

## **NSPCC factsheet**

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# **An introduction to child protection legislation in the UK**

**May 2012**

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**This fact sheet provides a brief introduction to some of the key legislation that protects children and young people in the UK. It is not comprehensive and does not constitute legal advice. It has been compiled by the NSPCC Information Service.**

### Introduction

There is no single piece of legislation that covers child protection in the UK, but rather a myriad of laws and guidance that are continually being amended, updated and revoked. Laws are amended by new legislation passed by Westminster, the Welsh Assembly Government, the Northern Ireland Assembly and the Scottish Parliament. This is known as **statutory law**, but laws also have to be interpreted by the courts. The way in which courts interpret laws is known as **case law**, and this can also have the effect of amending statutory law. It should also be noted that not all laws cover all parts of the UK (England, Wales, Scotland, Northern Ireland) and that the legal systems vary in the different areas. Although this fact sheet references Wales, Northern Ireland and Scotland, it does not provide a comprehensive picture of the legal framework in those nations.

Legislation covering child protection can be divided into two main categories: **civil law** and **criminal law**.

**Civil law** is divided into **public** and **private law**. **Public law** puts in place systems and processes in order to minimise the risk of children coming to harm and lays out what action should be taken if children are at risk. **Private law** deals with family proceedings such as divorce and contact.

**Criminal law** deals with people who have offended or are at risk of offending against children. In practice, some Acts may include both provisions that relate to civil law and provisions that relate to criminal law.

Since the NSPCC was founded in 1884, it has played a key role in influencing and drafting legislation to protect children.

The ***Children and Young Persons Act 1933*** is one of the older pieces of child protection legislation, which has parts that are still in force today. It includes a list of offences against children, which are referred to as Schedule One offences.

## The Children Act 1989

The current child protection system is based on the **Children Act 1989**, which was introduced in an effort to reform and clarify the existing plethora of laws affecting children. Hailed at the time as “the most comprehensive and far-reaching reform of child law which has come before Parliament in living memory” by the then Lord Chancellor Lord Mackay of Clashfern, it enshrined a number of principles. The **paramountcy principle** means that a child’s welfare is paramount when making any decisions about a child’s upbringing. The court must also ascertain the wishes and feelings of the child and shall not make an Order unless this is “better for the child than making no Order at all” (section 1). Every effort should be made to preserve the child’s home and family links. It introduced the concept of **parental responsibility** which is defined as “the rights, duties, powers and responsibilities which by law a parent of a child has in relation to the child and his property” (section 3).

The *Children Act 1989* sets out in detail what local authorities and the courts should do to protect the welfare of children. It charges local authorities with the “duty to investigate ... if they 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” (section 47). Local authorities are also charged with a duty to provide “services for children in need, their families and others” (section 17). It is section 31 of the *Children Act 1989* that sets out the NSPCC’s “authorised person status” which means the NSPCC has the power to apply directly for a court order if it believes a child is suffering or likely to suffer significant harm.

The *Children Act 1989* defines “harm” as ill-treatment (including sexual abuse and non-physical forms of ill-treatment) or the impairment of health (physical or mental) or development (physical, intellectual, emotional, social or behavioural) (section 31). “Significant” is not defined in the Act, although it does say that the court should compare the health and development of the child “with that which could be reasonably expected of a similar child”. So the courts have to decide for themselves what constitutes “**significant harm**” by looking at the facts of each individual case.

Two key **guidance documents** exist to help professionals to identify children at risk and to work together to protect them:

Guidance on interagency cooperation under the Children Act 1989 was first published in 1991. The current guidance, ***Working together to safeguard children: a guide to inter-agency working to safeguard and promote the welfare of children*** (HM Government, 2010), is currently under review. As it stands, it provides definitions of child abuse and neglect and guidance on what action agencies must take to protect children. It includes information about roles and responsibilities, local safeguarding children boards and Serious

Case Reviews (conducted after the death or serious injury of a child). Some chapters form statutory guidance whilst other chapters form “non-statutory practice guidance”. A revised version of the guidance will be produced, following a consultation later this year. Proposed changes include the removal of the prescription of timescales and the distinction between core and initial assessments.

The ***Framework for the assessment of children in need and their families*** (DH, 2000) is non-statutory guidance that provides professionals with a systematic way of identifying children in need and ascertaining the best way of helping those children and their families.

A simple guide for anyone working with children, ***What to do if you're worried a child is being abused***. (HM Government, 2006), outlines the child protection processes and systems contained in the *Working Together* and *Framework for Assessment* documents.

The *Children Act 1989* legislates for England and Wales. The current guidance for Wales is ***Safeguarding children: working together under the Children Act 2004*** (Welsh Assembly Government, 2006). The ***Children (Northern Ireland) Order 1995*** and the ***Children (Scotland) Act 1995*** share the same principles and have their own guidance - ***Co-operating to safeguard children*** (DHSSPS, 2003) and ***The national guidance for child protection in Scotland*** (Scottish Government, 2010).

