

Statutory framework for provision of children's independent advocacy, England

All children

- United Nations Convention on the Rights of the Child¹
- Human Rights Act 1998²
- Children's Commissioner, in discharging her primary function of promoting and protecting the rights of children, may investigate the availability and effectiveness of advocacy services for children³

Children in receipt of health services who wish to make a complaint

- Advocacy first given statutory basis through National Health Service Act 2006⁴; superseded by provisions in the Health and Social Care Act 2012⁵ (amended Local Government and Public Involvement in Health Act 2007)⁶
- Local authority must make arrangements for advocacy provision

Children and young people in receipt of social care services who wish to make a representation (including a complaint)

- Adoption and Children Act 2002⁷ (amended Children Act 1989)⁸; and The Advocacy Services and Representations Procedure (Children) (Amendment) Regulations 2004
- Local authority must make arrangements for advocacy provision
- This duty applies equally to unaccompanied children and child victims of modern slavery⁹
- Local authority must monitor the steps it has taken, in particular by keeping a record of the advocate appointed to the child or young person¹⁰
- This advocacy entitlement extends to age 25 for young people leaving care¹¹

Children with special educational needs and disabilities

- Special Educational Needs and Disability Code of Practice, Children and Families Act 2014¹²
- Local authorities should consider whether "some young people" need support in expressing their views

Children who have suffered significant harm

- Statutory guidance (currently being revised) states social workers with their managers should give information about advocacy services to families attending initial child protection conferences¹³
- (Care Act 2014 places duty on local authority to arrange an independent advocate for adults who are the subject of safeguarding enquiries and reviews and don't have anyone else independent and appropriate to assist them¹⁴)

Looked after children whose care and progress are being reviewed

- Adoption and Children Act 2002¹⁵; and The Care Planning, Placement and Case Review (England) Regulations 2010¹⁶
- The IRO must ensure looked after children have been informed of their right to bring proceedings under the Children Act 1989 (e.g. in relation to placements, contact with parents and siblings or discharge of a care order) and their right to make a representation (including a complaint) and access advocacy services. When a looked after child wishes to bring proceedings under the Children Act 1989, the IRO must support the child to obtain legal advice, or identify another appropriate adult to support the child

Where a child may need continuing care and support in adulthood

- Care Act 2014¹⁷
- Local authority must arrange an independent advocate for children who are the subject of a (transition) needs assessment¹⁸ who don't have anyone else independent and appropriate to assist them

Young carers who may need support in adulthood

- Care Act 2014¹⁹
- Local authority must arrange an independent advocate for children who are likely to continue to be young carers once they reach adulthood²⁰ who don't have anyone else independent and appropriate to assist them

Children and young people living in children's homes

- The Children's Homes (England) Regulations 2015²¹
- Registered person must ensure each child is given appropriate advocacy support. Soon after the child's arrival at the home, the registered person must ensure an explanation has been given to him or her as to what advocacy support or services are available; how the child may access that support or those services; and any entitlement the child may have to independent advocacy provision

Looked after children and young people who go missing

- Children Act 2004²²
- Local authorities must with local partners make arrangements for ensuring that their functions are discharged having regard to the need to safeguard and promote the welfare of children. As part of this, Department for Education statutory guidance states an independent representative or advocate should be offered to a missing looked after children once found²³

Children and young people in England who are detained under the Mental Health Act or are being considered for Electro Convulsive Therapy

- Mental Health Act 2007²⁴ (amended the Mental Health Act 1983²⁵)
- This is the only legislation to give powers to advocates. The independent advocate has the legal right to: interview a child or young person in private; interview any person who is professionally concerned with the child's medical treatment; and to obtain hospital and social services records relating to the child
- Local authority must make arrangements for provision of independent mental health advocates

16 and 17 year-olds who lack mental capacity

- Mental Capacity Act 2005²⁶; and The Mental Capacity Act 2005 (Independent Mental Capacity Advocates) (General) Regulations 2006
- Local authority must make arrangements for provision of independent mental capacity advocates

Children and young people in custody

- Provision in The Secure Training Centre Rules 1998²⁷ for 'independent persons' was interpreted as advocates by Youth Justice Board (contract now managed by the Ministry of Justice)

Article 39, June 2018
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Advocates4U is a national campaign to strengthen children's independent advocacy, run by Article 39 in partnership with the National Children's Advocacy Consortium and the National Association of Independent Reviewing Officers. Over 40 organisations support the campaign.

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- ¹ Article 12.
- ² Articles 6, 8 and 13 European Convention on Human Rights.
- ³ Section 2(3)(g) Children Act 2004 (as amended by Children and Families Act 2014).
- ⁴ Section 248 (1).
- ⁵ Section 185.
- ⁶ Section 223A.
- ⁷ Section 119.
- ⁸ Section 26A.
- ⁹ Department for Education (2017) Care of unaccompanied migrant children and child victims of modern slavery. Statutory guidance for local authorities.
- ¹⁰ Regulation 5.
- ¹¹ Section 3 Children and Social Work Act 2017 (amended Children Act 1989).
- ¹² Section 77.
- ¹³ HM Government (2015) Working together to safeguard children. A guide to inter-agency working to safeguard and promote the welfare of children.
- ¹⁴ Section 68.
- ¹⁵ Section 118.
- ¹⁶ Regulation 45.
- ¹⁷ Section 67.
- ¹⁸ Sections 58 and 59.
- ¹⁹ Section 67.
- ²⁰ Section 63.
- ²¹ Regulation 7.
- ²² Section 11.
- ²³ Department for Education (2014) Statutory guidance on children who run away or go missing from home or care.
- ²⁴ Section 30.
- ²⁵ Section 130A.
- ²⁶ Section 35.
- ²⁷ Rule 44.