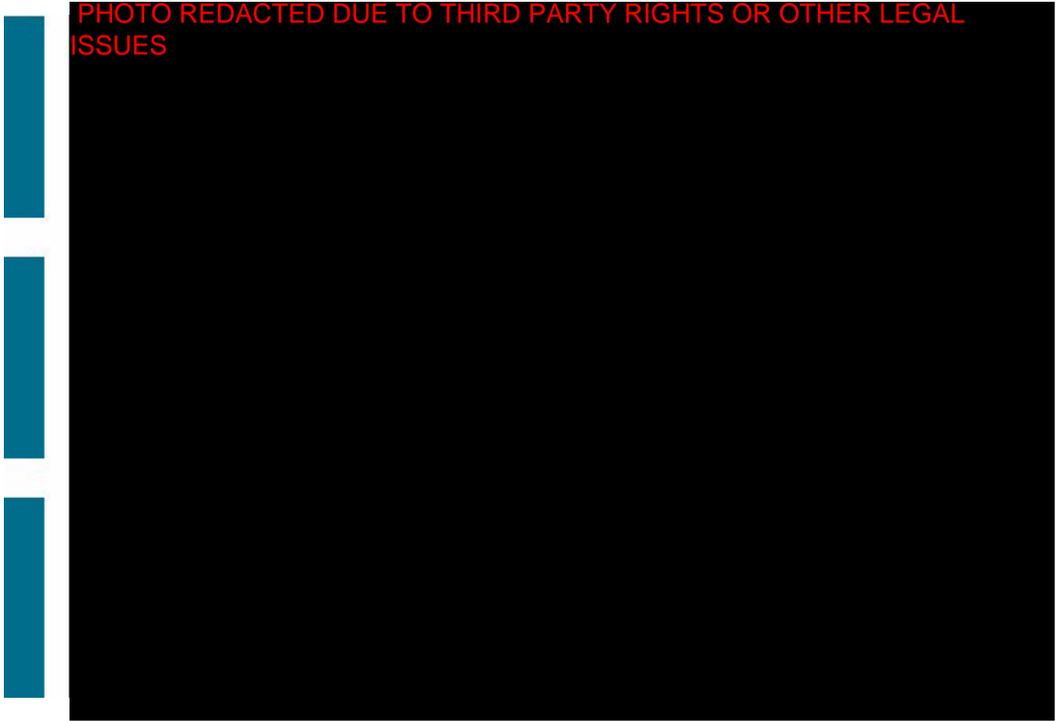


Information sharing: Further guidance on legal issues

Integrated working to improve outcomes
for children and young people

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ISSUES



Every Child Matters
Change For Children

This guidance supports the cross-Government guidance document *Information sharing: practitioners' guide*. It provides practitioners, managers and trainers with additional information on:

- the law specifically concerned with information sharing;
- the pieces of legislation which may provide statutory agencies and those acting on their behalf with statutory powers to share information.

It is for everyone who works with children and young people, whether they are employed or volunteers, and working in the public, private or voluntary sectors. It is for staff working in health; education; early years and childcare; social care; youth offending; police; advisory and support services, and leisure. It is also for practitioners who work in services provided for adults, for example mental health services and drug and alcohol services, as many of the adults accessing those services may have parenting or caring responsibilities.

Alongside this guidance, we are publishing:

- cross-Government guidance *Information sharing: Practitioners' guide*;
- a set of case examples which illustrate information sharing situations;
- a set of training materials available for local agency and multi-agency training, and for use by providers of initial training and continuous professional development for the children's workforce.

Go to www.ecm.gov.uk/informationsharing

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1. Introduction

1.1 There is no general statutory power to share information, just as there is no general power to obtain, hold or process data. Some Acts of Parliament give public bodies **express statutory powers** to share information. These are often referred to as ‘statutory gateways’ and are enacted to provide for the sharing of information for particular purposes. These gateways may be permissive or mandatory.

- An example of a ‘permissive statutory gateway’ is section 115 of the Crime and Disorder Act 1998, this **permits** people to share information to help prevent or detect crime.
- An example of a ‘mandatory statutory gateway’ is section 8 of the National Audit Act 1983, which **imposes a legal obligation** on public bodies to provide relevant information to the National Audit Office.

