3 Further information can be obtained from the Appropriate Adult SOP and Mental Health and Place of Safety SOP.

### 6.11 Domestic Abuse Incident

- 6.11.1 Where Officers are in attendance at a Domestic Abuse incident and have reason to believe that one or both parties is an Adult at Risk then procedures should be followed as per the Domestic Abuse SOP. The incident should be closed using both the appropriate 'Domestic' and 'Adult at Risk' disposal codes in accordance with local recording processes.
- 6.11.2 Officers attending a domestic abuse incident must also bear in mind that any other adults in the property have the potential to be an Adult at Risk.

### 6.12 Incidents Involving Children

- 6.12.1 Where Officers are in attendance at an Adult at Risk incident where there are concerns regarding children, then a Child Concern Form should be submitted. For further guidance please refer to the Child Protection SOP.

### 6.13 Hate Incidents

- 6.13.1 Where Officers are in attendance at an incident and a Prejudice Incident features / is uncovered during the adult support and protection process, then it should be reported as a Hate Crime. For further guidance please refer to the Hate Crime SOP.

### 6.14 Intelligence

- 6.14.1 If at any time during an Adult Protection investigation, an accused is identified, an intelligence log must be submitted immediately to the (SID). **There are no exceptions to this.**

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- 6.14.2 Throughout the course of the investigation, the Enquiry Officer must regularly update this information. This will ensure that all information held on SID is relevant, accurate and up to date, thus helping to prevent unsuitable persons having access to vulnerable groups. The criteria of SID intelligence submissions must be in accordance to SID rules and conventions.
- 6.14.3 Where the circumstances merit the submission of an intelligence log then it is the responsibility of the Enquiry Officer to do so prior to the end of their tour of duty via SID using the heading 'Adult at Risk'.

### 6.15 Crime Management

- 6.15.1 In addition to a command and control incident and iVPD, it is the responsibility of the Enquiry Officer to raise a Crime Report, where appropriate, in terms of the Scottish Crime Recording Standards.
- 6.15.2 In incidents where there is no identified criminality, an auditable record **must** be created on Command and Control and iVPD.
- 6.15.3 All criminal incidents reported to Police Scotland, should result in the creation of a Crime Report. Normally the belief of a victim (or person reasonably assumed to be acting on the victim's behalf), that a crime has taken place, will result in the creation of a Crime Report. There is **no requirement** for corroboration of a report to support the creation of this report in line with Scottish Crime Recording Standards.
- 6.15.4 Where apparent criminal activity comes to the attention of the Police and the victim confirms that a crime has taken place but declines to support any Police action, a Crime Report should still be raised. In instances where someone has been assaulted but signs an Officer's notebook or PDA to indicate that they do not wish the Police to investigate the incident or otherwise declines to complain, a Crime Report should still be submitted.
- 6.15.5 Issues regarding capacity should be directed through liaison with the local Procurator Fiscal

### 6.16 Crime Manager

- 6.16.1 It is the responsibility of the Crime Manager to ensure that Crime Reports in relation to Adults at Risk are raised in accordance with the Scottish Crime Recording Standards.

## 7. Police Support to Council Duties

- 7.1. The Act introduced new measures to identify and provide support and protection for adults who are at risk of harm whether as a result of their own or someone else's conduct. These include placing a duty on local authority to make the necessary inquiries and investigations to establish whether or not further action is required to support and protect the adult. A range of

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protection orders are defined in the Act and include Assessment Orders, Removal Orders and Banning Orders.

- 7.2. The role of the Police is **to assist** the local authority in carrying out enquiries in these matters. In order to provide a professional response, it is important that Police Officers and members of Police Staff are fully aware of the relevant local authority duties and powers in terms of the Act.

### 7.3 Visits

- 7.3.1 Local authority Council Officers may visit a residence or other property where an Adult at Risk may be, to investigate whether any action is required to protect the adult from harm. A Council Officer is permitted to enter any place where the adult normally resides, is residing temporarily or spends part of their time. A Council Officer may only visit a place at 'reasonable times' unless any delay would be prejudicial to the immediate safety or wellbeing of the Adult at Risk.

