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Social Work Across the UK

Legal and Policy Differences from a Scottish Perspective

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Introduction

The aim of this brief guide is to outline the principal legislation that affects the statutory delivery of social work services in Scotland, place it in the context of policy, and compare it with the equivalent other three jurisdictions of the United Kingdom (UK): England, Wales and Northern Ireland. This will necessarily start by delving into history as the development of social policy and the laws that implement it are created over time according to a number of factors that differ between the four countries. The guide will make every effort to remain factual and avoid comment or critique – a task however worthy of attention elsewhere. An element of subjectivity however cannot be avoided when looking at the distant past and the origins of the systems as they have developed: history will always be open to interpretation.

What is Social Work?

Social work is an international profession. The definition that has been adopted jointly by the International Federation of Social Work (IFSW) and International Schools of Social Work (ISSW) is as follows:

"Social work is a practice-based profession and an academic discipline that promotes social change and development, social cohesion, and the empowerment and liberation of people. Principles of social justice, human rights, collective responsibility and respect for diversities are central to social work. Underpinned by theories of social work, social sciences, humanities and indigenous knowledge, social work engages people and structures to address life challenges and enhance wellbeing. The above definition may be amplified at national and/or regional levels."

International Federation of Social Workers (IFSW) Global Definition of Social Work (2014)

The range of functions undertaken by social workers is wider than is commonly supposed. Table 1 sets out a summary of social work functions across the four jurisdictions of the UK.

The Wider Policy Context

Social work is not practiced in a vacuum. The challenges service users face will be affected by their level of income, their housing and the extent to which they feel included within society. Similarly, the response that is given by social services (and social workers) will depend not only on levels of funding but also the more fundamental tone set by government and politicians. For example, if politicians communicate that the children of vulnerable families are the product of feckless parenting who need 'rescuing', there will be one set of policy responses, if the message is that these families have not had social justice and their problems are problems of the system rather than individual failings there will be a different set of policy responses.

All professions work with, and are supported by, other professions (e.g. doctors rely on nurses). However, social work is perhaps quantitatively different in its multi-agency approach. For example, it is difficult to see how the child protection function can be undertaken without contributions from the school, the health service and, in the most serious cases, the police. This multi-agency emphasis makes comparisons between countries within the UK complex since the level of funding of schools, health and police varies, and how these services are delivered varies, between countries in the UK. In addition, the context in which social work is delivered, the changing nature of this context, the range of statutory powers, changing legislation and policy and the range of non-statutory functions and the sheer number of service users involved means that simple 'read across' comparisons aren't always possible. Instead this document highlights the most salient aspects.

The Historical Context of Social Work in the UK

There is one quite obvious reason for some of the differences in legislative and policy development between the four jurisdictions over the past twenty years: Scotland has had its own system of law (and established church) since the Act of Union in 1707, with the Westminster Parliament being the legislature until 1999. Since then, under the terms of the devolution settlement, the Scottish Parliament has had opportunity to consult, debate and pass legislation across a range of matters, including social work. The Welsh Assembly, established on a much narrower mandate initially had no primary legislative powers, gaining them in 2006, with additions in 2011. Northern Ireland had a devolved Government after the partition in 1921 and this passed legislation until the imposition of Direct Rule by Westminster at the height of "The Troubles" in 1971. As a result of the "Good Friday Agreement" a Northern Ireland Assembly was established in 1998 but suspended between 2007 and 2011, and again in 2017, remaining so as this is written in late 2018. Suspension has implications for health and social care professionals including social workers: for example Northern Ireland is now the only jurisdiction in the British Isles (including the Irish Republic) where abortion is in most circumstances illegal: guidance issued by the Department of Health Social Services and Public Safety Northern Ireland in 2016 warned that whilst giving information to women about services available in other jurisdictions was not illegal, whether it was lawful to "promote or advocate" them had not been tested in the courts (DHSSPSNI 2016).

At the time of writing in late 2018, the Scottish Parliament had enacted approximately (the definition depends on interpretation) 26 laws that have an impact on social work practice; the Welsh Assembly had enacted 6, and the Northern Ireland Assembly, 13. In Scotland most people would probably agree that Parliamentary business has at least partly been driven by the national question: with those in favour of independence wanting to demonstrate that Scotland can run its own affairs (the "Scottish Executive" changed its name to "Scottish Government" in 2012), whilst those in favour of devolution within the union, have been anxious to prove that independence is unnecessary. The Independence Referendum in 2014 did not settle these differences and they remain as drivers of change and reform. Such questions are of course of major relevance in Northern Ireland, and also, but perhaps to a lesser extent, in Wales.

Beneath reasons explained by simple opportunity, lie a history of cultural difference between the four jurisdictions. In a review of social work across the British Isles written soon after the millennium, Payne and Shardlow illustrate this with the example of how Probation and Justice services for adult offenders became a mainstream local authority controlled social work function in Scotland as a consequence of the Social Work (Scotland) Act 1968 (this will be referred to in more detail later). In the other three jurisdictions it remained a centralised service with an increasing divergence from social work. This they discuss under four headings: *administrative decisions and divisions, cultural and social expectations and experience, professional thinking, and knowledge and research* (Payne and Shardlow 2002). These headings take into account factors such as church teachings and influence, institutional influence (including the power of local government and its influence on central government), political divisions and influence, and the place of universities as centres of innovation, research and knowledge. This was quite far-seeing and can certainly be evidenced in the differential development in policy and law experienced over the years since.

So what might such differences be based upon? Histories of social work discuss long-standing tensions between those who support aims of social justice and universalism in welfare provision, and those who would differentiate between the deserving and undeserving poor – a debate that continues today (Daniel and Scott 2018). These differences, sometimes stemming from religious belief, explain attitudes, local variations and developments in Poor Law provision across the UK following upon the 1601 Elizabethan Poor Law Act. This is evidenced in the balance between "indoor relief" which forced the poorest and "undeserving" into workhouses, and "outdoor relief" which provided allowances in cash or kind to households. In Scotland the Poor Law (Scotland) Act of 1845 put the emphasis on outdoor relief. Scottish workhouses (or poor houses) were there for the old and infirm and their residents were not usually expected to work for their keep, which was not the normal rule in England and Wales. However, in keeping with the Protestant work ethic, those considered able-bodied in Scotland were denied relief entirely, unlike their counterparts elsewhere (Higginbotham undated).

Social work histories are agreed that social work developed in the 19th century as a consequence of industrialisation and urbanisation, the need for an organised and disciplined workforce, and associated extremes of poverty caused by the breakdown of traditional forms of support (Cree 2018). On the 500th anniversary of the beginning of the direct slave trade from Africa to the Americas it is also worth remembering that industrialisation in Scotland, as elsewhere, was funded by profit from our appalling role in this barbarity in the 17th and 18th Centuries – and the reparations paid to the owners of slaves upon its abolition. This background contrasts with the sympathy some of those same industrialists (a particular trend in Scotland) felt at the plight of the poor at home, and the philanthropic enterprises some established that formed the basis of the voluntary sector we know today. The earliest British social work organisation was the *Charity Organisation Society* whose members generally reflected Victorian middle and upper class ideas about the poor and were opposed to state intervention in any form. Other 19th Century charitable organisations had a different emphasis: the *Settlement Movement* which started in London but which spread to other cities including Glasgow, gave university students the opportunity to live and work amongst the poor and help them practically, but also promoted social reform (Ferguson and Woodward 2009). As charity was clearly insufficient to resolve social problems and dire poverty, the tensions between these two approaches were partially resolved through the creation of the welfare state and systems that have developed since. However, the same debates can still be seen across the developed world in populist attitudes towards refugees and other disadvantaged groups.

Tensions that inform present debates are also evident in the way in which the vulnerable are cared for: in Scotland the tradition of “boarding-out” needy children (and adults with learning disabilities – see Turbett 2010) to substitute families contrasts with historically less favoured forms of support that tried to improve a child’s situation within their own family (Cree 2018). Children were taken from urban slums and placed in large numbers in institutions – Quarriers Homes being an example that tried to emulate family life. Others were sent out to the colonies in practices now recognised as shameful. The moral message here was “rescue” – again a debate that has passed down the years and is still contested today – the abuse many children suffered after being removed from their own homes, an emergent and shocking theme (Scottish Child Abuse Inquiry 2018).

