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Working Together to Safeguard People

Volume 4 – Adult Protection and Support Orders



Part 7

Guidance on Safeguarding.

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Introduction

This guidance provides a single point of reference on Adult Protection and Support Orders (APSOs) for local authorities. It provides comprehensive information regarding the seeking, making and enforcement of an APSO. It is issued under section 131 of the Social Services and Well-being (Wales) Act 2014. In view of the shared interest, this guidance will also be of interest to the police and court staff.

Those using this guidance are advised to check the relevant measures themselves and to seek their own legal advice as required, when referring to the relevant provisions of the Social Services and Well-being (Wales) Act 2014.

APSOs are to be used to enable an authorised officer, and any other person specified in the order, to speak to an adult suspected of being at risk of abuse or neglect in private, to establish whether the adult can make decisions freely, to assess whether the person is an adult at risk and to establish if any action should be taken.

Importantly, Adult Protection and Support Orders do not grant a power of removal. The principle is that the wishes of an adult at risk should be capable of being freely expressed and that they should be respected.

Section 1: The basics

What are APSOs, who can apply for them and what can they be used for?

1.1 The purposes of an APSO are:

- to enable the authorised officer, and any other person accompanying the officer, to speak in private with a person suspected of being an adult at risk;
- to enable the authorised officer to ascertain whether that person is making decisions freely; and
- to enable the authorised officer properly to assess whether the person is an adult at risk and to make a decision as required by section 126(2) of the Social Services and Well-being (Wales) Act 2014 on what, if any, action should be taken.

1.2 APSOs are civil orders that can be sought by an authorised officer. An authorised officer must be a person authorised by a local authority for the purpose.

1.3 When an APSO is in force, the authorised officer, a constable and other persons specified in the order may enter premises where an adult at risk is living for the purposes set out above.

1.4 APSOs can be made by a justice of the peace if satisfied that:

- the authorised officer has reasonable cause to suspect that a person is an adult at risk;
- it is necessary for the authorised officer to gain access to the person in order properly to assess whether the person is an adult at risk and to make a decision on what, if any, action should be taken;
- making an order is necessary in order to fulfil the purposes set out in section 127(2); and
- exercising the power of entry conferred by the order will not result in the person being at greater risk of abuse or neglect.

1.5 The Adult Protection and Support Order (Authorised Officer) (Wales) Regulations 2015 set restrictions on who can act as an authorised officer. These Regulations provide for an officer of the local authority where the adult at risk resides to act as an authorised officer. Where this is not practical the authorised officer should be an officer from a local authority in the Safeguarding Board area and if this is not practical, an authorised officer must be an officer from a local authority in Wales.

1.6 Local authorities will need to be clear as to who has responsibility to act on behalf of the authority and be able to provide evidence of authorisation.

The role of the authorised officer

1.7 An authorised officer is the person that may apply to a justice of the peace for an APSO. The authorised officer should prepare the application form (see Annex B) including the grounds for the application and the information required to be included in the order as set out at section 127(5) and (6) of the Act. The role includes liaison with the local authority legal service to make the application to the court and possible attendance to give evidence about the need in particular cases.

Authorised officer's skills

1.8 An authorised officer requires a complex set of skills. An authorised officer will undergo a specialist training programme and be required to keep their skills up to date. It is essential that the authorised officer has a degree of autonomy from his or her employer and is able to perform the functions independently of the day-to-day management of the particular case.

1.9 An authorised officer should possess the following skill and attributes:

- the ability to prepare and present, with legal assistance, an APSO application clearly and confidently to a justice of the peace;
- an understanding of the legal framework within which APSOs operate including the implications of the Human Rights Act 1998, Equality Act 2010 and the need to respect diversity;
- the ability to assess any risk to the person suspected of being an adult at risk prior to making the application and, if an APSO is made, once it has been executed;
- a high level of understanding of the context of abuse, abusive situations and neglect;
- an ability to identify coercive control and its effects on adults at risk;
- a clear understanding of the provisions of the Mental Capacity Act 2005 in relation to assessments of capacity, best interests assessment and the role of the Independent Mental Capacity Advocate;
- effective communication skills and the ability to identify any special communication needs that the person suspected of being at risk may have and how their ability to communicate their wishes may be enhanced;
- an ability to be assertive and exercise control in difficult and challenging situations;
- an ability and willingness to challenge their own agency and other agencies when necessary; and
- an awareness of when an advocate is required and how to support the adult to secure an advocate.

