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# Statutory Framework

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## 1. Statutory Framework

1. All organisations that work with children and families share a commitment to safeguard and promote their welfare, and for many agencies that is underpinned by a statutory duty or duties.

2. This document briefly explains the legislation most relevant to work to safeguard and promote the welfare of children.

### CHILDREN ACT 2004

3. Section 10 requires each Local Authority to make arrangements to promote co-operation between the authority, each of the authority's relevant partners (see the table below) and such other persons or bodies, working with children in the local authority's area, as the authority consider appropriate. The arrangements are to be made with a view to improving the well-being of children in the authority's area - which includes protection from harm or neglect alongside other outcomes.

4. Section 11requires a range of organisations (see table) to make arrangements for ensuring that their functions, and services provided on their behalf, are discharged having regard to the need to safeguard and promote the welfare of children.

5. Section 13of the Children Act 2004 requires each local authority to establish a Local Safeguarding Children Partnership (LSCP) for their area and specifies the organisations and individuals (other than the local authority) that the Secretary of State may prescribe in regulations that should be represented on LSCPs.

6. Section 14 sets out the objectives of LSCPs, which are:

1. To coordinate what is done by each person or body represented on the Board for the purposes of safeguarding and promoting the welfare of children in the area of the local authority, and
2. To ensure the effectiveness of what is done by each such person or body for the purposes of safeguarding and promoting the welfare of children.

TheLSCP Regulations 2006made under section 13 set out the functions of LSCPs, which include undertaking reviews of the deaths of all children in their areas and undertaking Serious Case Reviews in certain circumstances.

LSCP Regulations 2006 [The Local Safeguarding Children Boards Regulations 2006](https://www.legislation.gov.uk/uksi/2006/90/contents/made)

Undersection 55 of the Borders, Citizenship and Immigration Act 2009, the Secretary of State (in practice, the UK Visas and Immigration (previously Border Agency or 'UKBA') has a duty to ensure that functions relating to immigration and customs are discharged with regard to the need to safeguard and promote the welfare of children. Section 55 is intended to have the same effect as section 11 of the Children Act 2004.

section 55 of the Borders, Citizenship and Immigration Act 2009 [Borders, Citizenship and Immigration Act 2009](https://www.legislation.gov.uk/ukpga/2009/11/section/55)

### EDUCATION ACT 2002

7. Section 175 puts a duty on local education authorities, maintained (state) schools, and further education institutions, including sixth form colleges, to exercise their functions with a view to safeguarding and promoting the welfare of children - children who are pupils, and students under 18 years of age, in the case of schools and colleges.

8. And the same duty is put on Independent schools, including Academies/free schools, by regulations made under s157 of that Act.

### CHILDREN ACT 1989

The Children Act 1989 places a duty on Councils with Social Services Responsibilities (CSSRs) to promote and safeguard the welfare of children in need in their area.

Section 17(1) of the Children Act 1989 states that:

It shall be the general duty of every local authority:

* To safeguard and promote the welfare of children within their area who are in need; and
* So far as is consistent with that duty, to promote the upbringing of such children by their families, by providing a range and level of services appropriate to those children's needs.

Section 17(5) enables the local authority to make arrangements with others to provide services on their behalf and states that every local authority:

1. Shall facilitate the provision by others (including in particular voluntary organisations) of services which it is a function of the authority to provide by virtue of this section, or section 18, 20, 22A to 22C, 23B to 23D, 24A or 24B; and
2. May make such arrangements as they see fit for any person to act on their behalf in the provision of any such service.

Section 17 (10) states that a child shall be taken to be in need if:

1. The child 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 for him of services by a local authority under this Part;
2. The child's heath or development is likely to be significantly impaired, or further impaired, without the provision or such services, or
3. The child is disabled.

Under section 17, local authorities have the responsibility for determining what services should be provided to a child in need. This does not necessarily require local authorities themselves to be the provider of such services.

### Section 47(1) of the Children Act 1989 states that:

Where a local authority:

1. Are informed that a child who lives, or is found, in their area is the subject of (i) an emergency protection order, or (ii) is in police protection;
2. Have reasonable cause to suspect that a child who lives, or is found, in their area is suffering, or likely to suffer, significant harm: The authority shall make, or cause to be made, such enquiries as they consider necessary to enable them to decide whether they should take any action to safeguard or promote the child's welfare. In the case of a child falling within paragraph (a) (iii) above, the enquiries shall be commenced as soon as practicable and in any event, within 48 hours of the authority receiving the information.

