



A UK-Wide Approach to Adult Protection: **NATIONAL POLICY ON POWERS.**



Policy Brief

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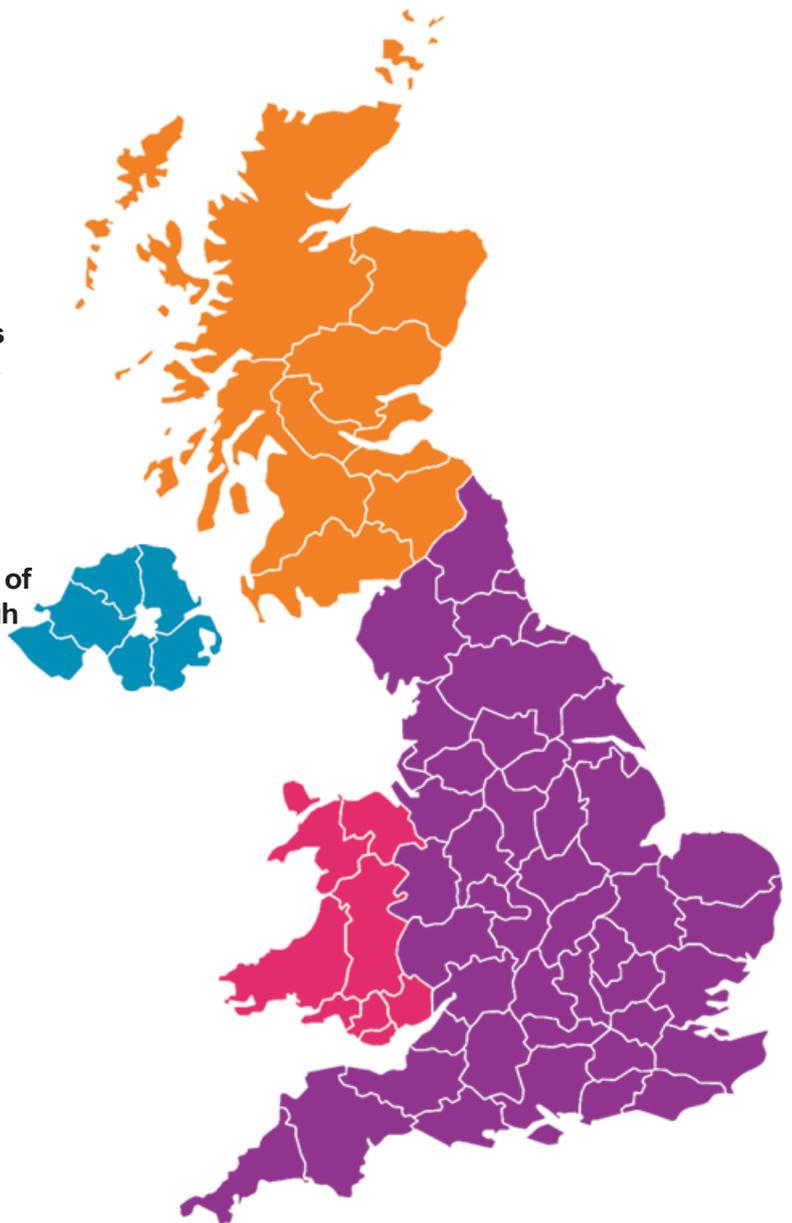
Key Issues:

Under present legislation in England, situations may arise where a social worker cannot access an adult at risk to conduct a private interview where there is suspected abuse.

Adult protection legislation in Scotland and Wales makes particular provision for instances of hindering or obstruction by a third party through a codified power of entry.

A majority of social workers in England have been found to support the introduction of a power of entry.

Evaluation of the Adult Support and Protection Act (Scotland) (2007) has concluded that additional powers for social workers support good safeguarding practice.



RECOMMENDATIONS:

Undertake a public consultation, executed by the Law Commission, to consider applying the power of entry available in Scotland and/or Wales to England.

