



**BRIEFING PAPER**

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# An overview of child protection legislation in England

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## Summary

This briefing gives a very broad overview of the legislative framework for child protection in England. It is intended as a short introduction to some of the key areas, rather than a comprehensive note.

### Children Act 1989

The current child protection system in England is grounded in the *Children Act 1989*, as amended. The Act establishes a number of key principles, including

- the concept of parental responsibility.
- the paramount nature of the child's welfare when a matter under the Act is before a court.
- that children are best looked after by their family unless intervention in family life is essential.

The Act places a general duty on local authorities to promote and safeguard the welfare of children in need in their area by providing a range of services appropriate to those children's needs. It additionally sets out what a local authority must do when it has reasonable cause to suspect that a child in its area is suffering, or is likely to suffer significant harm.

Section 31 of the Act sets out the circumstances under which a court may make an order placing a child in the care of the local authority (a care order). When determining whether or not to make such an order, a court must have regard to the 'welfare checklist' set out in section 1(3) of the Act. The Act also sets out the functions of local authorities in relation to looked after children, including a duty under section 22(3) to safeguard and promote the welfare of children in their care.

### Children Act 2004

Following Lord Lamming's inquiry into the murder of Victoria Climbié, the *Children Act 2004* made a number of key changes to the child protection framework. Further changes were made by the *Children and Social Work Act 2017*, which amended the 2004 Act in a number of areas.

Among other things, the 2004 Act, as amended:

- places a duty on local authorities in England to make arrangements to promote co-operation with key partners and local agencies, with a view to improving the well-being of children in the authority's area.
- places a duty on a range of agencies, including local authorities, the police and health services, to ensure that they consider the need to safeguard and promote the welfare of children when carrying out their functions.
- establishes the roles and responsibilities of safeguarding partners (the local authority, NHS Clinical Commissioning Groups and the police), which are responsible for determining how safeguarding arrangements should work in their area.

### Statutory guidance

The statutory guidance, [Working Together to Safeguard Children](#), sets out how individuals and organisations should work together to safeguard and promote the welfare of children and young people in accordance with the relevant legislation. It was last updated in July 2018 to reflect changes brought about by the *Children and Social Work Act 2017*.

# 1. Children Act 1989

There is no single piece of legislation, but “rather a myriad of laws and guidance”, that are relevant to safeguarding and promoting the welfare of children in England.<sup>1</sup> This briefing gives a very broad overview of this legislative framework. It should not be taken to be a comprehensive guide, but rather a short introduction to some of the key areas.

A number of other Library briefings, referenced below, provide more detailed information on specific areas.

## 1.1 Public law

The current child protection system in England is grounded in the *Children Act 1989*, which establishes a number of key principles including:

- The paramount nature of the child’s welfare when a matter under the Act is before a court.
- The concept of parental responsibility (Library briefing 2827, [Children: parental responsibility - what is it and how is it gained and lost \(England and Wales\)](#), provides more information).
- That children are best looked after by their family unless intervention in family life is essential.<sup>2</sup>

### Provision of services for children in need

Section 17 of the Act places a general duty on local authorities to promote and safeguard the welfare of children in need in their area by providing a range of services appropriate to those children’s needs. As far as is consistent with this duty, authorities are required to promote the upbringing of children in need by their families.

Section 17 defines a child in need as a child who:

- (a) [is] unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision...of services by a local authority...;
- (b) [whose] development is likely to be significantly impaired, or further impaired, without the provision of such services; or
- (c) [is] disabled.

Under the 1989 Act, local authorities have a duty to take reasonable steps to identify children in need in their area, and are responsible for determining what services should be provided to them.<sup>3</sup> The Act specifies the range of services that can be provided.<sup>4</sup>

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<sup>1</sup> NSPCC inform, [NSPCC factsheet: An introduction to child protection legislation in the UK](#), May 2012, p1

<sup>2</sup> [Child protection system in England](#), NSPCC Learning, last updated 29 November 2019; Department for Education, [The Children Act 1989 guidance and regulations Volume 2: care planning, placement and case review](#), June 2015, p13

<sup>3</sup> *Children Act 1989*, Schedule 2, part 1

<sup>4</sup> *Children Act 1989*, sections 17, 18 and 20, schedule 2, paras 8, 10

When deciding what services to provide, local authorities must, as far as is reasonably practicable and consistent with the welfare of the child, give due consideration to the child's wishes.