Some general historical considerations relating to differential service development are worthy of mention here. In Northern Ireland the first Prime Minister of the government formed after partition in 1921 made an early commitment to welfare policy that mirrored the system in Great Britain. Politics then and since in Northern Ireland have been dominated by the “national question” (Campbell and McColgan 2002). The concept of “parity” was both politically expedient given that the voting majority of Protestants favoured policies that underpinned the union and justified on the basis that if taxation was set for the whole UK, then Northern Ireland was entitled to the same level of benefits as elsewhere (Heenan and Birrell 2011). However, the reality was that debate was deliberately stifled by the establishment. Elements of the old Irish Poor Law (established in 1838) remained in place alongside workhouses and Boards of Guardians, until 1939 (and were not entirely abolished until 1948), falling far behind the rest of the UK in terms of provision both for “indoor” and “outdoor” relief (ibid).

In Scotland, the Scottish Office was created as an arm of government in 1885. Over the next hundred years its power and influence grew to the point that it became responsible for almost everything except defence, foreign policy and social security, paving the way for devolution and the forming of the Scottish Parliament in 1999 (Waterhouse and McGhee 2002). In Wales, by contrast, the Welsh Office was established as late as 1965, gradually assuming powers to match those of its Scottish counterpart until its dissolution with devolution in 1999. In the 19th Century and early 20th Centuries political influence in Wales was influenced heavily by, on the one part, the established Church who mirrored the interests and politics of the landowners and industrialists, and the chapel Protestant tradition which mirrored the majority common people and use of the Welsh language. It was not until the disestablishment of the Church after World War 1, and the replacement of the Liberal Party by Labour, that Church influence was ended and the needs of ordinary people given proportional consideration (Drakeford and Williams 2002).

The 1960s saw developments that shaped services we can recognise in part today: the creation through the Seebomh and Kilbrandon reports in England (and Wales) and Scotland respectively that saw the

creation of local authority run services that ended fragmentation in social work and reliance on the voluntary sector. Social Services in England and Wales (created by the Local Authority Services Act 1970), and Social Work Departments in Scotland (created by the Social Work (Scotland) Act 1968), were based on principles of universality, community and reciprocity (Ferguson and Woodward 2009). Meanwhile in Northern Ireland, Direct Rule alongside the need for reform resulted in the unique of quasi autonomous agencies that brought together health and personal social services in a unified structure (created through the Health and Personal Social Services (Northern Ireland) Order 1972). Initially four health and social services boards were established in 1973, and the system has since evolved within integrated structures in line with trends that came from the UK Government and were evident in Health organisation elsewhere: there are now five Health and Social Care Trusts in which all health and social care staff are employed. The unintended legacy has been that today Northern Ireland find themselves well in advance of the other jurisdictions in terms of the much desired goal of health and social work integration.

Terminology

Before proceeding it is worth quickly exploring some terms that will be used throughout this paper. First of all, the relationship between “law”, “policy” and “practice”. Typically, laws are passed in Parliament following debate at the Bill stage and consultation with the public. The law then creates a framework for policy, guidance, codes of practice and regulations – and ultimately practice. However, laws can sometimes enshrine policy that has emerged through the interface of policy and practice – an example being the 2014 Children and Young Persons Act in Scotland which brought into law three aspects of the GIRFEC approach (this will be discussed in later pages).

Law can also change through case law – the interpretation of law by a Court which sets a precedent that then becomes a duty to be followed.

Another matter worth clarifying are the differences between “duties” and “powers”, and “rights” and “responsibilities”. Put simply a legal duty is an obligation under the law and cannot be avoided. A power may arise from a duty in which case it is obligatory, but it may also be discretionary: an example being the power local authorities in Scotland have to dispense financial support through s12 of the Social Work (Scotland) Act 1968 and s22 of the Children (Scotland) Act 1995. A right is an entitlement an individual citizen has which is protected by law; rights, however, can be the subject of legal contest. Responsibility is usually used to describe an obligation the law confers upon a citizen: e.g. parents have a responsibility to care for their children and can commit offences under certain circumstances if they fail to fulfil this responsibility.

When describing Scotland, England Wales and Northern Ireland, the term “jurisdiction” will be used: this neutral legal term accurately describes them now that each has its own law-making parliament, and also avoids terms like “nation”, “province” or “country” which whilst commonly used, all reflect political divisions and are therefore contested.

In Scotland we tend to use the term “protection” when describing services to very vulnerable adults and children, but in the other jurisdictions the term “safeguarding” is used. In Scotland the term “Safeguarder” is used specifically in the context of the Children’s Hearing system to describe the independent person who can be appointed to investigate and report back to a Hearing upon particular aspects of a child’s situation.

Contemporary Law and Policy

Consideration of the development of policy and law will now be addressed in the various areas of social care and social work: Westminster legislation affecting all four jurisdictions (and not amended by any of the devolved Parliaments), Children and Families (including Child Protection and Safeguarding), Adults and Community Care, Mental Illness and Mental Health, the Protection and Safeguarding of Vulnerable Adults, Youth Justice, Criminal (Community) Justice, and finally, Regulatory Bodies. Table 2 attempts a comparison between the current principal pieces of legislation that underly all these areas, and Table 3

principal strategy reports and policy papers. It should be noted in this regard that law and policy is a hugely complex and ever-changing arena and more detailed descriptions written for social workers can be found in literature concerning one or other of the four jurisdictions e.g. for England and Wales: Brammer (2015); for Northern Ireland: White (2011); for Scotland: Maclean and Shiner (2018).

Westminster Legislation Affecting Social Work Practice and Service Delivery

Scotland, and Wales are both affected by law passed prior to the establishment of their respective parliaments; in the case of Scotland particularly, this has been amended by subsequent Scottish parliamentary legislation and will be covered below. There are however several important pieces of legislation that cover all four jurisdictions, and which affect social work services. The first of these is the Human Rights Act 1998 (HRA) which makes it obligatory for all UK public bodies to act in compliance with the European Convention on Human Rights (ECHR). Dispute will normally be settled in a UK court without the necessity to go to the European Court in Strasbourg. This has relevance to social work practice – e.g. it has recently been argued that notwithstanding amendments made to the Children (Scotland) Act 1995 that exempt local authorities from the power to assist children of refused asylum seekers assistance in cash or kind, the duty remains under Article 8 of the ECHR, the “right to family life” obliges local authorities to provide such assistance if required. This may be affected by Brexit but remains the case at the time of writing.

Of complimentary importance to the HRA is the Equality Act 2010. This was designed by the UK Government to bring together and update various pieces of anti-discrimination and anti-oppression legislation that had been enacted over the years. The Act outlines nine protected characteristics that cannot be used to discriminate against an individual: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The Child Poverty Act (2010) enshrined a long standing Government commitment to eradicate child poverty throughout the UK. This required Westminster and the Scottish and Northern Ireland administrations to publish their own Child Poverty strategies and set four separate child poverty targets to be met by 2020:

- Relative poverty – to reduce the proportion of children who live in relative low income (in families with incomes below 60% of the median, before housing costs) to less than 10%.
- Combined low income and material deprivation – to reduce the proportion of children who live in material deprivation and have a low income (below 70% of the median, before housing costs) to less than 5%
- “Persistent” poverty – to reduce the proportion of children that experience long periods of relative poverty, with the specific target to be set by December 2014
- “Absolute” poverty – to reduce the proportion of children who live below an income threshold fixed in real terms to less than 5%.

Another law of overarching importance at the time of writing is the Welfare Reform Act 2009. The aim of this legislation is to bring together existing welfare benefits into a single system of payment. Roll out has been implemented gradually as regulations, guidance and piloting have evolved, and is still (in late 2018) to be completed. A number of consequences have very controversially increased pressure on local authorities including reduced income through arrears of rent and requests for help with destitution (largely picked up through the very widespread creation by the voluntary sector of Foodbanks) both these issues arising through sanction regimes and a five week delay before the new Universal Credit can be claimed.

As of 25 May 2018, the main provisions of the General Data Protection Regulations (GDPR) are now applicable to the UK’s data protection regime. In addition, the new Data Protection Act 2018 is now in force, and the Data Protection Act 1998 has consequently been repealed. The GDPR and Data Protection Act 2018 together determine the law on information controlling and processing which is of importance in relation to protection and safeguarding duties.