It is clear from comparing the debates at the time of the implementation of the Care Act and more recently raised in the House of Lords in regards to the Domestic Abuse Bill that while there is significant stakeholder interest in broadening the powers available to social workers, there are also powerful counter arguments that call for more evidence of the impact of these powers. Commonly cited are the existence of other similar powers elsewhere and a denial of the prevalence of instances of hindering. Moreover, there is a lack of consensus about under what legislation these powers should lie. The independent Law Commission are well placed to bring together evidence from all four nations to make changes to encourage best practice in England.

Data collection to better understand the scale of the problem: consider including a hindering measure in annual statistical returns; commissioning development work to define where social workers are encountering hindering and develop guidance to respond.

The evidence suggests hindering or other obstruction of duty is encountered by many social workers in England, however cases are not consistently recorded or flagged. A better picture of prevalence could be developed through mandatory flagging in statistical returns. In turn, this significant issue would benefit from specialised guidance for social workers to identify best practice at gaining access to an adult at risk.

For the Department of Health and Social Care to commission comparative research to explore the experiences and outcomes for adults at risk and the approaches taken by the practitioners and agencies in the four nations.

In all four nations there is an absence of comprehensive evaluation that considers both outcomes and service user experiences. In England national-level evaluation is limited to the Safeguarding Annual Collection, a mandatory data collection from councils which captures information about safeguarding activity. This however does not look at experiences of service users, or capture information on cases that do not qualify for further investigation. Nor does it accommodate comparison to the other nations. A centralised comparative research project could create knowledge to inform practice on all areas of safeguarding across the UK's local authorities regardless of their different legal or policy frameworks.

Policy Problem:

In the UK, all four nations have taken a general approach to protection, with adult safeguarding concerning all abuse of adults who might be considered 'at risk'. As such the legal and policy frameworks also cover the needs of those older adults experiencing abuse or neglect that other jurisdictions might legally classify as 'elder abuse'. As an area of devolved administration, the frameworks for adult protection are different in each nation of the UK and this has created inequalities in the effectiveness of practice.

Adult Protection: statute or national policy?



England:
The Care Act 2014



Scotland:
Adult Support and
Protection (Scotland)
Act 2007



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



Northern Ireland:
Adult Safeguarding:
Prevention and Protection
in Partnership (2015)*

**Northern Ireland has recently concluded a consultation on a draft Adult Protection Bill.*

Adult safeguarding has been a feature of UK policy since the 1980s. Scotland was the first UK jurisdiction to legislate adult protection, through the Adult Support and Protection (Scotland) Act (2007). Adult Safeguarding in England is codified through the Care Act (2014), with parts of this Act covering Wales. Wales also has their own framework implemented under the Social Services and Wellbeing (Wales) Act (2014). Northern Ireland's

adult safeguarding is currently implemented under national policy, the most recent guidance is *Adult Safeguarding: Prevention and Protection in Partnerships* (2015).

There are differences between the UK nations in: the threshold for intervention; the definition of an adult at risk; and the duties on local authorities and partner agencies.¹ This discussion focuses on the differences in powers for social workers in the four nations, demonstrating the need to bring England in line with Scotland and Wales and to lay the foundation for Northern Ireland to follow suit as the Assembly drafts the Adult Protection Bill.

Under England's Care Act (2014), the local authority are under a legal duty to investigate abuse; social workers are not granted any powers emerging from this duty. The present policy in Northern Ireland stipulates some duties in respect to an adult at risk, but these lack legal basis and any corresponding powers are located in other welfare, civil and criminal legislation protecting members of the public. In Wales, the duty on local authorities to make enquiries is reinforced by a power of entry, granted via an "Adult Protection and Support Order", for practitioners to speak in private with adults suspected of being at risk of abuse. The Scottish Act codifies the widest range of powers corresponding to duties in the statute on local authorities to make enquiries and to provide services. These include powers to carry out visits, conduct interviews, and to require records to be produced where financial abuse is suspected. Additionally, "Protection Orders" can be granted to remove the adult for private interview or medical examination, removal of the adult for protection and banning the subject of the order from being in a specific place.