1.10 The above list of skills and attributes will form the basis of the training and assessment of authorised officers.

1.11 If an APSO is made, the court must:

- specify the premises to which it relates;
- provide that the authorised officer may be accompanied by a constable; and
- specify the period for which the order is to be in force.

1.12 The court may also attach conditions which may, for example:

- specify restrictions on the time at which the power of entry conferred by the order may be exercised;
- provide for the authorised officer to be accompanied by another specified person; and
- require notice of the order to be given to the occupier of the premises and to the person suspected of being an adult at risk.

Definition of 'living' and 'premises' and 'in private' for the purposes of this statutory guidance

1.13 A person is 'living' in premises if he or she resides there for a period of time either permanently or temporarily regardless of whether they have a legal or other interest in the premises.

1.14 For the purposes of this statutory guidance, 'premises' include:

- a) domestic premises;
- b) a residential care home;
- c) a nursing home;
- d) a hospital; or
- e) any other building, structure, mobile home or caravan in which the person is living.

1.15 It is important to note that an APSO cannot be used within premises of the secure estate, prisons or youth detention accommodation (see section 185(6) of the Act).

1.16 The definition of 'in private' under section 127(2)(a) is complex. Where the premises are large enough for the person to be interviewed without fear of being overheard fewer problems are encountered. However, in a small flat or house the adult suspected of being at risk may fear speaking frankly. It may, for example, be necessary to require the occupier to leave the premises for the duration of the interview.

1.17 The powers of a constable accompanying the authorised officer extend further than obtaining entry to the premises. Section 127(7) states that the officer may use reasonable force 'if necessary in order to fulfil the purposes of an adult protection and support order'. This will include ensuring that it is possible for the authorised officer to speak to the person in private and that the adult suspected of being at risk is making his or her decisions freely.

Making decisions freely

1.18 Section 127(2)(b) states that one of the purposes of the APSO is to ensure that the adult suspected of being at risk is 'making decisions freely'. It follows that those involved in the execution of the APSO should ensure that they do not exercise undue influence. They must be aware that the adult suspected of being at risk may feel intimidated by the use of statutory powers and the presence of a number of strangers in their home, including a constable. An advocate may be necessary to ensure that the person is able to challenge the views of practitioners.

When an APSO might be appropriate

1.19 It is anticipated that APSOs will rarely be sought. Applications will only be made when other less intrusive approaches have failed or are highly likely to fail.

1.20 However, authorised officers do not have to prove the need for the APSO beyond all reasonable doubt. In part, the need for the APSO is because there is insufficient information about the adult suspected of being at risk.

1.21 The authorising officer will need to be able to demonstrate that the grounds under section 127(4) are made out, i.e.

- that s/he has reasonable cause to suspect that an adult is an adult at risk of abuse or neglect;
- that it is necessary for the authorised officer to gain access to the person in order properly to assess whether the person is an adult at risk and to make a decision on what, if any, action should be taken;
- that making an order is necessary in order to fulfil the purposes set out in section 127(2) (as described above); and
- that exercising the power of entry conferred by the order will not result in the person being at greater risk of abuse or neglect.

When an APSO may not be appropriate

1.22 APSOs are designed to enable vulnerable adults to express their views independently to an authorised officer where there is reason to believe they are at risk of abuse or neglect. However, an APSO may not be appropriate if:

- the granting of an APSO might leave the individual at greater risk;
- other less interventionist approaches have not been considered; and
- the use of a Domestic Violence Protection Order¹ where the wrong-doer may be removed from the property may provide better protection for the victim.

1.23 It is important to note that an APSO cannot be used within premises of the secure estate, prisons or youth detention accommodation (see section 185(6) of the Act).

Duration of an APSO

1.24 APSOs do not give a general power of entry. They are focussed on the specific purposes outlined in section 127(2) of the Act. The power cannot be continued unreasonably as some kind of deterrent. The use of an APSO is subject to the general principle of proportionality. This applies to the number of visits and the number of people who accompany the authorised officer.

