

Safeguarding Pressures Phase 5

National Context: Legislation, Guidance and Reviews for Children's Services

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The Association of Directors of Children's Services Ltd



Each phase of the ADCS Safeguarding Pressures Research has provided the national context for children's social care activity. The quantity of legislation, guidance, reviews and investigations within which children's services currently operate is too big to include in the report for Phase 5 and has therefore been extracted into this separate document.

There are four sections providing brief summaries to key documents in chronological order starting with the most recent:

1. Legislation and policy
2. Reviews, reports and investigations
3. Inspections
4. Other key areas.

1 Legislation and Policy

- 1.1 Education and Adoption Act (2016)** is largely concerned with the performance of schools, it also introduces the concept of 'coasting schools' and makes provisions about joint arrangements for carrying out local authority adoption functions in England.
- 1.2 The Children & Social Work Bill (2016)** published in May 2016, a wide-ranging and significant change in legislation for the social work profession. Covering the care system, adoption, Corporate Parenting and; rights of care leavers. In addition, it includes the introduction of a Child Safeguarding Practice Review Panel; significant changes to social worker accreditation, regulation, registration, and training; as well as publication and sharing of information, and a duty to co-operate.
- 1.3 Counter-Extremism and Safeguarding Bill (2016)** includes new powers of intervention to tackle radicalisation of children in "unregulated education settings."
- 1.4 The Immigration Act (2016)** provides major revisions for the immigration system focussing on measures to reduce illegal migration, failed asylum seekers, the transfer of unaccompanied children, and former UASC who are Appeal Rights Exhausted (ARE). Some of the Act's provisions do not come into force in Spring 2017.
- 1.5 Special Guardianship Guidance (2016)** provides statutory guidance in relation to applications by local authorities for special guardianship orders, and which amends the Special Guardianship Regulations (2005).
- 1.6 The Serious Crime Act (2015)** includes a new mandatory reporting duty for female genital mutilation (FGM) requiring regulated health and social care professionals and teachers to report known cases of FGM in under 18-year-olds to the police from October 2015 onwards.

- 1.7 The Children Act 1989 Guidance and Regulations Volume 2 - Care Planning, Placement And Case Review (2015)** updates the 2010 edition of the guidance and describes the key principles underpinning the 1989 Children Act. It also consolidates information previously contained in a series of updates and supplements, including: contact with siblings, out-of-authority placements, fostering for adoption and the delegation of decision making about looked after children to their carers.
- 1.8 Promoting the Educational Achievement of Looked After Children (2015)** statutory guidance for local authorities which details the duty local authorities and Virtual School Heads have to promote the educational achievement of the children they look after, including those placed out-of-authority.
- 1.9 Deprivation of Liberty Code of Practice (2015)** is an amendment to the Mental Health Capacity Act 2005. The Deprivation of Liberty Safeguards (DoLS) apply to people who are in a care home or hospital, when it is necessary to deprive of their liberty a resident or patient who lacks capacity to consent to their care and treatment in order to keep them safe from harm. In May 2016, The Law Commission published an interim statement on its reform proposals the final report and draft legislation, due to be published by the end of 2016.
- 1.10 Promoting the Health and Well-Being of Looked-After Children (2015)** statutory guidance for local authorities, clinical commissioning groups and NHS England.
- 1.11 Tackling CSE action plan (2015)** sets out the Government’s strategy to tackle CSE, including setting up a national task force, whistleblowing, and giving Child Sexual Exploitation (CSE) the status of a ‘national threat’ in the Strategic Policing Requirement.
- 1.12 The Children's Homes (England) Regulations (2015)** sets out duties for those providing residential children's homes for children, and new inspection framework introduced from April 2015 in Ofsted’s **Inspection of children’s homes Framework for inspection** (Ofsted 2015).
- 1.13 Working Together to Safeguard Children (2015)** updated from the 2013 statutory guidance provides the main procedures for safeguarding children. It continues to be less prescriptive and incorporates legislation and statutory guidance published since 2013.
- 1.14 The Transforming Care programme (2015)** aims to improve services and support for children, young people and adults with a learning disability and/or autism who display behaviour that challenges, including those with a mental health condition.
- 1.15 Sustainability and Transformation Plans (2015)**, developed around new STP footprints, will set out in detail how local health systems will come together to deliver the NHS Five Year Forward View.

