



Adult Protection Bill – Draft Final Policy Proposals for Ministerial Consideration (July 2021)

1. Title and purpose of the Bill

- The draft Bill will be called the ‘Adult Protection Bill’; it will introduce additional protections to strengthen and underpin the adult protection process.

2. Definition of ‘adult at risk and in need of protection’

- The draft Bill will introduce a legal definition of an ‘adult at risk and in need of protection’ as:
 - a) a person aged 18 or over;
 - b) whose exposure to harm through abuse, neglect or exploitation may be increased by their personal characteristics and/or life circumstances;
 - c) who is unable to protect their own well-being, property, assets, rights or other interests; and
 - d) where the action or inaction of another person or persons is causing, or is likely to cause, him/her to be harmed.

3. Principles

- The draft Bill will set out Principles which should be adhered to by everyone involved in adult safeguarding and adult protection.
- These Principles are:

1. Prevention

“Organisations across all sectors should ensure that adults at risk in their care are always as safe as possible and should commit to fostering environments where harm to adults is not tolerated and suspected harm is investigated as quickly as possible.”

2. Autonomy

“A presumption that adults have capacity to make their own decisions unless there is evidence to the contrary. This includes the capacity to give or withhold consent and to make what some people would view as unwise decisions.”

3. Empowerment

“To support and encourage adults to make informed choices about their lives, avoid unnecessary intervention, take the view views of adults into account and help adults to maximise their opportunities to participate in wider society and keep themselves safe and free from harm.”

4. Dignity

“A rights based approach, promoting and respecting the dignity of adults.”

5. Proportionality

“Any intervention in an adult’s life should be in the best interests of the adult, should not cause the adult any further harm and should be the least restrictive option.”

6. Partnership

“Adults at risk, their families, friends, carers and organisations across all sectors all have a part to play in ensuring there is meaningful collaboration in order to prevent, detect and report harm and keep the adult at the centre of decision-making processes.”

7. Accountability

“Accountability and transparency with roles and responsibilities clearly understood.”

4. Duty to report

- The draft Bill will place a statutory duty on the HSC Trusts, PSNI, HSC Board, Public Health Agency, RQIA and independent providers commissioned or contracted to provide health and social care services to report to the relevant HSC Trust any cases where they believe there is reasonable cause to suspect that an adult meets the criteria of 'an adult at risk and in need of protection'.

5. Duty to make enquiries

- The draft Bill will place a statutory duty on HSC Trusts to make follow up enquiries into all cases where someone who is suspected of being an 'adult at risk and in need of protection' is brought to its attention.

6. Power of entry

- The draft Bill will introduce a new power of entry to interview an adult at risk. The draft Bill will also introduce associated additional powers, equivalent to the Scottish Assessment Order, Removal Order and Banning Order.
- A summary of the power of entry and associated additional powers is as follows:
 - The power of entry would permit a suitably experienced, trained and qualified social worker to enter the home (or other relevant premises) of an adult at risk and in need of protection to interview the adult in private and ascertain if the adult is making decisions freely.

- The Assessment Order would permit a suitably experienced, trained and qualified social worker to take the adult from that premises to a more suitable location to carry out the interview.
- The Removal Order would permit a suitably experienced, trained and qualified social worker to remove the adult from the premises to another location for up to seven days if the adult is likely to be seriously harmed.
- The Banning Order would ban a person from being in a specified location for up to six months if the adult is being or is likely to be seriously harmed by that person.
- The draft Bill will contain the following provisions, restrictions and requirements in relation to the power of entry and associated additional powers:
 - Magistrate approval will be required for use of the power of entry and additional powers on every occasion.
 - There must be a reasonable attempt to seek the consent of the adult at risk when applying to a magistrate to use the additional powers (note – consent will not be required for an application to the magistrate for the initial power of entry). Consent could be sought in person after entering the home, by telephone, or in writing and the application to the magistrate for the Assessment/Removal/Banning Order would indicate whether the adult at risk had consented. Where there is evidence that the adult at risk had not consented but is under duress or subject to coercion, the Magistrate could grant approval anyway, overruling withheld consent.
 - The power of entry and additional powers should be used by a suitably experienced, trained and qualified social worker only (consideration will

be given to creating a new cadre of Social Workers for the purpose of using Adult Protection Bill/Act powers).

