

2

An overview of the Children Act 1989

The Children Act 1989, implemented for the most part on 14 October 1991, introduced comprehensive changes to legislation in England and Wales affecting the welfare of children. The Act:

- reinforces the autonomy of families through definition of parental responsibility;
- provides for support from local authorities, in particular for families whose children are in need; and
- legislates to protect children who may be suffering or are likely to suffer significant harm.

Annual reports on the progress of the Act were published by the Children Act Advisory Committee until 1997, but the Committee was then abolished. The Government is required to publish a report on the Act every 5 years, and statistics on its application are also available. There are also research reports on the operation of the Act (see Aldgate & Statham, 2001).

Aims of the Act

The main aims of the Act are:

- to bring together private and public law in one framework;
- to achieve a better balance between protecting children and enabling parents to challenge state intervention;
- to encourage greater partnership between statutory authorities and parents;
- to promote the use of voluntary arrangements;
- to restructure the framework of the courts to facilitate management of family proceedings.

Principles of the Act

The main principles and provisions embodied in this legislation are that:

- the welfare of children must be the paramount consideration when the courts are making decisions about them;
- the concept of parental responsibility has replaced that of parental rights;
- children have the ability to be parties, separate from their parents, in legal proceedings;
- local authorities are charged with duties to identify children in need and to safeguard and promote their welfare;
- certain duties and powers are conferred upon local authorities to provide services for children and families;
- a checklist of factors must be considered by the courts before reaching decisions;
- orders under this Act should not be made unless it can be shown that this is better for the child than not making an order;
- delay in deciding questions concerning children is likely to prejudice their welfare.

Scope and contents of the Act

The scope of the Act is extremely wide. Consequently, it has major implications for the practice of all who work with or for children. It changed the standing of children and young people in law, introduced new concepts relating to the responsibilities of adults, changed the structure and functioning of the courts, and provided an entirely new range of orders in both private and public law relating to the care of children.

The Act is arranged in 12 Parts and 15 Schedules. Particular attention is drawn to Part I which establishes its core concepts.

Part I Introductory

This part establishes the principle of law that the welfare of children is of paramount importance and the concept of parental responsibility.

Part II Orders with respect of children in family proceedings

Part II establishes a range of orders known as 'section 8 orders'.

Part III Local authority support for children and families

(and Schedule 2)

This part lays upon each local authority a range of duties and powers relating to providing services for children and their families. In particular, it details the law in relationship to the provision of accommodation for children by local authorities and establishes the concept of children being *looked after* by the local authorities.

Part IV Care and supervision

Part IV deals with the provisions concerning care and supervision orders and establishes the threshold criteria (see pages 29–32) that must be satisfied before a court can make one of these orders.

Part V Protection of children

Part V deals with child assessment and emergency protection orders and with police protection.

Part VI Community homes**Part VII Voluntary Homes and voluntary organisations****Part VIII Registered children's homes**

Since April 2002, this Part has been replaced by provisions in the Care Standards Act 2000.

Part IX Private arrangements for fostering children**Part X Childminding and day care for young children**

Since April 2002, this Part has been replaced by provisions in the Care Standards Act 2000.

Part XI The Secretary of State's supervisory functions and responsibilities**Part XII Miscellaneous and general**

Key concepts in the Children Act 1989

Parental responsibility

A central change introduced by the Children Act 1989 was substitution of the concept of parental responsibility for that of parental rights. The Act defines parental responsibility as 'all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property': s3(1).

Parental responsibility is given to both the child's father and mother where they are married to each other at, or after, the child's conception. In the case of unmarried parents, the mother has parental responsibility and the father does not have parental responsibility for his child unless he acquires it. This is achieved by the father's successful application to a court or when the father and mother make between them a parental responsibility agreement or (when the relevant provisions of the Adoption and Children Act 2002 are implemented) if the father's name is on the child's birth certificate. A guardian

who is appointed by the court or by a parent also acquires parental responsibility on taking up appointment: s5.

More than one person may have parental responsibility for the same child at the same time. Any person who has parental responsibility does not cease to have that duty solely because some other person subsequently acquires parental responsibility. In brief, parental responsibility is something that parents have and, short of adoption (or freeing for adoption), do not lose.

