**SOCIAL SERVICES AND WELL-BEING (WALES) ACT 2014**

**HANDOUT**

## Adult Protection and Support Orders (APSOs)

## Legal alternatives

There are specific pieces of legislation that may be more appropriate than an APSO in specific circumstances. The legal powers which are most appropriate to each individual circumstance should be discussed on a multi-agency basis before applying for an APSO.

Other legal options may result in access to an adult at risk. However, they may not be relevant to the situation for which you are considering an APSO.

**Police powers**

* Under Section 17(1)(e) Police and Criminal Evidence Act 1984 (PACE 1984) a police officer may enter and search premises for the purpose of saving life or limb or preventing serious damage to property. The power is not linked to any suspicion of a criminal offence and can be used at the discretion of the police officer without a warrant.
* Under Section 24 PACE 1984, a police officer may arrest without a warrant anyone who is about to commit an offence; who is in the act of committing an offence; or whom he/she has reasonable grounds for suspecting to be about to commit an offence or to be in the act of committing an offence. However, this can only be done if one of a number of conditions exists. One of these conditions is ‘to protect a child or other vulnerable person’ from the person being arrested.
* If the police reasonably believe that a breach of the peace is being committed, or is about to be committed, on private property, they may use their common law power to enter the property without a warrant in order to stop or prevent the breach. The police are able to [arrest](http://www.inbrief.co.uk/police/power-of-arrest/) and detain anyone who is committing, or they have reasonable cause to believe is about to commit, a breach of the peace.

**Mental Health Act**

* Under the Mental Health Act 1983, a magistrate may issue a warrant authorising a constable to enter premises (using force if necessary) where it is believed that a person thought to be suffering from a mental disorder has been or is being ill-treated, neglected or not kept under ‘proper control’, or is living alone and unable to care for themselves. The warrant authorises the constable to remove the person to a ‘place of safety’ in order that they may be assessed under the Act or where arrangement for treatment or care may be made. The basis of this application will be information provided by an Approved Mental Health Professional (AMHP).
* Section 115 of the Mental Health Act 1983 gives AMHPs the power to enter and inspect premises in which a mentally disordered patient is living if they have reasonable cause to believe that the patient is not under proper care.

**Public health**

* Section 287 Public Health Act 1936 gives local authorities the power to enter and cleanse premises that may constitute a public health risk. A warrant may be obtained from the magistrates’ court in the case of refusal or anticipated refusal.
* Public Health (Control of Disease) Act 1984 contains a number of provisions to enable the removal of people with infectious disease.

**Regulation**

* Services that provide social care are subject to powers of the Care and Social Services Inspectorate Wales (CSSIW), which inspects them. Regulation and inspection is currently changing due to the Regulation and Inspection of Social Care (Wales) Act 2016. Where someone is a resident or is using a service, it will be helpful to talk to CSSIW about options.

**Domestic abuse**

* Domestic violence protection notices and orders (DVPNs and DVPOs) have been implemented across England and Wales from 8 March 2014. If the police have a reasonable belief that domestic abuse has occurred they are able to serve the perpetrator with a DVPN as the first step to acquiring a DVPO. A court will hear an application for a DVPO within 48 hours (excluding Sundays and bank holidays) of the person being served with a DVPN by the police. If a DVPO is made, it will last for a minimum of 14 days and a maximum of 28 days. The DPVO may stop the perpetrator from entering, and being within a certain distance, of the home of the person at risk; stop the perpetrator from making the person at risk leave or be excluded from their home; require the perpetrator to leave the home of the person at risk (even if it is their home, too). In addition, the court will take into account the welfare of anyone under 18 who the police consider will be affected by the DVPO. A police officer can arrest a person who has breached a DVPN or a DVPO without a warrant.
* The Serious Crime Act 2015 (the 2015 Act) received royal assent on 3 March 2015. The Act creates a new offence of controlling or coercive behaviour in intimate or familial relationships (Section 76). Controlling or coercive behaviour should be dealt with as part of adult and/or child safeguarding and public protection procedures. Victims who experience coercive and controlling behaviour that stops short of serious physical violence, but amounts to extreme psychological and emotional abuse, can bring their perpetrators to justice.
* Restraining orders can be made by a court in relation to a criminal case alleging domestic abuse, whether or not the case is upheld. A restraining order imposes prohibitions and may cover a range of behaviour. It can, for example, exclude a person from a specific geographical area, from contacting specific people or behaving in a particular way. A restraining order is preventative, not punitive. However, it is a crime to breach a restraining order, and a person doing so can be arrested and charged.
* The Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015 aims to prevent and protect people from gender-based violence,domestic abuse and sexual violence. *A person exercising relevant functions must have regard (along with all other relevant matters) to the need to remove or minimise any factors which—*

*(a) increase the risk of violence against women and girls, or*

*(b) exacerbate the impact of such violence on victims.* (2 (1))

A national strategy is being developed and there are pilot projects. This is an area for authorised officers to remain aware of.

**Private law**

* A person at risk of domestic abuse can make an application for an injunction. An injunction is a ‘stay away’ order, which prevents the abuser from certain behaviour (e.g. contacting the victim) or compels them to action (e.g. to leave the home). A power of arrest can be attached to an injunction and will give the police power to arrest the abuser if he or she breaks the order.
* Non-molestation orders are a type of injunction prohibiting the abuser from harassing, intimidating or pestering the victim or any children who live with the victim. The abuser does not have to have been physically abusive in order to obtain this type of order. If an order is breached, a criminal offence will have been committed.
* Occupation orders, another injunction, establish who has a right to stay in the home. An occupation order can order an abuser to move out of the home, or to keep a certain distance from the home.
* Other injunctions include Common Law Injunctions (sometimes called Assault and Trespass Injunctions) which stop somebody who does not live in the property, such as a relative or acquaintance, entering the property, and from harassing or assaulting them. Anti-Harassment Injunctions can be used if the person is being continually harassed, threatened, pestered or stalked by a stranger, acquaintance, or after a relationship has ended.

**Modern slavery**

* The Modern Slavery Act 2015 includes two civil orders under Part 2 which can be applied to those who pose a risk of harm from committing modern slavery offences in future: Slavery and Trafficking Prevention Orders (STPOs) and Slavery and Trafficking Risk Orders (STROs). The aim of both types of order is to protect potential victims from the physical or psychological harm which would result if the defendant committed a slavery or trafficking offence. Breach of an order, without reasonable excuse, is a criminal offence which may be tried either summarily or on indictment with a maximum penalty on indictment of five years’ imprisonment.

**Forced marriage**

* Forced Marriage Protection Orders can be made to a designated Forced Marriage Court by the person at risk or by a third party, such as a relative. A local authority can make an application on behalf of an adult with care and support needs. The orders can, for example, prohibit a forced marriage, demand to reveal the whereabouts of a person, and to ensure the security of passports and travel documents. Breach of an FMPO is a criminal offence.

This handout can act as a reference for you in your practice.