



# Children Act 1989

## 1989 CHAPTER 41

### PART I

#### INTRODUCTORY

#### **1 Welfare of the child.**

- (1) When a court determines any question with respect to—
  - (a) the upbringing of a child; or
  - (b) the administration of a child's property or the application of any income arising from it,the child's welfare shall be the court's paramount consideration.
- (2) In any proceedings in which any question with respect to the upbringing of a child arises, the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child.
- (3) In the circumstances mentioned in subsection (4), a court shall have regard in particular to—
  - (a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);
  - (b) his physical, emotional and educational needs;
  - (c) the likely effect on him of any change in his circumstances;
  - (d) his age, sex, background and any characteristics of his which the court considers relevant;
  - (e) any harm which he has suffered or is at risk of suffering;
  - (f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;
  - (g) the range of powers available to the court under this Act in the proceedings in question.
- (4) The circumstances are that—

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- (a) the court is considering whether to make, vary or discharge a section 8 order, and the making, variation or discharge of the order is opposed by any party to the proceedings; or
  - (b) the court is considering whether to make, vary or discharge an order under Part IV.
- (5) Where a court is considering whether or not to make one or more orders under this Act with respect to a child, it shall not make the order or any of the orders unless it considers that doing so would be better for the child than making no order at all.

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

**C1** S. 1(2)(3)(a)-(f) applied with modifications (14. 10. 1991) by S.I. 1991/1395, r. 11(1)

**Commencement Information**

**II** S. 1 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

**2 Parental responsibility for children.**

- (1) Where a child's father and mother were married to each other at the time of his birth, they shall each have parental responsibility for the child.
- (2) Where a child's father and mother were not married to each other at the time of his birth—
  - (a) the mother shall have parental responsibility for the child;
  - (b) the father shall not have parental responsibility for the child, unless he acquires it in accordance with the provisions of this Act.
- (3) References in this Act to a child whose father and mother were, or (as the case may be) were not, married to each other at the time of his birth must be read with section 1 of the <sup>M1</sup>Family Law Reform Act 1987 (which extends their meaning).
- (4) The rule of law that a father is the natural guardian of his legitimate child is abolished.
- (5) More than one person may have parental responsibility for the same child at the same time.
- (6) A person who has parental responsibility for a child at any time shall not cease to have that responsibility solely because some other person subsequently acquires parental responsibility for the child.
- (7) Where more than one person has parental responsibility for a child, each of them may act alone and without the other (or others) in meeting that responsibility; but nothing in this Part shall be taken to affect the operation of any enactment which requires the consent of more than one person in a matter affecting the child.
- (8) The fact that a person has parental responsibility for a child shall not entitle him to act in any way which would be incompatible with any order made with respect to the child under this Act.
- (9) A person who has parental responsibility for a child may not surrender or transfer any part of that responsibility to another but may arrange for some or all of it to be met by one or more persons acting on his behalf.

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- (10) The person with whom any such arrangement is made may himself be a person who already has parental responsibility for the child concerned.
- (11) The making of any such arrangement shall not affect any liability of the person making it which may arise from any failure to meet any part of his parental responsibility for the child concerned.

#### Commencement Information

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

#### Marginal Citations

**M1** 1987 c. 42.

### 3 Meaning of “parental responsibility”.

- (1) In this Act “parental responsibility” means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property.
- (2) It also includes the rights, powers and duties which a guardian of the child’s estate (appointed, before the commencement of section 5, to act generally) would have had in relation to the child and his property.
- (3) The rights referred to in subsection (2) include, in particular, the right of the guardian to receive or recover in his own name, for the benefit of the child, property of whatever description and wherever situated which the child is entitled to receive or recover.
- (4) The fact that a person has, or does not have, parental responsibility for a child shall not affect—
- (a) any obligation which he may have in relation to the child (such as a statutory duty to maintain the child); or
  - (b) any rights which, in the event of the child’s death, he (or any other person) may have in relation to the child’s property.
- (5) A person who—
- (a) does not have parental responsibility for a particular child; but
  - (b) has care of the child,
- may (subject to the provisions of this Act) do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child’s welfare.

#### Commencement Information

**I3** S. 3 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

### 4 Acquisition of parental responsibility by father.

- (1) Where a child’s father and mother were not married to each other at the time of his birth—

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- (a) the court may, on the application of the father, order that he shall have parental responsibility for the child; or
  - (b) the father and mother may by agreement (“a parental responsibility agreement”) provide for the father to have parental responsibility for the child.
- (2) No parental responsibility agreement shall have effect for the purposes of this Act unless—
- (a) it is made in the form prescribed by regulations made by the Lord Chancellor; and
  - (b) where regulations are made by the Lord Chancellor prescribing the manner in which such agreements must be recorded, it is recorded in the prescribed manner.
- (3) Subject to section 12(4), an order under subsection (1)(a), or a parental responsibility agreement, may only be brought to an end by an order of the court made on the application—
- (a) of any person who has parental responsibility for the child; or
  - (b) with leave of the court, of the child himself.
- (4) The court may only grant leave under subsection (3)(b) if it is satisfied that the child has sufficient understanding to make the proposed application.

#### Commencement Information

**I4** S. 4 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

VALID FROM 06/04/2009

#### **[<sup>F1</sup>4ZA Acquisition of parental responsibility by second female parent**

- (1) Where a child has a parent by virtue of section 43 of the Human Fertilisation and Embryology Act 2008 and is not a person to whom section 1(3) of the Family Law Reform Act 1987 applies, that parent shall acquire parental responsibility for the child if—
- (a) she becomes registered as a parent of the child under any of the enactments specified in subsection (2);
  - (b) she and the child's mother make an agreement providing for her to have parental responsibility for the child; or
  - (c) the court, on her application, orders that she shall have parental responsibility for the child.
- (2) The enactments referred to in subsection (1)(a) are—
- (a) paragraphs (a), (b) and (c) of section 10(1B) and of section 10A(1B) of the Births and Deaths Registration Act 1953;
  - (b) paragraphs (a), (b) and (d) of section 18B(1) and sections 18B(3)(a) and 20(1)(a) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965; and
  - (c) sub-paragraphs (a), (b) and (c) of Article 14ZA(3) of the Births and Deaths Registration (Northern Ireland) Order 1976.

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- (3) The Secretary of State may by order amend subsection (2) so as to add further enactments to the list in that subsection.
- (4) An agreement under subsection (1)(b) is also a “parental responsibility agreement”, and section 4(2) applies in relation to such an agreement as it applies in relation to parental responsibility agreements under section 4.
- (5) A person who has acquired parental responsibility under subsection (1) shall cease to have that responsibility only if the court so orders.
- (6) The court may make an order under subsection (5) on the application—
  - (a) of any person who has parental responsibility for the child; or
  - (b) with the leave of the court, of the child himself,
 subject, in the case of parental responsibility acquired under subsection (1)(c), to section 12(4).
- (7) The court may only grant leave under subsection (6)(b) if it is satisfied that the child has sufficient understanding to make the proposed application.]

#### Textual Amendments

- F1** S. 4ZA inserted (6.4.2009) by [Human Fertilisation and Embryology Act 2008 \(c. 22\)](#), ss. 56, 68, **Sch. 6 para. 27**; S.I. 2009/479, **art. 6(1)(e)**

VALID FROM 30/12/2005

#### **[<sup>F2</sup>4A** Acquisition of parental responsibility by step-parent

- (1) Where a child’s parent (“parent A”) who has parental responsibility for the child is married to [<sup>F3</sup>, or a civil partner of,] a person who is not the child’s parent (“the step-parent”)—
  - (a) parent A or, if the other parent of the child also has parental responsibility for the child, both parents may by agreement with the step-parent provide for the step-parent to have parental responsibility for the child; or
  - (b) the court may, on the application of the step-parent, order that the step-parent shall have parental responsibility for the child.
- (2) An agreement under subsection (1)(a) is also a “parental responsibility agreement”, and section 4(2) applies in relation to such agreements as it applies in relation to parental responsibility agreements under section 4.
- (3) A parental responsibility agreement under subsection (1)(a), or an order under subsection (1)(b), may only be brought to an end by an order of the court made on the application—
  - (a) of any person who has parental responsibility for the child; or
  - (b) with the leave of the court, of the child himself.
- (4) The court may only grant leave under subsection (3)(b) if it is satisfied that the child has sufficient understanding to make the proposed application.]

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### Textual Amendments

- F2** S. 4A inserted (30.12.2005) by 2002 c. 38, ss. 112, 148 (with Sch. 4 paras. 6-8); S.I. 2005/2213, art. 2(k)
- F3** Words in s. 4A(1) inserted (30.12.2005) by Civil Partnership Act 2004 (c. 33), s. 75(2); S.I. 2005/3175, art. 2(9)

## 5 Appointment of guardians.

- (1) Where an application with respect to a child is made to the court by any individual, the court may by order appoint that individual to be the child's guardian if—
  - (a) the child has no parent with parental responsibility for him; or
  - (b) a residence order has been made with respect to the child in favour of a parent or guardian of his who has died while the order was in force.
- (2) The power conferred by subsection (1) may also be exercised in any family proceedings if the court considers that the order should be made even though no application has been made for it.
- (3) A parent who has parental responsibility for his child may appoint another individual to be the child's guardian in the event of his death.
- (4) A guardian of a child may appoint another individual to take his place as the child's guardian in the event of his death.
- (5) An appointment under subsection (3) or (4) shall not have effect unless it is made in writing, is dated and is signed by the person making the appointment or—
  - (a) in the case of an appointment made by a will which is not signed by the testator, is signed at the direction of the testator in accordance with the requirements of section 9 of the <sup>M2</sup>Wills Act 1837; or
  - (b) in any other case, is signed at the direction of the person making the appointment, in his presence and in the presence of two witnesses who each attest the signature.
- (6) A person appointed as a child's guardian under this section shall have parental responsibility for the child concerned.
- (7) Where—
  - (a) on the death of any person making an appointment under subsection (3) or (4), the child concerned has no parent with parental responsibility for him; or
  - (b) immediately before the death of any person making such an appointment, a residence order in his favour was in force with respect to the child,
 the appointment shall take effect on the death of that person.
- (8) Where, on the death of any person making an appointment under subsection (3) or (4)—
  - (a) the child concerned has a parent with parental responsibility for him; and
  - (b) subsection (7)(b) does not apply,
 the appointment shall take effect when the child no longer has a parent who has parental responsibility for him.

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- (9) Subsections (1) and (7) do not apply if the residence order referred to in paragraph (b) of those subsections was also made in favour of a surviving parent of the child.
- (10) Nothing in this section shall be taken to prevent an appointment under subsection (3) or (4) being made by two or more persons acting jointly.
- (11) Subject to any provision made by rules of court, no court shall exercise the High Court's inherent jurisdiction to appoint a guardian of the estate of any child.
- (12) Where rules of court are made under subsection (11) they may prescribe the circumstances in which, and conditions subject to which, an appointment of such a guardian may be made.
- (13) A guardian of a child may only be appointed in accordance with the provisions of this section.

#### Commencement Information

**I5** S. 5 except s. 5(11)(12) in force at 14.10.1991 by S.I. 1991/828, art. 3(2) and s. 5(11)(12) wholly in force 1.2.1992 by S.I. 1991/828, art. 3 as amended by S.I. 1991/1990, art. 2.

#### Marginal Citations

**M2** 1837 c. 26.

## 6 Guardians: revocation and disclaimer.

- (1) An appointment under section 5(3) or (4) revokes an earlier such appointment (including one made in an unrevoked will or codicil) made by the same person in respect of the same child, unless it is clear (whether as the result of an express provision in the later appointment or by any necessary implication) that the purpose of the later appointment is to appoint an additional guardian.
- (2) An appointment under section 5(3) or (4) (including one made in an unrevoked will or codicil) is revoked if the person who made the appointment revokes it by a written and dated instrument which is signed—
  - (a) by him; or
  - (b) at his direction, in his presence and in the presence of two witnesses who each attest the signature.
- (3) An appointment under section 5(3) or (4) (other than one made in a will or codicil) is revoked if, with the intention of revoking the appointment, the person who made it—
  - (a) destroys the instrument by which it was made; or
  - (b) has some other person destroy that instrument in his presence.
- (4) For the avoidance of doubt, an appointment under section 5(3) or (4) made in a will or codicil is revoked if the will or codicil is revoked.
- (5) A person who is appointed as a guardian under section 5(3) or (4) may disclaim his appointment by an instrument in writing signed by him and made within a reasonable time of his first knowing that the appointment has taken effect.

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- (6) Where regulations are made by the Lord Chancellor prescribing the manner in which such disclaimers must be recorded, no such disclaimer shall have effect unless it is recorded in the prescribed manner.
- (7) Any appointment of a guardian under section 5 may be brought to an end at any time by order of the court—
- (a) on the application of any person who has parental responsibility for the child;
  - (b) on the application of the child concerned, with leave of the court; or
  - (c) in any family proceedings, if the court considers that it should be brought to an end even though no application has been made.

**Commencement Information**

**I6** S. 6 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

**7 Welfare reports.**

- (1) A court considering any question with respect to a child under this Act may—
- (a) ask a probation officer; or
  - (b) ask a local authority to arrange for—
    - (i) an officer of the authority; or
    - (ii) such other person (other than a probation officer) as the authority considers appropriate,
 to report to the court on such matters relating to the welfare of that child as are required to be dealt with in the report.
- (2) The Lord Chancellor may make regulations specifying matters which, unless the court orders otherwise, must be dealt with in any report under this section.
- (3) The report may be made in writing, or orally, as the court requires.
- (4) 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 the report; 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 it is considering.
- (5) It shall be the duty of the authority or probation officer to comply with any request for a report under this section.

**Commencement Information**

**I7** S. 7 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)



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## PART II

### ORDERS WITH RESPECT TO CHILDREN IN FAMILY PROCEEDINGS

#### General

#### 8 Residence, contact and other orders with respect to children.

(1) In this Act —

“a contact order” means an order requiring the person with whom a child lives, or is to live, to allow the child to visit or stay with the person named in the order, or for that person and the child otherwise to have contact with each other;

“a prohibited steps order” means an order that no step which could be taken by a parent in meeting his parental responsibility for a child, and which is of a kind specified in the order, shall be taken by any person without the consent of the court;

“a residence order” means an order settling the arrangements to be made as to the person with whom a child is to live; and

“a specific issue order” means an order giving directions for the purpose of determining a specific question which has arisen, or which may arise, in connection with any aspect of parental responsibility for a child.

(2) In this Act “a section 8 order” means any of the orders mentioned in subsection (1) and any order varying or discharging such an order.

(3) For the purposes of this Act “family proceedings” means any proceedings—

- (a) under the inherent jurisdiction of the High Court in relation to children; and
- (b) under the enactments mentioned in subsection (4),

but does not include proceedings on an application for leave under section 100(3).

(4) The enactments are—

- (a) Parts I, II and IV of this Act;
- (b) the <sup>M3</sup>Matrimonial Causes Act 1973;
- (c) the <sup>M4</sup>Domestic Violence and Matrimonial Proceedings Act 1976;
- (d) the <sup>M5</sup>Adoption Act 1976;
- (e) the <sup>M6</sup>Domestic Proceedings and Magistrates’ Courts Act 1978;
- (f) sections 1 and 9 of the <sup>M7</sup>Matrimonial Homes Act 1983;
- (g) Part III of the <sup>M8</sup>Matrimonial and Family Proceedings Act 1984.

#### Commencement Information

**I8** S. 8 wholly in force at the 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### Marginal Citations

**M3** 1973 c. 18.  
**M4** 1976 c. 50.  
**M5** 1976 c. 36.  
**M6** 1978 c. 22.  
**M7** 1983 c. 19.

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**M8** 1984 c. 42.

## **9 Restrictions on making section 8 orders.**

- (1) No court shall make any section 8 order, other than a residence order, with respect to a child who is in the care of a local authority.
- (2) No application may be made by a local authority for a residence order or contact order and no court shall make such an order in favour of a local authority.
- (3) A person who is, or was at any time within the last six months, a local authority foster parent of a child may not apply for leave to apply for a section 8 order with respect to the child unless—
  - (a) he has the consent of the authority;
  - (b) he is a relative of the child; or
  - (c) the child has lived with him for at least three years preceding the application.
- (4) The period of three years mentioned in subsection (3)(c) need not be continuous but must have begun not more than five years before the making of the application.
- (5) No court shall exercise its powers to make a specific issue order or prohibited steps order—
  - (a) with a view to achieving a result which could be achieved by making a residence or contact order; or
  - (b) in any way which is denied to the High Court (by section 100(2)) in the exercise of its inherent jurisdiction with respect to children.
- (6) No court shall make any section 8 order which is to have effect for a period which will end after the child has reached the age of sixteen unless it is satisfied that the circumstances of the case are exceptional.
- (7) No court shall make any section 8 order, other than one varying or discharging such an order, with respect to a child who has reached the age of sixteen unless it is satisfied that the circumstances of the case are exceptional.

### **Commencement Information**

**I9** S. 9 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

## **10 Power of court to make section 8 orders.**

- (1) In any family proceedings in which a question arises with respect to the welfare of any child, the court may make a section 8 order with respect to the child if—
  - (a) an application for the order has been made by a person who—
    - (i) is entitled to apply for a section 8 order with respect to the child; or
    - (ii) has obtained the leave of the court to make the application; or
  - (b) the court considers that the order should be made even though no such application has been made.
- (2) The court may also make a section 8 order with respect to any child on the application of a person who—
  - (a) is entitled to apply for a section 8 order with respect to the child; or

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- (b) has obtained the leave of the court to make the application.
- (3) This section is subject to the restrictions imposed by section 9.
- (4) The following persons are entitled to apply to the court for any section 8 order with respect to a child—
  - (a) any parent or guardian of the child;
  - (b) any person in whose favour a residence order is in force with respect to the child.
- (5) The following persons are entitled to apply for a residence or contact order with respect to a child—
  - (a) any party to a marriage (whether or not subsisting) in relation to whom the child is a child of the family;
  - (b) any person with whom the child has lived for a period of at least three years;
  - (c) any person who—
    - (i) in any case where a residence order is in force with respect to the child, has the consent of each of the persons in whose favour the order was made;
    - (ii) in any case where the child is in the care of a local authority, has the consent of that authority; or
    - (iii) in any other case, has the consent of each of those (if any) who have parental responsibility for the child.
- (6) A person who would not otherwise be entitled (under the previous provisions of this section) to apply for the variation or discharge of a section 8 order shall be entitled to do so if—
  - (a) the order was made on his application; or
  - (b) in the case of a contact order, he is named in the order.
- (7) Any person who falls within a category of person prescribed by rules of court is entitled to apply for any such section 8 order as may be prescribed in relation to that category of person.
- (8) Where the person applying for leave to make an application for a section 8 order is the child concerned, the court may only grant leave if it is satisfied that he has sufficient understanding to make the proposed application for the section 8 order.
- (9) Where the person applying for leave to make an application for a section 8 order is not the child concerned, the court shall, in deciding whether or not to grant leave, have particular regard to—
  - (a) the nature of the proposed application for the section 8 order;
  - (b) the applicant's connection with the child;
  - (c) any risk there might be of that proposed application disrupting the child's life to such an extent that he would be harmed by it; and
  - (d) where the child is being looked after by a local authority—
    - (i) the authority's plans for the child's future; and
    - (ii) the wishes and feelings of the child's parents.
- (10) The period of three years mentioned in subsection (5)(b) need not be continuous but must not have begun more than five years before, or ended more than three months before, the making of the application.

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### Commencement Information

**I10** S. 10 wholly in force at the 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

## 11 General principles and supplementary provisions.

- (1) In proceedings in which any question of making a section 8 order, or any other question with respect to such an order, arises, the court shall (in the light of any rules made by virtue of subsection (2))—
  - (a) draw up a timetable with a view to determining the question without delay; and
  - (b) give such directions as it considers appropriate for the purpose of ensuring, so far as is reasonably practicable, that that timetable is adhered to.
- (2) Rules of court may—
  - (a) specify periods within which specified steps must be taken in relation to proceedings in which such questions arise; and
  - (b) make other provision with respect to such proceedings for the purpose of ensuring, so far as is reasonably practicable, that such questions are determined without delay.
- (3) Where a court has power to make a section 8 order, it may do so at any time during the course of the proceedings in question even though it is not in a position to dispose finally of those proceedings.
- (4) Where a residence order is made in favour of two or more persons who do not themselves all live together, the order may specify the periods during which the child is to live in the different households concerned.
- (5) Where—
  - (a) a residence order has been made with respect to a child; and
  - (b) as a result of the order the child lives, or is to live, with one of two parents who each have parental responsibility for him,
 the residence order shall cease to have effect if the parents live together for a continuous period of more than six months.
- (6) A contact order which requires the parent with whom a child lives to allow the child to visit, or otherwise have contact with, his other parent shall cease to have effect if the parents live together for a continuous period of more than six months.
- (7) A section 8 order may—
  - (a) contain directions about how it is to be carried into effect;
  - (b) impose conditions which must be complied with by any person—
    - (i) in whose favour the order is made;
    - (ii) who is a parent of the child concerned;
    - (iii) who is not a parent of his but who has parental responsibility for him;
    - or
    - (iv) with whom the child is living,
 and to whom the conditions are expressed to apply;
  - (c) be made to have effect for a specified period, or contain provisions which are to have effect for a specified period;

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- (d) make such incidental, supplemental or consequential provision as the court thinks fit.

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

**C2** S. 11(3) restricted (14. 10. 1991) by S.I. 1991/1395, r.28

**Commencement Information**

**I11** S. 11 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

VALID FROM 07/11/2008

**[<sup>F4</sup>11A Contact activity directions**

- (1) This section applies in proceedings in which the court is considering whether to make provision about contact with a child by making—
  - (a) a contact order with respect to the child, or
  - (b) an order varying or discharging a contact order with respect to the child.
- (2) The court may make a contact activity direction in connection with that provision about contact.
- (3) A contact activity direction is a direction requiring an individual who is a party to the proceedings to take part in an activity that promotes contact with the child concerned.
- (4) The direction is to specify the activity and the person providing the activity.
- (5) The activities that may be so required include, in particular—
  - (a) programmes, classes and counselling or guidance sessions of a kind that—
    - (i) may assist a person as regards establishing, maintaining or improving contact with a child;
    - (ii) may, by addressing a person's violent behaviour, enable or facilitate contact with a child;
  - (b) sessions in which information or advice is given as regards making or operating arrangements for contact with a child, including making arrangements by means of mediation.
- (6) No individual may be required by a contact activity direction—
  - (a) to undergo medical or psychiatric examination, assessment or treatment;
  - (b) to take part in mediation.
- (7) A court may not on the same occasion—
  - (a) make a contact activity direction, and
  - (b) dispose finally of the proceedings as they relate to contact with the child concerned.
- (8) Subsection (2) has effect subject to the restrictions in sections 11B and 11E.
- (9) In considering whether to make a contact activity direction, the welfare of the child concerned is to be the court's paramount consideration.]

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### Textual Amendments

**F4** S. 11A inserted (7.11.2008) by Children and Adoption Act 2006 (c. 20), ss. 1, 17; S.I. 2008/2870, art. 2(1)

VALID FROM 07/11/2008

### [<sup>F5</sup>11B Contact activity directions: further provision

- (1) A court may not make a contact activity direction in any proceedings unless there is a dispute as regards the provision about contact that the court is considering whether to make in the proceedings.
- (2) A court may not make a contact activity direction requiring an individual who is a child to take part in an activity unless the individual is a parent of the child in relation to whom the court is considering provision about contact.
- (3) A court may not make a contact activity direction in connection with the making, variation or discharge of a contact order, if the contact order is, or would if made be, an excepted order.
- (4) A contact order with respect to a child is an excepted order if—
  - (a) it is made in proceedings that include proceedings on an application for a relevant adoption order in respect of the child; or
  - (b) it makes provision as regards contact between the child and a person who would be a parent or relative of the child but for the child's adoption by an order falling within subsection (5).
- (5) An order falls within this subsection if it is—
  - (a) a relevant adoption order;
  - (b) an adoption order, within the meaning of section 72(1) of the Adoption Act 1976, other than an order made by virtue of section 14 of that Act on the application of a married couple one of whom is the mother or the father of the child;
  - (c) a Scottish adoption order, within the meaning of the Adoption and Children Act 2002, other than an order made—
    - (i) by virtue of section 14 of the Adoption (Scotland) Act 1978 on the application of a married couple one of whom is the mother or the father of the child, or
    - (ii) by virtue of section 15(1)(aa) of that Act; or
  - (d) a Northern Irish adoption order, within the meaning of the Adoption and Children Act 2002, other than an order made by virtue of Article 14 of the Adoption (Northern Ireland) Order 1987 on the application of a married couple one of whom is the mother or the father of the child.
- (6) A relevant adoption order is an adoption order, within the meaning of section 46(1) of the Adoption and Children Act 2002, other than an order made—
  - (a) on an application under section 50 of that Act by a couple (within the meaning of that Act) one of whom is the mother or the father of the person to be adopted, or

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(b) on an application under section 51(2) of that Act.

(7) A court may not make a contact activity direction in relation to an individual unless the individual is habitually resident in England and Wales; and a direction ceases to have effect if the individual subject to the direction ceases to be habitually resident in England and Wales.]

#### Textual Amendments

**F5** S. 11B inserted (7.11.2008) by Children and Adoption Act 2006 (c. 20), ss. 1, 17; S.I. 2008/2870, art. 2(1)

VALID FROM 07/11/2008

#### [<sup>F6</sup>11C Contact activity conditions

- (1) This section applies if in any family proceedings the court makes—
  - (a) a contact order with respect to a child, or
  - (b) an order varying a contact order with respect to a child.
- (2) The contact order may impose, or the contact order may be varied so as to impose, a condition (a “contact activity condition”) requiring an individual falling within subsection (3) to take part in an activity that promotes contact with the child concerned.
- (3) An individual falls within this subsection if he is—
  - (a) for the purposes of the contact order so made or varied, the person with whom the child concerned lives or is to live;
  - (b) the person whose contact with the child concerned is provided for in that order; or
  - (c) a person upon whom that order imposes a condition under section 11(7)(b).
- (4) The condition is to specify the activity and the person providing the activity.
- (5) Subsections (5) and (6) of section 11A have effect as regards the activities that may be required by a contact activity condition as they have effect as regards the activities that may be required by a contact activity direction.
- (6) Subsection (2) has effect subject to the restrictions in sections 11D and 11E.]

#### Textual Amendments

**F6** S. 11C inserted (7.11.2008) by Children and Adoption Act 2006 (c. 20), ss. 1, 17; S.I. 2008/2870, art. 2(1)

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VALID FROM 07/11/2008

**[<sup>F7</sup>11D Contact activity conditions: further provision**

- (1) A contact order may not impose a contact activity condition on an individual who is a child unless the individual is a parent of the child concerned.
- (2) If a contact order is an excepted order (within the meaning given by section 11B(4)), it may not impose (and it may not be varied so as to impose) a contact activity condition.
- (3) A contact order may not impose a contact activity condition on an individual unless the individual is habitually resident in England and Wales; and a condition ceases to have effect if the individual subject to the condition ceases to be habitually resident in England and Wales.]

**Textual Amendments**

- F7** S. 11D inserted (7.11.2008) by [Children and Adoption Act 2006 \(c. 20\)](#), **ss. 1, 17**; [S.I. 2008/2870](#), **art. 2(1)**

VALID FROM 07/11/2008

**[<sup>F8</sup>11E Contact activity directions and conditions: making**

- (1) Before making a contact activity direction (or imposing a contact activity condition by means of a contact order), the court must satisfy itself as to the matters falling within subsections (2) to (4).
- (2) The first matter is that the activity proposed to be specified is appropriate in the circumstances of the case.
- (3) The second matter is that the person proposed to be specified as the provider of the activity is suitable to provide the activity.
- (4) The third matter is that the activity proposed to be specified is provided in a place to which the individual who would be subject to the direction (or the condition) can reasonably be expected to travel.
- (5) Before making such a direction (or such an order), the court must obtain and consider information about the individual who would be subject to the direction (or the condition) and the likely effect of the direction (or the condition) on him.
- (6) Information about the likely effect of the direction (or the condition) may, in particular, include information as to—
  - (a) any conflict with the individual's religious beliefs;
  - (b) any interference with the times (if any) at which he normally works or attends an educational establishment.
- (7) The court may ask an officer of the Service or a Welsh family proceedings officer to provide the court with information as to the matters in subsections (2) to (5); and



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it shall be the duty of the officer of the Service or Welsh family proceedings officer to comply with any such request.

(8) In this section “specified” means specified in a contact activity direction (or in a contact activity condition).]

#### Textual Amendments

**F8** S. 11E inserted (7.11.2008) by [Children and Adoption Act 2006 \(c. 20\)](#), **ss. 1, 17**; [S.I. 2008/2870](#), **art. 2(1)**

VALID FROM 07/11/2008

#### [<sup>F9</sup>11F **Contact activity directions and conditions: financial assistance**

- (1) The Secretary of State may by regulations make provision authorising him to make payments to assist individuals falling within subsection (2) in paying relevant charges or fees.
- (2) An individual falls within this subsection if he is required by a contact activity direction or condition to take part in an activity that promotes contact with a child, not being a child ordinarily resident in Wales.
- (3) The National Assembly for Wales may by regulations make provision authorising it to make payments to assist individuals falling within subsection (4) in paying relevant charges or fees.
- (4) An individual falls within this subsection if he is required by a contact activity direction or condition to take part in an activity that promotes contact with a child who is ordinarily resident in Wales.
- (5) A relevant charge or fee, in relation to an activity required by a contact activity direction or condition, is a charge or fee in respect of the activity payable to the person providing the activity.
- (6) Regulations under this section may provide that no assistance is available to an individual unless—
  - (a) the individual satisfies such conditions as regards his financial resources as may be set out in the regulations;
  - (b) the activity in which the individual is required by a contact activity direction or condition to take part is provided to him in England or Wales;
  - (c) where the activity in which the individual is required to take part is provided to him in England, it is provided by a person who is for the time being approved by the Secretary of State as a provider of activities required by a contact activity direction or condition;
  - (d) where the activity in which the individual is required to take part is provided to him in Wales, it is provided by a person who is for the time being approved by the National Assembly for Wales as a provider of activities required by a contact activity direction or condition.
- (7) Regulations under this section may make provision—

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- (a) as to the maximum amount of assistance that may be paid to or in respect of an individual as regards an activity in which he is required by a contact activity direction or condition to take part;
- (b) where the amount may vary according to an individual's financial resources, as to the method by which the amount is to be determined;
- (c) authorising payments by way of assistance to be made directly to persons providing activities required by a contact activity direction or condition.]

#### Textual Amendments

**F9** S. 11F inserted (7.11.2008) by [Children and Adoption Act 2006 \(c. 20\)](#), **ss. 1, 17**; S.I. 2008/2870, **art. 2(1)**

VALID FROM 07/11/2008

#### [<sup>F10</sup>11G Contact activity directions and conditions: monitoring

- (1) This section applies if in any family proceedings the court—
  - (a) makes a contact activity direction in relation to an individual, or
  - (b) makes a contact order that imposes, or varies a contact order so as to impose, a contact activity condition on an individual.
- (2) The court may on making the direction (or imposing the condition by means of a contact order) ask an officer of the Service or a Welsh family proceedings officer—
  - (a) to monitor, or arrange for the monitoring of, the individual's compliance with the direction (or the condition);
  - (b) to report to the court on any failure by the individual to comply with the direction (or the condition).
- (3) It shall be the duty of the officer of the Service or Welsh family proceedings officer to comply with any request under subsection (2).]

#### Textual Amendments

**F10** S. 11G inserted (7.11.2008) by [Children and Adoption Act 2006 \(c. 20\)](#), **ss. 1, 17**; S.I. 2008/2870, **art. 2(1)**

VALID FROM 08/12/2008

#### [<sup>F11</sup>11H Monitoring contact

- (1) This section applies if in any family proceedings the court makes—
  - (a) a contact order with respect to a child in favour of a person, or
  - (b) an order varying such a contact order.
- (2) The court may ask an officer of the Service or a Welsh family proceedings officer—

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- (a) to monitor whether an individual falling within subsection (3) complies with the contact order (or the contact order as varied);
  - (b) to report to the court on such matters relating to the individual's compliance as the court may specify in the request.
- (3) An individual falls within this subsection if the contact order so made (or the contact order as so varied)—
  - (a) requires the individual to allow contact with the child concerned;
  - (b) names the individual as having contact with the child concerned; or
  - (c) imposes a condition under section 11(7)(b) on the individual.
- (4) If the contact order (or the contact order as varied) includes a contact activity condition, a request under subsection (2) is to be treated as relating to the provisions of the order other than the contact activity condition.
- (5) The court may make a request under subsection (2)—
  - (a) on making the contact order (or the order varying the contact order), or
  - (b) at any time during the subsequent course of the proceedings as they relate to contact with the child concerned.
- (6) In making a request under subsection (2), the court is to specify the period for which the officer of the Service or Welsh family proceedings officer is to monitor compliance with the order; and the period specified may not exceed twelve months.
- (7) It shall be the duty of the officer of the Service or Welsh family proceedings officer to comply with any request under subsection (2).
- (8) The court may order any individual falling within subsection (3) to take such steps as may be specified in the order with a view to enabling the officer of the Service or Welsh family proceedings officer to comply with the court's request under subsection (2).
- (9) But the court may not make an order under subsection (8) with respect to an individual who is a child unless he is a parent of the child with respect to whom the order falling within subsection (1) was made.
- (10) A court may not make a request under subsection (2) in relation to a contact order that is an excepted order (within the meaning given by section 11B(4)).]

#### Textual Amendments

**F11** S. 11H inserted (8.12.2008) by [Children and Adoption Act 2006 \(c. 20\)](#), **ss. 2, 17**; S.I. 2008/2870, **art. 2(2)(b)**

VALID FROM 08/12/2008

#### [<sup>F12</sup>11I **Contact orders: warning notices**

Where the court makes (or varies) a contact order, it is to attach to the contact order (or the order varying the contact order) a notice warning of the consequences of failing to comply with the contact order.]

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### Textual Amendments

**F12** S. 11I inserted (8.12.2008) by [Children and Adoption Act 2006 \(c. 20\)](#), [ss. 3, 17](#) (with [s. 8](#)); [S.I. 2008/2870](#), [art. 2\(2\)\(b\)](#)

VALID FROM 08/12/2008

### <sup>F13</sup>11J Enforcement orders

- (1) This section applies if a contact order with respect to a child has been made.
- (2) If the court is satisfied beyond reasonable doubt that a person has failed to comply with the contact order, it may make an order (an “enforcement order”) imposing on the person an unpaid work requirement.
- (3) But the court may not make an enforcement order if it is satisfied that the person had a reasonable excuse for failing to comply with the contact order.
- (4) The burden of proof as to the matter mentioned in subsection (3) lies on the person claiming to have had a reasonable excuse, and the standard of proof is the balance of probabilities.
- (5) The court may make an enforcement order in relation to the contact order only on the application of—
  - (a) the person who is, for the purposes of the contact order, the person with whom the child concerned lives or is to live;
  - (b) the person whose contact with the child concerned is provided for in the contact order;
  - (c) any individual subject to a condition under section 11(7)(b) or a contact activity condition imposed by the contact order; or
  - (d) the child concerned.
- (6) Where the person proposing to apply for an enforcement order in relation to a contact order is the child concerned, the child must obtain the leave of the court before making such an application.
- (7) The court may grant leave to the child concerned only if it is satisfied that he has sufficient understanding to make the proposed application.
- (8) Subsection (2) has effect subject to the restrictions in sections 11K and 11L.
- (9) The court may suspend an enforcement order for such period as it thinks fit.
- (10) Nothing in this section prevents a court from making more than one enforcement order in relation to the same person on the same occasion.
- (11) Proceedings in which any question of making an enforcement order, or any other question with respect to such an order, arises are to be regarded for the purposes of section 11(1) and (2) as proceedings in which a question arises with respect to a section 8 order.
- (12) In Schedule A1—
  - (a) Part 1 makes provision as regards an unpaid work requirement;

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(b) Part 2 makes provision in relation to the revocation and amendment of enforcement orders and failure to comply with such orders.

(13) This section is without prejudice to section 63(3) of the Magistrates' Courts Act 1980 as it applies in relation to contact orders.]

#### Textual Amendments

**F13** S. 11J inserted (8.12.2008) by Children and Adoption Act 2006 (c. 20), ss. 4(1), 17 (with s. 8); S.I. 2008/2870, art. 2(2)(c)

VALID FROM 08/12/2008

#### [<sup>F14</sup>11K Enforcement orders: further provision

- (1) A court may not make an enforcement order against a person in respect of a failure to comply with a contact order unless it is satisfied that before the failure occurred the person had been given (in accordance with rules of court) a copy of, or otherwise informed of the terms of—
  - (a) in the case of a failure to comply with a contact order that was varied before the failure occurred, a notice under section 11I relating to the order varying the contact order or, where more than one such order has been made, the last order preceding the failure in question;
  - (b) in any other case, a notice under section 11I relating to the contact order.
- (2) A court may not make an enforcement order against a person in respect of any failure to comply with a contact order occurring before the person attained the age of 18.
- (3) A court may not make an enforcement order against a person in respect of a failure to comply with a contact order that is an excepted order (within the meaning given by section 11B(4)).
- (4) A court may not make an enforcement order against a person unless the person is habitually resident in England and Wales; and an enforcement order ceases to have effect if the person subject to the order ceases to be habitually resident in England and Wales.]

#### Textual Amendments

**F14** S. 11K inserted (8.12.2008) by Children and Adoption Act 2006 (c. 20), ss. 4(1), 17 (with s. 8); S.I. 2008/2870, art. 2(2)(c)

VALID FROM 08/12/2008

#### [<sup>F15</sup>11L Enforcement orders: making

- (1) Before making an enforcement order as regards a person in breach of a contact order, the court must be satisfied that—

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- (a) making the enforcement order proposed is necessary to secure the person's compliance with the contact order or any contact order that has effect in its place;
  - (b) the likely effect on the person of the enforcement order proposed to be made is proportionate to the seriousness of the breach of the contact order.
- (2) Before making an enforcement order, the court must satisfy itself that provision for the person to work under an unpaid work requirement imposed by an enforcement order can be made in the local justice area in which the person in breach resides or will reside.
- (3) Before making an enforcement order as regards a person in breach of a contact order, the court must obtain and consider information about the person and the likely effect of the enforcement order on him.
- (4) Information about the likely effect of the enforcement order may, in particular, include information as to—
- (a) any conflict with the person's religious beliefs;
  - (b) any interference with the times (if any) at which he normally works or attends an educational establishment.
- (5) A court that proposes to make an enforcement order may ask an officer of the Service or a Welsh family proceedings officer to provide the court with information as to the matters in subsections (2) and (3).
- (6) It shall be the duty of the officer of the Service or Welsh family proceedings officer to comply with any request under this section.
- (7) In making an enforcement order in relation to a contact order, a court must take into account the welfare of the child who is the subject of the contact order.]

#### Textual Amendments

**F15** S. 11L inserted (8.12.2008) by [Children and Adoption Act 2006 \(c. 20\)](#), **ss. 4(1), 17**; S.I. 2008/2870, **art. 2(2)(c)**

VALID FROM 08/12/2008

#### <sup>F16</sup>11M Enforcement orders: monitoring

- (1) On making an enforcement order in relation to a person, the court is to ask an officer of the Service or a Welsh family proceedings officer—
- (a) to monitor, or arrange for the monitoring of, the person's compliance with the unpaid work requirement imposed by the order;
  - (b) to report to the court if a report under paragraph 8 of Schedule A1 is made in relation to the person;
  - (c) to report to the court on such other matters relating to the person's compliance as may be specified in the request;
  - (d) to report to the court if the person is, or becomes, unsuitable to perform work under the requirement.

