

Think Family Legal Gateways

Digital Economy Act 2017 – Part 5

S. 35 – Disclosure of information to improve public service delivery

A person (as specified in Schedule 4 of the Act) may disclose information held by them in connection with any of the person's functions to another specified person for the purposes of an objective which is a specified objective in relation to each of those persons.

Specified objective, in relation to a specified person, means an objective specified in relation to that specified person in regulations made by the appropriate national authority.

An objective may be specified only if it complies with the following conditions:

- The first condition is that the objective has as its purpose—
 - (a) the improvement or targeting of a public service provided to individuals or households, or
 - (b) the facilitation of the provision of a benefit (whether or not financial) to individuals or households.
- The second condition is that the objective has as its purpose the improvement of the well-being of individuals or households.

The reference to the well-being of individuals or households includes—

- (a) their physical and mental health and emotional well-being,
- (b) the contribution made by them to society, and
- (c) their social and economic well-being.

- The third condition is that the objective has as its purpose the supporting of—
 - (a) the delivery of a specified person's functions, or
 - (b) the administration, monitoring or enforcement of a specified person's functions.

The Childcare Act 2006

1. The Childcare Act 2006 S.1 States the general duties of a local authority in relation to well-being of young children

(1)(a&b)) improve the well-being of young children in their area, and reduce inequalities between young children in their area in relation to the matters mentioned in subsection (2).

(2)(a&b) in this Act well-being, in relation to children, means their well-being so far as relating to; physical and mental health and emotional well-being and protection from harm and neglect.

2. The Childcare Act 2006 S.3 Describes specific duties of local authority in relation to early childhood services
 - (1) For the purpose of their general duty under S1(1), and English local authority have the further duties imposed by subsections (2) and (3).
 - (2) The authority must make arrangements to secure that early childhood services in their area are provided in an integrated manner which is calculated to-
 - (a) Facilitate access to those services, and (b) maximise the benefit of those services to parents, prospective parents and young children.
3. The Children Act 2004 S.10 Relates to co-operation to improve well-being

Section 10 of the Act places a duty on each children's services authority to make arrangements to promote co-operation between itself and relevant partner agencies to improve the well-being of children in their area in relation to:

- Physical and mental health, and emotional well-being
- Protection from harm and neglect
- Education, training and recreation
- Making a positive contribution to society
- Social and economic well-being

The relevant partners must co-operate with the local authority to make arrangements to improve the well-being of children. The relevant partners are:

- District councils
- The police
- The probation service
- Youth offending teams (YOTs)
- Any clinical commissioning group for an area any part of which falls within the area of the authority
- in pursuance of section 68 of the Education and Skills Act 2008
- The governing body of a maintained school that is maintained by the authority

- The proprietor of a school approved by the Secretary of State under section 342 of the Education Act 1996 and situated in the authority's area
- The proprietor of a city technology college, city college for the technology of the arts or Academy situated in the authority's area
- The governing body of an institution within the further education sector the main site of which is situated in the authority's area

Section 10 of the Act states good information sharing is key to successful collaborative working and arrangements under this section should ensure information is shared for strategic planning purposes and to support effective service delivery. It also states these arrangements should cover issues such as improving the understanding of the legal framework and developing better information sharing practice between and within organisations.

Section 11 of the Act places a **duty on key persons and bodies to make arrangements to ensure their functions are discharged** with regard to the need **to safeguard and promote the welfare of children**. The key people and bodies are:

- a local authority in England
- a district council which is not such an authority
- the National Health Service Commissioning Board
- a clinical commissioning group
- a Special Health Authority, so far as exercising functions in relation to England, designated by order made by the Secretary of State for the purposes of this section
- an NHS trust all or most of whose hospitals, establishments and facilities are situated in England
- an NHS foundation trust
- the local policing body and chief officer of police for a police area in England
- the British Transport Police Authority, so far as exercising functions in relation to England
- the National Crime Agency
- local probation board for an area in England
- the Secretary of State in relation to his functions under sections 2 and 3 of the Offender Management Act 2007, so far as they are exercisable in relation to England
- a youth offending team for an area in England

- **the governor of a prison or secure training centre in England (or, in the case of a contracted out prison or secure training centre, its director)**
- **the principal of a secure college in England**
- **any person to the extent that he is providing services in pursuance of section 74 of the Education and Skills Act 2008].**

The section 11 duty does not give agencies any new functions, nor does it override their existing ones, it simply requires them to:

- **Carry out their existing functions in a way that takes into account the need to safeguard and promote the welfare of children;**
- **Ensure services contracted out to others have regard to this need (to safeguard and promote the welfare of children).**

In order to safeguard and promote the welfare of children, arrangements should ensure that:

- **All staff in contact with children are aware of the most effective ways of sharing information** and understand what to do if they believe a child and family require targeted or specialist services in order to achieve their optimal outcomes;
- All staff in contact with children understand when to share information and what to do if they believe that a child may be in need, including those children suffering or at risk of significant harm.

