

# **SAFEGUARDING CHILDREN AND YOUNG PEOPLE**

**A Toolkit for General Practice  
2009 revision  
Annex A: Legislation and  
guidance**

## England

See *References and resources* for web links to legislation and guidance.

### **Legislation**

#### **United Nations Convention on the Rights of the Child (1989)**

This international agreement sets out the minimum standards for protecting children's rights and refers to all children up to the age of 18 years old. The principles and standards are binding on states that have ratified them. There are 54 articles: 40 give direct rights to children. The Convention defines the basic human rights of all children and specifies 14 basic rights. Each child has the right to:

- Life
- Name and nationality
- Live with his/her parents and if this is not possible then to have contact with them
- Say what they think
- Meet other children and join groups
- Be safe from harm
- Medical care
- A decent standard of living
- Education
- Practise their religion and speak their language
- Rest and time to play
- Protection from dangerous work
- Protection from the use of illicit drugs.

The remaining relate to the measures state parties must take to implement the treaty. Any nation that is a signatory has to demonstrate how these rights will be reflected in national legislation and policy. In the UK, the Convention on the Rights of the Child was ratified in December 1991 and the principles are reflected within the Children Act 1989, the Children (Northern Ireland) Order 1995, The Children (Scotland) Act 1995 and subsequent legislation.

In relation to safeguarding children, it states that:

- the best interests of the child should be a primary consideration when action is taken concerning them
- children are to be protected from all forms of discrimination
- every child has the inherent right to life, survival and development
- children should not be punished cruelly or in a way that belittles them
- children have the right to be protected from all forms of abuse and neglect and be given proper care by those looking after them
- children who are victims of abuse are entitled to the care and treatment needed to recover from the effects of their mistreatment.

See [www.unhchr.ch/html/menu2/6/crc/treaties/crc.htm](http://www.unhchr.ch/html/menu2/6/crc/treaties/crc.htm)

### **The Children Act 1989**

The Children Act 1989 came into force in October 1991. It brought together legislation on caring for and protecting children and is still the framework for safeguarding children and promoting their welfare.

The Children Act 1989 is underpinned by the following principles:

- welfare principle – the child’s welfare is the paramount consideration in any decision which affects them (s 1(1))
- welfare checklist (s 2(3) & 1(4) – a list of factors for the courts to assess what is in the welfare of the child, in a situation indicated in subsection 4
- delay to be avoided (s1(2))
- parental responsibility – replaces parental rights. Parents share parental responsibility with the local authority for a child in care
- partnership – professionals and families must work together for the welfare of children
- the child’s voice – a child’s wishes and feelings should be sought and taken into account in making decisions affecting them (if they are old enough to understand)
- family is best – a child’s own family is the best place for a child to be brought up
- no order principle s1(5) – a court order should not be made unless it is needed to improve the child’s life

- diversity issues – racial, cultural, religious and linguistic background must be taken into account in all decisions.

The main safeguarding provisions of the act are:

- child protection (s47) – a local authority has a duty to investigate if a child is thought to be suffering, or is likely to suffer, significant harm
- children in need (s17) – a local authority has a duty to assess and provide services for a child in need if parents wish it
- duty to co-operate (s27) – health, education and other public sector agencies are required to assist social care in safeguarding and promoting the welfare of children
- court orders – a court can order a child to be taken into care or to be under a supervision order. It can also order a child to be given emergency protection or to be assessed
- threshold criteria – when a local authority has decided that an application is made, then it must satisfy all the criteria set out in s31(2). These are that significant harm and causation. Causation being (a) level of care not being reasonable and (b) control.

See [www.opsi.gov.uk/acts/acts1989/Ukpga\\_19890041\\_en\\_1.htm](http://www.opsi.gov.uk/acts/acts1989/Ukpga_19890041_en_1.htm)

### **The Adoption and Children Act 2002**

This act replaces the Adoption Act 1976, updates the Children Act 1989 and modernises the existing legal framework for domestic and inter-country adoption in England and Wales.

Section 111 amends who can acquire parental responsibility to include unmarried fathers when a child is jointly registered with the mother.

Section 112 states that step-parents can obtain parental responsibility through a parental agreement or by order of the court.

Section 120 extends the definition of significant harm so that actually witnessing violence can also constitute harm

See [www.opsi.gov.uk/acts/acts2002/20020038.htm](http://www.opsi.gov.uk/acts/acts2002/20020038.htm)

## **The Children Act 2004**

The act puts into practice the proposals for legislation set out in the Green paper *Every Child Matters* (Cm 5860, 2003), including the creation of a Children's Commissioner for England. It proposed a national framework of change for children focusing on five outcomes:

- being healthy
- staying safe
- enjoying and achieving
- making a positive contribution
- achieving economic well-being.

The Act made it statutory to safeguard and promote the welfare of children across all statutory agencies except education (where it was already statutory – Education Act 2002, ss175 and 157). It set up local safeguarding children boards (LSCBs) to replace area child protection committees (ACPCs) to oversee the safeguarding of children, and required local authorities to produce annual children and young persons plans and appoint directors and lead members of children's services.

The act has limited the defence of reasonable chastisement (s 58), brought private fostering within a statutory framework and set up joint area reviews.

Regular updates are available on the *Every Child Matters* website [www.everychildmatters.gov.uk](http://www.everychildmatters.gov.uk)

## **Children and Young Persons Act 2008**

The purpose of the Act is to reform the statutory framework for the care system in England and Wales by implementing the proposals in the White Paper that require primary legislation. This forms part of the Government's programme to ensure children and young people receive high quality care and support. The Act also includes provisions in relation to well-being of children and young people, private fostering, child death notification to Local Safeguarding Children Boards and appropriate national authorities, the powers of the Secretary of State to conduct research and applications for the discharge of Emergency Protection Orders.

Act

Explanatory Notes

### **Coroners and Justice Bill**

Amongst other things the Bill proposes the following regarding children and vulnerable people:

- Extends the law proscribing possession of child pornography to include non-photographic images
- Increases flexibility in the help given to vulnerable witnesses giving evidence
- Changes rules on live links for defendants

<http://services.parliament.uk/bills/2008-09/coronersandjustice.html>

### **Apprenticeships, Skills, Children and Learning Bill**

- Strengthens the accountability of children's services
- Makes provisions in respect of pupil and student behaviour

<http://services.parliament.uk/bills/2008-09/apprenticeshipsskillschildrenandlearning.html>

### **The Human Rights Act 1998**

The Human Rights Act applies the European Convention on Human Rights to domestic law. Article 8, which covers respect for private and family life, limits state intervention in family life, which must be "in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others". This ensures that a child's right to protection overrides a family's right to privacy.

Article 3 covers the rights of an individual to be free from torture and inhuman and degrading treatment. It effectively imposes an obligation on the authorities to take preventative measures to protect a child at risk of harm.

See [www.opsi.gov.uk/acts/acts1998/80042--d.htm](http://www.opsi.gov.uk/acts/acts1998/80042--d.htm)

### **Data Protection Act 1998**

This act replaced the Data Protection Act 1984 and the Access to Personal Files Act 1987. It relates to recording information, including information about children.

Under the 1998 act, personal information must be obtained fairly and processed lawfully. Information can only be shared in certain circumstances and it has to be accurate, relevant and kept securely. In some circumstances, the act allows for disclosure of personal information without the consent of the subject, including that "...for the purpose and detection of crime, the apprehension or prosecution of offenders or when a failure to disclose information could place the protection of children, young people or vulnerable adults at risk." This is particularly relevant where an organisation or employer holds information about someone who could pose a risk to children.

See [www.opsi.gov.uk/ACTS/acts1998/19980029.htm](http://www.opsi.gov.uk/ACTS/acts1998/19980029.htm)

### **Police Act 1997 and Protection of Children Act 1999**

These acts change the routes by which employers can check whether a potential or actual employee has committed criminal offences against children, and whether there is reason for that person to be considered inappropriate to work with children. Sometimes there is a suspicion that a person may have hurt or abused a child but insufficient criminal evidence for them to be convicted. However, a check may confirm the view that the adult presents enough of a risk that they should not work with children.

### **Safeguarding Vulnerable Groups Act 2006**

Enables changes in connection with vetting and barring as recommended by the Richard Committee. The Act established a national vetting and barring scheme, and establishes the Independent Safeguarding Authority, applying to a wide number of positions and posts where people work with or have responsibility for children. The main purpose is to prevent unsuitable people from working with children and vulnerable adults.