Integration of Health and Social Care Services

SCOTLAND: The move towards integration of health and social care has been a UK wide policy imperative recognised by politicians of all parties aimed at achieving efficiencies, and resolving issues such as delayed discharges and boundary disputes. In Scotland this was lent compulsion by the Public Bodies (Joint Working) (Scotland) Act 2014 which gave health and local authorities some choice about how to achieve the ends sought by integration. This sets the framework for integrating adult health and social care, to ensure a consistent provision of quality, sustainable care services for the increasing numbers of people in Scotland who need joined-up support and care, particularly people with multiple, complex, long-term conditions – whether children or adults. Its principles are that each service:

- is integrated from the point of view of service-users
- takes account of the particular needs of different service-users
- takes account of the particular needs of service-users in different parts of the area in which the service is being provided
- takes account of the particular characteristics and circumstances of different service-users
- respects the rights of service-users
- takes account of the dignity of service-users
- takes account of the participation by service-users in the community in which service-users live
- protects and improves the safety of service-users
- improves the quality of the service
- is planned and led locally in a way which is engaged with the community (including, in particular service-users, those who look after service-users, and those who are involved in providing health or social care)
- best anticipates needs and prevents them arising, and
- makes the best use of the available facilities, people and other resources

ENGLAND, WALES and NORTHERN IRELAND: In England the Westminster Government's Health and Social Care Act 2012 and Care Act 2014 (described in more detail below) both contain provisions to promote integration. In Wales the Social Services and Well-being (Wales) Act 2014 has similar provisions. In Northern Ireland health and social care services have been integrated since 1973 and this is less of a legislative issue.

Children and Family (including Child Protection/Safeguarding)

UNITED KINGDOM BACKGROUND: By the 1990s public social work agencies across the UK were being heavily criticised for their failure to effectively protect vulnerable children. On the one hand, a number of well documented deaths of children at the hands of their carers highlighted situations where agencies, including social services, were perceived to have failed to work together or act properly. On the other, were examples (e.g. Cleveland in 1987 and Orkney in 1991) where children were removed from their homes having allegedly been sexually abused, and subsequently returned when the evidence to back the action up failed to meet standards of scrutiny. A number of public inquiries followed and then legislation to bring about improvement in the standard of services to vulnerable children. Across the UK this was also accompanied by a move away from the Kilbrandon and Seebohm notion of the "generic" social worker towards specialisms that would enhance the knowledge base of workers and bring about a more professional service. In England and Wales this resulted in the Children's Act 1989. This detailed legislation places a duty on local authorities to assess the needs of vulnerable children and make services available to safeguard and promote their welfare, outlining the scope of such services and the powers available. The Act brought about an emphasis for social workers on robust assessment characterised by the *Framework for Assessment of Children in Need* (Dept of Health 2000). The 1989 Act remains the primary legislation for children requiring social work services in England but has been built upon by the Children Act 2004, which tried to incorporate the lessons of the Victoria Climbié inquiry in relation to poor co-ordination between services. Numerous reports were published over the years including *Every Child Matters* (2003), and of national importance, the final *Munro Report on Child Protection* (Munro 2011) presented to parliament in 2011. Policy developments resulted in the Children

and Social Work Act 2017 which detailed new and enhanced local authority responsibilities for children in their care, and care leavers up to the age of 25. It also changed Safeguarding arrangements for children (in Scotland the term “child protection” is more commonly used), abolishing local multi-agency safeguarding boards and replacing them with the responsibility being shared between three agencies – the local authority, the police and any “commissioning agencies” operating in the area, and tasked them to come up with effective arrangements that met locally identified need. The new safeguarding arrangements are detailed in *Working Together to Safeguard Children* which is updated regularly. Other sections enhanced arrangements for adoption and permanence proceedings.

SCOTLAND: Children’s Hearings were established in 1971 following the recommendation of the 1966 Kibrandon report. The original legislation, the Social Work (Scotland) Act 1968 has been substantially amended since, both through the Children (Scotland) Act 1995, and the Children’s Hearings (Scotland) Act 2011. However, the notion that trained volunteer panel members should make decisions about vulnerable children in their local community remains true to the original spirit of the Act – a system that remains unique in the UK where Courts make equivalent decisions. Whilst the powers of the Children’s Panel have not significantly changed, the emergency removal from carers of a child can only now be affected under the 1995 Act, upon the authority of a Sheriff through a Child Protection Order application by a local authority (rather than an application by a social worker to a Justice of the Peace). Police officers retain the power in emergencies to remove a child to a place of safety without warrant but are obliged to pass this to the Reporter for the arrangement of an emergency Children’s Hearing within 24 hours.

In Scotland the equivalent to the Children Act (1989) was the previously referred to Children’s (Scotland) Act 1995 which particularly addressed criticisms made in the Clyde Report concerning the Orkney case in 1991. This defines parental responsibilities, local authority responsibilities to children including protection and supervision, and the role of Children’s Hearings. The important and widely interpreted general duty to promote the welfare of children was outlined in s22 of the Act. Part 3 concerning adoption was repealed and updated by the Adoption & Children (Scotland) Act 2007 which details the adoption process and its underlying premise. The Management of Offenders (Scotland) Act 2005 outlined the process for prison service, police and local authority liaison for the risk assessment and management of sex offenders (known as *MAPPA – Multi Agency Public Protection Arrangements*) including those who have offended against children. Meanwhile general policy concerning vulnerable children has been advanced through *GIRFEC*, which is for all children in Scotland, starting with the publication of *Getting It Right For Every Child* in 2008. Getting it right for every child (*GIRFEC*) supports families by making sure children and young people can receive the right help, at the right time, from the right people. This places a responsibility on all agencies and individuals who have contact with children, and guidance based on the policy is updated regularly.

The Children and Young People (Scotland) 2014 brings into law three aspects of the *GIRFEC* approach: a description of Wellbeing which is enacted and implemented (Part 18), the Named Person service (Part 4) and Child’s Plan (Part 5) which have not yet been commenced. However a Named Person can be made available and a Child’s Plan can be offered on a policy basis.

In Scotland *Child Protection Committees* were established in each local authority area in 1991 and their role clarified further in 2005. These multi-agency forums with a lead officer, establish local training and procedural guidelines, within a national framework: *National Guidance for Child Protection (2014)*.

It should be noted that the Social Care (Self-Directed Support) (Scotland) Act 2013 (described in the section concerning adults and community care below, applies equally to people of all ages including children.

ENGLAND: Until the implementation of the Crime and Courts Act 2013, cases involving custody or care of children in England and Wales were dealt with by magistrates in Family Proceeding Courts that had the powers to make adoption orders. Since 2013 all such cases are dealt with in the Family Court established under the Act. Family Courts are presided over by different levels of magistrates and judges

depending on the nature and complexity of the case they are hearing. As well as “public” matters where, for instance, local authority social workers are seeking orders to intervene in the lives of children, they also hear “private” cases concerning custody disputes.

WALES: The Children’s Act 1989 and subsequent legislation applied until the passing of the Social Services and Well-being (Wales) Act 2014. This legislation which incorporates and amends the Children’s Act 1989, is unique in applying a ‘people’ model to need, that includes children and every other vulnerable group in society for whom safeguarding and support services might be required. It followed on from a White Paper *Sustainable Social Services for Wales: A Framework for Action* (2011) which outlined the challenges for social work provision facing the Welsh Assembly. Child protection is now the responsibility of local regional children’s safeguarding boards (a published code of practice followed the 2014 Act) involving local authority, police, local health board, NHS trust, and provider of probation services that falls within the safeguarding board area.

NORTHERN IRELAND: The equivalent to the 1960s legislation elsewhere is the Children and Young Persons Act (Northern Ireland) 1968, which was substantially amended by the Children (Northern Ireland) Order 1995. The duty on services under the direction of the Northern Ireland Executive to work together effectively to promote a child’s welfare is the main basis of the Children’s Services Cooperation Act (Northern Ireland) 2015. Statutory social work service delivery and practice in Northern Ireland are influenced by recent strategy papers: *Improving and Safeguarding Social Wellbeing: A Strategy for Social Work in Northern Ireland 2012-2022* (2012) and the *Anti-Poverty Practice Framework for Social Work in Northern Ireland* (2018). The *Safeguarding Board for Northern Ireland*, a multi-agency group, oversee child protection and work to establish policies and procedures.

Adults and Community Care

SCOTLAND: Although general duties in Scotland are outlined in the National Assistance Act 1948, the Chronically Sick and Disabled Persons Act 1972 and the Social Work (Scotland) Act in 1968, contemporary service delivery for adults was shaped by the *Griffiths Report 1988* which paved the way for the National Health Service and Community Care Act 1990. This UK wide legislation, attempted to address demographic and consequential resource issues by introducing the market into social care, with a mixture of public and private provision to meet increasing pressures and expenditure. All services depended on social work assessment of need (commonly called community care assessments). This mirrored the emphasis on assessment in Children’s legislation and effectively moved a social worker’s main professional duty away from the direct provision of support embedded in the Social Work (Scotland) Act 1968. Building on the same principles, and using ideas imported from the disability movement in the USA, the UK applied Community Care (Direct Payments) Act 1996 gave local authorities the mechanism to make payments to individuals under the age of 65 so that they could purchase their own care. The Social Care (Self-Directed Support) (Scotland) Act 2013 built on the approach of Direct Payments and introduced substantial change to the way we do social care in Scotland bringing a major change in the ideology and philosophy of social care and requiring substantial cultural, behavioural and systems change. The Act emerged from the independent living movement and was an early rights-based piece of legislation in Scotland. It puts the person at the heart of decision-making, rebalancing power dynamics in social care and enacts the right to participate in the community by offering individuals specific choices about how they want their care delivered.

