

Children and Young Persons Act

Introduction

This briefing details the main provision of the Children and Young Persons Act and has a particular focus on older young people in care and those making the transition from care.

Background

The Children and Young Persons bill took forward some of the commitments in the White Paper *Care Matters: Time for Change* which was published in June 2007. The white paper followed consultation on a Green Paper, *Care Matters: Transforming the lives of children and young people in care*, issued in October 2006.

The bill was introduced in the House of Lords on 14 November 2007 and completed its stages in the House of Lords on 25 March 2008¹.

The bill had its Second Reading in the House of Commons on 16 June 2008. It was committed to Public bill committee² for seven sittings between 24 June and 3 July 2008; it was not amended during this stage.

The report stage³ and third reading took place in the House of Commons on 8 October 2008. After this the bill went back to House of Lords on 13 November and Royal Assent was granted on this day.

The Children and Young Persons Act can be found here:

http://www.opsi.gov.uk/acts/acts2008/pdf/ukpga_20080023_en.pdf

Details of the bill's passage through parliament can be found here:

<http://services.parliament.uk/bills/2007-08/childrenandyoungpersonshl.html>

¹ There was a number of amendments to Part 2 of the bill during passage through the House of Lords which this briefing takes account of (e.g. new duties for local authorities to improve the quality of care for carers through the provision of short breaks)

² The Public bill Committee had 16 members (2 Liberal Democrats; 5 Conservatives and 9 Labour including the Ministers for Children, Schools and Families)

³ The government laid down amendments at this stage (e.g. provision of support services for disabled children and their families)

Purpose

The purpose of the bill is to reform the statutory framework for the care system by implementing the proposals in the White Paper that require primary legislation. The main legislation to be amended is the Children Act 1989.

The Minister for Children, Young people and Families, Beverley Hughes outlined the four key principles enshrined in the legislation⁴:

1. Corporate parenting from every person involved in the lives of children in care.
2. The voice of young people at the heart of the system.
3. Stability and continuity in every aspect of a child's care.
4. An uncompromising culture of high aspirations.

Territorial extent

The Act extends to England and Wales (but the provisions relating to children's wellbeing and in relation to compliance notices for failing children's homes apply to England only). The Act does not extend to Northern Ireland and extends to Scotland only in relation to a consequential amendment to the Children (Scotland) Act 1995.

Organisation

The Act is organised into five parts.

Part 1 – Delivery of social work services

This part deals with arrangements for the provision of social-work services.

Part 2 - Functions in relation to children and young persons

This section places a number of duties on local authorities when placing children and also details local authority's duties in relation to the IRO service; visiting children; education and training; personal advisers; and enforcement of care standards.

Part 3 – Adoption and Fostering

This part contains provisions to amend the Adoption and Children Act 2002 to allow for an independent review of decisions on the suitability of adopters and of local authority foster carers. It also extends the period allowed for establishing a registration scheme for private fostering.

Part 4 – Orders under part 2 of the 1989 Act

This section deals with residence orders and special guardianship orders.

Part 5 - Supplementary, general and final provisions

⁴ House of Commons, Second reading, 16 June 2008

Content of the Children and Young Persons Act

Part 1: Delivery of social work services for children and young persons

Delivery of social work services – Clauses 1 to 6

This section of the Act enables local authorities to delegate their functions in relation to looked-after children (including care leavers) to providers of social-work services to be called 'social work practices' (SWPs)⁵. The responsible local authority remains the "corporate parent" for children receiving their care through a social work practice, therefore, independent reviewing officer (IRO) services will be provided outside of the SWP as the IRO function will contribute to assure the quality of SWP care planning for individual children.

The piloting stage for social work practices will last up to 5 years and the intention is to pilot the arrangements in a number of local authorities. The pilots will be evaluated, and subject to that evaluation, the power to delegate functions may be extended to all local authorities. If delegation occurs all providers of social work services will be regulated as agencies under the Care Standards Act 2000.

Part 2: Functions in relation to children and young persons⁶

Well-being – Clause 7

Clause 7 – well-being of children and young persons

This provision gives the Secretary of State a statutory duty to promote the well-being of children. In addition subsection (4) gives the Secretary of State a statutory power to promote the well-being of those care leavers who are over the age of 18 and under the age of 25 (both former relevant and those qualifying for advice and assistance under section 24). This is the only clause to come into effect on Royal assent. This duty applies to England only.

