



# 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 2023.

### Children Act 1989

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

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

**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 local authorities 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 section 17, 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 are responsible 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 III of the Children Act 1989 by the Children and Families Act 2014. These provisions came into force on 1 April 2015.

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

- 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 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.

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; and
- d) whether or not to provide any such services in relation to the parent carer or the disabled child cared for.

## **Provision of accommodation for children**

**Section 20** sets out the duty on local authorities to provide accommodation for any child in need within their area who appears to require accommodation as a result of:

- a) there being no person who has parental responsibility for the child;
- b) the child being lost or having been abandoned; or
- c) the person who has been caring for the child being prevented (whether or not permanently, and for whatever reason) from providing the child with suitable accommodation or care.

**Section 22C** sets out the way in which looked after children<sup>1</sup> are to be accommodated and maintained by local authorities.

## **Co-operation between authorities**

**Section 27** imposes a duty on other local authorities, local authority housing services and certain health bodies to co-operate with a local authority in the exercise of that authority's duties under Part III of the Act (support for children and families). Where it appears to a local authority that any authority mentioned in section 27(3) could, by taking any specified action, help in the exercise of any of the local authority's functions under Part III of the Act, the local authority 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 specified in section 27(3) are:

- a) any local authority;
- b) any local housing authority;
- c) NHS England;
- d) any Integrated care board, Local Health Board, Special Health Authority National Health Service Trust or NHS Foundation Trust;
- e) any local authority in Wales; and
- f) any person authorised by the Secretary of State for the purpose of section 27.

## **Care and Supervision Orders**

**Section 31** provides that, on the application of any local authority or authorised person, the court may make an order:

- a) placing the child with respect to whom the application is made in the care of a designated local authority; or
- b) putting the child under the supervision of a designated local authority.

A court may only make a care order or supervision order if it is satisfied:

- a) that the child concerned is suffering, or is likely to suffer, significant harm;
- 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.

No care order or supervision order may be made with respect to a child who has reached the age of seventeen (or sixteen, in the case of a child who is married).

Where a care order is made in relation to a child it is the duty of the local authority designated by the order to receive the child into their care and keep the child in their care while the order remains in force (section 33).

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<sup>1</sup> Section 22 sets out when a child will be "looked after" by a local authority for the purposes of the Act.

## Child protection

**Section 47(1)** states that, where a local authority:

- a) is informed that a child who lives, or is found, in their area is the subject of an emergency protection order or is in police protection; or
- b) the local authority has 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 the local authority with these enquiries (in particular by providing relevant information and advice) if called upon by the local authority to do so. Under section 47(5A), in determining what action to take following its enquiries, 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 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** on application by any person, if the court is satisfied that there is reasonable cause to believe that a child is likely to suffer significant harm if the child:

- a) is not removed to accommodation provided by or on behalf of the applicant; or
- b) 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:

- a) 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
- b) 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 may authorise the removal of a child to accommodation provided by or on behalf of the applicant or prevent the removal of a child from a hospital or any other place where the child was being accommodated before the order was made, 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**). This allows a perpetrator to be removed from or be prohibited entry 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:

- a) 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 (in the case of section 44A) that enquiries will cease to be frustrated; and
- b) 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**, where a police officer has reasonable cause to believe that a child would otherwise be likely to suffer significant harm, the officer may:

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

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

## Children 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<sup>2</sup>, 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 having regard to the need to safeguard and promote the welfare of children.

**Sections 16A to 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 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>3</sup> set out the criteria the Panel must take into account when determining whether serious child safeguarding cases raise issues that are complex or

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<sup>2</sup> Section 10(4) specifies who the relevant partners are for the purposes of section 10.

<sup>3</sup> [The Child Safeguarding Practice Review and Relevant Agency \(England\) Regulations 2018](#)

of national importance, along with arrangements for national reviewers and reports. **Section 16C** places a duty on 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 to 16K** establish the roles and responsibilities of safeguarding partners for local authority areas.