The scheme reforms the current vetting and barring practices but employers retain their responsibilities for ensuring safe recruitment practices. It will be introduced from autumn 2008. The term 'employers' refers to both employers and managers of volunteers. The term 'employees' refers to both paid and unpaid/volunteer work/activities. General practices will need to be aware of the impact and implementation within their own jurisdictions and update their strategic governance plans accordingly.

See [www.opsi.gov.uk/acts/acts2006/ukpga\\_20060047\\_en.pdf](http://www.opsi.gov.uk/acts/acts2006/ukpga_20060047_en.pdf)

### **Sexual Offences Act 2003**

Provides a comprehensive legislative framework for sexual offences. The act covers offences against adults (including people with mental disorders), as well as offences against children and sexual offences within the family. It also makes amendments to the laws governing the sex offenders register by introducing a requirement for those cautioned or convicted of specific categories of sexual offences to inform the police of their name and address and any changes to those details.

Covers specific offences relating to the “abuse of trust” applying to those aged younger than 18. These offences include:

- sexual activity with a child
- causing or inciting a child to engage in sexual activity
- engaging with sexual activity in the presence of a child
- causing a child to watch a sexual act.

The act lists occupations to which the abuse of trust laws applies. These include staff working in:

- institutions looking after children detained under a court order – eg young offenders institutions
- accommodation provided by local authorities and voluntary organisations under statutory provision
- hospitals, clinics, care homes, children’s homes and residential family centres
- educational institutions.

It allows for a preventative order to be made to protect children from harm, including stopping offenders from visiting places where children gather – eg parks and recreation grounds.

See [www.opsi.gov.uk/ACTS/acts2003/20030042.htm](http://www.opsi.gov.uk/ACTS/acts2003/20030042.htm)

### **The Education Act 2002**

Section 175 of this act, when enforced, will introduce a statutory duty on local education authorities, maintained and independent schools and further education institutions to ensure that their responsibilities are carried out with a view to safeguarding and promoting the welfare of children and young people.

See [www.opsi.gov.uk/ACTS/acts2002/20020032.htm](http://www.opsi.gov.uk/ACTS/acts2002/20020032.htm)

## **Case Law**

Judgements – JD (FC) (Appellant) v East Berkshire Community Health NHS Trust and Others (Respondents) and two other actions (FC)[2005] UKHL, 23

[www.publications.parliament.uk/pa/ld200405/ldjudgmt/jd050421/east.pdf](http://www.publications.parliament.uk/pa/ld200405/ldjudgmt/jd050421/east.pdf)

## **Guidance**

This section deals with government guidance to agencies on safeguarding children and young people however, this list is not exhaustive and Annex C provides access to the relevant government websites.

### **Working Together to Safeguard Children (HM Government, 2006f)**

This document is the key reference for safeguarding. It provides guidance on how agencies should work together to protect children. It covers the roles and responsibilities of all professionals who come into contact with children through their work and describes the child protection process. It replaces the 1999 guidance with the same title.

- Safeguards children wherever they are, including when they live away from home
- Emphasises our shared responsibility to safeguard children
- Stresses the specific needs of disabled children and children from different ethnic groups
- Acknowledges bullying as a form of emotional abuse
- Recognises children involved in prostitution as children in need
- Requires that children's wishes and feelings are ascertained in relation to services provided for them
- Alerts staff to the interrelationship between domestic violence, parental alcoholism, drugs misuse, mental illness, child abuse and neglect
- Recognises the risk to children from employees, including volunteers, and the need to develop safeguards that maintain a safe environment.

### **Protection of Children in England: Action Plan. The Government's response to Lord Laming**

On 12 March 2009, Lord Laming published The Protection of Children in England: A Progress Report. The Government accepted all of his recommendations and promised to issue a more detailed response later on. This action plan sets out the Government's response to Lord Laming's recommendations. It outlines how all of central Government will work together with local government and front line services including teachers, teaching assistants, school governors, staff in Children's Centres and early years settings, child care workers and other partners working with children to drive forward reform of child protection services across England.

<http://publications.everychildmatters.gov.uk/default.aspx?PageFunction=productdetails&PageMode=publications&ProductId=CM+7589>

### **Safeguarding the Young and the Vulnerable December 2008**

Safeguarding the young and vulnerable is the Government's response to the third joint Chief Inspectors' report on arrangements to safeguard children, published in July 2008, which made a number of recommendations to improve safeguarding arrangements for children and young people.

<http://www.everychildmatters.gov.uk/resources-and-practice/IG00349/>

### **Child Protection, Domestic Violence, and Parental Substance Misuse. 2008**

<http://www.everychildmatters.gov.uk/files/7564-DCFS-CP-Dom%20Violence.pdf>

### **Safeguarding Children who May have been Trafficked**

This guidance document is intended to help agencies and their staff safeguard and promote the welfare of children who may have been trafficked. It is supplementary to, and should be used in conjunction with, the Government's statutory guidance: Working Together to Safeguard Children.

<http://publications.everychildmatters.gov.uk/default.aspx?PageFunction=productdetails&PageMode=publications&ProductId=HMG-00994-2007&>

### **Statement on the Duties of Doctors and Other Professionals in Investigations of Child Abuse. July 2007.**

The purpose of the statement is to help secure the involvement of the medical profession in child protection work by addressing the perception that this area of work is professionally risky.

It is essential that medical staff and other practitioners take action where they have concerns about a child's welfare. Concerns have been expressed, however, that by getting involved as expert witnesses in suspected cases of abuse, or by becoming engaged in specialist safeguarding, roles could be affected by a concern for personal circumstances. This statement provides clarification of the issues involved.

<http://www.everychildmatters.gov.uk/resources-and-practice/IG00251/>

### **Caring for Young People and the Vulnerable (Home Office, 1999)**

This is designed to encourage all organisations caring for children or vulnerable adults to put codes of conduct in place to protect against sexual activity within a relationship of trust. The guidance contains principles of good practice on how to provide safeguards.

### **Framework for the Assessment of Children in Need and their Families (Department of Health et al, 2000)**

The framework was developed in relation to supporting children in need and working closely with families. It provides guidance for all agencies that may contribute to the assessment of need for children and families.

[http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_4003256](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4003256)

### **What to Do if you're Worried a Child is Being Abused (HM Government, 2006e)**

This practice guidance was issued following the inquiry conducted by Lord Laming into the death of Victoria Climbié. It draws together the guidance in Working Together to Safeguarding Children and the Framework for the Assessment of Children in Need and Their Families in a more accessible format for practitioners. It spells out the processes to be followed when there are

concerns about a child's welfare, including their safety, and provides clear expectations of everyone working with or coming into contact with children and their parents or carers.

**Safeguarding Children and Safer Recruitment in Education (Department for Education and Skills, 2006)**

Linked to the Education Act 2002, this guidance sets out the legal duties of local education authorities, schools and further education colleges to safeguard and promote the welfare of children, and provides vetting and barring guidance in accordance with the Bichard Committee recommendations.

<http://www.everychildmatters.gov.uk/resources-and-practice/IG00175/>

**Information Sharing – guidance for practitioners and managers (HM Government, 2008)**

This guidance explains the principles which should govern sharing information between staff and agencies. It gives six key points to guide practitioners.

<http://www.everychildmatters.gov.uk/resources-and-practice/IG00340/>

## Scotland

See *References and resources* for web links to legislation and guidance

### **United Nations Convention on the Rights of the Child (1989)**

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- say what they think
- meet with other children and join groups
- be safe from harm
- medical care
- a decent standard of living
- education
- practise their religion and speak their language
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- protection from dangerous work
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In relation to safeguarding children, it states that:

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- children must be protected from all forms of discrimination
- every child has the inherent right to life, survival and development
- children should not be punished cruelly or in a way that belittles them
- children have the right to be protected from all forms of abuse and neglect, and be given proper care by those looking after them
- children who are victims of abuse are entitled to the care and treatment needed to recover from the effects of their mistreatment.

See [www.unhcr.ch/html/menu2/6/crc/treaties/crc.htm](http://www.unhcr.ch/html/menu2/6/crc/treaties/crc.htm)

### **The Children (Scotland) Act 1995**

This act brought together legislation on caring for and protecting children and is the framework for promoting and safeguarding their welfare.