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(2) It shall be the duty of the officer of the Service or Welsh family proceedings officer to comply with any request under this section.]

#### Textual Amendments

**F16** S. 11M inserted (8.12.2008) by Children and Adoption Act 2006 (c. 20), ss. 4(1), 17; S.I. 2008/2870, art. 2(2)(c)

VALID FROM 08/12/2008

#### [<sup>F17</sup>11N Enforcement orders: warning notices

Where the court makes an enforcement order, it is to attach to the order a notice warning of the consequences of failing to comply with the order.]

#### Textual Amendments

**F17** S. 11N inserted (8.12.2008) by Children and Adoption Act 2006 (c. 20), ss. 4(1), 17; S.I. 2008/2870, art. 2(2)(c)

VALID FROM 08/12/2008

#### [<sup>F18</sup>11O Compensation for financial loss

- (1) This section applies if a contact order with respect to a child has been made.
- (2) If the court is satisfied that—
  - (a) an individual has failed to comply with the contact order, and
  - (b) a person falling within subsection (6) has suffered financial loss by reason of the breach,it may make an order requiring the individual in breach to pay the person compensation in respect of his financial loss.
- (3) But the court may not make an order under subsection (2) if it is satisfied that the individual in breach had a reasonable excuse for failing to comply with the contact order.
- (4) The burden of proof as to the matter mentioned in subsection (3) lies on the individual claiming to have had a reasonable excuse.
- (5) An order under subsection (2) may be made only on an application by the person who claims to have suffered financial loss.
- (6) A person falls within this subsection if he is—
  - (a) the person who is, for the purposes of the contact order, the person with whom the child concerned lives or is to live;
  - (b) the person whose contact with the child concerned is provided for in the contact order;

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- (c) an individual subject to a condition under section 11(7)(b) or a contact activity condition imposed by the contact order; or
  - (d) the child concerned.
- (7) Where the person proposing to apply for an order under subsection (2) is the child concerned, the child must obtain the leave of the court before making such an application.
- (8) The court may grant leave to the child concerned only if it is satisfied that he has sufficient understanding to make the proposed application.
- (9) The amount of compensation is to be determined by the court, but may not exceed the amount of the applicant's financial loss.
- (10) In determining the amount of compensation payable by the individual in breach, the court must take into account the individual's financial circumstances.
- (11) An amount ordered to be paid as compensation may be recovered by the applicant as a civil debt due to him.
- (12) Subsection (2) has effect subject to the restrictions in section 11P.
- (13) Proceedings in which any question of making an order under subsection (2) arises are to be regarded for the purposes of section 11(1) and (2) as proceedings in which a question arises with respect to a section 8 order.
- (14) In exercising its powers under this section, a court is to take into account the welfare of the child concerned.]

#### Textual Amendments

**F18** S. 11O inserted (8.12.2008) by [Children and Adoption Act 2006 \(c. 20\)](#), ss. 5, 17; S.I. 2008/2870, art. 2(2)(d)

VALID FROM 08/12/2008

#### <sup>F19</sup>11P Orders under section 11O(2): further provision

- (1) A court may not make an order under section 11O(2) requiring an individual to pay compensation in respect of a failure by him to comply with a contact order unless it is satisfied that before the failure occurred the individual had been given (in accordance with rules of court) a copy of, or otherwise informed of the terms of—
- (a) in the case of a failure to comply with a contact order that was varied before the failure occurred, a notice under section 11I relating to the order varying the contact order or, where more than one such order has been made, the last order preceding the failure in question;
  - (b) in any other case, a notice under section 11I relating to the contact order.
- (2) A court may not make an order under section 11O(2) requiring an individual to pay compensation in respect of a failure by him to comply with a contact order where the failure occurred before the individual attained the age of 18.



**Status:** Point in time view as at 19/11/1991. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Children Act 1989 is up to date with all changes known to be in force on or before 02 June 2024. 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)

- (3) A court may not make an order under section 11O(2) requiring an individual to pay compensation in respect of a failure by him to comply with a contact order that is an excepted order (within the meaning given by section 11B(4)).]

#### Textual Amendments

- F19** S. 11P inserted (8.12.2008) by Children and Adoption Act 2006 (c. 20), ss. 5, 17 (with s. 8); S.I. 2008/2870, art. 2(2)(d)

## 12 Residence orders and parental responsibility.

- (1) Where the court makes a residence order in favour of the father of a child it shall, if the father would not otherwise have parental responsibility for the child, also make an order under section 4 giving him that responsibility.
- (2) Where the court makes a residence order in favour of any person who is not the parent or guardian of the child concerned that person shall have parental responsibility for the child while the residence order remains in force.
- (3) Where a person has parental responsibility for a child as a result of subsection (2), he shall not have the right—
- to consent, or refuse to consent, to the making of an application with respect to the child under section 18 of the <sup>M9</sup>Adoption Act 1976;
  - to agree, or refuse to agree, to the making of an adoption order, or an order under section 55 of the Act of 1976, with respect to the child; or
  - to appoint a guardian for the child.
- (4) Where subsection (1) requires the court to make an order under section 4 in respect of the father of a child, the court shall not bring that order to an end at any time while the residence order concerned remains in force.

#### Commencement Information

- I12** S. 12 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### Marginal Citations

- M9** 1976 c. 36.

## 13 Change of child's name or removal from jurisdiction.

- (1) Where a residence order is in force with respect to a child, no person may—
- cause the child to be known by a new surname; or
  - remove him from the United Kingdom;
- without either the written consent of every person who has parental responsibility for the child or the leave of the court.
- (2) Subsection (1)(b) does not prevent the removal of a child, for a period of less than one month, by the person in whose favour the residence order is made.

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- (3) In making a residence order with respect to a child the court may grant the leave required by subsection (1)(b), either generally or for specified purposes.

**Commencement Information**

**I13** S. 13 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

**14 Enforcement of residence orders.**

- (1) Where—

- (a) a residence order is in force with respect to a child in favour of any person; and  
(b) any other person (including one in whose favour the order is also in force) is in breach of the arrangements settled by that order,

the person mentioned in paragraph (a) may, as soon as the requirement in subsection (2) is complied with, enforce the order under section 63(3) of the <sup>M10</sup>Magistrates' Courts Act 1980 as if it were an order requiring the other person to produce the child to him.

- (2) The requirement is that a copy of the residence order has been served on the other person.  
(3) Subsection (1) is without prejudice to any other remedy open to the person in whose favour the residence order is in force.

**Commencement Information**

**I14** S. 14 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

**Marginal Citations**

**M10** 1980 c. 43.

VALID FROM 17/01/2005

*<sup>F20</sup>Special guardianship*

**Textual Amendments**

**F20** Ss. 14A-14G and heading inserted (30.12.2005) by 2002 c. 38, ss. 115(1), 148 (with Sch. 4 paras. 6-8); S.I. 2005/2213, {art. 2k}

VALID FROM 30/12/2005

**<sup>F21</sup>14A Special guardianship orders**

- (1) A “special guardianship order” is an order appointing one or more individuals to be a child’s “special guardian” (or special guardians).

*Status:* Point in time view as at 19/11/1991. This version of this Act contains provisions that are not valid for this point in time.

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- (2) A special guardian—
  - (a) must be aged eighteen or over; and
  - (b) must not be a parent of the child in question,and subsections (3) to (6) are to be read in that light.
- (3) The court may make a special guardianship order with respect to any child on the application of an individual who—
  - (a) is entitled to make such an application with respect to the child; or
  - (b) has obtained the leave of the court to make the application,or on the joint application of more than one such individual.
- (4) Section 9(3) applies in relation to an application for leave to apply for a special guardianship order as it applies in relation to an application for leave to apply for a section 8 order.
- (5) The individuals who are entitled to apply for a special guardianship order with respect to a child are—
  - (a) any guardian of the child;
  - (b) any individual in whose favour a residence order is in force with respect to the child;
  - (c) any individual listed in subsection (5)(b) or (c) of section 10 (as read with subsection (10) of that section);
  - (d) a local authority foster parent with whom the child has lived for a period of at least one year immediately preceding the application.
- (6) The court may also make a special guardianship order with respect to a child in any family proceedings in which a question arises with respect to the welfare of the child if—
  - (a) an application for the order has been made by an individual who falls within subsection (3)(a) or (b) (or more than one such individual jointly); or
  - (b) the court considers that a special guardianship order should be made even though no such application has been made.
- (7) No individual may make an application under subsection (3) or (6)(a) unless, before the beginning of the period of three months ending with the date of the application, he has given written notice of his intention to make the application—
  - (a) if the child in question is being looked after by a local authority, to that local authority, or
  - (b) otherwise, to the local authority in whose area the individual is ordinarily resident.
- (8) On receipt of such a notice, the local authority must investigate the matter and prepare a report for the court dealing with—
  - (a) the suitability of the applicant to be a special guardian;
  - (b) such matters (if any) as may be prescribed by the Secretary of State; and
  - (c) any other matter which the local authority consider to be relevant.
- (9) The court may itself ask a local authority to conduct such an investigation and prepare such a report, and the local authority must do so.

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- (10) The local authority may make such arrangements as they see fit for any person to act on their behalf in connection with conducting an investigation or preparing a report referred to in subsection (8) or (9).
- (11) The court may not make a special guardianship order unless it has received a report dealing with the matters referred to in subsection (8).
- (12) Subsections (8) and (9) of section 10 apply in relation to special guardianship orders as they apply in relation to section 8 orders.
- (13) This section is subject to section 29(5) and (6) of the Adoption and Children Act 2002.

#### Textual Amendments

**F21** Ss. 14A-14G inserted (30.12.2005) by 2002 c. 38, ss. 115(1), 148 (with Sch. 4 paras. 6-8); S.I. 2005/2213, art. 2(k)

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

**C3** S. 14A(7) applied (with modifications) (30.12.2005) by 2002 c. 38, ss. 29(6), 148 (with Sch. 4 paras. 6-8); S.I. 2005/2213, art. 2(c)

VALID FROM 30/12/2005

#### <sup>F22</sup>14B Special guardianship orders: making

- (1) Before making a special guardianship order, the court must consider whether, if the order were made—
  - (a) a contact order should also be made with respect to the child, and
  - (b) any section 8 order in force with respect to the child should be varied or discharged.
- (2) On making a special guardianship order, the court may also—
  - (a) give leave for the child to be known by a new surname;
  - (b) grant the leave required by section 14C(3)(b), either generally or for specified purposes.

#### Textual Amendments

**F22** Ss. 14A-14G inserted (30.12.2005) by 2002 c. 38, ss. 115(1), 148 (with Sch. 4 paras. 6-8); S.I. 2005/2213, art. 2(k)

VALID FROM 30/12/2005

#### <sup>F23</sup>14C Special guardianship orders: effect

- (1) The effect of a special guardianship order is that while the order remains in force—

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- (a) a special guardian appointed by the order has parental responsibility for the child in respect of whom it is made; and
  - (b) subject to any other order in force with respect to the child under this Act, a special guardian is entitled to exercise parental responsibility to the exclusion of any other person with parental responsibility for the child (apart from another special guardian).
- (2) Subsection (1) does not affect—
- (a) the operation of any enactment or rule of law which requires the consent of more than one person with parental responsibility in a matter affecting the child; or
  - (b) any rights which a parent of the child has in relation to the child's adoption or placement for adoption.
- (3) While a special guardianship order is in force with respect to a child, no person may—
- (a) cause the child to be known by a new surname; or
  - (b) remove him from the United Kingdom,
- without either the written consent of every person who has parental responsibility for the child or the leave of the court.
- (4) Subsection (3)(b) does not prevent the removal of a child, for a period of less than three months, by a special guardian of his.
- (5) If the child with respect to whom a special guardianship order is in force dies, his special guardian must take reasonable steps to give notice of that fact to—
- (a) each parent of the child with parental responsibility; and
  - (b) each guardian of the child,
- but if the child has more than one special guardian, and one of them has taken such steps in relation to a particular parent or guardian, any other special guardian need not do so as respects that parent or guardian.
- (6) This section is subject to section 29(7) of the Adoption and Children Act 2002.

#### Textual Amendments

**F23** Ss. 14A-14G inserted (30.12.2005) by 2002 c. 38, ss. 115(1), 148 (with Sch. 4 paras. 6-8); S.I. 2005/2213, art. 2(k)

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

**C4** S. 14C(1)(b) modified (30.12.2005) by 2002 c. 38, ss. 29(7)(a), 148 (with Sch. 4 paras. 6-8); S.I. 2005/2213, art. 2(e)

**C5** S. 14C(3)(4) excluded (30.12.2005) by 2002 c. 38, ss. 29(7)(b), 148 (with Sch. 4 paras. 6-8); S.I. 2005/2213, art. 2(e)

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VALID FROM 30/12/2005

**F24 14D Special guardianship orders: variation and discharge**

- (1) The court may vary or discharge a special guardianship order on the application of—
  - (a) the special guardian (or any of them, if there are more than one);
  - (b) any parent or guardian of the child concerned;
  - (c) any individual in whose favour a residence order is in force with respect to the child;
  - (d) any individual not falling within any of paragraphs (a) to (c) who has, or immediately before the making of the special guardianship order had, parental responsibility for the child;
  - (e) the child himself; or
  - (f) a local authority designated in a care order with respect to the child.
- (2) In any family proceedings in which a question arises with respect to the welfare of a child with respect to whom a special guardianship order is in force, the court may also vary or discharge the special guardianship order if it considers that the order should be varied or discharged, even though no application has been made under subsection (1).
- (3) The following must obtain the leave of the court before making an application under subsection (1)—
  - (a) the child;
  - (b) any parent or guardian of his;
  - (c) any step-parent of his who has acquired, and has not lost, parental responsibility for him by virtue of section 4A;
  - (d) any individual falling within subsection (1)(d) who immediately before the making of the special guardianship order had, but no longer has, parental responsibility for him.
- (4) Where the person applying for leave to make an application under subsection (1) is the child, the court may only grant leave if it is satisfied that he has sufficient understanding to make the proposed application under subsection (1).
- (5) The court may not grant leave to a person falling within subsection (3)(b)(c) or (d) unless it is satisfied that there has been a significant change in circumstances since the making of the special guardianship order.

**Textual Amendments**

**F24** Ss. 14A-14G inserted (30.12.2005) by 2002 c. 38, ss. 115(1), 148 (with Sch. 4 paras. 6-8); S.I. 2005/2213, art. 2(k)

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VALID FROM 30/12/2005

**<sup>F25</sup>14E Special guardianship orders: supplementary**

- (1) In proceedings in which any question of making, varying or discharging a special guardianship order arises, the court shall (in the light of any rules made by virtue of subsection (3))—
  - (a) draw up a timetable with a view to determining the question without delay; and
  - (b) give such directions as it considers appropriate for the purpose of ensuring, so far as is reasonably practicable, that the timetable is adhered to.
- (2) Subsection (1) applies also in relation to proceedings in which any other question with respect to a special guardianship order arises.
- (3) The power to make rules in subsection (2) of section 11 applies for the purposes of this section as it applies for the purposes of that.
- (4) A special guardianship order, or an order varying one, may contain provisions which are to have effect for a specified period.
- (5) Section 11(7) (apart from paragraph (c)) applies in relation to special guardianship orders and orders varying them as it applies in relation to section 8 orders.

**Textual Amendments**

**F25** Ss. 14A-14G inserted (30.12.2005) by 2002 c. 38, ss. 115(1), 148 (with Sch. 4 paras. 6-8); S.I. 2005/2213, art. 2(k)

VALID FROM 30/12/2005

**<sup>F26</sup>14F Special guardianship support services**

- (1) Each local authority must make arrangements for the provision within their area of special guardianship support services, which means—
  - (a) counselling, advice and information; and
  - (b) such other services as are prescribed,in relation to special guardianship.
- (2) The power to make regulations under subsection (1)(b) is to be exercised so as to secure that local authorities provide financial support.
- (3) At the request of any of the following persons—
  - (a) a child with respect to whom a special guardianship order is in force;
  - (b) a special guardian;
  - (c) a parent;
  - (d) any other person who falls within a prescribed description,a local authority may carry out an assessment of that person's needs for special guardianship support services (but, if the Secretary of State so provides in

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regulations, they must do so if he is a person of a prescribed description, or if his case falls within a prescribed description, or if both he and his case fall within prescribed descriptions).

- (4) A local authority may, at the request of any other person, carry out an assessment of that person's needs for special guardianship support services.
- (5) Where, as a result of an assessment, a local authority decide that a person has needs for special guardianship support services, they must then decide whether to provide any such services to that person.
- (6) If—
  - (a) a local authority decide to provide any special guardianship support services to a person, and
  - (b) the circumstances fall within a prescribed description,
 the local authority must prepare a plan in accordance with which special guardianship support services are to be provided to him, and keep the plan under review.
- (7) The Secretary of State may by regulations make provision about assessments, preparing and reviewing plans, the provision of special guardianship support services in accordance with plans and reviewing the provision of special guardianship support services.
- (8) The regulations may in particular make provision—
  - (a) about the type of assessment which is to be carried out, or the way in which an assessment is to be carried out;
  - (b) about the way in which a plan is to be prepared;
  - (c) about the way in which, and the time at which, a plan or the provision of special guardianship support services is to be reviewed;
  - (d) about the considerations to which a local authority are to have regard in carrying out an assessment or review or preparing a plan;
  - (e) as to the circumstances in which a local authority may provide special guardianship support services subject to conditions (including conditions as to payment for the support or the repayment of financial support);
  - (f) as to the consequences of conditions imposed by virtue of paragraph (e) not being met (including the recovery of any financial support provided);
  - (g) as to the circumstances in which this section may apply to a local authority in respect of persons who are outside that local authority's area;
  - (h) as to the circumstances in which a local authority may recover from another local authority the expenses of providing special guardianship support services to any person.
- (9) A local authority may provide special guardianship support services (or any part of them) by securing their provision by—
  - (a) another local authority; or
  - (b) a person within a description prescribed in regulations of persons who may provide special guardianship support services,
 and may also arrange with any such authority or person for that other authority or that person to carry out the local authority's functions in relation to assessments under this section.



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(10) A local authority may carry out an assessment of the needs of any person for the purposes of this section at the same time as an assessment of his needs is made under any other provision of this Act or under any other enactment.

(11) Section 27 (co-operation between authorities) applies in relation to the exercise of functions of a local authority under this section as it applies in relation to the exercise of functions of a local authority under Part 3.]

#### Textual Amendments

**F26** Ss. 14A-14G inserted (30.12.2005) by 2002 c. 38, ss. 115(1), 148 (with Sch. 4 paras. 6-8); S.I. 2005/2213, art. 2(k)

#### <sup>F27</sup>14G Special guardianship support services: representations

- (1) Every local authority shall establish a procedure for considering representations (including complaints) made to them by any person to whom they may provide special guardianship support services about the discharge of their functions under section 14F in relation to him.
- (2) Regulations may be made by the Secretary of State imposing time limits on the making of representations under subsection (1).
- (3) In considering representations under subsection (1), a local authority shall comply with regulations (if any) made by the Secretary of State for the purposes of this subsection.

#### Textual Amendments

**F27** Ss. 14A-14G inserted (prosp.) by 2002 c. 38, ss. 115(1), 148 (with Sch. 4 paras. 6-8)

### *Financial relief*

#### 15 Orders for financial relief with respect to children.

- (1) Schedule 1 (which consists primarily of the re-enactment, with consequential amendments and minor modifications, of provisions of [<sup>F28</sup>section 6 of Family Law Reform Act 1969]the Guardianship of Minors Acts 1971 and 1973, the <sup>M11</sup>Children Act 1975 and of sections 15 and 16 of the <sup>M12</sup>Family Law Reform Act 1987) makes provision in relation to financial relief for children.
- (2) The powers of a magistrates' court under section 60 of the Magistrates' Courts Act 1980 to revoke, revive or vary an order for the periodical payment of money shall not apply in relation to an order made under Schedule 1.

#### Textual Amendments

**F28** Words in s. 15(2) inserted (14.10.1991) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), s. 116, Sch. 16 para. 10(1), S.I. 1991/1883, art. 3, Sch.

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#### **Commencement Information**

**I15** S. 15 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### **Marginal Citations**

**M11** 1975 c. 72.

**M12** 1987 c. 42.

### *Family assistance orders*

## **16 Family assistance orders.**

- (1) Where, in any family proceedings, the court has power to make an order under this Part with respect to any child, it may (whether or not it makes such an order) make an order requiring—
  - (a) a probation officer to be made available; or
  - (b) a local authority to make an officer of the authority available, to advise, assist and (where appropriate) befriend any person named in the order.
- (2) The persons who may be named in an order under this section (“a family assistance order”) are—
  - (a) any parent or guardian of the child;
  - (b) any person with whom the child is living or in whose favour a contact order is in force with respect to the child;
  - (c) the child himself.
- (3) No court may make a family assistance order unless—
  - (a) it is satisfied that the circumstances of the case are exceptional; and
  - (b) it has obtained the consent of every person to be named in the order other than the child.
- (4) A family assistance order may direct—
  - (a) the person named in the order; or
  - (b) such of the persons named in the order as may be specified in the order, to take such steps as may be so specified with a view to enabling the officer concerned to be kept informed of the address of any person named in the order and to be allowed to visit any such person.
- (5) Unless it specifies a shorter period, a family assistance order shall have effect for a period of six months beginning with the day on which it is made.
- (6) Where—
  - (a) a family assistance order is in force with respect to a child; and
  - (b) a section 8 order is also in force with respect to the child, the officer concerned may refer to the court the question whether the section 8 order should be varied or discharged.
- (7) A family assistance order shall not be made so as to require a local authority to make an officer of theirs available unless—
  - (a) the authority agree; or
  - (b) the child concerned lives or will live within their area.

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- (8) Where a family assistance order requires a probation officer to be made available, the officer shall be selected in accordance with arrangements made by the probation committee for the area in which the child lives or will live.
- (9) If the selected probation officer is unable to carry out his duties, or dies, another probation officer shall be selected in the same manner.

#### Commencement Information

**I16** S. 16 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

VALID FROM 01/10/2010

#### <sup>F29</sup>16A Risk assessments

- (1) This section applies to the following functions of officers of the Service or Welsh family proceedings officers—
  - (a) any function in connection with family proceedings in which the court has power to make an order under this Part with respect to a child or in which a question with respect to such an order arises;
  - (b) any function in connection with an order made by the court in such proceedings.
- (2) If, in carrying out any function to which this section applies, an officer of the Service or a Welsh family proceedings officer is given cause to suspect that the child concerned is at risk of harm, he must—
  - (a) make a risk assessment in relation to the child, and
  - (b) provide the risk assessment to the court.
- (3) A risk assessment, in relation to a child who is at risk of suffering harm of a particular sort, is an assessment of the risk of that harm being suffered by the child.]

#### Textual Amendments

**F29** S. 16A inserted (1.10.2007) by Children and Adoption Act 2006 (c. 20), ss. 7, 17; S.I. 2007/2287, art. 2(2)(b)

## PART III

### LOCAL AUTHORITY SUPPORT FOR CHILDREN AND FAMILIES

#### *Provision of services for children and their families*

#### **17 Provision of services for children in need, their families and others.**

- (1) It shall be the general duty of every local authority (in addition to the other duties imposed on them by this Part)—

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- (a) to safeguard and promote the welfare of children within their area who are in need; and
  - (b) so far as is consistent with that duty, to promote the upbringing of such children by their families,

by providing a range and level of services appropriate to those children's needs.
- (2) For the purpose principally of facilitating the discharge of their general duty under this section, every local authority shall have the specific duties and powers set out in Part 1 of Schedule 2.
- (3) Any service provided by an authority in the exercise of functions conferred on them by this section may be provided for the family of a particular child in need or for any member of his family, if it is provided with a view to safeguarding or promoting the child's welfare.
- (4) The Secretary of State may by order amend any provision of Part I of Schedule 2 or add any further duty or power to those for the time being mentioned there.
- (5) Every local authority—
  - (a) shall facilitate the provision by others (including in particular voluntary organisations) of services which the authority have power to provide by virtue of this section, or section 18, 20, 23 or 24; and
  - (b) may make such arrangements as they see fit for any person to act on their behalf in the provision of any such service.
- (6) The services provided by a local authority in the exercise of functions conferred on them by this section may include giving assistance in kind or, in exceptional circumstances, in cash.
- (7) Assistance may be unconditional or subject to conditions as to the repayment of the assistance or of its value (in whole or in part).
- (8) Before giving any assistance or imposing any conditions, a local authority shall have regard to the means of the child concerned and of each of his parents.
- (9) No person shall be liable to make any repayment of assistance or of its value at any time when he is in receipt of income support [<sup>F30</sup>, family credit or disability working allowance] under the <sup>M13</sup>Social Security Act 1986.
- (10) For the purposes of this Part a child shall be taken to be in need if—
  - (a) he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by a local authority under this Part;
  - (b) his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services; or
  - (c) he is disabled,

and "family", in relation to such a child, includes any person who has parental responsibility for the child and any other person with whom he has been living.
- (11) For the purposes of this Part, a child is disabled if he is blind, deaf or dumb or suffers from mental disorder of any kind or is substantially and permanently handicapped by illness, injury or congenital deformity or such other disability as may be prescribed; and in this Part—

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“development” means physical, intellectual, emotional, social or behavioural development; and

“health” means physical or mental health.

#### Textual Amendments

**F30** Words in s. 17(9) substituted (19.11.1991) by Disability Living Allowance and Disability Working Allowance Act 1991 (c. 21, SIF 113:1), s. 7, **Sch. 3 Pt. II**, para.13; S.I. 1991/2617,art. 2(b), Sch.

#### Commencement Information

**I17** S. 17 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, **art. 3(2)**

#### Marginal Citations

**M13** 1986 c. 50.

VALID FROM 01/04/2001

#### <sup>F31</sup>17A Direct payments.

- (1) Instead of providing services in the exercise of functions conferred on them by section 17, a local authority may make to a person falling within subsection (2) (if he consents) a payment of such amount as, subject to subsections (5) and (6), they think fit in respect of his securing the provision of any of the services which the local authority would otherwise have provided.
- (2) The following fall within this subsection—
  - (a) a person with parental responsibility for a disabled child;
  - (b) a disabled child aged 16 or 17.
- (3) A payment under subsection (1) shall be subject to the condition that the person to whom it is made shall not secure the provision of the service to which it relates by a person who is of a prescribed description.
- (4) The Secretary of State may by regulations provide that the power conferred by subsection (1) is not to be exercisable in relation to the provision of residential accommodation for any person for a period exceeding a prescribed period.
- (5) Except as mentioned in subsection (6) of this section, subsections (2) and (6) of section 1, and subsections (1) and (2) of section 2, of the<sup>M14</sup>Community Care (Direct Payments) Act 1996 apply in relation to payments under subsection (1) as they apply in relation to payments under section 1(1) of that Act, but as if—
  - (a) the reference to “subsection (4)” in section 1(6)(b) of that Act were a reference to subsection (3) of this section; and
  - (b) the references to “the relevant community care enactment” in section 2 of that Act were to Part III of the<sup>M15</sup>Children Act 1989.
- (6) Section 1(2) of the Community Care (Direct Payments) Act 1996 does not apply in relation to payments under subsection (1) to—
  - (a) a person with parental responsibility for a disabled child, other than a parent of such a child under the age of sixteen, in respect of a service which would otherwise have been provided for the child; or

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(b) any person who is in receipt of income support, working families' tax credit or disabled person's tax credit under Part VII of the <sup>M16</sup>Social Security Contributions and Benefits Act 1992 or of an income-based jobseeker's allowance,

and in those cases the amount of any payment under subsection (1) is to be at a rate equal to the local authority's estimate of the reasonable cost of securing the provision of the service concerned.]

#### Textual Amendments

**F31** S. 17A inserted (1.4.2001 (E.) and 1.7.2001 (W.)) by 2000 c. 16, s. 7(1); S.I. 2001/510, art. 2, Sch; S.I. 2001/2196, art. 2, Sch.

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

**C6** S. 17A(1) restricted (W.) (1.7.2001) by S.I. 2001/2192, reg. 3

#### Marginal Citations

**M14** 1996 c. 30.

**M15** 1989 c.41.

**M16** 1992 c. 4.

### [<sup>F32</sup>17B Vouchers for persons with parental responsibility for disabled children.

- (1) The Secretary of State may by regulations make provision for the issue by a local authority of vouchers to a person with parental responsibility for a disabled child.
- (2) "Voucher" means a document whereby, if the local authority agrees with the person with parental responsibility that it would help him care for the child if the person with parental responsibility had a break from caring, that person may secure the temporary provision of services for the child under section 17.
- (3) The regulations may, in particular, provide—
  - (a) for the value of a voucher to be expressed in terms of money, or of the delivery of a service for a period of time, or both;
  - (b) for the person who supplies a service against a voucher, or for the arrangement under which it is supplied, to be approved by the local authority;
  - (c) for a maximum period during which a service (or a service of a prescribed description) can be provided against a voucher.]

#### Textual Amendments

**F32** S. 17B inserted (30.4.2003 for E. and otherwise prosp.) by 2000 c. 16, ss. 7(1), 12(2); S.I. 2003/1183, art. 2

### 18 Day care for pre-school and other children.

- (1) Every local authority shall provide such day care for children in need within their area who are—
  - (a) aged five or under; and

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- (b) not yet attending schools,  
as is appropriate.
- (2) A local authority may provide day care for children within their area who satisfy the conditions mentioned in subsection (1)(a) and (b) even though they are not in need.
- (3) A local authority may provide facilities (including training, advice, guidance and counselling) for those—
  - (a) caring for children in day care; or
  - (b) who at any time accompany such children while they are in day care.
- (4) In this section “day care” means any form of care or supervised activity provided for children during the day (whether or not it is provided on a regular basis).
- (5) Every local authority shall provide for children in need within their area who are attending any school such care or supervised activities as is appropriate—
  - (a) outside school hours; or
  - (b) during school holidays.
- (6) A local authority may provide such care or supervised activities for children within their area who are attending any school even though those children are not in need.
- (7) In this section “supervised activity” means an activity supervised by a responsible person.

#### Commencement Information

**118** S. 18 wholly in force at 14.10.1991 see s. 108(2)(3) and [S.I. 1991/828, art. 3\(2\)](#)

## 19 Review of provision for day care, child minding etc.

- (1) Every local authority in England and Wales shall review—
  - (a) the provision which they make under section 18;
  - (b) the extent to which the services of child minders are available within their area with respect to children under the age of eight; and
  - (c) the provision for day care within their area made for children under the age of eight by persons other, than the authority, required to register under section 71(1)(b).
- (2) A review under subsection (1) shall be conducted—
  - (a) together with the appropriate local education authority; and
  - (b) at least once in every review period.
- (3) Every local authority in Scotland shall, at least once in every review period, review—
  - (a) the provision for day care within their area made for children under the age of eight by the local authority and by persons required to register under section 71(1)(b); and
  - (b) the extent to which the services of child minders are available within their area with respect to children under the age of eight.
- (4) In conducting any such review, the two authorities or, in Scotland, the authority shall have regard to the provision made with respect to children under the age of eight in relevant establishments within their area.

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(5) In this section—

“relevant establishment” means any establishment which is mentioned in paragraphs 3 and 4 of Schedule 9 (hospitals, schools and other establishments exempt from the registration requirements which apply in relation to the provision of day care); and

“review period” means the period of one year beginning with the commencement of this section and each subsequent period of three years beginning with an anniversary of that commencement.

(6) Where a local authority have conducted a review under this section they shall publish the result of the review—

- (a) as soon as is reasonably practicable;
- (b) in such form as they consider appropriate; and
- (c) together with any proposals they may have with respect to the matters reviewed.

(7) The authorities conducting any review under this section shall have regard to—

- (a) any representations made to any one of them by any relevant health authority or health board; and
- (b) any other representations which they consider to be relevant.

(8) In the application of this section to Scotland, “day care” has the same meaning as in section 79 and “health board” has the same meaning as in the <sup>M17</sup>National Health Service (Scotland) Act 1978.

**Commencement Information**

**I19** S. 19 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

**Marginal Citations**

**M17** 1978 c. 29.

*Provision of accommodation for children*

**20 Provision of accommodation for children: general.**

(1) Every local authority shall provide accommodation for any child in need within their area who appears to them to require accommodation as a result of—

- (a) there being no person who has parental responsibility for him;
- (b) his being lost or having been abandoned; or
- (c) the person who has been caring for him being prevented (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care.

(2) Where a local authority provide accommodation under subsection (1) for a child who is ordinarily resident in the area of another local authority, that other local authority may take over the provision of accommodation for the child within—

- (a) three months of being notified in writing that the child is being provided with accommodation; or
- (b) such other longer period as may be prescribed.



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- (3) Every local authority shall provide accommodation for any child in need within their area who has reached the age of sixteen and whose welfare the authority consider is likely to be seriously prejudiced if they do not provide him with accommodation.
- (4) A local authority may provide accommodation for any child within their area (even though a person who has parental responsibility for him is able to provide him with accommodation) if they consider that to do so would safeguard or promote the child's welfare.
- (5) A local authority may provide accommodation for any person who has reached the age of sixteen but is under twenty-one in any community home which takes children who have reached the age of sixteen if they consider that to do so would safeguard or promote his welfare.
- (6) Before providing accommodation under this section, a local authority shall, so far as is reasonably practicable and consistent with the child's welfare—
  - (a) ascertain the child's wishes regarding the provision of accommodation; and
  - (b) give due consideration (having regard to his age and understanding) to such wishes of the child as they have been able to ascertain.
- (7) A local authority may not provide accommodation under this section for any child if any person who—
  - (a) has parental responsibility for him; and
  - (b) is willing and able to—
    - (i) provide accommodation for him; or
    - (ii) arrange for accommodation to be provided for him, objects.
- (8) Any person who has parental responsibility for a child may at any time remove the child from accommodation provided by or on behalf of the local authority under this section.
- (9) Subsections (7) and (8) do not apply while any person—
  - (a) in whose favour a residence order is in force with respect to the child; or
  - (b) who has care of the child by virtue of an order made in the exercise of the High Court's inherent jurisdiction with respect to children, agrees to the child being looked after in accommodation provided by or on behalf of the local authority.
- (10) Where there is more than one such person as is mentioned in subsection (9), all of them must agree.
- (11) Subsections (7) and (8) do not apply where a child who has reached the age of sixteen agrees to being provided with accommodation under this section.

#### **Commencement Information**

**I20** S. 20 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

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## 21 Provision of accommodation for children in police protection or detention or on remand, etc.

- (1) Every local authority shall make provision for the reception and accommodation of children who are removed or kept away from home under Part V.
- (2) Every local authority shall receive, and provide accommodation for, children—
  - (a) in police protection whom they are requested to receive under section 46(3)(f);
  - (b) whom they are requested to receive under section 38(6) of the <sup>M18</sup>Police and Criminal Evidence Act 1984;
  - (c) who are—
    - (i) on remand under section [<sup>F33</sup>16(3A) or]23(1) of the <sup>M19</sup>Children and Young Persons Act 1969; or
    - (ii) the subject of a supervision order imposing a residence requirement under section 12AA of that Act,
 and with respect to whom they are the designated authority.
- (3) Where a child has been—
  - (a) removed under Part V; or
  - (b) detained under section 38 of the Police and Criminal Evidence Act 1984,
 and he is not being provided with accommodation by a local authority or in a hospital vested in the Secretary of State [<sup>F34</sup>or otherwise made available pursuant to arrangements made by a District Health Authority], any reasonable expenses of accommodating him shall be recoverable from the local authority in whose area he is ordinarily resident.

### Textual Amendments

**F33** Words in s. 21(2)(c)(i) inserted (14.10.1991) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), s. 116, **Sch. 16 para. 11**; S.I. 1991/1883, art. 3, **Sch.**

**F34** Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 36(1)**

### Commencement Information

**I21** S. 21 in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, **art. 3(2)**

### Marginal Citations

**M18** 1984 c. 60.

**M19** 1969 c. 54.

*Duties of local authorities in relation to children looked after by them*

## 22 General duty of local authority in relation to children looked after by them.

- (1) In this Act, any reference to a child who is looked after by a local authority is a reference to a child who is—
  - (a) in their care; or
  - (b) provided with accommodation by the authority in the exercise of any functions (in particular those under this Act) which stand referred to their social services committee under the <sup>M20</sup>Local Authority Social Services Act 1970.

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- (2) In subsection (1) “accommodation” means accommodation which is provided for a continuous period of more than 24 hours.
- (3) It shall be the duty of a local authority looking after any child—
  - (a) to safeguard and promote his welfare; and
  - (b) to make such use of services available for children cared for by their own parents as appears to the authority reasonable in his case.
- (4) Before making any decision with respect to a child whom they are looking after, or proposing to look after, a local authority shall, so far as is reasonably practicable, ascertain the wishes and feelings of—
  - (a) the child;
  - (b) his parents;
  - (c) any person who is not a parent of his but who has parental responsibility for him; and
  - (d) any other person whose wishes and feelings the authority consider to be relevant,regarding the matter to be decided.
- (5) In making any such decision a local authority shall give due consideration—
  - (a) having regard to his age and understanding, to such wishes and feelings of the child as they have been able to ascertain;
  - (b) to such wishes and feelings of any person mentioned in subsection (4)(b) to (d) as they have been able to ascertain; and
  - (c) to the child’s religious persuasion, racial origin and cultural and linguistic background.
- (6) If it appears to a local authority that it is necessary, for the purpose of protecting members of the public from serious injury, to exercise their powers with respect to a child whom they are looking after in a manner which may not be consistent with their duties under this section, they may do so.
- (7) If the Secretary of State considers it necessary, for the purpose of protecting members of the public from serious injury, to give directions to a local authority with respect to the exercise of their powers with respect to a child whom they are looking after, he may give such directions to the authority.
- (8) Where any such directions are given to an authority they shall comply with them even though doing so is inconsistent with their duties under this section.

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

**C7** S. 22 applied(*prosp.*) by Children and Young Persons Act 1969 (c. 54, SIF 20), s. 23(13)(a) (as substituted (*prosp.*) by Criminal Justice Act 1991 (c. 53, SIF 39:1), ss. 60(1), 102(2).

**Commencement Information**

**I22** S. 22 wholly in force at 14.10.1991 see 108(2)(3) and S.I. 1991/828, art. 3(2)

**Marginal Citations**

**M20** 1970 c. 42.

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## **23 Provision of accommodation and maintenance by local authority for children whom they are looking after.**

- (1) It shall be the duty of any local authority looking after a child—
    - (a) when he is in their care, to provide accommodation for him; and
    - (b) to maintain him in other respects apart from providing accommodation for him.
  
  - (2) A local authority shall provide accommodation and maintenance for any child whom they are looking after by—
    - (a) placing him (subject to subsection (5) and any regulations made by the Secretary of State) with—
      - (i) a family;
      - (ii) a relative of his; or
      - (iii) any other suitable person,

on such terms as to payment by the authority and otherwise as the authority may determine;
    - (b) maintaining him in a community home;
    - (c) maintaining him in a voluntary home;
    - (d) maintaining him in a registered children’s home;
    - (e) maintaining him in a home provided [<sup>F35</sup>in accordance with arrangements made]by the Secretary of State under section 82(5) on such terms as the Secretary of State may from time to time determine; or
    - (f) making such other arrangements as—
      - (i) seem appropriate to them; and
      - (ii) comply with any regulations made by the Secretary of State.
  
  - (3) Any person with whom a child has been placed under subsection (2)(a) is referred to in this Act as a local authority foster parent unless he falls within subsection (4).
  
  - (4) A person falls within this subsection if he is—
    - (a) a parent of the child;
    - (b) a person who is not a parent of the child but who has parental responsibility for him; or
    - (c) where the child is in care and there was a residence order in force with respect to him immediately before the care order was made, a person in whose favour the residence order was made.
  