1.2 Where there is no express statutory power to share information it may still be possible to **imply** such a power from the other duties and powers public bodies have. Many activities of statutory bodies will be carried out as a result of **implied statutory powers**, particularly as it may be difficult to expressly define all the numerous activities that a public body may carry out to deliver its main duties and powers.

1.3 Having express or implied statutory powers in any particular case does not mean that the Human Rights Act 1998, the common law duty of confidentiality, and the Data Protection Act 1998 can be disregarded. Having a mandatory statutory gateway does however mean that confidential information can be shared without either consent or the public interest test needing to be applied, but this will be rare and generally in limited circumstances.

1.4 This document describes the main terms and impact of:

- the Human Rights Act 1998 (section 2);
- the common law duty of confidentiality (section 3);
- the Data Protection Act 1998 (section 4).

It also sets out the main pieces of legislation relevant to agencies and practitioners in children’s services which either contain express or implied powers to share information (section 5).

2. The Human Rights Act 1998 and the European Convention of Human Rights

2.1 The European Convention on Human Rights has been interpreted to confer positive obligations on public authorities to take reasonable action within their powers (which would include information sharing) to safeguard the Convention rights of children. These rights include the right to life (Article 2), the right not to be subjected to torture or inhuman or degrading treatment (Article 3) and the right to liberty and security (Article 5).

2.2 Article 8 of the European Convention on Human Rights was incorporated into UK law by the Human Rights Act 1998 and recognises a right to respect for private and family life:

- Article 8.1: Everyone has the right to respect for his private and family life, his home and his correspondence.
- Article 8.2: There shall be no interference by a public authority with exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, protection of health and morals or for the protection of rights and freedoms of others.

2.2 Sharing confidential information may be a breach of an individual's Article 8 right: the question is whether sharing information would be justified under Article 8.2 and proportionate.

2.3 The right to a private life can be legitimately interfered with where it is in accordance with the law and, for example, is necessary for the prevention of crime or disorder, for public safety or for the protection of health or morals, or for the protection of the rights and freedoms of others. You need to consider the pressing social need and whether sharing the information is a proportionate response to this need and whether these considerations can override the individual's right to privacy. If a child or young person is at risk of significant harm, or sharing is necessary to prevent crime or disorder, breach of the child or young person's right would probably be justified under Article 8.

3. Common law duty of confidentiality

3.1 The common law duty of confidentiality is explained in sections 3.6 to 3.12 of the cross-Government guidance *Sharing information: practitioners' guide*. The common law provides that where there is a confidential relationship, the person receiving the confidential information is under a duty not to pass on the information to a third party. But the duty is not absolute and information can be shared without breaching the common law duty if:

- the information is not confidential in nature; or
- the person to whom the duty is owed has given explicit consent; or
- there is an overriding public interest in disclosure; or
- sharing is required by a court order or other legal obligation.

4. Data Protection Act 1998

4.1 This Act deals with the processing of personal (i.e. sensitive and non-sensitive) data. Personal data is data which relates to a living person, including the expression of any opinion or any indication about the intentions in respect of the child or young person is considered personal data. Sensitive personal data is personal data relating to racial or ethnic origin, religious or other similar beliefs, physical or mental health or condition, sexual life, political opinions, membership of a trade union, the commission or alleged commission of any offence, any proceedings for any offence committed or alleged to have been committed, the disposal of proceedings or the sentence of any court in proceedings.

4.2 Organisations which process personal data must comply with the data protection principles set out in schedule 1 of the Act. These require data to be:

- fairly and lawfully processed;
- able to meet a schedule 2 condition, and if sensitive personal data, a schedule 3 condition;
- processed for limited specified purposes;
- adequate, relevant and not excessive for those purposes;
- accurate and up to date;
- kept for no longer than necessary;
- processed in accordance with individuals' rights;
- kept secure;
- not transferred to non-EEA (European Economic Areas) without adequate protection.

4.3 The Data Protection Act only stipulates that records should be kept no longer than is necessary for the purposes for which the records are being processed. There are no actual timescales imposed. It is a matter for individual judgement, taking account of the nature and purpose of the records. It is advisable for all organisations to retain information on children and young people to agreed timescales. Six years is a commonly used benchmark and is generally compatible with limitation periods for the commencement of legal proceedings.