### Children Act 1989 s47

9. Under s17 of the Children Act 1989, CSSRs carry lead responsibility for establishing whether a child is in need and for ensuring services are provided to that child as appropriate. This does not require CSSRs themselves necessarily to be the provider of such services.

10. Section 17(5) of the Children Act 1989 enables the CSSR to make arrangements with others to provide services on their behalf.

Every local authority:

1. Shall facilitate the provision by others (including in particular voluntary organisations) of services which the authority have power to provide by virtue of this section, or section 18, 20, 23 or 24; and
2. May make such arrangements as they see fit for any person to act on their behalf in the provision of any such service.

### Children Act 1989 s17(5)

Section 53 of the Children Act 2004 amends both section 17 and section 47 of the Children Act 1989, to require in each case that before determining what services to provide or what action to take, the local authority shall, so far as is reasonably practicable and consistent with the child's welfare:

1. Ascertain the child's wishes and feelings regarding the provision of those services; and
2. 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.

### Emergency protection powers

12. There are a range of powers available to local authorities and their statutory partners to take emergency action to safeguard children:

Emergency Protection Orders

The court may make an emergency protection order under s44 of the Children Act 1989 if it is satisfied that there is reasonable cause to believe that a child is likely to suffer significant harm if:

* They are not removed to accommodation; or
* They do not remain in the place in which he is then being accommodated.

An emergency protection order may also be made if s47 enquiries are being frustrated by access to the child being unreasonably refused to a person authorised to seek access, and the applicant has reasonable cause to believe that access is needed as a matter of urgency.

An emergency protection order gives authority to remove a child, and places the child under the protection of the applicant for a maximum of eight days (with a possible extension of up to seven days).

Exclusion Requirement

The Court may include an exclusion requirement in an emergency protection order or an interim care order (section 38A and 44A of the Children Act 1989). This allows a perpetrator to be removed from the home instead of having to remove the child. The Court must be satisfied that:

* There is reasonable cause to believe that if the person is excluded from the home in which the child lives, the child will cease to suffer, or cease to be likely to suffer, significant harm or that enquires will cease to be frustrated; and
* Another person living in the home is able and willing to give the child the care which it would be reasonable to expect a parent to give, and consents to the exclusion requirement.

Police Protection Powers

Under s46 of the Children Act 1989, where a police officer has reasonable cause to believe that a child would otherwise be likely to suffer significant harm, they may:

* Remove the child to suitable accommodation and keep him or her there; or
* Take reasonable steps to ensure that the child's removal from any hospital, or other place in which the child is then being accommodated is prevented.

No child may be kept in police protection for more than 72 hours.

### Children and Families Act 2014

Child Arrangements Orders were introduced in April 2014 by the Children and Families Act 2014 (which amended section 8 Children Act 1989). They replace Contact Orders and Residence Orders.

A Child Arrangements Order means a court order regulating arrangements relating to any of the following:

1. With whom a child is to live, spend time or otherwise have contact; and
2. When a child is to live, spend time or otherwise have contact with any person.

The 'residence' aspects of a Child Arrangements Order (i.e. with whom a child is to live/when a child is to live with any person) can last until the child reaches 18 years unless discharged earlier by the Court or by the making of a Care Order.

The 'contact' aspects of a Child Arrangements Order (with whom and when a child is to spend time with or otherwise have contact with) cease to have effect when the child reaches 16 years, unless the court is satisfied that the circumstances of the case are exceptional.

A person named in the order as a person with whom the child is to live, will have Parental Responsibility for the child while the order remains in force. Where a person is named in the order as a person with whom the child is to spend time or otherwise have contact, but is not named in the order as a person with whom the child is to live, the court may provide in the order for that person to have Parental Responsibility for the child while the order remains in force.

Child Arrangements Orders are private law orders, and cannot be made in favour of a local authority. Where a child is the subject of a Care Order, there is a general duty on the local authority to promote contact between the child and the parents. A Contact Order can be made under section 34 of the Children Act 1989 requiring the local authority to allow the child to have contact with a named person.

### Children and Social Work Act 2017

13. An Act to make provision about looked after children, to make other provision in relation to the welfare of children, and to make provision about the regulation of social workers. The Children and Social Work Act has four main purposes:

* Improving decision making, and support for looked after and previously looked after children in England and Wales;
* Improving joint work at the local level to safeguard children and enabling better learning at the local and national levels to improve practice in child protection;
* Promoting the safeguarding of children by providing for Relationships and Sex Education in schools;
* Enabling the establishment of a new regulatory regime specifically for the social work profession in England.

