



Appendix A: Legislative duties and policy obligations



The past decade has seen a progressive shift in the legislative and policy framework relating to children and young people's participation. There are a number of legislative duties on public authorities to ensure that they involve the general public in decision-making, some of which relate specifically to children and young people.

The legal framework continues to develop. Important new duties in education, local decision making and for children in care have been passed by Parliament but are not yet commenced. Visit www.participationworks.org.uk or www.crae.org.uk for details of new legislative duties as they commence and key legal judgements

The table opposite gives some of the key legal duties on various public authorities that had come into force by February 2010.

What we must do	Source
<i>Local government:</i>	
<i>Actions specific to children and young people</i>	
Local authorities should ensure that their early years provision has regard to such information about the views of young children as is available to the local authority and appears to them to be relevant to the discharge of those duties.	Childcare Act 2006, Section 3(5)
Children's services authorities should produce a Children and Young People's Plan. ⁱ Regulations (published in 2005 and revised in 2007) state that while preparing this plan the local authority should consult with children and relevant young persons in the area of the authority.	ⁱ Children Act 2004, Section 7(1) Children and Young People's Plan (England) Regulations 2005, Regulation 7(1)(a) as amended by Children and Young People's Plan (England) (Amendment) Regulations 2007
When developing its positive leisure time activities, the local authority should ask 13 to 19 year-olds (or up to 25-year-olds if they have a learning disability) their views on the need for additional activities and facilities and their ability to access such activities and facilities. They must ensure that the views of these young people are taken into account.	Education and Inspection Act 2006, Section 6(9)(a) and (b)
The views of young people and their parents and carers will be taken into account much more widely in the planning and commissioning of services, so that services reflect their needs and their influence. Government, local authorities and health services should support the active participation of young people and their families in the commissioning, design and delivery of services (Priority Action 5). National Indicator 110 monitors how well local areas are increasing participation in positive activities, including participation in youth groups such as youth forums and councils.	Public Service Agreement (PSA) 14: increasing the number of people on the path to success
<i>General</i>	
Local authorities have the power to promote the well-being of the local area on economic, social or environmental grounds. ⁱ They should write a sustainable community strategy that outlines how they will fulfil this duty and should seek to consult and secure the participation of such persons as they consider appropriate. ⁱⁱ	ⁱ Local Government Act 2000, Section 2(1) ⁱⁱ Local Government Act 2000, Section 4(3)(A)
When developing a homelessness strategy the local authority should consult with other public or local authorities, voluntary organisations or other persons as they consider appropriate .	Homelessness Act 2002, Section 3(8)
When preparing a local development plan they must include a statement of community involvement, in which they set out their policy on involving their community in preparing regional spatial strategies, local development documents and consulting on planning applications.	Planning and Compulsory Purchase Act 2004, Section 18
Government aims to build empowered communities where children and young people <i>"are given opportunities to participate and influence decision-making as confident and responsible citizens"</i> . Indicator 3 focuses on <i>"the percentage of people who feel that they belong to their neighbourhood"</i> and Indicator 4 on <i>"the percentage of people who feel they can influence decisions in their locality"</i> .	Public Service Agreement 21 – Build more cohesive, empowered and active communities
County councils, unitary authorities, passenger transport executives and Transport for London, should produce Local Transport Plans. When preparing and keeping the plan under review, they should consult any groups or people as they consider appropriate	Section 108, Transport Act 2000 as amended by Local Transport Act 2008, Section 8(1)