- 7.3.2 A Local Authority Council Officer must state the object of the visit and produce evidence of the Officer's authorisation to visit the place. There is an obligation to be clear that the purpose of the visit is to investigate a suspected risk of harm. Wherever possible, other people in the household should also be offered an explanation as to what is happening and why, without breaching the adult's right to confidentiality.

- 7.3.3 A Police Officer may be required **to assist** local authority Council Officers to carry out this function. Where the Council Officer is in possession of a Warrant for Entry for a specified place, **an accompanying Constable is authorised to use reasonable force**, where necessary, to achieve the object of the visit. This may include the constable opening lock fast places, therefore it would be expected that the local authority would take all reasonable steps to ensure the security of the person's premises and belongings if force has been required to enter the premises. This is an **Adult at Risk incident** and will be recorded and reported as such.

- 7.3.4 Only the local authority may apply for such a Warrant. The warrant for entry is valid for 72 hours after it is granted and once the period has expired it does not entitle any person to remain in the place entered in pursuance of the warrant. Once the warrant has been executed, it cannot be used again.

### 7.4 Assessment Orders

- 7.4.1. The Act directs that the local authority may make an application to a Sheriff for an Assessment Order to determine whether an adult is an adult suspected to be at risk, whether there is reasonable cause to suspect that the Adult at Risk is being, or is likely to be, seriously harmed; and whether any action should be taken to protect the adult from serious harm.

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- 7.4.2. The Order allows a local authority Council Officer or 'Council nominee' to convey an Adult at Risk to a suitable place to conduct a private interview. The Order also provides that a health professional may carry out a private medical examination. In any potential criminal investigation a medical examination must be carried out by an appropriate Medical Examiner.
- 7.4.3. There is no power to detain the adult in the place they are taken to and the adult may choose to leave at any time.
- 7.4.4. Only the local authority can apply for an Assessment Order. The Order is valid from the date specified in the order and expires 7 days after that date.
- 7.4.5. In granting an Assessment Order, the Sheriff will also grant a warrant for entry as described at paragraphs 7.3.3 to 7.3.5 (above).

### **7.5 Removal Orders**

- 7.5.1. The Act provides that a local authority may apply to the Sheriff for a Removal Order which authorises a Council Officer, or any Council nominee, to move a specified person to a specified place within 72 hours of the Order being made and to take such reasonable steps as it thinks fit for the purpose of protecting the moved person from harm. A Removal Order will be granted only where the Sheriff is satisfied that the adult is likely to be seriously harmed if not moved to another place and that there is a suitable place available to remove the adult to.
- 7.5.2. The place from where the Adult at Risk is removed may not necessarily be his / her own home. They could be in public, private or commercial premises. The adult can be removed from any place in pursuance of a Removal Order. The adult is to be removed to the place specified in the Order. The place the Adult at Risk actually lives may, however, be a contributory factor in the harm.
- 7.5.3. A Removal Order expires 7 days (or such shorter period as may be specified in the Order) after the day on which the person specified in the Order is moved in pursuance of the Order. The Removal Order is primarily for protection and not for a Council interview or a medical examination.
- 7.5.4. In granting a Removal Order, the Sheriff will also grant a warrant for entry as described at paragraphs 7.3.3 to 7.3.5 (above).
- 7.5.5. The Removal Order may not always specify the place from where the adult must be removed, however the warrant for entry is specific to the address contained therein. This means that if a person is moved to a second place in the period between the Removal Order and warrant for entry being actioned, and it is anticipated that entry by warrant will be necessary, then a fresh application for a warrant for entry must be made to either a Sheriff or Justice of the Peace. Where the original Removal Order specified the place from where the adult must be removed, a fresh application will also be needed for a new Removal Order.

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7.5.6. The Act provides that **the local authority Council** must take reasonable steps to safeguard the property owned or controlled by the person moved in pursuance of the Removal Order.