The Community Care & Health (Scotland) Act 2002 introduced Free Personal Care to people over the age of 65 whose social work assessment identified that they required it. The provision of free personal care is, from 1 April 2019, extended to all adults, not just those age 65 or over.

This remains a policy unique to Scotland although free care through the NHS to meet health needs remains established throughout the UK, won through so called “continuing care” by case law in 1999. The rights of carers to assessment and support were introduced UK wide in the Carers (Recognition & Services) Act 1995. However rights were quite limited and were extended by the Community Care and

Health (Scotland) Act 2002 and then more significantly, by the Carers (Scotland) Act 2016 which established extensive new rights for carers.

The particular needs in Scotland of individuals with learning disabilities have been recognised in a series of reports over the past 20 years, each of which have built upon the previous one: *Same as You* (2011) accelerated the closure of large institutions and promoted care in the community; *The Keys to Life: Improving quality of life for people with learning disabilities* (2013) set out a ten year programme of change and set up the Scottish Learning Disabilities Observatory whose task was to research and report on the dramatic health inequalities encountered by a people with learning disabilities and autistic disorders.

ENGLAND: Social care legislation for adults has run a similar course to Scotland's, with the exception of one particular policy: the *Royal Commission on Long Term Care* chaired by Sir Stewart Sutherland reported in 1998 and recommended the introduction of free personal care for the elderly. However, as noted above, the concept has only been taken up in Scotland. Boundaries between care to meet personal needs, and care to meet health needs which are met from different budgets, remain contested and disputed between health and local authorities throughout the UK. In England, Parliament repealed and brought together 50 years' worth of existing legislation in the Care Act 2014. This is very detailed and followed on from the recommendations of the *Law Commission on Adult Social Care* published in 2011 but introduces little that is new. It is, however, prescriptive about the content of social work assessments, and the need for nationally agreed eligibility criteria for services. It also introduces the term "well-being" and replaces different terms for different age and service user groups with the term "adult". The Health and Social Care Act 2012 was principally concerned with "change" and "modernisation" within the National Health Service, but did seek to encourage and enable the integration of health and social care services, a premise that underpins the Care Act 2014.

Recent official English reports have looked at health inequalities for those with learning disability *People with learning disabilities in England* (2015), and good practice (*Learning Disabilities Good Practice Project* 2013). For those whose behaviour as a result of learning disability or autism presents challenges, policy in England has been influenced by the report commissioned by the Local Government Association, ADASS (Directors of Adult Social Services) and NHS England in 2015: *Building the Right Support*: this outlines strategies to close in-patient health settings and improve resources to enable people to live in the community.

WALES: One of the drivers for the creation of the Welsh Assembly in 1999 was the urgent need to develop social services based on the particular needs of Wales, including population growth based on disproportional increases in older people and outmigration of the young (Drakeford and Williams 2002). As outlined in the section on Children above, the white paper *Sustainable Social Services for Wales: A Framework for Action* (2011) was closely followed by the comprehensive Social Services and Well-being (Wales) Act 2014 that laid out the framework for services to those in need. Like the English Care Act 2014, this involved significant repeal of existing legislation, but did not alter the basic premise of assessment of need and service provision, setting out duties, powers and rights.

NORTHERN IRELAND: The Executive Department of Health published a report in 2016, *Health and Wellbeing 2026: Delivering Together*, aimed at further work and public consultation with a view to legislative reform. This in turn was based on the findings of a previous report *Transforming Care – A Review of Health and Social care in Northern Ireland* (2011). The suspension of the Assembly will delay this as with other planned reforms. In the meantime, services continue to be delivered under older legislation including the Health and Personal Social Services Act (Northern Ireland) 2001 which is similar to law of that time in England and Scotland but very limited in scope. However, as referred to earlier, Northern Ireland has a well-embedded integrated health and social care infrastructure that is said to have resulted in gains that are sought after elsewhere – efficient service delivery, close working relationships between practitioners in the different disciplines, and desirable low delay in hospital discharges.

Mental Health Care and Treatment

SCOTLAND: This section will confine itself to the role of social workers in those statutory measures required to provide care and treatment to individuals with mental health problems. In Scotland this is governed by the Mental Health (Care and Treatment) (Scotland) Act 2003 which has been revised by the Mental Health (Scotland) Act 2015. The legislation is prescriptive about circumstances, timescales and measures required for compulsory treatment of people with mental disorder (as defined in the Act). Social workers who have received statutory training in the task (known as Mental Health Officers - MHOs) have specific duties to give or withhold consent to compulsory care and treatment, make applications for compulsory measures and to provide reports on a person's social circumstances. The rights of the person are given a prominent place in the legislation (enhanced by the 2015 Act) and their past and present wishes regarding treatment have to be taken into account. The MHO has a central role in ensuring that legal safeguards (e.g. advocacy) are in place when people become subject to any compulsory measures under this legislation.

The Scottish Government's vision for mental health is outlined in the Mental Health Strategy 2017-2027 (2017). In Scotland services under the legislation described are monitored by the Mental Welfare Commission who have a duty to scrutinise care and treatment. The Mental Welfare Commission also have duties to monitor use of the Adults With Incapacity Act 2000.

ENGLAND AND WALES: statutory measures relating to compulsory treatment are governed by the Mental Health Act 1983 and amendments in the Mental Health Act 2007. The main update in the 2007 Act was to introduce the notion of community treatment options, but it also changed the social work role. The Acts outline the process for compulsory treatment involving Doctors and Approved Mental Health Professionals (AMHPs). Whereas under the 1983 Act Approved Social Workers performed tasks in the process similar to the MHO in the Scottish legislation, that role is now broadened to include other health professionals such as nurses or occupational therapists who undertake the same AMHP training. The UK government's strategy for mental health in England is contained in No Health Without Mental Health – A Cross Government Mental Health Outcomes Strategy for People of All Ages (2011).

WALES: In Wales the Mental Health (Wales) Measure 2010 concerns informal services and treatments. Welsh government strategy is outlined within Together for Mental Health – A Mental Health and Wellbeing Strategy for Wales (2012).

NORTHERN IRELAND: the law regarding compulsory treatment and detention is the Mental Health (Northern Ireland) Order 1986. This is akin to older mental health legislation in the other jurisdictions, and is generally regarded as in need of reform. This was indeed the finding of the Bamford Review of Mental Health and Learning Disability (entitled A Comprehensive Legislative Framework) in 2007. Social workers who have received the appropriate training for duty under the 1986 Act are known as Approved Social Workers and deployed in much the same role as elsewhere in the UK.

The Mental Health Act is overseen in England and Wales by the Mental Health Commission, and in Northern Ireland this function is now undertaken by the Regulation and Quality Improvement Authority.

Adults With Incapacity

SCOTLAND: The Adults with Incapacity (Scotland) Act 2000 (AWI) is notable as the first major piece of legislation passed in the Holyrood Parliament. It provides legal safeguards and the ability to act on behalf of adults who are unable to act for themselves through incapacity. It is most frequently used with people who have dementia or a learning disability. AWI lays out a clear legal process for assuming control of someone's affairs – both welfare and financial – and applications are made to a Sheriff Court. In most cases, applications to assume powers are sought by private individuals (e.g. family members) and in these cases MHOs in Scotland make an assessment of the suitability of the applicant to take on this role. Where no-one is able to act on behalf of an adult, the local authority must apply to intervene and safeguard them. This again involves MHOs making applications for Welfare and/or Financial Intervention

or Guardianship Orders. As with all modern welfare legislation the principle of minimum intervention applies so that powers are only used when absolutely necessary and only for as long as required.

ENGLAND AND WALES: similar authority to manage someone else's affairs comes under the Mental Incapacity Act 2005 whilst the Care Act 2014 covers powers in England to intervene to safeguard vulnerable adults.

WALES: The Social Services & Well-being (Wales) Act 2014 provides powers to safeguard adults at risk similar to those in England and Scotland.