In considering the frameworks in place in England, Scotland, and Wales, it is notable that social workers in England do not have the power to access an adult at risk for a private interview. This poses an issue in circumstances where abuse is suspected and as such the Local Authority pursues an investigation, however the adult in question may be experiencing coercive control thus impacting their capacity to participate in the adult safeguarding process. This occurrence, known as 'hindering' impacts adult protection in England.

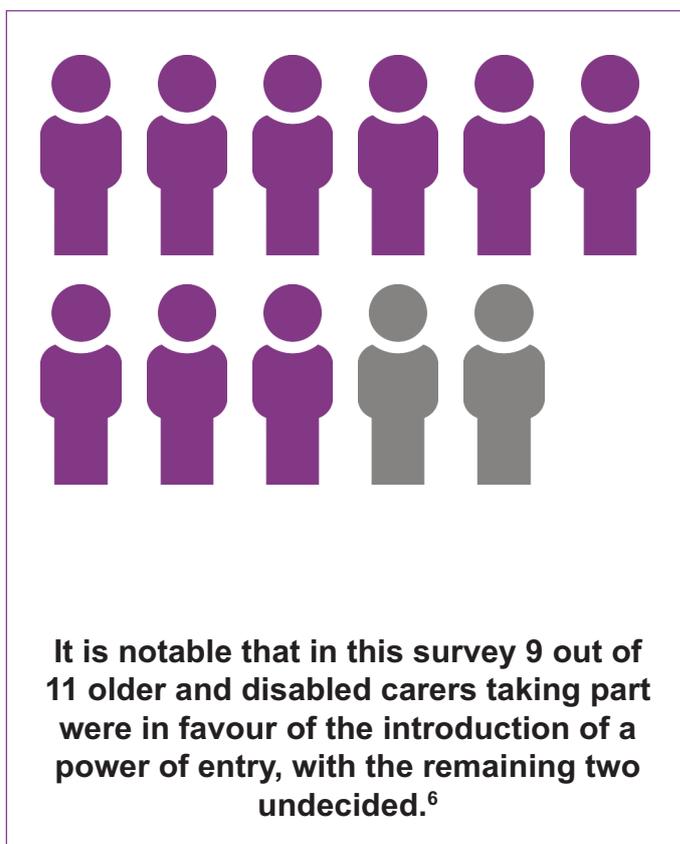
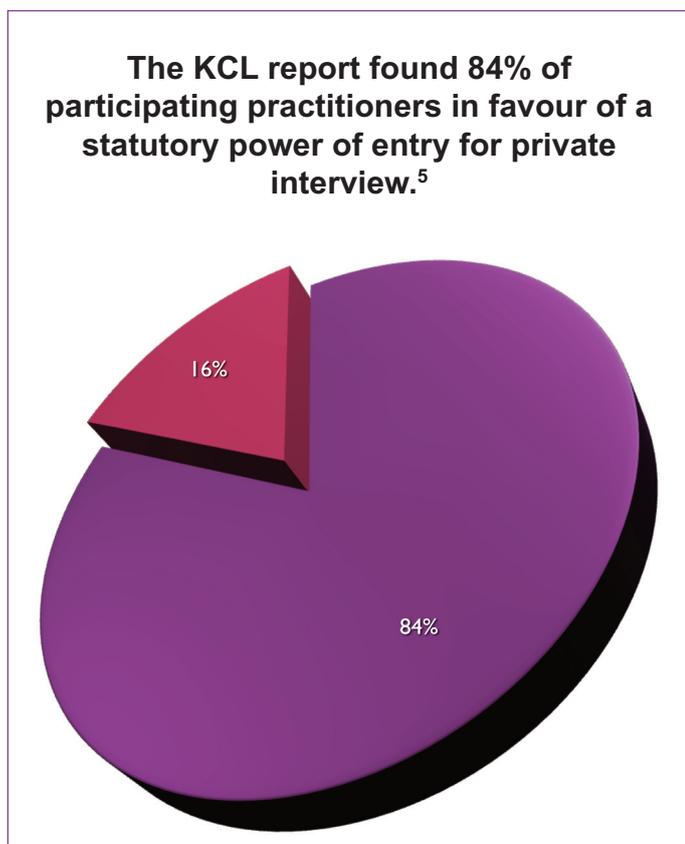
Powers granted under Adult Protection legislation or policy

