

## **The Children Act : an adviser's guide.**

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**THE CHILDREN ACT**  
**AN ADVISER'S GUIDE**



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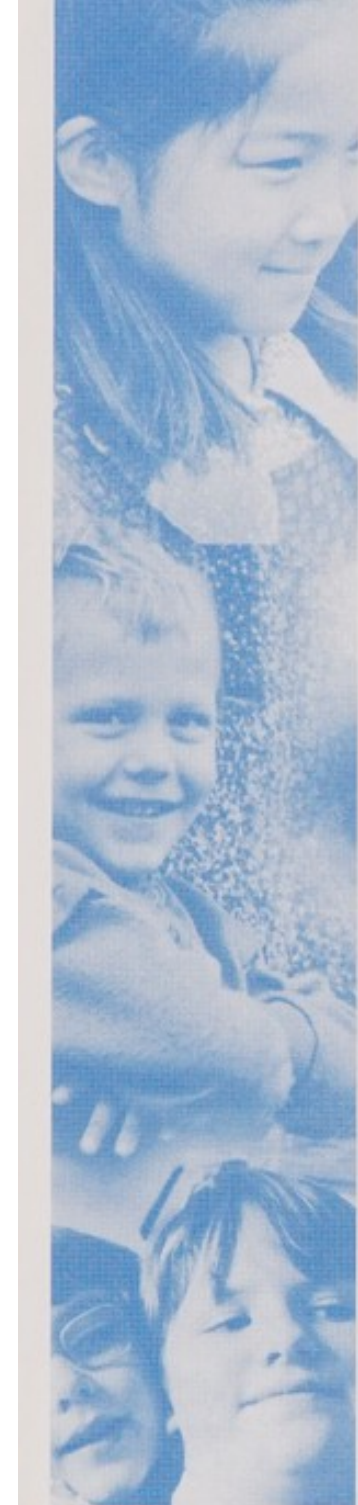
<b>HOW THE ACT ORIGINATED</b>	<b>2</b>
<b>WHAT THE ACT CONTAINS</b>	<b>3</b>
<b>THE MAIN PRINCIPLES OF THE ACT</b>	<b>4</b>
<b>DUTIES AND POWERS</b>	<b>5</b>
<b>SUPPORTING FAMILIES</b>	<b>5</b>
<b>THE COURTS</b>	<b>8</b>
<b>NEW COURT ORDERS</b>	<b>9</b>
<b>CHANGES IN THE COURTS</b>	<b>12</b>
<b>OTHER CHANGES IN THE ACT</b>	<b>14</b>
<b>WHAT HAPPENS NEXT</b>	<b>17</b>
<b>WHERE TO GET HELP</b>	<b>18</b>
<b>FURTHER READING</b>	<b>19</b>



This video package was produced by the Department of Health in association with the Lord Chancellor's Department and the Home Office.

Further copies of this guide are available from CFL Vision. The video is available on free loan, or to purchase at a cost of £40.00 from CFL Vision at: PO Box 35, Wetherby, Yorks, LS23 7EX. Tel (0937) 541010.





## INTRODUCTION

The Children Act 1989 is the most important reform of children's law this century. It brings together for the first time the law relating to the care, protection and upbringing of children, and addresses a wide range of situations from protecting children from physical and sexual abuse, through to keeping the family together when times are difficult, to providing services such as family centres and play-buses.

The video describes two situations which illustrate how the Children Act will help families cope with the difficulties they are facing. The situations shown are neither dramatic nor extreme, but are the type which often arise in real life. The video presents only one possible solution to the difficulties that these families encounter, although in any situation there will be a range of solutions depending on individual circumstances. The most appropriate solutions for these particular families are shown. The video and this guide illustrate the main principles underlying the Act and, most importantly, the spirit of co-operation and partnership which the Act is intended to promote.

The guide follows roughly the order of the video. It begins with an introduction to the Children Act; how it came about; the underlying principles and the main areas which are affected by the new law. It then looks in order at the two situations illustrated in the video and explains the concepts and terms which they introduce. The next chapter lists and describes briefly the other provisions in the Act which the video does not mention. The guide concludes with a look at what has been done to prepare for the Act coming into force, and advice on where to get further information.

