

## **Appendix F (ii) – Primary Statutory Requirements**

### **Social Care, Health and Housing**

#### **The Care Act 2014**

#### **Care and Support Statutory Guidance – Department of Health**

<http://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidance>

#### **Section 1 Promoting Wellbeing**

Local authorities must promote wellbeing when carrying out any of their care and support functions in respect of a person. This may sometimes be referred to as “the wellbeing principle” because it is a guiding principle that puts wellbeing at the heart of care and support.

The wellbeing principle applies in all cases where a local authority is carrying out a care and support function, or making a decision, in relation to a person. It applies equally to adults with care and support needs and their carers.

In some specific circumstances, it also applies to children, their carers and to young carers when they are subject to transition assessments (see chapter 16 on transition to adult care and support).

Wellbeing” is a broad concept, and it is described as relating to the following areas in particular:

- personal dignity (including treatment of the individual with respect);
- physical and mental health and emotional wellbeing;
- protection from abuse and neglect;
- control by the individual over day-to-day life (including over care and support provided and the way it is provided);
- participation in work, education, training or recreation;
- social and economic wellbeing;
- domestic, family and personal;
- suitability of living accommodation;
- the individual’s contribution to society.

All the above should be considered of equal importance when considering “wellbeing” in the round

Promoting wellbeing involves actively seeking improvements in the aspects of wellbeing set out above when carrying out a care and support function in relation to an individual at any stage of the process from the provision of information and advice to reviewing a care and support plan. Wellbeing covers an intentionally broad range of the aspects of a person’s life and will encompass a wide variety of specific considerations depending on the individual.

A local authority can promote a person’s wellbeing in many ways. How this happens will depend on the circumstances, including the person’s needs, goals and wishes, and how these impact on their wellbeing. There is no set approach – a local authority should consider each case on its own merits, consider what the person wants to achieve, and how the action which the local authority is taking may affect the wellbeing of the individual.

The Act therefore signifies a shift from existing duties on local authorities to provide particular services, to the concept of 'meeting needs'. This is the core legal entitlement for adults to care and support, establishing one clear and consistent set of duties and power for all people who need care and support.

The concept of 'meeting needs' recognises that everyone's needs are different and personal to them. Local authorities must consider how to meet each person's specific needs rather than simply considering what service they will fit into. The concept of meeting needs also recognises that modern care and support can be provided in any number of ways, with new models emerging all the time, rather than the previous legislation which focuses primarily on traditional models of residential and domiciliary care.

Whenever a local authority carries out any care and support functions relating to an individual, it must act to promote wellbeing – and it should consider all of the aspects above in looking at how to meet a person's needs and support them to achieve their desired outcomes. However, in individual cases, it is likely that some aspects of wellbeing will be more relevant to the person than others. For example, for some people the ability to engage in work or education will be a more important outcome than for others, and in these cases "promoting their wellbeing" effectively may mean taking particular consideration of this aspect. Local authorities should adopt a flexible approach that allows for a focus on which aspects of wellbeing matter most to the individual concerned.

The principle of promoting wellbeing should be embedded through the local authority care and support system, but how the local authority promotes wellbeing in practice will depend on the particular function being performed. During the assessment process, for instance, the local authority should explicitly consider the most relevant aspects of wellbeing to the individual concerned, and assess how their needs impact on them. Taking this approach will allow for the assessment to identify how care and support, or other services or resources in the local community, could help the person to achieve their outcomes. During care and support planning, when agreeing how needs are to be met, promoting the person's wellbeing may mean making decisions about particular types or locations of care (for instance, to be closer to family).

The wellbeing principle applies equally to those who do not have eligible needs but come into contact with the system in some other way (for example, via an assessment that does not lead to ongoing care and support) as it does to those who go on to receive care and support, and have an ongoing relationship with the local authority. It should inform the delivery of universal services which are provided to all people in the local population, as well as being considered when meeting eligible needs. Although the wellbeing principle applies specifically when the local authority performs an activity or task, or makes a decision, in relation to a person, the principle should also be considered by the local authority when it undertakes broader, strategic functions, such as planning, which are not in relation to one individual. As such, "wellbeing" should be seen as the common theme around which care and support is built at local and national level.

## **Key Principles and Standards**

There are a number of key principles and standards which local authorities must have regard to when carrying out the same activities or functions:

**(a) the importance of beginning with the assumption that the individual is best-placed to judge the individual's wellbeing.** Building on the principles of the Mental Capacity Act, the local authority should assume that the person themselves knows best their own outcomes, goals and wellbeing. Local authorities should not make assumptions as to what matters most to the person;

**(b) the individual's views, wishes, feelings and beliefs.** Considering the person's views and wishes is critical to a person-centred system. Local authorities should not ignore or downplay the importance of a person's own opinions in relation to their life and their care. Where particular

views, feelings or beliefs (including religious beliefs) impact on the choices that a person may wish to make about their care, these should be taken into account. This is especially important where a person has expressed views in the past, but no longer has capacity to make decisions themselves;

**(c) the importance of preventing or delaying the development of needs for care and support and the importance of reducing needs that already exist.** At every interaction with a person, a local authority should consider whether or how the person's needs could be reduced or other needs could be delayed from arising. Effective interventions at the right time can stop needs from escalating, and help people maintain their independence for longer;

**(d) the need to ensure that decisions are made having regard to all the individual's circumstances** (and are not based only on their age or appearance, any condition they have, or any aspect of their behaviour which might lead others to make unjustified assumptions about their wellbeing). Local authorities should not make judgments based on preconceptions about the person's circumstances, but should in every case work to understand their individual needs and goals;

**(e) the importance of the individual participating as fully as possible in decisions** about them and being provided with the information and support necessary to enable the individual to participate. Care and support should be personal, and local authorities should not make decisions from which the person is excluded;

**(f) the importance of achieving a balance between the individual's wellbeing and that of any friends or relatives who are involved in caring for the individual.** People should be considered in the context of their families and support networks, not just as isolated individuals with needs. Local authorities should take into account the impact of an individual's need on those who support them, and take steps to help others access information or support;

**(g) the need to protect people from abuse and neglect.** In any activity which a local authority undertakes, it should consider how to ensure that the person is and remains protected from abuse or neglect. This is not confined only to safeguarding issues, but should be a general principle applied in every case;

**(h) the need to ensure that any restriction on the individual's rights or freedom of action that is involved in the exercise of the function is kept to the minimum necessary** for achieving the purpose for which the function is being exercised. Where the local authority has to take actions which restrict rights or freedoms, they should ensure that the course followed is the least restrictive necessary.

## **Independent living**

Although not mentioned specifically in the way that "wellbeing" is defined, the concept of "independent living" is a core part of the wellbeing principle. Section 1 of the Care Act includes matters such as individual's control of their day-to-day life, suitability of living accommodation, contribution to society – and crucially, requires local authorities to consider each person's views, wishes, feelings and beliefs.

The wellbeing principle is intended to cover the key components of independent living, as expressed in the UN Convention on the Rights of People with Disabilities<sup>1</sup> (in particular, Article 19 of the Convention). Supporting people to live as independently as possible, for as long as possible, is a guiding principle of the Care Act.

Promoting wellbeing is not always about local authorities meeting needs directly. It will be just as important for them to put in place a system where people have the information they need to take control of their care and support and choose the options that are right for them.

Control also means the ability to move from one area to another or from children's services to the adult system without fear of suddenly losing care and support. The Care Act ensures that people will be able to move to a different area without suddenly losing their care and support and provides clarity about who will be responsible for care and support in different situations.

## **Section 2. Preventing, reducing or delaying needs**

It is critical to the vision in the Care Act that the care and support system works to actively promote wellbeing and independence, and does not just wait to respond when people reach a crisis point. To meet the challenges of the future, it will be vital that the care and support system intervenes early to support individuals, helps people retain or regain their skills and confidence, and prevents need or delays deterioration wherever possible.

The local authority's responsibilities for prevention apply to all adults, including:

- people who do not have any current needs for care and support;
- adults with needs for care and support, whether their needs are eligible and/or met by the local authority or not (see chapter 6);
- carers, including those who may be about to take on a caring role or who do not currently have any needs for support, and those with needs for support which may not be being met by the local authority or other organisation.

The term "prevention" or "preventative" measures can cover many different types of support, services, facilities or other resources. There is no one definition for what constitutes preventative activity and this can range from wide-scale whole-population measures aimed at promoting health, to more targeted, individual interventions aimed at improving skills or functioning for one person or a particular group or lessening the impact of caring on a carer's health and wellbeing.

"Prevention" is often broken down into three general approaches – primary, secondary and tertiary prevention.

### **Primary prevention/promoting wellbeing**

These are aimed at individuals who have no current particular health or care and support needs. These are services, facilities or resources provided or arranged that may help an individual avoid developing needs for care and support, or help a carer avoid developing support needs by maintaining independence and good health and promoting wellbeing. They are generally universal (i.e. available to all) services, which may include, but are not limited to interventions and advice that:

- provide universal access to good quality information;
- support safer neighbourhoods;
- promote healthy and active lifestyles (e.g. exercise classes);
- reduce loneliness or isolation (e.g. befriending schemes or community activities) or,
- encourage early discussions in families or groups about potential changes in the future, e.g. conversations about potential care arrangements or suitable accommodation should a family member become ill or disabled.

### **Reduce: secondary prevention/early intervention**

These are more targeted interventions aimed at individuals who have an increased risk of developing needs, where the provision of services, resources or facilities may help slow down or reduce any further deterioration or prevent other needs from developing. Some early support can help stop a person's life tipping into crisis, for example helping someone with a learning disability with moderate needs manage their money, or a few hours support to help a family carer who is caring for their son or daughter with a learning disability and behaviour that challenges at home.

Early intervention could also include a fall prevention clinic, adaptations to housing to improve accessibility or provide greater assistance, handyman services, short term provision of wheelchairs or telecare services. In order to identify those individuals most likely to benefit from such targeted services, local authorities may undertake screening or casefinding, for instance to identify individuals at risk of developing specific health conditions or experiencing certain events (such as strokes, or falls), or those that have needs for care and support which are not currently met by the local authority. Targeted interventions should also include approaches to identifying carers, including those who are taking on new caring responsibilities. Carers can also benefit from support to help them develop the knowledge and skills to care effectively and look after their own health and wellbeing.

### **Delay: tertiary prevention**

These are interventions aimed at minimising the effect of disability or deterioration for people with established or complex health conditions, (including progressive conditions, such as dementia), supporting people to regain skills and manage or reduce need where possible. Tertiary prevention could include, for example the rehabilitation of people who are severely sight impaired. Local authorities must provide or arrange services, resources or facilities that maximise independence for those already with such needs, for example, interventions such as rehabilitation/reablement services, e.g. community equipment services and adaptations and the use of joint case-management for people with complex needs.

Tertiary prevention services could also include helping improve the lives of carers by enabling them to continue to have a life of their own alongside caring, for example through respite care, peer support groups like dementia cafés, or emotional support or stress management classes which can provide essential opportunities to share learning and coping tips with others. This can help develop mechanisms to cope with stress associated with caring and help carers develop an awareness of their own physical and mental health needs.

### **Developing a local approach to preventative support**

Whilst local authorities may choose to provide some types of preventative support themselves, others may be more effectively provided in partnership with other local partners. . A local authority's commissioning strategy for prevention should consider the different commissioning routes available, and the benefits presented by each. This could include connecting to other key areas of local preventative activity outside care, including housing, planning and public health.

In developing a local approach to prevention, the local authority must take steps to identify and understand both the current and future demand for preventative support, and the supply in terms of services, facilities and other resources available.

Local authorities must consider the importance of identifying the services, facilities and resources that are already available in their area, which could support people to prevent, reduce or delay needs, and which could form part of the overall local approach to preventative activity.

## **Section 3 Information and advice**

Local authorities must: *“establish and maintain a service for providing people in its area with information and advice relating to care and support for adults and support for carers”*.

The local authority has an active and critical role in the provision of information and advice and must take an active role. To fulfil its duty under section 4 of the Act, a local authority is likely to need to go further than providing information and advice directly (though direct provision will be important) by working to ensure the coherence, sufficiency, availability and accessibility of information and advice relating to care and support across the local authority area. Importantly,

this duty to establish and maintain an information and advice service relates to the whole population of the local authority area, not just those with care and support needs or in some other way already known to the system.

## **Section 4 Market shaping and commissioning of adult care and support**

The Care Act places new duties on local authorities to facilitate and shape their market for adult care and support as a whole, so that it meets the needs of all people in their area who need care and support, whether arranged or funded by the state, by the individual themselves, or in other ways. The ambition is for local authorities to influence and drive the pace of change for their whole market, leading to a sustainable and diverse range of care and support providers, continuously improving quality and choice, and delivering better, innovative and cost-effective outcomes that promote the wellbeing of people who need care and support.