Under section 29 of the Act, local authorities may charge for providing services to a child in need and their family (but not for advice, guidance or counselling). But they may not charge more than a person "can reasonably be expected to pay" and they cannot charge people if they are in receipt of certain benefits.<sup>5</sup>

Under section 20 of the Act, local authorities have a duty to provide accommodation to children in need who require it because:

- There is no one who has parental responsibility for them; or
- They are lost or abandoned; or
- The person who has been caring for them is prevented from providing them with suitable accommodation or care or
- They have reached 16 and their welfare is "likely to be seriously prejudiced" if they are not provided with accommodation.

A child provided with accommodation under section 20 (sometimes referred to as a voluntary arrangement) is a looked after child.

Provisions relating to young carers and parent carers in need were inserted into Part 3 of the 1989 Act by the *Children and Families Act 2014*. They came into force on 1 April 2015.

Further information on the provision of services for children in need is available in Library Briefing 7730, [Local authority support for children in need \(England\)](#).

### Children suffering significant harm

Part five of the *Children Act 1989* sets out what local authorities should do to protect children at risk of harm. Under section 47 of the Act a local authority must make the necessary enquiries to decide whether it should act to safeguard or promote a child's welfare where it:

- is informed that a child in their area is the subject of an emergency protection order (see below) or is in police protection; or
- has "reasonable cause to suspect that a child who lives, or is found in their area is suffering, or is likely to suffer, significant harm"

Certain bodies (including other local authorities, local housing authorities, and clinical commissioning groups) are under a duty to assist the local authority in conducting enquiries under section 47.<sup>6</sup>

As when deciding what services to provide under section 17, when deciding what action to take under section 47 of the *Children Act* local authorities must, as far as is reasonably practicable and consistent with the welfare of the child, give due consideration to the child's wishes.

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<sup>5</sup> *Children Act 1989*, section 29

<sup>6</sup> *Children Act 1989*, section 47(9)

Chapter 1 of the Government's statutory guidance, [Working Together to Safeguard Children](#), provides more detail on the process of managing section 47 enquiries.

### Functions relating to looked after children

The functions of local authorities in relation to looked after children are also set out in the 1989 Act, as amended (including by the *Children (Leaving Care) Act 2000*, the *Adoption and Children Act 2002* and the *Children and Young Persons Act 2008*). A child is a 'looked after child' if they are in the care of a local authority by reason of a care order or if they are being provided with accommodation under section 20 of the 1989 Act (see above) for a continuous period of more than 24 hours with the agreement of the parents.<sup>7</sup>

Under section 31 of the *Children Act 1989*, on the application of any local authority or authorised person (currently only the NSPCC) the court may make a care order or supervision order if it is satisfied:

- that the child concerned is suffering, or is likely to suffer significant harm; and
- that the harm, or likelihood of harm, is attributable to:
  - the care given to the child not being what it would be reasonable to expect a parent to give them; or
  - the child is beyond parental control.

A care order places a child in the care of the local authority. A supervision order places the child under the supervision of a local authority and the authority must advise, assist and befriend the child. A supervision order may also require the child to comply with any directions given by the local authority, including, for example, to live at a specified place and take part in specified activities.<sup>8</sup>

When determining whether or not to make a care order or supervision order a court must have regard to the "welfare checklist" set out in section 1(3) of the 1989 Act, including (but not limited to) the wishes of the child, their needs, their age, and their sex. In addition, under section 1(5) of the Act, a court must not make a care or supervision order unless it considers that doing so would be better for the child than making no order.

Under section 33 of the 1989 Act, where a care order has been made, a local authority is under a duty to receive the child into their care and to keep them in their care while the order remains in force. Section 22(3) of the Act places a duty on local authorities to safeguard and promote the welfare of children in their care.