Accommodation - Clauses 8 and 9

Clause 8 – provision of accommodation and maintenance for children who are looked after by a local authority

⁵ In the Green paper these were described as small groups of social workers undertaking work with children in care commissioned by (and holding budgets via contract with) but independent of local authorities,

⁶ A clause relating to the welfare for child immigrants which had intended to amend section 11 of the Children Act 2004 and require the UK Border Agency to make arrangements that its functions are discharged having regard to the need to safeguard and promote the welfare of children was removed at report stage (8 October 2008). This duty of safeguarding for immigrant children should instead be included in the forthcoming Immigration and Citizenship Bill.

This clause identifies the way in which looked after children are to be accommodated and maintained. The local authority must give preference to a placement with a relative, friend or other person connected with the child over other placement options and a child so placed will be looked after, subject to further reviews of their care plan.⁷

If the local authority is unable to place a child with a relative/friend or other person connected with the child, they must place the child in the most appropriate placement available (foster carer connected to child; foster care unconnected to child; registered children's home or 'other arrangements' – these may include placements in supported lodgings or hostels).

Where a local authority is considering changing a child's accommodation from a placement in a regulated setting (e.g. children's home or foster placement) to one that involves 'other arrangements'- i.e. a placement that is not regulated under the Care Standards Act then they must hold a statutory review before doing this. This means that local authorities are prevented from moving a child in care from a regulated placement to 'other arrangements' unless this has been decided in a statutory review of the child's case.

The local authority must (as far as is reasonably practicable) ensure that placements for looked after children:

- Allows the child to live near their home (and in their local authority area unless inconsistent with their welfare)
- Does not disrupt the child's education or training
- If the child has a sibling(s) in care to be placed with the sibling(s)
- If the child is disabled the accommodation must be suitable for the child's particular needs.

Planning for transition

We shall set out explicitly in the new single set of care planning regulations that a local authority cannot move a looked after child to independent living arrangements without first conducting a statutory review of the care plan and that, where such a move takes place, it does not automatically result in the child leaving care. That is an entirely separate decision that must also be reviewed.

3rd Reading debate – 8th October 2008

Sarah McCarthy-Fry MP, Parliamentary Under-Secretary of State, DCSF.

⁷ These duties apply with respect to the placement of any looked after child irrespective of legal status and whether this is an initial or subsequent placement.

Clause 9 – general duty of local authority to secure sufficient accommodation
Requires local authorities to take steps to secure sufficient accommodation in their area that is appropriate for the needs of the children they look after. The local authority must have regard to the benefit of having a number of accommodation providers in their area and have a range of accommodation capable of meeting the different needs of children in their area.

Sufficient accommodation

Let me take this opportunity to put on record that the duty to secure sufficient accommodation applies to children's homes, foster care placements and other arrangements such as supported lodgings and semi-independent accommodation...in order to discharge this new duty, local authorities will have to, among other things, conduct assessments of local need, both existing and potential, and establish the extent to which those needs can be met through existing placements. They must then take action to address shortages of any particular type of accommodation in their area.

...We will provide statutory guidance on the steps required by local authorities that will in particular emphasise the need for children's services to work with providers and all relevant partners, especially housing and planning services to maximise available accommodation within the area.

3rd Reading debate – 8th October 2008
Sarah McCarthy-Fry MP, Parliamentary Under-Secretary of State, DCSF.

'Relevant children'

In future, there will be a presumption that children will continue to be looked after up to the age of 18 and that there will rarely be good reasons for a local authority to cease looking after a child before he or she turns 18.

Therefore, it is Government policy that relevant children will become a residual category of children.

The role of the independent reviewing officer in each case will be to challenge local decisions to ensure that there has been a proper assessment and that any decision promotes the welfare of the child. The IRO will want to be satisfied that the accommodation is genuinely suitable, and we will use statutory guidance to set out our expectation that the social worker and child should visit the proposed accommodation before the decision is made.

That will stop the current poor practice in local authorities that means that a child is placed in independent living arrangements without review and/or is automatically deemed to have left care at the same time. That poor practice is a misunderstanding of the current legislative framework. Clause 9 of the Bill, regulation-making powers and the revised children Act statutory guidance, give us a review mechanism to correct that. So in future there may still be a small number of cases where a review of the young person's case endorses the social worker's assessment that the young person's welfare would be promoted by the young person leaving care because he or she is ready and wants to take on the challenge of living more independently...