## **Section 5 Managing provider failure and other service interruptions**

The possibility of interruptions to care and support services causes uncertainty and anxiety for people receiving services, their carers, family and friends. The guidance explains how the Care Act makes provision to ensure that, in such circumstances, the care and support needs of those receiving the service continue to be met. It describes local authorities' powers and duties when services are at risk of interruption in general and, in particular, when the interruption is because a provider's business has failed. It provides guidance to local authorities on the exercise of those powers and the discharge of those duties.

## **Section 6 Assessment - Eligibility**

The national eligibility criteria set a minimum threshold for adult care and support needs and carer support needs which local authorities must meet. All local authorities must comply with this national threshold. Authorities can also decide to meet needs that are not deemed to be eligible if they chose to do so.

The eligibility threshold for adults with care and support needs is set out in the Care and Support (Eligibility Criteria) Regulations 2014 (the 'Eligibility Regulations'). The threshold is based on identifying how a person's needs affect their ability to achieve relevant outcomes, and how this impacts on their wellbeing.

In considering whether an adult with care and support needs has eligible needs, local authorities must consider whether:

- The adult's needs arise from or are related to a physical or mental impairment or illness.
- As a result of the adult's needs the adult is unable to achieve two or more of the specified outcomes (which are described in the guidance).
- As a consequence of being unable to achieve these outcomes there is, or there is likely to be, a significant impact on the adult's wellbeing.

An adult's needs are only eligible where they meet all three of these conditions

Carers can be eligible for support in their own right. The national eligibility threshold for carers is also set out in the Care and Support (Eligibility Criteria) Regulations 2014. The threshold is based on the impact a carer's needs for support has on their wellbeing.

In considering whether a carer has eligible needs, local authorities must consider whether:

- the needs arise as a consequence of providing necessary care for an adult;

- the effect of the carer's needs is that any of the circumstances specified in the Eligibility Regulations apply to the carer; and
- as a consequence of that fact there is, or there is likely to be, a significant impact on the carer's wellbeing.

A carer's needs are only eligible where they meet all three of these conditions

## **Section 7 Independent Advocacy**

There are duties to arrange an independent advocate for all adults, as part of their own assessment and care planning and care reviews and to those in their role as carers. It also applies to children who are approaching the transition to adult care and support, when a child's needs assessment is carried out, and when a young carer's assessment is undertaken. Section 72 of the Act provides that Regulations may be made for appeals against local authority decisions made under Part 1 of the Act and includes reference to the provision of independent advocacy

There is also a separate duty to arrange an independent advocate for adults who are subject to a safeguarding enquiry or Safeguarding Adults Review (SAR).

Local authorities must arrange an independent advocate if two conditions are met. That if an independent advocate were not provided then the person would have substantial difficulty in being fully involved in these processes and second, there is no appropriate individual available to support and represent the person's wishes who is not paid or professionally engaged in providing care or treatment to the person or their carer. The role of the independent advocate is to support and represent the person and to facilitate their involvement in the key processes and interactions with the local authority and other organisations as required for the safeguarding enquiry or SAR.

Everyone should have access to information and advice on care and support and keeping safe from abuse or neglect (see chapter 3). Prior to making contact with the local authority, there may be some people who require independent advocacy to access that information and advice. Local authorities will need to consider such needs in ensuring that the information and advice service is accessible.

## **Section 8 Charging and financial assessment**

The Care Act provides a single legal framework for charging for care and support under sections 14 and 17. It enables a local authority to decide whether or not to charge a person when it is arranging to meet a person's care and support needs or a carer's support needs.

Where a local authority arranges care and support to meet a person's needs, it may charge the adult, except where the local authority is required to arrange care and support free of charge. The new framework is intended to make charging fairer and more clearly understood by everyone. The overarching principle is that people should only be required to pay what they can afford. People will be entitled to financial support based on a means-test and some will be entitled to free care.

## **Housing Act 1985 (as amended) and Parts 6 and 7 of the Housing Act 1996 (as amended)**

The Housing Act 1985 contains the main statutory powers and duties of local housing authorities including those concerning secure tenancies, the right to buy and overcrowding. Parts 6 and 7 of the Housing Act 1996 contain the powers and duties concerning allocation of housing and homelessness functions. The homelessness legislation places a general duty on housing authorities to ensure that advice and information about homelessness, and preventing homelessness, is available to everyone in their district free of charge. The legislation also requires authorities to assist individuals and families who are homeless or threatened with homelessness and apply for help.

## **Primary Statutory Requirements**

### **Children's Services**

**Advice in relation to planning, consultation, decision making and proposed implementation for individual proposals should be obtained once the specifics of a proposal have been decided upon.**

**The Children Act 1989 guidance and regulations – June 2015 Department for Education**

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

### **The UN Convention and the European Convention on Human Rights**

The United Nations Convention on the Rights of the Child (UNCRC) is an international human rights treaty to which the UK is a signatory, which grants all children and young people aged 17 and under a comprehensive set of rights. These include the right to:

- special protection measures and assistance;
- access to services such as education and health care;
- develop their personality, abilities and talents to the fullest potential;
- grow up in an environment of happiness, love and understanding; and
- be informed about and participate in achieving their rights in an accessible and active manner.

The Human Rights Act 1998 gives further effect in UK law to the rights and freedoms contained in the European Convention on Human Rights (ECHR).

### **The Children Act 1989**

#### **Key Principles**

A key principle of the 1989 Act is that children are best looked after within their families, with their parents playing a full part in their lives, unless compulsory intervention in family life is necessary. That principle is reflected in:

- the concept of parental responsibility;
- the ability of unmarried fathers to share that responsibility by agreement with the mother, by joint registration at birth or by court order;
- the local authority's functions to provide services which support children and their families;
- the local authority's duty to return a looked after child to his/her family unless this is against his/her interests; and
- the local authority's duty, unless it is not reasonably practicable or consistent with his/her welfare, to endeavour to promote contact between a looked after child and his/her parents or others.

#### **Principles in relation to children and their families**

Good social care practice recognises the following principles when working with children and their families:

- Time is a crucial element in work with children and should be reckoned in days and months rather than years.
- Parents should be expected and enabled to retain their responsibilities and to remain as closely involved as is consistent with their child's welfare, even if that child cannot live at home either temporarily or permanently.

- If children have to live apart from their family, both they and their parents should be given adequate information and helped to consider alternatives and contribute to the making of an informed choice about the most appropriate form of care.
- Continuity of relationships is important and attachments should be respected, sustained and developed.
- A change of home, carer, social worker or school almost always carries some risk to a child's development and welfare.
- All children need to develop their own identity, including self-confidence and a sense of self-worth.

These principles reflect the intention in the 1989 Act, that parents should be encouraged to exercise their responsibility for their child's welfare in a constructive way and that where compulsory intervention in the family is necessary it should, where possible, support rather than undermine the parental role. The 1989 Act places a strong emphasis on the local authority working in partnership with parents when undertaking their statutory functions.

### **The child's wishes and feelings**

Section 22(4) of the 1989 Act, consistent with Article 12 of the UNCRC, provides that, before making any decision with respect to a child whom the local authority are looking after or proposing to look after, the authority must, so far as reasonably practicable, ascertain the wishes and feelings of the child and any other relevant person. Section 22(5) provides that, in making any decision in relation to the child, it should give due consideration to those wishes and feelings, having regard to the child's age and understanding. Children should feel that they are active participants and engaged in the process when adults are trying to solve problems and make decisions about them. When plans are being made for the child's future, s/he is likely to feel less fearful if s/he understands what is happening and has been listened to from the beginning.

The functions (including powers and duties) of local authorities in relation to children who are looked after by them are set out in the 1989 Act as principally amended by the Children (Leaving Care) Act 2000, the Adoption and Children Act 2002 and the Children and Young Persons Act 2008, and the associated Regulations and guidance in relation to those functions.

Section 22(3) of the 1989 Act sets out the general duty of the local authority looking after a child to safeguard and promote the welfare of the child. This duty underpins all activity by the local authority in relation to looked after children.

### **Section 17 – Provision of Services for Children in Need**

Section 17(1) of the 1989 Act imposes on local authorities a general duty to safeguard and promote the welfare of children in their area who are in need by providing a range and level of services appropriate to those children's needs. A child 'in need' includes a disabled child (section 17(10)). 'For the purpose principally of facilitating the discharge of' that general duty, every local authority 'shall have the specific duties and powers set out in Part 1 of Schedule 2' to the 1989 Act (section 17(2)).

A child in need is defined under the Children Act 1989 as a child who is unlikely to achieve or maintain a satisfactory level of health or development, or their health and development will be significantly impaired, without the provision of services; or a child who is disabled. In these cases, assessments by a social worker are carried out under section 17 of the Children Act 1989.

Children in need may be assessed under section 17 of the Children Act 1989, in relation to their special educational needs, disabilities, or as a carer (for any need for support under s.17ZA and s.17ZB and must consider such assessment under s.17ZC), or because they have committed a crime. The process for assessment should also be used for children whose parents are in prison

and for asylum seeking children. The definition will include any child or young person under the age of 18.

The provision of services under s.17 may also be arranged where a parent carer's needs assessment has been carried out and considered under sections 17ZD to 17ZF

The services provided by a Local Authority under this section may include providing accommodation, giving assistance in kind, or in exceptional circumstances, in cash and can be subject to conditions as to the repayment of the assistance of its value (in whole or in part) subject to means testing.

### **Section 47 – Duty to Investigate**

Where there is reasonable cause to suspect that a child is suffering, or likely to suffer, significant harm, the local authority is required under s47 of the Children Act 1989 to make enquiries, to enable it to decide whether it should take any action to safeguard and promote the welfare of the child.

The Children Act 1989 places a statutory duty on health, education and other services to help the local authority carry out its social services functions under Part 3 of the Children Act 1989 and section 47 enquiries. All agencies then have a duty to assist and provide information in support of child protection enquiries.

### **Section 44 – Emergency Protection Powers**

The court may make an emergency protection order under section 44 of the Children Act 1989, if it is satisfied that there is reasonable cause to believe that a child is likely to suffer significant harm if the child:

- is not removed to different accommodation provided by the applicant; or
- does not remain in the place in which the child is then being accommodated.

Where the applicant is the local authority, an emergency protection order (EPO) may also be made if enquires (for example, made under section 47) are being frustrated by access to the child being unreasonably refused to a person authorised to seek access, and the applicant has reasonable cause to believe that access is needed as a matter of urgency. An emergency protection order gives authority to remove a child, and place the child under the protection of the applicant.

### **Section 20 - Co-operative Agreement Into Care**

Some children in need may require accommodation because there is no one who has parental responsibility for them, because they are lost or abandoned or because the person who has been caring for them is prevented from providing them with suitable accommodation or care. Under section 20 of the Children Act 1989, the local authority has a duty to accommodate such children in need in their area. An Accommodated Child is looked after under Section 20 of the Children Act. This is a voluntarily arranged, co-operative agreement, between the local authority and the parents (or the young person if they are aged over 16). The parents retain full parental responsibility.

### **Section 31 - Care Orders**

Under section 31 of the Children Act 1989, the local authority or any authorised person can apply to the court for a child or young person to become the subject of a care order. Once a care order is made, the local authority obtains parental responsibility in addition to the other parental responsibility holders. Following an application for a care order under section 31A, the local

authority, must assess the child's needs and draw up a care plan (or a proposed care plan) which sets out the services which will be provided to meet the child's identified needs.

Both children under Section 20 and those under Section 31 are deemed 'Looked After Children' (LAC).

### **Independent Reviewing Officer (IRO)**

Section 25B sets out the functions of IROs to improve care planning and secure better outcomes for looked after children. IROs have responsibility for monitoring the performance by the local authority of their functions in relation to a child's case, as well as specific duties in relation to the review function. There are now two clear and separate aspects to the function of the IRO:

- chairing the child's review; and
- monitoring the child's case on an ongoing basis including whether any safeguarding issues arise.

The intention is to enable the IRO to have an effective and independent oversight of the child's case to ensure that the care plan represents an effective response to the assessed needs of the child and that progress is being made towards achieving the identified outcomes.

The responsibilities of the IRO include:

- ensuring that care plans for looked after children are based on a detailed and informed assessment, are up to date, effective and provide a real and genuine response to each child's needs;
- identifying any gaps in the assessment process or provision of service;
- offering a safeguard to prevent any 'drift' in care planning and the delivery of services;
- monitoring the activity of the local authority acting as a good corporate parent in taking all reasonable steps to ensure that care plans have given proper consideration and weight to the child's current views, wishes and feelings and that the child fully understands the implications of any changes to their care plan; and
- making sure that the child understands how an advocate could help and his/her entitlement to one.