  - (5) Where a child is in the care of a local authority, the authority may only allow him to live with a person who falls within subsection (4) in accordance with regulations made by the Secretary of State.
- [<sup>F36</sup>(5A) For the purposes of subsection (5) a child shall be regarded as living with a person if he stays with that person for a continuous period of more than 24 hours]
- (6) Subject to any regulations made by the Secretary of State for the purposes of this subsection, any local authority looking after a child shall make arrangements to enable him to live with—
    - (a) a person falling within subsection (4); or
    - (b) a relative, friend or other person connected with him,

unless that would not be reasonably practicable or consistent with his welfare.

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- (7) Where a local authority provide accommodation for a child whom they are looking after, they shall, subject to the provisions of this Part and so far as is reasonably practicable and consistent with his welfare, secure that—
- (a) the accommodation is near his home; and
  - (b) where the authority are also providing accommodation for a sibling of his, they are accommodated together.
- (8) Where a local authority provide accommodation for a child whom they are looking after and who is disabled, they shall, so far as is reasonably practicable, secure that the accommodation is not unsuitable to his particular needs.
- (9) Part II of Schedule 2 shall have effect for the purposes of making further provision as to children looked after by local authorities and in particular as to the regulations that may be made under subsections (2)(a) and (f) and (5).

#### Textual Amendments

**F35** Words inserted (14.10.1991) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), ss. 116, **Sch. 16 para. 12(1)**; S.I. 1991/1883, art. 3, **Sch.**

**F36** S. 23(5A) inserted (14.10.1991) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), ss. 116, **Sch. 16 para. 12(2)**; S.I. 1991/1883, art. 3, **Sch.**

#### Commencement Information

**I23** S. 23 in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

VALID FROM 01/04/2011

### <sup>F37</sup> 22A Provision of accommodation for children in care

When a child is in the care of a local authority, it is their duty to provide the child with accommodation.

#### Textual Amendments

**F37** Ss. 22A-22F substituted (1.9.2009 for E. and 26.4.2010 for W. for the insertion of ss. 22C(11), 22F, 1.4.2011 otherwise for E.) for s. 23 by Children and Young Persons Act 2008 (c. 23), ss. 8(1), 44; S.I. 2009/2273, art. 2(2)(a); S.I. 2010/1329, art. 2(a); S.I. 2010/2981, art. 4(a)

VALID FROM 01/04/2011

### 22B Maintenance of looked after children

It is the duty of a local authority to maintain a child they are looking after in other respects apart from the provision of accommodation.

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### Textual Amendments

**F37** Ss. 22A-22F substituted (1.9.2009 for E. and 26.4.2010 for W. for the insertion of ss. 22C(11), 22F, 1.4.2011 otherwise for E.) for s. 23 by [Children and Young Persons Act 2008 \(c. 23\)](#), [ss. 8\(1\)](#), 44; [S.I. 2009/2273](#), [art. 2\(2\)\(a\)](#); [S.I. 2010/1329](#), [art. 2\(a\)](#); [S.I. 2010/2981](#), [art. 4\(a\)](#)

VALID FROM 01/09/2009

## 22C Ways in which looked after children are to be accommodated and maintained

- (1) This section applies where a local authority are looking after a child (“C”).
- (2) The local authority must make arrangements for C to live with a person who falls within subsection (3) (but subject to subsection (4)).
- (3) A person (“P”) falls within this subsection if—
  - (a) P is a parent of C;
  - (b) P is not a parent of C but has parental responsibility for C; or
  - (c) in a case where C is in the care of the local authority and there was a residence order in force with respect to C immediately before the care order was made, P was a person in whose favour the residence order was made.
- (4) Subsection (2) does not require the local authority to make arrangements of the kind mentioned in that subsection if doing so—
  - (a) would not be consistent with C's welfare; or
  - (b) would not be reasonably practicable.
- (5) If the local authority are unable to make arrangements under subsection (2), they must place C in the placement which is, in their opinion, the most appropriate placement available.
- (6) In subsection (5) “placement” means—
  - (a) placement with an individual who is a relative, friend or other person connected with C and who is also a local authority foster parent;
  - (b) placement with a local authority foster parent who does not fall within paragraph (a);
  - (c) placement in a children's home in respect of which a person is registered under Part 2 of the Care Standards Act 2000; or
  - (d) subject to section 22D, placement in accordance with other arrangements which comply with any regulations made for the purposes of this section.
- (7) In determining the most appropriate placement for C, the local authority must, subject to the other provisions of this Part (in particular, to their duties under section 22)—
  - (a) give preference to a placement falling within paragraph (a) of subsection (6) over placements falling within the other paragraphs of that subsection;
  - (b) comply, so far as is reasonably practicable in all the circumstances of C's case, with the requirements of subsection (8); and
  - (c) comply with subsection (9) unless that is not reasonably practicable.
- (8) The local authority must ensure that the placement is such that—
  - (a) it allows C to live near C's home;

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- (b) it does not disrupt C's education or training;
  - (c) if C has a sibling for whom the local authority are also providing accommodation, it enables C and the sibling to live together;
  - (d) if C is disabled, the accommodation provided is suitable to C's particular needs.
- (9) The placement must be such that C is provided with accommodation within the local authority's area.
- (10) The local authority may determine—
- (a) the terms of any arrangements they make under subsection (2) in relation to C (including terms as to payment); and
  - (b) the terms on which they place C with a local authority foster parent (including terms as to payment but subject to any order made under section 49 of the Children Act 2004).
- (11) The appropriate national authority may make regulations for, and in connection with, the purposes of this section.
- (12) In this Act “local authority foster parent” means a person who is approved as a local authority foster parent in accordance with regulations made by virtue of paragraph 12F of Schedule 2.

#### Textual Amendments

**F37** Ss. 22A-22F substituted (1.9.2009 for E. and 26.4.2010 for W. for the insertion of ss. 22C(11), 22F, 1.4.2011 otherwise for E.) for s. 23 by [Children and Young Persons Act 2008 \(c. 23\)](#), [ss. 8\(1\), 44](#); [S.I. 2009/2273](#), [art. 2\(2\)\(a\)](#); [S.I. 2010/1329](#), [art. 2\(a\)](#); [S.I. 2010/2981](#), [art. 4\(a\)](#)

VALID FROM 01/04/2011

#### **22D Review of child's case before making alternative arrangements for accommodation**

- (1) Where a local authority are providing accommodation for a child (“C”) other than by arrangements under section 22C(6)(d), they must not make such arrangements for C unless they have decided to do so in consequence of a review of C's case carried out in accordance with regulations made under section 26.
- (2) But subsection (1) does not prevent a local authority making arrangements for C under section 22C(6)(d) if they are satisfied that in order to safeguard C's welfare it is necessary—
- (a) to make such arrangements; and
  - (b) to do so as a matter of urgency.

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#### Textual Amendments

**F37** Ss. 22A-22F substituted (1.9.2009 for E. and 26.4.2010 for W. for the insertion of ss. 22C(11), 22F, 1.4.2011 otherwise for E.) for s. 23 by [Children and Young Persons Act 2008 \(c. 23\)](#), [ss. 8\(1\)](#), 44; [S.I. 2009/2273](#), [art. 2\(2\)\(a\)](#); [S.I. 2010/1329](#), [art. 2\(a\)](#); [S.I. 2010/2981](#), [art. 4\(a\)](#)

VALID FROM 01/04/2011

#### **22E Children's homes provided by appropriate national authority**

Where a local authority place a child they are looking after in a children's home provided, equipped and maintained by an appropriate national authority under section 82(5), they must do so on such terms as that national authority may from time to time determine.

#### Textual Amendments

**F37** Ss. 22A-22F substituted (1.9.2009 for E. and 26.4.2010 for W. for the insertion of ss. 22C(11), 22F, 1.4.2011 otherwise for E.) for s. 23 by [Children and Young Persons Act 2008 \(c. 23\)](#), [ss. 8\(1\)](#), 44; [S.I. 2009/2273](#), [art. 2\(2\)\(a\)](#); [S.I. 2010/1329](#), [art. 2\(a\)](#); [S.I. 2010/2981](#), [art. 4\(a\)](#)

VALID FROM 01/09/2009

#### **22F Regulations as to children looked after by local authorities**

Part 2 of Schedule 2 has effect for the purposes of making further provision as to children looked after by local authorities and in particular as to the regulations which may be made under section 22C(11).]

#### Textual Amendments

**F37** Ss. 22A-22F substituted (1.9.2009 for E. and 26.4.2010 for W. for the insertion of ss. 22C(11), 22F, 1.4.2011 otherwise for E.) for s. 23 by [Children and Young Persons Act 2008 \(c. 23\)](#), [ss. 8\(1\)](#), 44; [S.I. 2009/2273](#), [art. 2\(2\)\(a\)](#); [S.I. 2010/1329](#), [art. 2\(a\)](#); [S.I. 2010/2981](#), [art. 4\(a\)](#)

VALID FROM 01/04/2011

#### **[<sup>F38</sup>22G General duty of local authority to secure sufficient accommodation for looked after children**

- (1) It is the general duty of a local authority to take steps that secure, so far as reasonably practicable, the outcome in subsection (2).
- (2) The outcome is that the local authority are able to provide the children mentioned in subsection (3) with accommodation that—



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- (a) is within the authority's area; and
  - (b) meets the needs of those children.
- (3) The children referred to in subsection (2) are those—
- (a) that the local authority are looking after,
  - (b) in respect of whom the authority are unable to make arrangements under section 22C(2), and
  - (c) whose circumstances are such that it would be consistent with their welfare for them to be provided with accommodation that is in the authority's area.
- (4) In taking steps to secure the outcome in subsection (2), the local authority must have regard to the benefit of having—
- (a) a number of accommodation providers in their area that is, in their opinion, sufficient to secure that outcome; and
  - (b) a range of accommodation in their area capable of meeting different needs that is, in their opinion, sufficient to secure that outcome.
- (5) In this section “accommodation providers” means—
- local authority foster parents; and
  - children's homes in respect of which a person is registered under Part 2 of the Care Standards Act 2000.]

#### Textual Amendments

**F38** S. 22G inserted (1.4.2011 for E.) by [Children and Young Persons Act 2008 \(c. 23\)](#), [ss. 9, 44](#); S.I. 2010/2981, [art. 4\(b\)](#)

VALID FROM 01/09/2009

### *[<sup>F39</sup> Visiting*

#### Textual Amendments

**F39** S. 23ZA and cross-heading inserted (1.9.2009 and 15.11.2010 for certain purposes for E., 26.4.2010 for certain purposes for W., 28.3.2011 for W. otherwise, 1.4.2011 for E. otherwise) by [Children and Young Persons Act 2008 \(c. 23\)](#), [ss. 15, 44](#); S.I. 2009/2273, [art. 2\(2\)\(d\)](#); S.I. 2010/1326, [art. 2\(d\)](#); S.I. 2010/2714, [art. 2\(d\)](#); S.I. 2010/2981, [art. 4\(d\)](#) (with [art. 5](#)); S.I. 2011/949, [art. 3\(1\)\(a\)](#)

#### **23ZA Duty of local authority to ensure visits to, and contact with, looked after children and others**

- (1) This section applies to—
- (a) a child looked after by a local authority;
  - (b) a child who was looked after by a local authority but who has ceased to be looked after by them as a result of prescribed circumstances.
- (2) It is the duty of the local authority—

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- (a) to ensure that a person to whom this section applies is visited by a representative of the authority (“a representative”);
  - (b) to arrange for appropriate advice, support and assistance to be available to a person to whom this section applies who seeks it from them.
- (3) The duties imposed by subsection (2)—
- (a) are to be discharged in accordance with any regulations made for the purposes of this section by the appropriate national authority;
  - (b) are subject to any requirement imposed by or under an enactment applicable to the place in which the person to whom this section applies is accommodated.
- (4) Regulations under this section for the purposes of subsection (3)(a) may make provision about—
- (a) the frequency of visits;
  - (b) circumstances in which a person to whom this section applies must be visited by a representative; and
  - (c) the functions of a representative.
- (5) In choosing a representative a local authority must satisfy themselves that the person chosen has the necessary skills and experience to perform the functions of a representative.

**I**  
**F40**  
**23ZB**

**Independent visitors for children looked after by a local authority**

- (1) A local authority looking after a child must appoint an independent person to be the child's visitor if—
- (a) the child falls within a description prescribed in regulations made by the appropriate national authority; or
  - (b) in any other case, it appears to them that it would be in the child's interests to do so.
- (2) A person appointed under this section must visit, befriend and advise the child.
- (3) A person appointed under this section is entitled to recover from the appointing authority any reasonable expenses incurred by that person for the purposes of that person's functions under this section.
- (4) A person's appointment as a visitor in pursuance of this section comes to an end if—
- (a) the child ceases to be looked after by the local authority;
  - (b) the person resigns the appointment by giving notice in writing to the appointing authority; or
  - (c) the authority give him notice in writing that they have terminated it.
- (5) The ending of such an appointment does not affect any duty under this section to make a further appointment.
- (6) Where a local authority propose to appoint a visitor for a child under this section, the appointment shall not be made if—
- (a) the child objects to it; and
  - (b) the authority are satisfied that the child has sufficient understanding to make an informed decision.

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- (7) Where a visitor has been appointed for a child under this section, the local authority shall terminate the appointment if—
  - (a) the child objects to its continuing; and
  - (b) the authority are satisfied that the child has sufficient understanding to make an informed decision.
- (8) If the local authority give effect to a child's objection under subsection (6) or (7) and the objection is to having anyone as the child's visitor, the authority does not have to propose to appoint another person under subsection (1) until the objection is withdrawn.
- (9) The appropriate national authority may make regulations as to the circumstances in which a person is to be regarded for the purposes of this section as independent of the appointing authority.]]

#### Textual Amendments

**F40** S. 23ZB inserted (1.9.2009 for E. for certain purposes, 26.4.2010 for W. for certain purposes, 1.4.2011 otherwise for E. and otherwise prosp.) by [Children and Young Persons Act 2008 \(c. 23\)](#), [ss. 16\(1\), 44](#); [S.I. 2009/2273, art. 2\(2\)\(e\)](#); [S.I. 2010/1329, art. 2\(e\)](#); [S.I. 2010/2981, art. 4\(e\)](#)

### *Advice and assistance for certain children*

VALID FROM 01/10/2001

#### **[<sup>F41</sup>23A The responsible authority and relevant children.**

- (1) The responsible local authority shall have the functions set out in section 23B in respect of a relevant child.
- (2) In subsection (1) “relevant child” means (subject to subsection (3)) a child who—
  - (a) is not being looked after by any local authority;
  - (b) was, before last ceasing to be looked after, an eligible child for the purposes of paragraph 19B of Schedule 2; and
  - (c) is aged sixteen or seventeen.
- (3) The Secretary of State may prescribe—
  - (a) additional categories of relevant children; and
  - (b) categories of children who are not to be relevant children despite falling within subsection (2).
- (4) In subsection (1) the “responsible local authority” is the one which last looked after the child.
- (5) If under subsection (3)(a) the Secretary of State prescribes a category of relevant children which includes children who do not fall within subsection (2)(b) (for example, because they were being looked after by a local authority in Scotland), he may in the regulations also provide for which local authority is to be the responsible local authority for those children.]

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### Textual Amendments

**F41** Ss. 23A, 23B, 23C inserted (1.10.2001) by 2000 c. 35, s. 2(4); S.I. 2001/2191, art. 2; S.I. 2001/2878, art. 2

### Modifications etc. (not altering text)

**C8** S. 23A(2) modified (W.) (1.10.2001) by S.I. 2001/2189, reg. 4(4)(5) (as amended (1.8.2002) by S.I. 2002/1855, reg. 2(b)(i))

VALID FROM 01/10/2001

## <sup>F42</sup>23B Additional functions of the responsible authority in respect of relevant children.

- (1) It is the duty of each local authority to take reasonable steps to keep in touch with a relevant child for whom they are the responsible authority, whether he is within their area or not.
- (2) It is the duty of each local authority to appoint a personal adviser for each relevant child (if they have not already done so under paragraph 19C of Schedule 2).
- (3) It is the duty of each local authority, in relation to any relevant child who does not already have a pathway plan prepared for the purposes of paragraph 19B of Schedule 2—
  - (a) to carry out an assessment of his needs with a view to determining what advice, assistance and support it would be appropriate for them to provide him under this Part; and
  - (b) to prepare a pathway plan for him.
- (4) The local authority may carry out such an assessment at the same time as any assessment of his needs is made under any enactment referred to in sub-paragraphs (a) to (c) of paragraph 3 of Schedule 2, or under any other enactment.
- (5) The Secretary of State may by regulations make provision as to assessments for the purposes of subsection (3).
- (6) The regulations may in particular make provision about—
  - (a) who is to be consulted in relation to an assessment;
  - (b) the way in which an assessment is to be carried out, by whom and when;
  - (c) the recording of the results of an assessment;
  - (d) the considerations to which the local authority are to have regard in carrying out an assessment.
- (7) The authority shall keep the pathway plan under regular review.
- (8) The responsible local authority shall safeguard and promote the child's welfare and, unless they are satisfied that his welfare does not require it, support him by—
  - (a) maintaining him;
  - (b) providing him with or maintaining him in suitable accommodation; and
  - (c) providing support of such other descriptions as may be prescribed.

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- (9) Support under subsection (8) may be in cash.
- (10) The Secretary of State may by regulations make provision about the meaning of “suitable accommodation” and in particular about the suitability of landlords or other providers of accommodation.
- (11) If the local authority have lost touch with a relevant child, despite taking reasonable steps to keep in touch, they must without delay—
  - (a) consider how to re-establish contact; and
  - (b) take reasonable steps to do so,and while the child is still a relevant child must continue to take such steps until they succeed.
- (12) Subsections (7) to (9) of section 17 apply in relation to support given under this section as they apply in relation to assistance given under that section.
- (13) Subsections (4) and (5) of section 22 apply in relation to any decision by a local authority for the purposes of this section as they apply in relation to the decisions referred to in that section.]

#### Textual Amendments

**F42** Ss. 23A, 23B, 23C inserted (1.10.2001) by 2000 c. 35, s. 2(4); S.I. 2001/2191, art. 2; S.I. 2001/2878, art. 2

VALID FROM 01/10/2001

#### [<sup>F43</sup>23C Continuing functions in respect of former relevant children.

- (1) Each local authority shall have the duties provided for in this section towards—
  - (a) a person who has been a relevant child for the purposes of section 23A (and would be one if he were under eighteen), and in relation to whom they were the last responsible authority; and
  - (b) a person who was being looked after by them when he attained the age of eighteen, and immediately before ceasing to be looked after was an eligible child,and in this section such a person is referred to as a “former relevant child”.
- (2) It is the duty of the local authority to take reasonable steps—
  - (a) to keep in touch with a former relevant child whether he is within their area or not; and
  - (b) if they lose touch with him, to re-establish contact.
- (3) It is the duty of the local authority—
  - (a) to continue the appointment of a personal adviser for a former relevant child; and
  - (b) to continue to keep his pathway plan under regular review.
- (4) It is the duty of the local authority to give a former relevant child—

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- (a) assistance of the kind referred to in section 24B(1), to the extent that his welfare requires it;
  - (b) assistance of the kind referred to in section 24B(2), to the extent that his welfare and his educational or training needs require it;
  - (c) other assistance, to the extent that his welfare requires it.
- (5) The assistance given under subsection (4)(c) may be in kind or, in exceptional circumstances, in cash.
- (6) Subject to subsection (7), the duties set out in subsections (2), (3) and (4) subsist until the former relevant child reaches the age of twenty-one.
- (7) If the former relevant child’s pathway plan sets out a programme of education or training which extends beyond his twenty-first birthday—
- (a) the duty set out in subsection (4)(b) continues to subsist for so long as the former relevant child continues to pursue that programme; and
  - (b) the duties set out in subsections (2) and (3) continue to subsist concurrently with that duty.
- (8) For the purposes of subsection (7)(a) there shall be disregarded any interruption in a former relevant child’s pursuance of a programme of education or training if the local authority are satisfied that he will resume it as soon as is reasonably practicable.
- (9) Section 24B(5) applies in relation to a person being given assistance under subsection (4)(b) as it applies in relation to a person to whom section 24B(3) applies.
- (10) Subsections (7) to (9) of section 17 apply in relation to assistance given under this section as they apply in relation to assistance given under that section.]

#### Textual Amendments

**F43** Ss. 23A, 23B, 23C inserted (1.10.2001) by 2000 c. 35, s. 2(4); S.I. 2001/2191, art. 2; S.I. 2001/2878, art. 2

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

**C9** S. 23C restricted (8.1.2003) by 2002 c. 41, s. 54, Sch. 3 (with s. 159); S.I. 2002/2811, art. 2, Sch.

VALID FROM 01/04/2011

#### [<sup>F44</sup>23CAFurther assistance to pursue education or training

- (1) This section applies to a person if—
- (a) he is under the age of twenty-five or of such lesser age as may be prescribed by the appropriate national authority;
  - (b) he is a former relevant child (within the meaning of section 23C) towards whom the duties imposed by subsections (2), (3) and (4) of that section no longer subsist; and
  - (c) he has informed the responsible local authority that he is pursuing, or wishes to pursue, a programme of education or training.

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- (2) It is the duty of the responsible local authority to appoint a personal adviser for a person to whom this section applies.
- (3) It is the duty of the responsible local authority—
  - (a) to carry out an assessment of the needs of a person to whom this section applies with a view to determining what assistance (if any) it would be appropriate for them to provide to him under this section; and
  - (b) to prepare a pathway plan for him.
- (4) It is the duty of the responsible local authority to give assistance of a kind referred to subsection (5) to a person to whom this section applies to the extent that his educational or training needs require it.
- (5) The kinds of assistance are—
  - (a) contributing to expenses incurred by him in living near the place where he is, or will be, receiving education or training; or
  - (b) making a grant to enable him to meet expenses connected with his education and training.
- (6) If a person to whom this section applies pursues a programme of education or training in accordance with the pathway plan prepared for him, the duties of the local authority under this section (and under any provision applicable to the pathway plan prepared under this section for that person) subsist for as long as he continues to pursue that programme.
- (7) For the purposes of subsection (6), the local authority may disregard any interruption in the person's pursuance of a programme of education or training if they are satisfied that he will resume it as soon as is reasonably practicable.
- (8) Subsections (7) to (9) of section 17 apply to assistance given to a person under this section as they apply to assistance given to or in respect of a child under that section, but with the omission in subsection (8) of the words “and of each of his parents”.
- (9) Subsection (5) of section 24B applies to a person to whom this section applies as it applies to a person to whom subsection (3) of that section applies.
- (10) Nothing in this section affects the duty imposed by subsection (5A) of section 23C to the extent that it subsists in relation to a person to whom this section applies; but the duty to make a payment under that subsection may be taken into account in the assessment of the person's needs under subsection (3)(a).
- (11) In this section “the responsible local authority” means, in relation to a person to whom this section applies, the local authority which had the duties provided for in section 23C towards him.]

#### Textual Amendments

**F44** S. 23CA inserted (1.4.2011 for E., 19.6.2012 for W.) by [Children and Young Persons Act 2008 \(c. 23\)](#), [ss. 22\(2\), 44](#); [S.I. 2010/2981](#), [art. 4\(g\)](#) (with [art. 6](#)); [S.I. 2012/1553](#), [art. 2\(a\)](#) (with [art. 3](#))

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VALID FROM 01/10/2001

*[<sup>F45</sup> Personal advisers and pathway plans]*

**Textual Amendments**

**F45** Ss. 23D, 23E and cross-heading inserted (1.10.2001) by [2000 c. 35, s. 3](#); [S.I. 2001/2191, art. 2](#); [S.I. 2001/2878, art. 2](#)

**[<sup>F46</sup>23D Personal advisers.**

- (1) The Secretary of State may by regulations require local authorities to appoint a personal adviser for children or young persons of a prescribed description who have reached the age of sixteen but not the age of twenty-one who are not—
  - (a) children who are relevant children for the purposes of section 23A;
  - (b) the young persons referred to in section 23C; or
  - (c) the children referred to in paragraph 19C of Schedule 2.
- (2) Personal advisers appointed under or by virtue of this Part shall (in addition to any other functions) have such functions as the Secretary of State prescribes.]

**Textual Amendments**

**F46** Ss. 23D, 23E and cross-heading inserted (1.10.2001) by [2000 c. 35, s. 3](#); [S.I. 2001/2191, art. 2](#); [S.I. 2001/2878, art. 2](#)

**[<sup>F47</sup>23E Pathway plans.**

- (1) In this Part, a reference to a “pathway plan” is to a plan setting out—
  - (a) in the case of a plan prepared under paragraph 19B of Schedule 2—
    - (i) the advice, assistance and support which the local authority intend to provide a child under this Part, both while they are looking after him and later; and
    - (ii) when they might cease to look after him; and
  - (b) in the case of a plan prepared under section 23B, the advice, assistance and support which the local authority intend to provide under this Part, and dealing with such other matters (if any) as may be prescribed.
- (2) The Secretary of State may by regulations make provision about pathway plans and their review.]

**Textual Amendments**

**F47** Ss. 23D, 23E and cross-heading inserted (1.10.2001) by [2000 c. 35, s. 3](#); [S.I. 2001/2191, art. 2](#); [S.I. 2001/2878, art. 2](#)



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## **<sup>F48</sup>24 Persons qualifying for advice and assistance.**

- (1) In this Part “a person qualifying for advice and assistance” means a person who—
  - (a) is under twenty-one; and
  - (b) at any time after reaching the age of sixteen but while still a child was, but is no longer, looked after, accommodated or fostered.
- (2) In subsection (1)(b), “looked after, accommodated or fostered” means—
  - (a) looked after by a local authority;
  - (b) accommodated by or on behalf of a voluntary organisation;
  - (c) accommodated in a private children’s home;
  - (d) accommodated for a consecutive period of at least three months—
    - (i) by any Health Authority, Special Health Authority, Primary Care Trust or local education authority, or
    - (ii) in any care home or independent hospital or in any accommodation provided by a National Health Service trust; or
  - (e) privately fostered.
- (3) Subsection (2)(d) applies even if the period of three months mentioned there began before the child reached the age of sixteen.
- (4) In the case of a person qualifying for advice and assistance by virtue of subsection (2) (a), it is the duty of the local authority which last looked after him to take such steps as they think appropriate to contact him at such times as they think appropriate with a view to discharging their functions under sections 24A and 24B.
- (5) In each of sections 24A and 24B, the local authority under the duty or having the power mentioned there (“the relevant authority”) is—
  - (a) in the case of a person qualifying for advice and assistance by virtue of subsection (2)(a), the local authority which last looked after him; or
  - (b) in the case of any other person qualifying for advice and assistance, the local authority within whose area the person is (if he has asked for help of a kind which can be given under section 24A or 24B).]

### **Textual Amendments**

**F48** Ss. 24, 24A, 24B, 24C substituted for s. 24 (1.10.2001) by 2000 c. 35, s. 4(1); S.I. 2001/2191, art. 2; S.I. 2001/2878, art. 2

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

**C10** S. 24(2)(c)(d)(ii) amended (*temp.* from 1.10.2001) by 2000 c. 35, s. 4(2)(a)(b); S.I. 2001/2191, art. 2; S.I. 2001/2878, art. 2

## **<sup>F49</sup>24A Advice and assistance.**

- (1) The relevant authority shall consider whether the conditions in subsection (2) are satisfied in relation to a person qualifying for advice and assistance.
- (2) The conditions are that—
  - (a) he needs help of a kind which they can give under this section or section 24B; and

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- (b) in the case of a person who was not being looked after by any local authority, they are satisfied that the person by whom he was being looked after does not have the necessary facilities for advising or befriending him.
- (3) If the conditions are satisfied—
  - (a) they shall advise and befriend him if he was being looked after by a local authority or was accommodated by or on behalf of a voluntary organisation; and
  - (b) in any other case they may do so.
- (4) Where as a result of this section a local authority are under a duty, or are empowered, to advise and befriend a person, they may also give him assistance.
- (5) The assistance may be in kind or, in exceptional circumstances, in cash.
- (6) Subsections (7) to (9) of section 17 apply in relation to assistance given under this section or section 24B as they apply in relation to assistance given under that section.]

#### Textual Amendments

**F49** Ss. 24, 24A, 24B, 24C substituted for s. 24 (1.10.2001) by 2000 c. 35, s. 4(1); S.I. 2001/2191, art. 2; S.I. 2001/2878, art. 2

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

**C11** S. 24A restricted (8.1.2002) by 2002 c. 41, s. 54, Sch. 3 (with s. 159); S.I. 2002/2811, art. 2, Sch.

### [<sup>F50</sup>24B Employment, education and training.

- (1) The relevant local authority may give assistance to any person who qualifies for advice and assistance by virtue of section 24(2)(a) by contributing to expenses incurred by him in living near the place where he is, or will be, employed or seeking employment.
- (2) The relevant local authority may give assistance to a person to whom subsection (3) applies by—
  - (a) contributing to expenses incurred by the person in question in living near the place where he is, or will be, receiving education or training; or
  - (b) making a grant to enable him to meet expenses connected with his education or training.
- (3) This subsection applies to any person who—
  - (a) is under twenty-four; and
  - (b) qualifies for advice and assistance by virtue of section 24(2)(a), or would have done so if he were under twenty-one.
- (4) Where a local authority are assisting a person under subsection (2) they may disregard any interruption in his attendance on the course if he resumes it as soon as is reasonably practicable.
- (5) Where the local authority are satisfied that a person to whom subsection (3) applies who is in full-time further or higher education needs accommodation during a vacation because his term-time accommodation is not available to him then, they shall give him assistance by—

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- (a) providing him with suitable accommodation during the vacation; or
  - (b) paying him enough to enable him to secure such accommodation himself.
- (6) The Secretary of State may prescribe the meaning of “full-time”, “further education”, “higher education” and “vacation” for the purposes of subsection (5).]

#### Textual Amendments

**F50** Ss. 24, 24A, 24B, 24C substituted for s. 24 (1.10.2001) by 2000 c. 35, s. 4(1); S.I. 2001/2191, art. 2; S.I. 2001/2878, art. 2

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

**C12** S. 24B restricted (8.1.2003) by 2002 c. 41, s. 54, Sch. 3 (with s. 159); S.I. 2002/2811, art. 2, Sch.

### [<sup>F51</sup> 24C Information.

- (1) Where it appears to a local authority that a person—
- (a) with whom they are under a duty to keep in touch under section 23B, 23C or 24; or
  - (b) whom they have been advising and befriending under section 24A; or
  - (c) to whom they have been giving assistance under section 24B,
- proposes to live, or is living, in the area of another local authority, they must inform that other authority.
- (2) Where a child who is accommodated—
- (a) by a voluntary organisation or in a private children’s home;
  - (b) by any Health Authority, Special Health Authority, Primary Care Trust or local education authority; or
  - (c) in any care home or independent hospital or any accommodation provided by a National Health Service trust,
- ceases to be so accommodated, after reaching the age of sixteen, the organisation, authority or (as the case may be) person carrying on the home shall inform the local authority within whose area the child proposes to live.
- (3) Subsection (2) only applies, by virtue of paragraph (b) or (c), if the accommodation has been provided for a consecutive period of at least three months.]

#### Textual Amendments

**F51** Ss. 24, 24A, 24B, 24C substituted for s. 24 (1.10.2001) by 2000 c. 35, s. 4(1); S.I. 2001/2191, art. 2; S.I. 2001/2878, art. 2

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

**C13** S. 24C(2)(a)(c) amended (*temp.* from 1.10.2001) by 2000 c. 35, s. 4(2)(a)(b); S.I. 2001/2191, art. 2; S.I. 2001/2878, art. 2

### [<sup>F52</sup> 24D Representations: sections 23A to 24B.

- (1) Every local authority shall establish a procedure for considering representations (including complaints) made to them by—

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- (a) a relevant child for the purposes of section 23A or a young person falling within section 23C;
  - (b) a person qualifying for advice and assistance; or
  - (c) a person falling within section 24B(2),
- about the discharge of their functions under this Part in relation to him.
- (2) In considering representations under subsection (1), a local authority shall comply with regulations (if any) made by the Secretary of State for the purposes of this subsection.]

**Textual Amendments**

**F52** S. 24D inserted (1.10.2001) by 2000 c. 35, s. 5; S.I. 2001/2191, art. 2; S.I. 2001/2878, art. 2

*Secure accommodation*

**25 Use of accommodation for restricting liberty.**

- (1) Subject to the following provisions of this section, a child who is being looked after by a local authority may not be placed, and, if placed, may not be kept, in accommodation provided for the purpose of restricting liberty ("secure accommodation") unless it appears—
- (a) that—
    - (i) he has a history of absconding and is likely to abscond from any other description of accommodation; and
    - (ii) if he absconds, he is likely to suffer significant harm; or
  - (b) that if he is kept in any other description of accommodation he is likely to injure himself or other persons.
- (2) The Secretary of State may by regulations—
- (a) specify a maximum period—
    - (i) beyond which a child may not be kept in secure accommodation without the authority of the court; and
    - (ii) for which the court may authorise a child to be kept in secure accommodation;
  - (b) empower the court from time to time to authorise a child to be kept in secure accommodation for such further period as the regulations may specify; and
  - (c) provide that applications to the court under this section shall be made only by local authorities.
- (3) It shall be the duty of a court hearing an application under this section to determine whether any relevant criteria for keeping a child in secure accommodation are satisfied in his case.
- (4) If a court determines that any such criteria are satisfied, it shall make an order authorising the child to be kept in secure accommodation and specifying the maximum period for which he may be so kept.

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- (5) On any adjournment of the hearing of an application under this section, a court may make an interim order permitting the child to be kept during the period of the adjournment in secure accommodation.
- (6) No court shall exercise the powers conferred by this section in respect of a child who is not legally represented in that court unless, having been informed of his right to apply for legal aid and having had the opportunity to do so, he refused or failed to apply.
- (7) The Secretary of State may by regulations provide that—
  - (a) this section shall or shall not apply to any description of children specified in the regulations;
  - (b) this section shall have effect in relation to children of a description specified in the regulations subject to such modifications as may be so specified;
  - (c) such other provisions as may be so specified shall have effect for the purpose of determining whether a child of a description specified in the regulations may be placed or kept in secure accommodation.
- (8) The giving of an authorisation under this section shall not prejudice any power of any court in England and Wales or Scotland to give directions relating to the child to whom the authorisation relates.
- (9) This section is subject to section 20(8).

#### Extent Information

- E1** S. 25 extends to England and Wales with the exception of s. 25(8) which extends to Great Britain. See s. 108(11)(12).

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

- C14** S. 25 excluded (14.10.1991) by [S.I. 1991/1505, reg. 5\(1\)](#).  
S. 25 excluded (14.10.1991) by [S.I. 1991/1505, reg. 5\(2\)](#).  
S. 25 modified (14.10.1991) by [S.I. 1991/1505, reg. 6\(1\)](#).  
S. 25 modified (14.10.1991) by [S.I. 1991/1505, reg. 7\(1\)](#).

#### Commencement Information

- I24** S. 25 wholly in force at 14.10.1991 see s. 108(2)(3) and [S.I. 1991/828, art. 3\(2\)](#)

## 26 Review of cases and inquiries into representations.

- (1) The Secretary of State may make regulations requiring the case of each child who is being looked after by a local authority to be reviewed in accordance with the provisions of the regulations.
- (2) The regulations may, in particular, make provision—
  - (a) as to the manner in which each case is to be reviewed;
  - (b) as to the considerations to which the local authority are to have regard in reviewing each case;
  - (c) as to the time when each case is first to be reviewed and the frequency of subsequent reviews;
  - (d) requiring the authority, before conducting any review, to seek the views of—
    - (i) the child;

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- (ii) his parents;
  - (iii) any person who is not a parent of his but who has parental responsibility for him; and
  - (iv) any other person whose views the authority consider to be relevant, including, in particular, the views of those persons in relation to any particular matter which is to be considered in the course of the review;
  - (e) requiring the authority to consider, in the case of a child who is in their care, whether an application should be made to discharge the care order;
  - (f) requiring the authority to consider, in the case of a child in accommodation provided by the authority, whether the accommodation accords with the requirements of this Part;
  - (g) requiring the authority to inform the child, so far as is reasonably practicable, of any steps he may take under this Act;
  - (h) requiring the authority to make arrangements, including arrangements with such other bodies providing services as it considers appropriate, to implement any decision which they propose to make in the course, or as a result, of the review;
  - (i) requiring the authority to notify details of the result of the review and of any decision taken by them in consequence of the review to—
    - (i) the child;
    - (ii) his parents;
    - (iii) any person who is not a parent of his but who has parental responsibility for him; and
    - (iv) any other person whom they consider ought to be notified;
    - (j) requiring the authority to monitor the arrangements which they have made with a view to ensuring that they comply with the regulations.
- (3) Every local authority shall establish a procedure for considering any representations (including any complaint) made to them by—
- (a) any child who is being looked after by them or who is not being looked after by them but is in need;
  - (b) a parent of his;
  - (c) any person who is not a parent of his but who has parental responsibility for him;
  - (d) any local authority foster parent;
  - (e) such other person as the authority consider has a sufficient interest in the child's welfare to warrant his representations being considered by them,
- about the discharge by the authority of any of their functions under this Part in relation to the child.
- (4) The procedure shall ensure that at least one person who is not a member or officer of the authority takes part in—
- (a) the consideration; and
  - (b) any discussions which are held by the authority about the action (if any) to be taken in relation to the child in the light of the consideration.
- (5) In carrying out any consideration of representations under this section a local authority shall comply with any regulations made by the Secretary of State for the purpose of regulating the procedure to be followed.

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- (6) The Secretary of State may make regulations requiring local authorities to monitor the arrangements that they have made with a view to ensuring that they comply with any regulations made for the purposes of subsection (5).
- (7) Where any representation has been considered under the procedure established by a local authority under this section, the authority shall—
  - (a) have due regard to the findings of those considering the representation; and
  - (b) take such steps as are reasonably practicable to notify (in writing)—
    - (i) the person making the representation;
    - (ii) the child (if the authority consider that he has sufficient understanding); and
    - (iii) such other persons (if any) as appear to the authority to be likely to be affected,of the authority’s decision in the matter and their reasons for taking that decision and of any action which they have taken, or propose to take.
- (8) Every local authority shall give such publicity to their procedure for considering representations under this section as they consider appropriate.

#### Commencement Information

**I25** S. 26 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

VALID FROM 20/11/2003

#### <sup>F53</sup>26ZA Representations: further consideration

- (1) The Secretary of State may by regulations make provision for the further consideration of representations which have been considered by a local authority in England under section 24D or section 26.
- (2) The regulations may in particular make provision—
  - (a) for the further consideration of a representation by the Commission for Social Care Inspection (“the CSCI”);
  - (b) for a representation to be referred by the CSCI for further consideration by an independent panel established under the regulations;
  - (c) about the procedure to be followed on the further consideration of a representation;
  - (d) for the making of recommendations about the action to be taken as the result of a representation;
  - (e) about the making of reports about a representation;
  - (f) about the action to be taken by the local authority concerned as a result of the further consideration of a representation;
  - (g) for a representation to be referred by the CSCI back to the local authority concerned for reconsideration by the authority;
  - (h) for a representation or any matter raised by the representation to be referred by the CSCI—

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- (i) to a Local Commissioner in England for him to consider whether to investigate the representation or matter under Part 3 of the Local Government Act 1974 as if it were a complaint duly made under section 26 of that Act; or
  - (ii) to any other person or body for him or it to consider whether to take any action otherwise than under the regulations.
- (3) The regulations may require—
- (a) the making of a payment, in relation to the further consideration of a representation under this section, by any local authority in respect of whose functions the representation is made;
  - (b) any such payment to be—
    - (i) made to such person or body as may be specified in the regulations;
    - (ii) of such amount as may be specified in, or calculated or determined under, the regulations;
  - (c) an independent panel to review the amount chargeable under paragraph (a) in any particular case and, if the panel thinks fit, to substitute a lesser amount.
- (4) The regulations may also—
- (a) provide for different parts or aspects of a representation to be treated differently;
  - (b) require the production of information or documents in order to enable a representation to be properly considered;
  - (c) authorise the disclosure of information or documents relevant to a representation—
    - (i) to a person or body who is further considering a representation under the regulations; or
    - (ii) to a Local Commissioner in England (when a representation is referred to him under the regulations);
 and any such disclosure may be authorised notwithstanding any rule of common law that would otherwise prohibit or restrict the disclosure.
- (5) In this section, “Local Commissioner in England” means a Local Commissioner under Part 3 of the Local Government Act 1974 (c. 7), who is a member of the Commission for Local Administration in England.]