NORTHERN IRELAND: the yet to be implemented Mental Capacity Act (Northern Ireland) 2016 provides powers to manage the affairs of those with mental incapacity including (uniquely) individuals experiencing mental illness.

Adult Protection and Safeguarding

SCOTLAND: This includes legislation designed to support and protect vulnerable adults beyond those user groups already described. In addition to AWI, the principal piece of legislation to protect vulnerable adults in Scotland is the Adult Support and Protection (Scotland) Act 2007 (ASP). ASP introduced significant changes in the ways that adults considered to be at risk of harm are supported and protected. ASP brought about a range of powers that may be used to intervene in adults' lives, including a requirement to involve people who use services in decision-making regarding their care, treatment and support wherever possible.

ASP makes provisions to protect those adults who are unable to safeguard their own interests and are at risk of harm because they are affected by disability, mental disorder, illness or physical or mental infirmity. Harm means all harm (financial, physical, emotional, sexual) including self-harm and neglect. ASP is used when there are suspicions (this might be based on a police report) that an adult is vulnerable and at risk of harm. Local authorities (led by social work) have a duty to investigate and act to support and/or protect. Social workers with appropriate experience and training act in the role of Council Officer under ASP. The Act provides social workers with certain powers to access, remove (if necessary) and assess the circumstances of the person concerned. Ultimately local authorities have the authority to seek protection orders from the Sheriff Court although instances of this are rare compared to similar powers exercised in respect of children.

ENGLAND AND WALES: similar authority to manage someone else's affairs comes under the Mental Incapacity Act 2005 whilst the Care Act 2014 covers powers in England to intervene to safeguard vulnerable adults. The Social Services & Well-being (Wales) Act 2014 provides powers to safeguard adults at risk similar to those in England and Scotland. In Northern Ireland the yet to be implemented Mental Capacity Act (Northern Ireland) 2016 provides powers to manage the affairs of those with mental incapacity including (uniquely) individuals suffering mental illness.

NORTHERN IRELAND: Policy for safeguarding adults at risk in Northern Ireland is described in Adult Safeguarding: Prevention and Protection in Partnership (2015) published by the Department of Health.

Other Protective Legislation

The Scottish Parliament has passed a number of other Bills that offer rights and protection to other vulnerable groups and although designed to give the police powers (and not local authorities) and the victims a right to assistance and support, are useful knowledge for social workers: these will be listed here alongside their equivalents in the other jurisdictions, but not discussed in any detail:

Matrimonial Homes (Family Protection) (Scotland) Act 1981 – the right of non-owning spouses to remain in a family home after separation – preventing the occupant from immediate homelessness. Northern Ireland has similar legislation: Family Homes and Domestic Violence (Northern Ireland) Order 1998

Criminal Law (Consolidation) (Scotland) Act 1995 s.1 – this describes the circumstances of the crime of incest. In England and Wales the Sexual Offences Act 2003 applies and in Northern Ireland the Sexual Offences (Northern Ireland) Order 2008.

The Protection from Abuse (Scotland) Act 2001 allows victims of domestic abuse to take out an interdict against their abuser with a power of arrest where it is breached. The Domestic Abuse (Scotland) Act 2018 will, from 1st April 2019, provide for a new offence of 'abuse of a partner or ex-partner', and also outlaws psychological abuse. In England and Wales, the Crime and Security Act 2010 gave the Police powers to issue Domestic Violence Protection Notices and the Courts powers to make Domestic Abuse Protection Orders. This was rolled out in 2016. The Serious Crime Act 2015 introduced a new offence of coercive or controlling behaviour in an intimate or family relationship. Northern Ireland has a strategy to improve policy and law regarding domestic violence: Stopping Domestic and Sexual Violence and Abuse in Northern Ireland – A Seven Years Strategy (2016) but as yet no updated legislation”.

The Protection of Vulnerable Groups (Scotland) Act 2007 introduced statutory checks through the agency *Disclosure Scotland* on individuals working or seeking to work with children or vulnerable adults – creating a list of those barred from doing so. In England and Wales there is similar provision under the Safeguarding Vulnerable Groups Act 2006 through the *Disclosure and Barring Service*, and in Northern Ireland through the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 and *AccessNI*.

“Sexual Offences (Scotland) Act 2009 – this provides for a statutory crime of rape (previously a crime at common law), a statutory definition of consent, as ‘free agreement’, and sets out a statutory framework for the law on sexual offence in Scotland, replacing and modernising a patchwork of statutory and common law offences. Similar provisions are contained within the Sexual Offences Act 2003 for England and Wales and the Sexual Offences (Northern Ireland) order 2008.”

The Forced Marriage etc (Protection & Jurisdiction) (Scotland) Act 2011 gives local authorities the duty to apply for *Forced Marriage Protection Orders* if they consider individuals are at risk. The Anti-Social Behaviour, Crime and Policing Act 2014 made forced marriage illegal in England and Wales. Similar legislation exists to cover Northern Ireland: the Forced Marriage (Civil Protection) Act 2007.

The Human Trafficking & Exploitation (Scotland) Act 2015 is intended to strengthen previously existing law on human trafficking and offer improved services to victims. England and Wales have similar provision in the Modern Slavery Act 2015, and the Human Trafficking & Exploitation (Criminal Justice & Support for Victims) (Northern Ireland) Act 2015 applies in Northern Ireland.

The Abusive Behaviour and Sexual Harm (Scotland) Act 2016 provides for a statutory sentencing aggravation that an offence involved abuse of a person’s partner or ex-partner and brings in provision regarding the sharing of intimate images and films without consent. Similar provision concerning non-consensual sharing of intimate images was made in the Criminal Justice and Courts Act 2015 for England and Wales.

Youth Justice

SCOTLAND: The Kilbrandon Report of 1964 criticised the system of using Courts to deal with vulnerable children who were in need of care and protection due either to their own behaviour, or the acts of their carers that were impacting adversely on their lives. Emphasis was made on “needs” rather than “deeds”. The proposals were enshrined in the Social Work (Scotland) Act 1968 and resulted in the creation of Children’s Panels in each local authority area in 1971. Instead of appointed Sheriffs and Justices of the Peace, Panels of three selected and trained lay people who volunteer from the local community, would make decisions based on the needs of the child. Hearings would be managed by an independent “Reporter”. This system has been amended since through the Children’s (Scotland) Act 1995 and the Children’s Hearings (Scotland) Act 2011, both designed to improve justice and fairness, representation,

impartiality and professionalism, but the essence remains as it was when established in 1971. The numbers of children referred to Children's Hearings for offence related matters only, have declined considerably – the majority of referrals now being for "care and protection". Children charged with offences over the age of 16 can be referred straight to Court (as with all offenders over 18) but the Courts can ask for the advice of a Children's Hearing. The age of criminal responsibility in Scotland is amongst the lowest in Europe, at eight years, but this is scheduled for reform and is likely to be changed to twelve years (with some, including the Children and Young People's Commissioner for Scotland calling for sixteen years).

In Scotland a series of strategy reports have looked at youth offending and justice, the latest being *Preventing offending: getting it right for children and young people – Our Youth Justice strategy for Scotland, for 2015 to 2020* published in 2016.

ENGLAND, WALES AND NORTHERN IRELAND: In the other UK jurisdictions children were and still are dealt with in the Court system. Youth Courts across England, Wales and Northern Ireland, hear cases where children over the age of criminal responsibility (ten in England, Wales and Northern Ireland) have been taken to Court for allegedly committing offences (prior to the 1998 Crime and Disorder Act children aged between ten and thirteen were presumed to be incapable of committing an offence). They can hear cases up until the age of seventeen although very serious offences can be heard in a higher Court (as in Scotland). Youth Courts are designed to be more child friendly than adult courts and require the attendance of carers. In actuality, children in all four jurisdictions who commit offences will usually be screened for other forms of intervention, including restorative justice: children at the lower end of the age range are unlikely to appear before Courts or Children's Hearings simply for offences charged against them. A system of youth cautions and referrals to Youth Offending Teams was introduced in 2013 in England and Wales under the Legal Aid, Sentencing and Punishment of Offenders Act 2012. This legislation also introduced "parenting orders" that could result in punishment if adult carers failed to bring about an improvement in a child made subject of an Anti-Social Behaviour Order.

For England and Wales the *Youth Justice Board for England and Wales Strategic Plan 2015-18* (2015) has considered youth offending and justice. There have been no very recent strategy report publications in Northern Ireland and this remains the responsibility of the Government Department of Justice.