The act is underpinned by the following principles:

- each child who can form views on matters affecting them has the right to express those views if they wish
- parents should normally be responsible for the upbringing of their children and should share that responsibility
- each child has the right to protection from all forms of abuse, neglect or exploitation
- in decisions relating to the protection of a child every effort should be made to keep the child in the family home
- any intervention by a public authority in the life of a child should be properly justified and supported by services from all relevant agencies working in collaboration.

Three main themes run through the act:

- the welfare of the child is the paramount consideration when their needs are considered by courts and children's hearings
- no court should make an order relating to a child. No children's hearing should make a supervision requirement unless the court or hearing considers doing so would be better for the child than not making an order or supervision requirement
- the child's views should be taken into account where major decisions are to be

made about their future.

Chapter 2 (s39-51) of the Act outlines the functions of Children's Hearings, a feature of the Child Protection system which is unique to Scotland. It is important to note that anyone may make a referral to the Children's Hearings Reporter, who then investigates each one to decide whether or not compulsory measures are needed to protect a child. Hearings can decide to take a range of measures including warrants and Child Protection Orders. Local Authorities have a legal obligation to implement Hearing decisions.

See <http://www.childrens-hearings.co.uk/background.asp>

See [www.scotland.gov.uk/library/documents4/sc-ch-02.htm](http://www.scotland.gov.uk/library/documents4/sc-ch-02.htm)

The main safeguarding provisions of the act are:

- Child protection (s53) – a local authority has a duty to investigate if a child is thought to need “compulsory measures” to keep them safe.
- Children in need (ss22–24) – a local authority has a duty to assess and provide services for a child in need.
- Co-operation between authorities (s21) – local authorities can ask health and other agencies to assist social workers to protect children.
- Welfare of certain children in hospital and nursing homes (s36).
- Court orders – a court can make an order to take a range of actions to protect children, to assess them and, if necessary, give emergency protection. It can make a parental responsibilities order or an order to exclude a child from a home.

It is important to note that the Act (s41) outlines the particular set of safeguards for children involved in legal proceedings. The use of *Safeguarders* in children's proceedings gives added protection to children who come before children's hearings and the court in that they are appointed to represent the child's best interests in the proceedings but not to act as an advocate for the child. This specific statutory application of the safeguarding concept lies behind the choice of ‘protection and promotion of welfare’ as the Scottish equivalent of the broader use of the term ‘safeguarding’ in other jurisdictions.

In addition, s5 states that:

“Anyone (aged 16 or over) who has care or control of a child (under 16 years) has a duty to do what is reasonable in all the circumstances to safeguard the child's health, development and welfare.” This is the basis for requiring those working or volunteering with children and young people in any setting to have measures in place to keep the child safe – their duty of care towards the child.

### **Age of Legal Capacity (Scotland) Act 1991**

Section 2 recognises that children with legal capacity are able to make some decisions on their own behalf. For example, a child older than 12 may consent to medical procedures or treatment, or instruct a solicitor in relation to civil matters, as long as they are capable of understanding their nature and possible consequences.

See [www.opsi.gov.uk/ACTS/acts1991/Ukpga\\_19910050\\_en\\_1.htm](http://www.opsi.gov.uk/ACTS/acts1991/Ukpga_19910050_en_1.htm)

### **Adults with Incapacity (Scotland) Act 2000**

Adults are defined as being aged 16 years and older. The law provides for decisions to be made on behalf of adults who lack legal capacity because of mental disorder or an inability to communicate.

See [www.opsi.gov.uk/legislation/scotland/acts2000/20000004.htm](http://www.opsi.gov.uk/legislation/scotland/acts2000/20000004.htm)

### **The Human Rights Act 1998**

The Human Rights Act applies the European Convention on Human Rights to British law. Article 8, which covers respect for private and family life, limits state intervention in family life, which must be "...in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others." This ensures that a child's right to protection overrides a family's right to privacy.

Article 3 covers the rights of an individual to be free from torture and inhuman and degrading treatment. It effectively imposes an obligation on the authorities to take preventative measures to protect a child at risk of harm.

See [www.opsi.gov.uk/acts/acts1998/80042--d.htm](http://www.opsi.gov.uk/acts/acts1998/80042--d.htm)

### **Data Protection Act 1998**

This act replaced the Data Protection Act 1984 and the Access to Personal Files Act 1987. It relates to recording information, including information about children. Under the 1998 act, personal information must be obtained fairly and processed lawfully. Information can only be shared in certain circumstances and it has to be accurate, relevant and kept securely. In some circumstances, the act allows for disclosure of personal information without the consent of the subject, including

that "...for the purpose and detection of crime, the apprehension or prosecution of offenders or when a failure to disclose information could place the protection of children, young people or vulnerable adults at risk." This is particularly relevant where an organisation or employer holds information about someone who could pose a risk to children.

See [www.opsi.gov.uk/ACTS/acts1998/19980029.htm](http://www.opsi.gov.uk/ACTS/acts1998/19980029.htm)

### **Protection of Children (Scotland) Act 2003**

This act allows Scottish ministers to maintain a list of persons deemed unsuitable to work with children – the Disqualified from Working with Children List.

It requires organisations, including voluntary organisations, to make a referral if an individual has been permanently removed from a childcare position (as defined in Schedule 2 of the act) on the grounds that they harmed a child or placed a child at risk of harm. There is also provision for organisations to make a referral where an individual has resigned, retired or accepted redundancy before the allegations of harm or risk of harm to a child have come to light.

Usually, referrals are made by organisations, including voluntary and regulatory bodies, and by Scottish courts following conviction for an offence against a child. Referrals made at the discretion of the courts result in automatic inclusion in the list. Organisational referrals are decided by a determination panel on behalf of the Scottish ministers. Access to the list is available only through the disclosure process and forms part of safe recruitment practice when filling a childcare position.

Under the act, it is an offence for an organisation to knowingly appoint a worker (paid or unpaid) who is fully listed into a childcare position. Listed people (who are informed when they are listed) commit a criminal offence if they work with children or apply to do so. Organisations have a duty to refer someone who has harmed a child or placed a child at risk of harm, and is dismissed, resigns or is moved away from contact with children as a consequence. Ministers investigate and decide whether someone should be added to the list. Organisations also have a duty to remove fully listed people from childcare positions.

The Act has been repealed in part by The Protection of Vulnerable Groups (Scotland) Act 2007 asp14. It has also been modified by the Scottish Statutory Instrument 2009 SSI 4 - The Protection of Vulnerable Groups (Scotland) Act 2007 (Transitory Provisions in Consequence of the Safeguarding Vulnerable Groups Act 2006) Order 2009 No 4.

See [www.opsi.gov.uk/legislation/scotland/acts2003/20030005.htm](http://www.opsi.gov.uk/legislation/scotland/acts2003/20030005.htm)

[http://www.statutelaw.gov.uk/legResults.aspx?LegType=Act+\(Scottish+Parliament\)&Year=2007&number=14&searchEnacted=0&extentMatchOnly=0&confersPower=0&blanketAmendment=0&TYPE=QS&NavFrom=0&activeTextDocId=3324515&PageNumber=1&SortAlpha=0](http://www.statutelaw.gov.uk/legResults.aspx?LegType=Act+(Scottish+Parliament)&Year=2007&number=14&searchEnacted=0&extentMatchOnly=0&confersPower=0&blanketAmendment=0&TYPE=QS&NavFrom=0&activeTextDocId=3324515&PageNumber=1&SortAlpha=0)

[http://www.statutelaw.gov.uk/legResults.aspx?LegType=S.S.I.+\(All+Scottish\)&Year=2009&number=4&searchEnacted=0&extentMatchOnly=0&confersPower=0&blanketAmendment=0&TYPE=QS&NavFrom=0&activeTextDocId=3547096&PageNumber=1&SortAlpha=0](http://www.statutelaw.gov.uk/legResults.aspx?LegType=S.S.I.+(All+Scottish)&Year=2009&number=4&searchEnacted=0&extentMatchOnly=0&confersPower=0&blanketAmendment=0&TYPE=QS&NavFrom=0&activeTextDocId=3547096&PageNumber=1&SortAlpha=0)

### **The Protection of Children (Scotland) Act 2003 (Amendment of the Definition of Child Care Position) Order 2008**

- [SSI 2008/260 - Web Version \(HTML\)](#)
- [SSI 2008/260 - Print Version \(PDF - 41 kb\)](#)
- [SSI 2008/260 - Executive Note \(PDF - 40 kb\)](#)