4.4 If the information enables a person to be identified, then a Schedule 2 condition should be met. These are:

- subject has given consent to share information;
- sharing information is necessary to protect the person's vital interests; or
- to comply with a Court Order; or
- to fulfil a legal duty; or
- to perform a statutory function; or

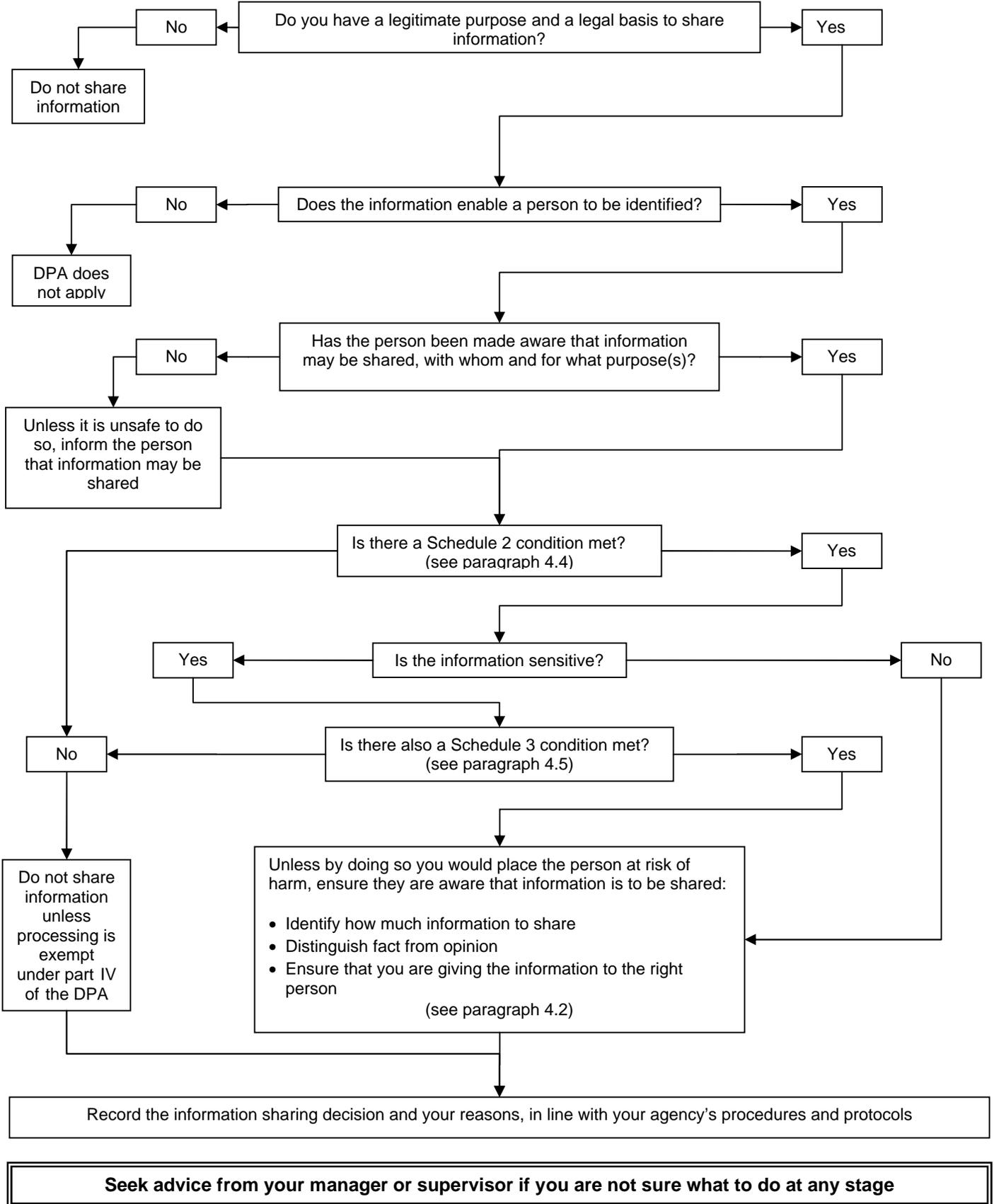
- to perform a public function in the public interest; or
- sharing is necessary for the legitimate interests of the data controller, or of the third party or parties to whom the data is disclosed, unless the rights or interests of the data subject preclude sharing

4.5 When information is sensitive then a schedule 3 condition must be met. These are:

- individual has given explicit consent to share information
- sharing information is necessary to establish, exercise or defend legal rights; or
- is necessary for the purpose of, or in connection with any legal proceedings; or
- to protect someone's vital interests and the person to whom the information relates cannot consent, is unreasonably withholding consent, or consent cannot reasonably be obtained; or
- to perform a statutory function; or
- it is in the substantial public interest and necessary to prevent or detect a crime and consent would prejudice that purpose; or
- processing is necessary for medical purposes and is undertaken by a health professional.