7.5.7. In urgent cases, a local authority can apply to a **Justice of the Peace** of the commission area in which the adult is located for the necessary Order and warrant for entry. The Adult at Risk must be removed within 12 hours of the grant of the Removal Order. The Order expires after 24 hours.

### 7.6 Banning Orders

7.6.1. The Act directs that an Adult at Risk or anyone living in the same premises may apply to a Sheriff to grant a Banning Order. A Banning Order bans the subject of the Order from being in a specified place, usually where the Adult at Risk lives, and may have other conditions attached to it. The local authority have a duty to apply for a Banning Order where it is known that an Adult at Risk is being, or is likely to be, seriously harmed and that no-one else is likely to apply.

7.6.2. The Sheriff may grant a Temporary Banning Order pending determination of an application for a Banning Order. A Banning or Temporary Banning Order may:

- Ban the subject from being in a specified area in the vicinity of the specified place;
  - Authorise the summary ejection of the subject from the specified place and the specified area;
  - Prohibit the subject from moving any specified thing from the specified place;
  - Direct any specified person to take specified measures to preserve any moveable property owned or controlled by the subject which remains in the specified place while the Order has effect;
  - Authorise the subject of the Order to be in a place or area from which they are banned, but only in specified circumstances, for example while being supervised by another person or during specified times;
  - Be made subject to any specified conditions;
- and
- Require or authorise any person to do, or to refrain from doing, anything else which the Sheriff thinks necessary for the proper enforcement of the Order.

7.6.3. The Banning Order can last for any period up to a maximum of 6 months and can be recalled or varied by the Sheriff if they are satisfied that the recall or variation is justified. A child can be the subject of a Banning Order.

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- 7.6.4. The granting of a Banning or Temporary Banning Order does not affect any rights the Adult at Risk has under the Matrimonial Homes (Family Protection) (Scotland) Act 1981 to occupy a home as a non-entitled spouse, within the place from where the subject of the Order is banned. This means that a Banning Order, despite affecting the subject's right to occupy the property in question, **does not affect any rights that the Adult at Risk** has under the 1981 Act.
- 7.6.5. A condition specified in an Order may authorise the subject of the Order to be in a place or area from which they are banned, but only in specified circumstances, for example while being supervised by another person or during specified times.

## 8. Banning Orders - Police Response

- 8.1. In terms of Section 25 of the Act a Sheriff may attach a power of arrest to any Banning or Temporary Banning Order. Where a Banning Order has been granted but no power of arrest has been attached, the Police will not routinely be notified of its existence. However, should Officers become aware of such an Order then this information should be recorded and shared appropriately by means of iVPD and/or SID and a marker added to the command and control system.
- 8.2. Where a power of arrest has been attached to a Banning Order a copy of the prescribed documentation must be delivered to the Chief Constable as soon as possible thereafter. The power of arrest becomes effective when it is served on the subject of the order and expires together with the order to which it is attached.
- 8.3. Where a Banning Order or Temporary Banning Order has a power of arrest attached, in terms of Section 28 of the Act, **a Constable can arrest without Warrant** the subject of an Order if the Constable:
- Reasonably suspects the subject to be breaching, or to have breached, the Order;
  - and
  - Considers that there would be a risk of the subject breaching the Order again, if the subject were not arrested.

**Note:** A Constable cannot simply arrest the subject for breaching the Order alone.

- 8.4. Banning Orders (with power of arrest) are held at records and notification of this will also be placed on PNC.
- 8.5. It is not necessary that a breach of criminal law be involved for such a power of arrest to be exercised; nor is it necessary that the complaint of the applicant be corroborated or capable of being proven beyond reasonable doubt.