### **Adoption and Children (Scotland) Act 2007 asp 4**

- [2007 asp 4 - Web Version \(HTML\)](#)
- [2007 asp 4 - Print Version \(PDF - 241 kb\)](#)
- [2007 asp 4 - Explanatory Note \(HTML\)](#)
- [2007 asp 4 - Explanatory Note \(PDF - 162 kb\)](#)

### **Public Health etc. (Scotland) Act 2008 asp 5**

Public Health etc. (Scotland) Act 2008 has a section prohibiting the use of sunbeds for the under-18s:

- [2008 asp 5 - Web Version \(HTML\)](#)
- [2008 asp 5 - Print Version \(PDF - 263 kb\)](#)
- [2008 asp 5 - Explanatory Note \(HTML\)](#)
- [2008 asp 5 - Explanatory Note \(PDF - 157 kb\)](#)

### ***Sexual offences legislation***

Sexual offences in Scotland are either common law offences such as rape, or statutory offences. Most of the statutory offences are contained in Part I of the Criminal Law (Consolidation) (Scotland) Act 1995, including offences of incest and intercourse with, or indecent behaviour towards, children.

Sections 52 and 52A of the Civic Government (Scotland) Act 1982 contain offences concerned with the taking, distribution and possession of indecent images of children, while Section 311 of the Mental Health (Care and Treatment) (Scotland) Act 2003 is concerned with non-consensual sexual acts.

### **Sexual Offences (Amendments) Act 2000**

This act introduced an offence of abuse of trust applicable to “positions of trust” which involve looking after children and young people who are in full time education, detained under a court order, looked after (in a hospital, children’s home or other establishment providing social care), or in foster care.

### **Sexual Offences Act 2003**

This act provides the main legislative framework for sexual offences in England and Wales. Covering the UK, it contains legislation governing the sex offenders register, whereby registered offenders are required to notify their movements to the police. Clarification of its application in Scotland is available in the Sexual Offences Act 2003 (Commencement) (Scotland) Order 2004.

### **Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005**

The aim is to improve the protection given to children and young people from those who wish to cause them sexual harm, or exploit them for sexual purposes. It also aims to increase the protection offered to adults and children against those convicted of sexual offences who still pose a risk of sexual harm.

It introduces the new offences:

- sexual grooming of a person under 16
- paying for the sexual services of a person under 18
- causing, inciting, controlling, arranging or facilitating the provision of sexual services by children or child pornography.

The act also:

- removes the statutory time limit for prosecution of the offence of unlawful intercourse with a girl between 13 and 16
- amends legislation criminalising the taking, possessing and distribution of indecent images of children so that it applies to images of people younger than 18 rather than only to images of those aged 16 or younger
- introduces risk of sexual harm orders (RSHOs), designed to protect children from those who display inappropriate behaviour towards them
- extends the use of sexual offences prevention orders (SOPOs) so that they can be imposed on those convicted of sex offences by the court when they are sentenced.

See [www.opsi.gov.uk/legislation/scotland/acts2005/20050009.htm](http://www.opsi.gov.uk/legislation/scotland/acts2005/20050009.htm) and [www.scotland.gov.uk/Resource/Doc/155036/0041656.pdf](http://www.scotland.gov.uk/Resource/Doc/155036/0041656.pdf)

### **Criminal Justice (Scotland) Act 2003**

This act amended the law regarding the physical punishment of children by parents. It makes it illegal for parents to hit a child on the head, hit a child with an implement, or shake a child.

See [www.opsi.gov.uk/legislation/scotland/acts2003/20030007.htm](http://www.opsi.gov.uk/legislation/scotland/acts2003/20030007.htm)

### **Protecting Vulnerable Groups (Scotland) Act 2007**

This Act relates to a new Scottish Vetting and Barring Scheme that builds on some of the existing provisions of the Protection of Children (Scotland) Act 2003. It includes the following provisions:

- Two lists will be established: one for those who are unsuitable to work with children and young people younger than 18; another for those unsuitable to work with “protected adults”.
- The definition of a childcare position is slightly extended and more clearly defined.
- Anyone who wants to work with children will be required to register with the scheme.
- Three different types of disclosure can be requested. Anyone requesting a disclosure check must use it only for the purpose of considering someone’s suitability to work with children. it is an offence to use it for any other purpose.

- Employers can appoint people on the condition that the disclosure check does not show that they are barred from working with children.
- Employers must still refer a person to disclosure in Scotland if they dismiss or move them away from working with children for harming or putting a child at risk of harm.
- People who commit a relevant offence (detailed in schedule 1) against a child will now be automatically included in the barring list.
- Unless someone is automatically barred for a relevant offence against a child, a new central barring unit will have a duty to consider whether someone should be barred whenever they receive a referral.

See: <http://www.opsi.gov.uk/legislation/scotland/acts2007/20070014.htm>

**The Protection of Vulnerable Groups (Scotland) Act 2007 (Transitory Provisions in Consequence of the Safeguarding Vulnerable Groups Act 2006) Order 2009**

- [SSI 2009/4 - Web Version \(HTML\)](#)
- [SSI 2009/4 - Print Version \(PDF - 45 kb\)](#)
- [SSI 2009/4 - Executive Note \(PDF - 93 kb\)](#)

**Protection of Vulnerable Groups (Scotland) Act 2007 asp 14**

[2007 asp 14 - Web Version \(HTML\)](#)

[2007 asp 14 - Print Version \(PDF - 214 kb\)](#)

[2007 asp 14 - Explanatory Note \(HTML\)](#)

[2007 asp 14 - Explanatory Note \(PDF - 164 kb\)](#)

**Guidance**

This section deals with government guidance to agencies on safeguarding children and young people.

### **Protecting Children – A Shared Responsibility (Scottish Office, 1998)**

The main national reference for safeguarding, with guidance on how agencies should work together to protect children and young people. It covers the roles and responsibilities of all professionals who come into contact with young people through their work and describes the child protection process.

### **National inter-agency guidance on child protection – *Protecting Children A Shared Responsibility, Guidance on Inter-agency Co-operation* (1998) Scottish Office.**

See [www.scotland.gov.uk/library/documents-w3/pch-13.htm](http://www.scotland.gov.uk/library/documents-w3/pch-13.htm)

And specific version for Protecting Children: A Shared Responsibility Guidance for Health Professionals in Scotland (Scottish Office, 1999), see <http://www.scotland.gov.uk/library2/doc11/pcsr-00.asp>

<http://www.scotland.gov.uk/Publications/2003/03/16909/21128>

### **“It’s everyone’s job to make sure I’m alright” Report of the Child Protection Audit and Review (Scottish Executive, 2002)**

This report outlines the findings of the child protection audit and review into child protection in Scotland. It makes a number of recommendations that aim to improve services for children who experience abuse or neglect. In response, the Scottish Executive developed the Child Protection Reform Programme, its overarching goals being to improve the protection of children at risk of neglect and abuse, and reduce the number of children who need protection.

### **Sharing Information about Children at Risk (Scottish Executive, 2003a)**

A short guide advising agencies on when it is necessary to share personal and confidential information with other professionals about the people using their service, to safeguard and protect the welfare of children who may be vulnerable or at risk. It is designed to help staff approach this complex area with greater clarity and confidence. At the time of writing, this guidance is currently being updated.

See [www.scotland.gov.uk/Resource/Doc/47237/0013498.pdf](http://www.scotland.gov.uk/Resource/Doc/47237/0013498.pdf)

**Getting Our Priorities Right: Policy and Practice Guidelines for Working with Children and Families Affected by Problem Drug Use (Scottish Executive, 2003b)**

Guidance for those working with children and families affected by substance misuse. It sets out what agencies need to ask of families when they present with drug or alcohol problems, and guidance to staff on identifying risks and the kinds of help that may be needed. It offers advice on working together more effectively and considers confidentiality and information sharing.

**Protecting Children and Young People – The Charter (Scottish Executive, 2004a)**

The Charter comprises 13 statements derived from consultations with children and young people. These are key messages for those who deliver services about what is important to children and young people and how they can be protected.