1.25 The Act does not specify how many times the power under an APSO can be used, although the APSO must specify the period for which it is to be in force. It is unlikely that one visit will be sufficient. As little may be known of the individual who is subject to the APSO, it may be difficult to identify who should accompany the authorised officer and what skill set is required. It would be unreasonable to expect a large number of practitioners to accompany the authorised officer just in case their skills and expertise are needed.

1.26 A first visit will enable the authorised officer to identify who should accompany him or her on any subsequent entry. Section 127(2) of the Act enables the authorised officer *and any other specified person accompanying the officer* to speak in private with a person suspected of being an adult at risk. Strong consideration should be given prior to application to who may be required to accompany the authorised officer on first or subsequent visits.

¹ <https://www.gov.uk/government/publications/domestic-violence-protection-orders>

1.27 In the absence of any specific conditions limiting the number of visits, an order could authorise any number of visits during the period the order is in force. However, if the justice of the peace is concerned about authorising multiple entries, he or she may attach conditions to the APSO and limit the authorisation to entry on one occasion only or to specify the maximum number of entries. It is probable, given the nature of an APSO, that the justice of the peace will be conscious of the need to limit the duration of an APSO and the number of visits allowed in order to limit the extent of the intrusion.

1.28 If an authorised officer believes that a longer duration or multiple visits will be required under a single APSO, then the arguments for this must be set out in the application.

Section 2: Seeking an order

Securing evidence to support an application

2.1 Authorised officers working alongside the relevant partners and other agencies involved with individuals and their families, must co-operate and share information to both determine the need for, and support the application for, an APSO.

Applications to the magistrates' court (acting in its civil capacity)

2.2 An APSO on application can be made (see section 127 of the Social Services and Well-being (Wales) Act 2014) where:

- an authorised officer has reasonable cause to suspect that a person is an adult at risk;
- that it is necessary for the authorised officer to gain access to the person in order properly to assess whether the person is an adult at risk and to make a decision as to what, if any, action should be taken;
- that the order is necessary in order to fulfil the purposes set out in section 127(2); and
- that exercising the power of entry conferred by the order will not result in the person being at greater risk of abuse or neglect.

2.3 It will be for the court to then determine whether it is satisfied that there are grounds for making an APSO.

2.4 An APSO on application can be made by a relevant authority to the magistrates' court within the appropriate local justice area, acting in its civil capacity. An application should, where it is practicable to do so, be made to the magistrates' court whose area includes the local authority area or police area responsible for the premises which are subject to the APSO.

2.5 The lead local authority officer in charge of the case should ensure that all the evidence and witnesses are available at the hearing, including any evidence in support of the need for the court to make an immediate APSO.

2.6 Various provisions for adjournment and non-attendance at court are contained in sections 54 to 57 of the Magistrates' Courts Act 1980.

2.7 Local authorities may each wish to establish a nominated contact for these orders. Local authorities need to ensure that they are clear as to the availability and contact details for appropriate authorised officers who may be able to act on behalf of the relevant authority. This will avoid potential confusion when making APSO applications. Similarly, local authorities should have direct links with the relevant police referral units. These should be the main point of contact between the local authority and the police.

Preparing the application

2.8 A particular difficulty for an authorised officer when considering applying for an APSO is that very little may be known about the adult suspected of being at risk. The lack of any reliable information on the person, coupled with concerns about their safety, will often be one of the reasons why an APSO is sought. In preparing an APSO application, an authorised officer should consider the following:

- wherever possible the application should be discussed by agency partners in order to ensure that it will lead to a structured implementation;
- that the authorised officer has all the relevant information;
- that there is adequate preparation for any post APSO involvement;
- however, the authorised officer, with the assistance of the local authority's legal team, is solely responsible for the application and implementation of the APSO;
- in making the application to the justice of the peace, the authorised officer must be able to provide evidence that alternative and less interventionist approaches have been considered, but are judged insufficient. Given the human rights implications of an APSO, they must be the last resort; and
- agreement must be reached with the police, or any other agency in respect of accompanying officers to be specified in the APSO.

2.9 The authorised officer should draw up a 'balance sheet' assessing the risks and implications of applying and not applying for an APSO. This would assist the authorised officer in considering the application, and would be of assistance to the justice of the peace where the application is made.