What we must do	Source
<i>Health providers</i>	
<i>General</i>	
<p>Strategic health authorities (SHAs), primary care trusts (PCTs), NHS trusts and NHS foundation trusts, or those delivering services on their behalf, must make arrangements to ensure that service users, whether directly or through representatives, are involved in:</p> <ul style="list-style-type: none"> • the planning of the provision of those services • the development and consideration of proposals for changes in the way those services are provided • decisions to be made by that body affecting the operation of those services. <p>The duty applies if implementation of the proposal, or a decision (if made), would have an impact on the way the service is delivered or available.</p>	NHS Act 2006, Section 242
<p>The Secretary of State can provide independent advocacy services for people making or intending to make a complaint.</p>	NHS Act 2006, Section 248
<p>Each local authority must enter into a contractual relationship with an independent body to ensure the involvement of local people in the commissioning, provision and scrutiny of health and social care services. These new arrangements will be known as Local Involvement Networks (LINKs).ⁱ These networks have the right to enter premises, refer social care matters to the local Overview and Scrutiny Committee and produce an annual report.</p>	<p>ⁱ Local Government and Public Involvement in Health Act 2007, Section 221 The Local Involvement Network Regulations 2008</p>
<p>Each SHA and PCT must (at times directed by the Secretary of State) prepare a report on the consultation carried out, or proposed to be carried out, before it makes commissioning decisions, and on the influence that the results of the consultation have on its commissioning decisions. The duty includes reports by a PCT and also applies to consultations not undertaken by a PCT itself but which have an impact on commissioning decisions.</p>	Section 17A, National Health Service Act 2006 as amended by Local Government and Public Involvement in Health Act 2007, Section 234
<p>Indicator 5 (parents' experience of services for disabled children and the 'core offer') will be based on a survey of parents of disabled children at local authority level. This will assess the level of participation of disabled children and their families in service planning, commissioning and delivery.</p>	Public Service Agreement 12: Improve the health and well-being of children and young people
<i>Police and community safety</i>	
<i>General</i>	
<p>Police authorities shall make arrangement for obtaining the views of people in their area about matters concerning the policing of the area</p>	Police Act 1996, Section 96(1)(a)
<p>Crime and Disorder Reduction Partnerships, made up of the police force, police authorities, local authorities, fire and rescue authorities and Primary Care Trusts, should obtain the views of local people when developing their strategy.</p>	Crime and Disorder Act 1998, Section 6(1) as amended by Police and Justice Act 2006, Section 22 and the Crime and Disorder (Formulation and Implementation of Strategy) Regulations 2007
<p>If the police have reasonable cause to believe that a child would otherwise be likely to suffer significant harm, they may remove the child to suitable accommodation and keep them there or take such steps to prevent their removal from another place.ⁱ As soon as is reasonably practicable after taking a child into police protection, the police officer concerned shall take such steps as are reasonably practicable to discover the wishes and feelings of the child.ⁱⁱ (See also 'Children in need of protection', page 56)</p>	<p>ⁱ Children Act 1989, Section 46(1) ⁱⁱ Children Act 1989, Section 46(3)(d)</p>

What we must do	Source
<i>Education providers</i>	
Local education authorities and school governing bodies of maintained schools (including those providing nursery education) are required to have regard to guidance on pupil consultation, including as it applies to pupil referral units. The Government has now included nursery education in this provision.	Education Act 2002, Section 176 as amended by Education and Inspections Act 2006, Section 167(a)
Regulations for school governors allow for the appointment of 'associate members' of a committee of a school governing body. Associate members can be under 18; there is no lower age limit. An associate member is not a governor. She or he can be a member of any committee of the governing body and can hold office for four years, with reappointment possible.	School Governance (Constitution) (England) Regulations (2003), Regulation 11
An excluded pupil under the age of 18 should normally be allowed to attend the exclusion hearing and to speak on his or her own behalf, if he or she wishes to do so.	Improving Behaviour and Attendance: Guidance on Exclusion from Schools and Pupil Referral Units, 2008
Every school must have a behaviour policy. In preparing this policy, governors should ensure that registered pupils at the school are consulted.	Education and Inspection Act 2006, Section 88(3)(d)
Her Majesty's Chief Inspector of Schools in England (Ofsted) must have regard for and include any views expressed to him by registered pupils (as well as other stakeholders) at the school.	Education Act 2005, Section 7(f)
<i>Best value authorities</i>	
<i>The Government has prescribed some public authorities as a 'best value authority' with a number of specific duties applying to them: a local authority (excluding parish councils); a National Park authority; the Broads Authority; a police authority; a fire authority constituted by a combination scheme and a metropolitan county fire and civil defence authority; the London Fire and Emergency Planning Authority; a waste disposal authority; a metropolitan county passenger transport authority; Transport for London; the London Development Agency.*</i>	
The authority must ensure that when attempting to improve its services they consult representatives of persons who use or are likely to use those services and representatives of persons appearing to the authority to have an interest in any area within which the authority carries out its functions.	Local Government Act 1999, Section 3(2)
Excluding police authorities, when consulting the authority should: <ul style="list-style-type: none"> • Provide information about the exercise of the function • Consult about the exercise of the function or • Be involved in another way. 	Local Government Act 1999, Section 3A(1)(a) to (c)