- 1.16 Children & Families Act (2014)** covers a range of children’s services, covering adoption and contact, family justice, children and young people with Special Educational Needs and Disability (SEND), child care, child welfare and the role of The Children’s Commissioner for England. Within the Children & Families Act, ‘Staying Put’ duties provide care leavers the opportunity to remain with their former foster carer after they reach the age of 18.
- 1.17 Care of Unaccompanied and Trafficked Children (2014)** sets out steps local authorities should take to plan for the provision of support for looked after children who are unaccompanied asylum seeking children and child victims of trafficking.
- 1.18 Statutory Guidance on Children Who Run Away or Go Missing from Home or Care (2014)** outlines action that local authorities and their partners should take to stop children going missing from home or care and to protect those who do. It covers agency roles and responsibilities; multi-agency working; access to support; risk assessment; safe and well checks; independent return interviews; emergency accommodation; children who repeatedly run away and go missing; and additional actions to protect looked after children.
- 1.19 Public Law Outline (2014)** following the Family Justice Review (2012) sets out reforms to the family justice system, changing the way local authorities make applications for Care and Supervision Orders with the aim of speeding up the process, some of which were made law in the Children and Families Act (2014).
- 1.20 The Care Act (2014)** continues to be significant legislation for adult social care and children and young people with SEND. Changes from April 2015 include general responsibilities for promoting wellbeing, focusing on prevention, personal budgets, eligibility criteria and support for carers, as well as deprivation of liberty safeguards.
- 1.21 NHS Five Year Forward View (2014)** sets out a new vision for the NHS based on new models of care.
- 1.22 SEND Code of Practice: 0 to 25 years (2014)** provides statutory guidance for organisations which work with and support children and young people who have special educational needs or disabilities.
- 1.23 Health & Social Care Act (2012)** created a new commissioning framework for the provision of health care in England, with implications for the provision of social care and public health, creating health and well-being boards, and transferring Public Health deliver to the local authority.
- 1.24 Legal Aid, Sentencing and Punishment of Offenders Act (2012)** introduced changes within the youth justice system, including making 17 year olds subject to the same remand framework as 12 to 16 year olds and conferring ‘children looked after’ status to remanded young people. The Act also transferred responsibility for the funding of placements to local authorities.

- 1.25 Welfare Reform Act (2012)** implemented in three phases from 2013 to 2017 makes changes to benefits system including housing allowances. The reforms include the 'under-occupancy penalty', commonly known as the 'bedroom tax' and the phased introduction of Universal Credit.
- 1.26 Statutory Guidance on Short Breaks (2011)** which clarifies the legal framework for short breaks under Part 3 of The Children Act (1989), and the requirement for assessment, planning and review for children having short breaks. It also makes provision as to the legal status of the child in receipt of short breaks
- 1.27 Missing Children and Adults – A cross Government Strategy (2011)** produced by the Home Office sets out a small number of strategic objectives relating to children and adults that go missing.
- 1.28 Statutory Guidance Care Planning (2010)** consolidates existing regulations and guidance into one coherent framework relating to care planning and review for all children looked after. This also builds on good practice, which has developed since the Children Act (1989) was implemented.
- 1.29 Southwark Judgement (2009) and Hillingdon Judgement (2003)** these two key pieces of case law relating to social care services for adolescents made explicit the level of support that was expected of local authorities for unaccompanied asylum seeking children and young people (Hillingdon Judgement); and obliging children's services to provide accommodation and support to homeless 16 and 17 year olds (Southwark Judgement).
- 1.30 Children and Adoption Act (2006)** gives courts more flexible powers to facilitate child contact and enforce contact orders when separated parents are in dispute.
- 1.31 The Children Act (2004)** aimed to achieve positive outcomes for children and young people and their families, to improve and integrate services for children, promote early intervention, and bring together different professionals. Through it, local authorities have a statutory role in securing the co-operation of partners. Part of the aim of integrating services, plans and information is to enable young people's needs to be identified early to allow for timely and appropriate intervention before needs become more acute. The Children Act (2004) remains in force although the government programme to implement its aims, *Every Child Matters: Change for Children*, (DfES 2004) was abolished in 2010, following a change of government.
- 1.32 Adoption and Children Act (2002)** updated the legal framework for domestic and inter-country adoption, and places a duty on local authorities to maintain an adoption service and provide support services.
- 1.33 Children (Leaving Care) Act (2000)** sets out duties local authorities have to support young people leaving care from 16 to 21 years of age.

1.34 The Children Act (1989) sets out many of the duties, powers and responsibilities local authorities hold in respect of their looked after children and care leavers. In 2015 new regulations relating to the Children Act came in to force.

1.35 Adoption has been a government priority since publishing the *Action Plan for Adoption* in March 2012 (2012c); *Adoption and Fostering: Tackling Delay* (DfE 2012d); *Family Justice Review* (Ministry of Justice 2011) and subsequent *Family Justice Modernisation Programme* (Judiciary 2012) which proposed “judicial solutions to the problems which are identified in the Family Justice Review through strong judicial leadership and management together with robust case management of proceedings by the requirement to have a welfare timetable for each child based on evidence and research”. See also Adoption Agencies (Miscellaneous Amendments) Regulations 2013; The Care Planning, Placement and Case Review and Fostering Services (Miscellaneous Amendments) Regulations 2013; DfE Statutory guidance on adoption 2013; Adoption Reform Grant.

