

# CHILDREN ACT 2004

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part 2 - Children's Services in England

##### General

##### *Section 10: Co-operation to improve well-being*

60. The purpose of this section is to create a statutory framework for local co-operation between local authorities, key partner agencies ('relevant partners') and other relevant bodies ('other bodies or persons'), including the voluntary and community sector, in order to improve the well-being of children in the area. The duty to make these arrangements is placed on the local authority and a duty to co-operate with the local authority is placed on the relevant partners. As well as underpinning wide co-operation arrangements, these duties and powers will also provide the statutory context within which agencies will be encouraged to integrate commissioning and delivery of children's services, underpinned by pooled budgeting arrangements, in Children's Trusts.
61. *Subsection (1)* imposes a duty on the local authority to make arrangements to promote co-operation between the authority, its relevant partners (listed in *subsection (4)*) and other bodies exercising functions or engaged in activities relating to children in the authority's area. The duty on each partner agency to co-operate is in *subsection (5)*. *Subsection (4)(f)* refers to the Connexions Service.
62. *Subsection (2)* sets out the purposes of such arrangements. They are to be made with a view to improving the well-being of children in the authority's area. This subsection also specifies the aspects of well-being with which such arrangements are concerned. These reflect the five outcomes which children identified as being most important to them.
63. *Subsection (3)* ensures that in making arrangements, children's services authorities must have regard to the importance of the role of parents and carers in improving the well-being of children.
64. *Subsections (6)* and *(7)* give a power for all the specified partners to provide staff, goods, services, accommodation or other resources and to pool budgets in support of these arrangements.
65. *Subsection (8)* requires those subject to the duties to have regard to guidance from the Secretary of State. This guidance will be issued jointly by the relevant government departments to all of the relevant partners. It is likely that the guidance will set out the outcomes expected of these arrangements. These include: effective working together to understand the needs of local children, agreeing the contribution each agency should make to meet those needs, effective sharing of information at a strategic level and about individual children to support multi-agency working, and oversight of arrangements for agencies to work together in integrated planning, commissioning and delivery of

services as appropriate. The guidance will, in particular, make clear that, for the local authority and Primary Care Trust and other participating services (e.g. Connexions, Youth Offending Teams) these arrangements should include consideration of integrated commissioning in the delivery of children's services. There will also be guidance as to the kinds of other bodies and persons referred to in *subsection (1)(c)* which the local authority may involve in these arrangements.

66. *Subsection (9)* permits arrangements made under this section to include those relating to persons aged 18 and 19 and persons over 19 receiving services as care leavers under the Children Act 1989 and persons under 25 with learning difficulties receiving services under the Learning and Skills Act 2000.

### ***Section 11: Arrangements to safeguard and promote welfare***

67. This section imposes a duty on specified agencies to make arrangements to ensure that their functions are discharged having regard to the need to safeguard and promote the welfare of children. The aim of this duty is to:

- complement the general co-operation duty (section 10) in the specific area of children's safeguards;
- ensure that agencies give appropriate priority to their responsibilities towards the children in their care or with whom they come into contact;
- encourage agencies to share early concerns about safety and welfare of children and to ensure preventative action before a crisis develops.

68. This duty is intended to ensure that agencies are conscious of the need to safeguard children and promote their welfare in the course of executing their normal functions. Exercise of this duty will require agencies that come into contact with children to recognise that their needs are not always the same as adults i.e. that they are children, and vulnerable, as well as being patients, offenders, or people who use local amenities.

- *Subsection (1)* sets out the persons and bodies to which the duty applies.
- *Subsection (2)* sets out the duty and makes clear that it continues to apply where the relevant body contracts out services.
- *Subsection (3)* excludes the application of the duty where section 175 of the Education Act 2002 applies. That section places a similar duty on Local Education Authorities, schools and further education colleges, i.e. to make arrangements for ensuring that their functions are exercised with a view to safeguarding and promoting the welfare of children and to have regard to guidance issued for this purpose by the Secretary of State.
- *Subsection (4)* requires those exercising the duty to have regard to guidance from the Secretary of State.

### ***Section 12: Information databases***

69. This section creates a power for the Secretary of State by regulations made by affirmative resolution procedure (section 66(3) refers) to require local authorities to establish and operate a database or databases of information about all children and other young people to whom arrangements under section 10 or 11 or section 175 of the Education Act 2002 may relate (*subsection (1)(a)*). Alternatively, the Secretary of State may set up such databases himself and he may set up a body corporate to operate such databases (*subsections (1)(b) and (2)*). Such databases might be set up at a local, regional or national level.

