



# Children Act 1989

## 1989 CHAPTER 41

### PART IV

#### CARE AND SUPERVISION

##### *Guardians ad litem*

#### 41 [F<sup>1</sup>Representation of child]

- (1) or the purpose of any specified proceedings, the court shall appoint [F<sup>2</sup>an officer of the Service][F<sup>3</sup>or a Welsh family proceedings officer] for the child concerned unless satisfied that it is not necessary to do so in order to safeguard his interests.
- (2) The [F<sup>2</sup>officer of the Service][F<sup>4</sup>or Welsh family proceedings officer] shall—
  - (a) be appointed in accordance with rules of court; and
  - (b) be under a duty to safeguard the interests of the child in the manner prescribed by such rules.
- (3) Where—
  - (a) the child concerned is not represented by a solicitor; and
  - (b) any of the conditions mentioned in subsection (4) is satisfied,the court may appoint a solicitor to represent him.
- (4) The conditions are that—
  - (a) no [F<sup>2</sup>officer of the Service][F<sup>4</sup>or Welsh family proceedings officer] has been appointed for the child;
  - (b) the child has sufficient understanding to instruct a solicitor and wishes to do so;
  - (c) it appears to the court that it would be in the child's best interests for him to be represented by a solicitor.
- (5) Any solicitor appointed under or by virtue of this section shall be appointed, and shall represent the child, in accordance with rules of court.

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- (6) In this section “specified proceedings” means any proceedings—
  - (a) on an application for a care order or supervision order;
  - (b) in which the court has given a direction under section 37(1) and has made, or is considering whether to make, an interim care order;
  - (c) on an application for the discharge of a care order or the variation or discharge of a supervision order;
  - (d) on an application under section 39(4);
  - (e) in which the court is considering whether to make a [<sup>F5</sup>child arrangements order with respect to the living arrangements of] a child who is the subject of a care order;
  - (f) with respect to contact between a child who is the subject of a care order and any other person;
  - (g) under Part V;
  - (h) on an appeal against—
    - (i) the making of, or refusal to make, a care order, supervision order or any order under section 34;
    - (ii) the making of, or refusal to make, a [<sup>F6</sup>child arrangements order with respect to the living arrangements of] a child who is the subject of a care order; or
    - (iii) the variation or discharge, or refusal of an application to vary or discharge, an order of a kind mentioned in sub-paragraph (i) or (ii);
    - (iv) the refusal of an application under section 39(4); or
    - (v) the making of, or refusal to make, an order under Part V; or
  - [<sup>F7</sup>(hh) on an application for the making or revocation of a placement order (within the meaning of section 21 of the Adoption and Children Act 2002);]
    - (i) which are specified for the time being, for the purposes of this section, by rules of court.

[<sup>F8</sup>(6A) The proceedings which may be specified under subsection (6)(i) include (for example) proceedings for the making, varying or discharging of a section 8 order.]

[<sup>F9</sup>(6B) For the purposes of subsection (6), a child arrangements order is one made with respect to the living arrangements of a child if the arrangements regulated by the order consist of, or include, arrangements which relate to either or both of the following—

- (a) with whom the child is to live, and
- (b) when the child is to live with any person.]

<sup>F10</sup>(7) .....

<sup>F10</sup>(8) .....

<sup>F10</sup>(9) .....

(10) Rules of court may make provision as to—

- (a) the assistance which any [<sup>F2</sup>officer of the Service][<sup>F11</sup>or Welsh family proceedings officer] may be required by the court to give to it;
- (b) the consideration to be given by any [<sup>F2</sup>officer of the Service][<sup>F11</sup>or Welsh family proceedings officer] , where an order of a specified kind has been made in the proceedings in question, as to whether to apply for the variation or discharge of the order;

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- (c) the participation of [<sup>F2</sup>officers of the Service][<sup>F12</sup>or Welsh family proceedings officers] in reviews, of a kind specified in the rules, which are conducted by the court.
- (11) Regardless of any enactment or rule of law which would otherwise prevent it from doing so, the court may take account of—
- (a) any statement contained in a report made by [<sup>F2</sup>an officer of the Service][<sup>F13</sup>or a Welsh family proceedings officer] who is appointed under this section for the purpose of the proceedings in question; and
- (b) any evidence given in respect of the matters referred to in the report, in so far as the statement or evidence is, in the opinion of the court, relevant to the question which the court is considering.

