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Safeguarding adults at risk of harm in Scotland: legislation, policy and practice

Serious consideration needs to be given to the development of specific legislation in adult protection, including a duty to cooperate for all agencies involved in this area of work (Penhale et al., 2007, p. 10).

Increasing awareness of the need for legislation to provide a context for adult protection activity in Scotland grew throughout the 1980s and 1990s, with the Scottish Law Commission publishing its "Report on vulnerable adults" in 1997. This report made "... recommendations to assist local authorities and the Mental Welfare Commission for Scotland in making enquiries and in taking steps to protect the welfare and property of vulnerable adults" (Scottish Law Commission, 1997, p. iv). The proposed Bill was not adopted by the Scottish Executive, but did add impetus to the issue when in 2002 concerns were raised by the case of a woman with intellectual disabilities who was admitted to her local general hospital in Scotland suffering from multiple injuries. The injuries were the result of physical and sexual assaults over several years. There had previously been awareness of the ill treatment of the woman by her brother on the part of the police, social services and the NHS and yet no action had been taken to prevent this chronic abuse. The woman's brother, along with two other men, was convicted of rape and assault and imprisoned. In the enquiry that followed, it became apparent that failures within social work and health services had allowed three people to be seriously sexually abused and another to be seriously physically neglected over a period of 30 years (MWC/SWSI, 2004).

The extent of the abuse both in this severity and chronic nature served as a wake-up call throughout Scotland. Evidence from the case and subsequent research pointed to systemic failings in the approach of responsible agencies (Hogg et al., 2009a, b). With respect to the latter, while evidence of good practice was certainly to be found, failures in responding to evidence of harm and abuse, unclear operational procedures and shortcomings in multiagency collaboration were all noted, findings directly comparable to those of Penhale et al. (2007) in England and Wales. In addition, between 2004 and 2009 the Care Commission in Scotland (now the Care Inspectorate) recorded 1,530 specific abuse and neglect complaints against adult care homes. Of these complaints 56 per cent had been upheld or partially upheld. There were 5,216 complaints in total during the same period, with 2,753 upheld or partially upheld.

In the light of this situation, the Scottish Government prepared a Bill that was to be enacted as the Adult Support and Protection (Scotland) Act 2007. This Act was developed in the context of existing legislation, notably the Adults with Incapacity (Scotland) Act 2000 and The Mental Health (Care and Treatment) (Scotland) Act 2003. It was intended to complement existing legislation, filling gaps relevant to adult safeguarding that had been identified. The Act aimed explicitly to make provisions that overcame the acknowledged failings noted above. In part it took its starting point from the earlier Scottish Law Commission report,

though in particular the word 'vulnerable' was avoided in subsequent legislation. Under the Act, however,

"vulnerable" does make its appearance in the Protection of Vulnerable Groups (Scotland) Act 2007, legislation which directly parallels vetting and barring procedures in England and Wales and indeed interfaces with that legislation.)

In order to avoid stigmatising individuals in particular groups, e.g. people with intellectual disabilities, no reference is made to categories of individuals. Instead a three-point test