70. The purpose of the information databases that would be set up under this section is to facilitate contact between professionals who are supporting individual children or who have concerns about their development, well-being or welfare with the aim of

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securing early, coherent, intervention. The purpose of including the basic data set out in *subsection (4)* is to help practitioners identify quickly a child they have contact with, and whether that child is getting the universal services (education, primary health care) to which he or she is entitled. Such data, suitably anonymised, would also serve a purpose in service planning. These purposes relate directly to the overarching duties on service providers to co-operate to promote the well-being of children (section 10) and to safeguard and promote the welfare of children (section 11). The purposes for which information databases may be used also include the duty of Local Education Authorities and governing bodies to fulfil their functions in a way that safeguards and promotes the welfare of children under section 175 of the Education Act 2002.

71. The section sets out the principles that would govern information sharing using information databases, including the basic information that is to be included in respect of all children. The detailed operational requirements will be set out in the affirmative procedure regulations referred to above and, as to more technical matters, in directions and guidance issued by the Secretary of State under *subsections (12) and (13)*.
72. *Subsection (3)* provides that a database may only include information specified in subsection (4) in relation to a person to whom subsection (1) relates (i.e. all children and other young people within the scope of sections 10 and 11 and section 175 of the Education Act 2002).
73. *Subsection (4)* describes the information to be held on the database. The basic data to be held for all children comprises: name; address; gender; date of birth; a unique identifying number; name and contact details of any person with parental responsibility or who has day to day care of the child; details of any education being received whether in an educational institution or other setting; name and contact details of a GP practice. The subsection also provides for the inclusion of the name and contact details of any practitioner providing a specialist service (of a kind to be specified in the regulations) to a child and the fact that a practitioner has a concern about a child. No material relating to case notes or case history about an individual may be included on the database, but the flexibility exists to require the inclusion of further basic data, for example to provide for future organisational change.
74. *Subsection (5)* gives the Secretary of State power to make provision for the establishment and operation of information sharing databases.
75. *Subsection (6)* lists a number of matters concerning the management and operation of information databases that may, in particular, be included in the regulations made under *subsection (5)*. These include requiring or permitting specified types of people or bodies to disclose information to the database, the conditions under which agencies and individuals will be granted access, the length of time that information should be held on the database and procedures for ensuring the accuracy of the data.
76. *Subsection (7)* lists the people and bodies who can be required to disclose information for inclusion in the database. This enables the primary sources of the basic data to be Primary Care Trusts, Local Education Authorities and the Connexions Service, with other statutory bodies and registered independent schools having a duty to supply such other information as may be required.
77. *Subsection (8)* lists the people and bodies who can be permitted to disclose information for inclusion in the database. This provides for voluntary sector bodies and the Inland Revenue (for Child Benefit and Child Tax Credit records), among others, to respond to any requests by the people who may be required to establish the databases to fill in any gaps in the basic data.
78. *Subsection (9)* permits information held by government departments, such as benefit records from the Department for Work and Pensions, to be supplied on request to fill in gaps in the basic data.

79. *Subsection (10)* allows the regulations to provide for the delegation of decisions relating to the matters referred to in *subsection (6)(e)*, relating to access to the databases, to persons who may be required to establish the databases.
80. *Subsection (11)* allows the regulations to provide that people or bodies who are permitted under *subsections (6)(c) to (e) or (9)* to disclose information to the database may do so notwithstanding their common law duty of confidence. Such a power would be relied upon where practitioners believe, in their professional judgement, that it is in the best interest of the child to share information about that child.
81. *Subsection (12)* provides that any direction issued by the Secretary of State must be complied with by any person or body who establishes or operates a database under this section and that they must have regard to any guidance issued by the Secretary of State.
82. *Subsection (13)* lists matters concerning the operation of the information databases that may, in particular, be included in directions or guidance issued by the Secretary of State. These include management functions, technical specifications, conditions relating to database security, the transfer and cross-matching of information from one database to another and the issuing of advice to children and their parents about their rights, under the Data Protection Act 1998, to access information held about them on the database.

