

Achieving Permanence: Law and Statutory Guidance

Social work practice in relation to achieving permanence is governed by five major statutes:

- 1) The Children Act 1989.

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

- 2) The Adoption and Children Act 2002.

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

- 3) The Children and Families Act 2014

<http://www.legislation.gov.uk/ukpga/2014/6/contents/enacted>

- 4) The Children and Social Work Act 2017

<http://www.legislation.gov.uk/ukpga/2017/16/contents/enacted>

- 5) The Human Rights Act 1998

<http://www.legislation.gov.uk/ukpga/1998/42/contents>

The Children and Social Work Act 2017

Key provisions in relation to achieving permanence include arrangements in relation to 'corporate parenting in England'. This is a summary only and the full legislation and any related guidance should be consulted additionally for details.

Section 1: Corporate parenting principles

(1) A local authority in England must have regard to the need:

- a) to act in the best interests, and promote the physical and mental health and well-being, of those children and young people;
- b) to encourage those children and young people to express their views, wishes and feelings;
- c) to take into account the views, wishes and feelings of those children and young people;
- d) to help those children and young people gain access to, and make the best use of, services provided by the local authority and its relevant partners;

- e) to promote high aspirations, and seek to secure the best outcomes, for those children and young people;
- f) for those children and young people to be safe, and for stability in their home lives, relationships and education or work;
- g) to prepare those children and young people for adulthood and independent living.

Section 2: Local offer for care leavers

(1) A local authority in England must publish information (to be known as the ‘local offer for care leavers’) about:

- a) services which the local authority offers for care leavers as a result of its functions under the Children Act 1989;
- b) other services which the local authority offers that may assist care leavers in, or in preparing for, adulthood and independent living – including in relation to:
 - preparing for, adulthood and independent living;
 - health and well-being;
 - relationships;
 - education and training;
 - employment;
 - accommodation;
 - participation in society.

Before publishing its local offer for care leavers, a local authority must consult relevant persons about which of the services offered by the local authority may assist care leavers in, or in preparing for, adulthood and independent living.

Section 3: Advice and support

Extends the responsibilities to provide support and guidance to care leavers up to the age of 25 including, where relevant:

- assessment of the needs of former relevant children,
- the provision of Personal Advisers,
- preparation of a Pathway Plan.

Section 4: Duty of local authority in relation to previously looked after children

‘Previously looked after children’ includes:

a child who was looked after by the local authority or another local authority in England or Wales but ceased to be so looked after as a result of:

- i) a child arrangements order which includes arrangements relating to with whom the child is to live, or when the child is to live with any person,
- ii) a special guardianship order, or

iii) an adoption order (see details).

1) A local authority in England must make advice and information available in accordance with this section for the purpose of promoting the educational achievement of each relevant child educated in their area.

2) The advice and information must be made available to:

a) any person who has parental responsibility for the child,

b) the member of staff at the child's school designated under section 20A of the Children and Young Persons Act 2008 or by virtue of section 2E of the Academies Act 2010, and

c) any other person that the local authority consider appropriate.

3) A local authority in England may do anything else that they consider appropriate with a view to promoting the educational achievement of relevant children educated in their area.

4) A local authority in England must appoint at least one person for the purpose of discharging the duty imposed by subsection (1).

Section 8: Care orders: permanence provisions

The permanence provisions of a section 31A plan are:

a) setting out the long-term plan for the upbringing of the child concerned as provide for any of the following:

i) the child to live with any parent of the child's or with any other member of, or any friend of, the child's family;

ii) adoption;

iii) long-term care not within sub-paragraph (i) or (ii);

And addressing:

i) the impact on the child concerned of any harm that he or she suffered or was likely to suffer;

ii) the current and future needs of the child (including needs arising out of that impact);

iii) the way in which the long-term plan for the upbringing of the child would meet those current and future needs.

Other parts of the Act include additional regulations relating to:

- The provision of secure accommodation (chapter 1, section 10)
- Relationships, sex and PSHE education (chapter 4).

The Human Rights Act, 1998

All actions of the State and all applications made under any of the other legislation must operate in accordance with the Human Rights Act, 1998 and it permeates everything.

For social work practice in achieving permanence, the critical rights are:

Article 3

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 5

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority

Article 6

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Article 8

1. Everyone has the right to respect for his private and family life, his home, and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety, or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 14

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or other status.

NB Article 6 uses vocabulary associated with criminal justice but also applies to family law, and to any process of decision-making by the State which affects the lives of individuals. The key issue in Article 8 is that any decision by the State which interferes with a person's private and family life can only be implemented if that decision is proportionate and necessary.

Accompanying guidance for practice is set out in several key statutory guidance documents, including:

1) Working Together, 2015 (NB this is currently being reviewed and the next edition will be published in April 2018)

<https://www.gov.uk/government/publications/working-together-to-safeguard-children-2>

2) Court orders and pre-proceedings: For local authorities, April 2014

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/30628/2/Statutory_guidance_on_court_orders_and_pre-proceedings.pdf

3) The Children Act 1989 guidance and regulations Volume 2: care planning, placement and case review, June 2015

<https://www.gov.uk/government/publications/children-act-1989-care-planning-placement-and-case-review>

4) Permanence, long-term foster placements and ceasing to look after a child: Statutory guidance for local authorities, March 2015

http://dera.ioe.ac.uk/22572/1/Stat_Guidance_Permanence_2015.pdf

5) Special Guardianship Guidance, January 2017

<https://www.gov.uk/government/publications/special-guardianship-guidance>

6) Children Act 1989: Fostering Services, July 2015

<https://www.gov.uk/government/publications/children-act-1989-fostering-services>

7) Statutory guidance on Adoption: For local authorities, voluntary adoption agencies and adoption support agencies, July 2013

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/270100/adoption_statutory_guidance_2013.pdf