Collection of evidence

2.10 Authorised officers do not have to prove the need for the APSO beyond all reasonable doubt. The need for the APSO may be in part because there is insufficient information about the adult suspected of being at risk. The justice of the peace needs to be 'satisfied' as to the matters outlined in the section 127(4)(a)-(d) of the Act. These are:

- that the authorised officer has reasonable cause to suspect that a person is an adult at risk;
- that it is necessary for the authorised officer to gain access to the person in order to properly assess whether the person is an adult at risk and to make a decision as required by section 126(2) on what, if any, action should be taken;
- that making an order is necessary in order to fulfil the purposes set out in section 127(2); and
- that exercising the power of entry conferred by the order will not result in the person being at greater risk of abuse or neglect.

Making the application

2.11 It is anticipated that APSOs will rarely be sought. As noted above applications should only be made as a last resort, they should only be considered when other less intrusive approaches have failed or are highly likely to fail. The actual or likely failure of these other approaches should be recorded.

Notice of an application for an APSO

2.12 Consideration must be given to issuing a written notice to the occupier of the premises and the adult suspected of being at risk that an application will be made for an APSO. A record of any such written or verbal notice should be kept and the information should be included in the APSO application, since it is open to a justice of the peace to attach to the order a condition requiring written notice to be given.

2.13 If the authorised officer is concerned that giving notice to the occupier or the adult suspected of being at risk may expose the person to potential harm, this information, and the reasoning behind such a judgement, must be included in the application.

2.14 Consideration should be given to the need to inform other persons affected by the order, for example where there are shared living arrangements within a domestic setting such as supported accommodation.

Who should accompany the authorised officer?

2.15 Section 127(6)(b) of the Act states that an APSO may include a condition providing for the authorised officer to be accompanied by another specified person. The application form at Annex B includes a list of people who may who may accompany the authorised officer. The list below is not exhaustive (section 127(3) allows a constable to attend so they are not listed below as an accompanying person). Their inclusion in an agreed order does not necessarily mean that they must accompany the authorised officer on a visit.

Examples of such a person who might be included:

- the key worker (social worker or health care worker);
- domiciliary care worker;
- advocate (statutory or non-statutory);
- family member or close friend;
- best interest assessor;
- general practitioner; or
- approved mental health professional under the Mental Health Act 1983.

2.16 It is likely that the authorised officer will not be in a position to decide what knowledge or expertise is required to fulfil the purposes of the APSO until the first visit, for example, whether it is necessary to include somebody who can assess capacity or has special communication skills. As far as possible, such a person or persons should be identified as part of the preparation for the application.

2.17 When seeking to include a condition as to who should accompany the authorised officer, including a police officer, the rationale for their inclusion must be provided in the application, so that it may be specified in the order.

2.18 The anticipated roles of those who accompany the authorised officer will vary. They will include:

- to ensure that any interview with the person suspected of being at risk is conducted fairly;
- to provide expert knowledge and experience on specific matters (e.g. capacity);
- to advocate on behalf of the person;
- to share their existing knowledge of the person;
- to build a rapport with the person;
- to allow the authorised officer to jointly investigate concerns with, for example, a key worker, a police officer, health professional or Office of the Public Guardian; and
- to assist communication with the adult (or any other member of the household), for example, an interpreter in British Sign Language, lip speaker, Makaton communicator, deaf-blind communications interpreter or a language interpreter.

2.19 Authorised officers should consider whether an advocate should accompany them, and, if they consider an advocate should not be used, should record their reasons for that decision.

2.20 If an advocate is considered necessary, authorised officers need to be clear what type of advocate is required, for example, an Independent Mental Capacity Advocate, Independent Mental Health Advocate, Independent Domestic Violence Advocate, or other advocates as necessary.

2.21 In circumstances where inquiries indicate that the officer carrying out the visit may encounter resistance from the person believed to be at risk or from others at the premises, including the threat of verbal or physical violence, steps should be taken to ensure that staff are protected and supported in planning and executing the visit. Reference will need to be made to the authorities' violence to staff or lone working procedures to assess any potential risks and measures, such as staff visiting in pairs or liaising closely with the police, where necessary.

