



# **Children's MARS Statutory Framework**

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## **Statutory framework**

The legislation relevant to safeguarding and promoting the welfare of children is set out below. It is valuable information in its own right and should also be read alongside the statutory guidance, Working Together to Safeguard Children 2018.

### **Children Act 2004**

**Section 10** requires each local authority to make arrangements to promote co-operation between the authority, each of the authority's relevant partners, and such other persons or bodies who exercise functions or are engaged in activities in relation to children in the local authority's area, as the authority considers appropriate. The arrangements are to be made with a view to improving the wellbeing of children in the authority's area – which includes protection from harm and neglect alongside other outcomes.

**Section 11** places duties on a range of organisations and individuals to make arrangements for ensuring that their functions, and any services that they contract out to others, are discharged with regard to the need to safeguard and promote the welfare of children<sup>1</sup>.

### **Sections 16A -16D**

Under Section 16A, the Secretary of State must establish the Child Safeguarding Practice Review Panel (the Panel). The Panel's functions under section 16B are to identify serious child safeguarding cases which raise issues that are complex or of national importance and to arrange, where appropriate, for those cases to be reviewed under their supervision. The reviews will seek to identify improvements required to safeguard and promote the welfare of children. The Child Safeguarding Practice Review and Relevant Agency (England) Regulations 2018<sup>2</sup> set out the criteria the Panel must take into account when determining whether serious child safeguarding cases raise issues that are complex or of national importance, along with arrangements for national reviewers and reports. Section 16C places a duty on

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<sup>1</sup> Under section 55 of the Borders, Citizenship and Immigration Act 2009, the Secretary of State (in practice, the UK Visas and Immigration, Immigration Enforcement and the Border Force) has a duty to make arrangements to ensure that functions relating to immigration, asylum, nationality and customs, and any services that are contracted out to others in relation to such functions, are discharged or provided with regard to the need to safeguard and promote the welfare of children who are in the United Kingdom. Section 55 is intended to have the same effect as section 11 of the Children Act 2004.

<sup>2</sup> [The Child Safeguarding Practice Review and Relevant Agency \(England\) Regulations 2018](#).

local authorities to notify the Panel of events where they know or suspect that a child has been abused or neglected and the child dies or is seriously harmed in the local authority's area, or dies or is seriously harmed outside England while normally resident in the local authority's area. Section 16D requires persons or bodies to supply information to the Panel, a reviewer or another person or body to enable the Panel to carry out its functions. The person or body to whom a request is made must comply with the request. The Panel may enforce such a request by making an application to the High Court or the county court for an injunction.

**Sections 16E-K** establish the roles and responsibilities of safeguarding partners.

**Section 16E** defines 'safeguarding partners' as the local authority, a clinical commissioning group and the chief officer of police within the local authority area; and a 'relevant agency' as a person who is specified in regulations (the Child Safeguarding Practice Review and Relevant Agency (England) Regulations 2018) and exercises functions in relation to children within the area. It also requires safeguarding partners to make arrangements for themselves (and relevant agencies they consider appropriate) to work together to safeguard and promote the welfare of children in their area. This must include arrangements to identify and respond to the needs of children in the area.

**Section 16F** requires local safeguarding partners for a local authority area to make arrangements to identify serious child safeguarding cases which raise issues of importance in relation to the area, and where appropriate, for those cases to be reviewed under their supervision. The purpose of these reviews is to identify improvements which should be made locally to safeguard and promote the welfare of children. The Child Safeguarding Practice Review and Relevant Agency (England) Regulations 2018 set out the criteria that the safeguarding partners must take into account when determining whether serious child safeguarding cases raise issues of importance in relation to the area, along with arrangements for local reviewers and reports.

**Section 16G** requires safeguarding partners to publish their arrangements, and to ensure scrutiny of how effective the arrangements have been by an independent person. It places a duty on safeguarding partners and the specified relevant agencies to act in accordance with the published arrangements; and enables the Secretary of State to make regulations which provide for enforcement of this duty if necessary. It also requires the safeguarding partners to prepare and publish, at least once in every 12 month period, a report on the work that they have done as a result of their arrangements, and how effective the arrangements have been in practice.