The statements are:

- get to know us
- speak with us
- listen to us
- take us seriously
- involve us
- respect our privacy
- be responsible to us
- think about our lives as a whole
- think carefully about how you use information about us
- put us in touch with the right people
- use your power to help
- make things happen when they should
- help us be safe.

### **Protecting Children and Young People – Framework for Standard (Scottish Executive, 2004b)**

Translates the commitments in the Children’s Charter so they can be put into practice. It sets out what each child in Scotland can expect from professionals and agencies to ensure that they are adequately protected and their needs are met. It also sets out what parents –or other adults who may report abuse and neglect – can expect.

The standards are:

- children get the help they need when they need it
- professionals take timely and effective action to protect children
- professionals ensure children are listened to and respected
- agencies and professionals share information about children where this is necessary to protect them
- agencies and professionals work together to assess needs and risks and develop effective plans
- professionals are competent and confident
- agencies work in partnership with members of the community to protect children
- agencies, individually and collectively, demonstrate leadership and accountability for their work and its effectiveness.

### **Getting it Right for Every Child (Scottish Executive, 2005a)**

The programme for improving children’s services, including an integrated framework for assessment, planning and recording. The document presents the Scottish Executive’s vision for the children of Scotland – that they should be ambitious and:

- confident individuals
- effective contributors
- successful learners
- responsible citizens.

To achieve the vision, children need to be:

- Safe: protected from abuse, neglect and harm by others at home, at school and in the community
- Nurtured: live within a supportive family setting, with additional assistance if

required – or, where this is not possible, within another caring setting, ensuring a positive and rewarding childhood

- Healthy: enjoy the highest attainable standards of physical and mental health, with access to suitable healthcare, and support for safe and healthy lifestyle choices
- Achieving: have access to positive learning environments and opportunities to develop their skills, confidence and self-esteem to the fullest potential
- Active have opportunities and encouragement to participate in play and recreation, including sport
- Respected and responsible: together with carers, be involved in decisions that affect them, have their voices heard and be encouraged to play an active and responsible role in their communities
- Included: have access to high-quality services, when required, and be assisted to overcome the social, educational, physical, environmental and economic barriers that create inequality.

### **Safe and Well: A Handbook for Staff, Schools and Education Authorities (Scottish Executive, 2005b)**

The handbook describes good practice in child protection in educational settings and when a child goes missing from education, adapted from NSPCC (2002) *Safeguarding Children: Everybody's Business*

### **Safeguarding Children in Scotland who may have been Trafficked**

Guidance developed to support professionals in identifying, assessing and providing appropriate support for children who may have been victims of trafficking.

<http://www.scotland.gov.uk/Publications/2009/02/18092546/0>

### **Literature Review: Better Outcomes for Children and Young People Experiencing Domestic Abuse - Directions for Good Practice**

Review of literature on domestic abuse and its effects on children and young people <http://www.scotland.gov.uk/Publications/2008/08/04112614/0>

**The Protection of Children (Scotland) Act 2003 - Guidance: (Amendment of the Definition of Children Care Position Order 2008)**

Guidance document for the Amendment of the Definition of Child Care Position Order 2008

<http://www.scotland.gov.uk/Publications/2008/07/21115427/0>

**National Domestic Abuse Delivery Plan for Children and Young People**

A delivery plan for children and young people

<http://www.scotland.gov.uk/Publications/2008/06/17115558/0>

**Supplementary Information and Guidance: Disqualified from Working with Children List**

The DWCL process and how decisions are reached; guidance on completion of the referral form; guidance on provisional listing; referral form to be used from February 2008

<http://www.scotland.gov.uk/Publications/2008/01/28095214/0>

**Protecting Vulnerable Groups Scheme: Check to Protect  
Protecting Vulnerable Groups Scheme, Information Booklet**

<http://www.scotland.gov.uk/Publications/2009/03/27172859/0>

**Protection of Vulnerable Groups (Scotland) Act 2007: Scottish Vetting and Barring Scheme**

**Scottish Government response to the analysis of consultation on policy proposals for secondary legislation.**

<http://www.scotland.gov.uk/Publications/2008/09/29114859/0>

**Special Measures for Vulnerable Adult and Child Witnesses: a guidance pack**

<http://www.scotland.gov.uk/Publications/2008/04/21142140/0>

## **Northern Ireland**

See *References and resources* for web links to legislation and guidance.

Though some provisions made by the UK Parliament apply, Northern Ireland has its own body of law and this covers most social welfare legislation. The statute book includes a residue of Stormont Parliament legislation, Westminster Acts and Orders in Council, and some Assembly legislation from the 1999-2002 sessions.

Northern Ireland child protection law is affected by section 5 of the Criminal Law Act (Northern Ireland) 1967, making it a criminal offence (subject to the view of the Attorney General) not to report an arrestable offence to the police, so that reporting serious cases of child abuse is technically mandatory.

## **United Nations Convention on the Rights of the Child (1989)**

This international agreement sets out the minimum standards for protecting children's rights and refers to all children up to the age of 18 years old. The principles and standards are binding on states that have ratified them. There are 54 articles: 40 give rights to children. The Convention defines the basic human rights of all children and specifies 14 basic rights. Each child has the right to:

- Life
- Name and nationality
- Live with his/her parents and if this is not possible then to have contact with them
- Say what they think
- Meet other children and join groups
- Be safe from harm
- Medical care
- A decent standard of living
- Education
- Practise their religion and speak their language
- Rest and time to play
- Protection from dangerous work
- Protection from the use of illicit drugs.

The remaining relate to the measures state parties must take to implement the treaty. Any nation that is a signatory has to demonstrate how these rights will be reflected in national legislation and policy. In the UK, the Convention on the Rights of the Child was ratified in December 1991 and the principles are reflected within the Children Act 1989, the Children (Northern Ireland) Order 1995, The Children (Scotland) Act 1995 and subsequent legislation.

In relation to safeguarding children, it states that:

- the best interests of the child should be a primary consideration when action is taken concerning them
- children are to be protected from all forms of discrimination
- every child has the inherent right to life, survival and development
- children should not be punished cruelly or in a way that belittles them
- children have the right to be protected from all forms of abuse and neglect and be given proper care by those looking after them
- children who are victims of abuse are entitled to the care and treatment needed to recover from the effects of their mistreatment.

See [www.unhchr.ch/html/menu2/6/crc/treaties/crc.htm](http://www.unhchr.ch/html/menu2/6/crc/treaties/crc.htm)

### **The Children (Northern Ireland) Order 1995**

This legislation came into force in 1996 and is similar in impact and principle to the UK Children Act 1989, on which it is based, although sequencing and layout are different. It brought together legislation on caring for and protecting children and is still the framework for promoting and safeguarding their welfare.

The Children (NI) Order 1995 is underpinned by the following principles:

- Welfare – the child's welfare is the paramount consideration in any decision which affects them.
- Parental responsibility – replaces parental rights. Parents share parental responsibility with the local trust for a child in care.
- Partnership – professionals and families must work together for the welfare of children.
- The child's voice – a child's wishes and feelings should be sought and taken into account in making decisions affecting them (if they are old enough to understand).
- Family is best – a child's own family is usually the best place for a child to be brought up.

- No order – a court order should not be made unless it is needed to improve the child's life.
- Diversity issues – racial, cultural, religious, and linguistic background must be taken into account in all decisions.

The main safeguarding provisions of the order are:

- Child protection (article 66) – an authority has a duty to investigate if a child is thought to be suffering, or is likely to suffer, significant harm.
- Children in need (article 17) – an authority has a duty to assess and provide services for a child in need.
- Duty to co-operate – health, education and other public sector agencies are required to assist social care in safeguarding and promoting the welfare of children.
- Court orders – a court can order a child to be taken into care or to be under a supervision order. It can also order a child to be given emergency protection or to be assessed.

See [www.opsi.gov.uk/SI/si1995/Uksi\\_19950755\\_en\\_2.htm](http://www.opsi.gov.uk/SI/si1995/Uksi_19950755_en_2.htm)

### **The Family Homes and Domestic Violence (Northern Ireland) Order (1998)**

This extended the definition of significant harm so that actually witnessing violence can also constitute harm.

