



# Armed Forces Act 1991

## 1991 CHAPTER 62

### PART III

#### PROTECTION OF CHILDREN OF SERVICE FAMILIES

#### **17 Power to make service family child assessment orders**

- (1) Subject to subsection (2) below, the power to make an order under this section (in this Part of this Act referred to as an “assessment order”) is exercisable only with respect to a child who—
  - (a) forms part of the family of a person subject to service law serving in a country or territory outside the United Kingdom or of a civilian in a corresponding position; and
  - (b) resides outside the United Kingdom with that family or another such family.
- (2) The power to make an assessment order is also exercisable with respect to a child who, though not falling within paragraph (a) of subsection (1) above, is staying (for however short a time) with such a family as is referred to in that paragraph and is so exercisable as if he resided with that family; and any reference in the following provisions of this Part of this Act to a person with whom a child was at any time residing shall be construed accordingly.
- (3) On an application made with respect to a child by a person authorised in that behalf by regulations, the officer having jurisdiction may make an assessment order with respect to the child if, but only if, he is satisfied that—
  - (a) the applicant has reasonable cause to suspect that the child is suffering, or is likely to suffer, significant harm;
  - (b) an assessment of the state of the child’s health or development or of the way in which he has been treated is required to enable the applicant to determine whether or not the child is suffering, or is likely to suffer, significant harm; and
  - (c) it is unlikely that such an assessment will be made, or be satisfactory, in the absence of an assessment order.

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- (4) A person making an application for an assessment order with respect to a child shall take such steps as are reasonably practicable to ensure that, before the application is considered, notice of the application is given to—
- (a) the child;
  - (b) his parents;
  - (c) any other person who has parental responsibility for him;
  - (d) any other person caring for the child or with whom the child is residing immediately before the making of the application;
  - (e) any person in whose favour a contact order is in force with respect to the child; and
  - (f) any person who is allowed to have contact with the child by virtue of an order under section 34 of the Children Act 1989.
- (5) An assessment order shall not be made with respect to any child if the officer to whom the application is made is satisfied—
- (a) that there are grounds for making a protection order with respect to the child; and
  - (b) that he ought to make such an order rather than an assessment order;
- and an officer to whom an application for an assessment order is made may treat the application as an application for a protection order.
- (6) Regulations may make provision with respect to the procedure to be followed on and in connection with the making of an assessment order.

## **18 Content, effect, variation and discharge of assessment orders**

- (1) An assessment order shall—
- (a) specify the date by which the assessment is to begin; and
  - (b) have effect for such period, not exceeding seven days beginning with that date, as may be specified in the order.
- (2) Where an assessment order is in force with respect to a child, it shall be the duty of any person who is in a position to produce the child—
- (a) to produce him to such person as may be named in the order; and
  - (b) to comply with such directions relating to the assessment of the child as the officer making the order considers appropriate to include in the order.
- (3) Subject to subsection (4) below, an assessment order authorises any person carrying out the assessment, or any part of the assessment, to do so in accordance with the terms of the order.
- (4) If the child to whom an assessment order relates is of sufficient understanding to make an informed decision, he may refuse to submit to a medical or psychiatric examination or other assessment.
- (5) The child to whom an assessment order relates may only be kept away from home—
- (a) in accordance with directions included in the order; and
  - (b) if it is necessary for the purposes of the assessment; and
  - (c) for such period or periods as may be specified in the order.
- (6) Where the child to whom an assessment order relates is to be kept away from home, the order shall contain such directions as the officer making it considers appropriate

with regard to the contact that the child must be allowed to have with other persons while away from home.

- (7) In such circumstances and subject to such conditions as may be prescribed by regulations, an assessment order may be varied or discharged on an application made, in such manner as may be so prescribed, by—
- (a) the child to whom the order relates;
  - (b) a parent of his;
  - (c) any other person who has parental responsibility for him;
  - (d) any other person caring for the child or with whom the child was residing immediately before the making of the application;
  - (e) any person in whose favour a contact order is in force with respect to the child; or
  - (f) any person who is allowed to have contact with the child by virtue of an order under section 34 of the Children Act 1989.
- (8) A person subject to service law or a civilian in a corresponding position who intentionally obstructs any person exercising a power conferred on him by virtue of the making of an assessment order shall be liable on conviction to a fine or to any less punishment provided by the Army Act 1955, the Air Force Act 1955 or the 1957 Act, as the case may require.
- (9) Any offence under subsection (8) above shall be treated,—
- (a) if the offender is subject to military law or a civilian to whom Part II of the Army Act 1955 is applied by section 209 of that Act, as if it were an offence against a provision of Part II of that Act which is triable by court-martial under that Act;
  - (b) if the offender is subject to air-force law or a civilian to whom Part II of the Air Force Act 1955 is applied by section 209 of that Act, as if it were an offence against a provision of Part II of that Act which is triable by court-martial under that Act;
  - (c) if the offender is subject to the 1957 Act or a civilian to whom Parts I and II of that Act are applied by section 118 of that Act, as if it were an offence against a provision of Part I of that Act which is triable by court-martial under that Act.
- (10) Any power conferred by this section to give directions shall be exercisable subject to, and in accordance with, any provision made by regulations.