4.6 See **Figure 1** for a flowchart illustrating the decision-making process for testing compliance with the Act.

Figure 1 - Data Protection Act (DPA) 1998 Flowchart



5. Specific legislation containing express powers or which imply powers to share information

The Children Act 1989

5.1 Sections 17 and 47 of the Children Act 1989 place a duty on local authorities to provide services for children in need and make enquiries about any child in their area who they have reason to believe may be at risk of significant harm.

5.2 Sections 17 and 47 also enable the local authority to request help from other local authorities, education and housing authorities and NHS bodies and places an obligation on these authorities to cooperate. You may be approached by social services and asked to:

- provide information about a child, young person or their family where there are concerns about a child's well-being, or to contribute to an assessment under section 17 or a child protection enquiry;
- undertake specific types of assessments as part of a core assessment or to provide a service for a child in need;
- provide a report and attend a child protection case conference.

5.3 The Act does not require information to be shared in breach of confidence, but an authority should not refuse a request without considering the relative risks of sharing information, if necessary without consent, against the potential risk to a child if information is not shared.

5.4 Section 27 says that the local authority, for assistance in the exercise of its statutory functions (which include the provision of services for children in need and the sharing of information for these purposes) request the help of:

- any local authority;
- any local education authority (LEA);
- any health authority;
- any person authorised by the Secretary of State.

The Children Act 2004

5.5 Section 10 of the Act places a duty on each children's services authority to make arrangements to *promote co-operation* between itself and relevant partner agencies to improve the well-being of children in their area in relation to:

- Physical and mental health, and emotional well-being;
- Protection from harm and neglect;
- Education, training and recreation;
- Making a positive contribution to society;
- Social and economic well-being.

5.6 The relevant partners must cooperate with the local authority to make arrangement to improve children's wellbeing. The relevant partners are:

- district councils;
- the police;
- the Probation Service;
- youth offending teams (YOTs);
- strategic health authorities and primary care trusts;
- Connexions;
- the Learning and Skills Council.

5.7 This statutory guidance for section 10 states that good information sharing is key to successful collaborative working and that arrangements under section 10 of the Act should ensure that information is shared for strategic planning purposes and to support effective service delivery. It also states that these arrangements should cover issues such as improving the understanding of the legal framework and developing better information sharing practice between and within organisations.

5.8 Section 11 of the Act places a duty on key people and bodies to make arrangements to ensure that their functions are discharged with regard to the need to safeguard and promote the welfare of children. The key people and bodies are:

- local authorities (including district councils);
- the police;
- the Probation Service;
- bodies within the National Health Service (NHS);
- Connexions;
- YOTs;
- governors/directors of prisons and young offender institutions;
- directors of secure training centres;
- the British Transport Police.

5.9 The section 11 duty does not give agencies any new functions, nor does it override their existing functions, it simply requires them to:

- carry out their existing functions in a way that takes into account the need to safeguard and promote the welfare of children;
- ensure that the services they contract out to others are provided having regard to that need.

5.10 In order to safeguard and promote the welfare of children, arrangements should ensure that:

- all staff in contact with children understand what to do and the most effective ways of sharing information if they believe a child and family may require targeted or specialist services in order to achieve their optimal outcomes;
- all staff in contact with children understand what to do and when to share information if they believe that a child may be in need, including those children suffering or at risk of significant harm.

Education Act 2002

5.11 The section 11 duty of the Children Act 2004 mirrors the duty placed by section 175 of the Education Act 2002 on LEAs and the governing bodies of both maintained schools and further education institutions to make arrangements to carry out their functions with a view to safeguarding and promoting the welfare of children and follow the guidance in *Safeguarding Children in Education* (DfES 2004).

5.12 The guidance applies to proprietors of independent schools by virtue of section 157 of the Education Act 2002 and the Education (Independent Schools Standards) Regulations 2003.