is proposed as to who is an “adult at risk of harm” and therefore protected under the Act.	58
Such individuals must be 16 years or over and:	59
• unable to safeguard her/his own well-being, property, rights or other interests;	60
• at risk of harm; and	61
• because they are affected by disability, mental disorder, illness or physical or mental infirmity are more vulnerable to being harmed than an adult who is not so affected.	62
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In the event of an allegation or suspicion of harm, the Act places a duty on local councils in Scotland to make the necessary inquiries to establish whether specific action is needed to stop or to prevent harm occurring. In the event of such risk being identified, the council then has the obligation to undertake an investigation of the case. A variety of powers to do so are made available under the Act, some of which have raised issues of rights. Importantly a duty is placed on statutory agencies including councils, the police and NHS to collaborate where an adult is deemed at risk of harm. These provisions have undoubtedly led to considerable activity, including the production of multiagency operating procedures and task groups at local level.	64
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The Act also mandates the setting up of interagency Adult Protection Committees (ASPs). 29 such committees have been established (some council areas opting for combined committees). Importantly, the committees have, under the legislation, to be chaired by independent convenors. The ASPs have a wide-ranging remit. This includes responsibility for ensuring robust adult protection procedures are in place and reviewed, including effective multiagency arrangements and training and staff development. The independent convenor is also mandated to prepare their own biennial report on the development of safeguarding in the council area and an assessment of its effectiveness. A summary of the first reports (October 2010) will shortly be available while the second biennial reports will be published in October 2012.	66
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The Act also empowered local councils to apply to a sheriff for a variety of protection orders. Depending on the urgency and type of harm they may apply for assessment orders, removal orders and banning or temporary banning orders. (Assessment orders also grant a warrant for entry to premises in which a person may be at risk of harm.) As intended by the legislators, these orders have been used very sparingly across Scotland, with banning orders preventing the perpetrator coming into contact with the at-risk individual the most frequently employed.	85
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It is important to note at this stage, that the majority of cases that come under review are not dealt with under the legislation. There are a variety of reasons for this. Support is often given through on-going or new care management arrangements, while inquiries may show that the person does not meet the three-point test noted above, or the allegation of harm is not upheld. A fuller understanding of the processes and decision-making is called for with comparative data needed.	92
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The launch of the Act in Scotland in 2008 has been supported by an implementation programme, funded and promoted by the Scottish Government. These included a Code of Practice for councils and health professionals under the Act, guidance for ASPs, an easy guide to the Act, and national training materials to meet differing needs (Scottish Government 2008a-d). Though the Act has given a significant impetus to local awareness and activity, wider national coordination has also been established. The 29 ASP Committee convenors meet as a group to discuss implementation of the Act and emerging issues of common concern. Their meetings are followed by discussion with Scottish Government representatives responsible for this area of work. More recently a national Adult Protection Policy Forum has been established with representatives of key national agencies and a small number of ASP Committee convenors. In addition, a national co-ordinator based at the University of Stirling has been appointed.	100
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Evaluation of adult support and protection activity at the level of local multiagency partnerships has received increasing attention, with a particular emphasis on self-evaluation. At the heart of this is the question: “Do we seek to make a difference because we can?” The following table provides a brief overview of the issues raised and	111
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the effectiveness of safeguarding. In addition, data standards for a national dataset have been formulated permitting cross-Scotland comparisons and the basis for examining trends in coming years.	115 116 117
While the outcome of local evaluation will have an important bearing on an assessment of the contribution of the legislation to making adults at risk of harm safer, questions should also be asked about the vertical structures that this movement has generated. Does the National Convenors Group result in local improvements and does the National Policy Forum add anything to making individuals safer? An overall appraisal of the entire structure of adult protection in Scotland will surely be called for in the not too distance future. External scrutiny of adult protection will also come into force. This will begin in 2013, though the Care Inspectorate has yet to describe the inspection model, or indicate whether inspection will be conducted in its own right or as part of an evaluation of wider adult inspection.	118 119 120 121 122 123 124 125 126 127
There is little doubt that the Adult Support and Protection (Scotland) Act 2007 has had a profound impact on safeguarding activity in the country. It is important to emphasise, however, that this legislation cannot in and of itself solve the problem of individuals at risk being harmed, even with the superstructures that have been erected since its implementation in October 2008. The Act is used in conjunction with a wide range of other legislative provisions and in a framework of support that includes care management. In addition, it is almost certainly the case that most harm is hidden, given that the primary context for abuse is the family. Increased awareness among members of the general public is needed, with adult protection becoming as salient in their minds as child protection. There is some way to go close this gap, though a significant start has been made.	128 129 130 131 132 133 134 135 136 137
The first paper in this special issue, by Stewart and Atkinson of the Glasgow Caledonian University considers the issue of citizenship and adult protection across the UK. In a wide-ranging paper, an overview of adult protection in the UK is provided, and the paper then considers concepts of vulnerability and citizenship. It also looks at the implications of the impact of adult protection procedures on the citizenship rights of those most likely to be subject to such procedures.	138 139 140 141 142 143 144
This is followed by a useful contribution by Hogg and May from the University of Dundee relating to the development of a resource to enable practitioners to evaluate their own practice within adult protection. The resource was developed within the context of multiagency policy, procedures and legislation and identified a set of relevant quality indicators, which were then piloted in just over half of the multiagency partnerships that have been established in Scotland. The paper charts the development of the resource and its piloting and also considers the potential for use outside Scotland.	145 146 147 148 149 150 151
The third paper in this issue, by Campbell and Chamberlin, from St Andrews, also concerns a pilot project that was established in order to evaluate the knowledge and understanding of a group of community nurses working in learning disability services following the implementation of legislation in Scotland and the use of approved training materials in this area. Although this was a small-scale study, levels of understanding and knowledge about the Act were below what was expected and the paper considers reasons for this and helpfully point to the need for further work in this area in order to evaluate the training initiatives that were undertaken in relation to the introduction of the legislation.	152 153 154 155 156 157 158 159
The following paper by Mackay and colleagues from the University of Stirling reports on qualitative research undertaken with social services professionals from three local authority areas to explore their experiences of use of the legislation following its introduction in 2008. Perhaps surprisingly, the research found that the most common reason for not using the legislation was a lack of understanding of what it was for and how to use it. The paper also discusses the use of protection orders and shared responsibility across the different organisations involved in adult protection work at local level. Clarification of the roles and responsibilities of professionals involved in this area of work was seen as very useful.	160 161 162 163 164 165 166 167 168
The final paper in this special issue, by Hunter and colleagues looks at the area of self-directed support within the framework of the Scottish legislation. The paper considers findings from the national evaluation of pilot sites for the introduction of self-directed support in Scotland,	169 170 171

together with data from interviews with Adult Protection leads in those areas. This is set within the context of recent developments in relation to practice within adult protection and the importance of needs for support within such situations is emphasised.

We hope that you will find this special issue of interest and that it will provide you with on-going food for thought and reflection about this area. Enjoy the variety of contributions in this issue, and hopefully the rest of the summer too!

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Further reading

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