## **19 Power to make orders for the emergency protection of children of service families**

- (1) Subject to subsection (2) below, the power to make an order under this section (in this Part of this Act referred to as a “protection order”) is exercisable only with respect to a child who—
- (a) forms part of the family of a person subject to service law serving in a country or territory outside the United Kingdom or of a civilian in a corresponding position; and
  - (b) resides outside the United Kingdom with that family or another such family.
- (2) The power to make a protection order is also exercisable with respect to a child who, though not falling within paragraph (a) of subsection (1) above, is staying (for however short a time) with such a family as is referred to in that paragraph and is so exercisable

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as if he resided with that family; and any reference in the following provisions of this Part of this Act to a person with whom a child was at any time residing shall be construed accordingly.

- (3) On an application made by any person with respect to a child, the officer having jurisdiction may make a protection order with respect to the child if, but only if, he is satisfied that—
- (a) there is reasonable cause to believe that the child is likely to suffer significant harm if he is not removed to accommodation provided by or on behalf of the applicant; or
  - (b) there is reasonable cause to believe that the child is likely to suffer significant harm if he does not remain in the place in which he is then being accommodated (whether or not that is the place where he is resident); or
  - (c) in the case of an application made by a designated person—
    - (i) the applicant has reasonable cause to suspect that a child is suffering, or is likely to suffer, significant harm;
    - (ii) the applicant is making enquiries with respect to the child's welfare; and
    - (iii) those enquiries are being frustrated by access to the child being unreasonably refused to the applicant or a person authorised by the applicant to seek access and the applicant has reasonable cause to believe that access to the child is required as a matter of urgency.
- (4) No protection order shall be made without affording—
- (a) the child to whom it is proposed that the order should relate,
  - (b) his parents,
  - (c) any other person who has parental responsibility for him, and
  - (d) any other person with whom he was residing immediately before the making of the application for the order,
- an opportunity to make representations to the officer to whom the application for the order is made, except where it appears to that officer that it would be undesirable to do so in the interests of the child or that it would be impracticable, or would cause unnecessary delay, to communicate with any parent of the child or with any such other person as is mentioned in paragraph (c) or paragraph (d) above.
- (5) Any person—
- (a) seeking access to a child in connection with enquiries of a kind mentioned in subsection (3)(c) above, and
  - (b) purporting to be a designated person or a person authorised by a designated person to seek such access,
- shall, on being asked to do so, produce some duly authenticated document as evidence that he is such a person.
- (6) Regulations may—
- (a) prescribe the descriptions of persons who for the purposes of this section are designated persons; and
  - (b) make provision with respect to the procedure to be followed on and in connection with the making of protection orders.
- (7) This section and sections 20 to 22 below have effect in place of section 14 of the Armed Forces Act 1981 (temporary removal to and detention in a place of safety abroad of children of service families in need of care or control).

## 20 Content and effect of protection orders

- (1) A protection order shall name the person on whose application it was made (in this Part of this Act referred to as “the responsible person”) and, wherever it is reasonably practicable to do so, the order shall also name the child to whom it relates; and where it does not name that child it shall describe him as clearly as possible.
- (2) Where a protection order is in force with respect to a child—
  - (a) it shall be the duty of any person who is in a position to do so to comply with any request to produce the child to the responsible person; and
  - (b) the order authorises—
    - (i) the removal of the child at any time to accommodation provided by or on behalf of the responsible person and his being kept there; or
    - (ii) the prevention of the child’s removal from any service hospital, or other place, in which he was being accommodated immediately before the making of the order.
- (3) Where a protection order is in force with respect to a child, the responsible person—
  - (a) shall only exercise a power given by virtue of subsection (2)(b) above in order to safeguard the welfare of the child;
  - (b) shall comply with the requirements of any regulations made for the purposes of this subsection; and
  - (c) subject to paragraphs (a) and (b) above, shall do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child’s welfare (having regard in particular to the duration of the order).
- (4) The officer making a protection order may give such directions (if any) as he considers appropriate with respect to all or any of the following matters—
  - (a) whether the responsible person, in exercising any power under the order, should be accompanied by a person having a medical, nursing or other appropriate qualification;
  - (b) any contact which is, or is not, to be allowed between the child and any named person; and
  - (c) any medical or psychiatric examination or other assessment of the child which is, or is not, to be carried out;but, where a direction is given under paragraph (c) above for the carrying out of an examination or other assessment, the child may, if he is of sufficient understanding to make an informed decision, refuse to submit to the examination or assessment.
- (5) Where a protection order is in force with respect to a child and—
  - (a) the responsible person has exercised the power given by subsection (2)(b)(i) above but it appears to him that it is safe for the child to be returned; or
  - (b) the responsible person has exercised the power given by subsection (2)(b)(ii) above but it appears to him that it is safe for the child to be allowed to be removed from the place in question,he shall return the child or (as the case may be) allow him to be removed.
- (6) Where he is required by subsection (5) above to return the child, the responsible person shall—
  - (a) return him to the care of the person from whose care he was removed; or
  - (b) if that is not reasonably practicable, return him to the care of—
    - (i) a parent of his;

