



Legislation, regulations and guidance affecting children and young people

Introduction

There are different types of rights: moral, philosophical and legal. Whilst moral and philosophical rights often communicate how children and young people are viewed and seen within society it is legal rights that can be claimed and defended within a court of law.

Legal rights however can be introduced via a number of routes:

- Rights may be legally acknowledged in an Act of Parliament e.g. the Children Act 1989, the Human Rights Act 1998.
- Rights may be written within statutory guidance that follows Acts of Parliament e.g. Get It Sorted guidance in providing effective advocacy services for children and young people making a complaint under the Children Act 1989.
- Rights may follow case law when legal judgements are made within a court hearing e.g. Gillick -v- West Norfolk And Wisbech Area Health Authority [1985] 3 WLR830 [HL] led to the concept of Gillick competency as referred to within the Children Act 1989.

Introduction

When deciding whether a child is mature enough to make decisions people often talk about whether a child is 'Gillick competent' or whether they meet the 'Fraser guidelines'. These terms refer to a legal case *Gillick -v- West Norfolk And Wisbech Area Health Authority* [1985] 3 WLR830 [HL] which looked specifically at whether doctors should be able to give contraceptive advice treatment under 16-year-olds without parental consent.

In this information pack you will read about the key provisions of important primary legislation which affects children and young people including the Children Act 1989, Children and Young Persons Act 2008 and the Children and Social Work Act 2017.

The Children Act 1989

The Children Act 1989 came into force in 1991 and was seen to be far reaching in reforming the law. It continues to be the Act that provides the legal foundation for child law. Since 1989, more recent Acts have been passed about child law e.g. The Adoption and Children Act 2002, Children Act 2004, but such Acts do not replace The Children Act 1989.

The Children Act 1989 deals with issues concerning parents and their children (private law) and with issues concerning state involvement with parents and their children (public law). The Act sets out the rights and responsibilities governing the relationships between children, parents and the State, the conditions, standards and procedure for court proceedings about children's upbringing, and the powers of the court to determine disputes or make orders in respect of children.

The Children Act 1989

The Paramountcy Principle

The Act introduced the concept that the welfare of the child is paramount, Section 1(1); that any delay is likely to prejudice that welfare, Section 1 (2) and introduced the 'no order' principle whereby the court would only make an order if it was better for the child to do so, Section 1 (5). The Act also introduced the welfare checklist which requires the Court and others to consider:

- the ascertainable wishes and feelings of the child concerned
- the child's physical, emotional and educational needs
- the likely effect on the child if circumstances changed as a result of the court's decision
- the child's age, sex, backgrounds and any other characteristics which will be relevant to the court's decision
- any harm the child has suffered or maybe at risk of suffering
- capability of the child's parents (or any other person the courts find relevant) at meeting the child's needs

The Children Act 1989

Parental Responsibility

The Act referred to parental responsibility rather than parental rights although the definition at Section 3 (1) states: "In this Act 'parental responsibility' means 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".

However the Act is clear that where there is a conflict of interest between the rights and interests of the child and those of a parent, the interests of the child prevail. Where a parent and a child are under 18 years and so are both 'children' as defined by the Act, the child's needs are paramount.

Advocates may find that they are working for young parents who are under 18 and are still in care or are care leavers . Advocates will need to ensure that the local authority is supportive to the child as parent as well as to their children. Some young parents can be seen to be 'inadequate' purely because they have been in care. If the local authority considers taking care proceedings then it is possible to ask the court, via the parent's solicitor, to consider appointing a separate children's guardian for the parent, who is still legally a child, so that their best interests can also be considered.

The Children Act 1989

Main orders within the Children Act 1989

The Children Act is broken down into a number of important sections which give powers and protections. Here is a summary of the main sections:

Section 4

Application for a parental responsibility order. Unlike mothers, some fathers may not automatically have a right to parental responsibility for their children and so may need to make an application to the courts under Section 4. Parental responsibility enables the holder to make important decisions about the child.

The Children Act 1989

Section 4

There are four types of section 8 orders:

- Contact Orders; detailing who the child can have contact with (this can include physical, tel, mail contact)
- Residence Orders (that will automatically give the adult named in the order parental responsibility for the length of the order);
- Prohibited Steps Order (stopping something from happening e.g. preventing a child being taken out of the country):
- Specific Issues Order (deciding that something should be done/happen. e.g. a child can undergo a medical procedure/operation.) These orders can be made in both private and public law proceedings.