## HOW THE ACT ORIGINATED

Until now the legislation concerning children has been covered by a large number of Acts of Parliament and Regulations. The Children Act 1989 replaces this mass of legislation with a single coherent framework.

There had been growing concern that the law governing child care was unnecessarily complex, and a few well-publicised and tragic cases led many to the view that the existing law needed changing. Parents often felt they had no say when the authorities thought their children were at risk; at the same time authorities frequently felt that they lacked the power to intervene decisively when they considered children were in danger. The need to address these issues was at the forefront when Parliament considered the new legislation.

The process which led directly to the Children Act began when the existing law was examined by the House of Commons' Social Services Select Committee.



Its report to Parliament in 1984 suggested that a thorough review of legislation was needed. This was carried out by a DHSS working party which issued "*Review of Child Care Law*" in 1985. In response the Government published a White Paper "*The Law on Child Care and Family Services*" in 1987. This formed the basis of the Children Bill which, with all party support, began its passage through Parliament in November 1988 and received Royal Assent in November 1989.

*The Act takes effect from 14 October 1991.*

## WHAT THE ACT CONTAINS

### Public and Private law

The Children Act brings together for the first time the public and private law relating to children. Briefly, public law deals with those areas where society intervenes in the actions of individuals (such as care proceedings) and private law addresses the behaviour of individuals towards each other (such as with whom the children should live following divorce).

### Parental responsibility and parent's rights

The Act introduces the new concept of 'parental responsibility'. This is defined as "*all the rights, duties, powers, responsibilities and authority which, by law, a parent has in relation to a child and his property*". The Act often refers to parental responsibility, who can obtain it, and how its exercise may occasionally be modified. Parents retain parental responsibility even if their child is looked after by the local authority. Parental responsibility is only lost when the child is adopted. Unmarried fathers may obtain parental responsibility by agreement or court order.

Parents have new rights under the Children Act, including a statutory right to have contact with a child who is in the care of the local authority, the right to say in the plans being made for their child's future and the right to attend or be represented at any court proceedings under the Act involving their child. Services which the local authority provides to support families with children in need must be provided in partnership with parents, and after finding out their wishes and feelings. These services are explained in more detail later.

### Providing services


The Act creates new duties for local authorities to support families with children in need. It brings together in one piece of legislation all the earlier laws under which, until now, local authorities have provided such services. For example, there are sections on support for families, on residential homes, on fostering services, and on childminding and day care. For the first time, children with disabilities are treated in legislation in the same way as other children in need.

### Protecting children

The Act contains a new legal framework for the care and protection of children. It introduces new orders for use when children are at risk of significant harm,







with simplified grounds for making them. Care and supervision orders remain, but the grounds on which a court can make them have been simplified. There are new provisions to enable local education authorities to take action where children are not receiving a proper education.

### Looking after children away from home

The local authority has new duties towards children who are being looked after away from home. This includes children in nursing homes and boarding schools, and children living with foster parents. The local authority has a duty to ensure that their welfare is being safeguarded. The Act also makes special provisions for young children who are away from home during the day, by ensuring that facilities such as nurseries and playgroups and people such as childminders are safeguarding the welfare of children in their care. Included in this list are out of school facilities for children under eight.

## THE MAIN PRINCIPLES OF THE ACT

A number of very important principles are embodied in the Children Act:

- the welfare of the child is the paramount consideration;
- wherever possible, children should be brought up and cared for within their own families;
- parents with children in need should be helped to bring up their children themselves;
- this help should be provided as a service to the child and his family and should:
  - be provided in partnership with the parents
  - meet each child's identified needs
  - be appropriate to the child's race, culture, religion and language
  - be open to effective independent representations and complaints procedures
  - draw upon effective partnership between the local authority and other agencies including voluntary agencies;
- children should be safe and be protected by effective intervention if they are in danger;
- when dealing with children, courts should ensure that delay is avoided, and may only make an order if to do so is better than making no order at all;
- children should be kept informed about what happens to them, and should participate when decisions are made about their future;
- parents will continue to have parental responsibility for their children, even when their children are no longer living with them. They should be kept informed about their children and participate when decisions are made about their children's future.