Education Act 1996

5.13 Section 13 of the Education Act 1996 provides that an LEA shall (so far as their powers enable them to do so) contribute towards the spiritual, moral, mental and physical development of the community, by securing that efficient primary and secondary education is available to meet the needs of the population of the area. Details of the number of children in the local authority's area and an analysis of their needs is required in order to fulfil this duty so there may be an implied power to collect and use information for this purpose.

5.14 Section 434 (4) of the Act requires LEAs to request schools to provide details of children registered at a school.

Learning and Skills Act 2000

5.15 Section 117 provides for help to a young person to enable them to take part in further education and training

5.16 Section 119 enables Connexions services to share information with the Benefits Agency and Jobcentre Plus to support young people to obtain appropriate benefits under the

Social Security Contributions and Benefits Act 1992 and Social Security Administration Act 1992.

Education (SEN) Regulations 2001

5.17 Regulation 6 provides that when the LEA are considering making an assessment of a child's special educational needs, they are obliged to send copies of the notice to social services, health authorities and the head teacher of the school (if any) asking for relevant information.

5.18 Regulation 18 provides that all schools must provide Connexions Services with information regarding all Year 10 children who have a statement of special educational needs.

Children (Leaving Care) Act 2000

5.19 The main purpose of the Act is to help young people who have been looked after by a local authority move from care into living independently in as stable a fashion as possible. To do this it amends the Children Act 1989 (c.41) to place a duty on local authorities to assess and meet need. The responsible local authority is to be under a duty to assess and meet the care and support needs of **eligible** and **relevant** children and young people and to assist **former relevant children**, in particular in respect of their employment, education and training.

5.20 Sharing information with other agencies will enable the local authority to fulfil the statutory duty to provide after care services to young people leaving public care.

Protection of Children Act 1999

5.21 The Act creates a system for identifying persons considered to be unsuitable to work with children. It introduces a 'one stop shop' to compel employers designated under the Act (and allows other employers) to access a single point for checking people they propose to employ in a child care position.

5.22 This will be achieved by checks being made of criminal records with the National Criminal Records Bureau and two lists maintained by the Department for Education and Skills.

Immigration and Asylum Act 1999

5.23 Section 20 provides for a range of information sharing for the purposes of the Secretary of State:

- to undertake the administration of immigration controls to detect or prevent criminal offences under the Immigration Act;
- to undertake the provision of support for asylum seekers and their dependents.

Local Government Act 2000

5.24 Part 1 of the Local Government Act 2000 gives local authorities powers to take any steps which they consider are likely to promote the wellbeing of their area or the inhabitants of it. Section 2 gives local authorities ‘a power to do anything which they consider is likely to achieve any one or more of the following objectives’:

- the promotion or improvement of the economic wellbeing of their area;
- the promotion or improvement of the social wellbeing of their area;
- the promotion or improvement of the environmental wellbeing of their area.

5.25 Section 2 (5) makes it clear that a local authority may do anything for the benefit of a person or an area outside their area, if the local authority considers that it is likely to achieve one of the objectives of Section 2(1).

5.26 Section 3 is clear that local authorities are unable to do anything (including sharing information) for the purposes of the wellbeing of people - including children and young people - where they are restricted or prevented from doing so on the face of any relevant legislation, for example, the Human Rights Act and the Data Protection Act or by the common law duty of confidentiality.

Criminal Justice Act 2003

5.27 Section 325 of this Act details the arrangements for assessing risk posed by different offenders:

- The “responsible authority “ in relation to any area, means the chief officer of police, the local probation board and the Minister of the Crown exercising functions in relation to prisons , acting jointly.
- The responsible authority must establish arrangements for the purpose of assessing and managing the risks posed in that area by:
 - a) relevant sexual and violent offenders; and
 - b) other persons who, by reason of offences committed by them are considered by the responsible authority to be persons who may cause serious harm to the public (this includes children)
- In establishing those arrangements, the responsible authority must act in co-operation with the persons identified below
- Co-operation may include the exchange of information

5.28 The following agencies have a duty to co-operate with these arrangements:

- a) every youth offending team established for an area
- b) the Ministers of the Crown, exercising functions in relation to social security, child support, war pensions, employment and training
- c) every local education authority
- d) every local housing authority or social services authority

- e) every registered social landlord which provides or manages residential accommodation
- f) every health authority or strategic health authority
- g) every primary care trust or local health board
- h) every NHS trust
- i) every person who is designated by the Secretary of State as a provider of electronic monitoring services

Crime and Disorder Act 1998

5.29 Section 17 applies to a local authority (as defined by the Local Government Act 1972); a joint authority; a police authority; a national park authority; and the Broads Authority. As amended by the Greater London Authority Act 1999 it applies to the London Fire and Emergency Planning Authority from July 2000 and to all fire and rescue authorities with effect from April 2003, by virtue of an amendment in the Police Reform Act 2002.