### Police Reform and Social Responsibility Act 2011

14.Section 1 (8)(h)requires the police and crime commissioner to hold the chief constable to account for the exercise of the latter's duties in relation to safeguarding children undersection 10andsection 11of the Children Act 2004.

Section 1 (8)(h) [Police Reform and Social Responsibility Act 2011](https://www.legislation.gov.uk/ukpga/2011/13/section/1)

section 10 [Children Act 2004](https://www.legislation.gov.uk/ukpga/2004/31/section/10)

section 11 [Children Act 2004](https://www.legislation.gov.uk/ukpga/2004/31/section/11)

Childcare Act 2006

Section 40 requires early years providers to comply with the welfare requirements of the Early Years Foundation Stage.

Section 40 [Childcare Act 2006](https://www.legislation.gov.uk/ukpga/2006/21/section/40)

Crime and Disorder Act 1998

Section 38requires local authorities, within the delivery of youth justice services, to ensure the provision of persons to act as appropriate adults to safeguard the interests of children and young persons detained or questioned by police officers.

Section 38 [Crime and Disorder Act 1998](https://www.legislation.gov.uk/ukpga/1998/37/section/38)

Housing Act 1996

Under Section 213A of the Housing Act 1996 (inserted by section 12 of the Homelessness Act 2002),section 12, housing authorities are required to refer to adult social care services homeless persons with dependent children who are ineligible for homelessness assistance or are intentionally homeless, as long as the person consents. If homelessness persists, any child in the family could be in need. In such cases, if social services decide the child's needs would be best met by helping the family to obtain accommodation, they can ask the housing authority for reasonable advice and assistance in this and the housing authority must give reasonable advice and assistance.

### Criminal Justice Act 2003 (inserted by S.140 Criminal Justice and Immigration Act 2008)

18. See Information Sharing Procedure.

### Crime and Security Act 2010 (Sect 24 - 33)

19. See Information Sharing Procedure. The Domestic Violence Disclosure Scheme (DVDS) commenced on 8 March 2014.

See Information Sharing Procedure

### Criminal Justice Act 2003 (Sect 327)

20. Domestic Violence Protection Orders

Domestic Violence Protection Orders (DVPOs) are implemented across England and Wales from 8 March 2014.

They provide protection to victims by enabling the police and magistrates to put in place protection in the immediate aftermath of a domestic abuse incident.

With DVPOs, a perpetrator can be banned with immediate effect from returning to a residence and from having contact with the victim for up to 28 days, allowing the victim time to consider their options and get the support they need.

Before the scheme, there was a gap in protection, because police couldn't charge the perpetrator for lack of evidence and so provide protection to a victim through bail conditions, and because the process of granting injunctions took time.

Domestic Violence Disclosure Scheme ('Clare's Law')

The Domestic Violence Disclosure Scheme (DVDS) (also known as 'Clare's Law') commenced in England and Wales on 8 March 2014. The DVDS gives members of the public a formal mechanism to make enquires about an individual who they are in a relationship with, or who is in a relationship with someone they know, where there is a concern that the individual may be violent towards their partner. This scheme adds a further dimension to the information sharing about children where there are concerns that domestic abuse is impacting on the care and welfare of the children in the family.

Members of the public can make an application for a disclosure, known as the 'right to ask'. Anybody can make an enquiry, but information will only be given to someone at risk or a person in a position to safeguard the victim. The scheme is for anyone in an intimate relationship regardless of gender.

Partner agencies can also request disclosure is made of an offender's past history where it is believed someone is at risk of harm. This is known as 'right to know'.

If a potentially violent individual is identified as having convictions for violent offences, or information is held about their behaviour which reasonably leads the police and other agencies to believe they pose a risk of harm to their partner, the police will consider disclosing the information. A disclosure can be made if it is legal, proportionate and necessary to do so.

For further information, seeDomestic Violence Disclosure Scheme.

Domestic Violence Disclosure Scheme [Domestic abuse: how to get help - GOV.UK](https://www.gov.uk/guidance/domestic-abuse-how-to-get-help#:~:text=nearest%20Safe%20Space.-,Check%20whether%20someone%20has%20an%20abusive%20past,your%20%27right%20to%20ask%27.)The Domestic Violence Disclosure Scheme (DVDS) commenced on 8 March 2014.

### Anti-Social Behaviour, Crime and Policing Act 2014

21. Anti-Social Behaviour Injunctions can be granted against a person aged 10 or over, to prevent them engaging in anti-social behaviour. The injunction may include provisions requiring the young person to do specified things, and/or prohibiting them from doing specified things.

For under-18s, the injunction must be for a specified period of time, which must be no more than 12 months.