As part of the monitoring function, the IRO also has a duty to monitor the performance of the local authority's function as a corporate parent and to identify any areas of poor practice. This should include identifying patterns of concerns emerging not just around individual children but also more generally in the collective experience of their looked after children. Where these more general concerns around service delivery are identified, the IRO should immediately alert senior managers to these concerns.

### **Contact arrangements for a child looked after under a care order**

Where a child is in care there is a requirement to promote contact with their family and specific requirements are placed on the local authority in relation to the refusal of contact, departure from the terms of an order made under section 34 (as regards contact with the child's family) and notification, variation or supervision of contact arrangements made under such a section 34 order.

The responsible authority must allow reasonable contact with a child's parents, any guardian and any other person with whom s/he was living under a court order immediately before the care order was made, provided that contact is consistent with the LA's duty to safeguard and promote the welfare of the child

**Section 26A of the Children Act 1989 was inserted by section 119 of the Adoption and Children Act 2002. The Advocacy Services and Representations Procedure (Children)(Amendment) Regulations 2004**

**Advocacy**

All local authorities with social services responsibilities should ensure that advocacy services are provided for children and young people making or intending to make a complaint under section 24D or section 26 of the Children Act 1989.

There are further duties imposed on a local authority to publish information about their services, maintain registers and to take reasonable steps to reduce the need for care by local authorities.

**Children Act 2004**

**Section 10 Co-operation to improve well-being**

(1) Each children's services authority in England must make arrangements to promote co-operation between—

- (a) the authority;
- (b) each of the authority's relevant partners; and
- (c) such other persons or bodies as the authority consider appropriate, being persons or bodies of any nature who exercise functions or are engaged in activities in relation to children in the authority's area.

(2) The arrangements are to be made with a view to improving the well-being of children in the authority's area so far as relating to—

- (a) physical and mental health and emotional well-being;
- (b) protection from harm and neglect;
- (c) education, training and recreation;
- (d) the contribution made by them to society;
- (e) social and economic well-being.

(3) In making arrangements under this section a children's services authority in England must have regard to the importance of parents and other persons caring for children in improving the well-being of children.

Section 11(2) of the 2004 Act imposes a duty to make arrangements for ensuring that when exercising any function in a way which affects a child are discharged having regard to the need to safeguard and promote the welfare of children.

**Childcare Act 2006**

The Childcare Act 2006 imposes **general duties upon a local authority in relation to the well-being of young children**. By section 1(1) an "English local authority must (a) improve the well-being of young children in their area and (b) reduce inequalities between young children in their area in relation to the matters mentioned in sub-section (2)..."

By section 3, specific duties are imposed in relation to early childhood services. By section 3(2) those are to "...make arrangements to secure that early childhood services in [a local authority's] 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". Further subsections require local authorities to take reasonable steps to encourage

parents or prospective parents to take advantage of services. They must also involve parents and prospective parents, early years providers and other persons engaged in activities which may improve the well being of young children in the area in the making and implementation of arrangements under s.3. When deciding what arrangements to make the local authority must have regard to the quantity and quality of early childhood services available or that the authority expect to be available in their area, where they are within the area, any information about the views of young children that is available and any guidance given by the Secretary of State.

By section 5A it is provided that:

"(1) Arrangements made by an English local authority under section 3(2) must, so far as is reasonably practicable, include arrangements for sufficient provision for children's centres to meet local need.

(2) "Local need" is the need of parents, prospective parents and young children in the authority's area."

There are further sections relating to the provision of children's centres which should be followed.

By Section 5D it is provided that:

"(1) An English local authority must secure that such consultation as they think appropriate is carried out -

(a) before making arrangements under section 3(2) for the provision of a children's centre;

(b) before any significant change is made in the services provided through a relevant children's centre;

(c) before anything is done that would result in a relevant children's centre ceasing to be a children's centre."

...

(3) For the purposes of this section a change in the manner in which, or the location at which, services are provided is to be treated as a change in the services.

Section 5A of the 2006 Act is augmented by statutory guidance published by the Secretary of State. It seeks to emphasise that local authorities should ensure that a network of children's centres is accessible to all families with young children in their area; that children's centres and their services are within reasonable reach of all families with young children in urban and rural areas, taking into account distance and availability of transport; and that opening times and availability of services meet the needs of families in their area.

## **Section 6 Duty to secure sufficient childcare for working parents**

(1) An English local authority must secure, so far as is reasonably practicable, that the provision of childcare (whether or not by them) is sufficient to meet the requirements of parents in their area who require childcare in order to enable them—

(a) to take up, or remain in, work, or

(b) to undertake education or training which could reasonably be expected to assist them to obtain work.

(2) In determining for the purposes of subsection (1) whether the provision of childcare is sufficient to meet those requirements, a local authority—

(a) must have regard to the needs of parents in their area for—

(i) the provision of childcare in respect of which the child care element of working tax credit is payable, and

(ii) the provision of childcare which is suitable for disabled children, and

(b) may have regard to any childcare which they expect to be available outside their area.

## **Early help**

Providing early help is more effective in promoting the welfare of children than reacting later. Early help means providing support as soon as a problem emerges, at any point in a child's life, from the foundation years through to the teenage years. Early help can also prevent further problems arising, for example, if it is provided as part of a support plan where a child has returned home to their family from care.

Effective early help relies upon local agencies working together to:

- identify children and families who would benefit from early help;
- undertake an assessment of the need for early help; and
- provide targeted early help services to address the assessed needs of a child and their family which focuses on activity to significantly improve the outcomes for the child. Local authorities, under section 10 of the Children Act 2004, have a responsibility to promote inter-agency cooperation to improve the welfare of children

## **Identifying children and families who would benefit from early help**

Local agencies should have in place effective ways to identify emerging problems and potential unmet needs for individual children and families. This requires all professionals, including those in universal services and those providing services to adults with children, to understand their role in identifying emerging problems and to share information with other professionals to support early identification and assessment.

Professionals should, in particular, be alert to the potential need for early help for a child who:

- is disabled and has specific additional needs;
- has special educational needs;
- is a young carer;
- is showing signs of engaging in anti-social or criminal behaviour;
- is in a family circumstance presenting challenges for the child, such as substance abuse, adult mental health problems and domestic violence;
- has returned home to their family from care; and/or
- is showing early signs of abuse and/or neglect.

## **Provision of effective early help services**

The early help assessment carried out for an individual child and their family should be clear about the action to be taken and services to be provided (including any relevant timescales for the assessment) and aim to ensure that early help services are coordinated and not delivered in a piecemeal way.

Local areas should have a range of effective, evidence-based services in place to address assessed needs early. The early help on offer should draw upon the local assessment of need and the latest evidence of the effectiveness of early help and early intervention programmes. In addition to high quality support in universal services, specific local early help services will typically include family and parenting programmes, assistance with health issues and help for problems relating to drugs, alcohol and domestic violence. Services may also focus on improving family functioning and building the family's own capability to solve problems; this should be done within a structured, evidence-based framework involving regular review to ensure that real progress is being made. Some of these services may be delivered to parents but should always be evaluated to demonstrate the impact they are having on the outcomes for the child.

## EDUCATION FUNCTIONS OF LOCAL AUTHORITIES

**The Education Act 1996** (as amended) outlines a number of specific duties and powers of the local authority as follows:

### 13A Duty to promote high standards and fulfilment of potential

(1) A local authority in England must ensure that their relevant education functions and their relevant training functions are (so far as they are capable of being so exercised) exercised by the authority with a view to--

- (a) promoting high standards,
- (b) ensuring fair access to opportunity for education and training, and
- (c) promoting the fulfilment of learning potential by every person to whom this subsection applies.

(2) Subsection (1) applies to the following--

- (a) persons under the age of 20;
- (b) persons aged 20 or over and for whom an EHC plan is maintained.

...

(5) In this section--

"education" and "training" have the same meanings as in section 15ZA;

"relevant education function", in relation to a local authority in England, means a function relating to the provision of education for--

- (a) persons of compulsory school age (whether at school or otherwise);
- (b) persons (whether at school or otherwise) who are over compulsory school age and to whom subsection (1) applies;
- (c) persons who are under compulsory school age and are registered as pupils at schools maintained by the authority;

...

"relevant training function" means a function relating to the provision of training.

S.14 of the Education Act 1996 places a duty on the local authority to secure that sufficient schools are available for the provision of appropriate primary and secondary education.

S.14(3A) requires that a local authority exercises its functions in respect of the provision of primary and secondary schools with a view to:

- “(a) securing diversity in the provision of schools, and
- (b) increasing opportunities for parental choice.”

### 14A Duty of local education authority to consider parental representations

(1) Where a local authority in England receive any representation from a parent of a qualifying child as to the exercise by the authority of their functions under section 14, the authority shall—

- (a) consider the representation and what action (if any) to take in response to it, and
- (b) within a reasonable time provide the parent with a statement setting out—
  - (i) any action which the authority propose to take in response to the representation, or
  - (ii) where the authority are of the opinion that no such action is necessary, their reasons for being of that opinion.

**Sections 15A and 18A of the Education Act 1996** (and Part 3 of the Children and Families Act 2014 – see below) requires local authorities to secure sufficient suitable education and training provision for all young people in their area who are over compulsory school age but under 19 or aged 19 to 25 and for whom an Education, Health and Care (EHC) plan is maintained.

#### **436A Duty to make arrangements to identify children not receiving education**

(1) A local education authority must make arrangements to enable them to establish (so far as it is possible to do so) the identities of children in their area who are of compulsory school age but—

- (a) are not registered pupils at a school, and
- (b) are not receiving suitable education otherwise than at a school.

(2) In exercising their functions under this section a local authority must have regard to any guidance given from time to time by the Secretary of State.

(3) In this Chapter, “suitable education”, in relation to a child, means efficient full-time education suitable to his age, ability and aptitude and to any special educational needs he may have.

#### **507A LEAs in England: functions in respect of recreational and training facilities for children under 13**

(1) A local authority in England must secure that the facilities for primary and secondary education provided for their area include adequate facilities for recreation and social and physical training for children who have not attained the age of 13.

(2) For the purposes of subsection (1) a local authority may—

(a) establish, maintain and manage, or assist the establishment, maintenance and management of—

- (i) camps, holiday classes, playing fields, play centres, and
  - (ii) other places, including playgrounds, gymnasiums and swimming baths not appropriated to any school or other educational institution,
- at which facilities for recreation and social and physical training are available for persons receiving primary or secondary education;

(b) organise games, expeditions and other activities for such persons; and

(c) defray, or contribute towards, the expenses of such games, expeditions and other activities.

(3) When making arrangements for the provision of facilities or the organisation of activities in the exercise of their powers under subsection (2), a local authority must, in particular, have regard to the expediency of co-operating with any voluntary societies or bodies whose objects include the provision of facilities or the organisation of activities of a similar character.

#### **507B Local Authorities**

(1) A local authority in England must, so far as reasonably practicable, secure for qualifying young persons in the authority's area access to—

(a) sufficient educational leisure-time activities which are for the improvement of their well-being, and sufficient facilities for such activities; and

(b) sufficient recreational leisure-time activities which are for the improvement of their well-being, and sufficient facilities for such activities.

(2) “Qualifying young persons”, for the purposes of this section, are—

(a) persons who have attained the age of 13 but not the age of 20; and

(b) persons who have attained the age of 20 but not the age of 25 and have a learning difficulty or disability (within the meaning of section 15ZA(6)(a) and (7)).

(3) For the purposes of subsection (1)(a)—

(a) “sufficient educational leisure-time activities” which are for the improvement of the well-being of qualifying young persons in the authority's area must include sufficient educational leisure-time activities which are for the improvement of their personal and social development, and

(b) “sufficient facilities for such activities” must include sufficient facilities for educational leisure-time activities which are for the improvement of the personal and social development of qualifying young persons in the authority's area.

(4) References in the remaining provisions of this section to “positive leisure-time activities” are references to any activities falling within paragraph (a) or (b) of subsection (1).

(5) For the purposes of subsection (1) a local authority may—

(a) provide facilities for positive leisure-time activities;

(b) assist others in the provision of such facilities;

(c) make arrangements for facilitating access for qualifying young persons to such facilities;

(d) organise positive leisure-time activities;

(e) assist others in the organisation of such activities;

(f) make arrangements for facilitating access for qualifying young persons to such activities;

(g) enter into agreements or make arrangements with any person in connection with anything done or proposed to be done under any of paragraphs (a) to (f);

(h) take any other action which the authority think appropriate.

(6) For the purposes of subsection (5)—

(a) the provision mentioned in paragraph (a) may include establishing, maintaining and managing places at which facilities for positive leisure-time activities are provided;

(b) the assistance mentioned in paragraphs (b) and (e) may include the provision of financial assistance;

(c) the arrangements mentioned in paragraphs (c) and (f) may include the provision of transport, of financial assistance or of information to any person.