See [www.opsi.gov.uk/si/si1998/19981071.htm](http://www.opsi.gov.uk/si/si1998/19981071.htm)

The UK Children Act 2004 has not been applied to Northern Ireland, but the **Commissioner for Children and Young People (Northern Ireland) Order 2003** established the Northern Ireland Commissioner's Office with wide-ranging powers and duties. Northern Ireland ministers have indicated that legislation will be enacted in future to establish a new Safeguarding Board for Northern Ireland. This will include a new statutory duty that agencies co-operate with safeguarding arrangements. This is still in development

See [www.opsi.gov.uk/SI/si2003/20030439.htm](http://www.opsi.gov.uk/SI/si2003/20030439.htm)

The **Office of the First Minister and Deputy First Minister's (OFMDFM's)** 10-year strategy for children and young people is the Northern Ireland equivalent of

England's *Every Children Matters* framework, and establishes high level outcomes for children:

- being healthy
- enjoying, learning and achieving
- living in safety and with stability
- experiencing economic and environmental well-being
- contributing positively to community and society
- living in a society which respects their rights.

The **Children and Young People's Unit** (CYPU) is a branch within the Good Relations and Reconciliation Division, and has responsibility for overseeing the implementation and subsequent evaluation of the ten year strategy sponsoring and monitoring the Commissioner for Children and Young People for Northern Ireland.

<http://www.allchildrenni.gov.uk/>

### **The Human Rights Act 1998**

The Human Rights Act applies the European Convention on Human Rights to British law, including Northern Ireland. Article 8, which covers respect for private and family life, limits state intervention in family life, which must be "...in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others." This ensures that a child's right to protection overrides a family's right to privacy.

Article 3 covers the rights of a person to be free from torture and inhuman and degrading treatment. It effectively imposes an obligation on the authorities to take preventative measures to protect a child at risk of harm.

See [www.opsi.gov.uk/acts/acts1998/80042--d.htm](http://www.opsi.gov.uk/acts/acts1998/80042--d.htm)

### **Data Protection Act 1998**

This act replaced the Data Protection Act 1984 and the Access to Personal Files Act 1987. It relates to recording information, including information about children. Under the 1998 act, personal information must be obtained fairly and processed lawfully. Information can only be shared in certain circumstances and it has to be accurate, relevant and kept securely. In some circumstances, the act allows for disclosure of personal information without the consent of the subject, including

that "...for the purpose and detection of crime, the apprehension or prosecution of offenders or when a failure to disclose information could place the protection of children, young people or vulnerable adults at risk." This is particularly relevant where an organisation or employer holds information about someone who could pose a risk to children.

See [www.opsi.gov.uk/ACTS/acts1998/19980029.htm](http://www.opsi.gov.uk/ACTS/acts1998/19980029.htm)

### **Police Act 1997**

Part V of the Police Act 1997 will formally be implemented in Northern Ireland in 2007, allowing the government to establish Access NI, a new disclosure body, the equivalent of the Criminal Records Bureau in England and Wales. Access NI will issue enhanced criminal record certificates for regulated positions.

### **Safeguarding Vulnerable Groups (Northern Ireland) Order 2007**

The Safeguarding Vulnerable Groups Act 2006 provides the framework for new Independent Safeguarding Authority scheme for these groups and extends parts of the scheme to Northern Ireland. The Act establishes a national vetting and barring scheme applying to a very wide number of positions and posts where people work with or have responsibility for children. The main purpose is to prevent unsuitable people from working with children and vulnerable adults. The scheme reforms the current vetting and barring practices, but employers retain their responsibilities for ensuring safe recruitment practices. The Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 replicates those parts of the scheme which do not extend to Northern Ireland so that a seamless vetting and barring will be available across all jurisdictions. The scheme will be introduced from autumn 2008. The term "employers" refers to both employers and managers of volunteers. The term "employees" refers to both paid and unpaid/volunteer work/activities.

General practices will need to be aware of the impact and implementation within their own jurisdictions and update their strategic governance plans accordingly.

### **(N.I. 11) The Safeguarding Vulnerable Groups (Northern Ireland) Order 2007**

[SI 2007/1351 - Web Version \(HTML\)](#)

[SI 2007/1351 - Print Version \(PDF - 208 kb\)](#)

[SI 2007/1351 - Explanatory Memorandum \(PDF - 82 kb\)](#)

[SI 2007/1351 - Explanatory Memorandum \(HTML - 30 kb\)](#)

### **Sexual Offences Act 2003**

This provides a comprehensive legislative framework for sexual offences. All of Part 2 (those provisions that relate to sex offender notification and new orders to restrict elements of offender behaviour) of the Sexual Offences Act applies in Northern Ireland and some aspects of Part 1, such as the abuse of trust provisions. *Reforming the Law on Sexual Offences in Northern Ireland, A Consultative Document, Volume 2* provides a detailed discussion and consideration on the criminal law on sex offences in Northern Ireland. General practices will, however, need to be aware that although the parts of the Sexual Offences Act 2003 have been extended to Northern Ireland (see below), these will remain in place until ‘all sexual offences in Northern Ireland will be consolidated into one Sexual Offences (Northern Ireland) Order’<sup>1</sup>.

The Sexual Offences Act 2003 covers offences against adults (including people with mental disorders), as well as offences against children and sexual offences within the family. It amends the law governing the sex offenders register by introducing a requirement for those cautioned or convicted of specific categories of sexual offences to inform the police of their name and address and any changes to those details. The act also covers specific offences relating to the “abuse of trust” which apply when the child is younger than 18.

These offences include:

- sexual activity with a child
- causing or inciting a child to engage in sexual activity
- engaging with sexual activity in the presence of a child
- causing a child to watch a sexual act.

It lists occupations to which the abuse of trust law applies. These include staff in:

- institutions looking after children detained under a court order – eg a young offenders institution
- accommodation provided by local authorities and voluntary organisations under statutory provision
- hospitals, clinics, care homes, children’s homes and residential family centres

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<sup>1</sup> Northern Ireland Office (July 2006), *Reforming the Law on Sexual Offences in Northern Ireland, A Consultative Document*, Vol 2, detailed discussion and consideration, para 1.2.3

- educational institutions.

The act allows for a preventative order to be made to protect children from harm. This includes stopping offenders from visiting places where children gather – eg parks and recreation grounds.

For detailed offences in Sexual Offences Act 2003 that apply in Northern Ireland see Annex One, *Reforming the Law on Sexual Offences in Northern Ireland, A Consultative Document, Volume 2*.

See [www.nio.gov.uk/reforming the law on sexual offences in northern ireland consultative document - volume 2.pdf](http://www.nio.gov.uk/reforming_the_law_on_sexual_offences_in_northern_ireland_consultative_document_-_volume_2.pdf)

### **(N.I. 2)The Sexual Offences (Northern Ireland) Order 2008**

[SI 2008/1769 - Web Version \(HTML\)](#)

[SI 2008/1769 - Print Version \(PDF - 205 kb\)](#)

[SI 2008/1769 - Explanatory Memorandum \(HTML\)](#)

[SI 2008/1769 - Explanatory Memorandum \(PDF - 294 kb\)](#)

### **The Sexual Offences (Northern Ireland Consequential Amendments) Order 2008**

[SI 2008/1779 - Web Version \(HTML\)](#)

[SI 2008/1779 - Print Version \(PDF - 65 kb\)](#)

### **Education and Libraries (Northern Ireland) Order 2003**

This introduces a new statutory duty on local education authorities, maintained and independent schools, and further education institutions in Northern Ireland to ensure that their responsibilities are carried out to safeguard and promote the welfare of children and young people.

### **Guidance**

This section deals with government guidance to agencies on safeguarding children and young people.

### **Safeguarding Children Statement - Children and Young People's Unit**

[http://www.allchildrenni.gov.uk/safeguarding\\_children\\_statement-3.doc](http://www.allchildrenni.gov.uk/safeguarding_children_statement-3.doc)

### **Children and Young People: A Ten Year Strategy for Children and Young People in Northern Ireland 2006-2016**

<http://www.allchildrenni.gov.uk/tenyearstrategychildren1-2.pdf>

### **Co-operating to Safeguard Children (DHSSPS, 2003)**

This is the main Northern Ireland reference for safeguarding. It provides guidance on how agencies should work together to protect children, and covers the roles and responsibilities of all professionals who come into contact with children through their work. It also describes the child protection process. Replaces the 1999 guidance *Co-operating to Protect Children* with a similar title.