**Section 16H** sets out the requirement for persons or bodies to supply (on request) information to the safeguarding partners for the purpose of enabling or assisting the performance of their functions. When a recipient does not comply with such a

request, a safeguarding partner may apply for a High Court or county court injunction to enforce it.

**Section 16I** allows the safeguarding partners and relevant agencies to fund their arrangements by making payments towards expenditure incurred in connection with the arrangements; and to supply resources connected with the arrangements which may include (for example) staff, goods, services or accommodation.

**Section 16J** enables the safeguarding partners for two or more local authority areas to agree that their areas are to be treated as a single area; and if they agree so, for safeguarding partners in those areas to arrange for one of them to carry out safeguarding partner functions on behalf of the other. The same applies to clinical commissioning groups and chief officers of police.

**Section 16K** specifies that the safeguarding partners and relevant agencies for a local authority area in England must have regard to any guidance given by the Secretary of State in connection with their functions.

**Sections 16M-P** establish the roles and responsibilities of child death review partners.

**Section 16M** sets out the requirement on child death review partners to make arrangements for the review of each death of a child normally resident in the area, or if they deem it appropriate, a child who is not normally resident. It also requires the partners to make arrangements for the analysis of information gathered by their reviews. This section sets out that where partners identify that it would be appropriate for someone to take action in relation to matters identified in their review, they must inform that person. It also requires that child death review partners must prepare and publish reports on what they have done as result of their arrangements, and how effective the arrangements have been in practice.

**Section 16N** sets out the requirement for persons or bodies to supply (on request) information to the child death review partners for the purpose of enabling or assisting the performance of their functions. When a recipient does not comply with such a request, a child death review partner may apply for a High Court or county court injunction to enforce it.

**Section 16O** allows child death review partners to fund their arrangements by making payments towards expenditure incurred in connection with the arrangements; and to supply resources to support the arrangements which may include (for example) staff, goods, services or accommodation.

**Section 16P** enables child death review partners for two or more local authority areas in England to agree that their areas are to be treated as a single area. Where a local authority is a child death review partner for the same local authority area as another

local authority the authorities may arrange for one of them to carry out functions under sections 16M to 16O on behalf of the other. The same applies to clinical commissioning groups.

**Section 16Q** defines 'child death review partners' as the local authority and any clinical commissioning group for the local authority area.

## **Education Acts**

**Section 175 of the Education Act 2002** places a duty on:

- a) local authorities in relation to their education functions; and
- b) the governing bodies of maintained schools and the governing bodies of further education institutions (which include sixth-form colleges) in relation to their functions relating to the conduct of the school or the institution

to make arrangements for ensuring that such functions are exercised with a view to safeguarding and promoting the welfare of children (in the case of the school or institution, being those children who are either pupils at the school or who are students under 18 years of age attending the further education institution).

A similar duty applies to proprietors of independent schools (which include academies/free schools) by virtue of regulations made under **sections 94(1) and (2) of the Education and Skills Act 2008**.

Regulations made under **Section 342 of the Education Act 1996**, set out the requirements for a non-maintained special school to be approved and continue to be approved by the Secretary of State. It is a condition of approval and continuing approval that arrangements must be in place for safeguarding and promoting the health, safety and welfare of pupils and when making such arrangements, the proprietor of the school must have regard to any relevant guidance published by the Secretary of State.

## **Children Act 1989**

The Children Act 1989 places a duty on local authorities to promote and safeguard the welfare of children in need in their area.

## **Provision of services for children in need, their families and others**

**Section 17(1)** states that it shall be the general duty of every local authority:

- a) *to safeguard and promote the welfare of children within their area who are in need; and*

- b) *so far as is consistent with that duty, to promote the upbringing of such children by their families.*

by providing a range and level of services appropriate to those children's needs.

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

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

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

- a) *the child is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision of services by a local authority under Part III of the Children Act 1989;*
- b) *the child's health or development is likely to be significantly impaired, or further impaired, without the provision of such services; or*
- c) *the child is disabled.*

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

Provisions relating to young carers and parent carers were inserted into Part 3 of the Children Act 1989 by sections 96 and 97 of the Children and Families Act 2014. These provisions came into force on 1 April 2015.