Criminal Justice and Community Justice

SCOTLAND: the functions of the Probation and After Care service in Scotland, a central government led agency, were taken over by the new social work departments established under the terms of the Kilbrandon Report 1964 and the Social Work (Scotland) Act 1968. Although this was on the basis of White Paper, it was also a recognition of the fact that the social work service to offenders provided by probation officers was essentially the same as other forms of social work, and that reports to the Court involved the same assessment skills, it was also pragmatic in that it was considered that a small Probation Service might have difficulty in providing career pathways and so would face recruitment difficulties (Scottish Education Department & Scottish Home and Health Department 1966). With the return to specialisms in the 1990s, working with adult offenders "Criminal Justice" (now usually referred to as "Community Justice"), became increasingly discreet – partially at least in response to criticism that it was given a low priority within generic teams (Waterhouse and McGhee 2002). From 1990 social work services to offenders were given direct funding and national objectives and standards were established that continue to be updated regularly. At the same time the role of social work in the system has been extended: as a result of the Crime and Disorder Act 1990 social workers supervise serious sexual and violent offenders on release from prison. The supervision of offenders undertaking unpaid work has also been extended since its introduction in 1978: the Community Justice and Licensing (Scotland) Act 2010 introduced "Community Payback Orders" with wide application. This Act also replaced "Probation Orders" with "Supervision Requirements". The National Outcomes and Standards for Social Work Services in the Criminal Justice System 2010 defines the key outcomes of the service as: 1) community safety and public protection 2) the reduction of re-offending 3) social inclusion to support desistance from offending. The structure for Criminal Justice services was re-established through the Community

Justice (Scotland) Act 2016: this established *Community Justice Scotland* as the responsible national body overseeing local level *Community Justice Partnerships*. Staff who work within these partnerships continue to be employed and managed through local authorities. Social workers who work in the Community Justice system are trained alongside other social workers and it is not uncommon for career pathways to cross to and from this service to other social work specialisms within local authority which is in contrast to the situation in England and Wales. The tagging of offenders and their monitoring is the only aspect of working with offenders in the community in Scotland, to be privatised.

ENGLAND AND WALES: Meanwhile England and Wales have developed a service that has increasingly moved away from social work. This is now organised under the direction of the *National Probation Service*. The service is split into a Probation Service, managed through trusts, and 21 Community Rehabilitation Companies (CRCs) – private companies run for profit supervising low level offenders. Training for Probation Officers now also differs markedly from that required for social workers: this involves 15 or 21 month (depending on previous qualification level) work-place based training courses leading to a *Professional Qualification in Probation (PQiP)* which is below the degree level required for qualification as a social worker. Strategy for the future of the service is outlined in a consultation paper presented to Parliament in July 2018 *Strengthening Probation, Building Confidence*.

NORTHERN IRELAND: The service in Northern Ireland continues to be run as a single public service under the direction of the *Probation Board for Northern Ireland (PBNI)*. The basic qualification for a probation officer in Northern Ireland remains a social work degree. Strategy for the service is outlined in the *PBNI Corporate Plan 2017-20*.

Regulatory Bodies

SCOTLAND: As a consequence of recommendations in the Crerar Review (2007) major changes were made to inspection and regulatory services in Scotland and became law in the Public Services Reform Act (Scotland) 2010. The Inspection organisation for care services became Social Care and Social Work Improvement Scotland (known more popularly as the Care Inspectorate) with a remit to inspect and publish reports upon public and private providers of care, social work and child protection services. The aim of the Care Inspectorate is to provide assurance and protection for people who use care and support services, to deliver efficient and effective regulation and inspection, and to support quality improvement in services. The Care Inspectorate is required by the Regulatory Reform (Scotland) Act 2014 to follow the Scottish Regulators' Strategic Code of Practice .

Alongside the Care Inspectorate the already existing Scottish Social Services Council (SSSC) within which certain categories of social care worker, and all social workers, were obliged to register, was redesigned. The SSSC sets codes of practice for both employers and employees: a new addition as a result of the 2010 changes was the introduction of a "duty of candour" – in effect a responsibility to openly own up to mistakes and render appropriate apologies to those who might have suffered as a consequence. The organisation also moved from a "misconduct" model to a "fitness to practice" model. The SSSC are obliged to investigate reports of failure to adhere to the codes of practice and hold public hearings if they feel there is evidence that questions fitness to practice. Hearings have the power to place conditions on continued registration, suspend registration or, in the most serious cases, terminate it all together. The categories of workers required to register are increasing: from 2017, care at home workers and housing support workers are now obliged to join.

ENGLAND: Inspection functions are provided by the Care Quality Commission with operations similar to those of the equivalent organisation in Scotland. The regulatory body for social workers, social care and health workers is the Health and Care Professions Council (HCPC) established through the Health and Social Work Professions Order 2001, to which all social workers and certain categories of care and health workers have to register. This will change as a consequence of the Children & Social Work Act 2017, with new regulations for social workers set out in the Social Workers Regulations 2018: this sets up a new organisation to regulate the social work profession: Social Work England, a non-departmental, independent public body: it is expected to commence its responsibilities during 2019.

WALES: The Social Services & Well-being (Wales) Act 2014 brought about reform of the inspection and regulatory regimes and brought them together in a new organisation, Social Care Wales. The law governing these changes is the Regulation and Inspection of Social Care (Wales) Act 2016. All social workers, social work students, and managers of care services are required to register, but not social care workers.

NORTHERN IRELAND: The Regulation and Quality Improvement Authority oversee monitoring and inspection functions, and was set up under the Health and Personal Social Services Act (Northern Ireland) 2001. In addition, since 2009, it carries out functions formerly undertaken by the Mental Health Commission under the terms of the Health and Social Care (Reform) Act (Northern Ireland) 2009. In Northern Ireland registration is the responsibility of the Northern Ireland Social Care Council – this is required of all social workers, social work students, social care workers in all types of residential settings, their managers and the managers of domiciliary care workers.

Children’s (and other) Commissioners

SCOTLAND: The Commissioner for Children and Young People (Scotland) Act 2003 (the 2003 Act) established the role of the Commissioner for Children and Young People in Scotland. The principal function of the role is to promote and safeguard the rights of children and young people, including raising awareness about children’s rights. The 2003 Act makes clear that the Commissioner is not to be regarded as a servant or agent of the Crown and is not subject to direction or control of any Member of the Scottish Parliament, member of the Scottish Government or the Scottish Parliamentary Corporate Body (SPCB). The SPCB sets the terms of the Commissioner’s appointment, including the allocation of resources.

The 2003 Act provides for the Commissioner for Children and Young People to undertake investigations in respect of how service providers have regard to the rights, interests and views of groups of children and young people in making decisions or taking actions that affect them. Provisions in Part 2 of the Children and Young People (Scotland) Act 2014, which were commenced on 7 August 2017, build on this by empowering the Commissioner to conduct such investigations on behalf of individual children.

Scotland has so far failed to legislate for an Older People’s Commissioner (a Bill fell in 2007). Neither is there provision in England, despite calls to include such an appointment in the Care Act 2014. Both Wales and Northern Ireland have appointed Commissioners for Older People through the Commissioner for Older People (Wales) Act 2006 and in Northern Ireland the Commissioner for Older People Act (Northern Ireland) 2011. Both these appointments have responsibilities and powers to safeguard and protect the rights of older people in their respective jurisdictions.

ENGLAND, WALES AND NORTHERN IRELAND: A Children’s Commissioner is appointed as a consequence of the Children Act 2004 and strengthened by the Children and Social Work Act 2014. In Wales the Children’s Commissioner for Wales has a similar remit laid out in the Children’s Commissioner for Wales Act 2001. The Northern Ireland Commissioner for Children and Young People was appointed under the The Commissioner for Children and Young People Order (Northern Ireland) 2003.

There is no provision in England for a Commissioner for Old People, despite calls to include such an appointment in the Care Act 2014. Both Wales and Northern Ireland have appointed Commissioners for Older People through the Commissioner for Older People (Wales) Act 2006 and in Northern Ireland the Commissioner for Older People Act (Northern Ireland) 2011. Both these appointments have responsibilities and powers to safeguard and protect the rights of older people in their respective jurisdictions.

Summary tables of the principal pieces of legislation and policy are set out in Tables 2 and 3.

The Social Work Profession: Protection of Title, Training, Deployment and Professional Leadership

The Regulation of Care (Scotland) Act 2001 (much of which has been repealed by the Public Services Reform Act (Scotland) 2010) gave protection of title to social workers in Scotland. The Care Act 2000 gave the same provision to social workers in England and Wales, and the Health and Personal Social Services Act (Northern Ireland) 2001, the same for social workers in Northern Ireland. The effect of protection of title is to make it an offence for anyone to describe themselves as a social worker unless they are registered as such by one or other of the registration bodies (see last section). Each of the registration bodies describes in detail the qualification and ongoing requirements (e.g. continuing professional development) for registration.