Welfare of the child

When a court determines a question with respect to the upbringing of a child, the child's welfare shall be the court's paramount consideration. Two additional points concerning the welfare of such a child need to be considered.

First, the courts are required, in public and private law proceedings, to establish a timetable and give directions for the expeditious handling of each case, because the courts must have regard to the general principle that any delay is likely to prejudice the welfare of the child: s1(2). This is not intended to be rigid. Purposeful delay, as opposed to unplanned drift, is acceptable (*C v. Solihull Metropolitan Borough Council* [1993] 1 FLR 290).

Second, courts must have regard, in opposed applications for a section 8 order and in care proceedings to a checklist concerning the child's circumstances as set out in section 1(3). This list of matters concerns:

- the ascertainable wishes and feelings of the child (considered in the light of his age and understanding);
- his physical, emotional and educational needs;
- the likely effect on him of any change in his circumstances;
- his age, sex, background and any characteristics of his which the court considers relevant;
- any harm that he has suffered or is at risk of suffering (for definition of harm, see page 30);
- how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs; and
- the range of powers available to the court in the proceedings in question.

A wider list of matters relating to circumstances in which adoption is being considered is contained in the Adoption and Children Act 2002.

These lists are known as the 'welfare checklists'.

Partnership and cooperation

The major changes in law relating to children that resulted from the Children Act 1989 have their most significant effect upon:

- parents;
- others having responsibilities for children;
- local authorities (see Department of Health, 1995a).

Nonetheless, the Act has substantial implications for the National Health Service (NHS) and for all health care professionals and managers who come into contact with children.

One of the main themes of the Children Act 1989 is encouragement of greater cooperation between those responsible for children and statutory or voluntary agencies. Section 27 enables local authorities to request the help of any other authority or person, including health authorities, in relationship to specified actions. Those so requested must comply if the request is compatible with their own statutory duties and obligations and does not unduly prejudice the discharge of any of their functions. At least 18 sections of the Act have implications for strategic health authorities, local health boards, primary care trusts, NHS trusts and for health services staff generally. An editorial review by Williams & Salmon (2002) examines the blocks to effective collaboration and potential resolutions to them.

In the 1980s the government published *Working Together: A Guide to Arrangements for Inter-agency Cooperation for the Protection of Children from Abuse*. A second edition was published in October 1991 (Home Office *et al*, 1991). The current, third, edition called *Working Together to Safeguard Children: A Guide for Inter-Agency Working to Safeguard and Promote the Welfare of Children* was published in England in 1999 and in Wales in 2001 (Department of Health *et al*, 2000; National Assembly for Wales, 2001a). See also *Child Protection: Medical Responsibilities* (Department of Health, 1995d), an addendum to *Working Together*, and *Safeguarding Children in Whom Illness is Fabricated or Induced* (Department of Health, 2002).

Local authority services

Part III of the Children Act gives powers and duties to local authorities to provide services for children and their families. Services for children in need and disabled children are brought under one statute. Under Part III, local authorities are required to produce plans setting out their provision of children's services. Strategic health authorities, local health boards, primary care trusts and NHS trusts should be consulted in this process. When assessing the needs of children and families, local authorities will be guided by the *Framework for the Assessment of Children in Need and their Families* (Department of Health, 2000a; National Assembly for Wales, 2001b) and *Assessing Children in Need and their Families: Practice Guidance* (Department of Health, 2000b).

Children in need

A general duty is placed on local authorities to safeguard and promote the welfare of children in 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: s17(1). A child is in need if he 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 under Part III. Equally, he is in need if his health or development is likely to be significantly impaired or further impaired without the provision of such services, or if he is disabled: s17(10, 11). Additional financial systems are in place for children with disabilities: s17A.

Children in local authority accommodation

Local authorities have a duty to provide accommodation for certain children in need: s20(1). An authority may not provide accommodation if any person with parental responsibility for the child, who is willing and able to provide or arrange accommodation, objects to the authority providing it. Unless another person has a residence order, any person who has parental responsibility may remove the child at any time: s20(7). Local authorities should make agreements in writing with parents or other persons with parental responsibility about the service to be provided, if possible before the service is provided (see the Arrangements for Placement of Children (General) Regulations 1991).