2.22 However, the presence of a police officer needs to be carefully considered on a case by case basis as there is a delicate balancing act to be struck between the stigma that might result from the presence of police officers and the anticipated need to utilise police powers which extend beyond those conferred on the authorised officer within the APSO. Prior agreement as to when police will and will not be required will reduce the likelihood of police officers being asked to attend at short notice in emergency situations.

2.23 Because of the very nature of APSOs, it is in all but the most extreme circumstances that an application for an emergency order will be required. However, local authorities will want to ensure that arrangements are in place to enable them to secure access to Her Majesty's Courts and Tribunal Service (HMCTS) out of hours.

Section 3: Other relevant information

Standard of proof

3.1 APSOs are civil orders, but the standard of proof that is applied to determine whether the granting of an order in any particular circumstances is ultimately a matter for the courts. It should be borne in mind however, that in part, the need for the APSO is because there is insufficient information about the adult suspected of being at risk

Disclosure

3.2 Before evidence is disclosed, the authorised officer making the application for the APSO should consult the local authority or police or other agencies to ensure that all reasonable steps have been taken to support witnesses and minimise any potential risk of witness intimidation.

3.3 The authorised officer should seek to maintain witness anonymity and ensure that it does not identify them by default (for example, through details of location, race, personal characteristics or age).

Witness support

3.4 The principal purpose of the APSO is to protect vulnerable people from the risk of abuse or neglect. The protection provided should aim to protect those who are at risk, other witnesses who may have reported concerns and the wider local community.

3.5 Engaging, developing and supporting those persons must be a primary concern of any authority seeking to use APSOs. Local strategies should indeed have the interests of the witnesses and the community at their centre. The welfare and safety of those who complain must be a significant consideration.

Devolution

3.6 APSOs can be applied for by authorised officers in Wales. The scheme does not apply to England, Scotland or Northern Ireland. The scheme will be operated by the Welsh Government, with close liaison with HMCTS.

Court fees

3.7 Relevant authorities that apply for an APSO will need to pay an application fee to the court to cover the cost of the court hearing. The amount payable for an APSO at the time of writing is £75. These fees are laid down in the Magistrates' Courts Fees (Amendment) Order 2014, No.875 which can be found at http://www.legislation.gov.uk/uksi/2014/875/pdfs/uksi_20140875_en.pdf

Welsh Government contacts:

Email: safeguardingandadvocacy@wales.gsi.gov.uk

Phil Mulraney: Tel: 029 2082 1556

David Clayton: Tel: 029 2082 5593

Section 4: After the Order is Made

Monitoring and recording

4.1 Local authorities should agree common procedures for recording and monitoring both their successful and unsuccessful applications and for sharing with their Safeguarding Adult Board details including the number of applications made and granted

Condition of Notice attached to an APSO

4.2 Section 127(6)(c) of the Act states that an APSO may include a condition that notice is given to the occupier of the premises and to the person suspected of being an adult at risk. This condition, where applicable, and the manner in which notice must be given, must be specified in the order.

4.3 The justice of the peace must determine, on the basis of evidence provided in the application, whether the attachment of a requirement to give notice might prejudice the safety of the adult considered to be at risk. In doing so he or she must balance the rights of all occupants of the premises, including those of other persons affected by the order - for example, where there is shared living within a domestic setting such as supported accommodation.

Timing of the use of the APSO

4.4 Under section 127(6)(a) of the Act a condition may be attached as to the time at which the order may be exercised. Other than in cases of emergency, strong consideration should be given to the time of entry, particularly where there may be capacity issues. In the absence of a condition in the APSO as to timing, careful consideration should still be given as to the most appropriate time of entry, bearing in mind the rights and interests of those who will be directly affected.

Entering the premises

4.5 It is important to remember at all times that, because of their inherently intrusive nature, care must be taken to ensure that the use of the APSO is compatible with the Human Rights Act 1998. All possible measure must be taken to minimise the risk of a forced or highly confrontational entry to the premises.

4.6 Note that under section 127(5)(b) an APSO **must** include a provision that a constable **may** accompany the authorised officer. There is discretion as to whether or not a constable should accompany the authorised officer. A number of factors must be considered in deciding whether a constable is necessary. Among these are:

- the likelihood of resistance to entry to the premises;
- any known history of violence;
- the severity of the suspected abuse; and
- a judgement as to whether this might escalate the situation.