The foundational qualification (a university provided three-year honours social work degree) for a social worker is the same in all four jurisdictions, although course content will vary according to the framework agreed by government for social work education in that jurisdiction. Some Master's social work degree courses also provide a pathway to qualification. The way that funding is provided for a degree level education (which includes social work) varies between the four jurisdictions: Scotland offers the most generous funding to students at Bachelor's and Master's level in social work (because university tuition is free to Scottish residents). It seems reasonable to assume that this has some impact on those who are able to enter the social work profession.

In England, replicating initiatives for teachers, the government have funded pilot schemes that fast track graduates into the profession, including "Frontline" – an independent workplace-based scheme for children and child protection services, whose aim is to create a high calibre leadership for the profession. Such initiatives, which have not been replicated elsewhere, remain controversial.

In Scotland there are estimated to be over 200,000 people in the social care workforce including about 11,000 social workers. In England, 96,000 social workers were registered in 2018, out of a total workforce that includes 1.6 million employed in adult social care alone. In Wales just under 3900 social workers were registered at the end of 2017, and 56,000 people were working for commissioned care providers across all social care sectors. Northern Ireland has 35,000 people in the whole social care workforce, of whom just under 6000 are social workers. (All data from government sources).

Social workers in Scotland in the public sector work for local authorities in children and family (including child protection, assessment and support of foster carers, and with unaccompanied asylum seeker children), various aspects of adult care, and community (criminal) justice. Settings vary from offices to schools, hospitals and other health settings, and prisons. Organisational arrangements vary widely between local authorities: health and social care partnerships and directorates shared with other functions such as housing and education, all being found across the country. In the voluntary sector, social workers work for fostering and adoption agencies, organisations related to domestic abuse and rape, and many others. A number of registered social workers also work in the residential field with both adults and children. In England, local authority social workers are found in adult and children's departments that are clearly defined, and this is replicated in Wales – neither of which employ social workers (as such) in the probation service. In Northern Ireland social workers are employed by the five health and social care trusts in teams reflecting adult and children specialisms; social work qualified and registered staff also work as probation officers in the PBNi. In England and Wales a large number of registered social workers are employed by CAFCASS (Children and Family Court Advisory and Support Service) – their function being to provide reports on children's circumstances to Family Courts in "private" legal proceedings concerning divorce, custody and contact. In Northern Ireland this function is undertaken by the Northern Ireland Guardian Ad Litem Agency whose reporters are not necessarily social workers. In Scotland this function can be undertaken by a Guardian Ad Litem appointed by the Court, or by local authorities if requested (usually if it is believed they have an interest).

In Scotland each local authority is obliged to appoint a Chief Social Work Officer (CSWO), a requirement

stemming back to the Social Work (Scotland) Act 1968. 9. The CSWO role was established to ensure the provision of appropriate professional advice in the discharge of a local authority's statutory functions. CSWOs must be a qualified social worker, and demonstrate extensive experience at a senior level of both operational and strategic management of social work and social care service.

The CSWO role is set out in guidance issued by the Scottish Government. CSWOs are responsible for providing professional leadership for social workers and staff in social work services and have a key role in promoting values and standards of professional practice, including all relevant national Standards. There are a small number of areas of decision-making where legislation confers functions directly on the CSWO by name. These areas relate primarily to the curtailment of individual freedom and the protection of both individuals and the public though these functions can be delegated..

CSWOs are responsible and answerable for the quality of the social work service in their area, although they are not necessarily the overall director (who in many cases will not be a qualified social worker and who may have responsibilities for other staff). The CSWO's responsibilities in relation to local authority social work functions continue to apply to functions which are being delivered by other bodies under health and social care integration arrangements. As such The CSWO has a role in reporting to the local authority Chief Executive, elected members and IJBs – providing comment on issues which may identify risk to safety of vulnerable people or impact on the social work service and also on the findings of relevant service quality and performance report.

The Scottish Government appoint a Chief Social Work Adviser (CSWA). The CSWA advises ministers and policy teams with an interest in, or responsibility for, aspects of social work services and practice. The adviser works with policy teams leading on major programmes including integration of health and social care, adult social care, implementation of self-directed support, Getting It Right for Every Child (GIRFEC) and community justice reform. She also works with a wide range of partners on the Social Work Services Strategic Forum to deliver the actions in the strategy document: Social Services in Scotland: a shared vision and strategy 2015 to 2020. The role also focuses on development and regulation of the social services workforce and has a sponsorship responsibility for the Scottish Social Services Council.

The Munro report into child protection in England called for the appointment of Principal Social Workers in line with the Scottish CSWO, and these are now in place in each local authority in England, one for children and family, and one for adults. They are answerable to the Chief Social Work Officer for Children and Families for England along with a Chief Social Work Officer for Adults. Their roles are similar to the Scottish equivalent, and they organise a formal network for their respective Principal Social Workers. Northern Ireland also has a Chief Social Work Officer.

The principal membership body representing the interests of social work profession in the UK is the British Association of Social Workers (BASW) which has "country" organisations in Scotland – the Scottish Association of Social Workers, Wales – BASW Cymru, and Northern Ireland – BASW Northern Ireland. In Scotland the leadership of the profession has a membership organisation Social Work Scotland (SWS). In England Directors are represented in two membership organisations: the Association of Directors of Adult Social Services (ADASS) and the Association of Directors of Children's Services (ADCS) reflecting the divergence of these duties in English local authorities. Wales has a single leadership representing organisation: the Association of Directors of Social Services Cymru (known as ADSS). There is no equivalent in Northern Ireland reflecting its long history of integration between social and health care services.






TABLE 1: SOCIAL WORK FUNCTIONS ACROSS THE UK – PRINCIPAL USER GROUPS AND SETTINGS – BOTH PUBLIC AND VOLUNTARY (3RD SECTOR)

	Scotland	England	Wales	Northern Ireland	
Children & Family	Child Protection / Safeguarding				
	Children & Family statutory and informal support				
	Reports for Children's Hearing system	Reports for Family Courts			
	Foster Carer assessment & support				
	Adoptive Parent assessment				
	Kinship Carer assessment & support				
	Youth Justice	Youth Justice (children only)			
	School and early Years Based Social Work				
	Support for Care Leavers				
	Residential Child Care				
	Children with Disabilities				
	Unaccompanied asylum seeking children				
	Asylum seeking families				
	Provision of reports for Courts in disputes over custody, contact for children in divorce and associated proceedings		Service provided by CAFCASS	Service provided by CAFCASS Cymru	Service provided by Northern Ireland Guardian Ad Litem Agency
	Adults	Older people			
Physically Disabled					
Physical illness					
Learning disability					
Addiction / alcohol and substance misuse					
Mental illness					
Mental incapacity & dementia					
Adult safeguarding					
End-of-life care					
Women's support settings					
Refugee support Support for Gypsy Travellers & other disadvantaged minority ethnic groups					
Carer support					

	Scotland	England	Wales	Northern Ireland
Criminal Justice	Provision of pre & post sentence reports / community payback / community supervision of offenders / courts / prisons	(not provided by social workers)	(not provided by social workers)	Services Provided by social work trained & qualified probation officers

TABLE 2: PRINCIPAL SOCIAL WORK/SOCIAL CARE LEGISLATION

NB – CAVEAT (as stated in the main body of this paper): the context in which social work is delivered, the changing nature of this context, the range of statutory powers, the range of non-statutory functions and the sheer number of service users involved means that a simple grid of comparisons isn't possible. Instead this table provides the most salient aspects.