(7) Before taking any action for the purposes of subsection (1) (“the proposed action”), a local authority must—

(a) consider whether it is expedient for the proposed action to be taken by another person, and

(b) where the authority consider that it is so expedient, take all reasonable steps to enter into an agreement or make arrangements with such a person for that purpose.

(8) For the purposes of subsection (7)(a) a local authority must consult such persons as the authority think appropriate as to whether it is expedient for the proposed action to be taken by another person.

(9) In exercising their functions under this section a local authority must—

(a) take steps to ascertain the views of qualifying young persons in the authority's area about—

(i) positive leisure-time activities, and facilities for such activities, in the authority's area;

(ii) the need for any additional such activities and facilities;

and

(iii) access to such activities and facilities; and

(b) secure that the views of qualifying young persons in the authority's area are taken into account.

(10) A local authority in England must—

(a) publicise information about positive leisure-time activities, and facilities for such activities, in the authority's area, and

(b) keep the information publicised under paragraph (a) up to date.

(11) A local authority may charge in respect of anything provided by the authority under this section where the provision is to a qualifying young person (whether or not in the authority's area).

(12) In exercising their functions under this section a local authority must have regard to any guidance given from time to time by the Secretary of State.

(13) In this section—

“recreation” includes physical training (and “recreational” is to be construed accordingly);

“sufficient”, in relation to activities or facilities, means sufficient having regard to quantity;

“well-being”, in relation to a person, means his well-being so far as relating to—

(a) physical and mental health and emotional well-being;

(b) protection from harm and neglect;

- (c) education, training and recreation;
- (d) the contribution made by him to society;
- (e) social and economic well-being.”

## **508A Local authorities**

- (1) A local authority in England must—
  - (a) prepare for each academic year a document containing their strategy to promote the use of sustainable modes of travel to meet the school travel needs of their area (“a sustainable modes of travel strategy”),
  - (b) publish the strategy in such manner and by such time as may be prescribed, and
  - (c) promote the use of sustainable modes of travel to meet the school travel needs of their area.
- (2) Before preparing a sustainable modes of travel strategy, an authority must in particular—
  - (a) assess the school travel needs of their area, and
  - (b) assess the facilities and services for sustainable modes of travel to, from and within their area.
- (3) “Sustainable modes of travel” are modes of travel which the authority consider may improve either or both of the following—
  - (a) the physical well-being of those who use them;
  - (b) the environmental well-being of the whole or a part of their area.
- (4) The “school travel needs” of a local authority's area are—
  - (a) the needs of children and persons of sixth form age in the authority's area as regards travel mentioned in subsection (5), and
  - (b) the needs of other children and persons of sixth form age as regards travel mentioned in subsection (6).
- (5) The needs of children and persons of sixth form age in the authority's area as regards travel referred to in subsection (4)(a) are their needs as regards travel to and from—
  - (a) schools at which they receive or are to receive education or training,
  - (b) institutions within the further education sector, or 16 to 19 Academies, at which they receive or are to receive education or training, or
  - (c) any other places where they receive or are to receive education by virtue of arrangements made in pursuance of section 19(1).
- (6) The needs of other children and persons of sixth form age as regards travel referred to in subsection (4)(b) are their needs as regards travel to and from—
  - (a) schools at which they receive or are to receive education or training,
  - (b) institutions within the further education sector, or 16 to 19 Academies, at which they receive or are to receive education or training, or
  - (c) any other places where they receive or are to receive education by virtue of arrangements made in pursuance of section 19(1),
 in so far as that travel relates to travel within the authority's area.
- (7) The Secretary of State must issue, and may from time to time revise, guidance in relation to the discharge by a local authority of their duties under this section.
- ...
- (9) In discharging their duties under this section an authority must—
  - (a) consult such persons as they consider appropriate, and
  - (b) have regard to any guidance given from time to time by the Secretary of State under subsection (7).
- (10) References in this section to persons of sixth form age are to be construed in accordance with subsection (1) of section 509AC.
- (11) In this section, “academic year” has the same meaning as in section 509AC in the case of local authorities in England.

## **The Education and Skills Act 2008 (as updated)**

This Act requires local authorities to make available to all young people aged 13-19 and those between 20-25 with special educational needs and disabilities, support that will encourage, enable or assist them to participate in education or training under s.68 of the Act (ie a duty to make

available such services as considered appropriate to encourage, enable or assist the effective participation of those persons in education or training).

The Act also places duties on local authorities to promote the effective participation in education and training of 16 and 17 year olds in their area with a view to ensuring that those persons fulfil the duty to participate in education or training (s.10 Education and Skills Act 2008) and to also identify those 16 and 17 year olds who are not participating in education or training (s.12 Education and Skills Act 2008).

Duties under the **Education and Inspections Act 2006** include:

### **60 Performance standards and safety warning notice**

(1) A maintained school is by virtue of this section eligible for intervention if—

(a) a relevant authority have given the governing body a warning notice in accordance with subsection (2),

(b) the period for compliance specified in the notice (“the compliance period”) has expired,

(c) the governing body have failed to comply, or secure compliance, with the notice to the relevant authority's satisfaction by the end of the compliance period, and

(d) the relevant authority have given reasonable notice in writing to the governing body that the authority proposes to exercise the authority's powers under any one or more of sections 63 to 69 (whether or not the notice is combined with a notice under section 62(2A)(c) of SSFA 1998).

(2) A relevant authority may give a warning notice to the governing body of a maintained school where the authority are satisfied—

(a) that the standards of performance of pupils at the school are unacceptably low, and are likely to remain so unless the authority exercise their powers under this Part, or

(b) that there has been a serious breakdown in the way the school is managed or governed which is prejudicing, or likely to prejudice, such standards of performance, or

(c) that the safety of pupils or staff of the school is threatened (whether by a breakdown of discipline or otherwise).

(3) For the purposes of subsection (2)(a) the standards of performance of pupils at a school are low if they are low by reference to any one or more of the following—

(a) the standards that the pupils might in all the circumstances reasonably be expected to attain,

(b) where relevant, the standards previously attained by them, or

(c) the standards attained by pupils at comparable schools.

(4) For the purposes of this section a “warning notice” is a notice in writing by the relevant authority setting out—

(a) the matters on which the conclusion mentioned in subsection (2) is based,

(b) the action which they require the governing body to take in order to remedy those matters,

(c) the compliance period for the purposes of subsection (1)(c), and

(d) the action which the relevant authority are minded to take (under one or more of sections 63 to 69 or otherwise) if the governing body fail to take the required action.

(4A) If a local authority are notified that the Secretary of State has given a warning notice to the governing body of a maintained school the local authority may not give a warning notice unless or until the Secretary of State informs them that they may.

(4B) If the Secretary of State gives a warning notice to the governing body of a maintained school, any earlier warning notice given to the maintained school by the local authority ceases to have effect from that time.

...

(6) The relevant authority must, at the same time as giving the governing body the warning notice, give a copy of the notice to each of the following persons—

(a) the Chief Inspector,

(b) the head teacher of the school,

(c) in the case of a Church of England school or a Roman Catholic Church school, the appropriate diocesan authority, and

(d) in the case of a foundation or voluntary school, the person who appoints the foundation governors.

(6A) If a local authority give a warning notice to the governing body of a maintained school they must, at the same time, give a copy of it to the Secretary of State.

(6B) If the Secretary of State gives a warning notice to the governing body of a maintained school the Secretary of State must, at the same time, give a copy of it to the local authority.

(10) In this section “relevant authority” means—

- (a) the local authority, or
- (b) the Secretary of State.

### **63 Power of local authority to require governing body to enter into arrangements**

(1) If at any time a maintained school is eligible for intervention other than by virtue of section 60A, then (subject to subsection (3)) the local authority may, with a view to improving the performance of the school, give the governing body of the school a notice requiring the governing body—

(a) to enter into a contract or other arrangement with a specified person (who may be the governing body of another school) for the provision to the governing body of specified services of an advisory nature,

(b) to make specified arrangements authorised by section 26 of EA 2002 (collaboration between schools) with the governing body of such other school as may be specified,

(c) to make specified arrangements authorised by regulations under section 166 of this Act (collaboration arrangements: maintained schools and further education bodies) with a further education body within the meaning of that section, or

(d) to take specified steps for the purpose of creating or joining a federation, as defined by section 24(2) of EA 2002.

(2) Before exercising the power conferred by subsection (1), the local authority must consult—

(a) the governing body of the school,

(b) in the case of a foundation or voluntary school which is a Church of England school or a Roman Catholic Church school, the appropriate diocesan authority, and

(c) in the case of any other foundation or voluntary school, the person or persons by whom the foundation governors are appointed.

(3) Where the school is eligible for intervention by virtue of section 60 (school subject to performance standards and safety warning), the power conferred by subsection (1) is only exercisable within the period of two months following the end of the compliance period (as defined by section 60(1)(b)).

(4) A notice under subsection (1)(a) may require the contract or other arrangement to contain specified terms and conditions.

### **64 Power of local authority etc. to appoint additional governors**

(1) If at any time a maintained school is eligible for intervention, then (subject to subsection (2)) the local authority may appoint such number of additional governors as they think fit.

Subsection (2) relates to when the power can be exercised.

There are further requirements relating to the exercise of intervention powers contained within the Act.

## **Children and Families Act 2014**

### **CHILDREN AND YOUNG PEOPLE IN ENGLAND WITH SPECIAL EDUCATIONAL NEEDS OR DISABILITIES**

#### **19 Local authority functions: supporting and involving children and young people**

In exercising a function under this Part in the case of a child or young person, a local authority in England must have regard to the following matters in particular—

- (a) the views, wishes and feelings of the child and his or her parent, or the young person;
- (b) the importance of the child and his or her parent, or the young person, participating as fully as possible in decisions relating to the exercise of the function concerned;
- (c) the importance of the child and his or her parent, or the young person, being provided with the information and support necessary to enable participation in those decisions;
- (d) the need to support the child and his or her parent, or the young person, in order to facilitate the development of the child or young person and to help him or her achieve the best possible educational and other outcomes.

## **22 Identifying children and young people with special educational needs and disabilities**

A local authority in England must exercise its functions with a view to securing that it identifies—

- (a) all the children and young people in its area who have or may have special educational needs, and
- (b) all the children and young people in its area who have a disability

## **24 When a local authority is responsible for a child or young person**

(1) A local authority in England is responsible for a child or young person if he or she is in the authority's area and has been—

- (a) identified by the authority as someone who has or may have special educational needs, or
- (b) brought to the authority's attention by any person as someone who has or may have special educational needs.

## **25 Promoting integration**

(1) A local authority in England must exercise its functions under this Part with a view to ensuring the integration of educational provision and 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 educational needs or a disability, or
- (b) improve the quality of special educational provision—
  - (i) made in its area for children or young people who have special educational needs, or
  - (ii) made outside its area for children or young people for whom it is responsible who have special educational needs.

(2) The reference in subsection (1) to the well-being of children and young people is to their well-being so far as relating to—

- (a) physical and mental health and emotional well-being;
- (b) protection from abuse and neglect;
- (c) control by them over their day-to-day lives;
- (d) participation in education, training or recreation;
- (e) social and economic well-being;
- (f) domestic, family and personal relationships;
- (g) the contribution made by them to society.

## **26 Joint commissioning arrangements**

(1) A local authority in England and its partner commissioning bodies must make arrangements ("joint commissioning arrangements") about the education, health and care provision to be secured for—

- (a) children and young people for whom the authority is responsible who have special educational needs, and

- (b) children and young people in the authority's area who have a disability.
- (2) In this Part "education, health and care provision" means—
  - (a) special educational provision;
  - (b) health care provision;
  - (c) social care provision.
- (3) Joint commissioning arrangements must include arrangements for considering and agreeing—
  - (a) the education, health and care provision reasonably required by—
    - (i) the learning difficulties and disabilities which result in the children and young people within subsection (1)(a) having special educational needs, and
    - (ii) the disabilities of the children and young people within subsection (1)(b);
  - (b) what education, health and care provision is to be secured;
  - (c) by whom education, health and care provision is to be secured;
  - (d) what advice and information is to be provided about education, health and care provision;
  - (e) by whom, to whom and how such advice and information is to be provided;
  - (f) how complaints about education, health and care provision may be made and are to be dealt with;
  - (g) procedures for ensuring that disputes between the parties to the joint commissioning arrangements are resolved as quickly as possible.
- (4) Joint commissioning arrangements about securing education, health and care provision must in particular include arrangements for—
  - (a) securing EHC needs assessments;
  - (b) securing the education, health and care provision specified in EHC plans;
  - (c) agreeing personal budgets under section 49.
- (5) Joint commissioning arrangements may also include other provision.
- (6) The parties to joint commissioning arrangements must—
  - (a) have regard to them in the exercise of their functions, and
  - (b) keep them under review.
- (7) Section 116B of the Local Government and Public Involvement in Health Act 2007 (duty to have regard to assessment of relevant needs and joint health and wellbeing strategy) applies in relation to functions exercisable under this section.
- (8) A local authority's "partner commissioning bodies" are—
  - (a) the National Health Service Commissioning Board, to the extent that it is under a duty under section 3B of the National Health Service Act 2006 to arrange for the provision of services or facilities for—
    - (i) any children and young people for whom the authority is responsible who have special educational needs, or
    - (ii) any children and young people in the authority's area who have a disability, and
  - (b) each clinical commissioning group that is under a duty under section 3 of that Act to arrange for the provision of services or facilities for any children and young people within paragraph (a).
- (9) Regulations may prescribe circumstances in which a clinical commissioning group that would otherwise be a partner commissioning body of a local authority by virtue of subsection (8)(b) is to be treated as not being a partner commissioning body of the authority.