The Children Act 1989

Section 17

There is a duty on the local authority to safeguard and promote the welfare of 'children in need' by providing agreed services appropriate to the child's need. Children in need can include children in poverty, children with disabilities and children as asylum seekers.

A 'child in need' assessment under section 17 will identify the needs of the child and ensure that the family are given support. A child will be considered in need if:

- they are unlikely to achieve or maintain or to have the opportunity to achieve or maintain a reasonable standard of health or development without provision of services from the Local Authority;
- their health or development is likely to be significantly impaired, or further impaired, without the provision of services from the Local Authority;
- they have a disability.

The Children Act 1989

Section 17

The Local Authority can provide a range of services for a child in need. These can include:

- counselling;
- social, cultural and recreational activities;
- help to have a holiday;
- family centres, where parents can receive family support and parenting advice, while children have a safe space to play;
- financial assistance;
- respite care

The Children Act 1989

Section 20

Section 20 of the Children Act allows a child to be looked after by the local authority following agreement with parents/those with parental responsibility. The local authority does not have parental responsibility and there is no court order as the care is given on a voluntary basis.

Children in care under Section 20 are often referred to as being accommodated.

Parents can end the arrangement at any time - the child can end it if they choose when they reach 16.

The Children Act 1989

Section 25

This refers to a Secure Accommodation Order - which can be made where a young person is deemed to be at risk of significant harm/ or is likely to injure himself or others.

The 'welfare' criteria are that:

- The child has a history of absconding and is likely to abscond from any other description of accommodation; and
- If the child absconds, (s)he is likely to suffer Significant Harm; or
- If the child is kept in any other description of accommodation (s)he is likely to injure her/himself or others.

Section 25 only applies to 'Looked After' children, i.e. children who are accommodated under Section 20 and those who are subject to a Care Order. In exceptional circumstances, if a child is not 'looked after' or the placement of the child is thought to constitute a deprivation of the child's liberty, (even though it is not its primary purpose), an application would need to be made to the High Court to exercise its inherent jurisdiction.

The Children Act 1989

Section 26

This confirms a duty on a local authority to establish a procedure for considering any representation (including any complaint) made to them by a child in care, a child in need, a parent, a person with parental responsibility for the child, a local authority foster carer, any other person deemed by the authority to have a sufficient interest in the welfare of the child as to warrant making a representation.

section 26A introduces the right to advocacy. yay!!!!

The Children Act 1989

Section 31

Section 31 allows for a child to be placed under a Care Order or Supervision Order

A Care Order means that there has been a hearing at court and the court decided to give the local authority parental responsibility for the child (parents still retain parental responsibility but local authorities can use this power to make significant decisions such as where the child will live).

The Care Order will cease when the child reaches 18 years unless discharged earlier. An interim Care order can be made until a decision on a full care order is made (S 38).

A supervision order allows the local authority to supervise the care of a child but the local authority does not have parental responsibility.

The Children Act 1989

Section 44

This section provides for Emergency Protection Order (EPO) to be made in order to protect a child from suspected imminent harm. Any person can make an application including a local authority.

The court will only make the order if they are satisfied there is a likelihood that child will suffer significant harm if they are not removed to accommodation provided by the local authority OR they do not remain in the place where they are currently being accommodated.

Adoption and Children Act 2004

The Adoption and Children Act 2002 overhauled the outdated 1976 Adoption Act providing a new legal framework for domestic and inter-country adoption.

One of the significant changes introduced was new guidance for independent reviewing officers (IRO). The guidance requires all local authorities to ensure that an IRO is appointed as Chair for all such meetings. Independent Reviewing Officers are now required to be more child focused and children's rights aware and to ensure that children and young people are informed of their right to an advocate.

It is suggested in Chapter 5 that the IRO should refer cases on to CAFCASS if the IRO feels that the child's human rights have been infringed. This is a useful approach - if you feel as the advocate, that a decision or process has threatened a child's human rights, then you can ask the IRO if they agree and if they do, remind them of their option of referring the matter to CAFCASS.