Further information on care orders and local authorities' responsibilities with regards to looked after children is available in statutory guidance published by the Department for Education:

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<sup>7</sup> Department for Education, [The Children Act 1989 guidance and regulations Volume 2: care planning, placement and case review](#), June 2015, p16

<sup>8</sup> Department for Education, [Court orders and pre-proceedings: For local authorities](#), April 2014, p23-4

- Department for Education, [Children Act 1989: care planning, placement and case review](#), July 2015.
- Department for Education, [Children Act 1989: Court orders](#), April 2014. (This guidance also provides information on emergency protection orders, section 8 orders and special guardianship orders) (see sections below.)

#### Box 1: Commitment to review the care system

The Conservative Party manifesto for the 2019 general election included a commitment to “review the care system to make sure that all care placements and settings are providing children and young adults with the support they need.” It added that “stable, loving placements – adoption where possible or foster parents recruited by the local authority” will be prioritised.<sup>9</sup>

### Emergency protection orders

Under section 44 of the *Children Act 1989* a court may make an emergency protection order with respect to a child on application by any person, if it is satisfied that there is reasonable cause to believe that a child is likely to suffer significant harm if they:

- are not removed to different accommodation (provided by or on behalf of the applicant); or
- do not remain in the place in which the child is then being accommodated.

An emergency protection order may also be made on the application of a local authority if the court is satisfied that enquiries being made under section 47 of the *Children Act 1989* are being frustrated by access to the child being unreasonably refused, and access is needed as a matter of urgency.<sup>10</sup>

## 1.2 Private law

### Section 8 orders

There are three orders under section 8 of the *Children Act 1989* which can be made in any family or care proceedings:

- **Child Arrangements Orders** were introduced in April 2014 by the *Children and Families Act 2014* (which amended section 8 of the *Children Act 1989*). They replace Contact Orders and Residence Orders. A Child Arrangements Order regulates arrangements relating to any of the following:
  - With whom a child is to live, spend time or otherwise have contact; and
  - When a child is to live, spend time or otherwise have contact with any person

<sup>9</sup> Conservative Party, [Get Brexit Done: Unleash Britain’s Potential: The Conservative and Unionist Party Manifesto 2019](#), p14

<sup>10</sup> HM Government, [Working Together to Safeguard Children: Statutory framework](#), July 2018, p10

Any person can apply for a child arrangements order, but some people first require the leave of the court to apply.

- **Prohibited Steps Orders** mean that no step specified in the order, which could normally be taken by a parent in meeting their parental responsibility for a child, can be taken without the consent of the court.
- **Specific Issue Orders** give directions for the specific purpose of determining a question that has arisen in connection with any aspect of parental responsibility that may arise.

As with care orders, when deciding whether to make, vary or discharge a section 8 order, a court must have regard to the 'welfare checklist' in section 1(3) of the *Children Act 1989*.

Further information is available in Library Briefing 8761, [Children: when agreement cannot be reached on contact and residence](#) (England and Wales).

### Special Guardianship Orders

Special Guardianship Orders were introduced by the *Adoption and Children Act 2002*, which introduced new sections 14A-F into the *Children Act 1989*.

A special guardianship order appoints a person or persons to be a child's special guardian. A special guardian has parental responsibility for a child and may exercise it to the exclusion of all others with parental responsibility, except other special guardians. The intention is that the special guardian "will have clear responsibility for all the day to day decisions about caring for the child...and [their] upbringing."<sup>11</sup> Unlike adoption, however, the order retains the basic link with the parents, who remain legally the child's parents, though their exercise of parental responsibility is limited.

Sections 14A-F of the 1989 Act provide the legal framework for special guardianship orders, including:

- Who may apply for a special guardianship order
- The circumstances in which a special guardianship order may be made
- The nature and effect of special guardianship orders
- Support services for those affected by special guardians.<sup>12</sup>

Further information is available in statutory [Special guardianship guidance](#) published by the Department for Education.

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<sup>11</sup> Department for Education, [Special guardianship guidance](#), January 2017, p8

<sup>12</sup> As above, pp7-9



## 2. Children Act 2004

### 2.1 Background

Lord Laming's inquiry into the murder of Victoria Climbié identified a lack of priority given to safeguarding measures by local authorities, and also deficiencies in the existing structures to effectively detect and respond to cases of child abuse.<sup>13</sup> Although the report concluded that the child protection framework under the *Children Act 1989* was fundamentally sound, it found gaps in its implementation. The report made 108 recommendations, including for fundamental changes to the national and local structures for children's and family services to ensure they are properly co-ordinated, accountable and managed effectively.