See [www.dhsspsni.gov.uk/child\\_care\\_guidance](http://www.dhsspsni.gov.uk/child_care_guidance)

[www.dhsspsni.gov.uk/show\\_publications?txtid=14022](http://www.dhsspsni.gov.uk/show_publications?txtid=14022)

### **Circular 99/10 Pastoral Care in Schools**

Sets out the child protection responsibilities of those working in the education sector to protect children. It is likely to be replaced by a new document taking into account UNOCINI (Understanding the Needs of Children In Northern Ireland), a new assessment framework for Northern Ireland to be implemented in 2007/2008.

## Wales

See *References and resources* for web links to legislation and guidance.

### United Nations Convention on the Rights of the Child (1989)

This international agreement sets out the minimum standards for protecting children's rights and refers to all children up to the age of 18 years old. The principles and standards are binding on states that have ratified them. There are 54 articles: 40 give rights to children. The Convention defines the basic human rights of all children and specifies 14 basic rights. Each child has the right to:

- Life
- Name and nationality
- Live with his/her parents and if this is not possible then to have contact with them
- Say what they think
- Meet other children and join groups
- Be safe from harm
- Medical care
- A decent standard of living
- Education
- Practise their religion and speak their language
- Rest and time to play
- Protection from dangerous work
- Protection from the use of illicit drugs.

The remaining relate to the measures state parties must take to implement the treaty. Any nation that is a signatory has to demonstrate how these rights will be reflected in national legislation and policy. In the UK, the Convention on the Rights of the Child was ratified in December 1991 and the principles are reflected within the Children Act 1989, the Children (Northern Ireland) Order 1995, The Children (Scotland) Act 1995 and subsequent legislation.

In relation to safeguarding children, it states that:

- the best interests of the child should be a primary consideration when action is taken concerning them
- children are to be protected from all forms of discrimination
- every child has the inherent right to life, survival and development

- children should not be punished cruelly or in a way that belittles them
- children have the right to be protected from all forms of abuse and neglect and be given proper care by those looking after them
- children who are victims of abuse are entitled to the care and treatment needed to recover from the effects of their mistreatment.

See [www.unhchr.ch/html/menu2/6/crc/treaties/crc.htm](http://www.unhchr.ch/html/menu2/6/crc/treaties/crc.htm)

### **Children Act 1989**

The Children Act 1989 came into force in October 1991. It brought together legislation on caring for and protecting children and is still the framework for safeguarding children and promoting their welfare.

The Children Act 1989 is underpinned by the following principles:

- welfare principle – the child's welfare is the paramount consideration in any decision which affects them (s 1(1))
- welfare checklist (s 2(3) & 1(4) – a list of factors for the courts to assess what is in the welfare of the child, in a situation indicated in subsection 4
- delay to be avoided (s1(2))
- parental responsibility – replaces parental rights. Parents share parental responsibility with the local authority for a child in care
- partnership – professionals and families must work together for the welfare of children
- the child's voice – a child's wishes and feelings should be sought and taken into account in making decisions affecting them (if they are old enough to understand)
- family is best – a child's own family is the best place for a child to be brought up
- no order principle s1(5) – a court order should not be made unless it is needed to improve the child's life
- diversity issues – racial, cultural, religious and linguistic background must be taken into account in all decisions.

The main safeguarding provisions of the act are:

- child protection (s47) – a local authority has a duty to investigate if a child is thought to be suffering, or is likely to suffer, significant harm
- children in need (s17) – a local authority has a duty to assess and provide services for a child in need if parents wish it

- duty to co-operate (s27) – health, education and other public sector agencies are required to assist social care in safeguarding and promoting the welfare of children
- court orders – a court can order a child to be taken into care or to be under a supervision order. It can also order a child to be given emergency protection or to be assessed
- threshold criteria – when a local authority has decided that an application is made, then it must satisfy all the criteria set out in s31(2). These are that significant harm and causation. Causation being (a) level of care not being reasonable and (b) control.

See [www.opsi.gov.uk/acts/acts1989/Ukpga\\_19890041\\_en\\_1.htm](http://www.opsi.gov.uk/acts/acts1989/Ukpga_19890041_en_1.htm)

### **The Adoption and Children Act 2002**

This act replaces the Adoption Act 1976, updates the Children Act 1989 and modernises the existing legal framework for domestic and inter-country adoption in England and Wales.

Section 111 amends who can acquire parental responsibility to include unmarried fathers when a child is jointly registered with the mother.

Section 112 states that step-parents can obtain parental responsibility through a parental agreement or by order of the court.

Section 120 extends the definition of significant harm so that actually witnessing violence can also constitute harm

See [www.opsi.gov.uk/acts/acts2002/20020038.htm](http://www.opsi.gov.uk/acts/acts2002/20020038.htm)

### **The Human Rights Act 1998**

The Human Rights Act applies the European Convention on Human Rights to domestic law. Article 8, which covers respect for private and family life, limits state intervention in family life, which must be “in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others”. This ensures that a child’s right to protection overrides a family’s right to privacy.

Article 3 covers the rights of an individual to be free from torture and inhuman and degrading treatment. It effectively imposes an obligation on the authorities to take preventative measures to protect a child at risk of harm.

See [www.opsi.gov.uk/acts/acts1998/80042--d.htm](http://www.opsi.gov.uk/acts/acts1998/80042--d.htm)

## **The Children Act 2004**

Puts into practice the proposals for legislation set out in the English Green paper *Every Child Matters* (Cm 5860, 2003) and *Children and Young People: Rights to Action* (Welsh Assembly Government, 2004) including the creation of the post of the first Children's Commissioner for Wales – the post was established by the Care Standards Act 2000 and the Children's Commissioner for Wales Act 2001 – work began on 1 March 2001.

The Children Act 2004 proposed a national framework of change for children focusing on five outcomes:

- being healthy
- staying safe
- enjoying and achieving
- making a positive contribution
- achieving economic well-being.

In Wales these five outcomes are also embodied in the Welsh Assembly Government's seven Core Aims, based on the United Nations Convention on the Rights of the Child.

The aims are to ensure that all children and young people in Wales:

- have a flying start
- have a comprehensive range of education and learning opportunities
- enjoy the best possible health and are free from abuse, victimisation and exploitation
- have access to play, leisure, sporting and cultural activities
- are listened to, treated with respect, and have their race and cultural identity recognised
- have a safe home and community which supports physical and emotional well-being
- are not disadvantaged by poverty.

Part 3 of the act applies specifically to Wales and makes it statutory to safeguard and promote the welfare of children across all statutory agencies except education, where it was already statutory under the Education Act 2002, s175 and s157. It set up local safeguarding children boards to replace area child protection committees to oversee the safeguarding of children, and requires local authorities to produce annual children and young person's plans, and appoint directors and lead members of children's services.

The act also devolves the Children and Family Court Advisory and Support Service (CAFCASS) to the Welsh Assembly Government, and provides the Children's Commissioner for Wales the right of entry to certain premises.

It ended the defence of reasonable chastisement in cases of assault on children, brought private fostering within a statutory framework, and set up joint area reviews (JARs).

### **Data Protection Act 1998**

This act replaced the Data Protection Act 1984 and the Access to Personal Files Act 1987. It relates to recording information, including information about children. Under the 1998 act, personal information must be obtained fairly and processed lawfully. Information can only be shared in certain circumstances and it has to be accurate, relevant and kept securely. In some circumstances, the act allows for disclosure of personal information without the consent of the subject, including that "...for the purpose and detection of crime, the apprehension or prosecution of offenders or when a failure to disclose information could place the protection of children, young people or vulnerable adults at risk." This is particularly relevant where an organisation or employer holds information about someone who could pose a risk to children.

See [www.opsi.gov.uk/ACTS/acts1998/19980029.htm](http://www.opsi.gov.uk/ACTS/acts1998/19980029.htm)

### **Police Act 1997 and Protection of Children Act 1999**

These acts change the routes by which employers can check whether a potential or current employee has committed criminal offences against children, and whether there is reason for that person to be considered inappropriate to work with them. Sometimes there is a suspicion that a person may have hurt or abused a child, but insufficient criminal evidence for them to be convicted. However, a check may confirm the view that the adult presents enough of a risk that they should not work with children.

### **Criminal Justice and Court Services Act 2000**

Part 2 of this act enables courts to disqualify unsuitable people from being employed by public bodies to work with children and sets out a review process for those who are disqualified from working with children. It also provides criminal

sanctions for those who breach the disqualification. Employers should not knowingly employ someone who has a disqualification order imposed on them.