Each local authority has duties to the children it looks after (i.e. children accommodated or in care) under sections 23 and 24 of the Children Act. These require the local authority to:

- safeguard and promote their welfare and to make such services available for children cared for by their own parents as appears to the authority reasonable in the case of each particular child;
- ascertain, as far as practicable, the wishes and feelings of the child, his parents, any other person who has parental responsibility and any other person the authority considers to be relevant, before making any decision with respect to a child they look after or propose to look after;
- give due consideration, having regard to his age and understanding, to such wishes and feelings of the child as they have been able to ascertain and to his religious persuasion, racial origin and cultural and linguistic background;
- consider the wishes and feelings of any person mentioned above;
- advise, assist and befriend each child with a view to promoting his welfare when he ceases to be in the local authority's care; and
- provide advice and assistance to qualifying persons between 16 years and 21 years old.

An authority looking after a child must, by section 23(2), provide him with accommodation while he is in care, and must:

- maintain him in a children's home (Children's Homes Regulations 2001);
- maintain him in the care of his family, relative or other suitable person (Fostering Services Regulations 2002);

- maintain him in the care of a parent or person who has parental responsibility (Accommodation of Children with Parents Regulations 1991); or
- make other appropriate arrangements which comply with such regulations.

As far as is reasonably practicable and consistent with the child's welfare (s23(7) and (8)):

- accommodation should be near the child's home;
- accommodation for a disabled child should not be unsuitable to his needs; and
- siblings should be accommodated together.

The duty of local authorities in respect of rehabilitation

An authority must make arrangements to enable a child to live with his family unless this is not practical or consistent with his welfare. If he is in care, he may only be placed with parents, or a person with parental responsibility, under strictly controlled conditions: s23.

Case reviews and complaints procedures

Under section 26 of the Children Act, the local authority is required to review the case of each child it looks after, at regular intervals, in accordance with the Review of Children's Cases Regulations 1991.

Where a child is being looked after by a local authority, accommodated on a local authority's behalf by a voluntary organisation or otherwise accommodated in a registered children's home, he will be entitled to use the complaints procedure, also required by section 26 and established in accordance with the Representations Procedure (Children) Regulations 1991. Under sections 24D and 26, local authorities must establish and publicise their procedures for considering any representations, including complaints, made by:

- a child who they are looking after or who is not being looked after but is in need;
- a person who qualifies for after-care services (see Chapter 11);
- a parent or other person with parental responsibility;
- any foster parent; and
- any other person who the authority or voluntary organisation considers has a sufficient interest in the child's welfare to warrant representations being considered by them about the discharge by the authority or voluntary organisation of any of their functions under Part III in relation to the child.

The procedure must ensure that at least one person, who is not a member or officer of the authority, takes part in the consideration of the complaint and in any discussions held by the authority about the action to be taken in

relation to the child in the light of the complaint. The authority must have due regard to the findings of those considering the representation and must notify:

- the child,
- the person making the representation, and
- other affected persons

of the reasons for its decision and of any action taken or to be taken.

While the decision about the child remains with the authority, it may be subject to judicial review if the authority ignores findings or fails to give any satisfactory reasons for its decision.

Further information on complaints procedures is summarised in Chapter 14.

An overview of the orders in the Children Act 1989

	Children Act 1989	Previous legislation
Private Law Orders	Section 8 orders: residence, contact, specific issue, and prohibited steps orders	Custody, care and control, and access orders
Public Law Orders	Care, supervision, and education supervision orders Secure accommodation	Care and supervision orders Secure accommodation
Orders for the Protection of Children	Child assessment, emergency protection, and police protection orders	Place of safety order
Wardship	No longer to be used by local authorities as a route into care, but orders under the inherent jurisdiction of the High Court with or without wardship may be available under s100, except that a child may not be both a ward of court and in care	Often used to gain the direction of the court when an application for a care order had failed, was not appropriate, or the result was uncertain