NATION	STATUS	ASSESSMENT OF ADULT THROUGH PRIVATE INTERVIEW OR MEDICAL EXAMINATION OR POWER OF ENTRY FOR PRACTITIONER TO SPEAK IN PRIVATE WITH ADULT AT RISK	REMOVAL OF THE ADULT AT RISK	BANNING THE SUBJECT OF THE ORDER FROM A CERTAIN PLACE
England 	Legal: S. 42 (1): The Care Act 2014			
Scotland 	Legal: Part 1. Adult Support and Protection (Scotland) Act 2007			
Wales 	Legal: S.104-18: Social Services and Well-being (Wales) Act 2014			
Northern Ireland 	Welfare, civil and criminal laws in conjunction with policy: Adult Safeguarding. Prevention and Protection in Partnership (2015)			

Kings College London's (KCL) Social Care Workforce Research Unit executed a comprehensive investigation into the Adult Safeguarding practice around hindering and the possibility for a power of entry, 'Helping or Hindering in adult safeguarding: an investigation of practice' (2017).

Through looking at Safeguarding Adult Reviews (SAR) - the equivalent of Serious Case Reviews under child protection - the report concluded that the prevention of access for informal visits can be a sign of more serious abuse.² Additionally, through a practitioner survey the report identified several impacts of hindering on safeguarding practice: impact on social workers, feelings of powerlessness; reduced desire to report situations by family and the public; high administrative costs.³ The survey also found hindering disproportionately involves older people, disabled people, and people with learning disabilities and mental health problems.⁴ There is support amongst practitioners for the addition of a power of entry. The KCL report found 84% of participating practitioners in favour of a statutory power of entry for private interview.⁵ It is notable that in this survey 9 out

of 11 older and disabled carers taking part were in favour of the introduction of a power of entry, with the remaining two undecided.⁶



There are alternative routes to accessing an adult for private interview that can be used in England, both practice-based and legal. Indeed, the KCL report details the diverse strategies social workers use to overcome hindering.⁷ Moreover, access can be gained through measures under the Mental Capacity Act (2005) and powers under the Police and Criminal Evidence Act (1884) (PACE). There is evidence of instances where these measures have been insufficient to curtail harm to an adult at risk swiftly.

Consider the example of London Borough of Redbridge vs. G. and Ors.⁸ The case concerned a 94-year-old woman and where the local authority in England were acting on a duty to investigate suspected abuse following reports of harmful behaviour from third party sources. The social worker faced consistent obstruction in carrying out their duties. Despite several third-party referrals for an adult safeguarding assessment, the social worker was unable to gain access to the lady without the suspected perpetrator present. Unable to gain access to establish capacity, and unable to prove the risk of 'life and limb' needed for police access under PACE, the victim in question experienced ongoing harm at the hands of her abuser.

Legislation is important to practitioners; the conceptual argument to put safeguarding adults on a statutory footing understands the power social workers derive from their statutory role.⁹ Social workers, 'who often lead investigation, and must balance complex ethical and practice dilemmas'¹⁰ benefit from good legislation that sets out definitions, principles, and procedures and promotes good training and understanding among professionals. The legislation in Scotland has been found to reduce harm and improve well-being by service users.¹¹ However, the operation of the power of entry has not had wide evaluation from service users as the number of times it has been invoked is small. The most significant evaluation of outcomes of the operationalisation of the Adult Support and Protection Act (Scotland) (2007), found that practitioners value the

powers codified under the Bill. Concluding that while the law needs to be complemented by skilled and knowledgeable professionals, appropriate powers for social workers can allow them to develop proportional interventions.¹² The low number of orders used indicates the legislation is not used intrusively and social workers use the framework of powers to act in the best interest of service users.¹³ Although not commonly invoked, the powers granted to social workers in Scotland have led to good practice equipping social workers with the tools to protect adults at risk.

