



LEGISLATIVE AND GUIDANCE FRAMEWORK SUPPLEMENT

to

Safeguarding Children and Young People
Guidance Handbook for Workers, Volunteers,
Management Committee Members and Trustees in
Voluntary and Community Sector Organisations
Working with Children and Young People



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www.youngsolutions.org.uk/safeguarding

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LEGISLATIVE FRAMEWORK

The advice contained in **Safeguarding Children and Young People Guidance Handbook for the Voluntary and Community Sectors 2018 Edition** is based on the key legislation and relevant guidance which promotes the welfare and safety of children and young people.

Legislation

Human Rights Act 1998

This sets out the rights of children, young people and families and reflects principles in international agreements. It gives individuals the right to challenge what they perceive to be an infringement of their human rights.

United Nation's Convention on the Rights of the Child

This includes:

- All children and young people must have equal rights and protection irrespective of race, colour, gender, disability, political or religious belief, ethnic or national origin, socio-economic background, language or other status.
- The best interests of the child or young person must be a primary consideration when decisions concerning children and young people are being made.
- All children and young people have the right to express their views freely, in all matters that affect them, taking into account the age and maturity of the child/young person.
- Children and young people cared for away from home and children with a disability have the right to protection.
- All children and young people have the right to be protected from violence, abuse, exploitation, abduction, sale and trafficking.

Children Act 1989

- A child is defined as any person aged 18 or under.
- The intention of the act is to ensure the welfare and developmental needs of children are met, including the need to be protected from harm. The law is based on the assumption that it is generally best for children to grow up in their own families and that most families want to care for their own children. There may be occasions, however, when it is necessary for statutory agencies to become involved to provide services for children who need assistance or protection.

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- In addition to Children's Social Care (now part of Children's Services) only the Police and NSPCC have the legal right and responsibility to investigate concerns about child abuse.

Children Act 2004

This provides the framework for the *Every Child Matters: Change for Children* agenda.

- The establishment of a Children's Commissioner for England to represent the views and interests of children and young people and to report annually to Parliament.
- It identified five outcomes for children:
 - Staying Safe
 - Be Healthy
 - Enjoy and Achieve
 - Make a Positive Contribution
 - Achieve Economic Wellbeing
- The local authority has a duty to make arrangements to promote co-operation between agencies to improve children's wellbeing. Key partners have a duty to take part in these arrangements.
- There is a new power to allow pooling of resources in support of these arrangements.
- Joint Area Reviews (JAR) will be carried out to look at how children's services as a whole operate across each local authority area.
- The voluntary and community sector (VCS) has a crucial role to play in improving outcomes for children and young people.
- The VCS are not only major providers of services to children, young people and families; they have significant expertise to offer in developing strategy and planning.
- A children's trust way of working will mean that children and families experience more integrated and responsive services where specialist support is embedded in and accessed through universal services.
- A lead-professional model and a Common Assessment Framework will be developed

Children and Families Act 2014

The act makes key changes to the safeguarding and child protection system and services for children and families.

It changes the way that children and young people with special educational needs and disabilities (SEND) are assessed. Special Education Statements are replaced

with a single Education, Health and Care Plan (EHCP). This will support children, young people and their families from birth to 25.

There are other changes around adoption and childminding.

There is also a requirement that local services for children and young people should be made available in a clear, easy to read manner.

Children and Social Work Act 2017

The main purpose of the legislation is to:

- improve decision making and support for looked after and previously looked after children
- improve joint work at the local level to safeguard children
- enable better learning at the local and national levels to improve practice in child protection.
- promote the safeguarding of children by providing for relationships and sex education in schools.

Children (Leaving Care) Act 2000

This extended the types of services and the upper age limits of the young people local authorities were responsible for as corporate parents.

Mental Capacity Act (MCA) 2005

The primary purpose of the MCA is to promote and safeguard decision-making within a legal framework. It does this in two ways:

- by empowering people to make decisions for themselves wherever possible, and by protecting people who lack capacity by providing a flexible framework that places individuals at the heart of the decision-making process
- by allowing people to plan ahead for a time in the future when they might lack the capacity, for any number of reasons

Care Act 2014

The Care Act 2014 sets out a clear legal framework for how local authorities and other statutory agencies should protect adults with care and support needs at risk of abuse or neglect. New duties include the duty to make enquiries or cause them to be made. The initiatives are designed to ensure greater multi-agency collaboration as a means of transforming adult social care.

The Care Act is mainly for adults in need of care and support, and their adult carers. There are, however, some provisions for the transition of children in need of care and support, parent carers of children in need of care and support, and young carers.

Disability Discrimination Act 1995

This act extends the anti-discrimination principle to people with disabilities and seeks to ensure that they have equal access to services as people who do not have disabilities.

Police Act 1997 Part V

This set up the Criminal Record Bureau (CRB) to improve access to criminal record checks for employment-related purposes. It is aimed at providing protection for children and vulnerable adults against those who might wish to harm them.

Protection of Children Act 1999

This includes a framework for identifying those people considered to be unsuitable to work with children.

Voluntary organisations and community groups are recommended to check those working with children through the CRB (now DBS).