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- 8.6. Where a person is arrested for an offence **and** for breach of a Banning Order, it is to be made clear to him/her that the power of arrest given by Section 28 of the Adult Support and Protection (Scotland) Act 2007 has been utilised.
- 8.7. Where a person is arrested in respect of conduct which amounts to a breach of a Banning Order then, whether or not a criminal charge is involved, the applicant (Adult at Risk, person residing with Adult at Risk or Council) should be informed of the arrest and that a report will be submitted to the Procurator Fiscal.
- 8.8. Where a person is arrested for breach of a Banning Order **only** then a subject report will be submitted to the Procurator Fiscal. Where there is an associated criminal charge then a full SPR should be submitted. Reference should be made to the Banning Order throughout the SPR particularly in the Antecedents, Summary and Witness Sections. In all circumstances, this report (Subject Report or SPR) should include details of any relevant previous incidents recorded on the iVPD Incident / Concern Report / Referral when there is no associated criminal charge. This is an **Adult at Risk incident** and will be recorded and reported as per local recording procedures.
- 8.9. The arrested person should be brought before the Sheriff, in the district in which the person was arrested. This should be on the next Court day on which it is practicable to do so.
- 8.10. The offender is to be arrested in all but the most trivial cases where there is no likelihood of repetition. Discretion not to arrest should be used sparingly and only for good reason, bearing in mind that the safety of the Adult at Risk is of paramount importance.
- 8.11. Where a decision is made not to arrest in terms of the Act, full details of the incident must be recorded on iVPD including reasons for non-arrest. The applicant is to be informed of this decision. In these circumstances a report is **not** required to be submitted to the Procurator Fiscal.
- 8.12. Where the offender has left the locus prior to the arrival of the Police, further enquiry will be carried out in order to effect an arrest, unless there are compelling reasons to the contrary. It will normally be necessary to pursue the offender where there has been violence and where there is a prospect of violence to the Adult at Risk, or where further harassment is likely. The duration of the pursuit will differ in every case, dependent on the circumstances and operational requirements.
- 8.13. All efforts made to trace the offender should be outlined on the STORM / iVPD Incident. Should the offender subsequently be traced and pose a risk of breaching the order again then they are to be arrested in terms of Section 28 of the Act and reported accordingly.
- 8.14. A breach of a Banning Order, in isolation, is **not** a criminal offence thus:
- Should the offending person not be arrested, a Warrant cannot be craved;
  - No Crime Report is required.

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- 8.15 Where there is evidence that an associated criminal offence has been committed, the existing criminal law will continue to apply and it may therefore be necessary to trace the offender in order to prefer the charge(s). Where it appears in these circumstances that there may be any significant delay in tracing the offender, a SPR in relation to the criminal offence is to be submitted to the Procurator Fiscal with a view to a warrant to apprehend being granted. This report should include details of all efforts made to trace the offender and details of this and any previous, relevant incidents recorded as per local procedures.
- 8.16 If an arrest has been made under common law or other statutory power of arrest (or detention) and it is only subsequently discovered that the circumstances which gave rise to the arrest involve a breach of Banning Order, then the arrested person should immediately be informed that he/she is no longer being detained in respect of the offence with which he/ she has been charged but is being arrested under Section 28 of the Act
- 8.17 Banning Order documents are not to be removed from Local Police files on arrest, since, unlike a Warrant, the power of arrest is not cancelled as soon as the person is arrested. The Banning Order can only be cancelled by the Court at which time, intimation will be sent according to local procedures for legal documents.
- 8.18 The subject of a Banning Order may be a child. Where a Duty Officer knows or believes that an arrested person is a child, the Officer **must**, where practicable, give intimation without delay of the detention and place of detention to any person known to have parental responsibilities and rights in relation to the detained child. Such person must be permitted reasonable access to the child. A report will also be made to the Scottish Children's Reporters Administration (SCRA). A Child Concern Form should also be submitted. For further guidance refer to the Offending by Children SOP and Child Protection SOP.
- 8.19 The Banning or Temporary Banning Order, any conditions attached, and power of arrest continue notwithstanding any breach proceedings.

## 9. Information Sharing

- 9.1. Information sharing is generally taken to mean the ongoing use of data, which may or may not be personal data, by the public sector, across traditional organisational boundaries, to achieve better policies and deliver better services for individuals and society as a whole. Disclosure includes merely using or making available personal data within an organisation but the term also includes transmission of such data to other parties outside the original processing agency.