## DUTIES AND POWERS

The Children Act imposes various duties and powers on local authorities, and occasionally other bodies, such as health or education authorities. A duty is something which the authority is legally obliged to do. Occasionally a duty is qualified by requiring the authority to do what it considers appropriate or reasonable. Powers are functions that an authority has discretion whether or not to undertake.

## SUPPORTING FAMILIES

The Children Act imposes on local authorities two general duties with respect to children in need:

- to safeguard and promote their welfare
- to promote wherever possible their upbringing by their families.

The Act defines a child in need as follows:

*“he 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;*

*his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services; or*

*he is disabled.”*


Thus for the first time children with disabilities will be treated first and foremost as children with particular needs, and will be entitled to the same general level of services as other children in need, to enable them to live as normal a life as possible.

In addition to the two *general* duties described above, the Act outlines *specific* duties and powers:

- to identify the extent to which there are children in need in their area
- to provide services for children in need living with their own families
- to provide accommodation for children in need
- to prevent neglect and abuse by the provision of services
- to reduce the need, by the provision of services, to bring court proceedings.







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Mr and Mrs Bhatia have three children aged 10, 12, and 15. Sanjay, the oldest, is physically disabled and attends a local special school. Mr Bhatia works late shift in a local factory. Mrs Bhatia has to go into hospital for an operation, and may be away for two weeks. Mr Bhatia realises that his shift means that no-one will be at home to look after the children when they get home from school until he returns from work.

Mr Bhatia has called the social services at the suggestion of his GP, and a social worker, Sally Donlin, has come to discuss what can be done to help. The problem is short-term and practical steps are needed - Mr and Mrs Bhatia want the children to stay together and be looked after at home. Sally has come to discuss what help the family feels it needs, and what social services can offer to help them.

Mr Bhatia talks to his employers and they agree to rearrange his shift so that he can get home earlier. Sally arranges for the school to look after Sanjay for an extra hour, and arranges transport to bring him home. A Family Help comes in to look after the children until Mr Bhatia returns from work. Sally contacts the hospital social worker to arrange for the Family Help to bring the children to hospital to visit their mother after school. They agree that when Mrs Bhatia gets home they will discuss whether further help may be needed until Mrs Bhatia is fully recovered.

The situation in which the Bhatia family found themselves is not uncommon. What was needed was some short-term support to make up for the care that the parents would normally provide for their children. The social worker discussed with the family what help they wanted and what could be offered. In partnership with the family, services were provided which would meet the family's needs and minimise the disruption to normal family life.

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### *What the local authority must do*

Support for families with children or a child in need is one of the most important functions of local authorities under the Children Act. The sort of short-term help which the Bhatias received is just one example of what can be offered. Services should be provided in partnership with the family after discussing their needs and seeking their views. The local authority is not always the sole provider of services and should work together with other authorities, such as housing, education and health. The local authority is also encouraged to provide services in partnership with voluntary organisations, to provide the most appropriate package of services for individual families.



When a child is identified as 'in need' the type of service which the local authority should provide might include:

- the general provision of services to families to improve the quality of life for children in their area, eg. day care, out of school care, toy libraries, drop-in centres etc;
- services such as the provision of family centres or family aides which, once a problem has arisen, may help to avoid the need to apply for a court order, or to provide accommodation for the child;
- advice, guidance and counselling to families;
- provision of accommodation on a voluntary basis for children who are not able to live at home. The primary duty of a local authority in such cases is to safeguard and promote the welfare of the child. Regulations place a duty on the local authority to:
  - plan arrangements in partnership with the parents and the child
  - review that plan regularly in consultation with the parents, the child and others who are significant in the child's life
  - produce written agreements as a record of the arrangements made and to signify everyone's commitment to working together for the welfare of the child;
- services which enhance the quality of life for children living away from home, such as working to maintain links with the family;
- a 'representations' (including complaints) procedure with an independent element for people in the local authority area who are not satisfied with the services which the local authority are providing;
- aftercare for children who they have been looking after, when they are no longer looking after them. The local authority must provide "advice and befriending"; they may also provide "assistance" which could, for example, take the form of help with the cost of training or education, or enabling someone to live near their place of work, training or education. This service can be provided for young people up to the age of 21, if necessary.