## **27 Duty to keep education and care provision under review**

- (1) A local authority in England must keep under review—
  - (a) the educational provision, training provision and social care provision made in its area for children and young people who have special educational needs or a disability, and
  - (b) the educational provision, training provision and social care provision made outside its area for—
    - (i) children and young people for whom it is responsible who have special educational needs, and
    - (ii) children and young people in its area who have a disability.
- (2) The authority must consider the extent to which the provision referred to in subsection (1)(a) and (b) is sufficient to meet the educational needs, training needs and social care needs of the children and young people concerned.

- (3) In exercising its functions under this section, the authority must consult—
- (a) children and young people in its area with special educational needs, and the parents of children in its area with special educational needs;
  - (b) children and young people in its area who have a disability, and the parents of children in its area who have a disability;
  - (c) the governing bodies of maintained schools and maintained nursery schools in its area;
  - (d) the proprietors of Academies in its area;
  - (e) the governing bodies, proprietors or principals of post-16 institutions in its area;
  - (f) the governing bodies of non-maintained special schools in its area;
  - (g) the advisory boards of children's centres in its area;
  - (h) the providers of relevant early years education in its area;
  - (i) the governing bodies, proprietors or principals of other schools and post-16 institutions in England and Wales that the authority thinks are or are likely to be attended by—
    - (i) children or young people for whom it is responsible, or
    - (ii) children or young people in its area who have a disability;
  - (j) a youth offending team that the authority thinks has functions in relation to—
    - (i) children or young people for whom it is responsible, or
    - (ii) children or young people in its area who have a disability;
  - (k) such other persons as the authority thinks appropriate.
- (4) Section 116B of the Local Government and Public Involvement in Health Act 2007 (duty to have regard to assessment of relevant needs and joint health and wellbeing strategy) applies in relation to functions exercisable under this section.
- (5) "Children's centre" has the meaning given by section 5A(4) of the Childcare Act 2006.

## **28 Co-operating generally: local authority functions**

---

- (1) A local authority in England must co-operate with each of its local partners, and each local partner must co-operate with the authority, in the exercise of the authority's functions under this Part.
- (2) Each of the following is a local partner of a local authority in England for this purpose—
- (a) where the authority is a county council for an area for which there is also a district council, the district council;
  - (b) the governing body of a maintained school or maintained nursery school that is maintained by the authority or provides education or training for children or young people for whom the authority is responsible;
  - (c) the proprietor of an Academy that is in the authority's area or provides education or training for children or young people for whom the authority is responsible;
  - (d) the proprietor of a non-maintained special school that is in the authority's area or provides education or training for children or young people for whom the authority is responsible;
  - (e) the governing body of an institution within the further education sector that is in the authority's area, or is attended, or likely to be attended, by children or young people for whom the authority is responsible;
  - (f) the management committee of a pupil referral unit that is in the authority's area, or is in England and is or is likely to be attended by children or young people for whom the authority is responsible;
  - (g) the proprietor of an institution approved by the Secretary of State under section 41 (independent special schools and special post 16 institutions: approval) that is in the authority's area, or is attended, or likely to be attended, by children or young people for whom the authority is responsible;
  - (h) any other person (other than a school or post-16 institution) that makes special educational provision for a child or young person for whom the authority is responsible;
  - (i) a youth offending team that the authority thinks has functions in relation to children or young people for whom it is responsible;
  - (j) a person in charge of relevant youth accommodation—
    - (i) in which there are detained persons aged 18 or under for whom the authority was responsible immediately before the beginning of their detention, or

- (ii) that the authority thinks is accommodation in which such persons are likely to be detained;
  - (k) the National Health Service Commissioning Board;
  - (l) a clinical commissioning group—
    - (i) whose area coincides with, or falls wholly or partly within, the authority's area, or
    - (ii) which is under a duty under section 3 of the National Health Service Act 2006 to arrange for the provision of services or facilities for any children and young people for whom the authority is responsible;
  - (m) an NHS trust or NHS foundation trust which provides services in the authority's area, or which exercises functions in relation to children or young people for whom the authority is responsible;
  - (n) a Local Health Board which exercises functions in relation to children or young people for whom the authority is responsible.
- (3) A local authority in England must make arrangements for ensuring co-operation between—
- (a) the officers of the authority who exercise the authority's functions relating to education or training,
  - (b) the officers of the authority who exercise the authority's social services functions for children or young people with special educational needs, and
  - (c) the officers of the authority, so far as they are not officers within paragraph (a) or (b), who exercise the authority's functions relating to provision which is within section 30(2)(e) (provision to assist in preparing children and young people for adulthood and independent living).
- (4) Regulations may prescribe circumstances in which a clinical commissioning group that would otherwise be a local partner of a local authority by virtue of subsection (2)(l)(ii) is to be treated as not being a local partner of the authority.

## **29 Co-operating generally: governing body functions**

- (1) This section applies where an appropriate authority for a school or post-16 institution mentioned in subsection (2) has functions under this Part.
- (2) The schools and post-16 institutions referred to in subsection (1) are—
- (a) mainstream schools;
  - (b) maintained nursery schools;
  - (c) 16 to 19 Academies;
  - (d) institutions within the further education sector;
  - (e) pupil referral units;
  - (f) alternative provision Academies.
- (3) The appropriate authority must co-operate with each responsible local authority, and each responsible local authority must co-operate with the appropriate authority, in the exercise of those functions.
- (4) A responsible local authority, in relation to an appropriate authority for a school or post-16 institution mentioned in subsection (2), is a local authority in England that is responsible for any child or young person who is a registered pupil or a student at the school or post-16 institution.
- (5) The “appropriate authority” for a school or post-16 institution is—
- (a) in the case of a maintained school, maintained nursery school, or institution within the further education sector, the governing body;
  - (b) in the case of an Academy, the proprietor;
  - (c) in the case of a pupil referral unit, the management committee.

## **30 Local offer**

- (1) A local authority in England must publish information about—
- (a) the provision within subsection (2) it expects to be available in its area at the time of publication for children and young people who have special educational needs or a disability, and
  - (b) the provision within subsection (2) it expects to be available outside its area at that time for—
    - (i) children and young people for whom it is responsible, and
    - (ii) children and young people in its area who have a disability.

(2) The provision for children and young people referred to in subsection (1) is—

- (a) education, health and care provision;
- (b) other educational provision;
- (c) other training provision;
- (d) arrangements for travel to and from schools and post-16 institutions and places at which relevant early years education is provided;
- (e) provision to assist in preparing children and young people for adulthood and independent living.

(3) For the purposes of subsection (2)(e), provision to assist in preparation for adulthood and independent living includes provision relating to—

- (a) finding employment;
- (b) obtaining accommodation;
- (c) participation in society.

(4) Information required to be published by an authority under this section is to be known as its “local offer”.

(5) A local authority must keep its local offer under review and may from time to time revise it.

(6) A local authority must from time to time publish—

- (a) comments about its local offer it has received from or on behalf of—
  - (i) children and young people with special educational needs, and the parents of children with special educational needs, and
  - (ii) children and young people who have a disability, and the parents of children who have a disability, and
- (b) the authority's response to those comments (including details of any action the authority intends to take).

(7) Comments published under subsection (6)(a) must be published in a form that does not enable the person making them to be identified.

(8) Regulations may make provision about—

- (a) the information to be included in an authority's local offer;
- (b) how an authority's local offer is to be published;
- (c) who is to be consulted by an authority in preparing and reviewing its local offer;
- (d) how an authority is to involve—
  - (i) children and young people with special educational needs, and the parents of children with special educational needs, and
  - (ii) children and young people who have a disability, and the parents of children who have a disability,in the preparation and review of its local offer;
- (e) the publication of comments on the local offer, and the local authority's response, under subsection (6) (including circumstances in which comments are not required to be published).

(9) The regulations may in particular require an authority's local offer to include—

- (a) information about how to obtain an EHC needs assessment;
- (b) information about other sources of information, advice and support for—
  - (i) children and young people with special educational needs and those who care for them, and
  - (ii) children and young people who have a disability and those who care for them;
- (c) information about gaining access to provision additional to, or different from, the provision mentioned in subsection (2);
- (d) information about how to make a complaint about provision mentioned in subsection (2).

## 32 Advice and information

(1) A local authority in England must arrange for children and young people for whom it is responsible, and the parents of children for whom it is responsible, to be provided with advice and information about matters relating to the special educational needs of the children or young people concerned.

(2) A local authority in England must arrange for children and young people in its area with a disability, and the parents of children in its area with a disability, to be provided with advice and information about matters relating to the disabilities of the children or young people concerned.

(3) The authority must take such steps as it thinks appropriate for making the services provided under subsections (1) and (2) known to—

(a) the parents of children in its area;

(b) children in its area;

(c) young people in its area;

(d) the head teachers, proprietors and principals of schools and post-16 institutions in its area.

(4) The authority may also take such steps as it thinks appropriate for making the services provided under subsections (1) and (2) known to such other persons as it thinks appropriate.

Powers and duties relating to the assessment, preparation and finalising an EHC plan and the provision of services under an EHC plan are detailed in Part 3 of the Children and Families Act 2014 including sections 33 to 48.

## Academies Act 2010

S5B provides that where a school is subject to an academy order the governing body and its relevant local authority must work towards the school's successful conversion into an academy by taking all reasonable steps necessary.

## Section 3 of the Local Government Act 1999 ('the 1999 Act')

Section 3(1) of the 1999 Act imposes a duty on a local authority to 'make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness'.

Section 3(2) requires a local authority to **consult various people** 'for the purpose of' deciding how to fulfil the duty imposed by section 3(1). In deciding how to fulfil that duty, and in making decisions about consultation, a local authority must have regard to guidance issued by Secretary of State.

The statutory guidance is short. It is aimed specifically at, and 'sets out clear expectations for' councils which are 'considering changing funding to local voluntary or community groups'. Paragraph 7 of the guidance says that '**Authorities should seek to avoid passing on disproportionate reductions – by not passing on larger reductions to the voluntary and community sector and small businesses as a whole than they take on**'.

## The Statutory Framework for Care Planning

as detailed in statutory guidance: The Children Act 1989 guidance and regulations  
Volume 2: care planning, placement and case review Issued by the Department of Education June 2015

