

*These notes refer to the Children Act 2004 (c.31)  
which received Royal Assent on 15th November 2004*

# CHILDREN ACT 2004

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## EXPLANATORY NOTES

### INTRODUCTION

1. These explanatory notes relate to the Children Act 2004 which received Royal Assent on 15<sup>th</sup> November 2004. They have been prepared by the Department for Education and Skills (DfES) in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

### *Summary and Background*

3. In September 2003, the Government published the *Every Child Matters* Green Paper alongside its formal response to the Victoria Climbié Inquiry Report. The Green Paper proposed changes in policy and legislation in England to maximise opportunities and minimise risks for all children and young people, focusing services more effectively around the needs of children, young people and families.
4. The consultation on the Green Paper showed broad support for the proposals, in particular the intention to concentrate on outcomes that children and young people themselves have said are important, rather than prescribing organisational change. The Act has been produced in the light of this consultation and gives effect to the legislative proposals set out in the Green Paper to create clear accountability for children's services, to enable better joint working and to secure a better focus on safeguarding children. Alongside the Act, the Government has published *Every Child Matters: Next Steps*. This provides details of the consultation response and the wider, non-legislative, elements of change that are being taken forward to promote the well-being of all children.
5. To ensure a voice for children and young people at national level Part 1 of the Act provides for the establishment of a Children's Commissioner (in these notes referred to as 'the Commissioner'). Under section 2, the Commissioner's role will be to promote awareness of the views and interests of children (and certain groups of vulnerable young adults) in England. The Commissioner will also be able to hold inquiries – on direction by the Secretary of State or on his own initiative – into cases of individual children with wider policy relevance in England or, on non-devolved matters, in other parts of the UK. Sections 5, 6, and 7 give the Commissioner functions in relation to non-devolved matters in Wales, Scotland, and Northern Ireland. These functions are the same as the functions which the Commissioner has in England under sections 2, 3, and 4 namely promoting awareness of the views and interests of children and holding inquiries on direction by the Secretary of State or on his own initiative.
6. [Part 2](#) of the Act gives effect in England to the principal legislative proposals contained in the Green Paper to support better integrated planning, commissioning, and delivery of children's services and provide for clear accountability.

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7. In particular, the Act places a duty on local authorities to make arrangements through which key agencies co-operate to improve the well-being of children and young people and widen services' powers to pool budgets in support of this. To ensure that, within this partnership working, safeguarding children continues to be given priority the Act places a responsibility for key agencies to have regard to the need to safeguard children and promote their welfare in exercising their normal functions. It also establishes statutory Local Safeguarding Children Boards to replace the existing non-statutory Area Child Protection Committees. In addition, it provides for regulations to require children's services authorities to prepare and publish a Children and Young People's Plan (CYPP) which will set out their strategy for services for children and relevant young people (sections 10, 11, 13-16, 17).
8. To support professionals in working together and sharing information to identify difficulties and provide appropriate support, this part of the Act also allows for the creation of databases holding information on all children and young people (section 12).
9. **Part 2** includes measures to ensure clear accountability for children's services. The Act will require local authorities in England to put in place a director of children's services to be accountable for, as a minimum, the local authority's education and social services functions in so far as they relate to children. It will also require the designation of a lead member for children's services to mirror the director's responsibilities at a local political level (sections 18 and 19).
10. To ensure a shared approach across inspections, sections 20 to 24 allow for the creation of an integrated inspection framework and for inspectorates to carry out joint reviews of all children's services provided in an area. (In support of this integrated approach, section 50 extends existing intervention powers in relation to education functions of local authorities to children's social services.)
11. **Part 3** of the Act provides for similar provisions to those in Part 2 to be made in Wales, but allows for implementation within the different context that exists for children's services there. In particular, reflecting this difference, in Wales authorities will be required to identify lead directors and members for children's services for local authorities, local health boards and NHS trusts. For Wales there are no provisions on inspection equivalent to those in sections 20 to 24.
12. **Part 4** of the Act provides for the devolution of CAF/CASS functions in Wales to the Assembly.
13. **Part 5** of the Act makes a number of further provisions:
  - to strengthen the existing notification arrangements for private fostering, with a reserve power to introduce a registration scheme should these not prove effective (sections 44 to 47);
  - to clarify and simplify the registration of child minders and providers of day care (section 48);
  - to make provision for the level of payments to be made to foster parents caring for looked after children placed with them by local authorities and to foster parents caring for children placed with them by voluntary organisations (section 49);
  - to provide for the extension of existing intervention powers as mentioned above (section 50);
  - to provide for an extension of inspection powers under section 38 of the Education Act 1997 (section 51);
  - to create a new duty for local authorities to promote the educational achievement of looked after children and an associated power to transmit data relating to individual children in monitoring this (section 52 and 54);

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- to place on local authorities a new duty, before determining what (if any) services to provide under section 17 of the Children Act 1989 for a particular child in need, to ascertain the child's wishes and feelings regarding the provision of those services, and give due consideration to them (section 53);
- to remove now unnecessary provisions in relation to social services committees (section 55);
- to allow for the payment of fees to adoption review panel members (section 57);
- to restrict the grounds on which the battery of a child may be justified as reasonable punishment (section 58);
- to allow grants to be paid across the range of children, young people and families services (section 59);
- to remove the power to make a care order at a lower threshold than would be usual under the Children Act 1989 as a sanction for not complying with a Child Safety Order (section 60);
- to give the Children's Commissioner for Wales the power to enter premises, other than private homes, to interview children when reviewing and monitoring the functions of and arrangements made by the Assembly and other specified persons (section 61);
- to amend section 97 of the Children Act 1989 and section 12 of the Administration of Justice Act 1960 to make clear that the publication of material from family proceedings which is intended, or likely, to identify any child as being involved in such proceedings (or the address or school of such a child) is only prohibited in relation to publication of information to the public or any section of the public and make it clear that rules of court will set out the cases in which publication of information relating to children is authorised (section 62);
- to amend Schedule 5 of the Tax Credits Act 2002 to enable the Inland Revenue to share Tax Credit, Child Benefit or Guardian's Allowance information (except where it relates to a person's income) with local authorities (or, in Northern Ireland, Health and Social Services Boards) for the purposes of enquiries and investigations relating to the welfare of a child (section 63).

***Territorial Application***

14. **Part 1** of the Act, which establishes the Commissioner, extends to the whole of the United Kingdom.
15. **Part 2** is concerned only with England and **Part 3** only with Wales. **Part 4** devolves to Wales functions previously exercised across England and Wales together. The provisions of **Part 5** on the whole apply to England and Wales together (although sections 45 and 46 provide separate powers for registration schemes in England and Wales respectively). Section 63 applies to the whole of the UK.