The local authority also have a new duty to publish information about the services provided by themselves and others, and to ensure that the information reaches those who might benefit from such services.





## THE COURTS

The Children Act makes some very important changes in public and private law proceedings affecting children. Broadly, there are new principles influencing the way that courts make their decisions, new statutory orders for the care and protection of children, and changes in the courts themselves.

### *Principles*

Four main principles determine the way that the courts will deal with cases under the Children Act:

- the welfare of the child must be the paramount consideration when a court makes a decision on the upbringing of a child;
- any delay in proceedings is likely to prejudice the child's welfare;
- where a court is considering whether to make an order under the Act, it can only make that order if it would be better for the child than making no order at all;
- in deciding most cases under the Act, the court must have regard to the following 'check-list' of considerations:
  - the child's wishes and feelings
  - his physical, emotional and educational needs
  - the likely effect of any change in circumstances
  - his age, sex, background and any other characteristics which the court considers relevant
  - any harm which he has suffered or is at risk of suffering
  - how capable his parents (or any other person the court considers relevant) are of meeting his needs
  - the range of powers available to the court under the Act in the proceedings in question.



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Susan Daley is 15 and lives with her mother, brother and step-father in a small flat. Her real father is dead, and she does not get on with her step-father. In the last year she has been doing particularly badly at school - losing interest and missing lessons. She has also become violent towards her mother when they argue, and has been staying out late and - according to her mother - drinking. A social worker, Jerry Fairclough, has been working with the family for some months and has tried providing services - counselling, foster placements for Susan - but the situation has continued to deteriorate. Susan knows that a care order may be applied for.

Jerry feels that Susan is beginning to put her welfare at risk and they meet to discuss informally what can be done. Jerry asks Susan about her aunt, who she has stayed with occasionally since her father died. Susan agrees to Jerry getting in touch with her aunt, to see if she could stay for a while, on a trial basis.

Susan goes to stay with her aunt for a few days; however, her mother will not agree to this arrangement becoming more permanent and is not happy at the prospect of Susan leaving for any length of time. The local authority decides that it has no option but to apply for a care order.

The local authority has tried to help Susan and her family by providing support services as described earlier (see page 3). However, this has not achieved the desired effect, and it is now felt that there is no option but to apply for an order through the courts, to ensure that Susan's welfare is not put further at risk by her deteriorating family situation.

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## NEW COURT ORDERS

The Act introduces a number of new orders which are available to the courts, and changes the grounds for making those available under previous laws:

### *The emergency protection order*

The emergency protection order replaces the place of safety order, and has a number of important features:

- it may be made for a maximum of eight days, with a possible further extension of up to seven days;







- if the parents were not present when the order was made, they have an opportunity to challenge it after 72 hours;
- the court may only make the order if it is satisfied that:
  - there is reasonable cause to believe that the child is likely to suffer significant harm if he is not removed to another place; or his removal from where he is accommodated is not prevented;
  - in the case of an application made by a local authority or the National Society for the Prevention of Cruelty to Children, the applicant *"has reasonable cause to suspect that a child is suffering, or is likely to suffer, significant harm"* and enquiries which are being made *"are frustrated by access to the child being unreasonably refused, and the applicant believes that access is required as a matter of urgency"*.

### The child assessment order

This is a completely new order, which addresses those situations where there is good cause to suspect that a child is suffering significant harm but is not at immediate risk, and the applicant believes that an assessment (medical, psychiatric or other) is required. If the parents seem unwilling to co-operate, the local authority can apply for a child assessment order. The order:

- has a maximum duration of seven days;
- will direct the type and nature of the assessment which is to be carried out, and whether the child should be kept away from home for the purposes of the assessment.