Overarching Framework	Work Area	Useful Documents
<b>Care Planning, Placement, and Case Review Regulations and statutory guidance</b>	<b>Social care standards and guidance</b>	<ul style="list-style-type: none"> <li>- <a href="#">Children Act 1989: care planning, placement and case review</a></li> <li>- <a href="#">Children Act 1989: court orders</a></li> <li>- <a href="#">Directors of children's services: roles and responsibilities</a></li> <li>- <a href="#">Children's social care: getting the best from complaints</a></li> <li>- <a href="#">Information sharing for practitioners and managers</a></li> </ul>
<b>Care Planning</b>	Health and wellbeing	<ul style="list-style-type: none"> <li>- <a href="#">Promoting the health and wellbeing of looked-after children</a></li> <li>- <a href="#">Care of unaccompanied and trafficked children</a></li> <li>- <a href="#">Children who run away or go missing from home or care</a></li> <li>- <a href="#">Working together to safeguard children</a></li> </ul>
	Support in education	<ul style="list-style-type: none"> <li>- <a href="#">Promoting the education of looked-after children</a></li> <li>- <a href="#">Designated teacher for looked-after children</a></li> <li>- <a href="#">SEND: guide for social care professionals</a></li> </ul>
	Financial support	<ul style="list-style-type: none"> <li>- <a href="#">Pupil premium: virtual school heads' responsibilities</a></li> <li>- <a href="#">Junior Individual saving accounts for looked-after children</a></li> </ul>
<b>Placements</b>	Accommodation	<ul style="list-style-type: none"> <li>- <a href="#">Children's homes regulations amendments 2014</a></li> <li>- <a href="#">Provision of accommodation for 16 and 17 year olds who may be homeless and/or require accommodation</a></li> <li>- <a href="#">Securing sufficient accommodation for looked-after children</a></li> </ul>
	Friends and family care	<ul style="list-style-type: none"> <li>- <a href="#">Children Act 1989: family and friends care</a></li> </ul>
	Special guardianship	<ul style="list-style-type: none"> <li>- <a href="#">Special guardianship guidance</a></li> </ul>
	Social care standards and guidance	<ul style="list-style-type: none"> <li>- <a href="#">Placement of looked-after children in EU member states</a></li> </ul>
<b>Adoption Fostering Children's Homes</b>	National Minimum Standards	<ul style="list-style-type: none"> <li>- <a href="#">Children's homes: national minimum standards</a></li> <li>- <a href="#">Adoption: national minimum standards</a></li> <li>- <a href="#">Fostering services: national minimum standards</a></li> </ul>
	Regulations	<ul style="list-style-type: none"> <li>- <a href="#">The Fostering Services (England) Regulations 2011</a></li> <li>- <a href="#">The Children's Homes (England) Regulations 2015</a></li> </ul>
<b>Case Review</b>	Advocacy	<ul style="list-style-type: none"> <li>- <a href="#">Advocacy services for children and young people</a></li> <li>- <a href="#">Independent reviewing officers' handbook</a></li> <li>- <a href="#">Supporting looked-after children with communication needs</a></li> </ul>
	Social care standards and guidance	<ul style="list-style-type: none"> <li>- <a href="#">Children's social care: getting the best from complaints</a></li> </ul>
<b>Ceasing to be looked after</b>	Care leavers and former looked-after children	<ul style="list-style-type: none"> <li>- <a href="#">Children Act 1989: transition to adulthood for care leavers</a></li> <li>- <a href="#">Care leaver strategy</a></li> </ul>
<b>Short breaks</b>	Short break care	<ul style="list-style-type: none"> <li>- <a href="#">Short breaks for disabled children</a></li> </ul>
<b>Case records</b>	Records	<ul style="list-style-type: none"> <li>- <a href="#">Data protection Act 1998</a></li> </ul>
<b>Arrangements in youth justice system</b>	Youth Justice	<ul style="list-style-type: none"> <li>- <a href="#">Children Act 1989: former looked-after children in custody</a></li> </ul>

## **Equality Act 2010 Duties**

Any proposals which relate to a change to e-forms or a change to the processes/procedures (including electronic) the need to ensure universal access to all service users remains and appropriate impact assessments and actions should be taken to ensure the Equality Act 2010 is complied with.

## **Charging for Services**

There are various general powers to carry out and charge for discretionary services provided to external bodies and to service users:

S.111 Local Government Act 1972 allows the Council to do anything “*which is calculated to facilitate, or is conducive or incidental to, the discharge of any of [its] functions*” and S.1 Local Authorities (Goods and Services) Act 1970 allows local authorities to trade with other public bodies by agreement.

The Local Government Act 2003 allows the Council to charge for discretionary services unless expressly prohibited from doing so (S.93) although it also limits the power to ensure that the income from such charges does not exceed the cost of provision.

In addition, the Localism Act 2011 gives Local Authorities the power to do anything which an individual would be able to do provided the Local Authority is not otherwise prohibited from taking such action (the general power of competence).

The Localism Act also gives the power to charge for any services provided under the general power of competence although the charges made should not exceed the cost of provision of those services.

The basis of the power to provide and charge for a service should be determined so the appropriate charges can be calculated correctly according to the relevant legislation.

## **Primary Statutory Requirements**

### **Community Services**

**Transport** - The Transport Acts 1985 and 2008,

#### **Section 57 Passenger Transport Areas, Authorities and Executives.**

9A General functions of Passenger Transport Authorities and Executives.

- (1) It shall be the duty of the Authority for any passenger transport area to formulate from time to time general policies with respect to the descriptions of public passenger transport services they consider it appropriate for the Executive for their area to secure for the purpose of meeting any public transport requirements within their area which in the view of the Authority would not be met apart from any action taken by the Executive for that purpose.
- (2) The Authority shall seek and have regard to the advice of the Executive for their area in formulating their policies under subsection (1) of this section.
- (3) It shall be the duty of the Executive for any passenger transport area to secure the provision of such public passenger transport services as they consider it appropriate to secure for meeting any public transport requirements within their area in accordance with policies formulated by the Authority for their area under subsection (1) of this section.
- (4) The Executive shall have power to enter into an agreement providing for service subsidies for the purpose of securing the provision of any service under subsection (3) of this section; but their power to do so—
  - (a) shall be exercisable only where the service in question would not be provided without subsidy; and
  - (b) is subject to sections 89 to 92 of the Transport Act 1985 (tendering for local services, etc.).
- (5) Where it appears to the Authority for any passenger transport area that it would be appropriate for the Executive for that area to take any measures for the purpose of or in connection with promoting, so far as relates to that area—
  - (a) the availability of public passenger transport services other than subsidised services and the operation of such services, in conjunction with each other and with any available subsidised services, so as to meet any public transport requirements the Authority consider it appropriate to meet; or
  - (b) the convenience of the public (including persons who are elderly or disabled) in using all available public passenger transport services (whether subsidised or not);the Authority may from time to time formulate general policies with respect to the description of such measures to be taken by the Executive for that area, and the Executive shall take such measures for the purpose or in the connection mentioned above as appear to them to be appropriate for carrying out those policies.
- (6) It shall be the duty—
  - (a) of the Authority for any passenger transport area, in formulating any such policies; and
  - (b) of the Executive for any passenger transport area, in carrying out any such policies; so to conduct themselves as not to inhibit competition between persons providing or seeking to provide public passenger transport services in their area.

(7) It shall be the duty both of the Authority and of the Executive for any passenger transport area, in exercising or performing any of their functions under the preceding provisions of this section, to have regard to the transport needs of members of the public who are elderly or disabled.

## **The Travel Concessions (Eligibility) Act 2002**

The Council has a duty as a Travel Concession Authorities (TCA) under the Transport Act 2000 and the Travel Concessions (Eligibility) Act 2002 to issue statutory travel concession permits, on request and without charge, to older people on public passenger transport (until 31 March 2010 this was defined as aged 60, but is now tied to the date at which a woman of the applicant's age would be eligible to receive a state pension) and disabled people. Originally applying to travel within the Council's area, from April 2008 this was extended to apply to travel throughout England.

## **School Transport**

**Section 508B of the Education Act 1996** requires local authorities to make such school travel arrangements as they consider necessary for children within their area, for the purpose of facilitating the attendance of persons (not of sixth form age) receiving education or training at an institution. **Such arrangements must be provided free of charge.**

"Statutory walking distance" is two miles for children aged under eight, and three miles for children aged eight and over. The measurement of the "statutory walking distance" is not necessarily the shortest distance by road. It is measured by the shortest route along which a child, accompanied as necessary, may walk with reasonable safety. As such, the route measured may include footpaths, bridleways, and other pathways, as well as recognised roads.

**Section 508C** of the Act gives local authorities discretionary powers to make school travel arrangements for other children not covered by section 508B. **Such transport does not have to be provided free of charge.**

Examples of other bodies or persons making travel arrangements might include: a parent consenting to use of their car in return for a mileage allowance; a school, or group of schools reaching an agreement with a local authority to provide transport in minibuses owned by the school; or a transport authority providing free passes for all children on public transport.

Subsection (4) of 508B and 508C of the Act list some of the travel and transport arrangements that may be made. These might include: provision of a seat on a bus or minibus provided by the local authority; provision of a seat in a taxi where more individualised arrangements are necessary; and provision of a pass for a public service bus, or other means of public transport.

On condition that the relevant parental consent has been obtained by the local authority, a number of allowances and other arrangements might be considered to meet the local authority duty relating to travel arrangements. Examples include:

- a mileage allowance paid to a parent driving their "eligible child" to school in lieu of the local authority making arrangements for a taxi to transport the child;
- a cycling allowance paid by the local authority where the parent agreed for their child to cycle to and from school instead of catching a bus for, say a three mile journey; and
- local authority provision of an escort to enable a child with SEN to walk a short distance to school in reasonable safety, instead of making arrangements for a taxi to take them to and from school.

Some children with SEN and/or a disability may, by reason of their SEN and/or disability, be unable to walk even relatively short distances to school. Similarly, children with a mobility problem caused, for example, by a temporary medical condition such as a broken leg, may also be unable to walk to school.

Where such children attend a qualifying school, which is within “statutory walking distance”, and no suitable arrangements have been made by the Local Authority for enabling them to become a registered pupil at a qualifying school nearer to their home, they will be “eligible children”. This means that local authorities must make suitable travel arrangements for children with SEN, a disability, or mobility problem (including temporary medical conditions) if their SEN, disability, or mobility problem means that they could not reasonably be expected to walk to the school (or other place where they might be receiving education under section 19(1) of the Act.

Where children live within “statutory walking distance” of their nearest qualifying school (or other place where education is provided under section 19(1)), local authorities will be under a duty to make travel arrangements where the nature of the route is such that a child can not reasonably be expected to walk (accompanied as necessary) in reasonable safety.

## **SEND Code of Practice 2015**

Transport can be an important factor in the support for children and young people with SEN or disabilities. The Local Offer **must** include information about arrangements for transport provision, including for those up to age 25 with an EHC plan, and this should include local authorities’ policy statements.

Local authorities **must** ensure that suitable travel arrangements are made where necessary to facilitate an eligible child’s attendance at school.

Local authorities **must** publish a transport policy statement each year setting out the travel arrangements they will make to support young people aged 16-19 and learners with learning difficulties and/or disabilities (LDD) aged up to 25, to access further education. This should include any arrangements for free or subsidised transport

## **Post 16**

The Education Act 1996 and the Apprenticeship, Skills, Children and Learning Act (2009) a local authority has a statutory responsibility to consider how it will assist learners to access the appropriate post 16 provision. Through the Education and Skills Act 2008, from 2014 the age of participation has been raised so that young people will be required to stay in education or training until their 18th birthday.

## **Libraries**

### **Section 7(1) of the Public Libraries and Museums Act 1964 (“the 1964 Act”)**

Section 7 of the 1964 Act imposes a statutory duty on library authorities to “provide a comprehensive and efficient library service” to everyone who lives, works or attends full time education in the library area. The duty is contained in Section 7(1) which provides as follows:-

“(1) It shall be the duty of every library authority to provide a comprehensive and efficient library service for all persons desiring to make use thereof ...

Provided that although a library authority shall have power to make facilities for the borrowing of books and other materials available to any person it shall not by virtue of this subsection be under a duty to make such facilities available to persons other than those whose residence or place of work is within the library area of the authority or who are undergoing full time education within that area”.

Section 7(2) provides further statutory instruction as to the factors which a library authority must take into account in order to fulfil its duty under Section 7(1):

“(2) In fulfilling its duty under the preceding subsection, a library authority shall in particular have regard to the desirability:

- (a) of securing, by the keeping of adequate stocks, by arrangements with other library authorities, and by any other appropriate means, that facilities are available for the borrowing of, or reference to, books and other printed matter, and pictures, gramophone records, films and other materials, sufficient in number, range and quality to meet the general requirements and any special requirements both of adults and children; and
- (b) of encouraging both adults and children to make full use of the library service, and of providing advice as to its use and of making available such bibliographical and other information as may be required by persons using it; and
- (c) of securing, in relation to any matter concerning the functions both of the library authority as such and any other authority whose functions are exercisable within the library area, that there is full co-operation between the persons engaged in carrying out those functions”.

The expression “library service” is not defined nor are the concepts “comprehensive” and “efficient”. Library facilities are referred to but not defined but they are clearly not the same as library premises which are defined (in Section 8(7)).

Section 9(1) confers a power on a library authority to contribute towards the expenses of “any other person” providing “library facilities for the public” and Section 20 empowers local authorities to generate revenue by allowing library premises to be used for holding meetings, performances and the like in return for payment.

## **Public Protection Various**

Trading Standards, Environmental Health and Licensing provide statutory public protection in relation to a wide range of environmental and health issues – such as air quality, noise, health and safety, protecting the food chain, alcohol, fair trading and consumer protection matters, animal welfare and from businesses and rogue traders who unwittingly or deliberately breach acceptable standards set down in legislation.

## **Community Safety:**

### **Crime and Disorder Act 1998**

Section 6 Formulation and implementation of strategies.

(1) The responsible authorities for a local government area shall, in accordance with the provisions of section 5 above and this section, formulate and implement, for each relevant period,

- (i) a strategy for the reduction of crime and disorder in the area

## **Waste**

The Environmental Protection Act 1990 details a number of obligations as regards waste collection and control. Where an occupier of premises in the area requests the collection of dry recyclable waste or food waste, subject to some conditions such as excluding domestic premises, such waste should be collected (s.45(c) Environmental Protection Act 1990)

‘relevant land’ in relation to the duty to keep land and highways clear of litter is land which is not excluded land and is open to the air and is land (but not a highway) which is under the direct control of a litter authority to which the public are entitled or permitted to have access with or without payment.

