



**Children and Young  
People:  
Rights to Action  
Safeguarding Children:  
Working Together  
Under the  
Children Act 2004**



Llywodraeth Cymru  
Welsh Government

# **1: The Legislative Framework**

- 1.1 This Chapter sets out the main statutory provisions covering the work of Local Safeguarding Children Boards and the roles and responsibilities of individual agencies.

## **The Children Act 1989**

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

## **Safeguarding and promoting the welfare of children**

- 1.2 Section 17 of the Children Act 1989 places a general duty on every local authority:
- to safeguard and promote the welfare of children within their area who are in need; and
  - so far as is consistent with that duty, to promote the upbringing of such children by their families, by providing a range and level of services appropriate to those children's needs.

## **Children who are suffering or are likely to suffer significant harm**

- 1.3 Where a local authority –
- are informed that a child who lives, or is found in their area –
    - is the subject of an emergency protection order; or
    - is in police protection; or
  - have reasonable cause to suspect that a child who lives, or is found in their area is suffering, or is likely to suffer, significant harm,

the authority shall make, or cause to be made, such enquiries as they consider necessary to enable them to decide whether they should take any action to safeguard or promote the child's welfare (Children Act 1989 section 47(1)).

## **The duty to co-operate to safeguard and promote the welfare of children**

- 1.4 The Children Act 1989 places two specific duties on agencies to co-operate in the interests of vulnerable children:
- 1.5 Section 27 provides that a local authority may request help from:
- any local authority;
  - any local education authority;
  - any local housing authority;
  - any health authority, Special Health Authority or National Health Service Trust; and
  - any person authorised by the National Assembly for Wales in exercising the local authority's functions under Part III of the Act.

1.6 This part of the Act places a duty on local authorities to provide support and services for children in need, including children looked after by the local authority, and those in secure accommodation. The body whose help is requested in these circumstances has a duty to comply with the request, provided it is compatible with its other duties and functions.

1.7 Section 47 places a duty on:

- any local authority;
- any local education authority;
- any housing authority;
- any health authority, Special Health Authority or National Health Service Trust; and
- any person authorised by the National Assembly for Wales

to help a local authority with its enquiries in cases where there is reasonable cause to suspect that a child is suffering, or is likely to suffer, significant harm.

## **Meaning of "harm"**

1.8 "Harm" is defined in section 31(9) of the Children Act 1989 as "ill-treatment or the impairment of health or development". It is broader than physical violence and includes sexual abuse and forms of ill-treatment which are not physical. Any harm a child suffers because a parent is being harassed or intimidated is caught by the definition of "harm". Section 120 of the Adoption and Children Act 2002 amends the definition of harm in the Children Act 1989 to "ill-treatment or the impairment of health or development, including, for example, impairment suffered from seeing or hearing the ill-treatment of another". The amendment applies to all proceedings where the court applies the 'welfare checklist' in section 1(3) of the Children Act 1989. This includes proceedings for contact or residence orders.

## **Children provided with accommodation by a health authority or local education authority**

1.9 Under Section 85, where a child is provided with accommodation by any health authority or local education authority ("the accommodating authority") –

- for a consecutive period of at least three months; or
- with the intention, on the part of that authority, of accommodating him for such a period,

the accommodating authority shall notify the responsible authority.

.....the accommodating authority shall notify the responsible authority when they cease to accommodate the child.

....."the responsible authority" means-

- the local authority appearing to the accommodating authority to be the authority within whose area the child was ordinarily resident immediately before being accommodated; or
- where it appears to the accommodating authority that a child was not ordinarily resident within the area of any local authority, the local authority within whose area the accommodation is situated.

Where a local authority have been notified ..... they shall-

- take such steps as reasonably practicable to enable them to determine whether the child's welfare is adequately safeguarded and promoted while he is accommodated by the accommodating authority; and
- consider the extent to which (if at all) they should exercise any of their functions under this Act with respect to the child.

### **Children provided with accommodation in a residential care home, nursing home or mental nursing home**

1.10 Similarly, section 86(1) of the Act requires that where a child is provided with accommodation in any residential care home, nursing home or mental nursing home:

- (a) for a consecutive period of at least three months; or
  - (b) with the intention, on the part of the person taking the decision to accommodate him, of accommodating him for such period,
  - (c) the person carrying on the home shall notify the local authority within whose area the home is carried on.
2. Where subsection (1) applies with respect to a child, the person carrying on the home shall also notify that authority when he ceases to accommodate the child in the home.
3. Where a local authority have been notified under this section, they shall:
- (a) take such steps as are reasonably practicable to enable them to determine whether the child's welfare is adequately safeguarded and promoted while he is accommodated in the home; and
  - (b) consider the extent to which (if at all) they should exercise any of their functions under this Act with respect to the child.

### **Children provided with accommodation in an independent school**

1.11 With regard to the welfare of children accommodated in independent schools, under section 87(1) it is the duty of:

- (a) the proprietor of any independent school which provides accommodation for any child; and
- (b) any person who is not the proprietor of such a school but who is responsible for conducting it, to safeguard and promote the child's welfare.