The Children and Families Act 2014

The Children and Families Act 2014 makes provision to reform the law relating to **care and support for children with special educational needs or a disability**.

Section 23 **places a duty on health bodies to bring certain children to local authority's attention, where the health body has formed the opinion that the child has (or probably has) special educational needs or a disability**. Section 25 places a duty on a local authority to exercise its functions with a view to ensuring the **integration of educational provision, training provision with health care provision and social care provision** where it thinks that this would –

- (a) promote the well-being of children or young people in its area who have special education needs or a disability, or
- (b) improve the quality of special educational provision in its area or outside its area for children it is responsible for who have special educational needs

Crime and Disorder Act 1998

Section 17 applies to a local authority (as defined by the Local Government Act 1972); a joint authority; a police authority; a national park authority; and the Broads Authority. As amended by the Greater London Authority Act 1999 it applies to the London Fire and Emergency Planning Authority from July 2000 and to all fire and rescue authorities with effect from April 2003, by virtue of an amendment in the Police Reform Act 2002.

It recognises that these key authorities have responsibility for the provision of a wide and varied range of services to and within the community. In carrying out these functions, section 17 places a duty on them to do **all they can to reasonably prevent crime and disorder in their area**.

The purpose of this section is simple: the level of crime and its impact are influenced by the decisions and activities taken in the day to day business of local bodies and organisations. Section 17 is aimed at giving the vital work of crime and disorder reduction a focus across a wide range of local services that influence and impact upon community safety and putting it at the heart of local decision making. Section 17 is a key consideration for these agencies in their work in crime and disorder reduction partnerships, drug action teams, YOTs, children's trusts and local safeguarding children boards.

More specifically, under Section 17A of the Crime and Disorder Act, a 'relevant authority' is under a duty to share with all other relevant authorities information of a 'prescribed description' which is relevant to the reduction of crime and disorder, including anti-social behaviour, in any area of England and Wales.

Information is of a prescribed description if it is:

- Depersonalised information; and
- Of a type listed in the Schedule to the 2007 Regulations.

In summary, prescribed information will be information relating to:

- Police recorded crime and police recorded incidents;
- Fire and Rescue Service recorded incidents of deliberate fires, assaults and malicious calls;
- Local authority recorded incidents of ASB, environmental crime, racial incidents, school exclusions and road traffic collisions;
- National Health Service / Primary Care Trust records on hospital admissions relating to assaults, drugs and alcohol related harm, domestic abuse, and mental and behavioural disorders due to drug use; and
- Ambulance Service call-outs to crime, disorder and ASB incidents.

Section 37 sets out that the principal aim of the youth justice system is to prevent offending by children and young people and requires everyone carrying out youth justice functions to have regard to that aim.

Section 39(5) sets out the statutory membership of YOTs reflecting their responsibilities both as a criminal justice agency and a children's service. The membership and consists of the following:

- At least one probation officer
- At least one police officer
- At least one person nominated by a health authority
- At least one person with experience in education
- At least one person with experience of social work in relation to children

YOTs have a statutory duty to coordinate the provision of youth justice services including advising courts, supervising community interventions and sentences, working with secure establishments in respect of young people serving custodial sentences and also in the latter category of a children's service.

As YOTs are multi-agency teams, members will also need to be aware of the need to safeguard and promote the welfare of children in their constituent agency.

Section 115 provides any person with a power but not an obligation to disclose information to responsible public bodies (e.g. police, local and health authorities) and with co-operating bodies (e.g. domestic violence support groups, victim support groups) participating in the formulation and

implementation of the local crime and disorder strategy. Personal information can be shared without the permission of the person to whom it relates however, the legal conditions governing the sharing of personal information must be followed.

The police have an important and general common law power to share information to prevent, detect and reduce crime. However, some other public organisations that collect information may not have previously had the power to share it with the police and others. Section 115 clearly sets out the power of any organisation to share information with the police authorities, local authority (including parish and community councils), Probation Service and health authority (or anyone acting on their behalf) for the purposes of the Act.

This ensures that information may be shared for a range of purposes covered by the Act, for example for the functions of the crime and disorder reduction partnerships and YOTs, the compilation of reports on parenting orders, anti-social behaviour orders, sex offender orders and drug testing orders.