## **Local Safeguarding Children Boards**

### ***Section 13: Establishment of LSCBs***

83. The purpose of this section is to place local arrangements for co-ordinating the work of key agencies in relation to safeguarding children on a statutory footing.
84. *Subsection (1)* requires each local authority to establish a Local Safeguarding Children Board (LSCB). The agencies which are ‘Board partners’ are listed in *subsection (3)*. The authority must co-operate with the Board partners in establishing the Board and the Board partners each have a reciprocal obligation to co-operate with the local authority (*subsection (7)*).
85. *Subsection (2)* provides for the Secretary of State to make regulations about representation on the LSCB. For example, regulations might be used to ensure that every Board partner, and the local authority, had a representative on the LSCB, albeit possibly through two or more sharing a single representative. Regulations may also set out the level of seniority required of representatives.
86. *Subsections (4) and (5)* provide for representation from persons other than Board partners exercising functions or engaged in activities in relation to children in the area. These might include schools and voluntary groups. The local authority must take steps to ensure representation of prescribed persons (*subsection (4)*) and may also invite representation from other persons or groups in consultation with Board partners (*subsection (5)*). This reflects that there will be other bodies in each area with a contribution to make to the work of the LSCB. It also allows the Board to seek specialist expertise where it sees fit.
87. *Subsection (8)* enables two or more local authorities to join together to establish an LSCB covering their combined areas.

### ***Section 14: Functions and procedure of LSCBs***

88. *Subsection (1)* sets out the objective of LSCBs. The aim is to ensure that each local area has a coherent approach to safeguarding children based on contributions from all key agencies, and that this approach is managed effectively.
89. *Subsection (2)* allows for functions of LSCBs to be prescribed by the Secretary of State in regulations. These functions will largely be based on the functions of their predecessor bodies, Area Child Protection Committees, as set out in Government

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guidance *Working Together to Safeguard Children* and will support the overall objective of the Board.

90. *Subsection (3)* allows for the Secretary of State to prescribe the procedures to be followed by LSCBs. For example, it may require a register of attendance to be kept.

### ***Section 15: Funding of LSCBs***

91. This section enables the local authority and the Board partners to contribute financially to the cost of establishing and running the LSCB. It allows for money from those agencies to be pooled in a single fund. It also makes clear that partners can provide non-pecuniary resources (such as staff, goods, services or accommodation) in support of the activities of the LSCB.
92. Where the governor or director of prison service institution or secure training centre is a Board partner the power to contribute is given to the Secretary of State. Where the prison or secure training centre is contracted out, the power to contribute is given to the contractor.

### ***Section 16: LSCBs: supplementary***

93. *Subsection (1)* enables regulations to provide for the functions of local authorities in relation to LSCBs. These will cover such matters as provision of administrative and support services.
94. *Subsection (2)* provides that, in exercising their functions, the authority and its Board partners must have regard to any guidance issued by the Secretary of State for this purpose. This guidance may, for example, set out how contributions may be made in cash or kind and how arrangements should be made for investigation of unexpected child deaths, and provide further detail about the functions and management of LSCBs.

## **Local authority administration**

### ***Section 17: Children and Young People's Plans***

95. *Section 17* imposes a new duty on children's services authorities to plan for the provision of services for children. It is linked to the duty to co-operate which is the subject of section 10. As a consequence of the new duty, a number of other planning obligations falling on local authorities are being dispensed with. These are the Education Development Plan, the Early Years Development and Childcare Plan, the School Organisation Plan, the Behaviour Support Plan, the Class Sizes Plan, the Children's Services Plan and the Local Authority Adoption Services Plan.
96. *Subsection (1)* provides for regulations to require children's services authorities to prepare and publish a Children and Young People's Plan (CYPP) which will set out their strategy for services for children and relevant young people.
97. *Subsection (2)* states that regulations may make provision for the content, timescale, publication and review of the plan and what consultation should be undertaken in its preparation. We intend the CYPP to be based on the five outcomes for children and to contain a statement of local vision for children and young people, key outcomes, a strategic analysis, actions (with timescales), references to joint planning with key partners, performance management and review of children's services, and to outline the consultation undertaken in its preparation. The intention is that regulations will provide for the CYPP to relate to successive periods of three years. The authority will have to publish the CYPP and to review it annually.
98. *Subsection (3)* provides for the content of the plan to include arrangements made under section 10 (duty to co-operate) and the strategy of key partners with whom there is co-operation for children's services. Therefore, the CYPP will be consistent with plans for services for children and young people prepared by other organisations in respect of

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the local authority's area, e.g. concerning children's health services, youth justice and services provided by the voluntary and community sector.