**Section 17ZA** states that a local authority in England must assess whether a young carer within their area has needs for support and, if so, what those needs are. This is either where:

- a) *it appears to the authority that the young carer may have needs for support; or*
- b) *the authority receives a request from the young carer or a parent of the young carer to assess the young carer's needs for support.*

**Section 17ZC** requires a local authority that carries out a young carer's needs assessment to consider the assessment and decide –

- a) *whether the young carer has needs for support in relation to the care which*

- he or she provides or intends to provide;
- b) if so, whether those needs could be satisfied (wholly or partly) by services which the authority may provide under section 17; and
- c) if they could be so satisfied, whether or not to provide any such services in relation to the young carer.

**Section 17ZD** states that a local authority in England must assess whether a parent carer of a disabled child who lives within their area has needs for support and, if so, what those needs are, if:

- a) it appears to the authority that the parent carer may have needs for support; or
- b) the authority receive a request from the parent carer to assess the parent carer's needs for support; and
- c) the local authority is satisfied that the disabled child cared for and the disabled child's family are persons for whom they may provide or arrange for the provision of services under section 17 of the Act.

The local authority need not carry out a young carer's assessment (under section 17ZA) or a parent carer's assessment (under section 17ZD) if the local authority has previously carried out a care-related assessment of the young carer/parent carer in relation to the same person cared for, unless it appears to the authority that the needs or circumstances of the young carer/parent carer or the person they care for have changed since the last care-related assessment.

**Section 17ZF** requires the local authority that carries out a parent carer's needs assessment to consider the assessment and decide:

- a) whether the parent carer has needs for support in relation to the care they provide;
- b) whether the disabled child cared for has needs for support;
- c) whether any needs identified could be satisfied (wholly or partly) by services which the authority may provide under section 17 of the Act; and
- d) whether or not to provide any such services in relation to the parent carer or the disabled child cared for

## **Co-operation between authorities**

**Section 27** imposes a duty on other local authorities, local authority housing services and health bodies to co-operate with a local authority in the exercise of that authority's duties under Part 3 of the Act which relate to local authority support for children and families.

Where it appears to a local authority that any authority or body mentioned in section 27(3) could, by taking any specified action, help in the exercise of any of their functions under Part 3 of the Act, they may request the help of that other authority or

body, specifying the action in question. An authority or body whose help is so requested must comply with the request if it is compatible with their own statutory or other duties and obligations and does not unduly prejudice the discharge of any of their functions.

The authorities are:

- a) *any local authority;*
- b) *any local housing authority;*
- c) *NHS England;*
- d) *any clinical commissioning group, Special Health Authority National Health Service Trust or NHS Foundation Trust; and*
- e) *any person authorised by the Secretary of State for the purpose of section 27*

**Section 47(1)** states that:

Where a local authority:

- a) *are informed that a child who lives, or is found, in their area (i) is the subject of an emergency protection order, or (ii) is in police protection; or*
- b) *have reasonable cause to suspect that a child who lives, or is found, in their area is suffering, or is likely to suffer, significant harm*

the authority must make, or cause to be made, such enquires as they consider necessary to enable them to decide whether they should take any action to safeguard or promote the child's welfare.

**Section 47(9)** places a duty on persons mentioned in section 47(11) where a local authority is conducting enquiries under section 47, to assist them with these enquiries (in particular by providing relevant information and advice) if called upon by the local authority to do so. Both section 17 and section 47 of the Children Act 1989, to require in each case that in order to help it to determine what services to provide or what action to take, the local authority must, so far as is reasonably practicable and consistent with the child's welfare:

- a) *ascertain the child's wishes and feelings regarding the provision of those services or the action to be taken; and*
- b) *give due consideration (with regard to the child's age and understanding) to such wishes and feelings of the child as they have been able to ascertain.*

## **Emergency protection powers**

The court may make an emergency protection order with respect to a child under section 44 of the Children Act 1989 on application by any person, if it is satisfied that there is reasonable cause to believe that a child is likely to suffer significant

harm if the child:

- is not removed to different accommodation (provided by or on behalf of the applicant); or
- does not remain in the place in which the child is then being accommodated.