#### Textual Amendments

**F53** S. 26ZA inserted (20.11.2003 for certain purposes and otherwise prosp.) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\)](#), ss. **116(1)**, 199

VALID FROM 01/04/2006

#### <sup>F54</sup> 26ZB Representations: further consideration (Wales)

- (1) The Secretary of State may by regulations make provision for the further consideration of representations which have been considered by a local authority in Wales under section 24D or section 26.



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- (2) The regulations may in particular make provision—
- (a) for the further consideration of a representation by an independent panel established under the regulations;
  - (b) about the procedure to be followed on the further consideration of a representation;
  - (c) for the making of recommendations about the action to be taken as the result of a representation;
  - (d) about the making of reports about a representation;
  - (e) about the action to be taken by the local authority concerned as a result of the further consideration of a representation;
  - (f) for a representation to be referred back to the local authority concerned for reconsideration by the authority.
- (3) The regulations may require—
- (a) the making of a payment, in relation to the further consideration of a representation under this section, by any local authority in respect of whose functions the representation is made;
  - (b) any such payment to be—
    - (i) made to such person or body as may be specified in the regulations;
    - (ii) of such amount as may be specified in, or calculated or determined under, the regulations; and
  - (c) for an independent panel to review the amount chargeable under paragraph (a) in any particular case and, if the panel thinks fit, to substitute a lesser amount.
- (4) The regulations may also—
- (a) provide for different parts or aspects of a representation to be treated differently;
  - (b) require the production of information or documents in order to enable a representation to be properly considered;
  - (c) authorise the disclosure of information or documents relevant to a representation to a person or body who is further considering a representation under the regulations;
- and any such disclosure may be authorised notwithstanding any rule of common law that would otherwise prohibit or restrict the disclosure.]

#### Textual Amendments

- F54** S. 26ZB inserted (1.4.2006) by [Health and Social Care \(Community Health and Standards\) Act 2003](#) (c. 43), [s. 116\(2\)](#); S.I. 2005/3285, [art. 2\(2\)\(b\)](#)

VALID FROM 30/01/2004

#### [<sup>F55</sup>26A Advocacy services

- (1) Every local authority shall make arrangements for the provision of assistance to—
- (a) persons who make or intend to make representations under section 24D; and

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- (b) children who make or intend to make representations under section 26.
- (2) The assistance provided under the arrangements shall include assistance by way of representation.
- (3) The arrangements—
- (a) shall secure that a person may not provide assistance if he is a person who is prevented from doing so by regulations made by the Secretary of State; and
  - (b) shall comply with any other provision made by the regulations in relation to the arrangements.
- (4) The Secretary of State may make regulations requiring local authorities to monitor the steps that they have taken with a view to ensuring that they comply with regulations made for the purposes of subsection (3).
- (5) Every local authority shall give such publicity to their arrangements for the provision of assistance under this section as they consider appropriate.]

#### Textual Amendments

**F55** S. 26A inserted (30.1.2004 for certain purposes and otherwise 1.4.2004) by 2002 c. 38, ss. 119, 148 (with Sch. 4 paras. 6-8); S.I. 2003/3079, art. 2(3)(4)(b)

## 27 Co-operation between authorities.

- (1) Where it appears to a local authority that any authority <sup>F56</sup> . . . mentioned in subsection (3) could, by taking any specified action, help in the exercise of any of their functions under this Part, they may request the help of that other authority <sup>F56</sup> . . . specifying the action in question.
- (2) An authority whose help is so requested shall comply with the request if it is compatible with their own statutory or other duties and obligations and does not unduly prejudice the discharge of any of their functions.
- (3) The [<sup>F57</sup>authorities]are—
- (a) any local authority;
  - (b) any local education authority;
  - (c) any local housing authority;
  - (d) any health authority [<sup>F58</sup>or National Health Service trust]; and
  - (e) any person authorised by the Secretary of State for the purposes of this section.
- (4) Every local authority shall assist any local education authority with the provision of services for any child within the local authority's area who has special educational needs.

#### Textual Amendments

**F56** Words in s. 27(1) repealed (14.10.1991) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), ss. 116, 125(7), Sch. 16 para. 14(a), Sch. 20; S.I. 1991/1883, art. 3, Sch.

**F57** Word in s. 27(3) substituted (14.10.1991) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), s. 116, Sch. 16 para. 14(b); S.I. 1991/1883, art. 3, Sch.

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**F58** Words in s. 27(3)(d) inserted (14.10.1991) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), s. 116, Sch. 16 para. 14(b); S.I. 1991/1883, art. 3, Sch.

**Commencement Information**

**I26** S. 27 in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

**28 Consultation with local education authorities.**

- (1) Where—
  - (a) a child is being looked after by a local authority; and
  - (b) the authority propose to provide accommodation for him in an establishment at which education is provided for children who are accommodated there, they shall, so far as is reasonably practicable, consult the appropriate local education authority before doing so.
- (2) Where any such proposal is carried out, the local authority shall, as soon as is reasonably practicable, inform the appropriate local education authority of the arrangements that have been made for the child's accommodation.
- (3) Where the child ceases to be accommodated as mentioned in subsection (1)(b), the local authority shall inform the appropriate local education authority.
- (4) In this section “the appropriate local education authority” means—
  - (a) the local education authority within whose area the local authority's area falls; or,
  - (b) where the child has special educational needs and a statement of his needs is maintained under the <sup>M21</sup>Education Act 1981, the local education authority who maintain the statement.

**Commencement Information**

**I27** S. 28 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

**Marginal Citations**

**M21** 1981 c. 60.

**29 Recoupment of cost of providing services etc.**

- (1) Where a local authority provide any service under section 17 or 18, other than advice, guidance or counselling, they may recover from a person specified in subsection (4) such charge for the service as they consider reasonable.
- (2) Where the authority are satisfied that that person's means are insufficient for it to be reasonably practicable for him to pay the charge, they shall not require him to pay more than he can reasonably be expected to pay.
- (3) No person shall be liable to pay any charge under subsection (1) at any time when he is in receipt of income support [<sup>F59</sup>, family credit or disability working allowance] under the <sup>M22</sup>Social Security Act 1986.
- (4) The persons are—
  - (a) where the service is provided for a child under sixteen, each of his parents;

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- (b) where it is provided for a child who has reached the age of sixteen, the child himself; and
  - (c) where it is provided for a member of the child's family, that member.
- (5) Any charge under subsection (1) may, without prejudice to any other method of recovery, be recovered summarily as a civil debt.
- (6) Part III of Schedule 2 makes provision in connection with contributions towards the maintenance of children who are being looked after by local authorities and consists of the re-enactment with modifications of provisions in Part V of the <sup>M23</sup>Child Care Act 1980.
- (7) Where a local authority provide any accommodation under section 20(1) for a child who was (immediately before they began to look after him) ordinarily resident within the area of another local authority, they may recover from that other authority any reasonable expenses incurred by them in providing the accommodation and maintaining him.
- (8) Where a local authority provide accommodation under section 21(1) or (2)(a) or (b) for a child who is ordinarily resident within the area of another local authority and they are not maintaining him in—
- (a) a community home provided by them;
  - (b) a controlled community home; or
  - (c) a hospital vested in the Secretary of State [<sup>F60</sup>or any other hospital made available pursuant to arrangements made by a District Health Authority],
- they may recover from that other authority any reasonable expenses incurred by them in providing the accommodation and maintaining him.
- (9) Where a local authority comply with any request under section 27(2) in relation to a child or other person who is not ordinarily resident within their area, they may recover from the local authority in whose area the child or person is ordinarily resident any [<sup>F61</sup>reasonable expenses] incurred by them in respect of that person.

#### Textual Amendments

- F59** Words in s. 29(3) substituted (19.11.1991 for certain purposes, 10.3.1992 for certain purposes and otherwise 6.4.1992) by [Disability Living Allowance and Disability Working Allowance Act 1991](#) (c. 21, SIF 113:1), s. 7, **Sch. 3 Pt. II para. 14**; S.I. 1991/2617, art.2(b)(e)(f), **Sch.**
- F60** Words in s. 29(8)(c) added by [National Health Service and Community Care Act 1990](#) (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 36(3)**
- F61** Words in s. 29(9) substituted (14.10.1991) by [Courts and Legal Services Act 1990](#) (c. 41, SIF 76:1), s. 116, **Sch. 16 para. 15**; S.I. 1991/1883, **art. 3**, Sch.

#### Commencement Information

- I28** S. 29 in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, **art. 3(2)**

#### Marginal Citations

- M22** 1986 c. 50.  
**M23** 1980 c. 5.

**Status:** Point in time view as at 19/11/1991. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Children Act 1989 is up to date with all changes known to be in force on or before 02 June 2024. 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)

### 30 Miscellaneous.

- (1) Nothing in this Part shall affect any duty imposed on a local authority by or under any other enactment.
- (2) Any question arising under section 20(2), 21(3) or 29(7) to (9) as to the ordinary residence of a child shall be determined by agreement between the local authorities concerned or, in default of agreement, by the Secretary of State.
- (3) Where the functions conferred on a local authority by this Part and the functions of a local education authority are concurrent, the Secretary of State may by regulations provide by which authority the functions are to be exercised.
- (4) The Secretary of State may make regulations for determining, as respects any local education authority functions specified in the regulations, whether a child who is being looked after by a local authority is to be treated, for purposes so specified, as a child of parents of sufficient resources or as a child of parents without resources.

#### Commencement Information

**I29** S. 30 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

VALID FROM 13/11/2008

#### [<sup>F62</sup>30A Meaning of appropriate national authority

In this Part “the appropriate national authority” means—

- (a) in relation to England, the Secretary of State; and
- (b) in relation to Wales, the Welsh Ministers.]

#### Textual Amendments

**F62** S. 30A inserted (13.11.2008) by Children and Young Persons Act 2008 (c. 23), ss. 39, 44, Sch. 3 para. 22

VALID FROM 01/09/2009

#### *Independent reviewing officers*

#### [<sup>F63</sup>25A Appointment of independent reviewing officer

- (1) If a local authority are looking after a child, they must appoint an individual as the independent reviewing officer for that child's case.
- (2) The initial appointment under subsection (1) must be made before the child's case is first reviewed in accordance with regulations made under section 26.
- (3) If a vacancy arises in respect of a child's case, the local authority must make another appointment under subsection (1) as soon as is practicable.

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- (4) An appointee must be of a description prescribed in regulations made by the appropriate national authority.

#### Textual Amendments

**F63** Ss. 25A, 25B and cross-heading inserted (1.9.2009 for certain purposes for E., 26.4.2010 for certain purposes for W., and and 1.4.2011 otherwise for E.) by [Children and Young Persons Act 2008 \(c. 23\)](#), [ss. 10\(1\)](#), 44; [S.I. 2009/2273](#), [art. 2\(2\)\(c\)](#); [S.I. 2010/1329](#), [art. 2\(c\)](#); [S.I. 2010/2981](#), [art. 4\(c\)](#) (with [art. 5](#))

### 25B Functions of the independent reviewing officer

- (1) The independent reviewing officer must—
- (a) monitor the performance by the local authority of their functions in relation to the child's case;
  - (b) participate, in accordance with regulations made by the appropriate national authority, in any review of the child's case;
  - (c) ensure that any ascertained wishes and feelings of the child concerning the case are given due consideration by the local authority;
  - (d) perform any other function which is prescribed in regulations made by the appropriate national authority.
- (2) An independent reviewing officer's functions must be performed—
- (a) in such manner (if any) as may be prescribed in regulations made by the appropriate national authority; and
  - (b) having regard to such guidance as that authority may issue in relation to the discharge of those functions.
- (3) If the independent reviewing officer considers it appropriate to do so, the child's case may be referred by that officer to—
- (a) an officer of the Children and Family Court Advisory and Support Service; or
  - (b) a Welsh family proceedings officer.
- (4) If the independent reviewing officer is not an officer of the local authority, it is the duty of the authority—
- (a) to co-operate with that individual; and
  - (b) to take all such reasonable steps as that individual may require of them to enable that individual's functions under this section to be performed satisfactorily.

#### Textual Amendments

**F63** Ss. 25A, 25B and cross-heading inserted (1.9.2009 for certain purposes for E., 26.4.2010 for certain purposes for W., and and 1.4.2011 otherwise for E.) by [Children and Young Persons Act 2008 \(c. 23\)](#), [ss. 10\(1\)](#), 44; [S.I. 2009/2273](#), [art. 2\(2\)\(c\)](#); [S.I. 2010/1329](#), [art. 2\(c\)](#); [S.I. 2010/2981](#), [art. 4\(c\)](#) (with [art. 5](#))

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VALID FROM 01/04/2011

[<sup>F64</sup>25C] **Referred cases**

- (1) In relation to children whose cases are referred to officers under section 25B(3), the Lord Chancellor may by regulations—
- (a) extend any functions of the officers in respect of family proceedings (within the meaning of section 12 of the Criminal Justice and Court Services Act 2000) to other proceedings;
  - (b) require any functions of the officers to be performed in the manner prescribed by the regulations.
- (2) The power to make regulations in this section is exercisable in relation to functions of Welsh family proceedings officers only with the consent of the Welsh Ministers.]]

**Textual Amendments**

- F63** Ss. 25A, 25B and cross-heading inserted (1.9.2009 for certain purposes for E., 26.4.2010 for certain purposes for W., and and 1.4.2011 otherwise for E.) by [Children and Young Persons Act 2008 \(c. 23\)](#), [ss. 10\(1\)](#), 44; [S.I. 2009/2273](#), [art. 2\(2\)\(c\)](#); [S.I. 2010/1329](#), [art. 2\(c\)](#); [S.I. 2010/2981](#), [art. 4\(c\)](#) (with [art. 5](#))
- F64** S. 25C inserted (1.4.2011 for E., otherwise prosp) by [Children and Young Persons Act 2008 \(c. 23\)](#), [ss. 10\(2\)](#), 44

VALID FROM 13/11/2008

[<sup>F65</sup>30A] **Meaning of appropriate national authority**

- In this Part “the appropriate national authority” means—
- (a) in relation to England, the Secretary of State; and
  - (b) in relation to Wales, the Welsh Ministers.]]

**Textual Amendments**

- F63** Ss. 25A, 25B and cross-heading inserted (1.9.2009 for certain purposes for E., 26.4.2010 for certain purposes for W., and and 1.4.2011 otherwise for E.) by [Children and Young Persons Act 2008 \(c. 23\)](#), [ss. 10\(1\)](#), 44; [S.I. 2009/2273](#), [art. 2\(2\)\(c\)](#); [S.I. 2010/1329](#), [art. 2\(c\)](#); [S.I. 2010/2981](#), [art. 4\(c\)](#) (with [art. 5](#))
- F65** S. 30A inserted (13.11.2008) by [Children and Young Persons Act 2008 \(c. 23\)](#), [ss. 39](#), 44, [Sch. 3 para. 22](#)

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## PART IV

### CARE AND SUPERVISION

#### *General*

### 31 Care and Supervision

- (1) On the application of any local authority or authorised person, the court may make an order—
  - (a) placing the child with respect to whom the application is made in the care of a designated local authority; or
  - (b) putting him under the supervision of a designated local authority or of a probation officer.
- (2) A court may only make a care order or supervision order if it is satisfied—
  - (a) that the child concerned is suffering, or is likely to suffer, significant harm; and
  - (b) that the harm, or likelihood of harm, is attributable to—
    - (i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or
    - (ii) the child's being beyond parental control.
- (3) No care order or supervision order may be made with respect to a child who has reached the age of seventeen (or sixteen, in the case of a child who is married).
- (4) An application under this section may be made on its own or in any other family proceedings.
- (5) The court may—
  - (a) on an application for a care order, make a supervision order;
  - (b) on an application for a supervision order, make a care order.
- (6) Where an authorised person proposes to make an application under this section he shall—
  - (a) if it is reasonably practicable to do so; and
  - (b) before making the application,  
consult the local authority appearing to him to be the authority in whose area the child concerned is ordinarily resident.
- (7) An application made by an authorised person shall not be entertained by the court if, at the time when it is made, the child concerned is—
  - (a) the subject of an earlier application for a care order, or supervision order, which has not been disposed of; or
  - (b) subject to—
    - (i) a care order or supervision order;
    - (ii) an order under section 7(7)(b) of the <sup>M24</sup>Children and Young Persons Act 1969; or
    - (iii) a supervision requirement within the meaning of the <sup>M25</sup>Social Work (Scotland) Act 1968.
- (8) The local authority designated in a care order must be—



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- (a) the authority within whose area the child is ordinarily resident; or
  - (b) where the child does not reside in the area of a local authority, the authority within whose area any circumstances arose in consequence of which the order is being made.
- (9) In this section—
- “authorised person” means—
  - (a) the National Society for the Prevention of Cruelty to Children and any of its officers; and
  - (b) any person authorised by order of the Secretary of State to bring proceedings under this section and any officer of a body which is so authorised;
- “harm” means ill-treatment or the impairment of health or development;
  - “development” means physical, intellectual, emotional, social or behavioural development;
  - “health” means physical or mental health; and
  - “ill-treatment” includes sexual abuse and forms of ill-treatment which are not physical.
- (10) Where the question of whether harm suffered by a child is significant turns on the child’s health or development, his health or development shall be compared with that which could reasonably be expected of a similar child.
- (11) In this Act—
- “a care order” means (subject to section 105(1)) an order under subsection (1)(a) and (except where express provision to the contrary is made) includes an interim care order made under section 38; and
  - “a supervision order” means an order under subsection (1)(b) and (except where express provision to the contrary is made) includes an interim supervision order made under section 38.

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

**C15** S. 31 applied (14.10.1991) by S.I. 1991/2032, art. 3(1).

**Commencement Information**

**I30** S. 31 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

**Marginal Citations**

**M24** 1969 c. 54.

**M25** 1968 c. 49.

VALID FROM 07/12/2004

**[<sup>F66</sup>31A Care orders: care plans**

- (1) Where an application is made on which a care order might be made with respect to a child, the appropriate local authority must, within such time as the court may direct, prepare a plan (“a care plan”) for the future care of the child.

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- (2) While the application is pending, the authority must keep any care plan prepared by them under review and, if they are of the opinion some change is required, revise the plan, or make a new plan, accordingly.
- (3) A care plan must give any prescribed information and do so in the prescribed manner.
- (4) For the purposes of this section, the appropriate local authority, in relation to a child in respect of whom a care order might be made, is the local authority proposed to be designated in the order.
- (5) In section 31(3A) and this section, references to a care order do not include an interim care order.
- (6) A plan prepared, or treated as prepared, under this section is referred to in this Act as a “section 31A plan”.]

#### **Textual Amendments**

**F66** S. 31A inserted (7.12.2004 for specified purposes and otherwise 30.12.2005) by 2002 c. 38, ss. 121(2), 148 (with s. 121(3), Sch. 4 paras. 6-8); S.I. 2004/3203, **art. 2(1)(m)(xii)**; S.I. 2005/2213, **art. 2(k)**

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

**C16** S. 31A modified (26.7.2010) by [The 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)(b)**

### **32 Period within which application for order under this Part must be disposed of.**

- (1) A court hearing an application for an order under this Part shall (in the light of any rules made by virtue of subsection (2))—
  - (a) draw up a timetable with a view to disposing of the application without delay; and
  - (b) give such directions as it considers appropriate for the purpose of ensuring, so far as is reasonably practicable, that that timetable is adhered to.
- (2) Rules of court may—
  - (a) specify periods within which specified steps must be taken in relation to such proceedings; and
  - (b) make other provision with respect to such proceedings for the purpose of ensuring, so far as is reasonably practicable, that they are disposed of without delay.

#### **Commencement Information**

**I31** S. 32 wholly in force at 14.10.1991 see s. 108(2)(3) and [S.I. 1991/828](#), **art. 3(2)**

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**Status:** Point in time view as at 19/11/1991. This version of this Act contains provisions that are not valid for this point in time.

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## Care orders

### 33 Effect of care order.

- (1) Where a care order is made with respect to a child it shall be the duty of the local authority designated by the order to receive the child into their care and to keep him in their care while the order remains in force.
- (2) Where—
  - (a) a care order has been made with respect to a child on the application of an authorised person; but
  - (b) the local authority designated by the order was not informed that that person proposed to make the application,the child may be kept in the care of that person until received into the care of the authority.
- (3) While a care order is in force with respect to a child, the local authority designated by the order shall—
  - (a) have parental responsibility for the child; and
  - (b) have the power (subject to the following provisions of this section) to determine the extent to which a parent or guardian of the child may meet his parental responsibility for him.
- (4) The authority may not exercise the power in subsection (3)(b) unless they are satisfied that it is necessary to do so in order to safeguard or promote the child's welfare.
- (5) Nothing in subsection (3)(b) shall prevent a parent or guardian of the child who has care of him from doing what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting his welfare.
- (6) While a care order is in force with respect to a child, the local authority designated by the order shall not—
  - (a) cause the child to be brought up in any religious persuasion other than that in which he would have been brought up if the order had not been made; or
  - (b) have the right—
    - (i) to consent or refuse to consent to the making of an application with respect to the child under section 18 of the <sup>M26</sup>Adoption Act 1976;
    - (ii) to agree or refuse to agree to the making of an adoption order, or an order under section 55 of the Act of 1976, with respect to the child; or
    - (iii) to appoint a guardian for the child.
- (7) While a care order is in force with respect to a child, no person may—
  - (a) cause the child to be known by a new surname; or
  - (b) remove him from the United Kingdom,without either the written consent of every person who has parental responsibility for the child or the leave of the court.
- (8) Subsection (7)(b) does not—
  - (a) prevent the removal of such a child, for a period of less than one month, by the authority in whose care he is; or
  - (b) apply to arrangements for such a child to live outside England and Wales (which are governed by paragraph 19 of Schedule 2).

*Status: Point in time view as at 19/11/1991. This version of this Act contains provisions that are not valid for this point in time.*

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- (9) The power in subsection (3)(b) is subject (in addition to being subject to the provisions of this section) to any right, duty, power, responsibility or authority which a parent or guardian of the child has in relation to the child and his property by virtue of any other enactment.

**Commencement Information**

**I32** S. 33 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

**Marginal Citations**

**M26** 1976 c. 36.

**34 Parental contact etc. with children in care.**

- (1) Where a child is in the care of a local authority, the authority shall (subject to the provisions of this section) allow the child reasonable contact with—
- (a) his parents;
  - (b) any guardian of his;
  - (c) where there was a residence order in force with respect to the child immediately before the care order was made, the person in whose favour the order was made; and
  - (d) where, immediately before the care order was made, a person had care of the child by virtue of an order made in the exercise of the High Court's inherent jurisdiction with respect to children, that person.
- (2) On an application made by the authority or the child, the court may make such order as it considers appropriate with respect to the contact which is to be allowed between the child and any named person.
- (3) On an application made by—
- (a) any person mentioned in paragraphs (a) to (d) of subsection (1); or
  - (b) any person who has obtained the leave of the court to make the application,
- the court may make such order as it considers appropriate with respect to the contact which is to be allowed between the child and that person.
- (4) On an application made by the authority or the child, the court may make an order authorising the authority to refuse to allow contact between the child and any person who is mentioned in paragraphs (a) to (d) of subsection (1) and named in the order.
- (5) When making a care order with respect to a child, or in any family proceedings in connection with a child who is in the care of a local authority, the court may make an order under this section, even though no application for such an order has been made with respect to the child, if it considers that the order should be made.
- (6) An authority may refuse to allow the contact that would otherwise be required by virtue of subsection (1) or an order under this section if—
- (a) they are satisfied that it is necessary to do so in order to safeguard or promote the child's welfare; and
  - (b) the refusal—
    - (i) is decided upon as a matter of urgency; and
    - (ii) does not last for more than seven days.

**Status:** Point in time view as at 19/11/1991. This version of this Act contains provisions that are not valid for this point in time.

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- (7) An order under this section may impose such conditions as the court considers appropriate.
- (8) The Secretary of State may by regulations make provision as to—
  - (a) the steps to be taken by a local authority who have exercised their powers under subsection (6);
  - (b) the circumstances in which, and conditions subject to which, the terms of any order under this section may be departed from by agreement between the local authority and the person in relation to whom the order is made;
  - (c) notification by a local authority of any variation or suspension of arrangements made (otherwise than under an order under this section) with a view to affording any person contact with a child to whom this section applies.
- (9) The court may vary or discharge any order made under this section on the application of the authority, the child concerned or the person named in the order.
- (10) An order under this section may be made either at the same time as the care order itself or later.
- (11) Before making a care order with respect to any child the court shall—
  - (a) consider the arrangements which the authority have made, or propose to make, for affording any person contact with a child to whom this section applies; and
  - (b) invite the parties to the proceedings to comment on those arrangements.

**Commencement Information**

**I33** S. 34 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*Supervision orders*

**35 Supervision orders.**

- (1) While a supervision order is in force it shall be the duty of the supervisor—
  - (a) to advise, assist and befriend the supervised child;
  - (b) to take such steps as are reasonably necessary to give effect to the order; and
  - (c) where—
    - (i) the order is not wholly complied with; or
    - (ii) the supervisor considers that the order may no longer be necessary, to consider whether or not to apply to the court for its variation or discharge.
- (2) Parts I and II of Schedule 3 make further provision with respect to supervision orders.

**Commencement Information**

**I34** S. 35 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

*Status: Point in time view as at 19/11/1991. This version of this Act contains provisions that are not valid for this point in time.*

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### 36 Education supervision orders.

- (1) On the application of any local education authority, the court may make an order putting the child with respect to whom the application is made under the supervision of a designated local education authority.
- (2) In this Act “an education supervision order” means an order under subsection (1).
- (3) A court may only make an education supervision order if it is satisfied that the child concerned is of compulsory school age and is not being properly educated.
- (4) For the purposes of this section, a child is being properly educated only if he is receiving efficient full-time education suitable to his age, ability and aptitude and any special educational needs he may have.
- (5) Where a child is—
  - (a) the subject of a school attendance order which is in force under section 37 of the <sup>M27</sup>Education Act 1944 and which has not been complied with; or
  - (b) a registered pupil at a school which he is not attending regularly within the meaning of section 39 of that Act,
 then, unless it is proved that he is being properly educated, it shall be assumed that he is not.
- (6) An education supervision order may not be made with respect to a child who is in the care of a local authority.
- (7) The local education authority designated in an education supervision order must be—
  - (a) the authority within whose area the child concerned is living or will live; or
  - (b) where—
    - (i) the child is a registered pupil at a school; and
    - (ii) the authority mentioned in paragraph (a) and the authority within whose area the school is situated agree,
 the latter authority.
- (8) Where a local education authority propose to make an application for an education supervision order they shall, before making the application, consult the social services committee (within the meaning of the <sup>M28</sup>Local Authority Social Services Act 1970) of the appropriate local authority.
- (9) The appropriate local authority is—
  - (a) in the case of a child who is being provided with accommodation by, or on behalf of, a local authority, that authority; and
  - (b) in any other case, the local authority within whose area the child concerned lives, or will live.
- (10) Part III of Schedule 3 makes further provision with respect to education supervision orders.

#### Commencement Information

**I35** S. 36 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### Marginal Citations

**M27** 1944 c. 31.

*Status:* Point in time view as at 19/11/1991. This version of this Act contains provisions that are not valid for this point in time.

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**M28** 1970 c. 42.

### *Powers of court*

#### **37 Powers of court in certain family proceedings.**

- (1) Where, in any family proceedings in which a question arises with respect to the welfare of any child, it appears to the court that it may be appropriate for a care or supervision order to be made with respect to him, the court may direct the appropriate authority to undertake an investigation of the child's circumstances.
- (2) Where the court gives a direction under this section the local authority concerned shall, when undertaking the investigation, consider whether they should—
  - (a) apply for a care order or for a supervision order with respect to the child;
  - (b) provide services or assistance for the child or his family; or
  - (c) take any other action with respect to the child.
- (3) Where a local authority undertake an investigation under this section, and decide not to apply for a care order or supervision order with respect to the child concerned, they shall inform the court of—
  - (a) their reasons for so deciding;
  - (b) any service or assistance which they have provided, or intend to provide, for the child and his family; and
  - (c) any other action which they have taken, or propose to take, with respect to the child.
- (4) The information shall be given to the court before the end of the period of eight weeks beginning with the date of the direction, unless the court otherwise directs.
- (5) The local authority named in a direction under subsection (1) must be—
  - (a) the authority in whose area the child is ordinarily resident; or
  - (b) where the child <sup>[F67]</sup>is not ordinarily resident in the area of a local authority, the authority within whose area any circumstances arose in consequence of which the direction is being given.
- (6) If, on the conclusion of any investigation or review under this section, the authority decide not to apply for a care order or supervision order with respect to the child—
  - (a) they shall consider whether it would be appropriate to review the case at a later date; and
  - (b) if they decide that it would be, they shall determine the date on which that review is to begin.

#### **Textual Amendments**

**F67** Words in s. 37(5)(b) substituted (14.10.1991) by [Courts and Legal Services Act 1990 \(c. 41, SIF 76:1\)](#), s. 116, [Sch. 16 para. 16](#); [S.I. 1991/1883](#), art. 3, [Sch.](#)

#### **Commencement Information**

**I36** S. 37 wholly in force at 14.10.1991 see s. 108(2)(3) and [S.I. 1991/828](#), [art. 3\(2\)](#)

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### **38 Interim orders.**

- (1) Where—
  - (a) in any proceedings on an application for a care order or supervision order, the proceedings are adjourned; or
  - (b) the court gives a direction under section 37(1),the court may make an interim care order or an interim supervision order with respect to the child concerned.
- (2) A court shall not make an interim care order or interim supervision order under this section unless it is satisfied that there are reasonable grounds for believing that the circumstances with respect to the child are as mentioned in section 31(2).
- (3) Where, in any proceedings on an application for a care order or supervision order, a court makes a residence order with respect to the child concerned, it shall also make an interim supervision order with respect to him unless satisfied that his welfare will be satisfactorily safeguarded without an interim order being made.
- (4) An interim order made under or by virtue of this section shall have effect for such period as may be specified in the order, but shall in any event cease to have effect on whichever of the following events first occurs—
  - (a) the expiry of the period of eight weeks beginning with the date on which the order is made;
  - (b) if the order is the second or subsequent such order made with respect to the same child in the same proceedings, the expiry of the relevant period;
  - (c) in a case which falls within subsection (1)(a), the disposal of the application;
  - (d) in a case which falls within subsection (1)(b), the disposal of an application for a care order or supervision order made by the authority with respect to the child;
  - (e) in a case which falls within subsection (1)(b) and in which—
    - (i) the court has given a direction under section 37(4), but
    - (ii) no application for a care order or supervision order has been made with respect to the child,the expiry of the period fixed by that direction.
- (5) In subsection (4)(b) “the relevant period” means—
  - (a) the period of four weeks beginning with the date on which the order in question is made; or
  - (b) the period of eight weeks beginning with the date on which the first order was made if that period ends later than the period mentioned in paragraph (a).
- (6) Where the court makes an interim care order, or interim supervision order, it may give such directions (if any) as it considers appropriate with regard to the medical or psychiatric examination or other assessment of the child; but if the child is of sufficient understanding to make an informed decision he may refuse to submit to the examination or other assessment.
- (7) A direction under subsection (6) may be to the effect that there is to be—
  - (a) no such examination or assessment; or
  - (b) no such examination or assessment unless the court directs otherwise.
- (8) A direction under subsection (6) may be—
  - (a) given when the interim order is made or at any time while it is in force; and



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- (b) varied at any time on the application of any person falling within any class of person prescribed by rules of court for the purposes of this subsection.
- (9) Paragraphs 4 and 5 of Schedule 3 shall not apply in relation to an interim supervision order.
- (10) Where a court makes an order under or by virtue of this section it shall, in determining the period for which the order is to be in force, consider whether any party who was, or might have been, opposed to the making of the order was in a position to argue his case against the order in full.

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

**C17** S. 38 modified (26.7.2010) by [The 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(2)**

**C18** S. 38(1) restricted (14. 10. 1991) by [S.I. 1991/1395](#), rules. 1,28

**Commencement Information**

**I37** S. 38 wholly in force at 14.10.1991 see s. 108(2)(3) and [S.I. 1991/828](#), **art. 3(2)**

VALID FROM 01/10/1997

**[<sup>F68</sup>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.

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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 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.
- (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.]

#### Textual Amendments

**F68** Ss. 38A and 38B inserted(1.10.1997) by 1996 c. 27, ss. 52, **Sch. 6 para. 1**(with Sch. 9 para. 5); S.I. 1997/1892, **art.3**

VALID FROM 01/10/1997

#### <sup>F69</sup>**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.

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(5) In this section “exclusion requirement” and “relevant person” have the same meaning as in section 38A.

#### Textual Amendments

**F69** Ss. 38A and 38B inserted (1.10.1997) by 1996 c. 27, s. 52, **Sch. 6 para.1** (with **Sch. 9 para. 5**); S.I. 1997/1892, **art.3**

### 39 Discharge and variation etc. of care orders and supervision orders.

- (1) A care order may be discharged by the court on the application of—
  - (a) any person who has parental responsibility for the child;
  - (b) the child himself; or
  - (c) the local authority designated by the order.
- (2) A supervision order may be varied or discharged by the court on the application of—
  - (a) any person who has parental responsibility for the child;
  - (b) the child himself; or
  - (c) the supervisor.
- (3) On the application of a person who is not entitled to apply for the order to be discharged, but who is a person with whom the child is living, a supervision order may be varied by the court in so far as it imposes a requirement which affects that person.
- (4) Where a care order is in force with respect to a child the court may, on the application of any person entitled to apply for the order to be discharged, substitute a supervision order for the care order.
- (5) When a court is considering whether to substitute one order for another under subsection (4) any provision of this Act which would otherwise require section 31(2) to be satisfied at the time when the proposed order is substituted or made shall be disregarded.

#### Commencement Information

**I38** S. 39 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, **art. 3(2)**

### 40 Orders pending appeals in cases about care or supervision orders.

- (1) Where—
  - (a) a court dismisses an application for a care order; and
  - (b) at the time when the court dismisses the application, the child concerned is the subject of an interim care order,the court may make a care order with respect to the child to have effect subject to such directions (if any) as the court may see fit to include in the order.
- (2) Where—
  - (a) a court dismisses an application for a care order, or an application for a supervision order; and

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- (b) at the time when the court dismisses the application, the child concerned is the subject of an interim supervision order,  
 the court may make a supervision order with respect to the child to have effect subject to such directions (if any) as the court may see fit to include in the order.
- (3) Where a court grants an application to discharge a care order or supervision order, it may order that—
- (a) its decision is not to have effect; or
  - (b) the care order, or supervision order, is to continue to have effect but subject to such directions as the court sees fit to include in the order.
- (4) An order made under this section shall only have effect for such period, not exceeding the appeal period, as may be specified in the order.
- (5) Where—
- (a) an appeal is made against any decision of a court under this section; or
  - (b) any application is made to the appellate court in connection with a proposed appeal against that decision,
- the appellate court may extend the period for which the order in question is to have effect, but not so as to extend it beyond the end of the appeal period.
- (6) In this section “the appeal period” means—
- (a) where an appeal is made against the decision in question, the period between the making of that decision and the determination of the appeal; and
  - (b) otherwise, the period during which an appeal may be made against the decision.

**Commencement Information**

**I39** S. 40 wholly in force at 14.10.1991 see s. 108(2)(3) and [S.I. 1991/828, art. 3\(2\)](#)

*Guardians ad litem*

**41 Representation of child and of his interests in certain proceedings.**

- (1) For the purpose of any specified proceedings, the court shall appoint a guardian ad litem for the child concerned unless satisfied that it is not necessary to do so in order to safeguard his interests.
- (2) The guardian ad litem 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 guardian ad litem has been appointed for the child;

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- (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.
- (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 residence order with respect to 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 residence order with respect to 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
  - (i) which are specified for the time being, for the purposes of this section, by rules of court.
- (7) The Secretary of State may by regulations provide for the establishment of panels of persons from whom guardians ad litem appointed under this section must be selected.
- (8) Subsection (7) shall not be taken to prejudice the power of the Lord Chancellor to confer or impose duties on the Official Solicitor under section 90(3) of the<sup>M29</sup> Supreme Court Act 1981.
- (9) The regulations may, in particular, make provision—
  - (a) as to the constitution, administration and procedures of panels;
  - (b) requiring two or more specified local authorities to make arrangements for the joint management of a panel;
  - (c) for the defrayment by local authorities of expenses incurred by members of panels;
  - (d) for the payment by local authorities of fees and allowances for members of panels;
  - (e) as to the qualifications for membership of a panel;
  - (f) as to the training to be given to members of panels;
  - (g) as to the co-operation required of specified local authorities in the provision of panels in specified areas; and

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- (h) for monitoring the work of guardians ad litem.
- (10) Rules of court may make provision as to—
- (a) the assistance which any guardian ad litem may be required by the court to give to it;
  - (b) the consideration to be given by any guardian ad litem, 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;
  - (c) the participation of guardians ad litem 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 a guardian ad litem 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>F70</sup>(12) The Secretary of State may, with the consent of the Treasury, make such grants with respect to expenditure of any local authority—
- (a) in connection with the establishment and administration of guardian ad litem panels in accordance with this section;
  - (b) in paying expenses, fees, allowances and in the provision of training for members of such panels,
- as he considers appropriate.]

#### Textual Amendments

**F70** S. 41(12) added (14.10.1991) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), s. 116, **Sch. 16 para. 17**; S.I. 1991/1883, art. 3, Sch.

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

**C19** S. 41(2) modified (14. 10. 1991) by S.I. 1991/1395, rules. 1, 11(1)

#### Commencement Information

**I40** S. 41 in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, **art. 3(2)**

#### Marginal Citations

**M29** 1981 c. 54.

## 42 Right of guardian ad litem to have access to local authority records.

- (1) Where a person has been appointed as a guardian ad litem under this Act 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>F71</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>F72</sup> . . .

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- (b) any <sup>F72</sup> . . . records of, or held by, a local authority which were compiled in connection with any functions which stand referred to their social services committee under the <sup>M30</sup>Local Authority Social Services Act 1970, so far as those records relate to that child.
- [<sup>F73</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 a guardian ad litem 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>F74</sup>(4) In this section “authorised person” has the same meaning as in section 31.]

#### Textual Amendments

- F71** 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.
- F72** 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.
- F73** 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.**
- F74** 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.**

#### Commencement Information

- I41** S. 42 in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, **art. 3(2)**

#### Marginal Citations

- M30** 1970 c. 42.