The Council as owner of land may have duties under the Occupiers Liability Acts 1957 and 1984 (as amended by the Countryside and Rights of Way Act 2000) in relation to the upkeep and management of its land and also in relation to the removal of any waste or litter which may cause injury to visitors or trespassers.

**Waste collection** – Waste collection authorities are obliged to arrange collection of household waste under section 45 of the Environmental Protection Act.

**Street cleansing** - CBC is a principle litter authority who has responsibility for keeping land and highways clean and free of litter as far as is practicable as specified in sections 86 and 89 of the Environmental Protection Act 1990.

**Household Waste Recycling Centres (HWRC)** – The Environmental Protection Act 1990 section 51 require all waste disposal authorities to provide at least one location where residents can dispose of their household waste.

**Food waste** – There is no obligation to collect food waste separately, but it contributes towards the national 50% recycling rate by 2020 and reduction in biodegradable waste sent to landfill as required of each member state under the Landfill Directive 2008.

**Grounds maintenance** – The Highways Act 1980 places an obligation on the local Highway authority to protect the highway to allow the public to enjoy it (section 130).

## Highways

### The Highways Act 1980

Section 41 imposes a duty on the authority who are for the time being the highway authority for a highway maintainable at the public expense to maintain the highway.

S.35 of the Road Traffic Regulation Act 1984 allows the council to make a charge for the parking spaces provided.

## Best Value

### Section 3 of the Local Government Act 1999

Section 3(1) of the 1999 Act imposes a duty on a local authority to ‘make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness’.

Section 3(2) requires a local authority to **consult various people** ‘for the purpose of’ deciding how to fulfil the duty imposed by section 3(1). In deciding how to fulfil that duty, and in making decisions about consultation, a local authority must have regard to guidance issued by Secretary of State.

The statutory guidance is short. It is aimed specifically at, and ‘sets out clear expectations for’ councils which are ‘considering changing funding to local voluntary or community groups’.

Paragraph 7 of the guidance says that ‘**Authorities should seek to avoid passing on disproportionate reductions – by not passing on larger reductions to the voluntary and community sector and small businesses as a whole than they take on**’.

### **Charging and trading:**

There are various general powers to carry out and charge for discretionary services provided to external bodies and to service users:

S.111 Local Government Act 1972 allows the Council to do anything “*which is calculated to facilitate, or is conducive or incidental to, the discharge of any of [its] functions*” and S.1 Local Authorities (Goods and Services) Act 1970 allows local authorities to trade with other public bodies by agreement by establishing a shared service or joint arrangements.

The Local Government Act 2003 allows the Council to charge for discretionary services unless expressly prohibited from doing so (S.93) although it also limits the power to ensure that the income from such charges does not exceed the cost of provision.

In addition, the Localism Act 2011 gives Local Authorities the power to do anything which an individual would be able to do provided the Local Authority is not otherwise prohibited from taking such action (the general power of competence).

The Localism Act also gives the power to charge for any services provided under the general power of competence although the charges made should not exceed the cost of provision of those services.

The basis of the power to provide and charge for a service should be determined so the appropriate charges can be calculated correctly according to the relevant legislation. A specific power to charge for a particular service will generally detail the methods and calculation of the charge and further legal advice should be sought for specific charges to be made. Under s.95 Local Government Act 2003 the Council has power to trade (on a commercial basis) in function related activities through a company in which it has an interest.

## **Primary Statutory Requirements**

### **Resources**

#### **Local Government Act 1972**

Section 151 of the Local Government Act requires local authorities to make arrangements for the proper administration of their financial affairs and secure that one of their officers has responsibility for the administration of those affairs”.

#### **Local Government Finance Act 1988**

Section 113 requires the responsible officer under Section 151 of the 1972 Act to be a member of a specified accountancy body.

Section 114 requires a report to all the Authority’s members to be made by that officer, in consultation with the Council’s Monitoring Officer, if there is, or is likely to be unlawful expenditure or an unbalanced budget.

Section 114(7) requires authorities in England and Wales to provide their CFO (CFO) with ‘such staff, accommodation and other resources as are in his opinion sufficient to allow his duties under this section (ie s114) to be performed’.

#### **Local Government and Housing Act 1989**

Section 5 requires the Council to appoint a Monitoring Officer. The Monitoring Officer has power to report on matters he believes are, or are likely to be, illegal or amount to maladministration; to be responsible for matters relating to the conduct of councillors; and to be responsible for the operation of the council’s constitution.

#### **Local Government Finance Act 1992**

Section 1—(1) As regards the financial year beginning in 1993 and subsequent financial years, each billing authority shall, in accordance with this Part, levy and collect a tax, to be called council tax, which shall be payable in respect of dwellings situated in its area.

Sections 32 and 43 of the Local Government Finance Act 1992 require billing and precepting authorities in England and Wales to have regard to the level of reserves needed for meeting estimated future expenditure when calculating the budget requirement.

#### **Local Government Act 2003**

Emphasises the importance of sound and effective financial management. In relation to capital financing there is a statutory requirement for each local authority to set and arrange their affairs to remain within prudential limits for borrowing and capital investment.

#### **General Governance Requirements - Chartered Institute of Public Finance and Accounting (CIPFA)**

- Establish a medium term business and financial planning process to deliver the authority’s strategic objectives, including:
  - a medium term financial strategy to ensure sustainable finances;
  - a robust annual budget process that ensures financial balance; and
  - a monitoring process that enables this to be delivered.

- Ensure that these are subject to regular review to confirm the continuing relevance of assumptions used.
- Ensure that professional advice on matters that have financial implications is available and recorded well in advance of decision making and used appropriately.
- Ensuring that budget calculations are robust and reserves adequate, in line with CIPFA's guidance.
- Ensure that those making decisions are provided with information that is fit for purpose – relevant, timely and giving clear explanations of financial issues and their implications.
- Ensure that timely, accurate and impartial financial advice and information is provided to assist in decision making and to ensure that the authority meets its policy and service objectives and provides effective stewardship of public money and value for money in its use.
- Ensure that the authority maintains a prudential financial framework; keeps its commitments in balance with available resources; monitors income and expenditure levels to ensure that this balance is maintained and takes corrective action when necessary.
- Ensure that advice is provided on the levels of reserves and balances in line with good practice guidance
- Ensure compliance with CIPFA's Code on a Prudential Framework for Local Authority Capital Finance and CIPFA's Treasury Management Code.
- Ensure that appropriate management accounting systems, functions and controls are in place so that finances are kept under review on a regular basis. These systems, functions and controls should apply consistently to all activities including partnerships arrangements, outsourcing or where the authority is acting in an enabling role.
- Ensure the provision of clear, well presented, timely, complete and accurate information and reports to budget managers and senior officers on the budgetary and financial performance of the authority.

## **Social Security Administration Act 1992**

An Act to consolidate certain enactments relating to the administration of social security and related matters.

## **Social Security Administration (Fraud) Act 1997**

An Act to amend the law relating to social security offences and to make other amendments of the law relating to the administration of social security.

**The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 made under section 13 and 105 of the Local Government Act 2000 before the Localism Act 2011 inserted the new Part 1A, remain in force until revoked pursuant to the Interpretation Act 1978.**

The Localism Act includes a 'general power of competence' It gives councils more freedom to work together with others in new ways to drive down costs.

## **The Tribunals Courts and Enforcement Act 2007**

The Tribunals Courts and Enforcement Act 2007 and regulations aim to introduce a new legislative regime that is simple to understand and which is applied consistently across all debt types. The Act introduces the term "Enforcement Agent" (EA), which is in effect the new term for Certificated Bailiffs. Only a certificated EA may take control of goods. There is a new certification procedure, which, whilst similar to the previous regime, includes new requirements for training & competency and the application process has been modernised. A certificate will be required for all forms of enforcement action. A new, revised complaints process will be introduced as part of the reforms.

An Enforcement Agent is an individual authorised under s46 of the Tribunals Courts and Enforcement Act 2007, who acts on behalf of Local Authorities or Magistrates' Courts enforcing unpaid council tax and non-domestic rate liability orders, warrants for unpaid penalty charge notices and warrants for unpaid Court fines.

## **Coroners and Justice Act 2009**

The relevant authority for a coroner has to balance the level of staffing need, as advised by the Coroner, with both the efficiency and outcomes of the service.

The Council's functions include the provision of officers and staff as are needed by the coroners to carry out their functions. The Council must also provide or secure the provision of appropriate accommodation taking into account the views of the Senior Coroner for the area.

### **S.24 Coroners and Justice Act 2009**

(1) The relevant authority for a coroner area—

- (a) must secure the provision of whatever officers and other staff are needed by the coroners for that area to carry out their functions;
- (b) must provide, or secure the provision of, accommodation that is appropriate to the needs of those coroners in carrying out their functions;
- (c) must maintain, or secure the maintenance of, accommodation provided under paragraph (b).

...

(4) In deciding how to discharge its duties under subsection (1)(b) and (c), the relevant authority for a coroner area must take into account the views of the senior coroner for that area.

## **Statutory Instrument 2008 No 3248 The Local Authorities (England) (Charges for Property Searches) Regulations 2008;**

### **Charges for access to property records**

5.—(1) This regulation applies where a local authority grants access to property records to a person (including to another local authority).

(2) The authority may impose a charge on that person for granting such access if it makes or proposes to make an internal recharge (analogous to a charge) for internal transactions.

(3) The charges and recharges made under this regulation must be calculated in accordance with regulations 6 and 7.

### **Calculation of charges for access to property records**

6.—(1) This regulation and regulation 7 make provision for the charges and internal recharges made under regulation 5(2) to be no more than the costs to the local authority of granting access to property records.

(2) Subject to paragraph (3), each charge or recharge (the "unit charge") for access to property records made during a financial year must be calculated by—

- (a) dividing a reasonable estimate of the likely total costs to the local authority in granting access to property records (and performing internal transactions) during the financial year; by
- (b) a reasonable estimate of the number of requests for access to property records likely to be received (from another person or different departments of the authority) over that same financial year.

(3) A local authority must take all reasonable steps to ensure that over the course of any period of three consecutive financial years, the total income (including notional income from internal

transactions) from such charges and recharges does not exceed the total costs of granting access to property records.

(4) Where under paragraph (2), a local authority makes an overestimate or underestimate of the unit charge for a financial year, it must take this into account in determining the unit charge for the following financial year.

(5) Each unit charge made during a financial year must be the same amount and must be applied on equal terms, regardless of whether it is made in relation to granting access to property records or internal transactions (although multiple unit charges may be made in respect of multiple requests for access or multiple transactions).

### **Interpretation of costs under regulation 6(1)**

7. (1) In regulation 6(1), “costs” means any costs to the local authority (including related salary costs and the costs of the creation and maintenance of records) reasonably incurred in connection with complying with a request for access to property records.

(2) In regulation 6(1), “costs” does not include—

- (a) such costs as the local authority incurs in granting access to free statutory information; or
- (b) such costs to the authority as are directly referable to the maintenance of free statutory information.

### **CRE-1617-13**

There are various general powers to carry out and charge for discretionary services provided to external bodies and to service users:

S.111 Local Government Act 1972 allows the Council to do anything “*which is calculated to facilitate, or is conducive or incidental to, the discharge of any of [its] functions*” and S.1 Local Authorities (Goods and Services) Act 1970 allows local authorities to trade with other public bodies by agreement.

The Local Government Act 2003 allows the Council to charge for discretionary services unless expressly prohibited from doing so (S.93) although it also limits the power to ensure that the income from such charges does not exceed the cost of provision.

In addition, the Localism Act 2011 gives Local Authorities the power to do anything which an individual would be able to do provided the Local Authority is not otherwise prohibited from taking such action (the general power of competence).

The Localism Act also gives the power to charge for any services provided under the general power of competence although the charges made should not exceed the cost of provision of those services. Whether the basis of the power to provide the services is under a specific or a general power and the appropriate charges to be made must also be considered.

### **Internal Recovery Agents**

The Tribunals, Courts and Enforcement Act 2007 and the Certification of Enforcement Agents Regulations 2014 provide a procedure for the certification of an Enforcement Agent in relation to the enforcement of debts under a Court Judgement. There are various general powers to carry out and charge for discretionary services provided to external bodies and to service users:

Any service which is for a commercial purpose can only be done via a company which can be set up under the general power of competence. Procurement and employment issues would then need to be considered as would governance arrangements.

### General

Where any proposals which relate to a change to e-forms or electronic processes/procedures the need to ensure universal access to all service users remains and appropriate impact assessments and actions should be taken to ensure the Equality Act 2010 is complied with.