*Police authorities are exempt from this duty in the Act as they are already covered by similar provisions in Section 96 of the Police Act 1996 and Section 157 of the Serious Organised Crime and Police Act 2005.

What we must do	Source
<i>Specific communities of children</i>	
The first PSA of its type concerned with tackling discrimination and disadvantage due to identity, including age. Indicator 3 focuses on “participation in public life by women, ethnic minorities, disabled people and young people”. Data is collected through the Place Survey and asks individuals over 18.	Public Service Agreement 15: Address the disadvantage that individuals experience because of their gender, race, disability, age, sexual orientation, religion or belief
<i>Adoption</i>	
Any court or adoption agency making a decision about the adoption of a child must have regard to the child’s ascertainable wishes and feelings about the decision (considered in the light of the child’s age and understanding).	Adoption and Children Act 2002, Section 1(4)(a)
Requiring rules of court to be prepared on the separate representation of children in family proceedings.	Adoption and Children Act 2002, Section 122 creates a new section 93(2)(bb) of the Children Act 1989
The making or revocation of an Adoption Placement Order is a “specified proceeding” and so subject to court rules on the separate representation of children.	Adoption and Children Act 2002, Section 122 creates a new section 41(6)(hh) of the Children Act 1989
<i>Children in need</i>	
<p>Children in need are described as:</p> <ul style="list-style-type: none"> • Disabled; or • Unlikely to have, or to have the opportunity to have, a reasonable standard of health or development without services from a local authority; or • Unlikely to progress in terms of health or development; or • Unlikely to progress in terms of health or development, without services from a local authority. 	
Section 53 of the Children Act 2004 amends the Children Act 1989 and places a duty on local authorities, so far as is reasonably practicable and consistent with the child’s welfare, to ascertain the wishes and feelings of a child in need ⁱ and to give them due consideration (having regard to the child’s age and understanding). ⁱⁱ	ⁱ Children Act 2004, Section 53 ⁱⁱ Children Act 1989, section 17(4A)
<i>Children in need of protection</i>	
Defined as subject of an emergency protection order; in police protection; or the local authority has 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 53 of the Children Act 2004 amends the Children Act 1989 to impose a new duty on local authorities, so far as is reasonably practicable and consistent with the child’s welfare, to ascertain the child’s wishes and feelings of a child at risk of significant harm ⁱ and give them due consideration (having regard to the child’s age and understanding). ⁱⁱ	ⁱ Children Act 2004, Section 53; ⁱⁱ Children Act 1989, section 47(5A)
<i>Disabled children</i>	
This is defined as a physical or mental impairment that has a substantial and long-term adverse effect on a child’s ability to carry out normal day-to-day activities.	
The Disability Discrimination Act 2005 amended the Disability Discrimination Act 1995 to introduce a new disability equality duty on all public authorities. ⁱ The duty ensures that any public body should promote equality of opportunity between disabled persons and other persons and encourage participation by disabled persons in public life. It also requires the public body to issue a disability equality scheme and state how disabled people have developed the scheme. ⁱⁱ	ⁱ Disability Discrimination Act 2005, Section 3 creating Section 49(A)(1)(f) ⁱⁱ The Disability Discrimination (Public Authorities) (Statutory Duties) Regulations 2005, Section 2(3)(a)