3rd Reading debate – 8th October 2008

Sarah McCarthy-Fry MP, Parliamentary Under-Secretary of State, DCSF.

Independent reviewing officers - Clauses 10 to 14

These clauses amend the duties of local authorities in relation to the appointment of independent reviewing officers; adds to the functions of the IRO and provides powers for an appropriate national authority to establish a new national IRO service independent of local authorities in England and Wales respectively.

When a child first becomes looked after a named individual must be appointed by the local authority as the IRO for the child. This appointment must take place before the child's case is first reviewed (within 28 days). The aim is provide continuity in the overseeing of the case and to allow the IRO to develop a relationship with the child.

The Act introduces a duty on the IRO to monitor the local authority's performance of its functions in relation to the child's case (this extends the IROs current monitoring role which is currently only in respect of the review).

There is a new duty on the local authority to cooperate with the IRO (if not an employee) and to enable IROs to perform their functions.

There is power to refer the child's case to CAFCASS if the IRO 'considers it appropriate to do so'⁸.

The provisions provide the Secretary of State with the power to establish a national IRO service or transfer the IROs functions to CAFCASS. The intention is if the changes to the statutory framework are not effective in making

⁸ This replaces the 'breach of Human Rights Act' criterion

significant improvements to outcomes for looked-after children this power will be used.

IRO role

We will address statutory guidance to the IROs themselves on the importance of maintaining their independent voice in care planning and on how to perform their role more effectively. It will be the first time that statutory guidance of that sort, on how to perform their role, will have been issued.

Beverley Hughes, Minister of State for Children
House of Commons, Committee stage, July 2008

Visiting - Clauses 15 to 18

This provision requires local authorities to appoint a representative to visit all children in care wherever they are living, and for this representative to provide appropriate advice, support and assistance. It provides a power to extend the duty to other groups of children who were looked after but have ceased to be so (for example those children who have ceased to be looked after as a result of a voluntary arrangement (accommodated under section 20) on being taken into custody,).

There is an extension to the group of looked after children for whom an independent person must be appointed to visit, befriend and advise the child to include all those for whom an appointment would be in their interests.

There is a duty on the responsible authority to visit children placed for three or more months by a health body or a local education authority. For a child who is provided with accommodation by a health body or a local education authority, responsibility for providing services under the 1989 Act falls on the local authority, in whose area the child was ordinarily resident immediately before the child was provided with accommodation.

Visiting

We will include in regulations a requirement that relevant children should be regularly visited where they are living by their personal adviser to enable identification...when the personal adviser visits they will be able to respond to any change in circumstance or need including whether the accommodation remains appropriate. We will explore, with the help of stakeholders, how we could provide more definition of what constitutes 'suitable' accommodation in the revised statutory guidance.

3rd Reading debate – 8th October 2008
Sarah McCarthy-Fry MP, Parliamentary Under-Secretary of State, DCSF.

Provision of support services for certain children - Clause 19

Sets out functions of the local authority in relation to the provision of services for children in need, and their families under section 17 of the 1989 Act. These services must include such services as the authority considers appropriate with respect to accommodated children i.e. children who are provided with accommodation by health bodies, local education authorities, care homes or independent hospitals. The local authority will be required to provide these services with a view to promoting contact between the child and family. The services provided may include advice, guidance and counselling; services necessary to enable the child to visit or be visited by members of the family; and assistance to enable the child and members of the family to have a holiday together.

Education and training - Clauses 20 to 23

Places a duty on governing bodies of maintained schools to designate a member of staff responsible for promoting educational achievement of registered pupils at the school who are looked after, and also who are 'relevant' or 'former relevant' young people.

This provision requires local authorities to pay a fixed sum (bursary) to a former relevant child who pursues higher education in accordance with a pathway plan prepared for that young person. The amount of the fixed sum will be set in regulations. The fixed sum is in addition to assistance provided under sec. 23C (4) and is exempt from income tax.

Extends the duty on local authorities to appoint a personal adviser and keep the pathway plan under regular review, for young people who are former relevant children and who start or resume a programme of education or training after the age of 21 but under the age of 25 years. It is the duty of the local authority to carry out an assessment of the needs of the young person with a view to determining what assistance (if any) it would be appropriate for them to provide and to prepare their pathway plan. The kinds of assistance are:

- Contributing to expenses incurred by young person in living near the place where young person is/will be receiving education or training
- Making a grant to enable young person to meet expenses connected with education and training.