Whilst local authorities have a mandatory duty to investigate if they are informed a child may be at risk, there are no specific mandatory child abuse reporting laws in the UK that require professionals to report their suspicions to the authorities. However in Northern Ireland, it is an offence not to report an arrestable crime to the police, which by definition, includes most crimes against children (Wallace and Bunting, 2007). Most professional bodies (eg Royal College of Nursing) issue guidance to their members which sets out what they should do if they are concerned about the welfare of a child who they come into contact with.

## **After the Children Act 1989**

Since the *Children Act 1989*, many new laws have been passed to strengthen the ways children are protected.

The ***United Nations Convention on the Rights of the Child 1989*** (UN, 1989) was ratified by the UK on 16 December 1991. It includes the right to protection from abuse, the right to express their views and have them listened to and the right to care and services for disabled children or children living away from home. Although the Government has said it regards itself bound by the Convention and refers to it in child protection guidance, it has not become part of UK-wide law (Lyon, 2003 p2).

Wales is the first, and so far only, part of the UK to embed the principles of the UN Convention into its own laws. The National Assembly for Wales passed the ***Rights of Children and Young Persons (Wales) Measure*** on 18 January 2011. It imposes a legal duty on Welsh ministers to have due regard to the rights and obligations set out in the Convention in exercising any of their functions. The legislation will come into force in two stages; from May 2012 for new or reviewed law or policy and from May 2014 for all Welsh ministers' functions along with a duty to promote knowledge and understanding of the Convention.

The ***Human Rights Act 1998*** incorporates the European Convention on Human Rights into UK law. Whilst it does not specifically mention children's rights, children are covered by this legislation as they are *persons* in the eyes of the law, just as adults are (Bainham, 2005 p82). The Act makes it unlawful for public authorities to act in a manner which is incompatible with the rights and freedoms contained in the Act. It also requires the Government and the courts to ensure that court rulings and new Bills are compatible with the Act wherever possible. These rights include the right to respect for private and family life.

The ***Children's Commissioner for Wales Act 2001*** created the first children's commissioner post in the UK. The principal aim of the Commissioner is to safeguard and promote the rights and welfare of children. Subsequent legislation created a children's commissioner for Northern Ireland (***The Commissioner for Children and Young People (NI) Order 2003***), Scotland (***Commissioner for Children and Young People (Scotland) Act 2003***) and England (sections 1-9 of the ***Children Act 2004***). The English Commissioner is unique in the UK in not having the remit to promote children's rights.

The ***Education Act 2002*** includes a provision (section 175) requiring school governing bodies, local education authorities and further education institutions to make arrangements to safeguard and promote the welfare of children.

Section 120 of the ***Adoption and Children Act 2002*** amends the *Children Act 1989* by expanding the definition of "harm" to include witnessing domestic violence.

## **Children Act 2004**

Following the death of eight-year old Victoria Climbié in 2000, the Government asked Lord Laming to conduct an inquiry to help decide whether it needed to introduce new legislation and guidance to improve the child protection system in England. The Government's response to the **Victoria Climbié Inquiry** report (Laming, 2003) was the ***Keeping children safe*** report (DfES, 2003) and the ***Every child matters green paper*** (DfES, 2003), which in turn led to the ***Children Act 2004***.

Although much of this legislation still applies, the election of a Conservative/Liberal Democrat coalition government in May 2010 has led to a shift in thinking on child protection, and a number of changes in approach are currently under discussion. In June 2010 the new government invited Professor Eileen Munro to conduct an independent review of children's social work and child protection practice in England. Children and Families Minister, Tim Loughton said that it would provide an opportunity to counteract a culture in child protection, "which places too much emphasis on bureaucratic box ticking above close personal attention to the circumstances of individual children". **The Munro review of child protection: final report** (Munro, May 2011) called for a more child-focused system and a reduction in prescriptive timescales and targets from central government. **A child centred system: the government's response to the Munro review** (DfE, July 2011) accepted all but one of Munro's recommendations, and laid out a programme of proposed changes over the following years. Pending alterations have been noted throughout this briefing.

The *Children Act 2004* does not replace or even amend much of the *Children Act 1989*. Instead it sets out the process for integrating services to children. It covers England and Wales in separate sections. Besides creating the post of Children's Commissioner for England, the *Children Act 2004* places a duty on local authorities to appoint a director of children's services and an elected lead member for children's services, who is ultimately accountable for the delivery of services. The coalition government published revised statutory guidance relating to the two posts in April 2012 (DfE, 2012).