What we must do	Source
<i>Children living away from home (including children in care)</i>	
<p>A Children's Rights Director is established as a part of Ofsted.ⁱ</p> <p>The Director will advise and assist the Chief Inspector in relation to the Chief Inspector's duty when performing his or her functions. The Director will have regard to:</p> <ul style="list-style-type: none"> • The need to safeguard and promote the rights and welfare of children • The views expressed by relevant persons about activities within his or her remit... in particular by ascertaining the views of children (and, where appropriate, their parents) about those activities, and reporting such views to the Chief Inspector. <p>The Director will inform the Chief Inspector of any matters in relation to the rights and welfare of children that he or she considers significant.ⁱⁱ</p> 	<p>ⁱ Education and Inspections Act 2006, Section 120 (initially established by Care Standards Act 2000, Schedule 1, paragraph 10(1). The role was transferred to Ofsted in 2006)</p> <p>ⁱⁱ The Office for Standards in Education, Children's Services and Skills (Children's Rights Director) Regulations 2007</p>
<i>Children in care</i>	
<p>A local authority shall, so far as is reasonably practicable, ascertain the wishes and feelings of the child before making any decision affecting that childⁱ and shall give those views due consideration.ⁱⁱ</p>	<p>ⁱ Children Act 1989, Section 22(4)</p> <p>ⁱⁱ Children Act 1989, Section 22(5)</p>
<p>Local authorities should follow regulations from Government on how they should review the cases of those children in their care. This regulations may require the local authority to seek the views of the child involvedⁱ and inform him or her of the result of the review.ⁱⁱ</p>	<p>ⁱ Children Act 2006, Section 26(2)(d)(i)</p> <p>ⁱⁱ Children Act 1989, Section 26(i)(i)</p>
<p>Every local authority should provide independent advocacy services for children and young people making representations to it.ⁱ</p>	<p>ⁱ Children Act 2006, Section 26A Children Act 1989 Representations Procedure (England) Regulations 2006</p>
<p>Independent Review Officers (IROs) should participate in the statutory meetings to review the care plan of each looked-after child. The IRO usually takes on the role of chairing the meeting and is responsible for monitoring the performance of the local authority's functions in respect of each review. The Officer must ensure that: the child's views are understood and taken into account and that the persons responsible for implementing any decision taken in consequence of the review are identified. If appropriate, IROs can refer a child's case to a Children and Family Court Advisory and Support Service (CAFCASS) Officer.ⁱⁱ</p>	<p>ⁱ Adoption and Children Act 2002, Section 118</p> <p>ⁱⁱ The Review of Children's Cases (Amendment) (England) Regulations 2004</p>
<i>Children in trouble with the law</i>	
<p>Requires a youth offender panel to produce a written record of the programme agreed by the child or young person in a language capable of being readily understood by, or explained to, the offender.</p>	<p>Youth Justice and Criminal Evidence Act 1999, Section 8(5)</p>
<i>Children in contact with the courts</i>	
<p>When considering a question with respect to the welfare of a children, it must have regard in particular to the ascertainable wishes and feelings of the child concerned (considered in the light of his or her age and understanding).</p>	<p>Children Act 1989, Section 1(3)(a)</p>
<p>In family proceedings in which the welfare of a child is, or may be, in question, the Children and Family Court Advisory and Support Service shall give advice to any court about any application made to it, make provision for children to be represented and provide information, advice and other support for the children and their families.</p>	<p>Criminal Justice and Court Services Act 2000, Section 12</p>

Adapted and updated from *Ready Steady Change* participation training materials (2005) and *Participation in Practice* (2002).¹³³ References refer to the law as amended unless detailed elsewhere.

For an up-to-date list of policy affecting participation visit: www.participationworks.org.uk