



PlayAction Guide

The Children Act and Play

INTRODUCTION

The Children Act 1989 was implemented on October 14th 1991. The Act brings together most law concerning the welfare of children, replacing complex and fragmented legislation. This Guide outlines the Act as it affects children's play provision. In the Act, the term 'local authority' equates to the social services authority, and this is retained here.

There are two main strands in the Act which are of immediate concern to play providers: the extra services which we might be asked to provide for children defined by the Act as 'in need'; and the registration of supervised activities for children under eight years.



The higher standards and improved services and their co-ordination which the Act requires means the resources to implement these need to be made available to local authorities and a realistic timescale for implementation was also necessary.

The Act aims:

to achieve a better balance between the need to protect children from harm and the need to protect children and their families from unwarranted intervention - the welfare of the child is regarded as paramount;

to encourage partnerships between local authorities and parents

to promote greater greater inter-agency co-operation and liaison between different local authorities and other bodies.

The philosophy of the Act is that the welfare of the child is paramount when questions concerning a child's future are being discussed, and that children are generally best looked after within the family.

Good play services can help both objectives - though Play is never mentioned in the Act - one has to look at other aspects such as 'day care' for indirect acknowledgement of its importance. S.27 of the Act enables the local authority to call upon any named type of authority including the housing, health and education authorities and persons named by the Secretary of State to provide help in meeting many of the above obligations.

If the action is within the statutory or other obligations of that authority or person, and does not unduly prejudice discharge of its functions, that other authority/person must comply. This does not



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mean the named authority must pay for it, however.

REGULATION OF ACTIVITIES INVOLVING CHILDREN UNDER 8 YEARS

The Act, in Part X, set standards of provision for day care of children aged under 8 years. This covers supervised activities which include e.g. summer playschemes and after-school clubs for school-age children, leisure centre activities, voluntary groups, pre-school playgroups and other under-fives provision. The Act and subsequent regulations/guidance enable staffing ratios, clear space, toilet and other standards to be established: for example, in a closed access scheme [that is, where the total number of children allowed is fixed by the registration procedure] the recommended ratio for children aged 5-7 is 1:8 carer to children; leader not counted in this ratio. Until September 2001, the function of Registration and Inspection of such activities was allocated under the Act to Social Services Departments. From that date, this function has been taken over by Ofsted in order to achieve nationwide consistency of practice and standards and separate PlayAction Guides on Regulation and on Child Protection are available. The former Part X of the Act has been replaced by a new Part XA, as a result of the Care Standards Act 2000.



REVIEW OF DAYCARE PROVISION

The local authority is obliged (S.19) to carry out a review of daycare services provided under S.18 (children in need, all ages) or registered under Part X (under-8's general). It does so jointly with the education authority, and has to consult a wide range of other bodies such as the District Council, voluntary providers, health authority etc. This review must occur at least every three years, the first within one year of implementation. The review must provide information on current provision in the area, identify gaps in provision and give dates for implementation of new provision. This function has been assumed in many areas by Early Years and Childcare Partnerships.

CHILDREN IN NEED

Local authorities are given a general duty to safeguard and promote the welfare of children in need, and to promote the upbringing of children by their families. This encompasses their recreational and play needs. The definition of who is 'in need' is subject to interpretation by local authorities and resource availability realistically will play a part in determining the breadth of services.

The Act (Part III, S.17 ff) defines a child to be 'in need' if:

he/she is unlikely to achieve or maintain or to have the opportunity of achieving or maintaining a reasonable standard of health or development without the provision of services by a local authority;



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his/her health or development is likely to be significantly impaired or further impaired without the provision of such services;

he/she is disabled (disability being already defined in existing legislation).

The above definitions are deliberately wide in order to reinforce the Act's emphasis on preventative support and services to families. Terminology: 'development' means physical, intellectual, emotional, social or behavioural development. 'Health' means physical or mental health. A child is a person under 18 years of age. Local authorities are not expected to meet every individual need, but must identify the extent of need and make decisions on priorities for service provision in their area.



Section 18 outlines the daycare provision that children in need are entitled to receive. In addition to this day care provision for pre-school and for school-age children in need (S.18), there must also be a range of services designed to support and improve the strengths and skills of parents in their own homes and neighbourhoods. Schedule 2 to the Act specifies a wide range of services the local authority must provide: information about services, provision of accommodation to protect a child, provision for disabled children to minimise the effect of their disabilities, advice counselling and guidance, occupational social cultural or recreational activities, home help, travel facilities, holiday assistance.

Crucially, Section 18 allows the provision of day care and supervised activities for children NOT in need, the clearest possible invitation to provide facilities as part of preventative strategies. The local authority may also provide e.g. training, advice, guidance and counselling for providers and carers [S.18(3)].

The Act provides for a system of appeal/ representation where a child or parent believes the services which should be available because of the child's need are not being offered. Fair Play knows of no instances to date where failure to provide day care as under S18 of the Act has been the cause of such a representation. However, many parents do not appear to be aware of the representation system, or more specifically that it applies to S.18 situations. Many are unaware, having not been informed by social services, that adequate day care provision is expected under the Act for children defined to be in need.

Para 11 of Schedule 2 also requires that local authorities making arrangements for day care and for encouraging fostering under Part III shall have regard to the different racial groups within their area to which children in need belong. **The Act emphasises that where local authorities seek help in discharge of their Children In Need obligations, they should look in particular to the voluntary sector.**

IMPLICATIONS FOR PLAY PROVIDERS

In theory, there should be adequate provision of preventative facilities for children in need if the Act is adequately resourced at all levels. In practice, Section 18 has been little used in many areas in terms of the power to provide facilities for children who are not in need. The clear invitation is to provide facilities so that children may be helped to avoid becoming 'in need'. Good play facili-



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ties would be such preventative investment under the Act. Providers should look with parents at individual children's day care needs and devise approaches to local authorities to represent both the individual and also the general community need.

Staff/volunteers will need to be registered as 'fit persons' under the Act, which will require agreement with Ofsted over qualifications, training, vetting etc. A national scheme of criminal records checks enables quick, high level checks to be made from national and local police records. Fair Play is participating in this so member organisations can access checks via us.

Fair Play advises on such matters, including the formulation of child protection policies at management level and implementation in the working environment, as well as on approaching the issue of obtaining checks (police, social services, medical etc). [The Child Protection in Playwork Pack was published in the 1990's. A new resource is being published - details on request from Fair Play.]

There are major implications for nearly all providers of supervised activities for young children including councils, voluntary groups and others. E.g. adequate staff and volunteers, improved training, provision for acquisition of qualifications, additional space, toilets and other facilities, food hygiene measures, and a great deal more. All providers have to consider the resource and cost implications which will be considerable.

Voluntary sector daycare for 5-7 year olds such as holiday playschemes and playbus sessions are usually grant-aided by county, unitary and district-level councils. They will need to increase the level of grant-aid to meet at least some of the considerable extra costs which voluntary provider bear as a result of the Act's provisions. The initial registration and annual inspection fees for e.g. summer playschemes grant-aided by councils should be reflected in grant applications as should the costs of bringing premises up to standard, for example in terms of additional toilets.



CONCLUSIONS

To maintain existing services at the higher standards, there has to be ongoing appraisal of existing provision in areas by providers through suitable collaborative forums, in conjunction with the day care officers of the local authority, looking at all implications of the Act on local policy and good practice. Any shortfall in standards can thereby be identified and costed, and details then presented for approval of additional budgets to maintain existing and provide new services. At the same time, urgent steps need to be taken to identify additional resources required for provision for children in need, especially daycare.

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