99. Relevant young people are defined according to section 10(9).

***Section 18: Director of children's services***

100. The local authorities that are children's services authorities for the purposes of this Act are currently required to appoint a chief education officer and a director of social services. Those requirements are removed when authorities exercise their power under this section to appoint a director of children's services and a director of adult social services. The Act makes it possible for local authorities to make these appointments and gives the Secretary of State a power to require them to do so by order at such time as he thinks appropriate.
101. The purposes for which the director of children's services is appointed are local authority education functions (other than functions specified in relation to adults); social services functions for children; functions in relation to young persons leaving care; functions conferred on the authority under sections 10- 12 and 17 of this Act; any functions delegated to the authority by an NHS body under section 31 of the Health Act 1999, so far as relating to children; and any other function prescribed by the Secretary of State by regulations. The authority may include in the remit of the director of children's services such additional functions as they consider appropriate (*subsection (5)*). Authorities are free, for example, to include adult education functions.
102. Directors of children's services will also be expected to steer local co-operation arrangements in relation to children's services. Further detail on the role and responsibilities of the director will be set out in guidance issued by the Secretary of State under *subsection (7)*.
103. *Subsection (8)* allows two or more authorities to appoint jointly a director of children's services. This would, for example allow adjoining authorities to reinforce arrangements for joint services.
104. *Subsection (9)* gives effect to Schedule 2.

***Schedule 2: Director of children's services: consequential amendments***

105. The amendments in this Schedule remove the duties for authorities in England to appoint a director of social services and a chief education officer (*paragraphs 2(2)(a)* and *4(2)* respectively). Their functions are assigned instead to the director of children's services appointed under section 18 and the director of adult social services appointed under section 6 of the Local Authority Social Services Act 1970, as amended. Other amendments in the Schedule reflect these changes.
106. *Paragraph 1*: Section 96 of the [Children and Young Persons Act 1933 \(c.12\)](#) is amended to add a reference to the director of children's services. This will allow a local authority or committee by resolution to empower the director of children's services, chief education officer ('CEO') in Wales or clerk to exercise powers of the authority or committee in any case which appears to him to be urgent.
107. *Paragraph 2*: Section 6 of the [Local Authority Social Services Act 1970 \(c.42\)](#) is amended so that a local authority in England to which the Act applies is required to appoint a director of adult social services. This is because responsibility for children's social services comes under the Director of Children's Services so an overall Director of social services is no longer appropriate. Schedule 1 to the 1970 Act (list of social service functions of local authorities) is amended so that the appointment of the director of adult social services is a social services function on which guidance may be issued under section 7 of the Act.

108. *Paragraph 3:* Section 2 of the [Local Government and Housing Act 1989 \(c.42\)](#) (politically restricted posts) is amended in relation to England so the posts of director of children's services and director of adult social services are 'statutory chief officer' posts and therefore 'politically restricted'. Section 1 of that Act describes the restrictions on such persons, the main one being that such a person is disqualified from being a member of the local authority.
109. *Paragraph 4:* Section 532 of the [Education Act 1996 \(c.56\)](#) (appointment of chief education officer) is amended to require only local education authorities in Wales to appoint a CEO.
110. *Section 566* (evidence: documents) of the Education Act 1996 is amended so that a document issued by a local education authority signed by the director of children's services (in the case of an authority in England) is treated as the document it purports to be and signed by the person by whom it purports to be signed, unless the contrary is proved. This provision still applies to the CEO of an authority in Wales.
111. *Paragraph 5:* Section 8 of the [Crime and Disorder Act 1998 \(c.37\)](#) (parenting orders) is amended so that someone nominated by the director of children's services is a 'responsible officer' for the purposes of that section and section 9. Responsible officers have the power to make applications to the court in respect of parenting orders and can direct a person subject to such an order to attend counselling or guidance sessions.
112. Section 39 of the Crime and Disorder Act 1998 (youth offending teams) is amended to include at least one person with experience of social work, and at least one person with experience in education to be nominated by the director of children's services on the list of persons one of who must be on every youth offending team.
113. *Paragraph 6:* Section 4C of the [Protection of Children Act 1999 \(c.14\)](#) is amended to substitute 'director of children's services of a local authority in England or a director of social services of a local authority in Wales' for 'director of social services of a local authority'. These post-holders are among the people who are able to apply to the High Court for an order restoring an individual's name to the list of those considered unsuitable to work with children, where it is necessary in order to protect children.
114. *Paragraph 7:* Section 36 of the [Criminal Justice and Court Services Act 2000 \(c.43\)](#) is amended so that the director of children's services and director of adult social services are added as a 'regulated position' for the purposes of that Act. As a consequence, under Part 2 of that Act (protection of children) a person disqualified from working with children commits an offence if he applies for the position of director of children's services.
115. *Paragraph 8:* Section 322 of the [Criminal Justice Act 2003 \(c.44\)](#) (individual support orders) is amended to include, in the new section 1AA (10) of the Crime and Disorder Act 1998 being inserted by that section, a reference to a person nominated by the director of children's services, so that person is a 'responsible officer' for the purposes of that section and section 1AB (which relate to individual support orders).