4.7 The precise role of the police will depend upon individual circumstances. In some situations, their presence will be in the background, whereas in others they will be central to obtaining access to the person. A key principle is that the police will use the minimum amount of force necessary and the impact of their presence should contribute to and not compromise achieving the purposes of the APSO.

4.8 Under section 127(7) of the Act, the constable's powers under an APSO extend beyond achieving entry and include ensuring that the purposes of an APSO are achieved. The constable may use his or her powers to arrest if they suspect that certain criminal offences have been committed.

4.9 Section 127(8) of the Act requires an authorised officer to state the object of the visit, produce evidence of authorisation to enter the premises, and provide an explanation to the occupier of the premises of how to complain about how the power of entry has been exercised.

4.10 Given the sensitive nature of this power it is essential that the authorised officer clearly states to the adult suspected of being at risk, and any other occupier of the premises, what is happening, and what will happen once the visit is completed.

4.11 A copy of the APSO should be provided to the occupier of the premises and a standard form of words should be used by the authorised officer to ensure compliance with section 127(8):

I am in possession of an Adult Protection and Support Order duly issued under section 127 of the Social Services and Well-being (Wales) Act 2014. The purpose of this order is to enable me to speak in private with a person suspected of being an adult at risk of abuse or neglect in order to ascertain whether that person is making decisions freely and to decide what, if any, action should be taken.

If you are dissatisfied with my actions you can formally record a complaint with the social services department.

If you are dissatisfied with the outcome of a complaint you make to the authority, you may then contact the Public Service Ombudsman for Wales. The Ombudsman has legal powers to look into complaints about public services and is independent of all government bodies.

The assessment

4.12 In view of the nature of these actions authorised officers will consider it beneficial to provide details of the complaints procedure, ombudsman and any local agencies suitable of providing advice and support to the household.

4.13 Section 127(2)(c) of the Act identifies one of the purposes of the APSO as being to “enable the authorised officer properly to assess whether the person is an adult at risk and to make a decision as required by section 126(2) on what, if any, action should be taken.”

4.14 The assessment should include consideration of risk, health status, capacity and the ability of the person to protect him or her self. It will also need to include an assessment of the person's understanding of what is happening and what their wishes are. Appropriate weight must be given to their wishes bearing in mind a consideration of the possibility of undue influence.

Exit strategy

4.15 It will be important to have developed an exit strategy so the authorised officer is able to clearly explain, both to the vulnerable person and to other occupants, what happens after the visit has taken place, any follow up actions that are proposed, and any sources of support that are available to them.

4.16 In the event that forced entry has been required, the local authority will be responsible for ensuring that the property is secured.

Information sharing

4.17 Section 137 of the Social Services and Well-being (Wales) Act 2014 requires a person or body to comply with a request for information from a Safeguarding Board unless to do so would be incompatible with the duties of the person or body, or otherwise have an adverse effect on the exercise of the functions of the person or body.

4.18 Section 164 of the Social Services and Well-being (Wales) Act 2014 imposes a duty on the relevant partners to co-operate with, and provide information to, the local authorities for the purpose of their social services functions.

4.19 Section 184 of the Act empowers the Welsh Ministers to require information about matters connected with functions under the Act and other related matters.

Freedom of Information implications

4.20 The Welsh Government is committed to meeting its responsibilities under the Freedom of Information Act 2000. Information submitted to a public authority may be subject to disclosure to a third party in response to a request for information under the Act. The Welsh Government may also decide to include certain information in the publication scheme that it maintains under the Act.

Annex A: Step-by-step approach for an application for an Adult Protection and Support Order

1. Collect evidence

Relevant authorities focus on what is most relevant and necessary to provide evidence for the court to arrive at a clear understanding of the matter.

2. Consider accompanying people

The authorised officer must consider who may be required to accompany them on the visit, and what information the court may require in order to agree to any such request.

3. Make application to the magistrates' court

An application for an APSO is by complaint to the magistrates' court using the appropriate form at Annex B. As a matter of good practice the application should primarily be made to the magistrates' court for the area in which the premises are located.

4. The hearing

The authorised officer, with appropriate legal support, should ensure that all the evidence and witnesses are available at the hearing, including any evidence in support for the court to make an immediate order. The authorised officer will need to liaise with the court regarding listing before bringing witnesses etc to court.