## PART V

### PROTECTION OF CHILDREN

#### 43 Child assessment orders.

- (1) On the application of a local authority or authorised person for an order to be made under this section with respect to a child, the court may make the order if, but only if, it is satisfied that—
- (a) the applicant has reasonable cause to suspect that the child is suffering, or is likely to suffer, significant harm;

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- (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 order under this section.
- (2) In this Act “a child assessment order” means an order under this section.
- (3) A court may treat an application under this section as an application for an emergency protection order.
- (4) No court shall make a child assessment order if it is satisfied—
  - (a) that there are grounds for making an emergency protection order with respect to the child; and
  - (b) that it ought to make such an order rather than a child assessment order.
- (5) A child assessment order shall—
  - (a) specify the date by which the assessment is to begin; and
  - (b) have effect for such period, not exceeding 7 days beginning with that date, as may be specified in the order.
- (6) Where a child 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 court thinks fit to specify in the order.
- (7) A child 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.
- (8) Regardless of subsection (7), if the child is of sufficient understanding to make an informed decision he may refuse to submit to a medical or psychiatric examination or other assessment.
- (9) The child may only be kept away from home—
  - (a) in accordance with directions specified in the order;
  - (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.
- (10) Where the child is to be kept away from home, the order shall contain such directions as the court thinks fit with regard to the contact that he must be allowed to have with other persons while away from home.
- (11) Any person making an application for a child assessment order shall take such steps as are reasonably practicable to ensure that notice of the application is given to—
  - (a) the child’s parents;
  - (b) any person who is not a parent of his but who has parental responsibility for him;
  - (c) any other person caring for the child;
  - (d) any person in whose favour a contact order is in force with respect to the child;
  - (e) any person who is allowed to have contact with the child by virtue of an order under section 34; and
  - (f) the child,



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before the hearing of the application.

(12) Rules of court may make provision as to the circumstances in which—

- (a) any of the persons mentioned in subsection (11); or
- (b) such other person as may be specified in the rules,

may apply to the court for a child assessment order to be varied or discharged.

(13) In this section “authorised person” means a person who is an authorised person for the purposes of section 31.

#### Commencement Information

**I42** S. 43 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

## 44 Orders for emergency protection of children.

(1) Where any person (“the applicant”) applies to the court for an order to be made under this section with respect to a child, the court may make the order if, but only if, it is satisfied that—

- (a) there is reasonable cause to believe that the child is likely to suffer significant harm if—
  - (i) he is not removed to accommodation provided by or on behalf of the applicant; or
  - (ii) he does not remain in the place in which he is then being accommodated;
- (b) in the case of an application made by a local authority—
  - (i) enquiries are being made with respect to the child under section 47(1)(b); and
  - (ii) those enquiries are being frustrated by access to the child being unreasonably refused to a person authorised to seek access and that the applicant has reasonable cause to believe that access to the child is required as a matter of urgency; or
- (c) in the case of an application made by an authorised 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 a person authorised to seek access and the applicant has reasonable cause to believe that access to the child is required as a matter of urgency.

(2) In this section—

- (a) “authorised person” means a person who is an authorised person for the purposes of section 31; and
- (b) “a person authorised to seek access” means—
  - (i) in the case of an application by a local authority, an officer of the local authority or a person authorised by the authority to act on their behalf in connection with the enquiries; or
  - (ii) in the case of an application by an authorised person, that person.

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- (3) Any person—
- (a) seeking access to a child in connection with enquiries of a kind mentioned in subsection (1); and
  - (b) purporting to be a person authorised to do so,
- shall, on being asked to do so, produce some duly authenticated document as evidence that he is such a person.
- (4) While an order under this section (“an emergency protection order”) is in force it—
- (a) operates as a direction to any person who is in a position to do so to comply with any request to produce the child to the applicant;
  - (b) authorises—
    - (i) the removal of the child at any time to accommodation provided by or on behalf of the applicant and his being kept there; or
    - (ii) the prevention of the child’s removal from any hospital, or other place, in which he was being accommodated immediately before the making of the order; and
  - (c) gives the applicant parental responsibility for the child.
- (5) Where an emergency protection order is in force with respect to a child, the applicant—
- (a) shall only exercise the power given by virtue of subsection (4)(b) in order to safeguard the welfare of the child;
  - (b) shall take, and shall only take, such action in meeting his parental responsibility for the child as is reasonably required to safeguard or promote the welfare of the child (having regard in particular to the duration of the order); and
  - (c) shall comply with the requirements of any regulations made by the Secretary of State for the purposes of this subsection.
- (6) Where the court makes an emergency protection order, it may give such directions (if any) as it considers appropriate with respect to—
- (a) the contact which is, or is not, to be allowed between the child and any named person;
  - (b) the medical or psychiatric examination or other assessment of the child.
- (7) Where any direction is given under subsection (6)(b), the child may, if he is of sufficient understanding to make an informed decision, refuse to submit to the examination or other assessment.
- (8) A direction under subsection (6)(a) may impose conditions and one under subsection (6)(b) may be to the effect that there is to be—
- (a) no such examination or assessment; or
  - (b) no such examination or assessment unless the court directs otherwise.
- (9) A direction under subsection (6) may be—
- (a) given when the emergency protection order is made or at any time while it is in force; and
  - (b) varied at any time on the application of any person falling within any class of person prescribed by rules of court for the purposes of this subsection.
- (10) Where an emergency protection order is in force with respect to a child and—

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- (a) the applicant has exercised the power given by subsection (4)(b)(i) but it appears to him that it is safe for the child to be returned; or
  - (b) the applicant has exercised the power given by subsection (4)(b)(ii) 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.
- (11) Where he is required by subsection (10) to return the child the applicant 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;
    - (ii) any person who is not a parent of his but who has parental responsibility for him; or
    - (iii) such other person as the applicant (with the agreement of the court) considers appropriate.
- (12) Where the applicant has been required by subsection (10) 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 emergency 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.
- (13) Where an emergency protection order has been made with respect to a child, the applicant shall, subject to any direction given under subsection (6), allow the child reasonable contact with—
- (a) his parents;
  - (b) any person who is not a parent of his but who has parental responsibility for him;
  - (c) any person with whom he was living immediately before the making of 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; and
  - (f) any person acting on behalf of any of those persons.
- (14) Wherever it is reasonably practicable to do so, an emergency protection order shall name the child; and where it does not name him it shall describe him as clearly as possible.
- (15) A person shall be guilty of an offence if he intentionally obstructs any person exercising the power under subsection (4)(b) to remove, or prevent the removal of, a child.
- (16) A person guilty of an offence under subsection (15) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**Commencement Information**

**I43** S. 44 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

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VALID FROM 01/10/1997

**[<sup>F75</sup>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.
- (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

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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.]

#### Textual Amendments

**F75** Ss. 44A and 44B inserted(1.10.1997) by 1996 c. 27, s. 52, **Sch. 6 para. 3**(with Sch. 9 para. 5); S.I. 1997/1892, **art. 3**

VALID FROM 01/10/1997

#### **F76** 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.

#### Textual Amendments

**F76** Ss. 44A and 44B inserted(1.10.1997) by 1996 c. 27, ss. 52, **Sch. 6 para. 3**(with Sch 9 para. 5); S.I. 1997/1892, **art.3**

#### 45 Duration of emergency protection orders and other supplemental provisions.

- (1) An emergency protection order shall have effect for such period, not exceeding eight days, as may be specified in the order.
- (2) Where—

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- (a) the court making an emergency protection order would, but for this subsection, specify a period of eight days as the period for which the order is to have effect; but
  - (b) the last of those eight days is a public holiday (that is to say, Christmas Day, Good Friday, a bank holiday or a Sunday),
- the court may specify a period which ends at noon on the first later day which is not such a holiday.
- (3) Where an emergency protection order is made on an application under section 46(7), the period of eight days mentioned in subsection (1) shall begin with the first day on which the child was taken into police protection under section 46.
- (4) Any person who—
- (a) has parental responsibility for a child as the result of an emergency protection order; and
  - (b) is entitled to apply for a care order with respect to the child,
- may apply to the court for the period during which the emergency protection order is to have effect to be extended.
- (5) On an application under subsection (4) the court may extend the period during which the order is to have effect by such period, not exceeding seven days, as it thinks fit, but may do so only if it has reasonable cause to believe that the child concerned is likely to suffer significant harm if the order is not extended.
- (6) An emergency protection order may only be extended once.
- (7) Regardless of any enactment or rule of law which would otherwise prevent it from doing so, a court hearing an application for, or with respect to, an emergency protection order may take account of—
- (a) any statement contained in any report made to the court in the course of, or in connection with, the hearing; or
  - (b) any evidence given during the hearing,
- which is, in the opinion of the court, relevant to the application.
- (8) Any of the following may apply to the court for an emergency protection order to be discharged—
- (a) the child;
  - (b) a parent of his;
  - (c) any person who is not a parent of his but who has parental responsibility for him; or
  - (d) any person with whom he was living immediately before the making of the order.
- (9) No application for the discharge of an emergency protection order shall be heard by the court before the expiry of the period of 72 hours beginning with the making of the order.
- [<sup>F77</sup>(10) No appeal may be made against—
- (a) the making of, or refusal to make, an emergency protection order;
  - (b) the extension of, or refusal to extend, the period during which such an order is to have effect;
  - (c) the discharge of, or refusal to discharge, such an order; or

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- (d) the giving of, or refusal to give, any direction in connection with such an order.]
- (11) Subsection (8) does not apply—
  - (a) where the person who would otherwise be entitled to apply for the emergency protection order to be discharged—
    - (i) was given notice (in accordance with rules of court) of the hearing at which the order was made; and
    - (ii) was present at that hearing; or
  - (b) to any emergency protection order the effective period of which has been extended under subsection (5).
- (12) A court making an emergency protection order may direct that the applicant may, in exercising any powers which he has by virtue of the order, be accompanied by a registered medical practitioner, registered nurse or registered health visitor, if he so chooses.

#### Textual Amendments

**F77** S. 45(10) substituted (14.10.1991) by Courts and Legal Services Act (c. 41, SIF 76:1), s. 116, Sch. 16 para. 19; S.I. 1991/1883, art. 3, Sch.

#### Commencement Information

**I44** S. 45 in force at 14.10.1991 see 108(2)(3) and S.I. 1991/828, art. 3(2)

## 46 Removal and accommodation of children by police in cases of emergency.

- (1) Where a constable has reasonable cause to believe that a child would otherwise be likely to suffer significant harm, he may—
  - (a) remove the child to suitable accommodation and keep him there; or
  - (b) take such steps as are reasonable to ensure that the child’s removal from any hospital, or other place, in which he is then being accommodated is prevented.
- (2) For the purposes of this Act, a child with respect to whom a constable has exercised his powers under this section is referred to as having been taken into police protection.
- (3) As soon as is reasonably practicable after taking a child into police protection, the constable concerned shall—
  - (a) inform the local authority within whose area the child was found of the steps that have been, and are proposed to be, taken with respect to the child under this section and the reasons for taking them;
  - (b) give details to the authority within whose area the child is ordinarily resident (“the appropriate authority”) of the place at which the child is being accommodated;
  - (c) inform the child (if he appears capable of understanding)—
    - (i) of the steps that have been taken with respect to him under this section and of the reasons for taking them; and
    - (ii) of the further steps that may be taken with respect to him under this section;
  - (d) take such steps as are reasonably practicable to discover the wishes and feelings of the child;

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- (e) secure that the case is inquired into by an officer designated for the purposes of this section by the chief officer of the police area concerned; and
  - (f) where the child was taken into police protection by being removed to accommodation which is not provided—
    - (i) by or on behalf of a local authority; or
    - (ii) as a refuge, in compliance with the requirements of section 51, secure that he is moved to accommodation which is so provided.
- (4) As soon as is reasonably practicable after taking a child into police protection, the constable concerned shall take such steps as are reasonably practicable to inform—
- (a) the child's parents;
  - (b) every person who is not a parent of his but who has parental responsibility for him; and
  - (c) any other person with whom the child was living immediately before being taken into police protection,
- of the steps that he has taken under this section with respect to the child, the reasons for taking them and the further steps that may be taken with respect to him under this section.
- (5) On completing any inquiry under subsection (3)(e), the officer conducting it shall release the child from police protection unless he considers that there is still reasonable cause for believing that the child would be likely to suffer significant harm if released.
- (6) No child may be kept in police protection for more than 72 hours.
- (7) While a child is being kept in police protection, the designated officer may apply on behalf of the appropriate authority for an emergency protection order to be made under section 44 with respect to the child.
- (8) An application may be made under subsection (7) whether or not the authority know of it or agree to its being made.
- (9) While a child is being kept in police protection—
- (a) neither the constable concerned nor the designated officer shall have parental responsibility for him; but
  - (b) the designated officer 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 length of the period during which the child will be so protected).
- (10) Where a child has been taken into police protection, the designated officer shall allow—
- (a) the child's parents;
  - (b) any person who is not a parent of the child but who has parental responsibility for him;
  - (c) any person with whom the child was living immediately before he was taken into police protection;
  - (d) any person in whose favour a contact order is in force with respect to the child;
  - (e) any person who is allowed to have contact with the child by virtue of an order under section 34; and
  - (f) any person acting on behalf of any of those persons,



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to have such contact (if any) with the child as, in the opinion of the designated officer, is both reasonable and in the child's best interests.

- (11) Where a child who has been taken into police protection is in accommodation provided by, or on behalf of, the appropriate authority, subsection (10) shall have effect as if it referred to the authority rather than to the designated officer.

#### Commencement Information

**I45** S. 46 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### 47 Local authority's duty to investigate.

- (1) Where a local authority—
- (a) are informed that a child who lives, or is found, in their area—
    - (i) is the subject of an emergency protection order; or
    - (ii) is in police protection; or
  - (b) have reasonable cause to suspect that a child who lives, or is found, in their area is suffering, or is likely to suffer, significant harm,
- the authority shall make, or cause to be made, such enquiries as they consider necessary to enable them to decide whether they should take any action to safeguard or promote the child's welfare.
- (2) Where a local authority have obtained an emergency protection order with respect to a child, they shall make, or cause to be made, such enquiries as they consider necessary to enable them to decide what action they should take to safeguard or promote the child's welfare.
- (3) The enquiries shall, in particular, be directed towards establishing—
- (a) whether the authority should make any application to the court, or exercise any of their other powers under this Act, with respect to the child;
  - (b) whether, in the case of a child—
    - (i) with respect to whom an emergency protection order has been made; and
    - (ii) who is not in accommodation provided by or on behalf of the authority,it would be in the child's best interests (while an emergency protection order remains in force) for him to be in such accommodation; and
  - (c) whether, in the case of a child who has been taken into police protection, it would be in the child's best interests for the authority to ask for an application to be made under section 46(7).
- (4) Where enquiries are being made under subsection (1) with respect to a child, the local authority concerned shall (with a view to enabling them to determine what action, if any, to take with respect to him) take such steps as are reasonably practicable—
- (a) to obtain access to him; or
  - (b) to ensure that access to him is obtained, on their behalf, by a person authorised by them for the purpose,
- unless they are satisfied that they already have sufficient information with respect to him.

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- (5) Where, as a result of any such enquiries, it appears to the authority that there are matters connected with the child's education which should be investigated, they shall consult the relevant local education authority.
- (6) Where, in the course of enquiries made under this section—
- (a) any officer of the local authority concerned; or
  - (b) any person authorised by the authority to act on their behalf in connection with those enquiries—
    - (i) is refused access to the child concerned; or
    - (ii) is denied information as to his whereabouts,
 the authority shall apply for an emergency protection order, a child assessment order, a care order or a supervision order with respect to the child unless they are satisfied that his welfare can be satisfactorily safeguarded without their doing so.
- (7) If, on the conclusion of any enquiries or review made under this section, the authority decide not to apply for an emergency protection order, a child assessment order, a care order or a supervision order they shall—
- (a) consider whether it would be appropriate to review the case at a later date; and
  - (b) if they decide that it would be, determine the date on which that review is to begin.
- (8) Where, as a result of complying with this section, a local authority conclude that they should take action to safeguard or promote the child's welfare they shall take that action (so far as it is both within their power and reasonably practicable for them to do so).
- (9) Where a local authority are conducting enquiries under this section, it shall be the duty of any person mentioned in subsection (11) to assist them with those enquiries (in particular by providing relevant information and advice) if called upon by the authority to do so.
- (10) Subsection (9) does not oblige any person to assist a local authority where doing so would be unreasonable in all the circumstances of the case.
- (11) The persons are—
- (a) any local authority;
  - (b) any local education authority;
  - (c) any local housing authority;
  - (d) any health authority [<sup>F78</sup>or National Health Service trust]; and
  - (e) any person authorised by the Secretary of State for the purposes of this section.
- (12) Where a local authority are making enquiries under this section with respect to a child who appears to them to be ordinarily resident within the area of another authority, they shall consult that other authority, who may undertake the necessary enquiries in their place.

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#### **Textual Amendments**

**F78** Words in s. 47(11)(d) inserted (14.10.1991) by [Courts and Legal Services Act 1990 \(c. 41, SIF 76:1\)](#), s. 116, [Sch. 16 para. 20](#); S.I. 1991/1883, art. 3, Sch.

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#### Commencement Information

**I46** S. 47 in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

### 48 Powers to assist in discovery of children who may be in need of emergency protection.

- (1) Where it appears to a court making an emergency protection order that adequate information as to the child's whereabouts—
  - (a) is not available to the applicant for the order; but
  - (b) is available to another person,it may include in the order a provision requiring that other person to disclose, if asked to do so by the applicant, any information that he may have as to the child's whereabouts.
- (2) No person shall be excused from complying with such a requirement on the ground that complying might incriminate him or his spouse of an offence; but a statement or admission made in complying shall not be admissible in evidence against either of them in proceedings for any offence other than perjury.
- (3) An emergency protection order may authorise the applicant to enter premises specified by the order and search for the child with respect to whom the order is made.
- (4) Where the court is satisfied that there is reasonable cause to believe that there may be another child on those premises with respect to whom an emergency protection order ought to be made, it may make an order authorising the applicant to search for that other child on those premises.
- (5) Where—
  - (a) an order has been made under subsection (4);
  - (b) the child concerned has been found on the premises; and
  - (c) the applicant is satisfied that the grounds for making an emergency protection order exist with respect to him,the order shall have effect as if it were an emergency protection order.
- (6) Where an order has been made under subsection (4), the applicant shall notify the court of its effect.
- (7) A person shall be guilty of an offence if he intentionally obstructs any person exercising the power of entry and search under subsection (3) or (4).
- (8) A person guilty of an offence under subsection (7) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (9) Where, on an application made by any person for a warrant under this section, it appears to the court—
  - (a) that a person attempting to exercise powers under an emergency protection order has been prevented from doing so by being refused entry to the premises concerned or access to the child concerned; or
  - (b) that any such person is likely to be so prevented from exercising any such powers,it may issue a warrant authorising any constable to assist the person mentioned in paragraph (a) or (b) in the exercise of those powers using reasonable force if necessary.

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- (10) Every warrant issued under this section shall be addressed to, and executed by, a constable who shall be accompanied by the person applying for the warrant if—
- (a) that person so desires; and
  - (b) the court by whom the warrant is issued does not direct otherwise.
- (11) A court granting an application for a warrant under this section may direct that the constable concerned may, in executing the warrant, be accompanied by a registered medical practitioner, registered nurse or registered health visitor if he so chooses.
- (12) An application for a warrant under this section shall be made in the manner and form prescribed by rules of court.
- (13) Wherever it is reasonably practicable to do so, an order under subsection (4), an application for a warrant under this section and any such warrant shall name the child; and where it does not name him it shall describe him as clearly as possible.

**Commencement Information**

**I47** S. 48 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

**49 Abduction of children in care etc.**

- (1) A person shall be guilty of an offence if, knowingly and without lawful authority or reasonable excuse, he—
- (a) takes a child to whom this section applies away from the responsible person;
  - (b) keeps such a child away from the responsible person; or
  - (c) induces, assists or incites such a child to run away or stay away from the responsible person.
- (2) This section applies in relation to a child who is—
- (a) in care;
  - (b) the subject of an emergency protection order; or
  - (c) in police protection,
- and in this section “the responsible person” means any person who for the time being has care of him by virtue of the care order, the emergency protection order, or section 46, as the case may be.
- (3) A person guilty of an offence under this section shall be liable on summary conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding level 5 on the standard scale, or to both.

**Commencement Information**

**I48** S. 49 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828 art. 3(2))

**50 Recovery of abducted children etc.**

- (1) Where it appears to the court that there is reason to believe that a child to whom this section applies—

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- (a) has been unlawfully taken away or is being unlawfully kept away from the responsible person;
  - (b) has run away or is staying away from the responsible person; or
  - (c) is missing,

the court may make an order under this section (“a recovery order”).
- (2) This section applies to the same children to whom section 49 applies and in this section “the responsible person” has the same meaning as in section 49.
- (3) A recovery order—
  - (a) operates as a direction to any person who is in a position to do so to produce the child on request to any authorised person;
  - (b) authorises the removal of the child by any authorised person;
  - (c) requires any person who has information as to the child’s whereabouts to disclose that information, if asked to do so, to a constable or an officer of the court;
  - (d) authorises a constable to enter any premises specified in the order and search for the child using reasonable force if necessary.
- (4) The court may make a recovery order only on the application of—
  - (a) any person who has parental responsibility for the child by virtue of a care order or emergency protection order; or
  - (b) where the child is in police protection, the designated officer.
- (5) A recovery order shall name the child and—
  - (a) any person who has parental responsibility for the child by virtue of a care order or emergency protection order; or
  - (b) where the child is in police protection, the designated officer.
- (6) Premises may only be specified under subsection (3)(d) if it appears to the court that there are reasonable grounds for believing the child to be on them.
- (7) In this section—
  - “an authorised person” means—
    - (a) any person specified by the court;
    - (b) any constable;
    - (c) any person who is authorised—
      - (i) after the recovery order is made; and
      - (ii) by a person who has parental responsibility for the child by virtue of a care order or an emergency protection order, to exercise any power under a recovery order; and
  - “the designated officer” means the officer designated for the purposes of section 46.
- (8) Where a person is authorised as mentioned in subsection (7)(c)—
  - (a) the authorisation shall identify the recovery order; and
  - (b) any person claiming to be so authorised shall, if asked to do so, produce some duly authenticated document showing that he is so authorised.
- (9) A person shall be guilty of an offence if he intentionally obstructs an authorised person exercising the power under subsection (3)(b) to remove a child.

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- (10) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (11) No person shall be excused from complying with any request made under subsection (3)(c) on the ground that complying with it might incriminate him or his spouse of an offence; but a statement or admission made in complying shall not be admissible in evidence against either of them in proceedings for an offence other than perjury.
- (12) Where a child is made the subject of a recovery order whilst being looked after by a local authority, any reasonable expenses incurred by an authorised person in giving effect to the order shall be recoverable from the authority.
- (13) A recovery order shall have effect in Scotland as if it had been made by the Court of Session and as if that court had had jurisdiction to make it.
- (14) In this section “the court”, in relation to Northern Ireland, means a magistrates’ court within the meaning of the <sup>M31</sup>Magistrates’ Courts (Northern Ireland) Order 1981.

#### Extent Information

**E2** S. 50 extends to England and Wales and Northern Ireland except s. 50(13) which also extends to Scotland. See s. 108(11)(12)

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

**C20** S. 50 applied (14.10.1991) by S.I. 1991/2032, art. 6(1).  
S. 50 applied (14.10.1991) by S.I. 1991/2032, art. 7(1).

#### Commencement Information

**I49** S. 50 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### Marginal Citations

**M31** S.I. 1981/1675 (N.I. 26).

## 51 Refuges for children at risk.

- (1) Where it is proposed to use a voluntary home or registered children’s home to provide a refuge for children who appear to be at risk of harm, the Secretary of State may issue a certificate under this section with respect to that home.
- (2) Where a local authority or voluntary organisation arrange for a foster parent to provide such a refuge, the Secretary of State may issue a certificate under this section with respect to that foster parent.
- (3) In subsection (2) “foster parent” means a person who is, or who from time to time is, a local authority foster parent or a foster parent with whom children are placed by a voluntary organisation.
- (4) The Secretary of State may by regulations—
- make provision as to the manner in which certificates may be issued;
  - impose requirements which must be complied with while any certificate is in force; and
  - provide for the withdrawal of certificates in prescribed circumstances.

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- (5) Where a certificate is in force with respect to a home, none of the provisions mentioned in subsection (7) shall apply in relation to any person providing a refuge for any child in that home.
- (6) Where a certificate is in force with respect to a foster parent, none of those provisions shall apply in relation to the provision by him of a refuge for any child in accordance with arrangements made by the local authority or voluntary organisation.
- (7) The provisions are—
  - (a) section 49;
  - (b) section 71 of the <sup>M32</sup>Social Work (Scotland) Act 1968 (harbouring children who have absconded from residential establishments etc.), so far as it applies in relation to anything done in England and Wales;
  - (c) section 32(3) of the <sup>M33</sup>Children and Young Persons Act 1969 (compelling, persuading, inciting or assisting any person to be absent from detention, etc.), so far as it applies in relation to anything done in England and Wales;
  - (d) section 2 of the <sup>M34</sup>Child Abduction Act 1984.

#### Commencement Information

**I50** S. 51 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### Marginal Citations

**M32** 1968 c. 49.  
**M33** 1969 c. 54.  
**M34** 1984 c. 37.

## 52 Rules and regulations.

- (1) Without prejudice to section 93 or any other power to make such rules, rules of court may be made with respect to the procedure to be followed in connection with proceedings under this Part.
- (2) The rules may, in particular make provision—
  - (a) as to the form in which any application is to be made or direction is to be given;
  - (b) prescribing the persons who are to be notified of—
    - (i) the making, or extension, of an emergency protection order; or
    - (ii) the making of an application under section 45(4) or (8) or 46(7); and
  - (c) as to the content of any such notification and the manner in which, and person by whom, it is to be given.
- (3) The Secretary of State may by regulations provide that, where—
  - (a) an emergency protection order has been made with respect to a child;
  - (b) the applicant for the order was not the local authority within whose area the child is ordinarily resident; and
  - (c) that local authority are of the opinion that it would be in the child's best interests for the applicant's responsibilities under the order to be transferred to them,

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that authority shall (subject to their having complied with any requirements imposed by the regulations) be treated, for the purposes of this Act, as though they and not the original applicant had applied for, and been granted, the order.

- (4) Regulations made under subsection (3) may, in particular, make provision as to—
- (a) the considerations to which the local authority shall have regard in forming an opinion as mentioned in subsection (3)(c); and
  - (b) the time at which responsibility under any emergency protection order is to be treated as having been transferred to a local authority.

**Commencement Information**

**I51** S. 52 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

**PART VI**

COMMUNITY HOMES

**53 Provision of community homes by local authorities.**

- (1) Every local authority shall make such arrangements as they consider appropriate for securing that homes (“community homes”) are available—
  - (a) for the care and accommodation of children looked after by them; and
  - (b) for purposes connected with the welfare of children (whether or not looked after by them),
 and may do so jointly with one or more other local authorities.
- (2) In making such arrangements, a local authority shall have regard to the need for ensuring the availability of accommodation—
  - (a) of different descriptions; and
  - (b) which is suitable for different purposes and the requirements of different descriptions of children.
- (3) A community home may be a home—
  - (a) provided, managed, equipped and maintained by a local authority; or
  - (b) provided by a voluntary organisation but in respect of which a local authority and the organisation—
    - (i) propose that, in accordance with an instrument of management, the management, equipment and maintenance of the home shall be the responsibility of the local authority; or
    - (ii) so propose that the management, equipment and maintenance of the home shall be the responsibility of the voluntary organisation.
- (4) Where a local authority are to be responsible for the management of a community home provided by a voluntary organisation, the authority shall designate the home as a controlled community home.
- (5) Where a voluntary organisation are to be responsible for the management of a community home provided by the organisation, the local authority shall designate the home as an assisted community home.



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- (6) Schedule 4 shall have effect for the purpose of supplementing the provisions of this Part.

**Commencement Information**

**I52** S. 53 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

**54 Directions that premises be no longer used for community home.**

- (1) Where it appears to the Secretary of State that—
- (a) any premises used for the purposes of a community home are unsuitable for those purposes; or
  - (b) the conduct of a community home—
    - (i) is not in accordance with regulations made by him under paragraph 4 of Schedule 4; or
    - (ii) is otherwise unsatisfactory,he may, by notice in writing served on the responsible body, direct that as from such date as may be specified in the notice the premises shall not be used for the purposes of a community home.
- (2) Where—
- (a) the Secretary of State has given a direction under subsection (1); and
  - (b) the direction has not been revoked,
- he may at any time by order revoke the instrument of management for the home concerned.
- (3) For the purposes of subsection (1), the responsible body—
- (a) in relation to a community home provided by a local authority, is that local authority;
  - (b) in relation to a controlled community home, is the local authority specified in the home's instrument of management; and
  - (c) in relation to an assisted community home, is the voluntary organisation by which the home is provided.

**Commencement Information**

**I53** S. 54 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

**55 Determination of disputes relating to controlled and assisted community homes.**

- (1) Where any dispute relating to a controlled community home arises between the local authority specified in the home's instrument of management and—
- (a) the voluntary organisation by which the home is provided; or
  - (b) any other local authority who have placed, or desire or are required to place, in the home a child who is looked after by them,
- the dispute may be referred by either party to the Secretary of State for his determination.

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- (2) Where any dispute relating to an assisted community home arises between the voluntary organisation by which the home is provided and any local authority who have placed, or desire to place, in the home a child who is looked after by them, the dispute may be referred by either party to the Secretary of State for his determination.
- (3) Where a dispute is referred to the Secretary of State under this section he may, in order to give effect to his determination of the dispute, give such directions as he thinks fit to the local authority or voluntary organisation concerned.
- (4) This section applies even though the matter in dispute may be one which, under or by virtue of Part II of Schedule 4, is reserved for the decision, or is the responsibility, of—
  - (a) the local authority specified in the home’s instrument of management; or
  - (b) (as the case may be) the voluntary organisation by which the home is provided.
- (5) Where any trust deed relating to a controlled or assisted community home contains provision whereby a bishop or any other ecclesiastical or denominational authority has power to decide questions relating to religious instruction given in the home, no dispute which is capable of being dealt with in accordance with that provision shall be referred to the Secretary of State under this section.
- (6) In this Part “trust deed”, in relation to a voluntary home, means any instrument (other than an instrument of management) regulating—
  - (a) the maintenance, management or conduct of the home; or
  - (b) the constitution of a body of managers or trustees of the home.

#### **Commencement Information**

**I54** S. 55 wholly in force at 14.10.1991 see s. 108(2)(3) see S.I. 1991/828, art. 3(2)

## **56 Discontinuance by voluntary organisation of controlled or assisted community home.**

- (1) The voluntary organisation by which a controlled or assisted community home is provided shall not cease to provide the home except after giving to the Secretary of State and the local authority specified in the home’s instrument of management not less than two years’ notice in writing of their intention to do so.
- (2) A notice under subsection (1) shall specify the date from which the voluntary organisation intend to cease to provide the home as a community home.
- (3) Where such a notice is given and is not withdrawn before the date specified in it, the home’s instrument of management shall cease to have effect on that date and the home shall then cease to be a controlled or assisted community home.
- (4) Where a notice is given under subsection (1) and the home’s managers give notice in writing to the Secretary of State that they are unable or unwilling to continue as its managers until the date specified in the subsection (1) notice, the Secretary of State may by order—
  - (a) revoke the home’s instrument of management; and
  - (b) require the local authority who were specified in that instrument to conduct the home until—
    - (i) the date specified in the subsection (1) notice; or

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- (ii) such earlier date (if any) as may be specified for the purposes of this paragraph in the order,  
as if it were a community home provided by the local authority.
- (5) Where the Secretary of State imposes a requirement under subsection (4)(b)—
- (a) nothing in the trust deed for the home shall affect the conduct of the home by the local authority;
  - (b) the Secretary of State may by order direct that for the purposes of any provision specified in the direction and made by or under any enactment relating to community homes (other than this section) the home shall, until the date or earlier date specified as mentioned in subsection (4)(b), be treated as a controlled or assisted community home;
  - (c) except in so far as the Secretary of State so directs, the home shall until that date be treated for the purposes of any such enactment as a community home provided by the local authority; and
  - (d) on the date or earlier date specified as mentioned in subsection (4)(b) the home shall cease to be a community home.

#### Commencement Information

**I55** S. 56 wholly in force at 14.10.1991 see 108(2)(3) and S.I. 1991/828, art. 3(2)

#### 57 Closure by local authority of controlled or assisted community home.

- (1) The local authority specified in the instrument of management for a controlled or assisted community home may give—
- (a) the Secretary of State; and
  - (b) the voluntary organisation by which the home is provided,
- not less than two years' notice in writing of their intention to withdraw their designation of the home as a controlled or assisted community home.
- (2) A notice under subsection (1) shall specify the date ("the specified date") on which the designation is to be withdrawn.
- (3) Where—
- (a) a notice is given under subsection (1) in respect of a controlled or assisted community home;
  - (b) the home's managers give notice in writing to the Secretary of State that they are unable or unwilling to continue as managers until the specified date; and
  - (c) the managers' notice is not withdrawn,
- the Secretary of State may by order revoke the home's instrument of management from such date earlier than the specified date as may be specified in the order.
- (4) Before making an order under subsection (3), the Secretary of State shall consult the local authority and the voluntary organisation.
- (5) Where a notice has been given under subsection (1) and is not withdrawn, the home's instrument of management shall cease to have effect on—
- (a) the specified date; or
  - (b) where an earlier date has been specified under subsection (3), that earlier date,

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and the home shall then cease to be a community home.

#### Commencement Information

**I56** S. 57 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

### 58 Financial provisions applicable on cessation of controlled or assisted community home or disposal etc. of premises.

(1) Where—

(a) the instrument of management for a controlled or assisted community home is revoked or otherwise ceases to have effect under section 54(2), 56(3) or (4) (a) or 57(3) or (5); or

(b) any premises used for the purposes of such a home are (at any time after 13th January 1987) disposed of, or put to use otherwise than for those purposes, the proprietor shall become liable to pay compensation (“the appropriate compensation”) in accordance with this section.

(2) Where the instrument of management in force at the relevant time relates—

(a) to a controlled community home; or

(b) to an assisted community home which, at any time before the instrument came into force, was a controlled community home,

the appropriate compensation is a sum equal to that part of the value of any premises which is attributable to expenditure incurred in relation to the premises, while the home was a controlled community home, by the authority who were then the responsible authority.

(3) Where the instrument of management in force at the relevant time relates—

(a) to an assisted community home; or

(b) to a controlled community home which, at any time before the instrument came into force, was an assisted community home,

the appropriate compensation is a sum equal to that part of the value of the premises which is attributable to the expenditure of money provided by way of grant under section 82, section 65 of the <sup>M35</sup>Children and Young Persons Act 1969 or section 82 of the <sup>M36</sup>Child Care Act 1980.

(4) Where the home is, at the relevant time, conducted in premises which formerly were used as an approved school or were an approved probation hostel or home, the appropriate compensation is a sum equal to that part of the value of the premises which is attributable to the expenditure—

(a) of sums paid towards the expenses of the managers of an approved school under section 104 of the <sup>M37</sup>Children and Young Persons Act 1933; or

(b) of sums paid under section 51(3)(c) of the <sup>M38</sup>Powers of Criminal Courts Act 1973 in relation to expenditure on approved probation hostels or homes.

(5) The appropriate compensation shall be paid—

(a) in the case of compensation payable under subsection (2), to the authority who were the responsible authority at the relevant time; and

(b) in any other case, to the Secretary of State.

(6) In this section—

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“disposal” includes the grant of a tenancy and any other conveyance, assignment, transfer, grant, variation or extinguishment of an interest in or right over land, whether made by instrument or otherwise;

“premises” means any premises or part of premises (including land) used for the purposes of the home and belonging to the proprietor;

“the proprietor” means—

- (a) the voluntary organisation by which the home is, at the relevant time, provided; or
- (b) if the premises are not, at the relevant time, vested in that organisation, the persons in whom they are vested;

“the relevant time” means the time immediately before the liability to pay arises under subsection (1); and

“the responsible authority” means the local authority specified in the instrument of management in question.

(7) For the purposes of this section an event of a kind mentioned in subsection (1)(b) shall be taken to have occurred—

- (a) in the case of a disposal, on the date on which the disposal was completed or, in the case of a disposal which is effected by a series of transactions, the date on which the last of those transactions was completed;
- (b) in the case of premises which are put to different use, on the date on which they first begin to be put to their new use.

(8) The amount of any sum payable under this section shall be determined in accordance with such arrangements—

- (a) as may be agreed between the voluntary organisation by which the home is, at the relevant time, provided and the responsible authority or (as the case may be) the Secretary of State; or
- (b) in default of agreement, as may be determined by the Secretary of State.

(9) With the agreement of the responsible authority or (as the case may be) the Secretary of State, the liability to pay any sum under this section may be discharged, in whole or in part, by the transfer of any premises.

(10) This section has effect regardless of—

- (a) anything in any trust deed for a controlled or assisted community home;
- (b) the provisions of any enactment or instrument governing the disposition of the property of a voluntary organisation.

#### Commencement Information

**I57** S. 58 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### Marginal Citations

**M35** 1969 c. 54.

**M36** 1980 c. 5.

**M37** 1933 c. 12.

**M38** 1973 c. 62.

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## PART VII

### VOLUNTARY HOMES AND VOLUNTARY ORGANISATIONS

#### **59 Provision of accommodation by voluntary organisations.**

- (1) Where a voluntary organisation provide accommodation for a child, they shall do so by—
  - (a) placing him (subject to subsection (2)) with—
    - (i) a family;
    - (ii) a relative of his; or
    - (iii) any other suitable person,
 on such terms as to payment by the organisation and otherwise as the organisation may determine;
  - (b) maintaining him in a voluntary home;
  - (c) maintaining him in a community home;
  - (d) maintaining him in a registered children’s home;
  - (e) maintaining him in a home provided by the Secretary of State under section 82(5) on such terms as the Secretary of State may from time to time determine; or
  - (f) making such other arrangements (subject to subsection (3)) as seem appropriate to them.
- (2) The Secretary of State may make regulations as to the placing of children with foster parents by voluntary organisations and the regulations may, in particular, make provision which (with any necessary modifications) is similar to the provision that may be made under section 23(2)(a).
- (3) The Secretary of State may make regulations as to the arrangements which may be made under subsection (1)(f) and the regulations may in particular make provision which (with any necessary modifications) is similar to the provision that may be made under section 23(2)(f).
- (4) The Secretary of State may make regulations requiring any voluntary organisation who are providing accommodation for a child—
  - (a) to review his case; and
  - (b) to consider any representations (including any complaint) made to them by any person falling within a prescribed class of person,
 in accordance with the provisions of the regulations.
- (5) Regulations under subsection (4) may in particular make provision which (with any necessary modifications) is similar to the provision that may be made under section 26.
- (6) Regulations under subsections (2) to (4) may provide that any person who, without reasonable excuse, contravenes or fails to comply with a regulation shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

#### **60 Registration and regulation of voluntary homes.**

- (1) No voluntary home shall be carried on unless it is registered in a register to be kept for the purposes of this section by the Secretary of State.

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- (2) The register may be kept by means of a computer.
- (3) In this Act “voluntary home” means any home or other institution providing care and accommodation for children which is carried on by a voluntary organisation but does not include—
  - (a) a nursing home, mental nursing home or residential care home;
  - (b) a school;
  - (c) any health service hospital;
  - (d) any community home;
  - (e) any home or other institution provided, equipped and maintained by the Secretary of State; or
  - (f) any home which is exempted by regulations made for the purposes of this section by the Secretary of State.
- (4) Schedule 5 shall have effect for the purpose of supplementing the provisions of this Part.