The Act places a duty on local authorities and their partners (including the police, health service providers and the youth justice system) to co-operate in promoting the wellbeing of children and young people and to make arrangements to safeguard and promote the welfare of children. The Act also puts Local Safeguarding Children Boards on a statutory footing (replacing the non-statutory Area Child Protection Committees) and gives them functions of investigation and review (section 14), which they use to review all child deaths in their area.

Section 58 of the *Children Act 2004* updates the legislation on physical punishment. It limits the use of the defence of reasonable punishment so that it can no longer be used when people are charged with the offences against a child of wounding, actual or grievous bodily harm or cruelty. Therefore any injury sustained by a child which is serious enough to warrant a charge of assault occasioning actual bodily harm cannot be considered to be as the result of reasonable punishment. (DCSF, 2007).

## **After the Children Act 2004**

The ***Children and Adoption Act 2006*** gives courts more flexible powers to facilitate child contact and enforce contact orders when separated parents are in dispute.

The ***Children and Young Persons Act 2008*** legislates for the recommendations in the ***Care matters white paper*** (DfES, 2007) to provide high quality care and services for children in care. It covers England and Wales (in part) and also places a duty on registrars to notify the Local Safeguarding Children Board of all child deaths.

The ***Borders, Citizenship and Immigration Act 2009*** places a duty on the UK Border Agency to safeguard and promote children's welfare (section 55), bringing them in line with other public bodies that have contact with children.

The ***Apprenticeships, Skills, Children and Learning Act 2009*** legislates for there to be two lay members from the local community sitting on each Local Safeguarding Children Board. The coalition government has since repealed some of the other provisions in this Act, including the requirement to draw up Children and Young People's Plans, and has withdrawn related statutory children's trust guidance.

The ***Education Act 2011*** makes changes to provisions on school discipline and will place restrictions on the public reporting of allegations made against teachers. The intention is for most of the sections of the Act to have commenced by the start of the 2012 academic year.

## **Legislation to protect children from adults who pose a risk**

In addition to the civil laws that set out the duties of public bodies to protect children, there are also laws that protect children by monitoring adults who pose a risk, creating offences with which they can be charged and stopping them from working with children.

The ***Sex Offenders Act 1997*** requires sex offenders convicted or cautioned on or after 1 September 1997 to notify the police of their names and addresses and of any subsequent changes (known colloquially as the sex offenders register).

The ***Sexual Offences Act 2003*** was introduced to update the legislation relating to offences against children. It includes the offences of grooming, abuse of position of trust, trafficking, and covers offences committed by UK citizens whilst abroad. It also updates the *Sex Offenders Act 1997* by strengthening the monitoring of sex offenders. The coalition government is currently consulting on further reform of the notification requirements for registered sex offenders (Home Office, 2011). Similar offences were introduced into other parts of the UK by the ***Sexual Offences (Scotland) Act 2009*** and the ***Sexual Offences (NI) Order 2008***.

The ***Female Genital Mutilation Act 2003*** extends the existing legislation criminalising female genital mutilation in the UK, by making it an offence for UK nationals or permanent UK residents to take a girl abroad, or to help others to take a girl abroad, to carry out female genital mutilation, even in countries where the practice is legal.

The ***Domestic Violence, Crime and Victims Act 2004*** closes a legal loophole, (whereby defendants in murder and manslaughter cases could escape conviction by claiming each other had killed the child), by creating a new offence of causing or allowing the death of a child or vulnerable adult. The offence establishes a new criminal responsibility for members of a household where they know that a child or vulnerable adult is at significant risk of serious harm. The ***Domestic Violence, Crime and Victims (Amendment) Act 2012*** extends the 2004 offence to include “causing or allowing child or vulnerable adult to suffer serious physical harm”. The amendment will come into force on a date to be announced by Statutory Instrument.

The Home Office published a circular (16/2005) ***Guidance on offences against children*** (Home Office, 2005) which contained a consolidated list of offences for all agencies to use in identifying “a person identified as presenting a risk, or potential risk, to children”. It also discusses the use of the terms “Schedule one” offenders and offences.

The ***Serious Organised Crime and Police Act 2005*** set up the framework for the UK-wide Child Exploitation and Online Protection (CEOP) Centre to be created. It also includes provisions for improving the vetting system to stop adults who pose a risk from working with children (section 163). In June 2011 plans were set out for the creation of a National Crime Agency (NCA) in 2013 which will replace the Serious Organised Crime Agency (SOCA) and take in the work of CEOP (National Crime Agency, 2011).

Following the 2002 murders of ten-year-olds Jessica Chapman and Holly Wells, the ***Bichard Inquiry*** (Bichard, 2004) examined vetting procedures. The Government’s response was the ***Safeguarding Vulnerable Groups Act 2006***, which established a new centralised vetting and barring scheme for people working with children. Following a 2011 review of this scheme, the *Protection of Freedoms Act* was passed on 1 May 2012. Once commenced, the Act will see the replacement of the vetting and barring scheme with a new, scaled back, disclosure and barring service which will focus only on roles working most closely with vulnerable groups.