- (2) Subsection (1) does not apply in relation to a school which is a children's home or a residential care home.
- (3) Where accommodation is provided for a child by an independent school within the area of a local authority, the authority shall take such steps as are reasonably practicable to enable them to determine whether the child's welfare is adequately safeguarded and promoted while he is accommodated by the school.

## **Education Act 1996** [<http://www.opsi.gov.uk/acts/acts1996/1996056.htm>]

### **Child employment**

- 1.12 Local Authority functions relating to child employment under section 559 of the Education Act 1996 and section 18(2) of the Children and Young Persons Act 1933 are education functions. The Local Authority Education Welfare Service is responsible for administering the child employment legislation, currently contained in local bylaws. The health, education and well being of every child for whom a work permit or performance licence is issued must be protected. Employers of children also have a responsibility to safeguard and promote the welfare of children by applying to the local authority for an employment permit.

### **Youth services facilities**

- 1.13 The local authority functions relating to the provision of youth services facilities are set out in section 508 of the Education Act 1996.

## **Housing Act 1996** [<http://www.opsi.gov.uk/ACTS/acts1996/1996052.htm>]

- 1.14 Section 213A of Housing Act 1996 (which was inserted by the 2002 Homelessness Act) ensures that a housing authority contacts social services (with consent) when a family with children is ineligible or intentionally homeless i.e. they are not owed the main homelessness duty and the family wishes to seek assistance under Part 3 of the Children Act 1989. If consent is withheld, the housing authority may disclose information about a homelessness case to social services if the child is or may be at risk of significant harm.
- 1.15 Section 213A also ensures that housing authorities co-operate with social services to provide advice and assistance as is reasonable to help ineligible or intentionally homeless households with children to obtain accommodation. However the duty does not extend to providing accommodation for the household.

## **Education Act 2002** [<http://www.opsi.gov.uk/ACTS/acts2002/20020032.htm>]

- 1.16 Section 175 of the Education Act 2002 imposes a duty on LEAs, the governing bodies of maintained schools, and the governing bodies of FE institutions to make arrangements in regard to the welfare of children. LEAs must make arrangements to ensure that their functions in the capacity of an LEA are exercised with a view to safeguarding and promoting the welfare of children (i.e. persons under 18 years of age). Similarly governing bodies must make arrangements to ensure that their functions relating to the conduct of the school, or institution, are exercised with a view to safeguarding and promoting the welfare of children who are pupils at the

school, or who are receiving education or training at the institution. All the bodies concerned must have regard to any guidance issued by the Secretary of State, in regard to England, or the NAW, in regard to Wales, in deciding what arrangements they must make to comply with their duty.

### **The Licensing Act 2003** [<http://www.opsi.gov.uk/ACTS/acts2003/20030017.htm>]

- 1.17 The overall aim of the Licensing Act is to modernise the legislation governing the sale and supply of alcohol and public entertainment licensing. The Act transferred Liquor licensing powers from the Magistrates' Courts to Local Authorities, via the creation of 'Licensing Authorities'. A number of 'responsible authorities' are to be notified of all licence variations and new applications. These responsible authorities include the police and the fire department, as well as "a body which represents those who, in relation to any area, are responsible for, or interested in, matters relating to the protection of children from harm, and is recognised by the licensing authority for that area for the purposes of this section as being competent to advise it on such matters." Agreement regarding the identification of this body is a local decision, however it may be the Local Safeguarding Children Board or social services.

### **Housing Act 2004** [<http://www.opsi.gov.uk/ACTS/acts2004/20040034.htm>]

- 1.18 Part 1 of the Housing Act 2004 gives local authorities powers and duties to take action against bad housing conditions, and introduces a new Housing Health and Safety Rating System under which authorities' environmental health professionals will assess the impact of health and safety hazards in the light of the occupants most vulnerable to them. Examples are damp and mould (to which the most vulnerable age group is children under 14), problems with washing facilities, sanitation and drainage (children under 5) and falls between levels (children under 2). The new system replaces the housing fitness standard and provides an objective way of assessing the seriousness of hazards and identifying the most appropriate remedial action.

### **The Children Act 2004** [<http://www.opsi.gov.uk/acts/acts2004/20040031.htm>]

- 1.19 The Children Act 2004 builds on and strengthens the framework set out in the Children Act 1989 in a number of ways. There are a number of provisions in the 2004 Act which relate directly or indirectly to agencies' responsibilities to safeguard and promote the welfare of children. These are set out below.

## **Section 25: Co-operation to improve well-being**

- 1.20 The Welsh Assembly Government has adopted the UN Convention on the Rights of the Child as the basis of all its work for children and young people in Wales. The Convention rights have been translated into seven Core Aims through which the Assembly Government seeks to implement, to ensure that all children and young people:

- have a flying start in life;
- have a comprehensive range of education and learning opportunities;

- enjoy the best possible health and are free from abuse, victimisation and exploitation;
- have access to play, leisure, sporting and cultural activities;
- are listened to, treated with respect, and have their race and cultural identity recognised;
- have a safe home and a community which supports physical and emotional wellbeing; and
- are not disadvantaged by poverty.

