

CHILDREN AND YOUNG PERSONS ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 - Functions in Relation to Children and Young Persons

Emergency Protection Orders

Section 30: Removal of restriction on hearing of application for discharge of emergency protection order

127. Provision for Emergency Protection Orders (EPOs) is made in Part 5 of the 1989 Act. The circumstances in which an EPO will be granted, extended and discharged are set out in sections 44 and 45 of the Act. Section 45(1) provides for an EPO to be made for a period of up to 8 days if the court is satisfied that there is reasonable cause to believe that the child is likely to suffer significant harm if:

- (a) he is not removed to accommodation provided by or on behalf of the applicant; or
- (b) he does not remain in the place in which he is then being accommodated.

The court must be satisfied that the child is likely to be in “imminent danger” if he is not removed from home. The court may extend the order for a maximum of a further seven days (under section 45(5)), if the court has reasonable cause to believe that the child is likely to suffer significant harm if the order is not extended.

128. The provisions relating to the discharge of EPOs are contained in sections 45(9) to (11). In a recent judgment of the Northern Ireland High Court, it was held that Article 64(8) of The Children (Northern Ireland) Order 1995 which is identical to section 45(9) of the 1989 Act and provides that “no application for discharge of an emergency protection order shall be heard for 72 hours beginning with the making of the order” is contrary to Articles 6(1) and 8 of the European Convention on Human Rights (ECHR). The Children (Emergency Protection Orders) (Northern Ireland) Act 2007 received Royal Assent on the 14th December 2007 and revoked the 72 hours provision in the 1995 Order.

129. The decision of the Northern Ireland High Court is not binding on the courts of England and Wales. However, the decision would be persuasive in these courts and, accordingly, *section 30* repeals section 45(9) of the 1989 Act to ensure that provisions for the discharge of Emergency Protection Orders are compatible with Articles 6 and 8 of the ECHR. The section allows the court to hear an application to discharge an emergency protection order as soon as it is made.