

**LEGISLATION AND GUIDANCE****Introduction**

Processes for safeguarding and promoting the welfare of children are governed by a legislative framework, supported by guidance based on principles and beliefs about the rights of the child and family.

**The United Nations Convention on the Rights of the Child 1989**

The Convention sets out the international agreement on minimum standards for protecting children's rights. Built on varied legal systems and cultural traditions, the Convention on the Rights of the Child is a universally agreed set of non-negotiable standards and obligations on protecting children's rights. It defines the basic human rights of all children. These rights include the right to protection from abuse and exploitation. Any nation that is a signatory has to demonstrate how these rights will be reflected in national legislation and policy. In the UK this agreement was ratified through the Children Act 1989.

**The Human Rights Act 1998 and The European Convention on Human Rights 1998**

There are 16 basic rights in the Human Rights Act 1998, all taken from the European Convention on Human Rights. They affect not only matters of life and death, like freedom from torture and killing, they also affect people's rights in everyday life: what they can say and do and believe, their right to a fair trial and many other similar basic entitlements.

The Human Rights Act 1998 (Article 3) prohibits torture, and inhuman and degrading treatment and punishment. In cases of children who, by reason of their age and vulnerability, are not capable of protecting themselves, Article 3 effectively imposes an obligation on the authorities to take preventative measures to protect a child at risk of harm.

**The Children Act 1989**

The Children Act 1989, based on the principles of the United Nations Convention on the Rights of the Child 1989, provides the foundation for child welfare law in the UK (except for Scotland). It applies to both private and public proceedings.

**Working with children and families**

- There is an expectation that local authorities will work in partnership with service users and should demonstrate this in their practice.
- Parents have responsibility for, and not rights over, their children.
- Agencies seek to work with children and families when providing services.

For children whose cases are in the family proceedings court the following principles apply:

- **The child's welfare is paramount**  
In any decisions taken by the court, the child's welfare shall be the court's paramount consideration.
- **No delay principle**  
Any delay in resolving the matter before the court is likely to prejudice the welfare of the child.
- **Welfare checklist**  
The court must consider the welfare checklist when making decisions about the child's welfare.
- **No order**  
The court shouldn't make an order unless to do so would be better for the child than making no order at all.

### Section 17

Under s17 of the Children Act 1989 the local authority has the power to assess the needs of all children in need and make provision to meet these.

#### Child in need

A child shall be taken to be in need if:

- he is unlikely to achieve or maintain, or have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by a local authority;
- his health or development is likely to be significantly impaired, or further impaired, without the provision of such services; or
- he is disabled.

s17 (10) Children Act 1989

### Section 47

Under s47 the local authority has a duty, and the power, to make enquiries about any child who is suffering significant harm or is likely to suffer significant harm.

Only children's social care, the police and the NSPCC are vested with the legal authority to make enquiries in a situation where a child is suffering significant harm or likely to suffer significant harm; other agencies have a duty to co-operate with the local authority.

- **Significant harm**

Harm is defined in the Children Act 1989 (s31(9)) as:

- ill-treatment (including sexual abuse and physical abuse)
- impairment of health (physical or mental) or development (physical, intellectual, emotional, social or behavioural) as compared to a similar child.

#### Note

Harm now includes the impairment of a child's health or development as a result of witnessing the ill-treatment of another person (Adoption and Children Act 2002).

In each case ill-treatment will be considered alongside the family's strengths and supports.

#### **Framework for the Assessment of Children in Need and their Families**

(Department of Health et al, 2000)

The Assessment Framework provides a 'systematic way of analysing, understanding and recording what is happening to children and young people within their families and the wider context of the community in which they live' (page viii). This statutory guidance is for all agencies involved with a child in need and their family. Local authority children's social care have lead responsibility for undertaking these assessments. Initial and core assessments have to be completed within seven and 35 working days respectively. *Assessing Children in Need and their Families: practice guidance* (Department of Health, 2000) provides additional guidance on completing an assessment of disabled children and black and minority ethnic children and their families.

#### **Working Together to Safeguard Children: a guide to inter-agency working to safeguard and promote the welfare of children**

(HM Government, 2006a)

It is addressed to practitioners and front-line managers who have particular responsibilities for safeguarding and promoting the welfare of children and to senior and organisational managers in

- organisations that are responsible for commissioning or providing services to children, young people and adults who are parents/carers, and
- organisations that have a particular responsibility for safeguarding and promoting the welfare of children.