An emergency protection order may also be made by the court on the application of a local authority or an authorised person (i.e. a person authorised to apply to the court for care orders or supervision orders under section 31 of the Act) if the court is satisfied that:

- enquires being made with respect to the child (in the case of a local authority, under section 47 (1) (b) of the Act) are being frustrated by access to the child being unreasonably refused to a person authorised to seek access, and
- the applicant has reasonable cause to believe that access is needed as a matter of urgency.

In addition, where the applicant is an authorised person the court must be satisfied that the applicant has reasonable cause to suspect that a child is suffering, or is likely to suffer, significant harm.

An emergency protection order gives authority to remove a child to accommodation provided by or on behalf of the applicant and place the child under the protection of the applicant, amongst other things.

## **Exclusion requirement**

The court may include an exclusion requirement in an interim care order or emergency protection order (section 38A and 44A of the Children Act 1989). This allows a perpetrator to be removed from or be prohibited entrance to the home or to be excluded from a defined area in which the home is situated, instead of having to remove the child from the home.

The court must be satisfied that:

- there is reasonable cause to believe that if the person is excluded from the home in which the child lives, the child will not be likely to suffer significant harm, or that enquiries will cease to be frustrated; and
- another person living in the home is able and willing to give the child the care that it would be reasonable to expect a parent to give, and consents to the inclusion of an exclusion requirement in the relevant order.

## **Police protection powers**

Under section 46 of the Children Act 1989, where a police officer has reasonable cause to believe that a child would otherwise be likely to suffer significant harm, the

officer may:

- remove the child to suitable accommodation and keep him there; or
- take reasonable steps to ensure that the child's removal from any hospital or other place in which the child is then being accommodated is prevented.

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

## **Legal Aid, Sentencing and Punishment of Offenders Act 2012**

Under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPOA), all children remanded in criminal proceedings will be looked-after. Children may be remanded to accommodation provided by the local authority or to youth detention accommodation (YDA). The authority responsible for a child who becomes looked-after following remand is usually the one where the child normally lives, but where there is a doubt about this the court may initially determine which authority should be designated as being responsible for the child's care.

Where a child is remanded to local authority accommodation, the local authority's care planning responsibilities will be the same as for any other looked-after child (though authorities are not required to produce a "plan for permanence" for this group of children). Where a child, including a child already looked-after, is remanded to YDA, the local authority will be required to produce a Detention Placement Plan, describing the arrangements for responding to the child's needs whilst they are detained. The Care Planning, Placement and Case Review Regulations 2010, as amended, take LASPOA into account.

## **Police Reform and Social Responsibility Act 2011**

**Section 1 (8)(h)** requires the police and crime commissioner for a police area to hold the relevant chief constable to account for the exercise of the latter's duties in relation to safeguarding children and promoting their welfare under sections 10 and 11 of the Children Act 2004.

## **Childcare Act 2006**

**Section 40** requires early years providers registered on the Early Years Register and schools providing early years childcare to comply with the welfare requirements of the Early Years Foundation Stage.

## **Crime and Disorder Act 1998**

**Section 38** requires local authorities, acting in co-operation with certain persons

(including every Chief Police Officer or local policing body whose area lies within that of the local authority, clinical commissioning groups and providers of probation services), to such extent as is appropriate for their area, to secure that youth justice services are available in their area, such services to include the provision of persons to act as appropriate adults to safeguard the interests of children and young persons detained or questioned by police officers.

## **Housing Act 1996**

**Section 213A** requires housing authorities to refer to adult social care services persons with whom children normally reside or might reasonably be expected to reside, who they have reason to believe may be ineligible for assistance, or who may be homeless and may have become so intentionally or who may be threatened with homelessness intentionally, as long as the person consents. If homelessness persists, any child in the family could be in need. In such cases, if social services decide the child's needs would be best met by helping the family to obtain accommodation, they can ask the housing authority for reasonable advice and assistance in this, and the housing authority must give reasonable advice and assistance.