

Status: Point in time view as at 25/11/2008.

Changes to legislation: Family Law Act 1996, SCHEDULE 6 is up to date with all changes known to be in force on or before 01 December 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 6

Section 52.

AMENDMENTS OF CHILDREN ACT 1989

1 After section 38 of the ^{M1}Children Act 1989 insert—

“38A Power to include exclusion requirement in interim care order.

- (1) Where—
 - (a) on being satisfied that there are reasonable grounds for believing that the circumstances with respect to a child are as mentioned in section 31(2)(a) and (b)(i), the court makes an interim care order with respect to a child, and
 - (b) the conditions mentioned in subsection (2) are satisfied,
the court may include an exclusion requirement in the interim care order.
- (2) The conditions are—
 - (a) that there is reasonable cause to believe that, if a person (“the relevant person”) is excluded from a dwelling-house in which the child lives, the child will cease to suffer, or cease to be likely to suffer, significant harm, and
 - (b) that another person living in the dwelling-house (whether a parent of the child or some other person)—
 - (i) is able and willing to give to the child the care which it would be reasonable to expect a parent to give him, and
 - (ii) consents to the inclusion of the exclusion requirement.
- (3) For the purposes of this section an exclusion requirement is any one or more of the following—
 - (a) a provision requiring the relevant person to leave a dwelling-house in which he is living with the child,
 - (b) a provision prohibiting the relevant person from entering a dwelling-house in which the child lives, and
 - (c) a provision excluding the relevant person from a defined area in which a dwelling-house in which the child lives is situated.
- (4) The court may provide that the exclusion requirement is to have effect for a shorter period than the other provisions of the interim care order.
- (5) Where the court makes an interim care order containing an exclusion requirement, the court may attach a power of arrest to the exclusion requirement.
- (6) Where the court attaches a power of arrest to an exclusion requirement of an interim care order, it may provide that the power of arrest is to have effect for a shorter period than the exclusion requirement.

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- (7) Any period specified for the purposes of subsection (4) or (6) may be extended by the court (on one or more occasions) on an application to vary or discharge the interim care order.
- (8) Where a power of arrest is attached to an exclusion requirement of an interim care order by virtue of subsection (5), a constable may arrest without warrant any person whom he has reasonable cause to believe to be in breach of the requirement.
- (9) Sections 47(7), (11) and (12) and 48 of, and Schedule 5 to, the Family Law Act 1996 shall have effect in relation to a person arrested under subsection (8) of this section as they have effect in relation to a person arrested under section 47(6) of that Act.
- (10) If, while an interim care order containing an exclusion requirement is in force, the local authority have removed the child from the dwelling-house from which the relevant person is excluded to other accommodation for a continuous period of more than 24 hours, the interim care order shall cease to have effect in so far as it imposes the exclusion requirement.

38B Undertakings relating to interim care orders.

- (1) In any case where the court has power to include an exclusion requirement in an interim care order, the court may accept an undertaking from the relevant person.
- (2) No power of arrest may be attached to any undertaking given under subsection (1).
- (3) An undertaking given to a court under subsection (1)—
 - (a) shall be enforceable as if it were an order of the court, and
 - (b) shall cease to have effect if, while it is in force, the local authority have removed the child from the dwelling-house from which the relevant person is excluded to other accommodation for a continuous period of more than 24 hours.
- (4) This section has effect without prejudice to the powers of the High Court and county court apart from this section.
- (5) In this section “exclusion requirement” and “relevant person” have the same meaning as in section 38A.”

Marginal Citations

M1 1989 c. 41.

2 In section 39 of the ^{M2}Children Act 1989 (discharge and variation etc. of care orders and supervision orders) after subsection (3) insert—

“(3A) On the application of a person who is not entitled to apply for the order to be discharged, but who is a person to whom an exclusion requirement contained in the order applies, an interim care order may be varied or discharged by the court in so far as it imposes the exclusion requirement.

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- (3B) Where a power of arrest has been attached to an exclusion requirement of an interim care order, the court may, on the application of any person entitled to apply for the discharge of the order so far as it imposes the exclusion requirement, vary or discharge the order in so far as it confers a power of arrest (whether or not any application has been made to vary or discharge any other provision of the order).”

Marginal Citations

M2 1989 c. 41.

3 After section 44 of the Children Act 1989 insert—

“44A Power to include exclusion requirement in emergency protection order.