### Care orders

Care orders existed under previous legislation. However, the Children Act changes the conditions which have to be satisfied before they are made: instead of the twenty or so conditions under which a care order could be made in the past, there is now only one, and that is defined in the Act as:

- "(a) that the child concerned is suffering, or is likely to suffer from significant harm; and*
- (b) that the harm, or likelihood of harm is attributable to -*
- (i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or*
  - (ii) the child's being beyond parental control"*.

The making of a care order gives the local authority parental responsibility for the child (see page 3). However, this does not mean that the parents lose it. It is shared with the local authority who have the power to decide how much the parents may exercise their parental responsibility, but may only do so if it is necessary to safeguard and promote the child's welfare. The local authority must allow parents reasonable contact with children who are the subject of a care order, unless this will put the child's welfare at risk. The local authority



will have to produce a plan for the future of each child in its care, and the progress of each child will be subject to periodic review, to ensure that the child is being provided with the right kind of care.

### Supervision orders

Supervision orders are retained in the new legislation but can now only be granted if the same conditions as are required for care orders are satisfied. The court will use its discretion as to when to make a supervision, rather than a care, order. A supervision order can initially be made for a maximum period of one year, although it may be extended to a maximum of three years. It does not give the local authority parental responsibility.

The person in whose favour the court makes the order is called the *supervisor* and the person with parental responsibility is called the *responsible person*. The supervision of the child will require the co-operation of the responsible person, who may be directed by the court to take all reasonable steps to ensure that the child complies with any directions given by the supervisor.

### Private law orders


There are a range of new orders under the Children Act which may be made in private law proceedings, or may be applied for on their own - parental responsibility orders have already been mentioned (see page 3). In addition there are section 8 orders and family assistance orders:

Section 8 orders consist of residence, contact, prohibited steps and specific issues orders. These are all new orders which allow a court in private law proceedings (divorce, adoption etc) to make arrangements with respect to a child's upbringing; subject to a number of restrictions, they are also available in public law proceedings. However, a local authority cannot apply for a contact or residence order, or have either order made in its favour.

- A residence order states with whom the child is to live, and is the only section 8 order which may be made when the child is in the care of a local authority. It has the effect of ending the care order;
- A contact order requires the person with whom a child lives, or is to live, to allow the child to have contact with the person named in the order;
- A prohibited steps order prevents the parents of a child, or any other person, taking certain steps as outlined in the order without first obtaining the permission of the court;
- A specific issues order gives directions about the handling of a specific question which has arisen, or may arise, in relation to the child.







Family assistance orders enable the court to direct a local authority to provide assistance to a family involved in certain proceedings. This order cannot be applied for in the same way that section 8 orders may be; it can only be made by a court *of its own motion* - that is if the court decides that it is necessary to do so when it is hearing an application for another order.

Susan's case has now come to court. The local authority has applied for a care order, after considering all the other options open to them. They believe that although Susan's short stay with her aunt has proved a success, her mother's objections to Susan living so far away with someone with whom her mother does not get on means that voluntary arrangements are unlikely to work. The local authority also feels that the distance between her parents' home and her aunt's would mean that Susan would lose touch with her family and her friends. They feel that they have no option but to apply for a care order.

## CHANGES IN THE COURTS

Under the Children Act, the way that courts work will change considerably, affecting both the conduct of the case and the way that decisions are made.

### Who will hear the case

Most public law cases under the Children Act will be heard by magistrates in a *Family Proceedings Court*. The magistrates will be drawn from new *Family Panels*, and will be specially trained to deal with cases under the Children Act.

If cases are particularly complex or urgent, they may be allocated to a higher court. Cases will be heard by judges who have been specially trained, and who sit in courts known in *care centres* or *family hearing centres*. The procedure in the courts will be made to feel less threatening and formal, especially to children.

### Before the case is heard

Before the case is heard in court, a *directions appointment* will usually take place. This is an informal preliminary hearing at which directions may be given by the court to those involved on such things as:

- the timetable for the proceedings
- the appointment of a guardian ad litem or solicitor
- the transfer of proceedings to another court
- the attendance of the child.