Education Act 2002

The duty laid out in section 11 of the Children Act 2004 mirrors the duty imposed by section 175 of the Education Act 2002 on LEAs and the governing bodies of both maintained schools and further education institutions. This duty is to make arrangements to carry out their functions with a view to safeguarding and promoting the welfare of children and follow the guidance in *Safeguarding Children in Education* (DfES 2004).

The guidance applies to proprietors of independent schools by virtue of section 157 of the Education Act 2002 and the Education (Independent Schools Standards) Regulations 2003.

Section 21 of the Act, as amended by section 38 of the Education and Inspections Act 2006, places a duty on the governing body of a maintained school to promote the well-being of pupils at the school. Well-being in this section is defined with reference to section 10 of the Children Act 2004 (see paragraph 5.5 above). The Act adds that this duty has to be considered with regard to any relevant children and young person's plan.

This duty extends the responsibility of the governing body and maintained schools beyond that of educational achievement and highlights the role of a school in all aspects of the child's life.

Involvement of other services may be required in order to fulfil this duty so there may be an **implied power** to work collaboratively and share information for this purpose.

Immigration and Asylum Act 1999

Section 20 provides for a range of information sharing for the purposes of the Secretary of State:

- To undertake the administration of immigration controls to detect or prevent criminal offences under the Immigration Act;
- To undertake the **provision of support for asylum seekers and their dependents**.

Local Government Act 2000

Part 1 of the Local Government Act 2000 which gave local authorities powers to **take any steps** which they consider are likely to promote the well-being of their area or the inhabitants of it has been repealed and replaced by the Localism Act 2011 (see 2.19 below).

Section 2 gives local authorities '**a power to do anything which they consider is likely to achieve any one or more of the following objectives**':

- The promotion or improvement of the economic well-being of their area
- The promotion or improvement of the social well-being of their area
- The promotion or improvement of the environmental well-being of their area

Section 2 (5) makes it clear that a local authority may do anything for the benefit of a person or an area outside their authority, if the local authority considers that it is likely to achieve one of the objectives in Section 2(1).

Section 3 is clear that local authorities are unable to do anything (including sharing information) for the purposes of the well-being of people – including children and young people – where they are restricted or prevented from doing so on the face of any relevant legislation, for example, the Human Rights Act, the Data Protection Act or by the common law duty of confidentiality.

Localism Act 2011

This has repealed the wellbeing powers of the Local Government Act 2000 (but not for Welsh Authorities). The general power of competence is a new power available to local authorities in England that will allow them to do “anything that individuals generally may do”. There are conditions placed on the use of the act where what the Local Authority wants to do is prohibited by another statute.

Children (Leaving Care) Act 2000

The main purpose of the Act is to help young people who have been looked after by a local authority, move from care into living independently in as stable a fashion as possible. To do this it amends the Children Act 1989 (c.41) to place a duty on local authorities to assess and meet need. The responsible local authority is under a duty to assess and meet the care and support needs of eligible and relevant children and young people and to assist former relevant children, in particular in respect of their employment, education and training.

Sharing information with other agencies will enable the local authority to fulfil the statutory duty to provide after care services to young people leaving public care.

Criminal Justice Act 2003

Section 325 of this Act details the arrangements for assessing risk posed by different offenders:

- The ‘responsible authority’ in relation to any area, means the chief officer of police, the local probation board and the Minister of the Crown exercising functions in relation to prisons, acting jointly.
- The responsible authority must establish arrangements for the purpose of assessing and managing the risks posed in that area by:

a) Relevant sexual and violent offenders; and

b) Other persons who, by reason of offences committed by them, are considered by the responsible authority to be persons who may cause serious harm to the public (this includes children).

- In establishing those arrangements, the responsible authority must act in co-operation with the persons identified below.
- **Co-operation may include the exchange of information.**

The following agencies have a duty to co-operate with these arrangements:

- Every youth offending team established for an area;
- The Ministers of the Crown, exercising functions in relation to social security, child support, war pensions, employment and training;
- Every local education authority;
- Every local housing authority or social services authority;
- Every registered social landlord who provides or manages residential accommodation;
- Every health authority or strategic health authority;
- Every primary care trust or local health board;
- Every NHS trust;
- Every person who is designated by the Secretary of State as a provider of electronic monitoring services.

Welfare Reform Act 2012

Section 131 restores and widens powers for the DWP to share information with local authorities in relation to welfare services and section 134 allows for longer term data sharing powers between DWP, their service providers and local authorities in particular to **those working with troubled families** and their in work and out of work benefits.