5. Immediate post-APSO procedure

Where an APSO is granted, where it provides for notice to be served, personal service should be arranged as soon as possible. In all cases service should be recorded. The local authority should ensure that a copy of the APSO is forwarded immediately to the police. Copies of the APSO should also be given to any other relevant agency.

Annex B: Application form for an Adult Protection and Support Order

Application by complaint for Adult Protection and Support Order (Social Services and Well-being (Wales) Act 2014 s.127)

Magistrates' Court (Code):

.....

Date:

.....

Subject of the Order:

.....

Address:

.....

.....

.....

Applicant Authority:

.....

And it is alleged:

- (a) that.....is experiencing or is at risk of abuse or neglect, has needs for care or support and as a result of those needs is unable to protect himself or herself against the abuse or neglect or the risk of it; and
- (b) that an Adult Protection and Support Order is necessary for the authorised officer to gain access to the person named above, in order properly to assess whether the person is an adult at risk and to make a decision on what, if any, action should be taken; and
- (c) making an order is necessary to fulfil the purposes set out in section 127(2) of the Social Services and Well-being (Wales) Act 2014; and
- (d) exercising the power of entry conferred by the order will not result in the person named above being at greater risk of abuse or neglect.

Short description of grounds for the application:

- (a).....
- (b).....
- (c).....
- (d).....

I believe it is appropriate for the following person(s) to accompany me when exercising the order (in accordance with s.127(6)(b) of the Act):

- (a).....
- (b).....
- (c).....
- (d).....

Do you wish this application to be heard:

- i) without notice being given to the defendant; or
- ii) with notice being given to the defendant.

If you wish the application to be heard without notice state reasons:

.....
.....
.....

Do you wish an order to be granted with or without a requirement to give notice to the occupier of the premises and to the person suspected of being an adult at risk?

State reasons:

.....
.....
.....

The order must specify the period for which it is in force. Are there any matters you wish to raise which are pertinent to this question?

.....
.....
.....

Name of Applicant Authority:

.....

Address of Applicant Authority:

.....

.....

Who states that the particulars above are a true and accurate description of the grounds upon which this complaint is made:

.....

.....

.....

Taken before me
Justice of the Peace
[By order of the clerk of the court]

Please provide any additional information you consider pertinent to this application:

.....
.....
.....

Examples of such a person who might accompany an authorised officer:

- the key worker (social worker or health care worker);
- domiciliary care worker;
- advocate (statutory or non-statutory);
- family member or close friend;
- best interest assessor;
- general practitioner; or
- approved mental health professional under the Mental Health Act 1983.

Annex C: Welsh Statutory Instruments

Welsh Statutory Instruments 2015 No. 1465 (W. 159) SOCIAL CARE, WALES

The Adult Protection and Support Orders (Authorised Officer) (Wales) Regulations 2015

<i>Made</i>	1 July 2015
<i>Coming into force</i>	6 April 2016

The Welsh Ministers, in exercise of the powers conferred by section 127(9) of the Social Services and Well-being (Wales) Act 2014¹, make the following Regulations.

A draft of these Regulations was laid before the National Assembly for Wales under section 196(6) of that Act and has been approved by a resolution of the National Assembly for Wales.

Title, commencement and application

- (1) The title of these Regulations is the Adult Protection and Support Orders (Authorised Officer) (Wales) Regulations 2015.
- (2) These Regulations come into force on 6 April 2016.
- (3) These Regulations apply in relation to Wales.

Interpretation

2. In these Regulations—

“appropriate training” (*“hyfforddiant priodol”*) means training which is provided or arranged by the Welsh Ministers or an authorising authority which will enable a person to undertake the functions of an authorised officer under section 127 of the Social Services and Well-being (Wales) Act 2014;

“authorising authority” (*“awdurdod awdurdodi”*) means the local authority which authorises the authorised officer;

“officer” (*“swyddog”*) means an officer appointed under section 112 of the Local Government Act 1972;

“relevant experience” (*“profiad perthnasol”*) means the appointing authority is satisfied that the person has the required experience of working within the field of social care with adults who are, or may be, at risk.

Restrictions on who may be authorised officer

3.—(1) Subject to paragraphs (2) and (3), a local authority must only authorise a person to apply for an adult protection and support order who has completed appropriate training and is an officer of the authorising authority.