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- 9.2. Effective policing relies on the Police service communicating and sharing information with a wide range of partners. There are clear advantages in sharing information with others, however, information should not be shared purely as a matter of routine. Each case must be reviewed individually with informed decisions made about whether to share or not. Information should only be shared for a specific purpose in terms of the Act or for a specific policing purpose.
- 9.3. Further guidance is available from the Information Management Department.

## **10. Offences**

### **10.1 Obstruction**

- 10.1.1 Section 49 of the Adult Support and Protection (Scotland) Act 2007 provides that it is an offence for any person, other than the Adult at Risk, 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 Section 10 (examination of records, etc.)
- 10.1.2 However, if the Adult at Risk prevents or obstructs a person, or refuses to comply with a request to provide access to any records, then the adult will not have committed an offence. Whilst the Act is silent in respect of the Adult at Risk, where appropriate refer to common law powers.

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**List of Associated Legislation**

- Adult Support and Protection (Scotland) Act 2007
- Adults with Incapacity (Scotland) Act 2000
- Local Government (Scotland) Act 1973
- Matrimonial Homes (Family Protection) (Scotland) Act 1981
- Mental Health (Care and Treatment) (Scotland) Act 2003
- Victims and Witnesses (Scotland) Act 2014
- Criminal Justice (Scotland) Act 2016
- Data Protection Act 2018

**LIST OF ASSOCIATED REFERENCE DOCUMENTS**

- Scottish Government – Adult Support and Protection (Scotland) Act 2007 - Code of Practice
- The Mental Welfare Commission (MWC) for Scotland
- Office of the Public Guardian
- Counselling, mediation, and victim support:
- Victims of Crime in Scotland
- Scottish Independent Advocacy Agency
- Appropriate Adults Scheme
- Criminal Injuries Compensation Scheme (CICS), 2001
- The Princess Royal Trust for Carers
- Appropriate Adult SOP
- Mental Health and Place of Safety SOP
- Domestic Abuse SOP
- Child Protection SOP
- Care and Welfare of Persons in Police Custody SOP
- Offending by Children SOP

### **Example Scenarios**

The individuals described in the following example scenarios could fit the definition of a potential 'Adult at Risk' and, therefore, in addition to any criminal enquiry, Police Scotland is required to record and share information with partner agencies:

1. 74 year old male, who is unable to leave the house and appears to have some problems with his memory. He lives alone in owner occupied accommodation and is not in receipt of any local authority care support. He has been repeatedly targeted by bogus workmen, where theft has occurred;
2. 88 year old female who has Alzheimer's Disease, resides within a privately run residential nursing home, family members become aware of bruises and discuss with care home staff, but are not satisfied by explanation provided by the care home staff;
3. 42 year old male with learning difficulties, lives alone in the community within local authority housing. He is repeatedly targeted by local youths. Police receive a report from the mother of a 12 year old boy that this male has assaulted her son;
4. 38 year old female who has multiple sclerosis, lives on her own within owner occupied accommodation with daily home help support. During a routine visit from a local voluntary organisation, she reports that money appears to be missing from her bank account;
5. 78 year old female with early onset of 'Dementia', lives in local authority sheltered housing is regularly visited by her 15 year old grandson who collects her pension for her. The warden notices that many items appear to be going missing from the house, she is unable to pay her rent. The warden contacts her family who deny any knowledge and refuse to provide any support;
6. 65 year old female, with rheumatoid arthritis is the primary carer of her 40 year old son who is a wheelchair user. There are no other support mechanisms in place. She attends accident and emergency with a fractured wrist, which occurred while trying to care for her son. The medical staff are concerned the injury may be non-accidental;
7. 55 year old male, recently bereaved. He has no family support and is living alone within owner occupied accommodation. He is alcohol dependent and has begun to self-harm. He has been diagnosed with depression in the past;
8. 18 year old female with a personality disorder, resides alone within supported local authority accommodation. She spent her childhood within various local authority children's homes and is a habitual missing person. Her Social Worker has concerns that she may be involved in prostitution.