In response to the recommendations in Lord Laming's report, a number of key changes were implemented under the *Children Act 2004*.

### 2.2 The Children Act 2004

Section 10 of the *Children Act 2004* places a duty on local authorities in England to make arrangements to promote co-operation with key partners and local agencies, with a view to improving the well-being of children in the authority's area.

#### Box 2: Children's Trust Boards

Section 12A of the *Children Act 2004* requires that the arrangements made by a local authority under section 10 "must include arrangements for the establishment of a Children's Trust Board for their area", comprising representatives of the authority and its relevant partners. In addition, under section 17 of the Act the Secretary of State can by regulations require Children's Trust Boards to prepare a children and people's plan setting out the strategy for co-operation between the bodies represented on the Board. As of October 2010, however, statutory children's trust guidance was withdrawn and children and young people's plan regulations were revoked, meaning that Trusts are no longer required to produce a plan. Thus, while there is still a requirement for authorities to have a Children's Trust Board, "there are no longer any regulations or central guidance on how this should be done."<sup>14</sup>

Section 11 of the 2004 Act places a duty on a range of agencies, including local authorities, the police and health services, to ensure that they consider the need to safeguard and promote the welfare of children when carrying out their functions. Section 175 of the *Education Act 2002* places the governing bodies of maintained schools and further education institutions under the same duty. The duty is placed on the proprietors of independent schools (which includes academies and free schools) by the Independent School Standards Regulations.<sup>15</sup> Further information on schools specifically is available in Library Briefing 8023, [Safeguarding in English schools](#).

<sup>13</sup> Lord Laming, The Victoria Climbié Inquiry, January 2003

<sup>14</sup> Education Committee, [Children first: the child protection system in England](#), 7 November 2012, HC 137, p12

<sup>15</sup> [The Education \(Independent School Standards\) Regulations 2014](#), SI 2014/3283

### Box 3: Local Safeguarding Children Boards

As originally passed, the *Children Act 2004* required local authorities to establish an independent Local Safeguarding Children Board (LSCB) for their area. LSCBs had a range of functions, including:

- developing safeguarding policy concerning the actions to be taken when there are concerns about a child and the investigation of allegations against individuals who work with children
- playing a strong role in supporting information sharing between organisations and requiring persons or bodies to comply with requests for information
- carrying out serious case reviews
- publishing an annual report on the effectiveness of child safeguarding in the area.<sup>16</sup>

LSCBs had an independent chair and comprised at least one representative from the local authority and a range of other partners, including, for example, the youth offending team, NHS trusts and Cafcass. Local authorities were additionally required to take reasonable steps to ensure that LSCBs included two lay members and representatives from all types of school in their area.

LSCBs have now been replaced by new multiagency safeguarding arrangements (see section below).

## 2.3 Children and Social Work Act 2017

The *Children and Social Work Act 2017* amended the *Children Act 2004* to replace LSCBs with new local arrangements for safeguarding and promoting the welfare of children.

### Safeguarding partners

A central feature of the new arrangements is that three safeguarding partners – the local authority, NHS Clinical Commissioning Groups (CCGs), and police forces – are responsible for determining how safeguarding arrangements should work in their area for them and relevant agencies. “Relevant agencies” is a term used for all bodies and groups within an area which play a crucial role in coordinating the safeguarding and welfare of children. Regulations specify the relevant agencies that safeguarding partners may choose to work with.<sup>17</sup>

Sections 16E-K of the *Children Act 2004*, as inserted by the *Children and Social Work Act 2017*, establish the roles and responsibilities of safeguarding partners, including:

- Section 16F requires local safeguarding partners to make arrangements to identify serious child safeguarding cases which raise issues of importance to the area and, where appropriate, arrange for them to be reviewed under their supervision.
- Section 16G requires local safeguarding partners to publish their arrangements, and to ensure scrutiny of how effective the arrangements have been by an independent person. It also places a duty on the safeguarding partners and relevant agencies to act in accordance with the published arrangements.
- Section 16H requires people or bodies to supply information to the safeguarding partners if requested for the purpose of enabling or assisting in the performance of their functions.