<sup>F10</sup>(12) . . . . .

#### Textual Amendments

- F1** S. 41 side note substituted (1.4.2001) by 2000 c. 43, s. 74, **Sch. 7 Pt. II para. 91(e)**; S.I. 2001/919, **art. 2(f)(ii)**
- F2** Words in s. 41(1)(2)(4)(a)(10)(a)(b)(c)(11)(a) substituted (1.4.2001) by 2000 c. 43, s. 74, **Sch. 7 Pt. II para. 91(a)(b)(c)**; S.I. 2001/919, **art. 2(f)(ii)**
- F3** Words in s. 41(1) inserted (1.4.2005) by Children Act 2004 (c. 31), s. 40, **Sch. 3 para. 9(2)**; S.I. 2005/700, **art. 2(2)**
- F4** Words in s. 41(2)(4)(a) inserted (1.4.2005) by Children Act 2004 (c. 31), s. 40, **Sch. 3 para. 9(3)**; S.I. 2005/700, **art. 2(2)**
- F5** Words in s. 41(6)(e) substituted (22.4.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 2 para. 33(2)**; S.I. 2014/889, **art. 4(f)** (with transitional provisions in S.I. 2014/1042, arts. 3, 4, 6-10)
- F6** Words in s. 41(6)(h)(ii) substituted (22.4.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 2 para. 33(2)**; S.I. 2014/889, **art. 4(f)** (with transitional provisions in S.I. 2014/1042, arts. 3, 4, 6-10)
- F7** S. 41(6)(hh) inserted (30.12.2005) by 2002 c. 38, ss. 122(1)(a), 148 (with Sch. 4 paras. 6-8); S.I. 2005/2213, **art. 2(k)**
- F8** S. 41(6A) inserted (7.12.2004) by 2002 c. 38, ss. 122(1)(b), 148 (with Sch. 4 paras. 6-8); S.I. 2004/3203, **art. 2(1)(l)**
- F9** S. 41(6B) inserted (22.4.2014) by Children and Families Act 2014 (c. 6), s. 139(6), **Sch. 2 para. 33(3)**; S.I. 2014/889, **art. 4(f)** (with transitional provisions in S.I. 2014/1042, arts. 3, 4, 6-10)
- F10** S. 41(7)-(9)(12) repealed (1.4.2001) by 2000 c. 43, ss. 74, 75, Sch. 7 Pt. II para. 91(d), **Sch. 8**; S.I. 2001/919, **art. 2(f)(ii)(g)**
- F11** Words in s. 41(10)(a)(b) inserted (1.4.2005) by Children Act 2004 (c. 31), s. 40, **Sch. 3 para. 9(4)(a)**; S.I. 2005/700, **art. 2(2)**
- F12** Words in s. 41(10)(c) inserted (1.4.2005) by Children Act 2004 (c. 31), s. 40, **Sch. 3 para. 9(4)(b)**; S.I. 2005/700, **art. 2(2)**
- F13** Words in s. 41(11) inserted (1.4.2005) by Children Act 2004 (c. 31), s. 40, **Sch. 3 para. 9(5)**; S.I. 2005/700, **art. 2(2)**

#### Modifications etc. (not altering text)

- C1** S. 41 modified (1.11.2012) by Parental Responsibility and Measures for the Protection of Children (International Obligations) (England and Wales and Northern Ireland) Regulations 2010 (S.I. 2010/1898), regs. 1(2), **5(3)(c)**
- C2** S. 41(2) modified (14. 10. 1991) by S.I. 1991/1395, rules. 1, 11(1)
- C3** S. 41(3)-(5) applied (with modifications) (23.12.2011) by The Legal Services Act 2007 (Designation as a Licensing Authority) (No. 2) Order 2011 (S.I. 2011/2866), arts. 1(2), 8(1)(2), Sch. 2

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### Commencement Information