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- (ii) any person who is not a parent of his but who has parental responsibility for him; or
  - (iii) such other person as the responsible person (with the agreement of the officer having jurisdiction) considers appropriate.
- (7) Where the responsible person has been required by subsection (5) above to return the child, or to allow him to be removed, he may again exercise his powers with respect to the child (at any time while the protection order remains in force) if it appears to him that a change in the circumstances of the case makes it necessary for him to do so.
- (8) Where a protection order has been made with respect to a child, the responsible person shall, subject to any direction given under subsection (4) above, allow the child reasonable contact with—
- (a) his parents;
  - (b) any other person who has parental responsibility for him;
  - (c) any other person with whom he was residing immediately before the making of the application for the order;
  - (d) any person in whose favour a contact order is in force with respect to him;
  - (e) any person who is allowed to have contact with the child by virtue of an order under section 34 of the Children Act 1989; and
  - (f) any person acting on behalf of any of those persons.
- (9) A person subject to service law or a civilian in a corresponding position who intentionally obstructs any person exercising the power under subsection (2)(b) above to remove, or prevent the removal of, a child shall be liable on conviction to a fine or to any less punishment provided by the Army Act 1955, the Air Force Act 1955 or the 1957 Act, as the case may require.
- (10) Any offence under subsection (9) above shall be treated,—
- (a) if the offender is subject to military law or a civilian to whom Part II of the Army Act 1955 is applied by section 209 of that Act, as if it were an offence against a provision of Part II of that Act which is triable by court-martial under that Act;
  - (b) if the offender is subject to air-force law or a civilian to whom Part II of the Air Force Act 1955 is applied by section 209 of that Act, as if it were an offence against a provision of Part II of that Act which is triable by court-martial under that Act;
  - (c) if the offender is subject to the 1957 Act or a civilian to whom Parts I and II of that Act are applied by section 118 of that Act, as if it were an offence against a provision of Part I of that Act which is triable by court-martial under that Act.
- (11) Any directions given under subsection (4) above shall be set out in the protection order, and—
- (a) the power to give such directions shall be exercisable subject to, and in accordance with, any provision made by regulations; and
  - (b) any direction given in the exercise of that power may be varied or revoked at any time subject to, and in accordance with, any provision so made.

## **21 Duration of protection orders**

- (1) A protection order shall specify the period for which it is to have effect, being—

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- (a) in a case where the order is made by an officer other than a superior officer, a period not exceeding the period of eight days beginning with the date of the order; and
  - (b) in a case where the order is made by a superior officer, a period not exceeding the period of twenty-eight days beginning with the date of the order.
- (2) Where a protection order has been made with respect to a child and it appears at any time to the officer having jurisdiction—
  - (a) that the period for which the order is to have effect is less than the maximum period applicable under subsection (1) above in relation to a protection order made by that officer; and
  - (b) that there is reasonable cause to believe that the child concerned is likely to suffer significant harm if the effect of the order is not extended or further extended,that officer may by an order (in this Part of this Act referred to as an “extension order”) continue the effect of the protection order until a time no later after the making of the protection order than the end of that maximum period.
- (3) No extension order shall be made without affording—
  - (a) the child to whom the protection order relates,
  - (b) his parents,
  - (c) any other person who has parental responsibility for him, and
  - (d) any other person with whom he was residing immediately before the making of the application for the protection order,an opportunity to make representations to the officer by whom the case is being considered, except where it appears to that officer that it would be undesirable to do so in the interests of the child or that it would be impracticable, or would cause unnecessary delay, to communicate with any parent of the child or with any such other person as is mentioned in paragraph (c) or paragraph (d) above.
- (4) Where a child is removed under a protection order to accommodation in the United Kingdom—
  - (a) the order shall not authorise his being kept in that accommodation after the end of the period of twenty-four hours beginning with his arrival in that accommodation; but
  - (b) the powers conferred by the Children Act 1989, the Social Work (Scotland) Act 1968 and the Children and Young Persons Act (Northern Ireland) 1968 shall be exercisable with respect to the child as if everything which was relevant to the question of whether a protection order should be made were relevant, notwithstanding that the child has been removed under the order, to the question whether the conditions for the exercise of any of those powers are satisfied.
- (5) Without prejudice to the power to vary or revoke any direction previously given under subsection (4) of section 20 above, an officer making an extension order may exercise the power to give such directions and subsection (11) of that section shall have effect accordingly.