See [www.opsi.gov.uk/acts/acts2000/20000043.htm](http://www.opsi.gov.uk/acts/acts2000/20000043.htm)

### **Safeguarding Vulnerable Groups Act 2006**

Enables changes in connection with vetting and barring as recommended by the Richard Committee. The provisions will come into force in 2008. The Act will establish

a national vetting and barring scheme, applying to a wide number of positions and posts where people work with or have responsibility for children. The main purpose is to prevent unsuitable people from working with children and vulnerable adults.

The scheme reforms the current vetting and barring practices but employers retain their responsibilities for ensuring safe recruitment practices. It will be introduced in autumn 2008. The term 'employers' refers to both employers and managers of volunteers. The term 'employees' refers to both paid and unpaid/volunteer work/activities. General practices will need to be aware of the impact and implementation within their own jurisdictions and update their strategic governance plans accordingly.

[www.opsi.gov.uk/acts/acts2006/ukpga\\_20060047\\_en.pdf](http://www.opsi.gov.uk/acts/acts2006/ukpga_20060047_en.pdf)

### **The Disqualification from Caring for Children (Wales) (Amendment) Regulations 2008**

[SI 2008/2691 - Web Version \(HTML\)](#)

[SI 2008/2691 - Print Version Mixed Language \(PDF - 48 kb\)](#)

### **Sexual Offences Act 2003**

Provides a comprehensive legislative framework for sexual offences. The act covers offences against adults (including people with mental disorders), as well as offences against children and sexual offences within the family. It also makes amendments to the laws governing the sex offenders register by introducing a requirement for those cautioned or convicted of specific categories of sexual offences to inform the police of their name and address and any changes to those details.

Covers specific offences relating to the “abuse of trust” applying to those aged younger than 18. These offences include:

- sexual activity with a child
- causing or inciting a child to engage in sexual activity
- engaging with sexual activity in the presence of a child
- causing a child to watch a sexual act.

The act lists occupations to which the abuse of trust laws applies. These include staff working in:

- institutions looking after children detained under a court order – eg young offenders institutions
- accommodation provided by local authorities and voluntary organisations under statutory provision
- hospitals, clinics, care homes, children’s homes and residential family centres
- educational institutions.

It allows for a preventative order to be made to protect children from harm, including stopping offenders from visiting places where children gather – eg parks and recreation grounds.

See [www.opsi.gov.uk/ACTS/acts2003/20030042.htm](http://www.opsi.gov.uk/ACTS/acts2003/20030042.htm)

### **The Education Act 2002**

Section 175 of this Act introduces a new statutory duty on local education authorities, maintained and independent schools and further education institutions to ensure that their responsibilities are carried out with a view to safeguarding and promoting the welfare of children and young people.

See [www.opsi.gov.uk/ACTS/acts2002/20020032.htm](http://www.opsi.gov.uk/ACTS/acts2002/20020032.htm)

### **Case Law**

Judgements- JD (FC) (Appellant) v East Berkshire Community Health NHS Trust and Others (Respondents) and two other actions (FC)[2005] UKHL, 23

[www.publications.parliament.uk/pa/ld200405/ldjudgmt/jd050421/east.pdf](http://www.publications.parliament.uk/pa/ld200405/ldjudgmt/jd050421/east.pdf)

## **Guidance**

This section deals with government guidance to agencies on safeguarding children and young people.

### **Safeguarding Children – Working Together under the Children Act 2004, (Welsh Assembly Government, 2006)**

The Welsh Assembly Government has issued this guidance for the bodies named in sections 28 and 31 of the Children Act 2004. It is intended to assist them to review their current policies, procedures and practices.

Guidance is given on analysing the state of safeguarding and promoting children's welfare within their bodies and deciding on future steps to implement the guidance.

<http://wales.gov.uk/topics/childrenyoungpeople/publications/guidance/1297522?!ang=en>

### **Caring for Young People and the Vulnerable (Home Office, 1999)**

Designed to encourage all organisations caring for children or vulnerable adults to put in place codes of conduct to protect against sexual activity within a relationship of trust. The guidance contains principles of good practice on how to provide safeguards.

### **Framework for the Assessment of Children in Need and their Families (National Assembly for Wales, 2001)**

The framework was developed in relation to supporting children in need and working closely with families. It provides guidance for all agencies that contribute to the assessment of need for children and families.

Note – the documents are available through this link

<http://wales.gov.uk/topics/childrenyoungpeople/childrenfirst/publications/frameworkfortheassessmentofchild?lang=en>

## **All Wales Child Protection Procedures**

This Guidance contains the roles and responsibilities for reporting concerns about a child's welfare or safety. The procedures set out common standards for all of Wales to guide child protection work. They make clear how agencies should work together and aim to make sure that practice is consistent and of a high quality. The procedures are for use by all those who work involves contact with children and families, across departments and agencies and are relevant to those working in the statutory, voluntary and independent sectors.

For the latest version see:

<http://www.childreninwales.org.uk/areasofwork/safeguardingchildren/awcp/prg/proceduresandprotocols/index.html>

## **Guidance on Education**

Jane Hutt, Welsh Minister for Children, Education, Lifelong Learning and Skills, has issued a guidance document for local authorities and governing bodies on arrangements for safeguarding children under section 175 of the Education Act 2002.

<http://www.childreninwales.org.uk/1250.html?filterid=1050>

## **Safeguarding Children in Whom Illness is Fabricated or Induced**

<http://wales.gov.uk/topics/childrenyoungpeople/publications/illnessfabricated/?lang=en>

## **Safeguarding Children from Abuse Linked to a Belief in Spirit Possession**

<http://wales.gov.uk/topics/childrenyoungpeople/publications/2693593/?lang=en>

Report to the Minister for Health and Social Services of a task and finish group on services for **children who display sexually harmful behaviour**

On 22 April 2008, the Minister for Health and Social Services commissioned a Task and Finish Group to consider the current position in Wales with regard to services for children who display sexually harmful behaviour.

<http://wales.gov.uk/topics/childrenyoungpeople/publications/sexuallyharmful/?lang=en>

### **Safeguarding children who may have been trafficked**

This document provides good practice guidance to professionals and volunteers from all agencies.

<http://wales.gov.uk/topics/childrenyoungpeople/publications/trafficked/?lang=en>

Local Safeguarding Children Boards, Wales: Review of Regulations and Guidance

<http://wales.gov.uk/topics/childrenyoungpeople/publications/localsafeguarding/?lang=en>

### **Safe from Harm: Safeguarding Children in Voluntary and Community Organisations in Wales**

This guidance is intended for small voluntary and community groups that are not currently subject to inspection and/or regulation. This might include arts, hobbies and drama groups, although many other groups may also find it useful.

<http://wales.gov.uk/topics/childrenyoungpeople/publications/safefromharm?lang=en>

## Isle of Man

<http://www.gov.im/lib/docs/infocentre/acts/2009/educationmiscellaneousprovisions.pdf>

See *References and resources* for web links to legislation and guidance.

For an overview of the Isle of Man's recent legislation

See [www.gov.im/infocentre/acts/viewacts.aspx?viewtype=2](http://www.gov.im/infocentre/acts/viewacts.aspx?viewtype=2)

For access to the Department of Health and Social Security, Isle of Man Child Protection Committee Agency Procedures, otherwise known as the "Yellow Book" see [www.gov.im/lib/news/dhss/launchofupdateto.xml](http://www.gov.im/lib/news/dhss/launchofupdateto.xml)

## **Channel Islands**

See Annex C: External Resources

### **Jersey Child Protection Committee**

<http://www.gov.je/JCPC/>

### **HM Government - Working Together to Safeguard Children**

A guide to inter-agency working to safeguard and promote the welfare of children  
This document sets out how organisations and individuals should work together to safeguard and promote the welfare of children. It is addressed to practitioners and front-line managers who have particular responsibilities for safeguarding and promoting the welfare of children, and to senior and operational managers, in:

- organisations that are responsible for commissioning or providing services to children, young people, and adults who are parents/carers, and
- organisations that have a particular responsibility for safeguarding and promoting the welfare of children.

<http://www.gov.je/JCPC/Reports/report1.htm>

Jersey reflects the principles and guidance from England, whereas Guernsey reflects Scots law and subsequent Scottish Government guidance. General practices are therefore recommended to contact their designated and named health professionals to ascertain their current positions.