These injunctions replace the previous Anti-Social Behaviour Orders (ASBOs) under section 1 of the Crime and Disorder Act 1998.

### The Sexual Offences Act 2003, as amended by the Anti-Social Behaviour, Crime and Policing Act 2014

22. There are offences against trafficking persons into, within and out of the country for the purposes of sexual exploitation. There are offences to prevent children from being abused through prostitution and pornography. They cover a range of activity including: buying the sexual services of a child, causing or encouraging child prostitution or pornography, arranging or facilitating child prostitution or pornography, and controlling any of the activities of a child involved in prostitution or pornography.

These orders were introduced by the Anti-Social Behaviour, Crime and Policing Act 2014. They replace the previous Sexual Offences Prevention Order, Risk of Sexual Harm Orders and Foreign Travel Orders which were introduced by the Sexual Offences Act 2003.

The court needs to be satisfied that the order is necessary for protecting the public, or any particular members of the public, from sexual harm from the defendant; or protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from sexual harm from the defendant outside the United Kingdom.

The Orders prohibit the defendant from doing anything described in the order, and can include a prohibition on foreign travel (replacing Foreign Travel Orders which were introduced by the Sexual Offences Act 2003).

Failure to comply with a requirement imposed under an Order is an offence punishable by a fine and/or imprisonment.

Sexual Harm Prevention Orders can be applied to anyone convicted or cautioned of a sexual or violent offence, including where offences are committed overseas. They replace the previous Sexual Offences Prevention Orders.

A prohibition contained in a Sexual Harm Prevention Order has effect for a fixed period, specified in the order, of at least 5 years, or until further order. The Order may specify different periods for different prohibitions.

Sexual Risk Orders can be made where a person has done an act of a sexual nature as a result of which there is reasonable cause to believe that it is necessary for such an order to be made, even if they have never been convicted. They replace the previous Risk of Sexual Harm Orders.

A prohibition contained in a Sexual Risk Order has effect for a fixed period, specified in the order, of not less than 2 years, or until further order. The Order may specify different periods for different prohibitions.

23. Criminal Offence of Sexual Communication with a Child

As part of the Serious Crime Act (2015) there is now a criminal offence of sexual communication with a child which has been introduced. This applies to an adult who communicates with a child and the communication is sexual or if it is intended to elicit from the child a communication which is sexual and the adult reasonably believes the child to be under 16 years of age. The Act also amended the Sex Offences Act 2003 so it is now an offence for an adult to arrange to meet with someone under 16 having communicated with them on just one occasion (previously it was on at least two occasions).

24. Creating a new offence of failing to protect a girl from FGM with a penalty of up to 7 years in prison or a fine or both. - A person is liable if they are "responsible" for a girl at the time when an offence is committed. This will cover someone who has "parental responsibility" for the girl and has "frequent contact" with her and any adult who has assumed responsibility for caring for the girl in the manner of a parent. This could be for example family members, with whom she was staying during the school holidays.SeeFemale Genital Mutilation Procedure.

* Introduced Female Genital Mutilation Protection Orders ("FGMPO") - breaching an order carries a penalty of up to five years in prison. The terms of the order can be flexible and the court can include whatever terms it considers necessary and appropriate to protect the girl or woman;
* Allowing for the anonymity of victims of FGM - prohibiting the publication of any information that could lead to the identification of the victim. Publication covers all aspects of media including social media;
* Extended the extra-territorial reach of Female Genital Mutilation (FGM) offences to include "habitual residents" of the UK.

See Female Genital Mutilation Procedure

25. Controlling or coercive behaviour does not relate to a single incident, it is a purposeful pattern of behaviour which takes place over time in order for one individual to exert power, control or coercion over another. Such behaviours might include:

* Isolating a person from their friends and family;
* Depriving them of their basic needs;
* Monitoring their time;
* Monitoring a person via online communication tools or using spyware;
* Taking control over aspects of their everyday life, such as where they can go, who they can see, what to wear and when they can sleep;
* Depriving them of access to support services, such as specialist support or medical services;
* Repeatedly putting them down such as telling them they are worthless;
* Enforcing rules and activity which humiliate, degrade or dehumanise the victim;
* Forcing the victim to take part in criminal activity such as shoplifting, neglect or abuse of children to encourage self-blame and prevent disclosure to authorities;
* Financial abuse including control of finances, such as only allowing a person a punitive allowance;
* Threats to hurt or kill;
* Threats to a child;
* Threats to reveal or publish private information (e.g. threatening to 'out' someone);
* Assault;
* Criminal damage (such as destruction of household goods);
* Rape;
* Preventing a person from having access to transport or from working.