**II** S. 41 in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, **art. 3(2)**

## 42 <sup>[F14]</sup>Right of officer of the Service to have access to local authority records]

- (1) Where <sup>[F15]</sup>an officer of the Service<sup>[F16]</sup> or Welsh family proceedings officer] has been appointed <sup>[F17]</sup>under section 41] he shall have the right at all reasonable times to examine and take copies of—
- (a) any records of, or held by, a local authority <sup>[F18]</sup>or an authorised person] which were compiled in connection with the making, or proposed making, by any person of any application under this Act with respect to the child concerned;  
<sup>F19</sup> . . .
  - (b) any <sup>F19</sup> . . . records of, or held by, a local authority which were compiled in connection with any functions which <sup>[F20]</sup>are social services functions within the meaning of] the <sup>M1</sup>Local Authority Social Services Act 1970 <sup>[F21]</sup>or for the purposes of the Social Services and Well-being (Wales) Act 2014], so far as those records relate to that child.
- <sup>[F22]</sup>, or
- (c) any records of, or held by, an authorised person which were compiled in connection with the activities of that person, so far as those records relate to that child.]
- (2) Where <sup>[F23]</sup>an officer of the Service<sup>[F16]</sup> or Welsh family proceedings officer] takes a copy of any record which he is entitled to examine under this section, that copy or any part of it shall be admissible as evidence of any matter referred to in any—
- (a) report which he makes to the court in the proceedings in question; or
  - (b) evidence which he gives in those proceedings.
- (3) Subsection (2) has effect regardless of any enactment or rule of law which would otherwise prevent the record in question being admissible in evidence.

<sup>[F24]</sup>(4) In this section “ authorised person ” has the same meaning as in section 31. ]

### Textual Amendments

- F14** S. 42 sidenote substituted (1.4.2001) by 2000 c. 43, s. 74, **Sch.7 Pt. II para. 92(c)**; S.I. 2001/919, **art. 2(f)(ii)**
- F15** Words in s. 42(1) substituted (1.4.2001) by 2000 c. 43, s. 74, 80, **Sch. 7 Pt. II para. 92(a)(i)**; S.I. 2001/919, **art. 2(f)(ii)**
- F16** Words in s. 42(1)(2) inserted (1.4.2005) by Children Act 2004 (c. 31), s. 40, **Sch. 3 para. 10**; S.I. 2005/700, **art. 2(2)**
- F17** Words in s. 42(1) substituted (1.4.2001) by 2000 c. 43, s. 74, **Sch. 7 Pt. II para. 92(a)(ii)**; S.I. 2001/919, **art. 2(f)(ii)**
- F18** Words in s. 42(1)(a) inserted (14.10.1991) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), s. 116, **Sch. 16 para. 18(2)**; S.I. 1991/1883, art. 3, **Sch.**
- F19** Words in s. 42(1) repealed (14.10.1991) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), s. 125(7), **Sch. 20**; S.I. 1991/1883, art. 3, **Sch.**
- F20** Words in s. 42(1)(b) substituted (26.10.2000 for E. and otherwise 28.7.2001) by 2000 c. 22, ss. 107, 108(4), **Sch. 5 para. 20**; S.I. 2000/2849, **art. 2(f)**
- F21** Words in s. 42(1)(b) inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **99**

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- F22** S. 42(1)(c) added (14.10.1991) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), ss. 116, **Sch. 16 para. 18(3)**; S.I. 1991/1883, art. 3, **Sch. 16 para. 18(3)**; S.I. 1991/1883, art. 3, **Sch. 16 para. 18(3)**
- F23** Words in s. 42(2) substituted (1.4.2001) by 2000 c. 43, s. 74, **Sch. 7 Pt. II para. 92(b)**; S.I. 2001/919, **art. 2(f)(ii)**
- F24** S. 42(4) added (14.10.1991) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), s. 116, **Sch. 16 para. 18(4)**; S.I. 1991/1883, art. 3, **Sch. 16 para. 18(4)**

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**Commencement Information**

- I2** S. 42 in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, **art. 3(2)**

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**Marginal Citations**

- M1** 1970 c. 42.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 4(1A)(aa) inserted by 2009 c. 24 Sch. 6 para. 21(3)
- s. 4(1C) inserted by 2009 c. 24 Sch. 6 para. 21(4)
- s. 4ZA(2)(aa) inserted by 2009 c. 24 Sch. 6 para. 22(3)
- s. 4ZA(3A) inserted by 2009 c. 24 Sch. 6 para. 22(4)
- s. 8(4)(k) inserted by 2021 c. 17 s. 52(1)
- s. 31A(4A) inserted by 2014 c. 6 s. 15(2)(b)