## Primary Statutory Requirements

### Public Health

**Advice in relation to planning, consultation, decision making and proposed implementation for individual proposals should be obtained once the specifics of a proposal have been decided upon.**

#### Health and Social Care Act 2012 and National Health Service Act 2006

The Act amended the National Health Service Act 2006 and thereby conferred duties on local authorities to improve public health. Local authorities have a duty to take such steps as they consider appropriate for improving the health of the people in their areas. Local authorities also inherited responsibility for a range of public health services previously provided by the NHS including most sexual health services and services to address drug or alcohol misuse. Section 2B of the Act lists some of the steps to improve public health that local authorities and the Secretary of State are able to take, including:

- carrying out research into health improvement, providing information and advice (for example giving information to the public about healthy eating and exercise);
- providing facilities for the prevention or treatment of illness (such as smoking cessation clinics);
- providing financial incentives to encourage individuals to adopt healthier lifestyles (for instance by giving rewards to people for stopping smoking during pregnancy); and,
- providing assistance to help individuals minimise risks to health arising from their accommodation or environment (for example a local authority may wish to improve poor housing where this impacts on health).

Local authorities are also given powers to make grants or lend money to organisations or individuals in order to improve public health; it is for the local authority to determine the appropriate terms of such grants or loans (S.2B(4)).

**Regulations made under Section 6C of the NHS Act 2006** require local authorities to take particular steps in exercise of their public health functions, or aspects of the Secretary of State's public health functions.

**Part 2 of the Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) Regulations 2013 (SI 2013/351)** makes provision for the steps to be taken by local authorities in exercising their public health functions. In particular:

- **Regulation 3** requires local authorities to provide for the **weighing and measuring** of certain children in their area (including age and school type).

**Regulations 4 and 5** relate to the duties of local authorities to provide or make arrangements to provide **for health checks** for eligible people (depending upon age and health status). The regulations specify the type of information to be recorded. Local authorities must also provide information about dementia to older people.

- **Regulation 6** requires local authorities to provide, or make arrangements to secure the provision of open access **sexual health** services in their area (including in relation to contraceptive services and preventing the spread of sexually transmitted infections, the treating, testing and caring for people with such infections and notifying sexual partners of people with such infections). HIV treatment and care, abortion, vasectomy and sterilisation services will continue to be commissioned by the NHS.

- **Regulation 7** creates a duty on local authorities to provide or make arrangements to secure the provision of a **public health advice service**, in relation to their powers and duties to commission health services, to any Clinical Commissioning Groups (CCGs) in their area. The matters covered by the advice service is to be kept under review and should be agreed between local authorities and CCGs
- **Regulation 8** imposes a duty on local authorities to provide **information and advice** to certain persons and bodies within their area in order to promote the preparation of, or participation in, health protection arrangements against threats to the health of the local population, including infectious disease, environmental hazards and extreme weather events.

### **Duty to have regard to guidance: Public Health Outcomes Framework**

Local authorities must have regard to guidance from the Secretary of State when exercising their public health functions; in particular this requires local authorities to have regard to the Department of Health's Public Health Outcomes Framework (PHOF). A public health outcomes framework for England sets out the Government's overarching vision for public health, the desired outcomes and the indicators that will be used to measure improvements to and protection of health. Improving outcomes and supporting transparency, provides a summary technical specifications of public health indicators.

Section 237 of the 2012 Act also requires local authorities to comply with National Institute for Health and Care Excellence (NICE) recommendations to fund treatments under their public health functions as set out in the National Institute for Health and Care Excellence (Constitution and Functions) and the Health and Social Care Information Centre (Functions) Regulations 2013.

### **Responsibility for sexual health services**

#### **Local authorities commission:**

- comprehensive sexual health services including most contraceptive services and all prescribing costs, but excluding GP additionally-provided contraception
- sexually transmitted infections (STI) testing and treatment, chlamydia screening and HIV testing
- specialist services, including young people's sexual health, teenage pregnancy services, outreach, HIV prevention, sexual health promotion, services in schools, college and pharmacies

One of the aims of transferring public health responsibilities to local authorities was to better integrate health and social care services and other activities that affect health such as housing and maintenance of public spaces.

A public health grant has been provided to:

- improve significantly the health and wellbeing of local populations
- carry out health protection functions delegated from the Secretary of State
- reduce health inequalities across the life course, including within hard to reach groups
- ensure the provision of population healthcare advice

### **Guidance to support the commissioning of the Healthy Child Programme 0-19: Health Visiting and School Nursing services Public Health England**

The guidance is designed to support local authorities in commissioning 'public health services for children and young people' and in particular delivering the Healthy Child Programme 0-5 (Health Visitors) and 5-19 (School Nurses). The Healthy Child Programme aims to bring together health, education and other key partners to deliver an effective programme for prevention and support. The Programme (0-19) aims to:

- help parents develop and sustain a strong bond with children
- encourage care that keeps children healthy and safe
- protect children from serious disease, through screening and immunisation
- reduce childhood obesity by promoting healthy eating and physical activity
- identify health issues early, so support can be provided in a timely manner
- ensure children are prepared for / supported in all child care, early years and education settings and especially supported to be 'ready for to learn at two and ready for school by five

The core public health offer for all children includes:

- child health surveillance (including infant physical examination) and development reviews
- child health protection, immunisation and screening
- information, advice and support for children, young people and families
- early intervention and targeted support for families with additional needs
- health promotion and prevention by the multi-disciplinary team
- defined support in early years and education settings for children with additional and complex health needs
- additional or targeted public health nursing support as identified in the Joint Strategic Needs Assessment, e.g. support for looked after children, young carers, or children of military families

Charges for Local Authority Functions may be made and recovered under Regulations 9 of the Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) Regulations 2013 in relation to providing information and advice, facilities or services to promote healthy living, providing training for persons working or seeking to work in the field of health improvement and making available the services of any person or any facilities provided the steps do not relate to the improvement of an individuals health.

## **Charging for services**

Where there are no existing powers to charge for services or functions, there are various general powers to carry out and charge for discretionary services provided to external bodies and to service users:

S.111 Local Government Act 1972 allows the Council to do anything "which is calculated to facilitate, or is conducive or incidental to, the discharge of any of [its] functions" and S.1 Local Authorities (Goods and Services) Act 1970 allows local authorities to trade with other public bodies by agreement.

The Local Government Act 2003 allows the Council to charge for discretionary services unless expressly prohibited from doing so (S.93) although it also limits the power to ensure that the income from such charges does not exceed the cost of provision.

In addition, the Localism Act 2011 gives Local Authorities the power to do anything which an individual would be able to do provided the Local Authority is not otherwise prohibited from taking such action (the general power of competence).

The Localism Act also gives the power to charge for any services provided under the general power of competence although the charges made should not exceed the cost of provision of those services.

The basis of the power to provide and charge for a service should be determined so the appropriate charges can be calculated correctly according to the relevant legislation.

## **Equality Act 2010 duties**

Before proceeding with the implementation of any proposals which relate to a change to e-forms or a change to the processes/procedures (including electronic) need to ensure universal access to all service users remains and appropriate impact assessments and actions should be taken to ensure the Equality Act 2010 is complied with.

## Primary Statutory Requirements

### Regeneration

SC151

S.206 Planning Act 2008 gives a local planning authority the power to charge a Community Infrastructure Levy. Before such charges can be implemented further provisions of the Planning Act setting out the process for calculation of the rates and criteria for charging, publication of a charging schedule and approval of the schedule by members by reference to the Community Infrastructure Levy Regulations 2010 which must be complied with.

The Planning Act 2008 was amended by the Localism Act 2011 to include within the Community Infrastructure Levy includes the additional costs, besides infrastructure costs, that development places on an area and the money raised can be used to fund the improvement, replacement, operation or maintenance of infrastructure as well as its provision. The Act specifies how planning decisions can be legally enforced and allows planning authorities to decline to process planning applications which include any region affected by a planning enforcement notice.

RG401

The Council is required to produce a Local Plan under the Planning and Compulsory Purchase Act 2004 which sets out its development plan for its area.

RG404

#### **The Building (Local Authority) Charges Regulations 2010**

Provides the power to recover charges for carrying out certain functions relating to Building Regulations. The chargeable functions, calculating the charge, payment are all detailed in the Regulations. An Authority should only charge the cost of providing the services and should not charge for the first hour of advice. The s.151 officer is to issue a statement every year detailing the charges made

#### **S.3 Authorisation to fix and recover charges by way of a scheme**

(1) A local authority are authorised by means of a scheme made under these Regulations (a “charging scheme”) to—

- (a) fix such charges as they may determine, from time to time and in accordance with these Regulations, for or in connection with the performance of their functions relating to building regulations; and
  - (b) recover those charges, to the extent provided for by these Regulations, from relevant persons.
- (2) The authorisation given by paragraph (1) is subject to the exception in regulation 4 *[relates to building work solely required for disabled persons]*.

#### **S.5 Principles of charging scheme: chargeable functions and advice**

(1) A local authority are authorised, by means of a charging scheme, to make a charge for or in connection with each of the following functions carried out by them—

- (a) the passing or rejection of plans of proposed building work which have been deposited with the local authority, in accordance with section 16 of the Act (a “plan charge”);
- (b) the inspection of building work for which plans have been deposited in accordance with the Principal Regulations and with section 16 of the Act (an “inspection charge”);
- (c) the consideration of a building notice which has been given to the local authority in accordance with the Principal Regulations (a “building notice charge”);
- (d) the consideration of building work reverting to local authority control under the Approved Inspectors Regulations (a “reversion charge”); and
- (e) the consideration of an application under regulation [18] of the Principal Regulations and the inspection of any building work to which that application relates (a “regularisation charge”).

(2) A local authority are authorised by means of a charging scheme, to make a charge in relation to a request for advice as regards any particular case (in these Regulations called “chargeable

advice”) where such a charge is made in anticipation of the future exercise of their chargeable functions in relation to that case; but no charge may be made for the first hour of time spent by an officer of the authority in providing chargeable advice.

## **S.6 Principles of charging scheme: overriding objective in determining charges**

(1) In determining the amount of the charges to be made within a charging scheme, a local authority shall have regard to the overriding objective in paragraph (3).

(2) At the end of the financial year in which a local authority first make a charging scheme, and of each subsequent financial year, the authority shall conduct a review of the level of charges set under their charging scheme in accordance with regulation 7, for the purpose of achieving the overriding objective.

(3) The overriding objective is that the authority must ensure that, taking one financial year with another, the income derived by the authority from performing chargeable functions and providing chargeable advice (“chargeable income”) as nearly as possible equates to the costs incurred by the authority in performing chargeable functions and providing chargeable advice (“chargeable costs”).

(4) Immediately following the review mentioned in paragraph (2) a local authority shall prepare a statement which sets out, as regards the financial year to which it relates—

- (a) the chargeable costs;
- (b) the chargeable income; and
- (c) the amount of any surplus or deficit.

(5) The statement prepared in accordance with paragraph (4) shall be published not more than six months after the end of the financial year to which the statement relates.

(6) The statement to be published under this regulation must be approved by the person having responsibility for the administration of the financial affairs of the local authority under—

- (a) section 151 of the Local Government Act 1972; or

...

(7) Paragraph (8) applies where—

- (a) an authority first makes a charging scheme under these Regulations, and
- (b) that scheme first takes effect at any time other than at the beginning of a financial year.

(8) Where this paragraph applies, in determining the charges under their charging scheme, an authority shall have regard to any estimated surplus or deficit arising for that part of the financial year for which an existing scheme made under the Building (Local Authority Charges) Regulations 1998 continues to have effect.

(9) A financial year is the period of 12 months beginning with 1st April.

## **Charging for services**

There are various general powers to carry out and charge for discretionary services provided to external bodies and to service users:

S.111 Local Government Act 1972 allows the Council to do anything “*which is calculated to facilitate, or is conducive or incidental to, the discharge of any of [its] functions*” and S.1 Local Authorities (Goods and Services) Act 1970 allows local authorities to trade with other public bodies by agreement.

The Local Government Act 2003 allows the Council to charge for discretionary services unless expressly prohibited from doing so (S.93) although it also limits the power to ensure that the income from such charges does not exceed the cost of provision.

In addition, the Localism Act 2011 gives Local Authorities the power to do anything which an individual would be able to do provided the Local Authority is not otherwise prohibited from taking such action (the general power of competence). The Localism Act also gives the power to charge for any services provided under the general power of competence although the charges made should not exceed the cost of provision of those services.

The basis of the power to provide and charge for a service should be determined so the appropriate charges can be calculated correctly according to the relevant legislation.

### **Equality Act 2010 duties**

Before proceeding with the implementation of any proposals which relate to a change to e-forms or a change to the processes/procedures (including electronic) need to ensure universal access to all service users remains and appropriate impact assessments and actions should be taken to ensure the Equality Act 2010 is complied with.