**What To Do If You're Worried A Child Is Being Abused**

(HM Government, 2006b)

The practice guidance first issued following the inquiry conducted by Lord Laming into the death of Victoria Climbié draws together *Working Together to Safeguard Children* and the Assessment Framework in a format which is accessible to practitioners. It spells out the process to be followed when there are concerns about a child's welfare including their safety, and provides clear expectations of everyone involved in working with, or having contact with, children.

**The Common Assessment Framework**

A framework to help practitioners assess children's additional need for services earlier and more effectively, develop a common understanding of those needs and agree a process for working together to meet those needs. The Common Assessment Framework offers a basis for early referral and information sharing between organisations. This includes children's social care when there are concerns about a child's welfare or safety.

**The Children Act 2004**

The 2004 Act provides clear accountability and integration within children's services, to enable better joint working and to secure a better focus on safeguarding children. The key changes the Act introduces are:

- a Children's Commissioner for England
- a duty on local authorities to make arrangements to promote co-operation between the various agencies and other bodies involved with children in order to improve children's well-being
- a duty on key agencies to take part in co-operation arrangements
- a duty on key agencies to make arrangements to safeguard and promote the welfare of children
- a duty on local authorities to set up Local Safeguarding Children Boards (LSCBs) and on key partners to take part – in effect putting ACPCs on a statutory footing – with a specific function of establishing screening groups to review unexpected child deaths in their area
- provision of databases containing basic information about children and young people to enable better sharing of information
- improved local accountability through a local Director of Children's Services and a lead council member for children's services
- an integrated inspection framework and provision of Joint Area Reviews of children's services
- additional requirements in relation to managing and monitoring private fostering arrangements
- a duty on local authorities to promote the educational achievement of looked after children
- a duty to ascertain children's wishes and feelings when undertaking assessments under s17 and s47 and to give them due consideration

before determining what, if any, services to provide a child in need under s17 or what action to be taken with respect to a child under s47

- that battery of a child can no longer be justified on the grounds of reasonable punishment.

Alongside the 2004 Act, the Government published *Every Child Matters: next steps* (Department for Education and Skills, 2004). This provided details of the response to the Every Child Matters consultation and of the wider, non-legislative, elements of change that have been taken forward to promote the well-being of all children.

## References

*Adoption and Children Act (2002) 2002 Chapter 38.* HMSO, London.

Website: <http://www.opsi.gov.uk/acts/acts2002/20020038.htm>

*Children Act (1989) 1989 Chapter 41.* HMSO, London.

Website: [http://www.hmso.gov.uk/acts/acts1989/Ukpga\\_19890041\\_en\\_1.htm](http://www.hmso.gov.uk/acts/acts1989/Ukpga_19890041_en_1.htm)

*Children Act (2004) 2004 Chapter 31.* HMSO, London.

Website: <http://www.hmso.gov.uk/acts/acts2004/20040031.htm>

Cm 5860 (2003) *Every Child Matters.* The Stationery Office, London.

Website: <http://www.everychildmatters.gov.uk/files/EBE7EEAC90382663E0D5BBF24C99A7AC.pdf>

Department for Education and Skills (2004) *Every Child Matters: next steps.* DfES Publications, London.

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Website: <http://www.dh.gov.uk/assetRoot/04/07/93/83/04079383.pdf>

Department of Health, Department for Education and Employment and Home Office (2000) *Framework for the Assessment of Children in Need and their Families.* The Stationery Office, London.

Website: <http://www.dh.gov.uk/assetRoot/04/01/44/30/04014430.pdf>

European Convention on Human Rights 1998

Website: <http://www.charitycommission.gov.uk/supportingcharities/ogs/g071a002.asp>

HM Government (2006a) *Working Together to Safeguard Children: a guide to inter-agency working to safeguard and promote the welfare of children.* The Stationery Office, London.

Website: <http://www.everychildmatters.gov.uk/workingtogether>

HM Government (2006b) *What To Do If You're Worried A Child Is Being Abused.* The Stationery Office, London.

Website: <http://www.everychildmatters.gov.uk/safeguarding>

HM Government (2006c) *Information Sharing: practioners' guide.* Department for Education and Skills, London.

Website: <http://www.everychildmatters.gov.uk/deliveringservices/informationsharing>

*Human Rights Act (1998)* 1998 HMSO, London.

Website: <http://www.hmso.gov.uk/acts/acts1998/19980042.htm>

United Nations Convention on the Rights of the Child 1989

Website: <http://www.unicef.at/kinderrechte/download/crceng.pdf>

The *Every Child Matters* website provides access to Government policy information, details and guidance on implementation, and examples of emerging practice. This includes *Every Child Matters: change for children*, which explains the requirements of the Children Act 2004 and how it fits with other core elements to provide a national framework for 150 local change programmes.

Website: <http://www.everychildmatters.gov.uk/>