Criminal Justice and Court Services Act 2000

This links with the two previous acts to build a system which aims to prevent unsuitable people from working with children and young people.

- It defines jobs and positions which are 'regulated'. These include categories where 'normal duties include caring for, training, supervising and/or being in sole charge of children'. It includes those who supervise or manage people who are in a 'regulated' position.
- It is a criminal offence if an employer does not take sufficient steps to check an employee working with children and/or knowingly gives someone a job when s/he is inappropriate or disqualified from working with children.

Rehabilitation of Offenders Act 1974

This act protects the privacy of individuals and counteracts prejudice against people with convictions by allowing them not to declare convictions to employers. But, those who are involved in situations where they have prolonged or sustained access to children or young people are exempt from this legislation. They must declare all criminal convictions and these will be taken into account when deciding a person's suitability for working with children or young people.

The 2013 amendment explains the difference between spent and unspent convictions and outlines which convictions must be declared when applying for jobs and any exceptions.

Sexual Offences Act 2003

This is designed to protect everyone from sexual crimes especially those particularly vulnerable to abuse such as children and young people.

It extends laws relating to abuse to include those who hold positions of trust or authority in the lives of children or young people. It applies to those who have regular unsupervised contact with children in the community.

Safeguarding Vulnerable Groups Act 2006

- People permitted to engage in Regulated Activity with children or vulnerable adults are subject to monitoring. (This includes a lot of activities undertaken within the voluntary and community sector.)
- Employers will be committing an offence if they employ people to work with children, young people or vulnerable adults if they know they are barred. This includes voluntary work.
- A new, proactive, comprehensive and continuously updated Vetting and Barring Scheme to help to eliminate any existing gaps which could be exploited by unsuitable people seeking access to children and vulnerable adults through their work. 'Real-time' instant checks will be possible to check on a prospective employee. Barring decisions will be updated as soon as information becomes available.
- The Independent Safeguarding Authority was set up to oversee the Vetting and Barring Scheme.

Forced Marriage (Civil Protection) Act 2007

This act allows courts to order civil measures to be taken to prevent forced marriages.

Anti-social Behaviour, Crime and Policing Act 2014

This wide-ranging act includes provision about anti-social behaviour, crime and disorder. Anti-social behaviour is identified as being conduct that has caused, or is likely to cause, harassment, alarm or distress to any person.

The act made it a criminal offence to force someone to marry. It also made it a criminal offence to breach a Forced Marriage Protection Order.

Data Protection Acts 1984, 1998, and 2018 and the General Data Protection Regulation (GDPR)

These acts regulate what information about people may be kept by a group/organisation and with whom it can be shared. In relation to child protection issues:

- all records must be kept securely
- only certain people should be able to access the information
- if the information relates to a child protection concern it cannot be withheld since this would not be acting in the best interests of the child
- families, children and young people can see the information concerning them and have an opportunity to respond

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The GDPR and Data Protection Act 2018 place greater significance on groups/organisations being transparent and accountable in relation to their use of data. All groups/organisations handling personal data need to have comprehensive and proportionate arrangements for collecting, storing, and sharing information.

Public Interest Disclosure Act 1998 (PIDA)

This act created a framework for whistle blowing across the private, public and voluntary sectors. The act provides almost every individual in the workplace with protection from victimisation where they raise genuine concerns about malpractice in accordance with the act's provisions.

Equality Act 2010

Equality Act replaces previous legislation (such as the Race Relations Act 1976 and the Disability Discrimination Act 1995) and ensures consistency in making your group/organisation a fair environment and that it complies with the law.

Protection of Freedoms Act 2012

This act relates specifically to public authorities but the principles should also apply to all voluntary and community sector groups in regard to eliminating discrimination and promoting equality of opportunity.

The act includes a wide range of measures including restricting the scope of the Vetting and Barring Scheme for protecting vulnerable groups and makes changes to the system of criminal records checks.

The Disclosure and Barring Service (DBS) was established to bring together the functions previously undertaken by the Criminal Records Bureau (CRB) and the Independent Safeguarding Authority (ISA).

Health and Safety at Work Act 1974

This is the fundamental piece of health and safety legislation. It places general duties on employers, people in control of premises, manufacturers and employees. These general duties form the framework for all subsequent health and safety regulations.

Serious Crime Act 2015

Section 5 of the act made a number of changes in law including:

- enhancing the protection of children from cruelty
- protecting girls from Female Genital Mutilation (FGM)
- strengthening the protection afforded to victims of domestic abuse

It also included the new offence of failing to protect a girl from FGM and placed a new duty on professionals to notify the police of such offences.

Counter Terrorism and Security Act 2015

Section 26 of the Counter Terrorism and Security Act 2015 identifies the need for authorities to prevent people from being drawn into terrorism or supporting terrorism. The Prevent Strategy works at the pre-criminal stage by using early intervention to encourage individuals and communities to challenge extremist and terrorist ideology and behaviour.