5.30 It recognises that these key authorities have responsibility for the provision of a wide and varied range of services to and within the community. In carrying out these functions, section 17 places a duty on them to do all they can to reasonably prevent crime and disorder in their area.

5.31 The purpose of this section is simple: the level of crime and its impact is influenced by the decisions and activities taken in the day to day business of local bodies and organisations. Section 17 is aimed at giving the vital work of crime and disorder reduction a focus across a wide range of local services that influence and impact upon community safety and putting it at the heart of local decision making. Section 17 is a key consideration for these agencies in their work in crime and disorder reduction partnerships, drug action teams, YOTs, children's trusts and local safeguarding children boards.

5.32 Section 37 sets out that the principal aim of the youth justice system is to prevent offending by children and young people and requires everyone carrying out youth justice functions to have regard to that aim.

5.33 Section 39(5) sets out the statutory membership of YOTs reflecting their responsibilities both as a criminal justice agency and a children's service. The membership and consists of the following:

- at least one probation officer;
- at least one police officer;
- at least one person nominated by a health authority;
- at least one person with experience in education;
- at least one person with experience of social work in relation to children.

5.34 YOTs have a statutory duty to coordinate the provision of youth justice services including advising courts, supervising community interventions and sentences, and working with secure establishments in respect of young people serving custodial sentences and also in the latter category of a children's service.

5.35 As YOTs are multi-agency teams, members will also need to be aware of the need to safeguard and promote the welfare of children that relates to their constituent agency.

5.36 Section 115 provides any person with a power but not an obligation to disclose information to responsible public bodies (e.g. police, local and health authorities) and with cooperating bodies (e.g. domestic violence support groups, victim support groups) participating in the formulation and implementation of the local crime and disorder strategy.

5.37 The police have an important and general common law power to share information to prevent, detect and reduce crime. However, some other public organisations that collect information may not have had the power previously to share it with the police and others. Section 115 clearly sets out the power of any organisation to share information with the police authorities, local authority (including parish and community councils), Probation Service and health authority (or anyone acting on their behalf) for the purposes of the Act.

5.38 This ensures that information may be shared for a range of purposes covered by the Act, for example for the functions of the crime and disorder reduction partnerships and YOTs, the compilation of reports on parenting orders, anti-social behaviour orders, sex offender orders and drug testing orders.

National Health Service Act 1977

5.39 The Act provides for a comprehensive health service to England and Wales to improve the physical and mental health of the population and to prevent, diagnose and treat illness.

5.40 Section 2 provides for sharing information with other NHS professionals and practitioners from other agencies carrying out health service functions that would otherwise be carried out by the NHS.

Health Act 1999

5.41 Section 27 of the Health Act replaces section 22 of the NHS Act 1977. Section 27 states that NHS bodies and local authorities shall cooperate with one another (this allows for practitioners to share information) in order to secure the health and welfare of people.

The Adoption and Children Act 2002

5.42 For further information about the Adoption and Children Act 2002 and Regulations see www.dfes.gov.uk/adoption/lawandguidance.

Links and resources

Information and publications relating to all aspects of the *Every Child Matters: Change for Children* programme - www.ecm.gov.uk

Information sharing practitioners' guide: Cross-Government guidance to improve practice by giving practitioners across children's services clearer guidance on when and how they can share information legally and professionally. Available online at www.ecm.gov.uk/informationsharing

Common Assessment Framework practitioners' and managers' guides: Guidance for those implementing and using CAF. Available online at www.ecm.gov.uk/caf

Lead professional practitioners' and managers' guides: Guidance for those implementing and carrying out lead professional functions. Available online at www.ecm.gov.uk/leadprofessional

Supporting integrated working training strategy: Details of the outline training strategy and the range of training modules, including training in information sharing, are available at www.ecm.gov.uk/iwtraining

You can download this publication online at www.ecm.gov.uk/informationsharing

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