Guidance was introduced in 2010 to inform IRO's on their functions:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/337568/iro_statutory_guidance_iros_and_las_march_2010_tagged.pdf

Children Act 2004

The main provisions of the Act include:

- The establishment of a Children's Commissioner in England
- Placing a duty on local authorities to appoint a director of children's services and an elected lead member for children's services.
- Placing a duty on local authorities and their partners (including the police, health service providers and the youth justice system) to co-operate in promoting the wellbeing and safeguarding of children and young people
- Establishing statutory Local Safeguarding Children Boards (which have since introduced 'safeguarding partners')
- Creating a new duty for local authorities to promote the educational achievement of looked after children
- A requirement to ascertain the child's wishes and feelings before determining what (if any) services to provide under section 17 of the Children Act 1989 for a particular child in need and to give due consideration to them (section 53)

Children and Young Persons Act 2008

The main goal of the Children and Young Persons Act 2008 was to provide support for local authorities (and others) to regulate official interventions. When it was introduced it:

- increased the transparency and quality of care planning;
- ensured that the child's voice is heard in all decisions by strengthening the role of Independent Reviewing Officers;
- improved stability for children, by ensuring they are placed in the most appropriate placement;
- ensured young people (up to age 18) are not forced to move out of care before they are ready;
- provided more support for care leavers by extending the entitlement to a Personal Adviser to age 25 (for those who resume an education and training pathway);
- provided more support for care leavers by providing an entitlement to a £2,000 bursary for those who go onto higher education;
- made the role of the designated teacher statutory

Children and Social Work Act 2017

The Children and Social Work Act 2017 improves support for looked after children and care leavers and makes provisions about the regulation of social workers.

For the first time, legislation set out corporate parenting principles for the council as a whole to be the best parent it can be to children in its care. These are largely a collation of existing duties local authorities have towards looked after children and those leaving care.

Local authorities will also be required to publish their support offer to care leavers and to promote the educational attainment of children who have been adopted or placed in other long term arrangements.

Children and Social Work Act 2017

The legislation also extends the current considerations of the court when making decisions about the long term placement of children to include an assessment of current and future needs and of any relationship with the prospective adopter.

The Act makes changes to the arrangements for local child safeguarding partnerships and the serious case review process, including provision for a central Child Safeguarding Practice Review Panel for cases of national importance. It also established a new regulatory regime for the social work profession.

**Information taken from LGA Get in on the Act: Children and Social Work Act 2017*

Main Provisions of the Children and Social Work Act 2017

Principles affecting how to look after children and care leavers

Section 1

The Act introduced seven principles of corporate parenting which local authorities must have regard to when they are looking after children or supporting care leavers.

- acting in the best interests of, and to promote their health and wellbeing
- encouraging children and young people to express their views, wishes & feelings
- taking account of a child or young person's views, wishes & feelings
- helping children and young people to gain access to and get the best use of the services provided by the local authority and its partners
- promoting high aspirations amongst children and young people
- keeping children and young people safe and providing for stability in their home lives, relationships and education or work
- preparing relevant children and young people for adulthood and independent living

Main Provisions of the Children and Social Work Act 2017

Provisions to support care leavers

Local authorities must publish information about the services it offers to care leavers which may assist them in preparing for adulthood and independent living. These services may include health and wellbeing, education and training, employment, accommodation, and participation in society. (section 2)

Appointing a personal adviser for care leavers who request one up until the age of 25, regardless of whether the young person intends to pursue education or training. The local authority also has a duty to carry out an assessment of the young person's needs and to provide the necessary advice and support. (section 3)

Main Provisions of the Children and Social Work Act 2017

Promoting educational achievement of looked after children

Local authorities have a duty to promote the educational achievement of looked after children. A local authority must appoint an officer employed by them or another authority to discharge the duty to provide advice and information (section 4).

Main Provisions of the Children and Social Work Act 2017

Safeguarding Partners

The Act established a national Child Safeguarding Practice Review Panel by adding a new section to the Children Act 2004. The functions of the Panel are to identify serious child protection cases in England which raise issues that are complex or of national importance, and to arrange for such cases to be reviewed under their supervision.

The stated purpose of these reviews is to ascertain what lessons can be learned about the way in which local authorities or others should work to safeguard children. The reports must be published unless the panel consider it inappropriate to do so, in which case they must publish any information relating to the lessons to be learned that they consider appropriate. (section 15 & 16)

Multi Agency Safeguarding Partnership set out revised arrangements for local multi-agency safeguarding partnerships to replace the previous model of local safeguarding children boards (LSCBs).

Main Provisions of the Children and Social Work Act 2017

A new regulator - Social Work England

Section 36 establishes a new regulator, Social Work England, and gives the Secretary of State the power to make regulations to rename the regulator. Such regulations would be subject to a negative procedure, whereby it will automatically become law without debate unless there is an objection from either the House of Lords or the House of Commons.