(2) Subject to paragraph (3), in a particular case where it is not practicable for an officer who satisfies paragraph (1) to act, a local authority must only authorise a person who has relevant experience, has completed appropriate training and is—

(a) an officer of a local authority within the same Safeguarding Board area⁽²⁾ as the authorising authority; or

(b) where it is not practicable for an officer described in sub-paragraph (a) to act, an officer of any local authority in Wales.

(3) In a particular case where it is not practicable for an officer who satisfies paragraph (1) or (2) to the act, a local authority must only authorise a person who is an officer of the authorising authority.

Mark Drakeford

Minister for Health and Social Services, one of the Welsh Ministers

1 July 2015

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under the Social Services and Well-being (Wales) Act 2014 and relate to a person authorised by a local authority to apply for an adult protection and support order under section 127 of that Act.

Regulation 3(1) provides that, except in the circumstances set out in paragraphs (2) and (3), a local authority must only authorise a person who has relevant experience, has completed appropriate training and is an officer of that local authority.

Where that is not practicable regulation 3(2) provides for a person to be authorised who has relevant experience, has completed appropriate training and who is an officer of a local authority within a certain safeguarding board area, or failing that, of a local authority in Wales.

In circumstances where it is not practicable for an officer described in paragraphs (1) or (2) to act, regulation 3(3) allows a local authority to authorise an officer of that local authority who has relevant experience.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained by contacting the Department for Health and Social Services, Welsh Government, Cathays Park, Cardiff CF10 3NQ.

² Section 142 of the Act defines "Safeguarding Board area" as an area set out in regulations under section 134(1) of the Act (see the Safeguarding Boards (General) (Wales) Regulations 2015, S.I. 2015/1357 (W. 131)).

Annex D: Social Services and Well-being (Wales) Act 2014

Section 127 Adult Protection and Support Orders

127 Adult protection and support orders

- (1) An authorised officer may apply to a justice of the peace for an order (“an adult protection and support order”) in relation to a person living in any premises within a local authority’s area.
- (2) The purposes of an adult protection and support order are -
 - (a) to enable the authorised officer and any other person accompanying the officer to speak in private with a person suspected of being an adult at risk;
 - (b) to enable the authorised officer to ascertain whether that person is making decisions freely; and
 - (c) to enable the authorised officer properly to assess whether the person is an adult at risk and to make a decision as required by section 126(2) on what, if any, action should be taken.
- (3) When an adult protection and support order is in force the authorised officer, a constable and any other specified person accompanying the officer in accordance with the order, may enter the premises specified in the order for the purposes set out in subsection (2).
- (4) The justice of the peace may make an adult protection and support order if satisfied that -
 - (a) the authorised officer has reasonable cause to suspect that a person is an adult at risk;
 - (b) it is necessary for the authorised officer to gain access to the person in order properly to assess whether the person is an adult at risk and to make a decision as required by section 126(2) on what, if any, action should be taken;
 - (c) making an order is necessary in order to fulfil the purposes set out in subsection (2); and
 - (d) exercising the power of entry conferred by the order will not result in the person being at greater risk of abuse or neglect.
- (5) An adult protection and support order must -
 - (a) specify the premises to which it relates;
 - (b) provide that the authorised officer may be accompanied by a constable; and
 - (c) specify the period for which the order is to be in force.

(6) Other conditions may be attached to an adult protection and support order, for example -

- (a) specifying restrictions on the time at which the power of entry conferred by the order may be exercised;
- (b) providing for the authorised officer to be accompanied by another specified person; and
- (c) requiring notice of the order to be given to the occupier of the premises and to the person suspected of being an adult at risk.

(7) A constable accompanying the authorised officer may use reasonable force if necessary in order to fulfil the purposes of an adult protection and support order set out in subsection (2).

(8) On entering the premises in accordance with an adult protection and support order the authorised officer must -

- (a) state the object of the visit;
- (b) produce evidence of the authorisation to enter the premises; and
- (c) provide an explanation to the occupier of the premises of how to complain about how the power of entry has been exercised.

(9) In this section an authorised officer means a person authorised by a local authority for the purposes of this section, but regulations may set restrictions on the persons or categories of persons who may be authorised.