The minimalist approach applied in England through the Care Act (2014), can be seen to provide insufficient protection in the instances of hindering or obstruction experienced by social workers. This opens the case for examining the use of additional barriers in other UK jurisdictions. It is a significant limitation to the case for new powers that there has been little governmental evaluation of the use of powers in Scotland and Wales. The Scottish Government are presently conducting a review of their Adult Support and Protection Act (Scotland) (2007), which may throw additional light on the use of powers and provide even stronger evidence for their introduction in England. Northern Ireland has recently concluded a consultation on their Adult Protection Bill. The consultation asked a specific question on additional powers for social workers. The department of Health final policy proposals (July 2021) indicate that a power of entry will be created under the Bill. When published, this may provide further evidence from across the UK of the efficacy of such powers. The available evidence demonstrates that additional powers, namely the power of entry codified in Scotland and Wales, could support social worker practice in improving the quality of life and safety of service users.

RECOMMENDATIONS:

Undertake a public consultation, executed by the Law Commission, to consider applying the power of entry available in Scotland and/or Wales to England.

It is clear from comparing the debates at the time of the implementation of the Care Act and more recently raised in the House of Lords in regards to the Domestic Abuse Bill that while there is significant stakeholder interest in broadening the powers available to social workers, there are also powerful counter arguments that call for more evidence of the impact of these powers. Commonly cited are the existence of other similar powers elsewhere and a denial of the prevalence of instances of hindering. Moreover, there is a lack of consensus about under what legislation these powers should lie. The independent Law Commission are well placed to bring together evidence from all four nations to make changes to encourage best practice in England.

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Consulted or recommended resources

- ¹ Lorna Montgomery Janet Anand Kathryn Mackay Brian Taylor Katherine C. Pearson Colin M. Harper, (2016), "Implications of divergences in adult protection legislation", *The Journal of Adult Protection*, Vol. 18 Iss 3 pp. 149 - 160
- ² Stevens, M. J., Martineau, S. J., Norrie, C. M., & Manthorpe, J. (2017). *Helping or Hindering in Adult Safeguarding: an investigation of practice*. Social Care Workforce Research Unit, King's College London. Pg. 6-7.
- ³ Stevens, M. J., Martineau, S. J., Norrie, C. M., & Manthorpe, J. (2017). *Helping or Hindering in Adult Safeguarding: an investigation of practice*. Social Care Workforce Research Unit, King's College London. Pg. 16-18.
- ⁴ *Ibid.* Pg. 19-20.
- ⁵ *Ibid.* Pg. 48.
- ⁶ *Ibid.* Pg. 48.
- ⁷ *Ibid.* Pg. 36-46.
- ⁸ [2014] London Borough of Redbridge vs. G. and Ors.
- ⁹ Stevens, M. J., Martineau, S. J., Norrie, C. M., & Manthorpe, J. (2017). *Helping or Hindering in Adult Safeguarding: an investigation of practice*. Social Care Workforce Research Unit, King's College London. Pg. 57.
- ¹⁰ Lorna Montgomery Janet Anand Kathryn Mackay Brian Taylor Katherine C. Pearson Colin M. Harper, (2016), "Implications of divergences in adult protection legislation", *The Journal of Adult Protection*, Vol. 18 Iss 3 pp. 149 – 160. Pg. 150.
- ¹¹ Ekosgen (2014) Final Report for the Glasgow Adult Support and Protection Service User Sub Committee.
- ¹² Mackay K & Notman M (2017) Adult Support and Protection (Scotland) Act 2007: Reflections on Developing Practice and Present Day Challenges. *Journal of Adult Protection*, 19 (4), pp. 187-198. Pg. 196.
- ¹³ Preston-Shoot, M., and S. Cornish. (2014). Paternalism or Proportionality? Experiences and Outcomes of the Adult Support and Protection (Scotland) Act 2007. *The Journal of Adult Protection* 16 (1): 5–16



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