The Children's Homes Regulations

The Children's Homes (England) Regulations 2015 is secondary legislation (the Care Standards Act 2000 is its parent Act). The Regulations set out the quality standards for children's homes. Every children's home registered with Ofsted must follow these standards.

Residential child care – key principles as detailed in the Guide to the Children's Homes Regulations including the quality standards April 2015:

- Children in residential child care should be loved, happy, healthy, safe from harm and able to develop, thrive and fulfil their potential.
- Residential child care should value and nurture each child as an individual with talents, strengths and capabilities that can develop over time.
- Residential child care should foster positive relationships, encouraging strong bonds between children and staff in the home on the basis of jointly undertaken activities, shared daily life, domestic and non-domestic routines and established boundaries of acceptable behaviour.
- Residential child care should be ambitious, nurturing children's school learning and out of-school learning and their ambitions for their future.

The Children's Homes Regulations

- Residential child care should be attentive to children's need, supporting emotional, mental and physical health needs, including repairing earlier damage to self-esteem and encouraging friendships.
- Residential child care should be outward facing, working with the wider system of professionals for each child, and with children's families and communities of origin to sustain links and understand past problems.
- Residential child care should have high expectations of staff as committed members of a team, as decision makers and as activity leaders. In support of this, children's homes should ensure all staff and managers are engaged in on-going learning about their role and the children and families they work with.
- Residential child care should provide a safe and stimulating environment in high-quality buildings, with spaces that support nurture and allow privacy as well as common spaces and spaces to be active.'

Advocacy and the Regulations

If you are working alongside and supporting young people who live in residential care it is essential that you are aware of these Regulations. You may wish to:

- use them when challenging a decision
- explain them to children and young people so they understand what they can expect when living in a children's home
- remind providers of Children's Homes where you are concerned they are not following them

<https://www.legislation.gov.uk/ukxi/2015/541/contents/made>

Care Planning, Placement and Case Review Regulations 2010

Care Planning, Placement and Case Review (England) Regulations 2010 is secondary legislation (the Children Act 1989 is its parent Act). It is legally binding in the same way as the Children Act 1989 but the process for making it law was different. It was created by the (then) Secretary of State for Children, Schools and Families, in exercise of the powers granted by the Children Act 1989 (the parent Act to the Regulations).

The Regulations provide more detail to specific provisions of the Children Act 1989. For example, Regulations 28-30 of the Regulations set out: the frequency of local authority (social worker) visits to children and young people in care; how the visits should be conducted; and the action to be taken afterwards if there are concerns about the child or young person's welfare.

Care Planning, Placement and Case Review Regulations 2010

It introduced the following specific duties:

- A Care Plan must be prepared prior to placement, or, if it is not practicable to do so, within 10 working days of the child's first placement (Regulation 4(2));
- A Placement Plan must be drawn up by the social worker before the child is placed, or, if not reasonably practicable, within 72 hours of the start of the placement,
- Emergency placements with a local authority approved foster carer outside the terms of approval can be made for up to 24 hours,
- There is a statutory provision that Looked After Reviews must take place for children who are Looked After as a result of a secure remand;
- There are requirements in relation to decisions to make placements out of area, including the requirement to consult with the Independent Reviewing Officer (IRO)

Care Planning, Placement and Case Review Regulations 2010

Part 5 prescribes arrangements for a child to be visited by a representative of the LA, the frequency, conduct and consequences of such visits (regulations 28 to 30), and the advice, support and assistance that must be made available to the child between visits.

If the child is in care, their social worker must visit:

- Within 1 week of moving to live in a new place.
- Then at least every 6 weeks for the first year.
- Then every 6 weeks unless it has been agreed that the child will live there until they are 18, in which case the child must be visited at least once every 3 months.
- Whenever the child makes a reasonable request for a visit.

'Remote' visits are allowed - including telephone, video-link or other electronic means, however the guidance tells local authorities they should bear in mind that a visit by telephone will be far less satisfactory than one conducted by video-link as the visitor will not be able to see the child or the conditions of the placement.

Further reading and resources

Rights 4 Children - website designed for children and young people to learn about their rights. use this when you working alongside and supporting young people to learn about their rights.

<https://rights4children.org.uk/>

Children's rights alliance for England

<http://www.crae.org.uk/>

Article 12 - organisation which fights for the rights of children living in state and privately run institutions. We strongly advise you sign up to this organisation!

<https://article39.org.uk/who-we-are/>

Thank you for reading.
Please return to the
e-learning for the next
section of learning