The majority of directions will be given at a directions appointment although they can be given at any time during the proceedings. The purpose of a directions appointment is to clarify the central issues of a case, and to ensure that the case is heard and decided quickly and efficiently.



### The child's voice

All children will have a chance to put their views to the court hearing their case. A *guardian ad litem* will be appointed in nearly all public law cases under the Act. The guardian ad litem is an independent social worker who is appointed to represent the child's interests to the court. The guardian ad litem has access to all the social services' records, and will make a written report to the court which will usually include recommendations as to what is best for the child. Usually the child will also be represented by a solicitor and, if of sufficient age and understanding to do so, will be able to state his own views directly to the court.

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A directions appointment has taken place, at which all the parties including the local authority and a guardian ad litem were present. The court has appointed a guardian ad litem to represent Susan's interests, and she has made a written report to the court, stating that she believes a care order would not be appropriate and recommending that a residence order be made instead.

The magistrates consider all the evidence, including the guardian ad litem's report, the local authority's opinions and the views of Susan, her mother and her aunt. The court makes a residence order, directing that Susan should live with her aunt, Mrs Dixon. A supervision order is also made, so the local authority can maintain its links with Susan, and ensure that her welfare is being adequately looked after.

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### The court's decision


One of the principles of the Children Act is that a court may only make an order with respect to a child if to do so would be better for the child than making no order at all; this principle will underpin all decisions made by the court.

Under the Act, courts will have a much greater degree of flexibility in deciding what order - if any - to make. They will have a choice of making the order applied for, making no order at all or making a completely different order to the one originally applied for. In Susan's case, the court made two orders, neither of which had been applied for by the local authority.

The court will have to give reasons for any order it makes, and these will be recorded. It will be possible to appeal against the making of or refusal to make any order under the Children Act except an emergency protection order, against which there is no appeal, but an application to have the order discharged can be made (see page 9).







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Susan's case demonstrates the flexibility of the Act, enabling the courts to be responsive to the needs of children. The magistrates heard two different opinions on what would be the best order to make, listened to what Susan had to say, and made two different orders to that applied for by the local authority. The residence order enables Susan to live with her aunt as she, the guardian ad litem and the local authority wished. The supervision order ensures that the local authority can continue to monitor Susan's situation to ensure that her welfare is being looked after. Jerry Fairclough, Susan's social worker, will be the supervisor and Mrs Dixon will be the responsible person. Under their general duty to promote contact between children and their families where they are living apart, the local authority will help Susan's mother to visit her in Liverpool, or Susan to visit her mother.

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## OTHER CHANGES IN THE ACT

In the video and the previous chapters of this guide, two of the most important areas of the Act - the provision of services to families with children in need, and the protection of children - have been described. However, the Children Act will affect almost everyone who works with children, and this chapter looks briefly at the other main areas of change, and what the effect of those changes will be. If you would like further information on these subjects, see the reading list at the back of the booklet.

### *Fostering*

Under the Act, fostering services take their place among the range of services which local authorities are required to provide. Most of the specific requirements on local authorities are described in Regulations, rather than in the Act itself. In general these set out:

- how the local authority should go about approving people as foster parents; what information they should obtain and what conditions must be satisfied; how approval should be reviewed and if necessary terminated;
- what factors should be considered before a placement is made, and how the placement should be supervised and reviewed;
- what records the local authority should keep;
- in what circumstances persons can be disqualified from acting as foster parents.



The major changes in the fostering service are that the local authority will approve a particular foster parent rather than a household; in an emergency it will be possible to place a child with any approved foster parent for a period of less than 24 hours immediately; the local authority must ensure that children who have been placed with a foster parent by a voluntary organisation are being properly looked after.

When they are making arrangements for a child to live with foster parents, the local authority must always consider the child's need for continuity. In general this will mean that the local authority will try to place the child with a family of the same race, religion and culture in a neighbourhood within reach of his family, school and friends.