Guidance

In addition to legislation the Government has produced a number of guidance documents on how the provisions or principles of the acts are to be put in place. They include:

Working Together to Safeguard Children 2018

This guidance sets out how organisations and individuals should work together to safeguard and promote the welfare of children and how practitioners should conduct the assessment of children. This Guidance is for all who work with children and families, including those in the voluntary and community sector, so that the needs of children and young people can most appropriately be met through a child-centred and coordinated approach to safeguarding.

www.gov.uk/government/publications/working-together-to-safeguard-children

What to do if you're worried a child is being abused 2006

This document provides best practice guidance for those who work with children in order to safeguard their welfare. It also contains an appendix to help workers with the legal issues affecting the sharing of information.

The guidance also provides general information for anyone whose work brings them into contact with children and families, focusing particularly on those who work in social care, health, education and criminal justice services.

www.gov.uk/government/publications/what-to-do-if-youre-worried-a-child-is-being-abused--2

Keeping Children Safe in Education 2016 updated 2018

Guidance for schools and colleges on safeguarding children. This looks at procedures to control safeguarding, safer recruitment and handle allegations against staff.

www.gov.uk/government/publications/keeping-children-safe-in-education--2

Regulated Activity in relation to children: scope 2012

This note from the Government provides information on the scope of Regulated Activity to children. Regulated Activity is work that a barred person must not do.

www.gov.uk/government/publications/keeping-children-safe-in-education--2

Safeguarding Children in whom illness is fabricated or induced 2008

This guidance outlines what is known about fabricated or induced illness, the ways in which it can be caused, the impact on the child's health and development. It includes the roles and functions of relevant agencies and procedures to be followed where there are concerns.

www.gov.uk/government/publications/safeguarding-children-in-whom-illness-is-fabricated-or-induced

No Secrets: guidance on protecting vulnerable adults in care 2000 updated 2015

This guidance sets out a code of practice for the protection of vulnerable adults.

www.gov.uk/government/publications/no-secrets-guidance-on-protecting-vulnerable-adults-in-care

Information Sharing: Advice for Practitioners providing Safeguarding Services 2018

This updates the advice in line with the General Data Protection Regulation and the Data Protection Act 2018. It includes the seven golden rules for information sharing. See Guidance Handbook for more details.

www.gov.uk/government/publications/safeguarding-practitioners-information-sharing-advice

What to do if you are worried a child is being abused 2015

Addressing issues affecting all those who work with children, the document outlines the following:

- What you should do if you have concerns about a child's welfare.
- What will happen once you have informed someone about those concerns.
- What further contribution you may be asked or expected to make to the processes of assessment, planning, working with children, and reviewing that work.

The guidance explains the procedure from referral, initial assessment, emergency action that might need to be taken, through to what happens after a strategy discussion and an initial child protection conference.

www.gov.uk/government/publications/what-to-do-if-youre-worried-a-child-is-being-abused

Safeguarding children and young people from sexual exploitation 2009

This covers the prevention of sexual exploitation, the protection of children and young people who are at risk of being sexually exploited and the disruption and prosecution of offenders.

More details at:

www.gov.uk/government/publications/safeguarding-children-and-young-people-from-sexual-exploitation-supplementary-guidance

Guidance for safer working practice for those working with children and young people in education settings 2015

This guidance has been written so that all adults working with children and young people understand that the nature of their work and the responsibilities related to it place them in a positions of trust. This practice guidance provides clear advice

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on appropriate and safe behaviours for all adults working with children in paid or unpaid capacities, in all settings and in all contexts.

www.safeguardingschools.co.uk/wp-content/uploads/2015/10/Guidance-for-Safer-Working-Practices-2015-final1.pdf

Guidance on the Anti-social Behaviour, Crime and Policing Act 2014

This guidance was updated in December 2017. It is designed to ensure that the most vulnerable, the homeless for example, are not disproportionately targeted. This also includes small groups gathering to chat.

It also includes the importance of local consultation, accountability and transparency.

www.gov.uk/government/publications/anti-social-behaviour-crime-and-policing-bill-anti-social-behaviour

Driving School Minibuses - Advice for schools and local authorities 2013

This advice identifies the circumstances which apply to school staff driving minibuses.

www.gov.uk/government/publications/driving-school-minibuses-advice-for-schools-and-local-authorities

Mandatory reporting of female genital mutilation (FGM) 2015

This guidance gives health and social care professionals, teachers and the police information on their responsibilities under the female genital mutilation mandatory reporting duty.

www.gov.uk/government/publications/mandatory-reporting-of-female-genital-mutilation-procedural-information

Whistleblowing - List of Prescribed People and Bodies 2014

If you decide to blow the whistle to a prescribed person rather than your employer, you must make sure that you've chosen the correct person or body for your issue.

The Government has produced a list of the prescribed persons and bodies to whom you can make a disclosure. There is also a brief description about the matters you can report to each prescribed person.

www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2#histor

Charity Commission Policy Paper

Safeguarding children and young people 2014

This policy paper from the Charity Commission reminds the trustees of charities working with children, young people or vulnerable adults that they have a legal duty to act prudently in ensuring that they are not harmed in any way. Also it states that charities are expected to comply with government statutory guidance.

www.gov.uk/government/publications/safeguarding-children-and-young-people/safeguarding-children-and-young-people