**Commencement Information**

**I58** S. 60 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

**61 Duties of voluntary organisations.**

- (1) Where a child is accommodated by or on behalf of a voluntary organisation, it shall be the duty of the organisation—
  - (a) to safeguard and promote his welfare;
  - (b) to make such use of the services and facilities available for children cared for by their own parents as appears to the organisation reasonable in his case; and
  - (c) to advise, assist and befriend him with a view to promoting his welfare when he ceases to be so accommodated.
- (2) Before making any decision with respect to any such child the organisation shall, so far as is reasonably practicable, ascertain the wishes and feelings of—
  - (a) the child;
  - (b) his parents;
  - (c) any person who is not a parent of his but who has parental responsibility for him; and
  - (d) any other person whose wishes and feelings the organisation consider to be relevant,regarding the matter to be decided.
- (3) In making any such decision the organisation shall give due consideration—
  - (a) having regard to the child’s age and understanding, to such wishes and feelings of his as they have been able to ascertain;
  - (b) to such other wishes and feelings mentioned in subsection (2) as they have been able to ascertain; and
  - (c) to the child’s religious persuasion, racial origin and cultural and linguistic background.

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

- C21** S. 61: power to apply conferred (7.2.2004 for W. and 7.12.2004 for E.) by 2002 c. 38, ss. 53(3)(a), 148 (with Sch. 4 paras. 6-8); S.I. 2004/252, **art. 2(b)**; S.I. 2004/3203, **art. 2(1)(h)**
- C22** S. 61(2)(a) applied (30.12.2005) (E.) by The Adoption Agencies Regulations 2005 (S.I. 2005/389), **art. 45(4)(a)**  
S. 61(2)(a) applied (30.12.2005) (W.) by The Adoption Agencies (Wales) Regulations 2005 (S.I. 2005/1313), **art. 46(4)(a)**
- C23** S. 61(2)(b)-(d)(3)(b): power to apply with modifications or exclude conferred (7.2.2004 for W. and 7.12.2004 for E) by 2002 c. 38, ss. 53(3)(b), 148 (with Sch. 4 paras. 6-8); S.I. 2004/252, **art. 2(b)**; S.I. 2004/3203, **art. 2(1)(h)**
- C24** S. 61(2)(b) excluded (30.12.2005) (E.) by The Adoption Agencies Regulations 2005 (S.I. 2005/389), **art. 45(4)(b)**  
S. 61(2)(b) excluded (30.12.2005) (W.) by The Adoption Agencies (Wales) Regulations 2005 (S.I. 2005/1313), **art. 46(4)(b)**
- C25** S. 61(2)(c) applied (with modifications) (30.12.2005) (E.) by The Adoption Agencies Regulations 2005 (S.I. 2005/389), **art. 45(4)(c)**  
S. 61(2)(c) applied (with modifications) (30.12.2005) (W.) by The Adoption Agencies (Wales) Regulations 2005 (S.I. 2005/1313), **art. 46(4)(c)**

#### Commencement Information

- I59** S. 61 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, **art. 3(2)**

## 62 Duties of local authorities.

- (1) Every local authority shall satisfy themselves that any voluntary organisation providing accommodation—
  - (a) within the authority’s area for any child; or
  - (b) outside that area for any child on behalf of the authority,
 are satisfactorily safeguarding and promoting the welfare of the children so provided with accommodation.
- (2) Every local authority shall arrange for children who are accommodated within their area by or on behalf of voluntary organisations to be visited, from time to time, in the interests of their welfare.
- (3) The Secretary of State may make regulations—
  - (a) requiring every child who is accommodated within a local authority’s area, by or on behalf of a voluntary organisation, to be visited by an officer of the authority—
    - (i) in prescribed circumstances; and
    - (ii) on specified occasions or within specified periods; and
  - (b) imposing requirements which must be met by any local authority, or officer of a local authority, carrying out functions under this section.
- (4) Subsection (2) does not apply in relation to community homes.
- (5) Where a local authority are not satisfied that the welfare of any child who is accommodated by or on behalf of a voluntary organisation is being satisfactorily safeguarded or promoted they shall—



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- (a) unless they consider that it would not be in the best interests of the child, take such steps as are reasonably practicable to secure that the care and accommodation of the child is undertaken by—
    - (i) a parent of his;
    - (ii) any person who is not a parent of his but who has parental responsibility for him; or
    - (iii) a relative of his; and
  - (b) consider the extent to which (if at all) they should exercise any of their functions with respect to the child.
- (6) Any person authorised by a local authority may, for the purpose of enabling the authority to discharge their duties under this section—
- (a) enter, at any reasonable time, and inspect any premises in which children are being accommodated as mentioned in subsection (1) or (2);
  - (b) inspect any children there;
  - (c) require any person to furnish him with such records of a kind required to be kept by regulations made under paragraph 7 of Schedule 5 (in whatever form they are held), or allow him to inspect such records, as he may at any time direct.
- (7) Any person exercising the power conferred by subsection (6) shall, if asked to do so, produce some duly authenticated document showing his authority to do so.
- (8) Any person authorised to exercise the power to inspect records conferred by subsection (6)—
- (a) shall be entitled at any reasonable time to have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records in question; and
  - (b) may require—
    - (i) the person by whom or on whose behalf the computer is or has been so used; or
    - (ii) any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material,to afford him such assistance as he may reasonably require.
- (9) Any person who intentionally obstructs another in the exercise of any power conferred by subsection (6) or (8) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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**Commencement Information**

**I60** S. 62 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

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## PART VIII

### REGISTERED CHILDREN’S HOMES

#### **63 Children not to be cared for and accommodated in unregistered children’s homes.**

- (1) No child shall be cared for and provided with accommodation in a children’s home unless the home is registered under this Part.
- (2) The register may be kept by means of a computer.
- (3) For the purposes of this Part, “a children’s home”—
  - (a) means a home which provides (or usually provides or is intended to provide) care and accommodation wholly or mainly for more than three children at any one time; but
  - (b) does not include a home which is exempted by or under any of the following provisions of this section or by regulations made for the purposes of this subsection by the Secretary of State.
- (4) A child is not cared for and accommodated in a children’s home when he is cared for and accommodated by—
  - (a) a parent of his;
  - (b) a person who is not a parent of his but who has parental responsibility for him; or
  - (c) any relative of his.
- (5) A home is not a children’s home for the purposes of this Part if it is—
  - (a) a community home;
  - (b) a voluntary home;
  - (c) a residential care home, nursing home or mental nursing home;
  - (d) a health service hospital;
  - (e) a home provided, equipped and maintained by the Secretary of State; or
  - (f) a school (but subject to subsection (6)).
- (6) An independent school is a children’s home if—
  - (a) it provides accommodation for not more than fifty children; and
  - (b) it is not approved by the Secretary of State under section 11(3)(a) of the <sup>M39</sup>Education Act 1981.
- (7) A child shall not be treated as cared for and accommodated in a children’s home when—
  - (a) any person mentioned in subsection (4)(a) or (b) is living at the home; or
  - (b) the person caring for him is doing so in his personal capacity and not in the course of carrying out his duties in relation to the home.
- (8) In this Act “a registered children’s home” means a children’s home registered under this Part.
- (9) In this section “home” includes any institution.
- (10) Where any child is at any time cared for and accommodated in a children’s home which is not a registered children’s home, the person carrying on the home shall be—

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- (a) guilty of an offence; and
  - (b) liable to a fine not exceeding level 5 on the standard scale, unless he has a reasonable excuse.
- (11) Schedule 6 shall have effect with respect to children’s homes.
- (12) Schedule 7 shall have effect for the purpose of setting out the circumstances in which a person may foster more than three children without being treated as carrying on a children’s home.

**Commencement Information**

**I61** S. 63 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

**Marginal Citations**

**M39** 1981 c. 60.

**64 Welfare of children in children’s homes.**

- (1) Where a child is accommodated in a children’s home, it shall be the duty of the person carrying on the home to—
- (a) safeguard and promote the child’s welfare;
  - (b) make such use of the services and facilities available for children cared for by their own parents as appears to that person reasonable in the case of the child; and
  - (c) advise, assist and befriend him with a view to promoting his welfare when he ceases to be so accommodated.
- (2) Before making any decision with respect to any such child the person carrying on the home shall, so far as is reasonably practicable, ascertain the wishes and feelings of—
- (a) the child;
  - (b) his parents;
  - (c) any other person who is not a parent of his but who has parental responsibility for him; and
  - (d) any person whose wishes and feelings the person carrying on the home considers to be relevant,
- regarding the matter to be decided.
- (3) In making any such decision the person concerned shall give due consideration—
- (a) having regard to the child’s age and understanding, to such wishes and feelings of his as he has been able to ascertain;
  - (b) to such other wishes and feelings mentioned in subsection (2) as he has been able to ascertain; and
  - (c) to the child’s religious persuasion, racial origin and cultural and linguistic background.
- (4) Section 62, except subsection (4), shall apply in relation to any person who is carrying on a children’s home as it applies in relation to any voluntary organisation.

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#### Commencement Information

**I62** S. 64 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

### 65 Persons disqualified from carrying on, or being employed in children's homes.

- (1) A person who is disqualified (under section 68) from fostering a child privately shall not carry on, or be otherwise concerned in the management of, or have any financial interest in a children's home unless he has—
  - (a) disclosed to the responsible authority the fact that he is so disqualified; and
  - (b) obtained their written consent.
- (2) No person shall employ a person who is so disqualified in a children's home unless he has—
  - (a) disclosed to the responsible authority the fact that that person is so disqualified; and
  - (b) obtained their written consent.
- (3) Where an authority refuse to give their consent under this section, they shall inform the applicant by a written notice which states—
  - (a) the reason for the refusal;
  - (b) the applicant's right to appeal against the refusal to a Registered Homes Tribunal under paragraph 8 of Schedule 6; and
  - (c) the time within which he may do so.
- (4) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both.
- (5) Where a person contravenes subsection (2) he shall not be guilty of an offence if he proves that he did not know, and had no reasonable grounds for believing, that the person whom he was employing was disqualified under section 68.

#### Commencement Information

**I63** S. 65 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

VALID FROM 01/04/2002

#### [<sup>F79</sup>65A Appeal against refusal of authority to give consent under section 65.

- (1) An appeal against a decision of an appropriate authority under section 65 shall lie to the Tribunal established under section 9 of the <sup>M40</sup>Protection of Children Act 1999.
- (2) On an appeal the Tribunal may confirm the authority's decision or direct it to give the consent in question.]

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#### Textual Amendments

**F79** S. 65A inserted (1.4.2002) by 2000 c. 14, s. 116, **Sch. 4 para. 14(14)**; S.I. 2002/1493, **art. 3(2)(b)** (subject to transitional provision in art. 4); S.I. 2002/920, **art. 3(3)(d)** (with art. 3(4)-(10) and transitional provisions in Schs. 1-3)

#### Marginal Citations

**M40** 1999 c. 14.

## PART IX

### PRIVATE ARRANGEMENTS FOR FOSTERING CHILDREN

#### 66 Privately fostered children.

- (1) In this Part—
  - (a) “a privately fostered child” means a child who is under the age of sixteen and who is cared for, and provided with accommodation by, someone other than—
    - (i) a parent of his;
    - (ii) a person who is not a parent of his but who has parental responsibility for him; or
    - (iii) a relative of his; and
  - (b) “to foster a child privately” means to look after the child in circumstances in which he is a privately fostered child as defined by this section.
- (2) A child is not privately fostered child if the person caring for and accommodating him—
  - (a) has done so for a period of less than 28 days; and
  - (b) does not intend to do so for any longer period.
- (3) Subsection (1) is subject to —
  - (a) the provisions of section 63; and
  - (b) the exceptions made by paragraph 1 to 5 of Schedule 8.
- (4) In the case of a child who is disabled, subsection (1)(a) shall have effect as if for “sixteen” there were substituted “eighteen”.
- (5) Schedule 8 shall have effect for the purposes of supplementing the provision made by this Part.

#### Commencement Information

**I64** S. 66 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, **art. 3(2)**

#### 67 Welfare of privately fostered children.

- (1) It shall be the duty of every local authority to satisfy themselves that the welfare of children who are privately fostered within their area is being satisfactorily safeguarded

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and promoted and to secure that such advice is given to those caring for them as appears to the authority to be needed.

- (2) The Secretary of State may make regulations—
  - (a) requiring every child who is privately fostered within a local authority’s area to be visited by an officer of the authority—
    - (i) in prescribed circumstances; and
    - (ii) on specified occasions or within specified periods; and
  - (b) imposing requirements which are to be met by any local authority, or officer of a local authority, in carrying out functions under this section.
- (3) Where any person who is authorised by a local authority to visit privately fostered children has reasonable cause to believe that—
  - (a) any privately fostered child is being accommodated in premises within the authority’s area; or
  - (b) it is proposed to accommodate any such child in any such premises, he may at any reasonable time inspect those premises and any children there.
- (4) Any person exercising the power under subsection (3) shall, if so required, produce some duly authenticated document showing his authority to do so.
- (5) Where a local authority are not satisfied that the welfare of any child who is privately fostered within their area is being satisfactorily safeguarded or promoted they shall—
  - (a) unless they consider that it would not be in the best interests of the child, take such steps as are reasonably practicable to secure that the care and accommodation of the child is undertaken by—
    - (i) a parent of his;
    - (ii) any person who is not a parent of his but who has parental responsibility for him; or
    - (iii) a relative of his; and
  - (b) consider the extent to which (if at all) they should exercise any of their functions under this Act with respect to the child.

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

**C26** S. 67(2): power to amend conferred (15.1.2005) by [Children Act 2004 \(c. 31\)](#), ss. {45-47}

**C27** S. 67(3): power to amend conferred (15.1.2005) by [Children Act 2004 \(c. 31\)](#), ss. {45-47}

**C28** S. 67(4): power to amend conferred (15.1.2005) by [Children Act 2004 \(c. 31\)](#), ss. {45-47}

**C29** S. 67(5): power to amend conferred (15.1.2005) by [Children Act 2004 \(c. 31\)](#), ss. {45-47}

**Commencement Information**

**I65** S. 67 wholly in force at 14.10.1991 see [s. 108\(2\)\(3\)](#) and [S.I. 1991/828](#), [art. 3\(2\)](#)

**68 Persons disqualified from being private foster parents.**

- (1) Unless he has disclosed the fact to the appropriate local authority and obtained their written consent, a person shall not foster a child privately if he is disqualified from doing so by regulations made by the Secretary of State for the purposes of this section.
- (2) The regulations may, in particular, provide for a person to be so disqualified where—

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- (a) an order of a kind specified in the regulations has been made at any time with respect to him;
  - (b) an order of a kind so specified has been made at any time with respect to any child who has been in his care;
  - (c) a requirement of a kind so specified has been imposed at any time with respect to any such child, under or by virtue of any enactment;
  - (d) he has been convicted of any offence of a kind so specified, or has been placed on probation or discharged absolutely or conditionally for any such offence;
  - (e) a prohibition has been imposed on him at any time under section 69 or under any other specified enactment;
  - (f) his rights and powers with respect to a child have at any time been vested in a specified authority under a specified enactment.
- (3) Unless he has disclosed the fact to the appropriate local authority and obtained their written consent, a person shall not foster a child privately if—
- (a) he lives in the same household as a person who is himself prevented from fostering a child by subsection (1); or
  - (b) he lives in a household at which any such person is employed.
- (4) Where an authority refuse to give their consent under this section, they shall inform the applicant by a written notice which states—
- (a) the reason for the refusal;
  - (b) the applicant’s right under paragraph 8 of Schedule 8 to appeal against the refusal; and
  - (c) the time within which he may do so.
- (5) In this section—
- “the appropriate authority” means the local authority within whose area it is proposed to foster the child in question; and
  - “enactment” means any enactment having effect, at any time, in any part of the United Kingdom.

**Commencement Information**

**I66** S. 68 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

**69 Power to prohibit private fostering.**

- (1) This section applies where a person—
- (a) proposes to foster a child privately; or
  - (b) is fostering a child privately.
- (2) Where the local authority for the area within which the child is proposed to be, or is being, fostered are of the opinion that—
- (a) he is not a suitable person to foster a child;
  - (b) the premises in which the child will be, or is being, accommodated are not suitable; or
  - (c) it would be prejudicial to the welfare of the child for him to be, or continue to be accommodated by that person in those premises,
- the authority may impose a prohibition on him under subsection (3).

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- (3) A prohibition imposed on any person under this subsection may prohibit him from fostering privately—
  - (a) any child in any premises within the area of the local authority; or
  - (b) any child in premises specified in the prohibition.
  - (c) a child identified in the prohibition, in premises specified in the prohibition.
- (4) A local authority who have imposed a prohibition on any person under subsection (3) may, if they think fit, cancel the prohibition—
  - (a) of their own motion; or
  - (b) on an application made by that person, if they are satisfied that the prohibition is no longer justified.
- (5) Where a local authority impose a requirement on any person under paragraph 6 of Schedule 8, they may also impose a prohibition on him under subsection (3).
- (6) Any prohibition imposed by virtue of subsection (5) shall not have effect unless—
  - (a) the time specified for compliance with the requirement has expired; and
  - (b) the requirement has not been complied with.
- (7) A prohibition imposed under this section shall be imposed by notice in writing addressed to the person on whom it is imposed and informing him of—
  - (a) the reason for imposing the prohibition;
  - (b) his right under paragraph 8 of Schedule 8 to appeal against the prohibition; and
  - (c) the time within which he may do so.

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

**C30** S. 69: power to amend conferred (15.1.2005) by [Children Act 2004 \(c. 31\)](#), [ss. 45–47](#)

**Commencement Information**

**I67** S. 69 wholly in force at 14.10.1991 see [s. 108\(2\)\(3\)](#) and [S.I. 1991/828](#), [art. 3\(2\)](#)

**70 Offences.**

- (1) A person shall be guilty of an offence if—
  - (a) being required, under any provision made by or under this Part, to give any notice or information—
    - (i) he fails without reasonable excuse to give the notice within the time specified in that provision; or
    - (ii) he fails without reasonable excuse to give the information within a reasonable time; or
    - (iii) he makes, or causes or procures another person to make, any statement in the notice or information which he knows to be false or misleading in a material particular;
  - (b) he refuses to allow a privately fostered child to be visited by a duly authorised officer of a local authority;
  - (c) he intentionally obstructs another in the exercise of the power conferred by section 67(3);
  - (d) he contravenes section 68;



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- (e) he fails without reasonable excuse to comply with any requirement imposed by a local authority under this Part;
  - (f) he accommodates a privately fostered child in any premises in contravention of a prohibition imposed by a local authority under this Part;
  - (g) he knowingly causes to be published, or publishes, an advertisement which he knows contravenes paragraph 10 of Schedule 8.
- (2) Where a person contravenes section 68(3), he shall not be guilty of an offence under this section if he proves that he did not know, and had no reasonable ground for believing, that any person to whom section 68(1) applied was living or employed in the premises in question.
- (3) A person guilty of an offence under subsection (1)(a) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) A person guilty of an offence under subsection (1)(b), (c) or (g) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (5) A person guilty of an offence under subsection (1)(d) or (f) shall be liable on summary conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding level 5 on the standard scale, or to both.
- (6) A person guilty of an offence under subsection (1)(e) shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (7) If any person who is required, under any provision of this Part, to give a notice fails to give the notice within the time specified in that provision, proceedings for the offence may be brought at any time within six months from the date when evidence of the offence came to the knowledge of the local authority.
- (8) Subsection (7) is not affected by anything in section 127(1) of the <sup>M41</sup>Magistrates' Courts Act 1980 (time limit for proceedings).

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

**C31** S. 70: power to amend conferred (15.1.2005) by [Children Act 2004 \(c. 31\)](#), [ss. 45-47](#)

**Commencement Information**

**I68** S. 70 wholly in force at 14.10.1991 see [s. 108\(2\)\(3\)](#) and [S.I. 1991/828](#), [art. 3\(2\)](#)

**Marginal Citations**

**M41** 1980 c. 43.

## PART X

### CHILD MINDING AND DAY CARE FOR YOUNG CHILDREN

**Extent Information**

**E3** [Pt. X](#) and [Sch. 9](#): By [2000 c. 14](#), [s. 79\(5\)](#) it is provided (2.7.2001 (E.) and 1.4.2002 (W.) and otherwise *prosp.*) that [Pt. X](#) and [Sch. 9](#) shall cease to extend to England and Wales; [S.I. 2001/2041](#),

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art. 2(1)(c) (with transitional provisions and savings in **Sch**); S.I. 2002/920, art. 3(3)(b) (subject to transitional provisions in **Schs. 1-3**)

## 71 Registration.

- (1) Every local authority shall keep a register of—
  - (a) persons who act as child minders on domestic premises within the authority’s area; and
  - (b) persons who provide day care for children under the age of eight on premises (other than domestic premises) within that area.
- (2) For the purposes of this Part—
  - (a) a person acts as a child minder if—
    - (i) he looks after one or more children under the age of eight, for reward; and
    - (ii) the period, or the total of the periods, which he spends so looking after children in any day exceeds two hours; and
  - (b) a person does not provide day care for children unless the period, or the total of the periods, during which children are looked after exceeds two hours in any day.
- (3) Where a person provides day care for children under the age of eight on different premises situated within the area of the same local authority, that person shall be separately registered with respect to each of those premises.
- (4) A person who—
  - (a) is the parent, or a relative, of a child;
  - (b) has parental responsibility for a child; or
  - (c) is a foster parent of a child,
 does not act as a child minder for the purposes of this Part when looking after that child.
- (5) Where a person is employed as a nanny for a child, she does not act as a child minder when looking after that child wholly or mainly in the home of the person so employing her.
- (6) Where a person is so employed by two different employers, she does not act as a child minder when looking after any of the children concerned wholly or mainly in the home of either of her employers.
- (7) A local authority may refuse to register an applicant for registration under subsection (1)(a) if they are satisfied that—
  - (a) the applicant; or
  - (b) any person looking after, or likely to be looking after, any children on any premises on which the applicant is, or is likely to be, child minding,
 is not fit to look after children under the age of eight.
- (8) A local authority may refuse to register an applicant for registration under subsection (1)(a) if they are satisfied that—
  - (a) any person living, or likely to be living, at any premises on which the applicant is, or is likely to be, child minding; or
  - (b) any person employed, or likely to be employed, on those premises,
 is not fit to be in the proximity of children under the age of eight.

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- (9) A local authority may refuse to register an applicant for registration under subsection (1)(b) if they are satisfied that any person looking after, or likely to be looking after, any children on the premises to which the application relates is not fit to look after children under the age of eight.
- (10) A local authority may refuse to register an applicant for registration under subsection (1)(b) if they are satisfied that—
- (a) any person living, or likely to be living, at the premises to which the application relates; or
  - (b) any person employed, or likely to be employed, on those premises, is not fit to be in the proximity of children under the age of eight.
- (11) A local authority may refuse to register an applicant for registration under this section if they are satisfied—
- (a) in the case of an application under subsection (1)(a), that any premises on which the applicant is, or is likely to be, child minding; or
  - (b) in the case of an application under subsection (1)(b), that the premises to which the application relates,
- are not fit to be used for looking after children under the age of eight, whether because of their condition or the condition of any equipment used on the premises or for any reason connected with their situation, construction or size.
- (12) In this section—
- “domestic premises” means any premises which are wholly or mainly used as a private dwelling;
  - “premises” includes any vehicle.
- (13) For the purposes of this Part a person acts as a nanny for a child if she is employed to look after the child by—
- (a) a parent of the child;
  - (b) a person who is not a parent of the child but who has parental responsibility for him; or
  - (c) a person who is a relative of the child and who has assumed responsibility for his care.
- (14) For the purposes of this section, a person fosters a child if—
- (a) he is a local authority foster parent in relation to the child;
  - (b) he is a foster parent with whom the child has been placed by a voluntary organisation; or
  - (c) he fosters the child privately.
- (15) Any register kept under this section—
- (a) shall be open to inspection by members of the public at all reasonable times; and
  - (b) may be kept by means of a computer.
- (16) Schedule 9 shall have effect for the purpose of making further provision with respect to registration under this section including, in particular, further provision for exemption from the requirement to be registered and provision for disqualification.

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

**C32** Pt. X (ss. 71-79) and Sch. 9: By 2000 c. 14, ss. 79(5), 122 it is provided (2.7.2001 (E.) otherwise *prosp.*) that Pt. X and Sch. 9 shall cease to extend to England and Wales; S.I. 2001/2041, art. 2(1)(c) (with transitional provisions and savings in the Sch.)

**Commencement Information**

**I69** S. 71 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

**72 Requirements to be complied with by child minders.**

- (1) Where a local authority register a person under section 71(1)(a), they shall impose such reasonable requirements on him as they consider appropriate in his case.
- (2) In imposing requirements on him, the authority shall—
  - (a) specify the maximum number of children, or the maximum number of children within specified age groups, whom he may look after when acting as a child minder;
  - (b) require him to secure that any premises on which he so looks after any child, and the equipment used in those premises, are adequately maintained and kept safe;
  - (c) require him to keep a record of the name and address of—
    - (i) any child so looked after by him on any premises within the authority's area;
    - (ii) any person who assists in looking after any such child; and
    - (iii) any person living, or likely at any time to be living, at those premises;
  - (d) require him to notify the authority in writing of any change in the persons mentioned in paragraph (c)(ii) and (iii).
- (3) The Secretary of State may by regulations make provision as to—
  - (a) requirements which must be imposed by local authorities under this section in prescribed circumstances;
  - (b) requirements of such descriptions as may be prescribed which must not be imposed by local authorities under this section.
- (4) In determining the maximum number of children to be specified under subsection (2)(a), the authority shall take account of the number of other children who may at any time be on any premises on which the person concerned acts, or is likely to act, as a child minder.
- (5) Where, in addition to the requirements mentioned in subsection (2), a local authority impose other requirements, those other requirements must not be incompatible with any of the subsection (2) requirements.
- (6) A local authority may at any time vary any requirement imposed under this section, impose any additional requirement or remove any requirement.

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

**C33** Pt. X (ss. 71-79) and Sch. 9: By 2000 c. 14, ss. 79(5), 122 it is provided (2.7.2001 (E.) otherwise *prosp.*) that Pt. X and Sch. 9 shall cease to extend to England and Wales; S.I. 2001/2041, art. 2(1)(c) (with transitional provisions and savings in the Sch.)

**Commencement Information**

**I70** s. 72 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

**73 Requirements to be complied with by persons providing day care for young children.**

- (1) Where a local authority register a person under section 71(1)(b) they shall impose such reasonable requirements on him as they consider appropriate in his case.
- (2) Where a person is registered under section 71(1)(b) with respect to different premises within the area of the same authority, this section applies separately in relation to each registration.
- (3) In imposing requirements on him, the authority shall—
  - (a) specify the maximum number of children, or the maximum number of children within specified age groups, who may be looked after on the premises;
  - (b) require him to secure that the premises, and the equipment used in them, are adequately maintained and kept safe;
  - (c) require him to notify the authority of any change in the facilities which he provides or in the period during which he provides them;
  - (d) specify the number of persons required to assist in looking after children on the premises;
  - (e) require him to keep a record of the name and address of—
    - (i) any child looked after on the registered premises;
    - (ii) any person who assists in looking after any such child; and
    - (iii) any person who lives, or is likely at any time to be living, at those premises;
  - (f) require him to notify the authority of any change in the persons mentioned in paragraph (e)(ii) and (iii).
- (4) The Secretary of State may by regulations make provision as to—
  - (a) requirements which must be imposed by local authorities under this section in prescribed circumstances;
  - (b) requirements of such descriptions as may be prescribed which must not be imposed by local authorities under this section.
- (5) In subsection (3), references to children looked after are to children looked after in accordance with the provision of day care made by the registered person.
- (6) In determining the maximum number of children to be specified under subsection (3)
  - (a), the authority shall take account of the number of other children who may at any time be on the premises.

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- (7) Where, in addition to the requirements mentioned in subsection (3), a local authority impose other requirements, those other requirements must not be incompatible with any of the subsection (3) requirements.
- (8) A local authority may at any time vary any requirement imposed under this section, impose any additional requirement or remove any requirement.

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

**C34** Pt. X (ss. 71-79) and Sch. 9: By 2000 c. 14, ss. 79(5), 122 it is provided (2.7.2001 (E.) otherwise *prosp.*) that Pt. X and Sch. 9 shall cease to extend to England and Wales; S.I. 2001/2041, art. 2(1)(c) (with transitional provisions and savings in the Sch.)

**Commencement Information**

**I71** S. 73 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

**74 Cancellation of registration.**

- (1) A local authority may at any time cancel the registration of any person under section 71(1)(a) if—
- (a) it appears to them that the circumstances of the case are such that they would be justified in refusing to register that person as a child minder;
  - (b) the care provided by that person when looking after any child as a child minder is, in the opinion of the authority, seriously inadequate having regard to the needs of that child; or
  - (c) that person has—
    - (i) contravened, or failed to comply with, any requirement imposed on him under section 72; or
    - (ii) failed to pay any annual fee under paragraph 7 of Schedule 9 within the prescribed time.
- (2) A local authority may at any time cancel the registration of any person under section 71(1)(b) with respect to particular premises if—
- (a) it appears to them that the circumstances of the case are such that they would be justified in refusing to register that person with respect to those premises;
  - (b) the day care provided by that person on those premises is, in the opinion of the authority, seriously inadequate having regard to the needs of the children concerned; or
  - (c) that person has—
    - (i) contravened, or failed to comply with, any requirement imposed on him under section 73; or
    - (ii) failed to pay any annual fee under paragraph 7 of Schedule 9 within the prescribed time.
- (3) A local authority may at any time cancel all registrations of any person under section 71(1)(b) if it appears to them that the circumstances of the case are such that they would be justified in refusing to register that person with respect to any premises.
- (4) Where a requirement to carry out repairs or make alterations or additions has been imposed on a registered person under section 72 or 73, his registration shall not be

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cancelled on the ground that the premises are not fit to be used for looking after children if—

- (a) the time set for complying with the requirements has not expired, and
- (b) it is shown that the condition of the premises is due to the repairs not having been carried out or the alterations or additions not having been made.

(5) Any cancellation under this section must be in writing.

(6) In considering the needs of any child for the purposes of subsection (1)(b) or (2)(b), a local authority shall, in particular, have regard to the child's religious persuasion, racial origin and cultural and linguistic background.

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

**C35** Pt. X (ss. 71-79) and Sch. 9: By 2000 c. 14, ss. 79(5), 122 it is provided (2.7.2001 (E.) otherwise *prosp.*) that Pt. X and Sch. 9 shall cease to extend to England and Wales; S.I. 2001/2041, art. 2(1)(c) (with transitional provisions and savings in the Sch.)

#### Commencement Information

**I72** S. 74 wholly in force at 14.10.1991 see s. 108(2)(3) see S.I. 1991/828, art. 3(2)

## 75 Protection of children in an emergency.

(1) If—

- (a) a local authority apply to the court for an order—
  - (i) cancelling a registered person's registration;
  - (ii) varying any requirement imposed on a registered person under section 72 or 73; or
  - (iii) removing a requirement or imposing an additional requirement on such a person; and
- (b) it appears to the court that a child who is being, or may be, looked after by that person, or (as the case may be) in accordance with the provision for day care made by that person, is suffering, or is likely to suffer, significant harm, the court may make the order.

(2) Any such cancellation, variation, removal or imposition shall have effect from the date on which the order is made.

(3) An application under subsection (1) may be made *ex parte* and shall be supported by a written statement of the authority's reasons for making it.

(4) Where an order is made under this section, the authority shall serve on the registered person, as soon as is reasonably practicable after the making of the order—

- (a) notice of the order and of its terms; and
- (b) a copy of the statement of the authority's reasons which supported their application for the order.

(5) Where the court imposes or varies any requirement under subsection (1), the requirement, or the requirement as varied, shall be treated for all purposes, other than those of section 77, as if it had been imposed under section 72 or (as the case may be) 73 by the authority concerned.

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

**C36** Pt. X (ss. 71-79) and Sch. 9: By 2000 c. 14, ss. 79(5), 122 it is provided (2.7.2001 (E.) otherwise *prosp.*) that Pt. X and Sch. 9 shall cease to extend to England and Wales; S.I. 2001/2041, art. 2(1)(c) (with transitional provisions and savings in the Sch.); S.I. 2002/920, art. 3(3)(b) (subject to transitional provisions in Schs. 1-3)

#### Commencement Information

**I73** S. 75 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

## 76 Inspection.

- (1) Any person authorised to do so by a local authority may at any reasonable time enter—
  - (a) any domestic premises within the authority’s area on which child minding is at any time carried on; or
  - (b) any premises within their area on which day care for children under the age of eight is at any time provided.
- (2) Where a local authority have reasonable cause to believe that a child is being looked after on any premises within their area in contravention of this Part, any person authorised to do so by the authority may enter those premises at any reasonable time.
- (3) Any person entering premises under this section may inspect—
  - (a) the premises;
  - (b) any children being looked after on the premises;
  - (c) the arrangements made for their welfare; and
  - (d) any records relating to them which are kept as a result of this Part.
- (4) Every local authority shall exercise their power to inspect the premises mentioned in subsection (1) at least once every year.
- (5) Any person inspecting any records under this section—
  - (a) shall be entitled at any reasonable time to have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is, or has been, in use in connection with the records in question; and
  - (b) may require—
    - (i) the person by whom or on whose behalf the computer is or has been so used; or
    - (ii) any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material, to afford him such reasonable assistance as he may require.
- (6) A person exercising any power conferred by this section shall, if so required, produce some duly authenticated document showing his authority to do so.
- (7) Any person who intentionally obstructs another in the exercise of any such power shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.



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

**C37** Pt. X (ss. 71-79) and Sch. 9: By 2000 c. 14, ss. 79(5), 122 it is provided (2.7.2001 (E.) otherwise *prosp.*) that Pt. X and Sch. 9 shall cease to extend to England and Wales; S.I. 2001/2041, art. 2(1)(c) (with transitional provisions and savings in the Sch.)

**Commencement Information**

**I74** S. 76 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

**77 Appeals.**

- (1) Not less than 14 days before—
  - (a) refusing an application for registration under section 71;
  - (b) cancelling any such registration;
  - (c) refusing consent under paragraph 2 of Schedule 9;
  - (d) imposing, removing or varying any requirement under section 72 or 73; or
  - (e) refusing to grant any application for the variation or removal of any such requirement,the authority concerned shall send to the applicant, or (as the case may be) registered person, notice in writing of their intention to take the step in question (“the step”).
- (2) Every such notice shall—
  - (a) give the authority’s reasons for proposing to take the step; and
  - (b) inform the person concerned of his rights under this section.
- (3) Where the recipient of such a notice informs the authority in writing of his desire to object to the step being taken, the authority shall afford him an opportunity to do so.
- (4) Any objection made under subsection (3) may be made in person or by a representative.
- (5) If the authority, after giving the person concerned an opportunity to object to the step being taken, decide nevertheless to take it they shall send him written notice of their decision.
- (6) A person aggrieved by the taking of any step mentioned in subsection (1) may appeal against it to the court.
- (7) Where the court imposes or varies any requirement under subsection (8) or (9) the requirement, or the requirement as varied, shall be treated for all purposes (other than this section) as if it had been imposed by the authority concerned.
- (8) Where the court allows an appeal against the refusal or cancellation of any registration under section 71 it may impose requirements under section 72 or (as the case may be) 73.
- (9) Where the court allows an appeal against such a requirement it may, instead of cancelling the requirement, vary it.
- (10) In Scotland, an appeal under subsection (6) shall be by summary application to the sheriff and shall be brought within 21 days from the date of the step to which the appeal relates.

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- (11) A step of a kind mentioned in subsection (1)(b) or (d) shall not take effect until the expiry of the time within which an appeal may be brought under this section or, where such an appeal is brought, before its determination.

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

**C38** Pt. X (ss. 71-79) and Sch. 9: By 2000 c. 14, ss. 79(5), 122 it is provided (2.7.2001 (E.)otherwise<sup>prosp.</sup>) that Pt. X and Sch. 9 shall cease to extend to England and Wales; S.I. 2001/2041, art. 2(1)(c) (with transitional provisions and savings in the Sch.)

**Commencement Information**

**I75** S. 77 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

**78 Offences.**

- (1) No person shall provide day care for children under the age of eight on any premises within the area of a local authority unless he is registered by the authority under section 71(1)(b) with respect to those premises.
- (2) If any person contravenes subsection (1) without reasonable excuse, he shall be guilty of an offence.
- (3) No person shall act as a child minder on domestic premises within the area of a local authority unless he is registered by the authority under section 71(1)(a).
- (4) Where it appears to a local authority that a person has contravened subsection (3), they may serve a notice (“an enforcement notice”) on him.
- (5) An enforcement notice shall have effect for a period of one year beginning with the date on which it is served.
- (6) If a person with respect to whom an enforcement notice is in force contravenes subsection (3) without reasonable excuse he shall be guilty of an offence.
- (7) Subsection (6) applies whether or not the subsequent contravention occurs within the area of the authority who served the enforcement notice.
- (8) Any person who without reasonable excuse contravenes, or otherwise fails to comply with, any requirement imposed on him under section 72 or 73 shall be guilty of an offence.
- (9) If any person—
  - (a) acts as a child minder on domestic premises at any time when he is disqualified by regulations made under paragraph 2 of Schedule 9; or
  - (b) contravenes any of sub-paragraphs (3) to (5) of paragraph 2,
 he shall be guilty of an offence.
- (10) Where a person contravenes sub-paragraph (3) of paragraph 2 he shall not be guilty of an offence under this section if he proves that he did not know, and had no reasonable grounds for believing, that the person in question was living or employed in the household.

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- (11) Where a person contravenes sub-paragraph (5) of paragraph 2 he shall not be guilty of an offence under this section if he proves that he did not know, and had no reasonable grounds for believing, that the person whom he was employing was disqualified.
- (12) A person guilty of an offence under this section shall be liable on summary conviction—
- (a) in the case of an offence under subsection (8), to a fine not exceeding level 4 on the standard scale;
  - (b) in the case of an offence under subsection (9), to imprisonment for a term not exceeding six months, or to a fine not exceeding level 5 on the standard scale, or to both; and
  - (c) in the case of any other offence, to a fine not exceeding level 5 on the standard scale.

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

**C39** Pt. X (ss. 71-79) and Sch. 9: By 2000 c. 14, ss. 79(5), 122 it is provided (2.7.2001 (E.) otherwise *prosp.*) that Pt. X and Sch. 9 shall cease to extend to England and Wales; S.I. 2001/2041, art. 2(1)(c) (with transitional provisions and savings in the Sch.)

**Commencement Information**

**I76** s. 78 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

**79 Application of this Part to Scotland.**

In the application to Scotland of this Part—

- (a) “the court” means the sheriff;
- (b) “day care” means any form of care or of activity supervised by a responsible person provided for children during the day (whether or not it is provided on a regular basis);
- (c) “education authority” has the same meaning as in the <sup>M42</sup>Education (Scotland) Act 1980;
- (d) “local authority foster parent” means a foster parent with whom a child is placed by a local authority;
- (e) for references to a person having parental responsibility for a child there shall be substituted references to a person in whom parental rights and duties relating to the child are vested; and
- (f) for references to fostering a child privately there shall be substituted references to maintaining a foster child within the meaning of the <sup>M43</sup>Foster Children (Scotland) Act 1984.