### ***Section 19: Lead member for children's services***

116. *Subsection (1)(a)* requires a local authority in England to designate one of their members as lead member for children's services in respect of the functions of the authority set out in section 18(1). *Subsection (1)(b)* allows individual authorities to allocate to the lead member for children's services any additional functions they consider appropriate.
117. Further detail on which member should be designated as the lead member (depending on individual authorities' constitutional arrangements), and the role and responsibilities of the lead member will be set out in guidance issued by the Secretary of State under *subsection (2)*.

**Sections 20-24: Inspections of children's services**

118. The purpose of these sections is to provide for a unified approach to the inspection of children's services in a local authority area.

**Section 20: Joint area reviews**

119. The purpose of this section is to make provision for joint area reviews of children's services (as defined in section 23(3)) to be carried out in the area of each children's services authority or the areas of particular children's services authorities.
120. *Subsection (1)* provides that the Secretary of State can request the inspectorates and commissions to draw up a timetable for joint area reviews for his approval. *Subsection (1)(a)(i)* allows the request to include every children's services authority, depending which authority is being reviewed; *subsection (1)(a)(ii)* allows the request to cover some but not all of the children's services authorities. *Subsection (1)(b)* enables the Secretary of State to request two or more of the inspectorates to conduct a review of particular children's services in an area he specifies. Where the Secretary of State makes such a request the inspectorates in question are obliged to conduct the review.
121. *Subsection (2)* enables two or more of the inspectorates to conduct a review of a particular local authority's area on their own initiative.
122. *Subsection (3)* provides that the purpose of the review is to evaluate the extent to which, taken together, the children's services being reviewed improve the well-being of children and relevant young persons. The review will, in particular, consider the quality of children's services and how the bodies which provide those services work together.
123. *Subsections (5) and (6)* provides that any review must be conducted in accordance with arrangements made by Her Majesty's Chief Inspector of Schools ('Chief Inspector') and before making those arrangements he must consult the inspectorates as he considers appropriate.
124. *Subsection (7)* provides that the Chief Inspector's annual report under section 2 (7)(a) of the School Inspections Act 1996 must include an account of reviews carried out under this section.
125. *Subsection (8)* enables the Secretary of State to make regulations in relation to reviews under this section. This may include making provision to require the persons or bodies inspected to produce information for the purposes of a review, or to authorise entry to premises for those conducting reviews and provision creating criminal offences to underpin these obligations. By virtue of *subsections (9) and (10)* provision can be made by applying existing provisions giving the inspectorates powers to conduct assessments for the purpose of reviews under section 20. 'Assessment' for the purposes of the section is defined in section 23(2) (see below). Regulations may also impose requirements as to the making of a report on each review under this section and for specified persons to make written statements of the action they propose to take in light of the report and the period within which such action must or may be taken.

**Section 21: Framework**

126. This section makes provision for a Framework for Inspection of Children's Services ('the Framework').
127. *Subsection (1)* imposes a duty on the Chief Inspector of Schools to devise the Framework. The purpose of the Framework is to set out the principles which are to be applied by any of the inspectorates when carrying out a relevant assessment (see section 23 (2)) of children's services, including a joint area review under section 20. The purpose of the Framework is to ensure that those assessments properly evaluate and report on the extent to which children's services improve the well-being of children and relevant young persons. The principles may include how the results of an assessment



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are to be organised and reported by each of the inspectorates, so that their judgement 'ratings' may be aggregated.

128. *Subsection (6)* provides that the Chief Inspector must consult the inspectorates when devising the Framework. *Subsection (7)* provides that before publishing the Framework he must consult any other persons or bodies as he thinks fit and obtain the consent of the Secretary of State. The Framework may be revised (*subsection (8)*).

### ***Section 22: Co-operation and delegation***

129. *Subsection (1)* provides that any person or body with functions under any enactment of carrying out assessments of children's services must, for the purposes of those assessments, co-operate with other persons or bodies with such functions.
130. *Subsection (2)* enables a person or body with functions of carrying out assessments of children's services to delegate their functions to any other person or body with such functions.

### ***Section 23: Sections 20 to 22: interpretation***

131. This section applies for the purposes of sections 20 to 22.

### ***Section 24: Performance rating of social services***

132. This section amends section 79(2) of the [Health and Social Care \(Community Health and Standards\) Act 2003 \(c.43\)](#) (annual reviews). Section 79(2) of that Act requires the Commission for Social Care Inspection (CSCI) to review each local authority in England's social services provision annually and award the authority a performance rating. This amendment means that CSCI will award one performance rating in respect of services to children and care leavers (*subsection (2)(a)*) and another in respect of all other social services (*subsection (2)(b)*).