	Scotland	England	Wales	Northern Ireland
Significant Westminster Legislation	Human Rights Act 1998 Welfare Reform Act 2009 Equality Act 2010 Child Poverty Act 2010 Data Protection Act 2018	    		
Children & Family (including Child Protection/Safeguarding)	Social Work (Scotland) Act 1968 Children (Scotland) Act 1995 Management of Offenders etc (Scotland) Act 2005 Adoption & Children (Scotland) Act 2007 Children's Hearings (Scotland) Act 2011 Children & Young People (Scotland) Act 2014 Carers Scotland Act 2016	Children Act 1989 Children Act 2004 Children & Social Work Act 2017	Social Services & Well-being (Wales) Act 2014	Children and Young Persons Act (Northern Ireland) 1968 The Children (Northern Ireland) Order 1995 Children's Services Co-operation Act (Northern Ireland) 2015
Adults/Community Care	National Assistance Act 1948 Social Work (Scotland) Act 1968 Chronically Sick & Disabled Persons (Scotland) Act 1972 National Health Service & Community Care Act 1990 Carers (Recognition & Services) Act 1995 Community Care (Direct Payments) Act 1996 Community Care & Health (Scotland) Act 2002 Social Care (Self-Directed Support) (Scotland) Act 2013 Public Bodies (Joint Working) (Scotland) Act 2014 Carers Scotland Act 2016	Health & Social Care Act 2012 Care Act (2014)	Social Services & Well-being (Wales) Act 2014	Health & Social Services (Northern Ireland) Order 1972 Chronically Sick and Disabled Persons (Northern Ireland) Act 1978 Disabled Persons (Northern Ireland) Act 1989 Carers and Direct Payments Act (Northern Ireland) 2002 Health and Social Care (Reform) Act (Northern Ireland) 2009

	Scotland	England	Wales	Northern Ireland
Mental Illness/ Health	<p>Mental Health (Care & Treatment) (Scotland) Act 2003</p> <p>Mental Health (Scotland) Act 2015</p>	<p>Mental Health Act 1983</p> <p>Mental Health Act 2007</p>	<p>Mental Health (Wales) Measure 2010</p>	<p>Mental Health (Northern Ireland) Order 1986</p>
Adult Protection/ Safeguarding	<p>Matrimonial Homes (Family Protection) (Scotland) Act 1981</p> <p>Criminal Law (Consolidation) (Scotland) Act 1995 s.1</p> <p>Adults with Incapacity (Scotland) Act 2000</p> <p>Protection from Abuse (Scotland) Act 2001</p> <p>Adult Support & Protection (Scotland) Act 2007</p> <p>Protection of Vulnerable Groups (Scotland) Act 2007</p> <p>Sexual Offences (Scotland) Act 2009</p> <p>Domestic Abuse (Scotland) Act 2011</p> <p>Forced Marriage etc (Protection & Jurisdiction) (Scotland) Act 2011</p> <p>Human Trafficking & Exploitation (Scotland) Act 2015</p> <p>Abusive Behaviour & Sexual Harm (Scotland) Act 2016</p> <p>Domestic Abuse (Scotland) Act 2018</p>	<p>Mental Capacity Act 2005</p> <p>Sexual Offences Act 2003</p> <p>Domestic Violence Crime and Victims Act 2004</p> <p>Care Act (2014)</p> <p>Safeguarding Vulnerable Groups Act 2006</p> <p>Sexual Offences Act 2003</p> <p>Crime and Security Act 2010</p> <p>Anti-Social Behaviour, Crime and Policing Act 2014</p> <p>Modern Slavery Act 2015</p> <p>Criminal Justice and Courts Act 2015</p>	<p>Violence against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015</p>	<p>Family Homes and Domestic Violence (Northern Ireland) Order 1998</p> <p>Safeguarding Vulnerable Groups (Northern Ireland) Order 2007</p> <p>Mental Capacity Act (Northern Ireland) 2016</p> <p>Safeguarding Vulnerable Groups (Northern Ireland) Order 2007</p> <p>Sexual Offences (Northern Ireland) Order 2008.</p> <p>Forced Marriage (Civil Protection) Act 2007</p> <p>Human Trafficking & Exploitation (Criminal Justice & Support for Victims) (Northern Ireland) Act 2015</p>

	Scotland	England	Wales	Northern Ireland
Youth Justice	<p>Children & Young Persons (Scotland) Act 1937</p> <p>Children (Scotland) Act 1995</p> <p>Criminal Procedure (Scotland) Act 1995</p> <p>Anti Social Behaviour etc (Scotland) Act 2004</p> <p>Children's Hearings (Scotland) Act 2011</p>	<p>Children & Young Persons Act 1969</p> <p>Crime & Disorder Act 1998</p> <p>Legal Aid, Sentencing and Punishment of Offenders Act 2012</p> <p>Crime & Courts Act 2013</p>		<p>The Criminal Justice (Children) (Northern Ireland) Order 1998</p> <p>Justice (NI) Act 2002</p> <p>Criminal Justice (NI) Order 2008</p> <p>Criminal Justice Act (Northern Ireland) 2013</p>
Criminal/Community Justice	<p>Social Work (Scotland) Act 1968</p> <p>Crime & Disorder Act 1998</p> <p>The Criminal Justice and Licensing (Scotland) Act 2010</p> <p>Community Justice (Scotland) Act 2016</p>	<p>Criminal Justice and Court Services Act 2001</p> <p>Criminal Justice Act 2003</p> <p>The Offender Management Act 2007</p>		<p>The Probation Rules (Northern Ireland) 1950</p> <p>The Probation Board (Northern Ireland) Order 1982</p> <p>Justice (Northern Ireland) Act 2002</p>
Regulatory Legislation	<p>Regulation of Care (Scotland) Act 2001</p> <p>Commissioner for Children & Young People (Scotland) Act 2003</p> <p>Public Services Reform Act (Scotland) 2010</p>	<p>Health Act 1999</p> <p>Care Standards Act 2000</p> <p>Health and Social Work Professions Order 2001</p> <p>Children Act 2004</p> <p>Health and Care Professions Council (Constitution) Order 2009</p> <p>Children & Social Work Act 2017</p> <p>The Social Workers Regulations 2018</p>	<p>Children's Commissioner for Wales Act 2001</p> <p>Commissioner for Older People Act (Wales) 2006</p> <p>The Regulation and Inspection of Social Care (Wales) Act 2016</p>	<p>Health and Personal Social Services Act (Northern Ireland) 2001</p> <p>The Commissioner for Children and Young People Order (Northern Ireland) 2003</p> <p>Health and Social Care (Reform) Act (Northern Ireland) 2009</p> <p>Commissioner for Older People Act (Northern Ireland) 2011</p>

TABLE 3: MAJOR POLICY AND GUIDANCE DOCUMENTS OF CONTEMPORARY RELEVANCE

	Scotland	England	Wales	Northern Ireland
Children & Family including Child Protection / Safeguarding	<p>Getting It Right For Every Child (GIRFEC) (2008)</p> <p>National Guidance for Child Protection (2014)</p>	<p>Every Child Matters (2003)</p> <p>Working Together to Safeguard Children (2018)</p>	<p>Sustainable Social Services for Wales: A Framework for Action (2011)</p>	<p>Revised Regional Core Child Protection Policies and Procedures for Northern Ireland (2018)</p> <p>Improving and Safeguarding Social Wellbeing: A Strategy for Social Work in Northern Ireland 2012-2022 (2012)</p> <p>Anti-Poverty Practice Framework for Social Work in Northern Ireland (2018)</p>
Adults / Community Care	<p>←</p> <p>←</p> <p>Same As You (2000)</p> <p>Keys to Life: Improving quality of life for people with learning disabilities (2013)</p>	<p>Griffiths Report (1988)</p> <p>Royal Commission on Long Term Care (Sutherland Report) (1998)</p> <p>Law Commission on Adult Social Care (2011)</p> <p>Learning Disabilities Good Practice Project (2013)</p> <p>People with learning disabilities in England (2015)</p> <p>Building the Right Support (2015)</p>	<p>→</p> <p>→</p>	<p>→</p> <p>→</p> <p>Transforming Care – A Review of Health and Social care in Northern Ireland (2011).</p> <p>Health and Wellbeing 2026: Delivering Together (2016)</p>
Mental Illness / Health	<p>Mental Health Strategy 2017-2027 (2017)</p>	<p>No Health Without Mental Health – A Cross Government Mental Health Outcomes Strategy for People of All Ages (2011)</p>	<p>Together for Mental Health – A Mental Health and Wellbeing Strategy for Wales (2012)</p>	<p>Bamford Review – A Comprehensive Legislative Framework (2007)</p>
Adult Protection / Safeguarding				<p>Adult Safeguarding: Prevention and Protection in Partnership (2015)</p> <p>Stopping Domestic and Sexual Violence and Abuse in Northern Ireland – A Seven Years Strategy (2016)</p>

	Scotland	England	Wales	Northern Ireland
Youth Justice	Preventing offending: getting it right for children and young people - Our Youth Justice strategy for Scotland, for 2015 to 2020	Youth Justice Board for England and Wales Strategic Plan 2015-18 		
Criminal / Community Justice	National Outcomes and Standards for Social Work Services in the Criminal Justice System (2010)	Strengthening Probation, Building Confidence (2018) 		PBNI Corporate Plan 2017-20
Regulatory Bodies	The Crerar Review: the report of the independent review of regulation, audit, inspection and complaints handling of public services in Scotland (2007)			

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