# What are a council’s duties under the Act?

The [Act](https://www.legislation.gov.uk/asp/2007/10/contents) places duties upon the council to:

* make inquiries if it knows or believes that a person is an adult at risk of harm and that it might need to intervene under the Act or otherwise to protect the person’s wellbeing, property or financial affairs (Section 4);
* undertake investigative activity, as part of its inquiries, involving council officers who have certain powers under the Act (Sections 7-10);
* co-operate with other councils and other listed (or specified) bodies and office holders (Section 5);
* have regard to the importance of the provision of appropriate services (including, in particular, independent advocacy services), where the council considers that it needs to intervene in order to protect an adult at risk of harm (Section 6);
* make visits, with right of entry, for the purpose of conducting interviews and arranging medical examinations (sections 7, 8, 9 & 36 - 40);
* protect property owned or controlled by an adult who is removed from a place under a removal order (Section 18);
* set up an Adult Protection Committee to carry out various functions in relation to adult protection in its area, and to review procedures under the Act (Section 42).

# What are a council’s powers under the Act?

Where it is known or believed that an adult is at risk from harm and the council might need to intervene, the Act places a duty on the council to make the necessary inquiries to establish whether or not action is required to stop or prevent harm occurring.

The Act makes frequent reference to actions that can be taken where a council ‘knows or believes’ that an adult is at risk of harm. It is clear

that ‘know’ and ‘believe’ are not intended to be used interchangeably, and that the intention is to allow for engagement with people where it has yet to be determined whether they are an adult at risk. Partnerships should ensure that their procedures are clear that inquiries will often take place before a determination has been made that the adult is at risk of harm.

The Act enables a council to:

* through the offices of a council officer, visit any place necessary to assist with inquiries under section 4. Council officers may interview, in private, any adult found at the place being visited, and may arrange for a medical examination of an adult known or believed to be at risk to be carried out by a health professional. Health, financial and other records relating to an adult at risk may be requested and examined. Note that the Council Officer is empowered by the Act to identify, take or copy medical records held by a service but having obtained them must ensure they are interpreted by a health professional.; and
* apply to the sheriff for the granting of a protection order.

Council officers have rights of entry to places where adults are known or believed to be at risk of harm. If, following inquiries, a council officer believes that action is required, the council can apply to the sheriff for a protection order. The range of protection orders include assessment orders (which may be to carry out an interview or medical examination of a person); removal orders (removal of an adult at risk) and banning orders or temporary banning orders (banning of the person causing, or likely to cause, the harm from being in a specified place) ([Sections 11-34](https://www.legislation.gov.uk/asp/2007/10/section/11)).

# Who can act as a council officer for the purposes of the Act?

[Section 53 (1)](https://www.legislation.gov.uk/asp/2007/10/section/53) of the Act defines a council officer as an individual appointed by a council under [Section 64](https://www.legislation.gov.uk/ukpga/1973/65/section/64) of the Local Government (Scotland) Act 1973.

Section 52(1) of the Act enables Ministers to restrict the type of individual who may be authorised by a council to perform council officer functions under the Act.

Scottish Ministers have made an order that prescribes that a council must not authorise a person to perform the functions of a council officer under sections 7 to 10 of the Act (investigative functions) unless the person:

* is registered in the part of the Scottish Social Services Council register maintained in respect of social workers or social service workers or is the subject of an equivalent registration;
* is registered as an occupational therapist in the register maintained under article 5(1) (establishment and maintenance of register) of the Health Professions Order 2001; or
* is a nurse; and
* the person has at least 12 months' post qualifying experience of identifying, assessing and managing adults at risk.

A council may withdraw the authority of a person to perform the functions of a council officer if the person no longer meets the relevant requirements.

The [Public Bodies (Joint Working) (Scotland) Act 2014](https://www.legislation.gov.uk/asp/2014/9/contents/enacted) placed a requirement on all Health Boards and councils to make arrangements for adult health and social care services to be provided in an integrated way within each local authority area.

Section 23 of the 2014 Act allows Ministers to make regulation to allow suitably qualified individuals who are employed by a Health Board to exercise the functions of a council officer.