- A statutory requirement to take all reasonable steps to support the adult at risk to understand what the power is and why it is being used.
- Anyone who is using the power of entry or additional powers will be able to request PSNI support (but will not be required to).
- An adult at risk will have the right to be supported by a witness rather than be interviewed alone and should be advised of this right.
- There will be the right to appeal the Banning Order only.
- There will be legal consequences to obstructing a social worker who is seeking to apply a power of entry or additional power that has been approved by a magistrate (consideration will be given to issuing fines).

7. Independent advocates

- The draft Bill will introduce a statutory provision of independent advocates who can assist adults at risk to be involved in and influence decisions taken about their care.
- The draft Bill will include a regulatory making power setting out any future requirements in respect of independent advocacy, including eligibility criteria.

8. Independent Adult Protection Board

- The draft Bill will establish the Independent Adult Protection Board (IAPB) and place it on a statutory footing.

- The draft Bill will set out the following core IAPB functions:
 - To publish a strategic plan each year
 - To publish an annual report
 - To make arrangements and have responsibility for Serious Case Reviews (see point 9.)
- The draft Bill will give the IAPB the power to request the supply of information relevant to the exercise of its functions.
- The draft Bill will include a regulatory making power to set out further operational details in relation to the membership and procedures of the IAPB.

9. Serious Case Reviews

- The draft Bill will introduce Serious Case Reviews (SCRs). SCRs are multi-agency reviews that look into the circumstances surrounding the death of, or serious harm to, an adult at risk and in need of protection. The purpose of SCRs is to establish whether there are lessons to be learned from a case about the way in which agencies and professionals work together and to action change as a result.

10. Duty to cooperate

- The draft Bill will place a statutory duty on the HSC Trusts, PSNI, Probation Board for NI, HSC Board, Public Health Agency, RQIA and independent providers commissioned or contracted to provide health and social care services to cooperate with both HSC Trusts and PSNI when those bodies are making enquiries into a case where there is reasonable cause to suspect that an adult meets the criteria of 'an adult at risk and in need of protection'.

- The draft Bill will include provision that the organisations that are required to cooperate do not have to do so where doing so would conflict with the exercise of their functions.

11. Power to access financial records

- The draft Bill will introduce a new power to access any relevant financial records where there is suspected financial abuse. This includes the financial records of the adult at risk and any other records that are relevant to the enquiry.
- The draft Bill will contain the following provisions, restrictions and requirements in relation to the power to access financial records:
 - Magistrate approval will be required for use of the power to access financial records on every occasion.
 - The power to access financial records will be held by the HSC Trusts and be used by a suitably experienced, trained and qualified social worker only (consideration will be given to creating a new cadre of Social Workers for the purpose of using Adult Protection Bill/Act powers).
 - A statutory requirement to take all reasonable steps to support the adult at risk to understand what the power is and why it is being used.
 - There must be a reasonable attempt to seek the consent of the adult at risk before application to the magistrate to use this power; however if consent is not given, the magistrate will be able to grant permission to access. Consent could be sought in person after entering the home, by telephone, or in writing.

- There will be legal consequences to obstructing a social worker who is seeking to apply a power to access financial records that has been approved by a magistrate (consideration will be given to issuing fines).

12. Offences of ill-treatment and wilful neglect

- The draft Bill will introduce new offences of ill-treatment and wilful neglect.
- The draft Bill will include two tiers of offence of ill-treatment and wilful neglect:
 - Care worker offence – an offence for an individual who has the care of another individual by virtue of being a care worker to ill-treat or wilfully neglect that individual.

‘Care worker’ generally means an individual who, as paid work, provides health or social care for an adult. It also includes an individual who, as paid work, supervises or manages individuals providing such care or is a director or similar officer of an organisation which provides such care.

- Care provider offence – a care provider commits an offence if:
 - a) an individual who has the care of another individual by virtue of being part of the care provider’s arrangements ill-treats or wilfully neglects that individual,
 - b) the care provider’s activities are managed or organised in a way which amounts to a gross breach of a relevant duty of care owed by the care provider to the individual who is ill-treated or neglected, and
 - c) in the absence of the breach, the ill-treatment or wilful neglect would not have occurred or would have been less likely to occur.

'Care provider' generally means a body corporate or unincorporated association which provides or arranges for the provision of health care or social care for an adult; or an individual who provides such care and employs, or has otherwise made arrangements with, other persons to assist him or her in providing such care.

13. Statutory Guidance

- The draft Bill will be supported by new Statutory Guidance, the development of which will include a further public consultation. It is intended that the Statutory Guidance will replace the Prevention and Protection in Partnership Policy 2015.