<sup>16</sup> HM Government, [Working together to safeguard children: A guide to inter-agency working to safeguard and promote the welfare of children](#), March 2015, pp65-75

<sup>17</sup> [The Child Practice Review and Relevant Agency \(England\) Regulations 2018](#), SI 2018/789

- Section 16J enables the safeguarding partners for two or more local authority areas to agree that their areas are to be treated as a single area.
- Section 16K puts the safeguarding partners and relevant agencies under a duty to have regard to any guidance issued by the Secretary of State.

### Child Safeguarding Practice Review Panels

Section 16A of the *Children Act 2004*, as inserted by the 2017 Act, requires the Secretary of State to establish a Child Safeguarding Practice Review Panel. The Panel's functions under section 16B of the 2004 Act are to "identify serious safeguarding cases which raise issues that are complex or of national importance and to arrange, where appropriate, for those cases to be reviewed under their supervision."<sup>18</sup> The aim of the reviews is to identify improvements required to safeguard and promote the welfare of children.

Under section 16C of the 2004 Act, local authorities are under a duty to notify the Panel if a child who it knows or suspects has been abused or neglected:

- dies or is seriously harmed in the local authority's area; or
- dies or is seriously harmed outside England while normally resident in the local authority's area.

### Child Death Reviews

Sections 16M-P of the *Children Act 2004*, as inserted by the 2017 Act, establish the roles and responsibilities of child death review partners.

Under Section 16Q of the 2004 Act, child death review partners are defined as the local authority and any clinical commissioning group for the local authority area.<sup>19</sup> Section 16M sets out a requirement that the child death review partners for a local authority in England must make arrangements for the review of each death of a child normally resident in the area or, if they deem it appropriate, a child who is not normally resident in the area.

#### Box 4: The safeguarding framework in the devolved nations

Each nation of the UK has its own child protection system and laws for safeguarding and promoting the welfare of children. Further information on the legislative framework for child protection in Scotland, Wales and Northern Ireland is available on the website of the NSPCC at:

- [Child Protection System in Scotland: Legislation and guidance](#), last updated July 2019.
- [Child Protection System in Wales: Legislation and guidance](#), last updated 3 January 2020.
- [Child Protection System in Northern Ireland: Legislation and guidance](#), last updated 5 July 2019.

<sup>18</sup> HM Government, [Working Together to Safeguard Children: Statutory framework](#), July 2018, p3

<sup>19</sup> As above, p5

## 3. Further information

### 3.1 Statutory guidance

The main policy guidance on the child protection system in England is contained in the statutory guidance, [Working Together to Safeguard Children](#). The guidance was last updated in July 2018 to reflect the changes brought about by the *Children and Social Work Act 2017*. It sets out how individuals and organisations should work together to safeguard and promote the welfare of children and young people in accordance with the relevant legislation. Further information on the safeguarding responsibilities of schools is set out in additional statutory guidance, [Keeping children safe in education](#).

Under section 11(4) of the *Children Act 2004*, each person or body to which the section 11 duty applies (see section 2.2 above), including local authorities, the police, and health services, are required to have regard to the Working Together guidance. Section 175(4) of the *Education Act 2002* and paragraph 7(b) of the independent school standards regulations place a similar requirement on maintained schools and independent schools (including academies and free schools) respectively. Additional bodies are also required to have regard to the guidance under other legislative provisions.<sup>20</sup>

### 3.2 Further information

The following links provide further information on legislation relating to safeguarding children in England:

- HM Government, [Working Together to Safeguard Children – Statutory framework: legislation relevant to safeguarding and promoting the welfare of children](#), July 2018.
- Family Rights Group, [Advice Sheet 9: Child Protection Procedures](#), last updated 12 February 2019.
- NCPCC, [Child protection system in England: Legislation and guidance](#), last updated 29 November 2019.
- NSPCC, [History of child protection in the UK](#), last updated 5 July 2019.
- Library Briefing Paper 8543, [Children’s social care services in England](#) (section 1.1), last updated 28 June 2019.
- Library Briefing Paper 7730, [Local authority support for children in need \(England\)](#), 13 January 2020.

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<sup>20</sup> For further information see, HM Government, [Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children](#), July 2018, pp7-8

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