## **22 Review and discharge of protection orders**

- (1) Subsections (2) to (4) below apply in relation to a protection order in any case where—
  - (a) the order as originally made has effect for a period exceeding eight days; or

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- (b) by an extension order the effect of the protection order is continued for a period exceeding seven days beginning with the date of the extension order.
- (2) If, during the period of six days beginning with the date of the protection order or during any other period of six days while the protection order continues to have effect, —
- (a) no extension order is made continuing the effect of the protection order, and
  - (b) no review of the protection order is carried out in accordance with subsection (4) below,
- then, subject to subsection (3) below, on the day immediately following the end of that six-day period a superior officer shall carry out a review of the protection order in accordance with subsection (4) below.
- (3) Subsection (2) above does not require a review of a protection order to be carried out on the day following any six-day period if—
- (a) the order ceases to have effect at the end of that period or on that following day; or
  - (b) on that following day an extension order is made continuing the effect of the protection order.
- (4) A superior officer carrying out a review of a protection order shall consider whether—
- (a) if the child were returned by the responsible person, or
  - (b) where section 20(2)(b)(ii) above applies, if the child were allowed to be removed from the place in which he was being accommodated immediately before the making of the order,
- any of the conditions in paragraphs (a) to (c) of subsection (3) of section 19 above would be satisfied; and if in his opinion none of those conditions would be satisfied he shall discharge the order.
- (5) Without prejudice to the possibility of the discharge of a protection order on a review under the preceding provisions of this section, if an application is made by—
- (a) the responsible person,
  - (b) the child to whom the order relates,
  - (c) a parent of his,
  - (d) any other person who has parental responsibility for him, or
  - (e) any other person with whom he was residing immediately before the making of the application for the order,
- then, in such circumstances and subject to such conditions as may be prescribed by regulations, the officer having jurisdiction may discharge the order.
- (6) Regulations may make provision as to the procedure to be followed on a review of a protection order (including provision as to the making of representations by any persons).
- (7) Without prejudice to the power to vary or revoke any direction previously given under subsection (4) of section 20 above, if, on carrying out a review of a protection order or on an application under subsection (5) above, the officer dealing with the matter does not discharge the order, he may exercise the power to give directions under subsection (4) of section 20 above and subsection (11) of that section shall have effect accordingly.



## 23 Interpretation of Part III

(1) In this Part of this Act—

“accommodation” means any service hospital or other suitable place the occupier of which is willing temporarily to receive the child to whom a protection order relates, whether situated in the United Kingdom, the country or territory where the child resides or elsewhere;

“assessment order” has the meaning given by section 17 above;

“child” means a person under the age of eighteen;

“civilian in a corresponding position” has the same meaning as in section 13 of the Armed Forces Act 1981;

“contact order” has the meaning given by section 8(1) of the Children Act 1989;

“extension order” has the meaning given by section 21(2) above;

“officer having jurisdiction” and “superior officer” shall be construed in accordance with subsection (2) below;

“parental responsibility” has the meaning given by section 3 of the Children Act 1989;

“parents” shall be construed in accordance with subsection (3) below;

“protection order” has the meaning given by section 19 above;

“regulations” means regulations made by the Secretary of State by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament;

“the responsible person”, in relation to a protection order, has the meaning given by section 20(1) above;

“service hospital” means a military, air-force or naval unit or establishment or a ship at or in which medical or surgical treatment is provided for persons subject to service law; and

“service law” means military law, air-force law or the 1957 Act.

(2) Regulations may make provision for determining—

(a) who, in relation to an assessment order or a protection order, is at any time the officer having jurisdiction for the purposes of any of the provisions of this Part of this Act; and

(b) who, in relation to a protection order, is at any time a superior officer for the purposes of sections 21 and 22 above.

(3) Any reference in this Part of this Act to the parents of a child shall be construed without regard to whether they are or have been married to each other at any time; and this subsection is without prejudice to—

(a) the operation of section 1 of the Family Law Reform Act 1987 as part of the law of England and Wales or section 1 of the Law Reform (Parent and Child) (Scotland) Act 1986 as part of the law of Scotland; and

(b) any enactment or rule of law relating to adoption or legitimation.

(4) Any power under this Part of this Act to make regulations may make different provision for different cases and for different purposes.