**Commencement Information**

**I77** S. 79 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

**Marginal Citations**

**M42** 1980 c. 44.

**M43** 1984 c. 56.

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VALID FROM 16/03/2001

## [<sup>F80</sup>PART XA

### CHILD MINDING AND DAY CARE FOR CHILDREN IN ENGLAND AND WALES]

#### Textual Amendments

**F80** Pt. XA (ss. 79A-79X) inserted by 2000 c. 14, ss. 79(1), 122 (the insertion coming into force at 16.3.2001 for specified purposes for E., at 1.7.2001 for specified purposes for W., at 2.7.2001 for specified purposes for E., at 1.4.2002 for specified purposes for E., at 1.4.2002 otherwise for W., at 2.9.2002 for specified purposes for E., and otherwise prosp.) by: S.I. 2001/1210, art. 2; S.I. 2001/2041, art. 2(1)(a)(2)(3) (with transitional provisions and savings in Sch); S.I. 2001/2190, art. 2, Sch.; S.I. 2002/839, art. 2; S.I. 2002/2215, art. 2; S.I. 2002/920, art. 3(3)(b) (subject to transitional provisions in Schs. 1-3))

VALID FROM 01/07/2001

#### *Introductory*

VALID FROM 02/07/2001

#### <sup>F81</sup>79A Child minders and day care providers.

- (1) This section and section 79B apply for the purposes of this Part.
- (2) “Act as a child minder” means (subject to the following subsections) look after one or more children under the age of eight on domestic premises for reward; and “child minding” shall be interpreted accordingly.
- (3) A person who—
  - (a) is the parent, or a relative, of a child;
  - (b) has parental responsibility for a child;
  - (c) is a local authority foster parent in relation to a child;
  - (d) is a foster parent with whom a child has been placed by a voluntary organisation; or
  - (e) fosters a child privately,
 does not act as a child minder when looking after that child.
- (4) Where a person—
  - (a) looks after a child for the parents (“P1”), or
  - (b) in addition to that work, looks after another child for different parents (“P2”),

and the work consists (in a case within paragraph (a)) of looking after the child wholly or mainly in P1’s home or (in a case within paragraph (b)) of looking after

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the children wholly or mainly in P1’s home or P2’s home or both, the work is not to be treated as child minding.

- (5) In subsection (4), “parent”, in relation to a child, includes—
- (a) a person who is not a parent of the child but who has parental responsibility for the child;
  - (b) a person who is a relative of the child.
- (6) “Day care” means care provided at any time for children under the age of eight on premises other than domestic premises.
- (7) This Part does not apply in relation to a person who acts as a child minder, or provides day care on any premises, unless the period, or the total of the periods, in any day which he spends looking after children or (as the case may be) during which the children are looked after on the premises exceeds two hours.
- (8) In determining whether a person is required to register under this Part for child minding, any day on which he does not act as a child minder at any time between 2 am and 6 pm is to be disregarded.

#### Textual Amendments

**F81** S. 79A inserted (2.7.2001 (E.) and 1.4.2002 (W.)) by 2000 c. 14, s. 79(1); S.I. 2001/2041, art. 2(1)(a)(2)(3) (with transitional provisions and savings in Sch); S.I. 2002/920, art. 3(3)(b) (subject to transitional provisions in Schs. 1-3)

#### <sup>F82</sup>79B Other definitions, etc.

- (1) The registration authority in relation to England is Her Majesty’s Chief Inspector of Schools in England (referred to in this Part as the Chief Inspector) and references to the Chief Inspector’s area are references to England.
- (2) The registration authority in relation to Wales is the National Assembly for Wales (referred to in this Act as “the Assembly”).
- (3) A person is qualified for registration for child minding if—
- (a) he, and every other person looking after children on any premises on which he is or is likely to be child minding, is suitable to look after children under the age of eight;
  - (b) every person living or employed on the premises in question is suitable to be in regular contact with children under the age of eight;
  - (c) the premises in question are suitable to be used for looking after children under the age of eight, having regard to their condition and the condition and appropriateness of any equipment on the premises and to any other factor connected with the situation, construction or size of the premises; and
  - (d) he is complying with regulations under section 79C and with any conditions imposed by the registration authority.
- (4) A person is qualified for registration for providing day care on particular premises if—

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- (a) every person looking after children on the premises is suitable to look after children under the age of eight;
  - (b) every person living or working on the premises is suitable to be in regular contact with children under the age of eight;
  - (c) the premises are suitable to be used for looking after children under the age of eight, having regard to their condition and the condition and appropriateness of any equipment on the premises and to any other factor connected with the situation, construction or size of the premises; and
  - (d) he is complying with regulations under section 79C and with any conditions imposed by the registration authority.
- (5) For the purposes of subsection (4)(b) a person is not treated as working on the premises in question if—
- (a) none of his work is done in the part of the premises in which children are looked after; or
  - (b) he does not work on the premises at times when children are looked after there.
- (6) “Domestic premises” means any premises which are wholly or mainly used as a private dwelling and “premises” includes any area and any vehicle.
- (7) “Regulations” means—
- (a) in relation to England, regulations made by the Secretary of State;
  - (b) in relation to Wales, regulations made by the Assembly.
- (8) “Tribunal” means the Tribunal established by section 9 of the <sup>M44</sup>Protection of Children Act 1999.
- (9) Schedule 9A (which supplements the provisions of this Part) shall have effect.

#### Textual Amendments

**F82** S. 79B inserted (1.7.2001 (W.) for certain purposes and otherwise (W.) 1.4.2002 and 2.7.2001 (E.) for certain purposes and otherwise (E.) 1.4.2002) by 2000 c. 14, s. 79(1); S.I. 2001/2041, art. 2(1)(a)(3) (with transitional provisions and savings in Sch); S.I. 2001/2190, art. 2, Sch.; S.I. 2002/839, art. 2; S.I. 2002/920, art. 3(3)(b) (subject to transitional provisions in Schs. 1-3)

#### Marginal Citations

**M44** 1999 c. 14.

### *Regulations*

#### <sup>F83</sup>79C Regulations etc. governing child minders and day care providers.

- (1) The Secretary of State may, after consulting the Chief Inspector and any other person he considers appropriate, make regulations governing the activities of registered persons who act as child minders, or provide day care, on premises in England.
- (2) The Assembly may make regulations governing the activities of registered persons who act as child minders, or provide day care, on premises in Wales.

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- (3) The regulations under this section may deal with the following matters (among others)—
- (a) the welfare and development of the children concerned;
  - (b) suitability to look after, or be in regular contact with, children under the age of eight;
  - (c) qualifications and training;
  - (d) the maximum number of children who may be looked after and the number of persons required to assist in looking after them;
  - (e) the maintenance, safety and suitability of premises and equipment;
  - (f) the keeping of records;
  - (g) the provision of information.
- (4) In relation to activities on premises in England, the power to make regulations under this section may be exercised so as to confer powers or impose duties on the Chief Inspector in the exercise of his functions under this Part.
- (5) In particular they may be exercised so as to require or authorise the Chief Inspector, in exercising those functions, to have regard to or meet factors, standards and other matters prescribed by or referred to in the regulations.
- (6) If the regulations require any person (other than the registration authority) to have regard to or meet factors, standards and other matters prescribed by or referred to in the regulations, they may also provide for any allegation that the person has failed to do so to be taken into account—
- (a) by the registration authority in the exercise of its functions under this Part, or
  - (b) in any proceedings under this Part.
- (7) Regulations may provide—
- (a) that a registered person who without reasonable excuse contravenes, or otherwise fails to comply with, any requirement of the regulations shall be guilty of an offence; and
  - (b) that a person guilty of the offence shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

#### Textual Amendments

**F83** S. 79C inserted ((E.) 16.3.2001 for certain purposes otherwise 2.7.2001 and (W.) 1.7.2001 for certain purposes otherwise 1.4.2002) by 2000 c. 14, s. 79(1); S.I. 2001/1210, art. 2(a)(i); S.I. 2001/2041, art. 2(1)(a)(2)(3)(with transitional provisions and savings in Sch.); S.I. 2001/2190, art. 2, Sch.; S.I. 2002/920, art. 3(3)(b) (subject to transitional provisions in Schs. 1-3)

#### Registration

VALID FROM 02/07/2001

#### <sup>F84</sup>79D Requirement to register.

- (1) No person shall—

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- (a) act as a child minder in England unless he is registered under this Part for child minding by the Chief Inspector; or
  - (b) act as a child minder in Wales unless he is registered under this Part for child minding by the Assembly.
- (2) Where it appears to the registration authority that a person has contravened subsection (1), the authority may serve a notice (“an enforcement notice”) on him.
  - (3) An enforcement notice shall have effect for a period of one year beginning with the date on which it is served.
  - (4) If a person in respect of whom an enforcement notice has effect contravenes subsection (1) without reasonable excuse (whether the contravention occurs in England or Wales), he shall be guilty of an offence.
  - (5) No person shall provide day care on any premises unless he is registered under this Part for providing day care on those premises by the registration authority.
  - (6) If any person contravenes subsection (5) without reasonable excuse, he shall be guilty of an offence.
  - (7) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

#### Textual Amendments

**F84** S. 79D inserted (2.7.2001 (E.) and 1.4.2002 (W.)) by 2000 c. 14, s. 79(1); S.I. 2001/2041, art. 2(1)(a)(2)(3) (with transitional provisions and savings in Sch); S.I. 2002/920, art. 3(3)(b) (subject to transitional provisions in Schs.1-3)

#### <sup>F85</sup>79E Applications for registration.

- (1) A person who wishes to be registered under this Part shall make an application to the registration authority.
- (2) The application shall—
  - (a) give prescribed information about prescribed matters;
  - (b) give any other information which the registration authority reasonably requires the applicant to give.
- (3) Where a person provides, or proposes to provide, day care on different premises, he shall make a separate application in respect of each of them.
- (4) Where the registration authority has sent the applicant notice under section 79L(1) of its intention to refuse an application under this section, the application may not be withdrawn without the consent of the authority.
- (5) A person who, in an application under this section, knowingly makes a statement which is false or misleading in a material particular shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.



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### Textual Amendments

**F85** S. 79E inserted ((E.) 16.3.2001 for certain purposes otherwise 2.7.2001 and (W.) 1.7.2001 for certain purposes otherwise 1.4.2002) by 2000 c. 14, s. 79(1); S.I. 2001/1210, art. 2(a)(ii); S.I. 2001/2041, art. 2(1)(a)(2)(3) (with transitional provisions and savings in Sch.); S.I. 2001/2190, art. 2, Sch.; S.I. 2002/920, art. 3(3)(b) (subject to transitional provisions in Schs. 1-3)

### <sup>F86</sup>79F Grant or refusal of registration.

- (1) If, on an application by a person for registration for child minding—
  - (a) the registration authority is of the opinion that the applicant is, and will continue to be, qualified for registration for child minding (so far as the conditions of section 79B(3) are applicable); and
  - (b) the applicant pays the prescribed fee,the authority shall grant the application; otherwise, it shall refuse it.
- (2) If, on an application by any person for registration for providing day care on any premises—
  - (a) the registration authority is of the opinion that the applicant is, and will continue to be, qualified for registration for providing day care on those premises (so far as the conditions of section 79B(4) are applicable); and
  - (b) the applicant pays the prescribed fee,the authority shall grant the application; otherwise, it shall refuse it.
- (3) An application may, as well as being granted subject to any conditions the authority thinks necessary or expedient for the purpose of giving effect to regulations under section 79C, be granted subject to any other conditions the authority thinks fit to impose.
- (4) The registration authority may as it thinks fit vary or remove any condition to which the registration is subject or impose a new condition.
- (5) Any register kept by a registration authority of persons who act as child minders or provide day care shall be open to inspection by any person at all reasonable times.
- (6) A registered person who without reasonable excuse contravenes, or otherwise fails to comply with, any condition imposed on his registration shall be guilty of an offence.
- (7) A person guilty of an offence under subsection (6) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### Textual Amendments

**F86** S. 79F inserted (16.3.2001 (E.) for certain purposes and 1.7.2001 (W.) for certain purposes and otherwise (W.) 1.4.2002, and 2.7.2001 (E.) in so far as not already in force) by 2000 c. 14, s. 79(1); S.I. 2001/1210, art. 2(a)(iii)(iv); S.I. 2001/2041, art. 2(1)(a) (with transitional provisions and savings in Sch.); S.I. 2001/2190, art. 2, Sch.; S.I. 2002/920, art. 3(3)(b) (subject to transitional provisions in Schs. 1-3)

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VALID FROM 02/07/2001

**<sup>F87</sup>79G Cancellation of registration.**

- (1) The registration authority may cancel the registration of any person if—
  - (a) in the case of a person registered for child minding, the authority is of the opinion that the person has ceased or will cease to be qualified for registration for child minding;
  - (b) in the case of a person registered for providing day care on any premises, the authority is of the opinion that the person has ceased or will cease to be qualified for registration for providing day care on those premises, or if an annual fee which is due from the person has not been paid.
- (2) Where a requirement to make any changes or additions to any services, equipment or premises has been imposed on a registered person under section 79F(3), his registration shall not be cancelled on the ground of any defect or insufficiency in the services, equipment or premises if—
  - (a) the time set for complying with the requirements has not expired; and
  - (b) it is shown that the defect or insufficiency is due to the changes or additions not having been made.
- (3) Any cancellation under this section must be in writing.

**Textual Amendments**

**F87** S. 79G inserted (2.7.2001 (E.) and 1.4.2002 (W.)) by 2000 c. 14, s. 79(1); S.I. 2001/2041, art. 2(1)(a) (with transitional provisions and savings in Sch.); S.I. 2002/920, art. 3(3)(b) (subject to transitional provisions in Schs. 1-3)

**<sup>F88</sup>79H Suspension of registration.**

- (1) Regulations may provide for the registration of any person for acting as a child minder or providing day care to be suspended for a prescribed period by the registration authority in prescribed circumstances.
- (2) Any regulations made under this section shall include provision conferring on the person concerned a right of appeal to the Tribunal against suspension.

**Textual Amendments**

**F88** S. 79H inserted (16.3.2001 (E.) for certain purposes and 1.7.2001 (W.) for certain purposes and otherwise (W.) 1.4.2002, and 2.7.2001 (E.) in so far as not already in force) by 2000 c. 14, ss. 79(1); S.I. 2001/1210, art. 2(a)(v); S.I. 2001/2041, art. 2(1)(a) (with transitional provisions and savings in Sch); S.I. 2001/2190, art. 2, Sch.; S.I. 2002/920, art. 3(3)(b) (subject to transitional provisions in Schs. 1-3)

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VALID FROM 02/07/2001

**<sup>F89</sup>79J Resignation of registration.**

- (1) A person who is registered for acting as a child minder or providing day care may by notice in writing to the registration authority resign his registration.
- (2) But a person may not give a notice under subsection (1)—
  - (a) if the registration authority has sent him a notice under section 79L(1) of its intention to cancel the registration, unless the authority has decided not to take that step; or
  - (b) if the registration authority has sent him a notice under section 79L(5) of its decision to cancel the registration and the time within which an appeal may be brought has not expired or, if an appeal has been brought, it has not been determined.

**Textual Amendments**

**F89** S. 79J inserted (2.7.2001 (E.) and 1.4.2002 (W.)) by 2000 c. 14, s. 79(1); S.I. 2001/2041, art. 2(1)(a) (with transitional provisions and savings in Sch.); S.I. 2002/920, art. 3(3)(b) (subject to transitional provisions in Schs. 1-3)

VALID FROM 02/07/2001

**<sup>F90</sup>79K Protection of children in an emergency.**

- (1) If, in the case of any person registered for acting as a child minder or providing day care—
  - (a) the registration authority applies to a justice of the peace for an order—
    - (i) cancelling the registration;
    - (ii) varying or removing any condition to which the registration is subject; or
    - (iii) imposing a new condition; and
  - (b) it appears to the justice that a child who is being, or may be, looked after by that person, or (as the case may be) in accordance with the provision for day care made by that person, is suffering, or is likely to suffer, significant harm,the justice may make the order.
- (2) The cancellation, variation, removal or imposition shall have effect from the time when the order is made.
- (3) An application under subsection (1) may be made without notice.
- (4) An order under subsection (1) shall be made in writing.
- (5) Where an order is made under this section, the registration authority shall serve on the registered person, as soon as is reasonably practicable after the making of the order—

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- (a) a copy of the order;
  - (b) a copy of any written statement of the authority's reasons for making the application for the order which supported that application; and
  - (c) notice of any right of appeal conferred by section 79M.
- (6) Where an order has been so made, the registration authority shall, as soon as is reasonably practicable after the making of the order, notify the local authority in whose area the person concerned acts or acted as a child minder, or provides or provided day care, of the making of the order.

#### Textual Amendments

**F90** S. 79K inserted (2.7.2001 for certain purposes for E. and otherwise 1.4.2002) by 2000 c. 14, s. 79(1); S.I. 2001/2041, art. 2(1)(a)(3) (with transitional provisions and savings in Sch.); S.I. 2002/839, art. 2(b); S.I. 2002/920, art. 3(3)(b) (subject to transitional provisions in Schs. 1-3)

VALID FROM 02/07/2001

#### <sup>F91</sup>79L Notice of intention to take steps.

- (1) Not less than 14 days before—
  - (a) refusing an application for registration;
  - (b) cancelling a registration;
  - (c) removing or varying any condition to which a registration is subject or imposing a new condition; or
  - (d) refusing to grant an application for the removal or variation of any condition to which a registration is subject,
 the registration authority shall send to the applicant, or (as the case may be) registered person, notice in writing of its intention to take the step in question.
- (2) Every such notice shall—
  - (a) give the authority's reasons for proposing to take the step; and
  - (b) inform the person concerned of his rights under this section.
- (3) Where the recipient of such a notice informs the authority in writing of his desire to object to the step being taken, the authority shall afford him an opportunity to do so.
- (4) Any objection made under subsection (3) may be made orally or in writing, by the recipient of the notice or a representative.
- (5) If the authority, after giving the person concerned an opportunity to object to the step being taken, decides nevertheless to take it, it shall send him written notice of its decision.
- (6) A step of a kind mentioned in subsection (1)(b) or (c) shall not take effect until the expiry of the time within which an appeal may be brought under section 79M or, where such an appeal is brought, before its determination.
- (7) Subsection (6) does not prevent a step from taking effect before the expiry of the time within which an appeal may be brought under section 79M if the person

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concerned notifies the registration authority in writing that he does not intend to appeal.

#### Textual Amendments

**F91** S. 79L inserted (2.7.2001 for certain purposes for E. and otherwise 1.4.2002) by 2000 c. 14, s. 79(1); S.I. 2001/2041, art. 2(1)(a)(3)(c) (with transitional provisions and savings in Sch.); S.I. 2002/839, art. 2(c); S.I. 2002/920, art. 3(3)(b) (subject to transitional provisions in Schs. 1-3)

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

**C40** S. 79L applied (with modifications) (25.3.2003) (E.) by The Tax Credits (Approval of Home Child Care Providers) Scheme 2003 (S.I. 2003/463), {arts. 11, 12}

VALID FROM 01/04/2002

#### <sup>F92</sup>79M Appeals.

- (1) An appeal against—
  - (a) the taking of any step mentioned in section 79L(1); or
  - (b) an order under section 79K,shall lie to the Tribunal.
- (2) On an appeal, the Tribunal may—
  - (a) confirm the taking of the step or the making of the order or direct that it shall not have, or shall cease to have, effect; and
  - (b) impose, vary or cancel any condition.

#### Textual Amendments

**F92** S. 79M inserted (1.4.2002) by 2000 c. 14, s. 79(1); S.I. 2002/839, art. 2(d); S.I. 2002/920, art. 3(3)(b) (subject to transitional provisions in Schs. 1-3)

*Inspection: England*

#### <sup>F93</sup>79N General functions of the Chief Inspector.

- (1) The Chief Inspector has the general duty of keeping the Secretary of State informed about the quality and standards of child minding and day care provided by registered persons in England.
- (2) When asked to do so by the Secretary of State, the Chief Inspector shall give advice or information to the Secretary of State about such matters relating to the provision of child minding or day care by registered persons in England as may be specified in the Secretary of State's request.
- (3) The Chief Inspector may at any time give advice to the Secretary of State, either generally or in relation to provision by particular persons or on particular premises,

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on any matter connected with the provision of child minding or day care by registered persons in England.

- (4) The Chief Inspector may secure the provision of training for persons who provide or assist in providing child minding or day care, or intend to do so.
- (5) Regulations may confer further functions on the Chief Inspector relating to child minding and day care provided in England.
- (6) The annual reports of the Chief Inspector required by subsection (7)(a) of section 2 of the <sup>M45</sup>School Inspections Act 1996 to be made to the Secretary of State shall include an account of the exercise of the Chief Inspector's functions under this Part, and the power conferred by subsection (7)(b) of that section to make other reports to the Secretary of State includes a power to make reports with respect to matters which fall within the scope of his functions by virtue of this Part.

#### Textual Amendments

**F93** S. 79N inserted ((E.) 16.3.2001 for certain purposes otherwise 2.7.2001 and (W.) 1.7.2001 for certain purposes otherwise 1.4.2002) by 2000 c. 14, s. 79(1); S.I. 2001/1210, art. 2(a)(vi); S.I. 2001/2041, art. 2(1)(a)(2)(3) (with transitional provisions and savings in Sch.); S.I. 2001/2190, art. 2, Sch.; S.I. 2002/920, art. 3(3)(b) (subject to transitional provisions in Schs. 1-3)

#### Marginal Citations

**M45** 1996 c. 57.

VALID FROM 02/07/2001

#### <sup>F94</sup>79P Early years child care inspectorate.

- (1) The Chief Inspector shall establish and maintain a register of early years child care inspectors for England.
- (2) The register may be combined with the register maintained for England under paragraph 8(1) of Schedule 26 to the <sup>M46</sup>School Standards and Framework Act 1998 (register of nursery education inspectors).
- (3) Paragraphs 8(2) to (9), 9(1) to (4), 10 and 11 of that Schedule shall apply in relation to the register of early years child care inspectors as they apply in relation to the register maintained for England under paragraph 8(1) of that Schedule, but with the modifications set out in subsection (4).
- (4) In the provisions concerned—
  - (a) references to registered nursery education inspectors shall be read as references to registered early years child care inspectors;
  - (b) references to inspections under paragraph 6 of that Schedule shall be read as references to inspections under section 79Q (and references to the functions of a registered nursery education inspector under paragraph 6 shall be interpreted accordingly);
  - (c) references to the registration of a person under paragraph 6 of that Schedule shall be read as references to the registration of a person under

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subsection (1) (and references to applications made under paragraph 6 shall be interpreted accordingly); and

- (d) in paragraph 10(2), for the words from “to a tribunal” to the end there shall be substituted “to the Tribunal established under section 9 of the <sup>M47</sup>Protection of Children Act 1999.”

- (5) Registered early years child care inspectors are referred to below in this Part as registered inspectors.

#### Textual Amendments

**F94** S. 79P inserted (2.7.2001 and 2.9.2002 (E.) for certain purposes otherwise *prosp.* (E.) and 1.4.2002 (W.)) by 2000 c. 14, ss. 79(1), 122; S.I. 2001/2041, art. 2(1)(a)(2)(3) (with transitional provisions and savings in Sch. (as amended by S.I. 2002/2215, art. 3)); S.I. 2002/920, art. 3(3)(b) (subject to transitional provisions in Schs. 1-3); S.I. 2002/2215, art. 2

#### Marginal Citations

**M46** 1998 c. 31.

**M47** 1999 c. 14.

#### <sup>F95</sup>79Q Inspection of provision of child minding and day care in England.

- (1) The Chief Inspector may at any time require any registered person to provide him with any information connected with the person’s activities as a child minder, or provision of day care, which the Chief Inspector considers it necessary to have for the purposes of his functions under this Part.
- (2) The Chief Inspector shall secure that any child minding provided in England by a registered person is inspected by a registered inspector at prescribed intervals.
- (3) The Chief Inspector shall secure that any day care provided by a registered person on any premises in England is inspected by a registered inspector at prescribed intervals.
- (4) The Chief Inspector may comply with subsection (2) or (3) either by organising inspections or by making arrangements with others for them to organise inspections.
- (5) In prescribing the intervals mentioned in subsection (2) or (3) the Secretary of State may make provision as to the period within which the first inspection of child minding or day care provided by any person or at any premises is to take place.
- (6) A person conducting an inspection under this section shall report on the quality and standards of the child minding or day care provided.
- (7) The Chief Inspector may arrange for an inspection conducted by a registered inspector under this section to be monitored by another registered inspector.

#### Textual Amendments

**F95** S. 79Q inserted (16.3.2001 and 2.7.2001 (E.) for certain purposes, otherwise 2.9.2002 (E.) and 1.7.2001 (W.) for certain purposes otherwise 1.4.2002 (W.)) by 2000 c. 14, s. 79(1); S.I. 2001/1210, art. 2(a)(vii)(viii) S.I. 2001/2041, art. 2(1)(a)(2) (with transitional provisions and

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savings in Sch.); S.I. 2001/2190, art. 2, Sch.; S.I. 2002/920, art. 3(3)(b) (subject to transitional provisions in Schs. 1-3)

### <sup>F96</sup>79R Reports of inspections.

- (1) A person who has conducted an inspection under section 79Q shall report in writing on the matters inspected to the Chief Inspector within the prescribed period.
- (2) The period mentioned in subsection (1) may, if the Chief Inspector considers it necessary, be extended by up to three months.
- (3) Once the report of an inspection has been made to the Chief Inspector under subsection (1) he—
  - (a) may send a copy of it to the Secretary of State, and shall do so without delay if the Secretary of State requests a copy;
  - (b) shall send a copy of it, or of such parts of it as he considers appropriate, to any prescribed authorities or persons; and
  - (c) may arrange for the report (or parts of it) to be further published in any manner he considers appropriate.
- (4) Subsections (2) to (4) of section 42A of the <sup>M48</sup>School Inspections Act 1996 shall apply in relation to the publication of any report under subsection (3) as they apply in relation to the publication of a report under any of the provisions mentioned in subsection (2) of section 42A.

#### Textual Amendments

**F96** S. 79R inserted ((E.) 16.3.2001 for certain purposes otherwise 2.7.2001 and (W.) 1.7.2001 for certain purposes otherwise 1.4.2002) by 2000 c. 14, s. 79(1); S.I. 2001/1210, art. 2(a)(ix)(x); S.I. 2001/2041, art. 2(1)(a) (with transitional provisions and savings in Sch); S.I. 2001/2190, art. 2, Sch.; S.I. 2002/920, art. 3(3)(b) (subject to transitional provisions in Schs. 1-3)

#### Marginal Citations

**M48** 1996 c. 57.

VALID FROM 01/07/2001

*Inspection: Wales*

### <sup>F97</sup>79S General functions of the Assembly.

- (1) The Assembly may secure the provision of training for persons who provide or assist in providing child minding or day care, or intend to do so.
- (2) In relation to child minding and day care provided in Wales, the Assembly shall have any additional function specified in regulations made by the Assembly; but the regulations may only specify a function corresponding to a function which, by virtue of section 79N(5), is exercisable by the Chief Inspector in relation to child minding and day care provided in England.



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#### Textual Amendments

**F97** S. 79S inserted ((W.) 1.7.2001 for certain purposes otherwise 1.4.2002 and (E.) 2.7.2001) by 2000 c. 14, s. 79(1); S.I. 2001/2041, art. 2(1)(a) (with transitional provisions and savings in Sch.); S.I. 2001/2190, art. 2, Sch.; S.I. 2002/920, art. 3(3)(b) (subject to transitional provisions in Schs. 1-3)

#### <sup>F98</sup>79T Inspection: Wales.

- (1) The Assembly may at any time require any registered person to provide it with any information connected with the person's activities as a child minder or provision of day care which the Assembly considers it necessary to have for the purposes of its functions under this Part.
- (2) The Assembly may by regulations make provision—
  - (a) for the inspection of the quality and standards of child minding provided in Wales by registered persons and of day care provided by registered persons on premises in Wales;
  - (b) for the publication of reports of the inspections in such manner as the Assembly considers appropriate.
- (3) The regulations may provide for the inspections to be organised by—
  - (a) the Assembly; or
  - (b) Her Majesty's Chief Inspector of Education and Training in Wales, or any other person, under arrangements made with the Assembly.
- (4) The regulations may provide for subsections (2) to (4) of section 42A of the <sup>M49</sup>School Inspections Act 1996 to apply with modifications in relation to the publication of reports under the regulations.

#### Textual Amendments

**F98** S. 79T inserted ((W.) 1.7.2001 for certain purposes and otherwise 1.4.2002 and (E.) 2.7.2001) by 2000 c. 14, s. 79(1); S.I. 2001/2041, art. 2(1)(a) (with transitional provisions and savings in Sch.); S.I. 2001/2190, art. 2, Sch.; S.I. 2002/920, art. 3(3)(b) (subject to transitional provisions in Schs. 1-3)

#### Marginal Citations

**M49** 1996 c. 57.

*Supplementary*

VALID FROM 02/07/2001

#### <sup>F99</sup>79U Rights of entry etc.

- (1) An authorised inspector may at any reasonable time enter any premises in England or Wales on which child minding or day care is at any time provided.

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- (2) Where an authorised inspector has reasonable cause to believe that a child is being looked after on any premises in contravention of this Part, he may enter those premises at any reasonable time.
- (3) An inspector entering premises under this section may—
- (a) inspect the premises;
  - (b) inspect, and take copies of—
    - (i) any records kept by the person providing the child minding or day care; and
    - (ii) any other documents containing information relating to its provision;
  - (c) seize and remove any document or other material or thing found there which he has reasonable grounds to believe may be evidence of a failure to comply with any condition or requirement imposed by or under this Part;
  - (d) require any person to afford him such facilities and assistance with respect to matters within the person's control as are necessary to enable him to exercise his powers under this section;
  - (e) take measurements and photographs or make recordings;
  - (f) inspect any children being looked after there, and the arrangements made for their welfare;
  - (g) interview in private the person providing the child minding or day care; and
  - (h) interview in private any person looking after children, or living or working, there who consents to be interviewed.
- (4) Section 42 of the <sup>M50</sup>School Inspections Act 1996 (inspection of computer records for purposes of Part I of that Act) shall apply for the purposes of subsection (3) as it applies for the purposes of Part I of that Act.
- (5) The registration authority may, in any case where it appears to the authority appropriate to do so, authorise a person who is not an authorised inspector to exercise any of the powers conferred by this section.
- (6) A person exercising any power conferred by this section shall, if so required, produce some duly authenticated document showing his authority to do so.
- (7) It shall be an offence wilfully to obstruct a person exercising any such power.
- (8) Any person guilty of an offence under subsection (7) shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (9) In this section—
- “authorised inspector” means a registered inspector or a person authorised by the Assembly or by any person with whom the Assembly has made arrangements under section 79T(3);
- “documents” and “records” each include information recorded in any form.

#### Textual Amendments

**F99** S. 79U inserted (2.7.2001 (E.) and 1.4.2002 (W.)) by 2000 c. 14, s. 79(1); S.I. 2001/2041, art. 2(1)(a) (with transitional provisions and savings in Sch.); S.I. 2002/920, art. 3(3)(b) (subject to transitional provisions in Schs. 1-3)

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### Marginal Citations

**M50** 1996 c. 57.

### <sup>F100</sup>79V Function of local authorities.

Each local authority shall, in accordance with regulations, secure the provision—

- (a) of information and advice about child minding and day care; and
- (b) of training for persons who provide or assist in providing child minding or day care.

### Textual Amendments

**F100** S. 79V inserted ((E.) 16.3.2001 for certain purposes otherwise 2.7.2001 and (W.) 1.7.2001 for certain purposes otherwise 1.4.2002) by 2000 c. 14, s. 79(1); S.I. 2001/1210, art. 2(a)(xi) S.I. 2001/2041, art. 2(1)(a) (with transitional provisions and savings in Sch.); S.I. 2001/2190, art. 2, Sch.; S.I. 2002/920, art. 3(3)(b) (subject to transitional provisions in Schs. 1-3)

*Checks on suitability of persons working with children over the age of seven*

### <sup>F101</sup>79W Requirement for certificate of suitability.

- (1) This section applies to any person not required to register under this Part who looks after, or provides care for, children and meets the following conditions.

References in this section to children are to those under the age of 15 or (in the case of disabled children) 17.

- (2) The first condition is that the period, or the total of the periods, in any week which he spends looking after children or (as the case may be) during which the children are looked after exceeds five hours.
- (3) The second condition is that he would be required to register under this Part (or, as the case may be, this Part if it were subject to prescribed modifications) if the children were under the age of eight.
- (4) Regulations may require a person to whom this section applies to hold a certificate issued by the registration authority as to his suitability, and the suitability of each prescribed person, to look after children.
- (5) The regulations may make provision about—
  - (a) applications for certificates;
  - (b) the matters to be taken into account by the registration authority in determining whether to issue certificates;
  - (c) the information to be contained in certificates;
  - (d) the period of their validity.
- (6) The regulations may provide that a person to whom this section applies shall be guilty of an offence—
  - (a) if he does not hold a certificate as required by the regulations; or
  - (b) if, being a person who holds such a certificate, he fails to produce it when reasonably required to do so by a prescribed person.

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- (7) The regulations may provide that a person who, for the purpose of obtaining such a certificate, knowingly makes a statement which is false or misleading in a material particular shall be guilty of an offence.
- (8) The regulations may provide that a person guilty of an offence under the regulations shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

#### Textual Amendments

**F101** S. 79W inserted ((E.) 16.3.2001 for certain purposes otherwise 2.7.2001 and (W.) 1.7.2001 for certain purposes otherwise 1.4.2002) by 2000 c. 14, s. 79(1); S.I. 2001/1210, art. 2(a)(xii); S.I. 2001/2041, art. 2(1)(a) (with transitional provisions and savings in Sch.); S.I. 2001/2190, art. 2, Sch.; S.I. 2002/920, art. 3(3)(b) (subject to transitional provisions in Schs. 1-3)

VALID FROM 02/07/2001

#### *Time limit for proceedings*

#### **F102** ~~79X~~ **Time limit for proceedings.**

Proceedings for an offence under this Part or regulations made under it may be brought within a period of six months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to his knowledge; but no such proceedings shall be brought by virtue of this section more than three years after the commission of the offence.

#### Textual Amendments

**F102** S. 79X inserted (2.7.2001 (E.) and 1.4.2002 (W.)) by 2000 c. 14, s. 79(1); S.I. 2001/2041, art. 2(1)(a) (with transitional provisions and savings in Sch.); S.I. 2002/920, art. 3(3)(b) (subject to transitional provisions in Schs. 1-3)

## PART XI

### SECRETARY OF STATE’S SUPERVISORY FUNCTIONS AND RESPONSIBILITIES

#### **80** **Inspection of children’s homes etc. by persons authorised by Secretary of State.**

- (1) The Secretary of State may cause to be inspected from time to time any—
- (a) children’s home;
  - (b) premises in which a child who is being looked after by a local authority is living;
  - (c) premises in which a child who is being accommodated by or on behalf of a local education authority or voluntary organisation is living;

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- (d) premises in which a child who is being accommodated by or on behalf of a health authority [<sup>F103</sup>or National Health Service trust]is living;
  - (e) premises in which a child is living with a person with whom he has been placed by an adoption agency;
  - (f) premises in which a child who is a protected child is, or will be, living;
  - (g) premises in which a privately fostered child, or child who is treated as a foster child by virtue of paragraph 9 of Schedule 8, is living or in which it is proposed that he will live;
  - (h) premises on which any person is acting as a child minder;
    - (i) premises with respect to which a person is registered under section 71(1)(b);
  - (j) residential care home, nursing home or mental nursing home required to be registered under the <sup>M51</sup>Registered Homes Act 1984 and used to accommodate children;
  - (k) premises which are provided by a local authority and in which any service is provided by that authority under Part III;
  - (l) independent school providing accommodation for any child;
- (2) An inspection under this section shall be conducted by a person authorised to do so by the Secretary of State.
- (3) An officer of a local authority shall not be so authorised except with the consent of that authority.
- (4) The Secretary of State may require any person of a kind mentioned in subsection (5) to furnish him with such information, or allow him to inspect such records (in whatever form they are held), relating to—
- (a) any premises to which subsection (1) or, in relation to Scotland, subsection (1) (h) or (i) applies;
  - (b) any child who is living in any such premises;
  - (c) the discharge by the Secretary of State of any of his functions under this Act; or
  - (d) the discharge by any local authority of any of their functions under this Act, as the Secretary of State may at any time direct.
- (5) The persons are any—
- (a) local authority;
  - (b) voluntary organisation;
  - (c) person carrying on a children’s home;
  - (d) proprietor of an independent school;
  - (e) person fostering any privately fostered child or providing accommodation for a child on behalf of a local authority, local education authority, health authority [<sup>F104</sup>National Health Service trust]or voluntary organisation;
  - (f) local education authority providing accommodation for any child;
  - (g) person employed in a teaching or administrative capacity at any educational establishment (whether or not maintained by a local education authority) at which a child is accommodated on behalf of a local authority or local education authority;
  - (h) person who is the occupier of any premises in which any person acts as a child minder (within the meaning of Part X) or provides day care for young children (within the meaning of that Part);

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- (i) person carrying on any home of a kind mentioned in subsection (1)(j).
- (6) Any person inspecting any home or other premises under this section may—
  - (a) inspect the children there; and
  - (b) make such examination into the state and management of the home or premises and the treatment of the children there as he thinks fit.
- (7) Any person authorised by the Secretary of State to exercise the power to inspect records conferred by subsection (4)—
  - (a) shall be entitled at any reasonable time to have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records in question; and
  - (b) may require—
    - (i) the person by whom or on whose behalf the computer is or has been so used; or
    - (ii) any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material, to afford him such reasonable assistance as he may require.
- (8) A person authorised to inspect any premises under this section shall have a right to enter the premises for that purpose, and for any purpose specified in subsection (4), at any reasonable time.
- (9) Any person exercising that power shall, if so required, produce some duly authenticated document showing his authority to do so.
- (10) Any person who intentionally obstructs another in the exercise of that power shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (11) The Secretary of State may by order provide for subsections (1), (4) and (6) not to apply in relation to such homes, or other premises, as may be specified in the order.
- (12) Without prejudice to section 104, any such order may make different provision with respect to each of those subsections.

#### Extent Information

**E4** S. 80 extends to England and Wales only except s. 80(1)(h)(i)(2)(3)(4) (5)(a)(b)(h)(6)-(12) which extend to Great Britain. See s. 108(11)and(12)

#### Textual Amendments

**F103** Words inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), [Sch. 9 para. 36\(4\)\(a\)](#)

**F104** Words inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), [Sch. 9 para. 36\(4\)\(b\)](#)

#### Commencement Information

**I78** S. 80 wholly in force at 14.10.1991 see [s. 108\(2\)\(3\)](#) see [S.I. 1991/828](#), art. 3(2)

#### Marginal Citations

**M51** 1984 c. 23.

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## 81 Inquiries.

- (1) The Secretary of State may cause an inquiry to be held into any matter connected with—
  - (a) the functions of the social services committee of a local authority, in so far as those functions relate to children;
  - (b) the functions of an adoption agency;
  - (c) the functions of a voluntary organisation, in so far as those functions relate to children;
  - (d) a <sup>F105</sup> . . . children’s home or voluntary home;
  - (e) a residential care home, nursing home or mental nursing home, so far as it provides accommodation for children;
  - (f) a home provided [<sup>F106</sup>in accordance with arrangements made]by the Secretary of State under section 82(5);
  - (g) the detention of a child under section 53 of the <sup>M52</sup>Children and Young Persons Act 1933.
- (2) Before an inquiry is begun, the Secretary of State may direct that it shall be held in private.
- (3) Where no direction has been given, the person holding the inquiry may if he thinks fit hold it, or any part of it, in private.
- (4) Subsections (2) to (5) of section 250 of the <sup>M53</sup>Local Government Act 1972 (powers in relation to local inquiries) shall apply in relation to an inquiry under this section as they apply in relation to a local inquiry under that section.
- (5) In this section “functions” includes powers and duties which a person has otherwise than by virtue of any enactment.

### Textual Amendments

**F105** Word in s. 81(1)(d) repealed (14.10.1991) by [Courts and Legal Services Act 1990 \(c. 41, SIF 76:1\)](#), ss. 116, 125(7), [Sch. 16 para. 21](#), [Sch. 20](#), S.I. 1991/1883, art. 3, Sch.

**F106** Words in s. 81(1)(f) inserted (14.10.1991) by [Courts and Legal Services Act 1990 \(c. 41, SIF 76:1\)](#), s. 116, [Sch. 16 para. 21](#); S.I. 1991/1883, art. 3, Sch.