1.21 These aims are reflected in section 25 of the Children Act 2004 and together strengthen the arrangements for protecting and promoting the welfare of children and young people. For the first time it places a duty on all local authorities in Wales (referred to in the Act as children's services authorities) to make arrangements to promote co-operation with a view to improving 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;
- The contribution made by them to society; and
- Social and economic well-being.

1.22 In fulfilling this duty a local authority is required to promote co-operation between itself and its partners, these being:

- The police authority and the chief officer of police for a police area any part of which falls within the area of the local authority;
- A local probation board for an area any part of which falls within the area of the authority;
- A youth offending team for an area any part of which falls within the area of the authority;
- A Local Health Board for an area any part of which falls within the area of the authority;
- An NHS Trust providing services in the area of the authority; and
- The National Council for Education and Training for Wales.

1.23 These partners are also placed under a statutory duty to co-operate with the local authority in making these arrangements.

## **Section 26: Children and young people's plans**

1.24 Section 26 provides for regulations which will require local authorities to prepare and publish a plan setting out their strategy for discharging their functions in relation to children and young people. The Children and Young People's Plan will be a plan for local children's services. It will include the arrangements for co-operation required under section 25 and will be consistent with the strategic plans of local

partners covered by that duty. It will be prepared in consultation with children, young people, carers and families and all relevant local organisations including the Local Safeguarding Children Board.

1.25 Planning Guidance will be issued in 2007 with the first plans commencing in 2008.

## **Section 27: Responsibility for functions under sections 25 and 26**

1.26 The Act requires key agencies to appoint senior officers with responsibility for their functions under sections 25 and 26.

1.27 Each local authority is required to appoint a Lead Director for children and young people's services and to designate a lead member for children and young people's services for the purposes of co-ordinating and overseeing arrangements under sections 25 and 26 of the Act. The Lead Director and Lead Member will provide, respectively, a professional and political focus for children's services. They have three key roles:

- responsibility for promoting partnership working both corporately across the local authority and, in recognition of its leadership role, between the authority and its partners;
- providing leadership to drive change;
- ensuring that the local authority implements the rights of children and young people.

1.28 Local Health Boards are required to appoint an Executive Director and designated non-officer Board Member and NHS Trusts will designate a Lead Executive and non-Executive Director to take overall responsibility for their respective arrangements for cooperation in the partnership planning process, mirroring the same three roles.

## **Section 28: Arrangements to safeguard and promote welfare**

1.29 Section 28 of the 2004 Act also requires the following to make arrangements for ensuring that their functions are discharged having regard to the need to safeguard and promote the welfare of children:

- A local authority;
- A Local Health Board;
- An NHS Trust all or most of whose hospitals, establishments and facilities are situated in Wales;
- The police authority and chief officer of police for a police area in Wales;
- The British Transport Police Authority, so far as exercising functions in relation to Wales;
- A local probation board for an area in Wales;
- A youth offending team for an area in Wales;

- The governor of a prison or secure training centre in Wales (or, in the case of a contracted out prison or secure training centre, its director); and
- Any person to the extent that he is providing services pursuant to arrangements made by a local authority in Wales under section 123(1)(b) of the Learning and Skills Act 2000 (chapter 21) (youth support services).

## **Section 29: Information databases**

- 1.30 Section 29 gives the Assembly the power to establish, or to require local authorities to establish, maintain and operate a database of basic information on all children in the authority's area or, if the duty to create a database or databases is placed on another body, to participate in its operation.

## **Section 30: Inspection of functions**

- 1.31 This section makes provision for the functions of a children's services authority in Wales to be subject to inspection by the Assembly.

## **Sections 31-34: Local safeguarding children boards**

- 1.32 Under section 31 of the Act, Area Child Protection Committees are replaced by Local Safeguarding Children Boards. The Act specifies the following as statutory partners of a local authority who must be represented on each Safeguarding Board

- The chief officer of police for a police area any part of which falls within the area of the local authority;
- A local probation board for an area any part of which falls within the area of the authority;
- A youth offending team for an area any part of which falls within the area of the authority;
- A Local Health Board for an area any part of which falls within the area of the authority;
- An NHS Trust providing services in the area of the authority;
- The governor of any secure training centre within the area of the authority (or, in the case of a contracted out secure training centre, its director); and
- The governor of any prison in the area of the authority which ordinarily detains children (or, in the case of a contracted out prison, its director).

- 1.33 Section 32 of the Act defines the objective of a Local Safeguarding Children Board as:

- to co-ordinate what is done by each person or body represented on the Board for the purposes of safeguarding and promoting the welfare of children in the area of the authority by which it is established; and
- to ensure the effectiveness of what is done by each such person or body for those purposes.