In March 2016, the Government launched a new four year strategy: “*Adoption: A vision for change*,” which lays out a new system supported by £14m investment for local innovative schemes. Desired outcomes include quicker matching for children with adoptive parents and boosting the educational success of adopted children. The Government states it will change the law at the earliest possible opportunity to make crystal clear that councils and courts must always pursue adoption when it’s in a child’s best interest. In May 2016 the Education and Adoption Bill received royal assent. The new Act includes a series of provisions for the development of joint adoption arrangements in England.

Permanency Case Law the impact of landmark judgments, *Re B* and *Re B-S* in 2013, which ruled that adoption orders should only be made when “nothing else will do” (to quote one of the judges in the *Re B* case). This brought the disconnect between social work and court decisions into sharp focus creating an even greater pressurised arena where judges continued to criticise poor practice and overturn social work recommendations, and even though the government restated its “pro-adoption” stance, and insisted the legal test for adoption remained unchanged. In August 2016, a Court of Appeal Judgement to overturn a judge’s decision to reject an adoption application in favour of a special guardianship order against (*Re W*) created further confusion, when the Court of Appeal said the judge had failed to identify “significant errors” in social work evidence, and a “fatally flawed” welfare analysis, in reaching his decision, finding that the social workers had misunderstood the “nothing else will do” benchmark.

2 Reviews, Reports and Investigations

This section includes current or recent reviews, reports and investigations only.

- 2.1 The NAO publishes a report on children in need of help and protection (October 2016)
- 2.2 Home Office DfE publishes voluntary national transfer scheme for unaccompanied asylum seeking and refugee children (July 2016)
- 2.3 DfE announces a stocktake of fostering services (July 2016)
- 2.4 DfE publishes 'Putting Children First' (July 2016)
- 2.5 Government publishes a refreshed care leaver's strategy (July 2016)
- 2.6 DfE review of the role of the LA in respect of schools led by Alan Wood (July 2016)
- 2.7 Residential care review by Sir Martin Narey (July 2016)
- 2.8 'In care, out of trouble' final report of the review by Lord Laming of prevalence of children in care and care leavers in the justice system (May 2016)
- 2.9 Review of Local Safeguarding Children Boards by Alan Wood (May 2016)
- 2.10 DfE publishes 'Children's Social Care: A Vision for Change,' (January 2016)
- 2.11 Review of Youth Justice System (Taylor) commissioned (September 2015) Interim report (February 2016); final report not yet published
- 2.12 Report of Inspection of Rotherham Metropolitan Borough Council by Louise Casey CB published (February 2015)
- 2.13 Independent Inquiry into Child Sexual Exploitation in Rotherham by Alexis Jay (August 2014)
- 2.14 Launch of Independent Inquiry (led by Goddard/Jay) into Child Sexual Abuse in England and Wales to examine how the country's institutions handled their duty of care to protect children from sexual abuse, (launched in 2014 with report due mid-2017)
- 2.15 Winterbourne View – a time for change, a report by the Transforming Care and Commissioning Steering Group, chaired by Sir Stephen Bubb – (2014).

3 Inspections

- 3.1 Ofsted Single Inspection Framework (SIF) of local authority assesses children in need of help and protection and support for care leavers, from November 2013 to 2017. The latest version of the framework and evaluation schedule was published in August 2016 (Ofsted 2016).
- 3.2 Review of Local Safeguarding Children Boards (LSCBs) by Ofsted (currently attached to the SIF)
- 3.3 Joint Targeted Area Inspections carried out in partnership with Ofsted, the CQC, HM Inspectorate of Constabulary, HM Inspectorate of Probation and, where relevant, HM Inspectorate of Prisons. (Ofsted 2016b). The inspections look at the effectiveness of front-line safeguarding and how well the different agencies work together, and include a 'deep dive' theme for each tranche:
 - child sexual exploitation and missing children – February to August 2016
 - children living with domestic abuse – September 2016 to March 2017
- 3.4 Ofsted Joint Targeted Area Inspections (single agency focus on the local authority)
- 3.5 Joint Ofsted and CQC inspection looking at the effectiveness of identifying and meeting the needs of children and young people with SEND
- 3.6 Ofsted Local authority arrangements for supporting school improvement [LASSI] inspections
- 3.7 Ofsted Children's Homes Inspections
- 3.8 CQC Children looked after and Safeguarding Reviews of health of children looked after
- 3.9 HMI Probation's inspection of Youth Offending Teams.

4 Other

- 4.1 Earlier this year months the Home Office consulted on reporting and acting on child abuse and neglect, which included proposals for the introduction of mandatory reporting, or a lesser duty to act, for professionals. The consultation closed in October 2016, the results of this exercise have not yet been published.
- 4.2 DCLG Troubled Families Programme 2012 a programme, extended beyond its original three-year term, aiming to “turn around” the lives of 120,000 of England's most “troubled families” through targeted work on a ‘payment by results’ basis, focussing on reducing worklessness, truancy, crime and anti-social behaviour, and improving school readiness.

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ADCS is the national leadership
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