- (1) Where—
- (a) on being satisfied as mentioned in section 44(1)(a), (b) or (c), the court makes an emergency protection order with respect to a child, and
 - (b) the conditions mentioned in subsection (2) are satisfied,
- the court may include an exclusion requirement in the emergency protection order.
- (2) The conditions are—
- (a) that there is reasonable cause to believe that, if a person (“the relevant person”) is excluded from a dwelling-house in which the child lives, then—
 - (i) in the case of an order made on the ground mentioned in section 44(1)(a), the child will not be likely to suffer significant harm, even though the child is not removed as mentioned in section 44(1)(a)(i) or does not remain as mentioned in section 44(1)(a)(ii), or
 - (ii) in the case of an order made on the ground mentioned in paragraph (b) or (c) of section 44(1), the enquiries referred to in that paragraph will cease to be frustrated, and
 - (b) that another person living in the dwelling-house (whether a parent of the child or some other person)—
 - (i) is able and willing to give to the child the care which it would be reasonable to expect a parent to give him, and
 - (ii) consents to the inclusion of the exclusion requirement.
- (3) For the purposes of this section an exclusion requirement is any one or more of the following—
- (a) a provision requiring the relevant person to leave a dwelling-house in which he is living with the child,
 - (b) a provision prohibiting the relevant person from entering a dwelling-house in which the child lives, and
 - (c) a provision excluding the relevant person from a defined area in which a dwelling-house in which the child lives is situated.

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- (4) The court may provide that the exclusion requirement is to have effect for a shorter period than the other provisions of the order.
- (5) Where the court makes an emergency protection order containing an exclusion requirement, the court may attach a power of arrest to the exclusion requirement.
- (6) Where the court attaches a power of arrest to an exclusion requirement of an emergency protection order, it may provide that the power of arrest is to have effect for a shorter period than the exclusion requirement.
- (7) Any period specified for the purposes of subsection (4) or (6) may be extended by the court (on one or more occasions) on an application to vary or discharge the emergency protection order.
- (8) Where a power of arrest is attached to an exclusion requirement of an emergency protection order by virtue of subsection (5), a constable may arrest without warrant any person whom he has reasonable cause to believe to be in breach of the requirement.
- (9) Sections 47(7), (11) and (12) and 48 of, and Schedule 5 to, the Family Law Act 1996 shall have effect in relation to a person arrested under subsection (8) of this section as they have effect in relation to a person arrested under section 47(6) of that Act.
- (10) If, while an emergency protection order containing an exclusion requirement is in force, the applicant has removed the child from the dwelling-house from which the relevant person is excluded to other accommodation for a continuous period of more than 24 hours, the order shall cease to have effect in so far as it imposes the exclusion requirement.

44B Undertakings relating to emergency protection orders.

- (1) In any case where the court has power to include an exclusion requirement in an emergency protection order, the court may accept an undertaking from the relevant person.
- (2) No power of arrest may be attached to any undertaking given under subsection (1).
- (3) An undertaking given to a court under subsection (1)—
 - (a) shall be enforceable as if it were an order of the court, and
 - (b) shall cease to have effect if, while it is in force, the applicant has removed the child from the dwelling-house from which the relevant person is excluded to other accommodation for a continuous period of more than 24 hours.
- (4) This section has effect without prejudice to the powers of the High Court and county court apart from this section.
- (5) In this section “exclusion requirement” and “relevant person” have the same meaning as in section 44A.”

- 4 In section 45 of the ^{M3}Children Act 1989 (duration of emergency protection orders and other supplemental provisions), insert after subsection (8)—

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“(8A) On the application of a person who is not entitled to apply for the order to be discharged, but who is a person to whom an exclusion requirement contained in the order applies, an emergency protection order may be varied or discharged by the court in so far as it imposes the exclusion requirement.

(8B) Where a power of arrest has been attached to an exclusion requirement of an emergency protection order, the court may, on the application of any person entitled to apply for the discharge of the order so far as it imposes the exclusion requirement, vary or discharge the order in so far as it confers a power of arrest (whether or not any application has been made to vary or discharge any other provision of the order).”

Marginal Citations

M3 1989 c. 41.

5 In section 105(1) of the Children Act 1989 (interpretation), after the definition of “domestic premises”, insert—

“ “dwelling-house” includes—

(a) any building or part of a building which is occupied as a dwelling;

(b) any caravan, house-boat or structure which is occupied as a dwelling;

and any yard, garden, garage or outhouse belonging to it and occupied with it.”.

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