The *Safeguarding Vulnerable Groups Act 2006* covers England and Wales. The *Safeguarding Vulnerable Groups (NI) Order 2007* covers Northern Ireland and the *Protection of Vulnerable Groups (Scotland) Act 2007* covers Scotland. The two acts and NI Order should work together to provide a robust system for vetting staff and barring people who are unsuitable to work with children across the UK.

The *Forced Marriage Act (Civil Protection) 2007*, gives courts the power to make orders to protect the victim or potential victim of a forced marriage and help remove them from that situation. Although this Act does not make forcing someone into marriage a crime, anyone found to be contravening a Forced Marriage Protection Order can be charged with a criminal offence.

The *Criminal Justice and Immigration Act 2008* allows people who commit sex offences against children abroad to face prosecution in the UK, even if that offence is not illegal in the foreign country in which it was committed.

## What the legislation doesn't cover

There is no specific legislation that covers:

- the minimum age at which a child may be left alone
- how old a babysitter should be.

The NSPCC has produced a leaflet *Home alone* to help parents make decisions about how, when and for how long it is safe to leave their children at home.

[http://www.nspcc.org.uk/Inform/publications/Downloads/homealone\\_wdf48204.pdf](http://www.nspcc.org.uk/Inform/publications/Downloads/homealone_wdf48204.pdf)

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*Protection of Freedoms Act. (2012)*

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## Relevant Acts in chronological order

**Children and Young Persons Act 1933**

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**Children Act 1989**

<http://www.legislation.gov.uk/ukpga/1989/41/contents>

**Children (Scotland) Act 1995**

<http://www.legislation.gov.uk/ukpga/1995/36/contents>

**Children (Northern Ireland) Order 1995**

<http://www.legislation.gov.uk/nisi/1995/755/contents/made>

**Sex Offenders Act 1997**

<http://www.legislation.gov.uk/ukpga/1997/51/contents>

**Human Rights Act 1998**

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**Children's Commissioner for Wales Act 2001**

<http://www.legislation.gov.uk/ukpga/2001/18/contents>

**Adoption and Children Act 2002**

<http://www.legislation.gov.uk/ukpga/2002/38/contents>

**Education Act 2002**

<http://www.legislation.gov.uk/ukpga/2002/32/contents>

**Sexual Offences Act 2003**

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**Female Genital Mutilation Act 2003**

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**The Commissioner for Children and Young People (Northern Ireland) Order 2003**

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**Commissioner for Children and Young People (Scotland) Act 2003**

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**Domestic Violence, Crime and Victims Act 2004**

<http://www.legislation.hmso.gov.uk/acts/acts2004/20040028.htm>

**Children Act 2004**

<http://www.legislation.gov.uk/ukpga/2004/31/contents>

**Serious Organised Crime and Police Act 2005**

<http://www.legislation.gov.uk/ukpga/2005/15/contents>

**Safeguarding Vulnerable Groups Act 2006**

<http://www.legislation.gov.uk/ukpga/2006/47/contents>

**Children and Adoption Act 2006**

<http://www.legislation.gov.uk/ukpga/2006/20>

**Protection of Vulnerable Groups (Scotland) Act 2007**

<http://www.legislation.gov.uk/asp/2007/14/contents>

**Safeguarding Vulnerable Groups (Northern Ireland) Order 2007**

<http://www.legislation.gov.uk/nisi/2007/1351/contents>

**Forced Marriage Act (Civil Protection) 2007**

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**Children and Young Persons Act 2008**

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**Borders, Citizenship and Immigration Act 2009**

<http://www.legislation.gov.uk/ukpga/2009/11>

**Apprenticeships, Skills, Children and Learning Act 2009**

<http://www.legislation.gov.uk/ukpga/2009/22>

**Sexual Offences (Scotland) Act 2009**

<http://www.legislation.gov.uk/asp/2009/9>

**Rights of Children and Young Persons (Wales) Measure**

<http://www.legislation.gov.uk/asp/2011/2>

**Safeguarding Board Act (Northern Ireland) 2011**

<http://www.legislation.gov.uk/nia/2011/7/section/1>

**Education Act 2011**

<http://www.legislation.gov.uk/ukpga/2011/21/contents/enacted>

**Domestic Violence Crime and Victims (Amendment) Act 2012**

<http://www.legislation.gov.uk/ukpga/2012/4/contents/enacted>

**Protection of Freedoms Act 2012**

<http://www.legislation.gov.uk/ukpga/2012/9/contents/enacted>