### *Private fostering*

Private fostering is where parents place their children, by private arrangement, for more than 28 days with a family which is not related to them. Under the Children Act, a proposal to foster a child must be notified to the local authority, who will make sure that the child will be adequately cared for and ensure that, if necessary, the private foster parents will be given advice to assist them. The local authority can inspect a home where a child is privately fostered as well as interview the child who is being fostered, and may prohibit people from privately fostering a particular child (or children) or in a particular place.

### *Day care and Childminding*

The Children Act replaces legislation on the regulation of independently run day care services and childminding so, for the first time, the same age limit of under eight applies where children are being cared for by childminders or by people running day care services. This means that day care services used by younger school-age children will have to be regulated by the local authority.

Other changes introduced by the Act include:

- a local authority inspection at least once a year of every registered person and their premises
- the power to cancel registration where the local authority considers that the care being given to an individual child is seriously inadequate
- the power for the local authority social services department to seek advice from the local education authority about the way it regulates day care and childminding services.

The Act places a new duty on social services departments to co-operate with education departments to review the day care services in their area used by children under eight, to consult health authorities and others in the process, and to publish a report on their review. The review must be carried out every three years. The first one will be within a year of the Act coming into force.







### Independent schools

For the first time local authorities will have a duty to ensure that children in boarding schools are being properly looked after. Proprietors of independent schools which have more than 50 pupils boarding with them, or which are approved for special education under Section 11 of the Education Act 1981, will have a duty to safeguard the welfare of children accommodated by them. Local authorities are required to ensure that this duty is being carried out, and must visit schools to ensure this.

### Education supervision orders

In the previous legislation it was possible to seek a care order if a child was not receiving a proper education. This provision has been repealed and replaced by the education supervision order. This order, which is applied for by the local education authority rather than the social services department, places a child of compulsory school age who is not being properly educated, under the supervision of the local education authority.

The duties of the supervisor, who will normally be an education welfare officer or an education social worker, are to “*advise, assist, befriend and give directions to*” the child and his parents. The objective is to ensure that the child receives and benefits from full-time education suitable to his or her age and ability, and to any special educational needs.

### Adoption Contact Register

The Children Act has introduced the Adoption Contact Register. The Register, which has been operating since 1 May 1991, makes easier the possibility of contact between adopted adults and their natural parents or other relatives. It ensures that responsibility for initiating contact rests solely with the adopted person, and provides a safe and confidential way for natural parents to assure an adopted person that contact would be welcome. The register is operated by the Registrar General at the Office of Population Censuses and Surveys. Information about the register and application forms may be obtained free from:

The Office of Population Censuses and Surveys  
The General Register Office  
Adoptions Section  
Smedley Hydro  
Trafalgar Road  
Birkdale  
Southport PR8 2HH



### Children in residential accommodation

The Children Act brings together all the legislation relating to residential accommodation for children. Children's homes can be:

- Community homes, which are homes for which local authorities are either wholly or partly responsible.
- Voluntary homes, which are run by voluntary organisations.
- Registered homes, which are privately run childrens homes, but may also include certain independent schools (see page 16).

Children's homes will need to provide a service which meets the needs of individual children, as well as the common needs of all the children it accommodates. Local authorities will be required to take reasonable steps to ensure the welfare of all children accommodated in children's homes in their area.

For the first time, private children's homes will be required to register with their local social services department. The Act does not change the requirement for voluntary homes to register with the Secretary of State at the Department of Health.

All children's homes will be required to provide a 'statement of purpose', which describes what the home sets out to do, and the way in which care is provided. It must also give details of staffing and of the admissions procedure.

### Independent visitors

An independent visitor is a person appointed by a local authority to visit a child it is looking after. Independent visitors are not new, but the number of children for whom they will be appointed will greatly increase under the Children Act. Under the previous legislation the appointment of independent visitors was restricted to children in community homes which provided education. Under the Children Act, whether the child is living with a family or in residential accommodation, an independent visitor will be appointed if a child has not been visited by his parents in the last year or visits are infrequent, and it is felt that the child would benefit from being visited regularly. An independent visitor's duties are to "visit, befriend and advise" the child.