**Section 16E** requires safeguarding partners for a local area to make arrangements for the safeguarding partners and any appropriate relevant agencies to work together to safeguard and promote the welfare of children in their area. 'Safeguarding partners' are the local authority, an integrated care board and the chief officer of police within the local authority area. A 'relevant agency' is a person who is specified in regulations<sup>4</sup> and exercises functions in relation to children within the 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 the 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

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<sup>4</sup> Relevant agencies are specified in the [Child Safeguarding Practice Review and Relevant Agency \(England\) Regulations 2018](#)



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 integrated care boards and chief officers of the 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.

**Section 16M and 16Q** establish the roles and responsibilities of child death review partners. 'Child death review partners' are the local authority and any integrated care board for the local authority area (section 16Q).

**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 consider 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 a 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 integrated care boards.

## **Children and Social Work Act 2017**

The Children and Social Work Act 2017 was enacted following the publication of a 2016 policy paper entitled 'Putting children first: our vision for children's social care'. The Act contains freestanding provisions (for example, it sets out the corporate parenting principles that apply

to local authorities in section 1), along with amendments to both the Children Act 1989 and the Children Act 2004. In particular, the Act amended the Children Act 2004 to provide for the abolition of Local Safeguarding Children Boards and the creation of new safeguarding arrangements, including the establishment of the Child Safeguarding Practice Review Panel and the imposition of duties on safeguarding partners and child death review partners.

## **Education Acts**

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

- a) local authorities in relation to their education functions
- 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.

## **Childcare Act 2006**

**Section 40** of the Childcare Act 2006 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 statutory framework.

## **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 (England) Regulations 2010, as amended, take LASPOA into account.

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

**Section 1(8)(h)** of the Police Reform and Social Responsibility Act 2011 requires the police and crime commissioner for a police area to hold the relevant chief constable to account for the exercise of the chief constable’s duties in relation to safeguarding children and promoting their welfare under sections 10 and 11 of the Children Act 2004.

## **Crime and Disorder Act 1998**

**Section 38** of the Crime and Disorder Act 1998 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, integrated care boards 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. Youth justice services 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** of the Housing Act 1996 requires housing authorities to refer to social 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, 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.

## **Homelessness Reduction Act 2017**

The Homelessness Reduction Act 2017 reformed England’s homelessness legislation by imposing duties on local authorities to intervene at earlier stages to prevent homelessness in their areas. The Act made various amendments to the Housing Act 1996, including by inserting a new section 213B, which applies to all public authorities specified in regulations<sup>5</sup> if the authority considers that a person in England in relation to whom it exercises functions is or may be homeless or threatened with homelessness. In those circumstances, the public authority must ask the person to agree to a local housing authority being notified and, provided the person agrees, notify the local housing authority and provide them with the person’s contact details.

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<sup>5</sup> See [Schedule 1 to the Homelessness \(Review Procedure etc.\) Regulations 2018/223](#)

## **Domestic Abuse Act 2021**

The Domestic Abuse Act 2021 introduced the first ever statutory definition of domestic abuse (see section 1 of the Act). The statutory definition is clear that domestic abuse may be a single incident or a course of conduct which can encompass a wide range of abusive behaviours, including a) physical or sexual abuse; b) violent or threatening behaviour; c) controlling or coercive behaviour; d) economic abuse; and e) psychological, emotional or other abuse.

Under the statutory definition, both the person who is carrying out the behaviour and the person to whom the behaviour is directed towards must be aged 16 or over and they must be “personally connected” (as defined in section 2 of the Act). The definition ensures that different types of relationships are captured, including ex-partners and family members.

Section 3 of the Act recognises the impact of domestic abuse on children (defined as a person under 18) as victims in their own right, if they see, hear or experience the effects of abuse involving a person they are related to. A child is related to a person if the person is a parent of, or has parental responsibility for, the child, or the child and the person are relatives.

## **Data Protection Act 2018 and UK General Data Protection Regulation (UK GDPR)**

The Data Protection Act 2018 and the UK GDPR regulate the collection and use of personal data. Personal data is information about identified or identifiable living individuals. Everyone responsible for processing personal data has to follow the ‘data protection principles’. The principles include that information must be processed fairly, lawfully and transparently, must be collected for specified, explicit and legitimate purposes, and must be adequate, relevant and limited to only what is necessary in relation to the purposes for which it is processed. Further information on data protection can be obtained from the [ICO website](#).