The duty continues as long as the young person pursues the agreed programme, even if this takes them beyond their 25th birthday.

Cash payments – Clause 24

There is an extension to the powers of local authorities to make cash payments to children in need and their families. This clause eliminates the restriction on the making of cash payments by removing the phrase 'in exceptional circumstances'.

Care breaks – Clause 25

This clause imposes a duty on local authorities to provide, as part of the range of services for families, breaks which assist parents and others who provide care for disabled children.

Enforcement of care standards – Clause 26 to 29

These clauses make provision to enable registration authorities to issue compliance notices to children's home providers who are failing to meet required standards. Also to serve a notice preventing new admissions to establishments where this is deemed appropriate.

Emergency protection orders – Clause 30

This repeals section 45(9) of the 1989 Act to remove the 72 hour moratorium on the court's powers to hear an application to discharge an Emergency Protection Order.

Information and research - Clauses 31 to 33

These clauses place a duty on registrars of birth and deaths to notify local Safeguarding Children boards of the particulars of the death of a child, and gives the Registrar general power to supply information to the appropriate national authority for research purposes. They also extend the powers of the Secretary of State to carry out research on the functions of local authorities to functions added under recent legislation.

Part 3: Adoption and Fostering – Clauses 34 and 35

These clauses extend the period within which a registration scheme may be established for private fostering by three years.

Part 4: Orders under Part 2 of the 1989 Act

Residence orders – Clause 36 and 37

Special guardianship orders – Clause 38

Extends the rights of relatives who are entitled to apply for a residence order or special guardianship order without leave of the court to those with whom the child has lived for a continuous period of one year and ensure that where a court makes a residence order the order will normally continue until the child reaches the age of 18

What next?

The only part of the Act which is currently in force is Clause 7 on well being. There will be phased commencement of the rest of the provisions. Alongside this regulations and guidance to accompany the Act are currently being prepared, and this work is led by the Department for Children, Schools and Families (DCSF). We expect a draft version of the guidance and regulations to be out for public consultation early to mid-2009 and the finalised version to be ready by December 2009 at the latest.

As part of this process the Government has committed to consolidate the care planning regulations by:

Bringing together all the requirements for care planning in one set of regulations and issuing accompanying statutory guidance as part of the revised children act 1989 guidance⁹

In addition we expect new IRO Guidance and new Leaving care guidance. Finally, the Children and Young Persons Act is only one part of the Care Matters strategy that sets out the reforms needed to transform the life and experiences of children in care. There are also commitment to deliver:

- Review of National minimum standards (2009)
- Statutory health guidance (2009)
- Ofsted new inspection regime (start April 2009)
- Deliver and evaluate pilots (2011)

Implementation plan:

<http://publications.everychildmatters.gov.uk/eOrderingDownload/DCSF-00279-2008.pdf>

Action log:

http://www.everychildmatters.gov.uk/_files/Care%20Matters%20ACTION%20Log.pdf

Piloting new models

- Staying put: 18+ family placement
- Right2bcared4
- Multi systematic therapy
- Virtual head and private tutoring
- Social work practices
- Multi-dimensional treatment foster care
- Social pedagogy
- Regional commissioning units
- Family drug and alcohol courts
- Pastoral care in FE

⁹ Care Matters: Time for change page 25

CONTACT DETAILS

For further information and resources please go to our website www.leavingcare.org or contact:

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ABOUT US

The National Care Advisory Service (NCAS) is the national advice, support and development service for children in and from care (age 13-25) and those who work with them. We work at local, regional, national and European levels to develop solutions based on good corporate parenting that include and empower young people, professionals and policy-makers to continually improve service quality and outcomes. Our aims are

- To promote improvement in outcomes for older children in care and care leavers by supporting work at a national, regional and local levels.
- To support the specific implementation of the Care Matters agenda across the country.
- To support local authorities to empower young people to be fully involved in the design, development and delivery of successful services.



NCAS is supported by Catch22. Registered charity number 1124127. Catch22, the charity that helps young people out. Before we were Catch22 we were Rainer and Crime Concern, two national charities which merged in 2008.