## WHAT HAPPENS NEXT

The two years between the Children Act receiving Royal Assent and its implementation have been spent completing the details of the legislation by producing *Regulations* and *Rules of Court*, and by preparing people for the important changes in the way they will work with children.







### Regulations

The Children Act gives the Secretary of State for Health the power to make *Regulations*. These have the full force of law, and contain the more detailed aspects of the legislation. For example, the Act says that every local authority should set up a 'representations' procedure, to deal with complaints etc about the services they provide under the Act. The Act lays down the requirement to set up the procedure. The associated Regulations set out the details of - among other things - how it should be run, who will be able to make representations, what records should be kept and how the procedure should be monitored.

To accompany the Regulations the Department of Health has issued *guidance* for local authorities, intended as a guide to what is considered 'good practice' on how the Act should be operated. Although it does not have the full force of law, local authorities are required to act in accordance with guidance.

### Rules of Court

Rules of Court are produced by the Lord Chancellor; they lay down the procedures which must be followed in courts hearing cases under the Children Act.

### Transitional provisions

Even though the Children Act will be implemented on 14 October 1991, immediately before then there will be some children who are affected by the old laws. For example, a court may have made an order placing a child in the care of the local authority before 14 October; if the child is still in care when the Act comes into force he will be subject to *transitional provisions*. This means that the order which was made will, from the date the new Act comes into force, be treated as if it had been made under the Children Act. This will happen with most court orders under the Act, ensuring that all children will be treated equally under the new law.

## WHERE TO GET HELP

### Advisers in the community

Citizens Advice Bureaux and other advice agencies will have an important role to play in ensuring that the people affected by the Children Act are aware of the new provisions and services. One of the aims of the Act is to ensure that social services departments are seen as providers of services to the community - services which are responsive to peoples' needs. Often advisers are the first people to whom those experiencing difficulties will turn.

It is important that everyone who is asked for advice knows what can be done under the Children Act - what services are available in their area, who to speak



to in the social services department or which voluntary organisation can provide the service required.

### Local authorities

The emphasis on partnership with families should mean that people should no longer feel reluctant to approach local authorities directly to discuss any problems or difficulties they may be experiencing. Local authorities have a duty to publicise the services which they provide to help families with children in need, and it is likely that they would wish to involve local advisory agencies in this task, to ensure that dissemination is as wide as possible. The easy availability of this material will encourage parents to seek help if they need it.

Advisers and voluntary groups should be aware of the new representations procedure (see page 7). The local authority have a duty to publicise this procedure, and they are advised to place posters and leaflets in health clinics, schools, libraries, Citizens Advice Bureaux and similar places to ensure the widest possible publicity.

## FURTHER READING

If you wish to find out more about the Children Act, the publications listed below provide more detail on various aspects of the Act:

- |  |  |
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| ALLEN, N.  | <i>Making Sense of the Children Act</i><br>(LONGMAN 1990)  |
| DEPARTMENT OF HEALTH                             | <i>An introduction to the Children Act</i><br>(HMSO 1989)  |
| DEPARTMENT OF HEALTH                             | <i>The Care of Children: Principles and Practice in Guidance and Regulations</i><br>(HMSO 1990)                            |
| DEPARTMENT OF HEALTH                             | <i>Children Act 1989: Guidance and Regulations</i> (five volumes published at the time of going to press)<br>(HMSO 1991)   |
| UNIVERSITY OF LEICESTER<br>SCHOOL OF SOCIAL WORK | <i>Children in Need and their Families: A Guide to Part III of the Children Act 1989</i><br>(UNIVERSITY OF LEICESTER 1990) |





## NOTES







# THE CHILDREN ACT

## AN ADVISER'S GUIDE

The Children Act is the most significant reform of children's law this century, and reflects the way we as a society want to see our children brought up and protected.

The Act seeks to achieve a balance between the rights of parents, the welfare of the child and the role of the local authority to promote that welfare.

The Act simplifies the public and private law on the care and upbringing of children, and its implications will be wide-reaching. It will affect not only children and their parents, but local authorities, the health service, schools, legal practitioners and other concerned adults well-placed in the community to enable people to help themselves.



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