

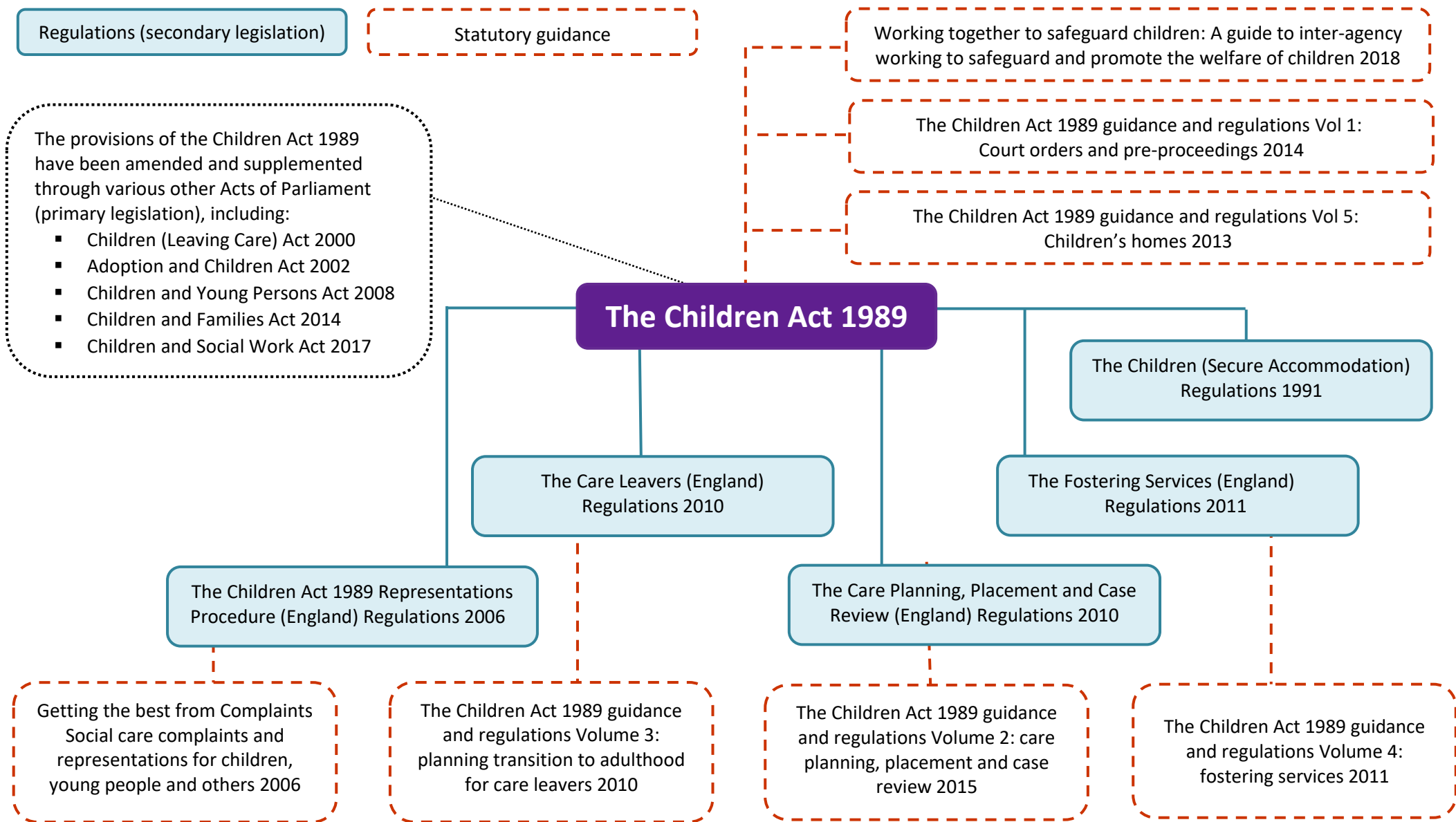
The Children Act 1989 marked a fundamental shift in both the ethos and application of child and family law in England. At the time of its passing, it was described as the “the most comprehensive and far-reaching reform of child law” and “a landmark in children’s legislation”.¹ The Act brought together private and public law, significantly reduced and clarified routes into state care, introduced the concept of ‘parental responsibility’ and enshrined in law the principle of “working in partnership with families rather than in opposition to them”.² It strengthened legal protections for children by confirming that the child’s welfare must be the courts’ primary consideration and introduced a ‘welfare checklist’. It extended entitlements for children to be heard in decision-making affecting them, with courts and local authorities required to give due consideration to their wishes and feelings. Receiving Royal Assent just four days before the United Nations adopted the Convention on the Rights of the Child, it continues to be regarded as a world-class piece of legislation.

The Act, which entered into force in October 1991, has been amended by various subsequent Acts of Parliament, including the Children (Leaving Care) Act 2000, the Adoption and Children Act 2002, the Children and Families Act 2014, the Children and Young Persons Act 2008 and, most recently, the Children and Social Work Act 2017.

Key principles and provisions

- **The child’s welfare must (“shall”) be the family court’s paramount consideration** when making decisions regarding the child’s care (“upbringing”) or their property. A **‘welfare checklist’** guides decision-making in both private and public law matters and requires that regard be given to the child’s wishes and feelings; their physical, emotional and educational needs; their age, sex and background; and parental and wider family capacity. (Section 1)
- **The least interventionist approach must be taken** by the court, which must only make an order if “it considers that doing so would be better for the child than making no order at all”. (Section 1(5))
- **Local authorities must safeguard and promote the welfare of children within their area who are in need** and support children to remain with their families. This includes the duty to provide a range of family support services and accommodation. (Section 17 and 20, and Schedule 2)
- **Local authorities must safeguard and promote the welfare of children they are looking after.** This applies whether the child is the subject of a care order, or is accommodated. (Section 22)
- **Local authorities must ascertain and give due consideration to the child’s wishes and feelings** in respect of services to children in need (Section 17(4A)), providing accommodation (Section 20(6)), when children and young people are looked after (Section 22(4) and during child protection enquiries (Section 47(5A)).
- **Local authorities must, as a general rule, promote contact between children in their care and parents, other family members (this would include siblings) and friends.** (Section 34 and Schedule 2, Paragraph 15)
- **Local authorities must maintain regular contact, including through visits, with children in care.** All children in care are entitled to receive support from independent visitors. (Section 23ZA, ZB)
- **Deprivation of liberty of children in care must be authorised by a court.** (Section 25)
- **Local authorities have a duty to investigate** (“make enquiries”) to see if any action is required to safeguard and promote the welfare of children if there is a reasonable cause to suspect significant harm. This applies to all children in the local authority’s area – including those living in institutional settings such as mental health units and prisons. (Section 47)

Provisions within the Act are supported by a host of statutory instruments (secondary legislation) and statutory guidance documents. This infographic illustrates the key legislation and guidance that supplement the provisions of the Act and support its effective implementation.



Endnotes

¹ HL Deb (06 December 1988). vol 502, col 496. Available at: <https://api.parliament.uk/historic-hansard/lords/1988/dec/06/children-bill-hl> (Accessed: 13 October 2020).

² Lady Hale, President of the UK Supreme Court (13 November 2019) *30 Years of the Children Act 1989*. [Scarman Lecture 2019] Law Commission, p.1.