### Commencement Information

**I79** S. 81 in force at 14.10.1991 see [s. 108\(2\)\(3\)](#) and S.I. 1991/828, [art. 3\(2\)](#)

### Marginal Citations

**M52** 1933 c. 12.

**M53** 1972 c. 70.

## 82 Financial support by Secretary of State.

- (1) The Secretary of State may (with the consent of the Treasury) defray or contribute towards—
  - (a) any fees or expenses incurred by any person undergoing approved child care training;

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- (b) any fees charged, or expenses incurred, by any person providing approved child care training or preparing material for use in connection with such training; or
  - (c) the cost of maintaining any person undergoing such training.
- (2) The Secretary of State may make grants to local authorities in respect of expenditure incurred by them in providing secure accommodation in community homes other than assisted community homes.
- (3) Where—
  - (a) a grant has been made under subsection (2) with respect to any secure accommodation; but
  - (b) the grant is not used for the purpose for which it was made or the accommodation is not used as, or ceases to be used as, secure accommodation, the Secretary of State may (with the consent of the Treasury) require the authority concerned to repay the grant, in whole or in part.
- (4) The Secretary of State may make grants to voluntary organisations towards—
  - (a) expenditure incurred by them in connection with the establishment, maintenance or improvement of voluntary homes which, at the time when the expenditure was incurred—
    - (i) were assisted community homes; or
    - (ii) were designated as such; or
  - (b) expenses incurred in respect of the borrowing of money to defray any such expenditure.
- (5) The Secretary of State may arrange for the provision, equipment and maintenance of homes for the accommodation of children who are in need of particular facilities and services which—
  - (a) are or will be provided in those homes; and
  - (b) in the opinion of the Secretary of State, are unlikely to be readily available in community homes.
- (6) In this Part—
  - “child care training” means training undergone by any person with a view to, or in the course of—
    - (a) his employment for the purposes of any of the functions mentioned in section 83(9) or in connection with the adoption of children or with the accommodation of children in a residential care home, nursing home or mental nursing home; or
    - (b) his employment by a voluntary organisation for similar purposes;
  - “approved child care training” means child care training which is approved by the Secretary of State; and
  - “secure accommodation” means accommodation provided for the purpose of restricting the liberty of children.
- (7) Any grant made under this section shall be of such amount, and shall be subject to such conditions, as the Secretary of State may (with the consent of the Treasury) determine.



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**Commencement Information**

**180** S. 82 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

**83 Research and returns of information.**

- (1) The Secretary of State may conduct, or assist other persons in conducting, research into any matter connected with—
  - (a) his functions, or the functions of local authorities, under the enactments mentioned in subsection (9);
  - (b) the adoption of children; or
  - (c) the accommodation of children in a residential care home, nursing home or mental nursing home.
- (2) Any local authority may conduct, or assist other persons in conducting, research into any matter connected with—
  - (a) their functions under the enactments mentioned in subsection (9);
  - (b) the adoption of children; or
  - (c) the accommodation of children in a residential care home, nursing home or mental nursing home.
- (3) Every local authority shall, at such times and in such form as the Secretary of State may direct, transmit to him such particulars as he may require with respect to—
  - (a) the performance by the local authority of all or any of their functions—
    - (i) under the enactments mentioned in subsection (9); or
    - (ii) in connection with the accommodation of children in a residential care home, nursing home or mental nursing home; and
  - (b) the children in relation to whom the authority have exercised those functions.
- (4) Every voluntary organisation shall, at such times and in such form as the Secretary of State may direct, transmit to him such particulars as he may require with respect to children accommodated by them or on their behalf.
- (5) The Secretary of State may direct the clerk of each magistrates’ court to which the direction is expressed to relate to transmit—
  - (a) to such person as may be specified in the direction; and
  - (b) at such times and in such form as he may direct,such particulars as he may require with respect to proceedings of the court which relate to children.
- (6) The Secretary of State shall in each year lay before Parliament a consolidated and classified abstract of the information transmitted to him under subsections (3) to (5).
- (7) The Secretary of State may institute research designed to provide information on which requests for information under this section may be based.
- (8) The Secretary of State shall keep under review the adequacy of the provision of child care training and for that purpose shall receive and consider any information from or representations made by—
  - (a) the Central Council for Education and Training in Social Work;
  - (b) such representatives of local authorities as appear to him to be appropriate; or

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(c) such other persons or organisations as appear to him to be appropriate, concerning the provision of such training.

(9) The enactments are—

- (a) this Act;
- (b) the Children and Young Persons Acts 1933 to 1969;
- (c) section 116 of the <sup>M54</sup>Mental Health Act 1983 (so far as it relates to children looked after by local authorities);
- (d) section 10 of the <sup>M55</sup>Mental Health (Scotland) Act 1984 (so far as it relates to children for whom local authorities have responsibility).

**Commencement Information**

**I81** S. 83 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

**Marginal Citations**

**M54** 1983 c. 20.

**M55** 1984 c. 36.

**84 Local authority failure to comply with statutory duty: default power of Secretary of State.**

- (1) If the Secretary of State is satisfied that any local authority has failed, without reasonable excuse, to comply with any of the duties imposed on them by or under this Act he may make an order declaring that authority to be in default with respect to that duty.
- (2) An order under subsection (1) shall give the Secretary of State’s reasons for making it.
- (3) An order under subsection (1) may contain such directions for the purpose of ensuring that the duty is complied with, within such period as may be specified in the order, as appear to the Secretary of State to be necessary.
- (4) Any such direction shall, on the application of the Secretary of State, be enforceable by mandamus.

**Commencement Information**

**I82** S. 84 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

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## PART XII

### MISCELLANEOUS AND GENERAL

#### *Notification of children accommodated in certain establishments*

#### **85 Children accommodated by health authorities and local education authorities.**

- (1) Where a child is provided with accommodation by any health authority [<sup>F107</sup>National Health Service trust] or local education authority (“the accommodating authority”)—
- (a) for a consecutive period of at least three months; or
  - (b) with the intention, on the part of that authority, of accommodating him for such a period,
- the accommodating authority shall notify the responsible authority.
- (2) Where subsection (1) applies with respect to a child, the accommodating authority shall also notify the responsible authority when they cease to accommodate the child.
- (3) In this section “the responsible authority” means—
- (a) the local authority appearing to the accommodating authority to be the authority within whose area the child was ordinarily resident immediately before being accommodated; or
  - (b) where it appears to the accommodating authority that a child was not ordinarily resident within the area of any local authority, the local authority within whose area the accommodation is situated.
- (4) Where a local authority have been notified under this section, they shall—
- (a) take such steps as are reasonably practicable to enable them to determine whether the child’s welfare is adequately safeguarded and promoted while he is accommodated by the accommodating authority; and
  - (b) consider the extent to which (if at all) they should exercise any of their functions under this Act with respect to the child.

#### **Textual Amendments**

**F107** Words inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), [Sch. 9 para. 36\(5\)](#)

#### **Commencement Information**

**I83** [S. 85](#) wholly in force at 14.10.1991 see [s. 108\(2\)\(3\)](#) and [S.I. 1991/828](#), [art. 3\(2\)](#)

#### **86 Children accommodated in residential care, nursing or mental nursing homes.**

- (1) Where a child is provided with accommodation in any residential care home, nursing home or mental nursing home—
- (a) for a consecutive period of at least three months; or
  - (b) with the intention, on the part of the person taking the decision to accommodate him, of accommodating him for such period,
- the person carrying on the home shall notify the local authority within whose area the home is carried on.

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- (2) Where subsection (1) applies with respect to a child, the person carrying on the home shall also notify that authority when he ceases to accommodate the child in the home.
- (3) Where a local authority have been notified under this section, they shall—
  - (a) take such steps as are reasonably practicable to enable them to determine whether the child’s welfare is adequately safeguarded and promoted while he is accommodated in the home; and
  - (b) consider the extent to which (if at all) they should exercise any of their functions under this Act with respect to the child.
- (4) If the person carrying on any home fails, without reasonable excuse, to comply with this section he shall be guilty of an offence.
- (5) A person authorised by a local authority may enter any residential care home, nursing home or mental nursing home within the authority’s area for the purpose of establishing whether the requirements of this section have been complied with.
- (6) Any person who intentionally obstructs another in the exercise of the power of entry shall be guilty of an offence.
- (7) Any person exercising the power of entry shall, if so required, produce some duly authenticated document showing his authority to do so.
- (8) Any person committing an offence under this section shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### Commencement Information

**184** S. 86 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

VALID FROM 01/01/2010

#### **[<sup>F108</sup>86A Visitors for children notified to local authority under section 85 or 86**

- (1) This section applies if the appropriate officer of a local authority—
  - (a) has been notified with respect to a child under section 85(1) or 86(1); and
  - (b) has not been notified with respect to that child under section 85(2) or, as the case may be, 86(2).
- (2) The local authority must, in accordance with regulations made under this section, make arrangements for the child to be visited by a representative of the authority (“a representative”).
- (3) It is the function of a representative to provide advice and assistance to the local authority on the performance of their duties under section 85(4) or, as the case may be, 86(3).
- (4) Regulations under this section may make provision about—
  - (a) the frequency of visits under visiting arrangements;
  - (b) circumstances in which visiting arrangements must require a child to be visited; and
  - (c) additional functions of a representative.

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- (5) Regulations under this section are to be made by the Secretary of State and the Welsh Ministers acting jointly.
- (6) In choosing a representative a local authority must satisfy themselves that the person chosen has the necessary skills and experience to perform the functions of a representative.
- (7) In this section “visiting arrangements” means arrangements made under subsection (2).]

#### Textual Amendments

**F108** S. 86A inserted (1.1.2010 for certain purposes and 1.4.2011 otherwise) by [Children and Young Persons Act 2008 \(c. 23\)](#), **ss. 18, 44**; S.I. 2009/3354, **art. 2**; S.I. 2010/2981, **art. 2(b)**

### 87 Welfare of children accommodated in independent schools.

- (1) It shall be the duty of—
  - (a) the proprietor of any independent school which provides accommodation for any child; and
  - (b) any person who is not the proprietor of such a school but who is responsible for conducting it,to safeguard and promote the child’s welfare.
- (2) Subsection (1) does not apply in relation to a school which is a children’s home or a residential care home.
- (3) Where accommodation is provided for a child by an independent school within the area of a local authority, the authority shall take such steps as are reasonably practicable to enable them to determine whether the child’s welfare is adequately safeguarded and promoted while he is accommodated by the school.
- (4) Where a local authority are of the opinion that there has been a failure to comply with subsection (1) in relation to a child provided with accommodation by a school within their area, they shall notify the Secretary of State.
- (5) Any person authorised by a local authority may, for the purpose of enabling the authority to discharge their duty under this section, enter at any reasonable time any independent school within their area which provides accommodation for any child.
- (6) Any person entering an independent school in exercise of the power conferred by subsection (5) may carry out such inspection of premises, children and records as is prescribed by regulations made by the Secretary of State for the purposes of this section.
- (7) Any person exercising that power shall, if asked to do so, produce some duly authenticated document showing his authority to do so.
- (8) Any person authorised by the regulations to inspect records—
  - (a) shall be entitled at any reasonable time to have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records in question; and
  - (b) may require—

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- (i) the person by whom or on whose behalf the computer is or has been so used; or
  - (ii) any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material,  
to afford him such assistance as he may reasonably require.
- (9) Any person who intentionally obstructs another in the exercise of any power conferred by this section or the regulations shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (10) In this section “proprietor” has the same meaning as in the <sup>M56</sup>Education Act 1944.

#### Commencement Information

**I85** S. 87 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### Marginal Citations

**M56** 1944 c. 31.

VALID FROM 01/01/1996

#### <sup>F109</sup>87A Suspension of duty under section 87(3).

- (1) The Secretary of State may appoint a person to be an inspector for the purposes of this section if—
- (a) that person already acts as an inspector for other purposes in relation to independent schools to which section 87(1) applies, and
  - (b) the Secretary of State is satisfied that the person is an appropriate person to determine whether the welfare of children provided with accommodation by such schools is adequately safeguarded and promoted while they are accommodated by them.
- (2) Where—
- (a) the proprietor of an independent school to which section 87(1) applies enters into an agreement in writing with a person appointed under subsection (1),
  - (b) the agreement provides for the person so appointed to have in relation to the school the function of determining whether section 87(1) is being complied with, and
  - (c) the local authority in whose area the school is situated receive from the person with whom the proprietor of the school has entered into the agreement notice in writing that the agreement has come into effect,
- the authority’s duty under section 87(3) in relation to the school shall be suspended.
- (3) Where a local authority’s duty under section 87(3) in relation to any school is suspended under this section, it shall cease to be so suspended if the authority receive—
- (a) a notice under subsection (4) relating to the person with whom the proprietor of the school entered into the relevant agreement, or
  - (b) a notice under subsection (5) relating to that agreement.

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- (4) The Secretary of State shall terminate a person's appointment under subsection (1) if—
- (a) that person so requests, or
  - (b) the Secretary of State ceases, in relation to that person, to be satisfied that he is such a person as is mentioned in paragraph (b) of that subsection,
- and shall give notice of the termination of that person's appointment to every local authority.
- (5) Where—
- (a) a local authority's duty under section 87(3) in relation to any school is suspended under this section, and
  - (b) the relevant agreement ceases to have effect,
- the person with whom the proprietor of the school entered into that agreement shall give to the authority notice in writing of the fact that it has ceased to have effect.
- (6) In this section—
- (a) "proprietor" has the same meaning as in the <sup>M57</sup>Education Act 1944, and
  - (b) references to the relevant agreement, in relation to the suspension of a local authority's duty under section 87(3) as regards any school, are to the agreement by virtue of which the authority's duty under that provision as regards that school is suspended.]

#### Textual Amendments

**F109** Ss. 87A and 87B inserted (1.1.1996) by 1994 c. 40, s. 38; S.I. 1995/2835, art.2

#### Marginal Citations

**M57** 1944 c. 31.

VALID FROM 01/01/1996

#### [<sup>F110</sup>87B Duties of inspectors under section 87A.

- (1) The Secretary of State may impose on a person appointed under section 87A(1) ("an authorised inspector") such requirements relating to, or in connection with, the carrying out under substitution agreements of the function mentioned in section 87A(2)(b) as the Secretary of State thinks fit.
- (2) Where, in the course of carrying out under a substitution agreement the function mentioned in section 87A(2)(b), it appears to an authorised inspector that there has been a failure to comply with section 87(1) in the case of a child provided with accommodation by the school to which the agreement relates, the inspector shall give notice of that fact to the Secretary of State.
- (3) Where, in the course of carrying out under a substitution agreement the function mentioned in section 87A(2)(b), it appears to an authorised inspector that a child provided with accommodation by the school to which the agreement relates is suffering, or is likely to suffer, significant harm, the inspector shall—

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- (a) give notice of that fact to the local authority in whose area the school is situated, and
  - (b) where the inspector is required to make inspection reports to the Secretary of State, supply that local authority with a copy of the latest inspection report to have been made by the inspector to the Secretary of State in relation to the school.
- (4) In this section—
- (a) “proprietor” has the same meaning as in the Education <sup>M58</sup>Act 1944, and
  - (b) references to substitution agreement are to an agreement between an authorised inspector and the proprietor of an independent school by virtue of which the local authority’s duty in relation to the school under section 87(3) is suspended.]

#### Textual Amendments

**F110** Ss. 87A, 87B inserted (1.1.1996) by 1995 c. 40, s.38; S.I. 1995/2835, art.2

#### Marginal Citations

**M58** 1944 c. 31.

VALID FROM 01/07/2001

#### [<sup>F111</sup>87C Boarding schools: national minimum standards.

- (1) The Secretary of State may prepare and publish statements of national minimum standards for safeguarding and promoting the welfare of children for whom accommodation is provided in a school or college.
- (2) The Secretary of State shall keep the standards set out in the statements under review and may publish amended statements whenever he considers it appropriate to do so.
- (3) Before issuing a statement, or an amended statement which in the opinion of the Secretary of State effects a substantial change in the standards, the Secretary of State shall consult any persons he considers appropriate.
- (4) The standards shall be taken into account—
  - (a) in the making by the appropriate authority of any determination under section 87(4) or (4A);
  - (b) in the making by a person appointed under section 87A(1) of any determination under section 87B(2); and
  - (c) in any proceedings under any other enactment in which it is alleged that the person has failed to comply with section 87(1).]

#### Textual Amendments

**F111** S. 87C inserted (1.7.2001 (W.) and 20.11.2001 (E.) for specified purposes and 1.4.2002 (E.) in so far as not already in force) by 2000 c. 14, s. 107; S.I. 2001/2190, art. 2, Sch.; S.I. 2001/3852, art. 3(3)(d)(ii)(7)(h)(subject to transitional provision in Sch. 1 of the commencing S.I. (as amended by



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S.I. 2001/4150, **art. 5**; S.I. 2002/1493, **art. 5**; S.I. 2002/1790, **art. 2**; S.I. 2002/2001, **arts. 2, 3**; S.I. 2002/3210, **art. 2** (with art. 4); S.I. 2005/3397, **art. 2**)

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

**C41** S. 87C: transfer of functions (1.4.2007) by Education and Inspections Act 2006 (c. 40), **ss. 148(3), 188**; S.I. 2007/935, **art. 5(u)**

VALID FROM 01/07/2001

**[<sup>F112</sup>87D Annual fee for boarding school inspections.**

- (1) Regulations under subsection (2) may be made in relation to any school or college in respect of which the appropriate authority is required to take steps under section 87(3).
- (2) The Secretary of State may by regulations require the relevant person to pay the appropriate authority an annual fee of such amount, and within such time, as the regulations may specify.
- (3) A fee payable by virtue of this section may, without prejudice to any other method of recovery, be recovered summarily as a civil debt.]

**Textual Amendments**

**F112** S. 87D inserted (1.7.2001 (W.) and 20.11.2001 for specified purposes otherwise 1.4.2002 (E.)) by 2000 c. 14, **s. 108**; S.I. 2001/2090, **art. 2(1), Sch.**; S.I. 2001/3852, **art. 3(3)(a)(iii)(7)(h)** (subject to transitional provision in Sch. 1 of the commencing S.I. (as amended by S.I. 2001/4150, **art. 5**; S.I. 2002/1493, **art. 5**; S.I. 2002/1790, **art. 2**; S.I. 2002/2001, **arts. 2, 3**; S.I. 2002/3210, **art. 2** (with art. 4); S.I. 2005/3397, **art. 2**)

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

**C42** S. 87D: transfer of functions (1.4.2007) by Education and Inspections Act 2006 (c. 40), **ss. 148(3), 188**; S.I. 2007/935, **art. 5(u)**

*Adoption*

**88 Amendments of adoption legislation.**

- (1) The <sup>M59</sup>Adoption Act 1976 shall have effect subject to the amendments made by Part I of Schedule 10.
- (2) The <sup>M60</sup>Adoption (Scotland) Act 1978 shall have effect subject to the amendments made by Part II of Schedule 10.

**Commencement Information**

**I86** S. 88(1) in force at 1.5.1991 so far as it relates to Sch. 10 para. 21; s. 88 wholly in force 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, **art. 3**

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#### Marginal Citations

**M59** 1976 c. 36.

**M60** 1978 c. 28.

### *Paternity tests*

#### **89 Tests to establish paternity.**

In section 20 of the <sup>M61</sup>Family Law Reform Act 1969 (power of court to require use of tests to determine paternity), the following subsections shall be inserted after subsection (1)—

“(1A) Where—

- (a) an application is made for a direction under this section; and
- (b) the person whose paternity is in issue is under the age of eighteen when the application is made,

the application shall specify who is to carry out the tests.

(1B) In the case of a direction made on an application to which subsection (1A) applies the court shall—

- (a) specify, as the person who is to carry out the tests, the person specified in the application; or
- (b) where the court considers that it would be inappropriate to specify that person (whether because to specify him would be incompatible with any provision made by or under regulations made under section 22 of this Act or for any other reason), decline to give the direction applied for.”

#### Marginal Citations

**M61** 1969 c. 46.

### *Criminal care and supervision orders*

#### **90 Care and supervision orders in criminal proceedings.**

(1) The power of a court to make an order under subsection (2) of section 1 of the <sup>M62</sup>Children and Young Persons Act 1969 (care proceedings in juvenile courts) where it is of the opinion that the condition mentioned in paragraph (f) of that subsection (“the offence condition”) is satisfied is hereby abolished.

(2) The powers of the court to make care orders—

- (a) under section 7(7)(a) of the Children and Young Persons Act 1969 (alteration in treatment of young offenders etc.); and
- (b) under section 15(1) of that Act, on discharging a supervision order made under section 7(7)(b) of that Act,

are hereby abolished.

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- (3) The powers given by that Act to include requirements in supervision orders shall have effect subject to amendments made by Schedule 12.

**Commencement Information**

**I87** S. 90 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

**Marginal Citations**

**M62** 1969 c. 54.

*Effect and duration of orders etc.*

**91 Effect and duration of orders etc.**

- (1) The making of a residence order with respect to a child who is the subject of a care order discharges the care order.
- (2) The making of a care order with respect to a child who is the subject of any section 8 order discharges that order.
- (3) The making of a care order with respect to a child who is the subject of a supervision order discharges that other order.
- (4) The making of a care order with respect to a child who is a ward of court brings that wardship to an end.
- (5) The making of a care order with respect to a child who is the subject of a school attendance order made under section 37 of the <sup>M63</sup>Education Act 1944 discharges the school attendance order.
- (6) Where an emergency protection order is made with respect to a child who is in care, the care order shall have effect subject to the emergency protection order.
- (7) Any order made under section 4(1) or 5(1) shall continue in force until the child reaches the age of eighteen, unless it is brought to an end earlier.
- (8) Any—
  - (a) agreement under section 4; or
  - (b) appointment under section 5(3) or (4),shall continue in force until the child reaches the age of eighteen, unless it is brought to an end earlier.
- (9) An order under Schedule 1 has effect as specified in that Schedule.
- (10) A section 8 order shall, if it would otherwise still be in force, cease to have effect when the child reaches the age of sixteen, unless it is to have effect beyond that age by virtue of section 9(6).
- (11) Where a section 8 order has effect with respect to a child who has reached the age of sixteen, it shall, if it would otherwise still be in force, cease to have effect when he reaches the age of eighteen.
- (12) Any care order, other than an interim care order, shall continue in force until the child reaches the age of eighteen, unless it is brought to an end earlier.

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- (13) Any order made under any other provision of this Act in relation to a child shall, if it would otherwise still be in force, cease to have effect when he reaches the age of eighteen.
- (14) On disposing of any application for an order under this Act, the court may (whether or not it makes any other order in response to the application) order that no application for an order under this Act of any specified kind may be made with respect to the child concerned by any person named in the order without leave of the court.
- (15) Where an application (“the previous application”) has been made for—
- (a) the discharge of a care order;
  - (b) the discharge of a supervision order;
  - (c) the discharge of an education supervision order;
  - (d) the substitution of a supervision order for a care order; or
  - (e) a child assessment order,
- no further application of a kind mentioned in paragraphs (a) to (e) may be made with respect to the child concerned, without leave of the court, unless the period between the disposal of the previous application and the making of the further application exceeds six months.
- (16) Subsection (15) does not apply to applications made in relation to interim orders.
- (17) Where—
- (a) a person has made an application for an order under section 34;
  - (b) the application has been refused; and
  - (c) a period of less than six months has elapsed since the refusal,
- that person may not make a further application for such an order with respect to the same child, unless he has obtained the leave of the court.

#### Commencement Information

**I88** S. 91 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### Marginal Citations

**M63** 1944 c. 31.

### *Jurisdiction and procedure etc.*

## 92 Jurisdiction of courts.

- (1) The name “domestic proceedings”, given to certain proceedings in magistrates’ courts, is hereby changed to “family proceedings” and the names “domestic court” and “domestic court panel” are hereby changed to “family proceedings court” and “family panel”, respectively.
- (2) Proceedings under this Act shall be treated as family proceedings in relation to magistrates’ courts.
- (3) Subsection (2) is subject to the provisions of section 65(1) and (2) of the <sup>M64</sup>Magistrates’ Courts Act 1980 (proceedings which may be treated as not being family proceedings), as amended by this Act.

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- (4) A magistrates' court shall not be competent to entertain any application, or make any order, involving the administration or application of—
  - (a) any property belonging to or held in trust for a child; or
  - (b) the income of any such property.
- (5) The powers of a magistrates' court under section 63(2) of the Act of 1980 to suspend or rescind orders shall not apply in relation to any order made under this Act.
- (6) Part I of Schedule 11 makes provision, including provision for the Lord Chancellor to make orders, with respect to the jurisdiction of courts and justices of the peace in relation to—
  - (a) proceedings under this Act; and
  - (b) proceedings under certain other enactments.
- (7) For the purposes of this Act “the court” means the High Court, a county court or a magistrates' court.
- (8) Subsection (7) is subject to the provision made by or under Part I of Schedule 11 and to any express provision as to the jurisdiction of any court made by any other provision of this Act.
- (9) The Lord Chancellor may by order make provision for the principal registry of the Family Division of the High Court to be treated as if it were a county court for such purposes of this Act, or of any provision made under this Act, as may be specified in the order.
- (10) Any order under subsection (9) may make such provision as the Lord Chancellor thinks expedient for the purpose of applying (with or without modifications) provisions which apply in relation to the procedure in county courts to the principal registry when it acts as if it were a county court.
- (11) Part II of Schedule 11 makes amendments consequential on this section.

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

**C43** S. 92(2) excluded (14.10.1991) by [Criminal Justice Act 1991 \(c. 53, SIF 39:1\)](#), **s. 60(3)**; S.I. 1991/2208, **art. 2(1)**, **Sch. 1**

**C44** S. 92(7)–(10) applied by [Human Fertilisation and Embryology Act 1990 \(c. 37, SIF 83:1\)](#), **ss. 30(8)(9)**, 39(3), 43(2)

**Commencement Information**

**I89** S. 92 wholly in force at 14.10.1991 see s. 108(2)(3) and [S.I. 1991/828](#), **art. 3(2)**

**Marginal Citations**

**M64** 1980 c. 43.

**93 Rules of court.**

- (1) An authority having power to make rules of court may make such provision for giving effect to—
  - (a) this Act;
  - (b) the provisions of any statutory instrument made under this Act; or

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- (c) any amendment made by this Act in any other enactment, as appears to that authority to be necessary or expedient.
- (2) The rules may, in particular, make provision—
- (a) with respect to the procedure to be followed in any relevant proceedings (including the manner in which any application is to be made or other proceedings commenced);
  - (b) as to the persons entitled to participate in any relevant proceedings, whether as parties to the proceedings or by being given the opportunity to make representations to the court;
  - (c) with respect to the documents and information to be furnished, and notices to be given, in connection with any relevant proceedings;
  - (d) applying (with or without modification) enactments which govern the procedure to be followed with respect to proceedings brought on a complaint made to a magistrates' court to relevant proceedings in such a court brought otherwise than on a complaint;
  - (e) with respect to preliminary hearings;
  - (f) for the service outside [<sup>F113</sup>England and Wales], in such circumstances and in such manner as may be prescribed, of any notice of proceedings in a magistrates' court;
  - (g) for the exercise by magistrates' courts, in such circumstances as may be prescribed, of such powers as may be prescribed (even though a party to the proceedings in question is [<sup>F114</sup>or resides] outside England and Wales);
  - (h) enabling the court, in such circumstances as may be prescribed, to proceed on any application even though the respondent has not been given notice of the proceedings;
  - (i) authorising a single justice to discharge the functions of a magistrates' court with respect to such relevant proceedings as may be prescribed;
  - (j) authorising a magistrates' court to order any of the parties to such relevant proceedings as may be prescribed, in such circumstances as may be prescribed, to pay the whole or part of the costs of all or any of the other parties.
- (3) In subsection (2)—
- “notice of proceedings” means a summons or such other notice of proceedings as is required; and “given”, in relation to a summons, means “served”;
- “prescribed” means prescribed by the rules; and
- “relevant proceedings” means any application made, or proceedings brought, under any of the provisions mentioned in paragraphs (a) to (c) of subsection (1) and any part of such proceedings.
- (4) This section and any other power in this Act to make rules of court are not to be taken as in any way limiting any other power of the authority in question to make rules of court.
- (5) When making any rules under this section an authority shall be subject to the same requirements as to consultation (if any) as apply when the authority makes rules under its general rule making power.

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### Textual Amendments

**F113** Words in s. 93(2)(f) substituted (14.10.1991) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), s. 116, **Sch. 16 para. 22(a)**; S.I. 1991/1883, art.3, **Sch.**

**F114** Words in s. 93(2)(g) inserted (14.10.1991) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), s. 116, **Sch. 16 para. 22(b)**; S.I. 1991/1883, art.3, **Sch.**

### Commencement Information

**I90** S. 93 in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, **art. 3(2)**

## 94 Appeals.

- (1) [<sup>F115</sup>Subject to any express provisions to the contrary made by or under this Act, an] appeal shall lie to the High Court against—
  - (a) the making by a magistrates' court of any order under this Act; or
  - (b) any refusal by a magistrates' court to make such an order.
- (2) Where a magistrates' court has power, in relation to any proceedings under this Act, to decline jurisdiction because it considers that the case can more conveniently be dealt with by another court, no appeal shall lie against any exercise by that magistrates' court of that power.
- (3) Subsection (1) does not apply in relation to an interim order for periodical payments made under Schedule 1.
- (4) On an appeal under this section, the High Court may make such orders as may be necessary to give effect to its determination of the appeal.
- (5) Where an order is made under subsection (4) the High Court may also make such incidental or consequential orders as appear to it to be just.
- (6) Where an appeal from a magistrates' court relates to an order for the making of periodical payments, the High Court may order that its determination of the appeal shall have effect from such date as it thinks fit to specify in the order.
- (7) The date so specified must not be earlier than the earliest date allowed in accordance with rules of court made for the purposes of this section.
- (8) Where, on an appeal under this section in respect of an order requiring a person to make periodical payments, the High Court reduces the amount of those payments or discharges the order—
  - (a) it may order the person entitled to the payments to pay to the person making them such sum in respect of payments already made as the High Court thinks fit; and
  - (b) if any arrears are due under the order for periodical payments, it may remit payment of the whole, or part, of those arrears.
- (9) Any order of the High Court made on an appeal under this section (other than one directing that an application be re-heard by a magistrates' court) shall, for the purposes—
  - (a) of the enforcement of the order; and
  - (b) of any power to vary, revive or discharge orders,

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be treated as if it were an order of the magistrates' court from which the appeal was brought and not an order of the High Court.

- (10) The Lord Chancellor may by order make provision as to the circumstances in which appeals may be made against decisions taken by courts on questions arising in connection with the transfer, or proposed transfer, of proceedings by virtue of any order under paragraph 2 of Schedule 11.
- (11) Except to the extent provided for in any order made under subsection (10), no appeal may be made against any decision of a kind mentioned in that subsection.

#### Textual Amendments

**F115** Words in s. 94(1) substituted (14.10.1991) by [Courts and Legal Services Act 1990 \(c. 41, SIF 76:1\)](#), s. 116, [Sch. 16 para. 23](#); S.I. 1991/1883, art.3, [Sch.](#)

#### Commencement Information

**I91** S. 94 in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, [art. 3\(2\)](#)

## 95 Attendance of child at hearing under Part IV or V.

- (1) In any proceedings in which a court is hearing an application for an order under Part IV or V, or is considering whether to make any such order, the court may order the child concerned to attend such stage or stages of the proceedings as may be specified in the order.
- (2) The power conferred by subsection (1) shall be exercised in accordance with rules of court.
- (3) Subsections (4) to (6) apply where—
- an order under subsection (1) has not been complied with; or
  - the court has reasonable cause to believe that it will not be complied with.
- (4) The court may make an order authorising a constable, or such person as may be specified in the order—
- to take charge of the child and to bring him to the court; and
  - to enter and search any premises specified in the order if he has reasonable cause to believe that the child may be found on the premises.
- (5) The court may order any person who is in a position to do so to bring the child to the court.
- (6) Where the court has reason to believe that a person has information about the whereabouts of the child it may order him to disclose it to the court.

#### Commencement Information

**I92** S. 95 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, [art. 3\(2\)](#)



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## 96 Evidence given by, or with respect to, children.

- (1) Subsection (2) applies where a child who is called as a witness in any civil proceedings does not, in the opinion of the court, understand the nature of an oath.
- (2) The child's evidence may be heard by the court if, in its opinion—
  - (a) he understands that it is his duty to speak the truth; and
  - (b) he has sufficient understanding to justify his evidence being heard.
- (3) The Lord Chancellor may by order make provision for the admissibility of evidence which would otherwise be inadmissible under any rule of law relating to hearsay.
- (4) An order under subsection (3) may only be made with respect to—
  - (a) civil proceedings in general or such civil proceedings, or class of civil proceedings, as may be prescribed; and
  - (b) evidence in connection with the upbringing, maintenance or welfare of a child.
- (5) An order under subsection (3)—
  - (a) may, in particular, provide for the admissibility of statements which are made orally or in a prescribed form or which are recorded by any prescribed method of recording;
  - (b) may make different provision for different purposes and in relation to different descriptions of court; and
  - (c) may make such amendments and repeals in any enactment relating to evidence (other than in this Act) as the Lord Chancellor considers necessary or expedient in consequence of the provision made by the order.
- (6) Subsection (5)(b) is without prejudice to section 104(4).
- (7) In this section—

“civil proceedings” and “court” have the same meaning as they have in the <sup>M65</sup>Civil Evidence Act 1968 by virtue of section 18 of that Act; and

“prescribed” means prescribed by an order under subsection (3).

### Commencement Information

**I93** S. 96 wholly in force at 14.10.1991; s. 96(3)-(7) in force at 16.11.1989 see s. 108(2); s. 96(1)(2) in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

### Marginal Citations

**M65** 1968 c. 64.

## 97 Privacy for children involved in certain proceedings.

- (1) Rules made under section 144 of the <sup>M66</sup>Magistrates' Courts Act 1980 may make provision for a magistrates' court to sit in private in proceedings in which any powers under this Act may be exercised by the court with respect to any child.
- (2) No person shall publish any material which is intended, or likely, to identify—
  - (a) any child as being involved in any proceedings before a magistrates' court in which any power under this Act may be exercised by the court with respect to that or any other child; or
  - (b) an address or school as being that of a child involved in any such proceedings.

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- (3) In any proceedings for an offence under this section it shall be a defence for the accused to prove that he did not know, and had no reason to suspect, that the published material was intended, or likely, to identify the child.
- (4) The court or the Secretary of State may, if satisfied that the welfare of the child requires it, by order dispense with the requirements of subsection (2) to such extent as may be specified in the order.
- (5) For the purposes of this section—  
“publish” includes—  
[<sup>F116</sup>(a) include in a programme service (within the meaning of the Broadcasting Act 1990);]  
(b) cause to be published; and  
“material” includes any picture or representation.
- (6) Any person who contravenes this section shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.
- (7) Subsection (1) is without prejudice to—  
(a) the generality of the rule making power in section 144 of the Act of 1980; or  
(b) any other power of a magistrates’ court to sit in private.
- (8) [<sup>F117</sup>Sections 69 (sittings of magistrates’ courts for family proceedings) and 71 (newspaper reports of certain proceedings) of the Act of 1980] shall apply in relation to any proceedings to which this section applies subject to the provisions of this section.

#### Textual Amendments

**F116** Words in s. 97(5) substituted by [Broadcasting Act 1990 \(c. 42, SIF 96\)](#), s. 203(1), **Sch. 20 para. 53**

**F117** Words in s. 97(8) substituted (14.10.1991) by [Courts and Legal Services Act 1990 \(c. 41, SIF 76:1\)](#), s. 116, **Sch. 16 para. 24**; S.I. 1991/1883, art.3, **Sch.**

#### Commencement Information

**I94** S. 97 in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, **art. 3(2)**

#### Marginal Citations

**M66** 1980 c. 43.

## 98 Self-incrimination.

- (1) In any proceedings in which a court is hearing an application for an order under Part IV or V, no person shall be excused from—  
(a) giving evidence on any matter; or  
(b) answering any question put to him in the course of his giving evidence, on the ground that doing so might incriminate him or his spouse of an offence.
- (2) A statement or admission made in such proceedings shall not be admissible in evidence against the person making it or his spouse in proceedings for an offence other than perjury.

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#### Commencement Information

**I95** S. 98 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

### 99 Legal aid.

- (1) The <sup>M67</sup>Legal Aid Act 1988 is amended as mentioned in subsections (2) to (4).
- (2) In section 15 (availability of, and payment for, representation under provisions relating to civil legal aid), for the words “and (3)” in subsection (1) there shall be substituted “to (3B)”; and the following subsections shall be inserted after subsection (3)—
  - “(3A) Representation under this Part shall not be available—
    - (a) to any local authority; or
    - (b) to any other body which falls within a prescribed description, for the purposes of any proceedings under the Children Act 1989.
  - (3B) Regardless of subsection (2) or (3), representation under this Part must be granted where a child who is brought before a court under section 25 of the 1989 Act (use of accommodation for restricting liberty) is not, but wishes to be, legally represented before the court.”
- (3) In section 19(5) (scope of provisions about criminal legal aid), at the end of the definition of “criminal proceedings” there shall be added “and also includes proceedings under section 15 of the <sup>M68</sup>Children and Young Persons Act 1969 (variation and discharge of supervision orders) and section 16(8) of that Act (appeals in such proceedings)”.
- (4) Sections 27, 28 and 30(1) and (2) (provisions about legal aid in care, and other, proceedings in relation to children) shall cease to have effect.
- (5) The Lord Chancellor may by order make such further amendments in the Legal Aid Act 1988 as he considers necessary or expedient in consequence of any provision made by or under this Act.

#### Commencement Information

**I96** S. 99 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### Marginal Citations

**M67** 1988 c. 34.

**M68** 1969 c. 54.

### 100 Restrictions on use of wardship jurisdiction.

- (1) Section 7 of the <sup>M69</sup>Family Law Reform Act 1969 (which gives the High Court power to place a ward of court in the care, or under the supervision, of a local authority) shall cease to have effect.
- (2) No court shall exercise the High Court’s inherent jurisdiction with respect to children—

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- (a) so as to require a child to be placed in the care, or put under the supervision, of a local authority;
  - (b) so as to require a child to be accommodated by or on behalf of a local authority;
  - (c) so as to make a child who is the subject of a care order a ward of court; or
  - (d) for the purpose of conferring on any local authority power to determine any question which has arisen, or which may arise, in connection with any aspect of parental responsibility for a child.
- (3) No application for any exercise of the court's inherent jurisdiction with respect to children may be made by a local authority unless the authority have obtained the leave of the court.
- (4) The court may only grant leave if it is satisfied that—
- (a) the result which the authority wish to achieve could not be achieved through the making of any order of a kind to which subsection (5) applies; and
  - (b) there is reasonable cause to believe that if the court's inherent jurisdiction is not exercised with respect to the child he is likely to suffer significant harm.
- (5) This subsection applies to any order—
- (a) made otherwise than in the exercise of the court's inherent jurisdiction; and
  - (b) which the local authority is entitled to apply for (assuming, in the case of any application which may only be made with leave, that leave is granted).

**Commencement Information**

**I97** S. 100 wholly in force at 14.10.1991 see s. 108(2)(3) and [S.I. 1991/828, art. 3\(2\)](#)

**Marginal Citations**

**M69** 1969 c. 46.

**101 Effect of orders as between England and Wales and Northern Ireland, the Channel Islands or the Isle of Man.**

- (1) The Secretary of State may make regulations providing—
- (a) for prescribed orders which—
    - (i) are made by a court in Northern Ireland; and
    - (ii) appear to the Secretary of State to correspond in their effect to orders which may be made under any provision of this Act,
 to have effect in prescribed circumstances, for prescribed purposes of this Act, as if they were orders of a prescribed kind made under this Act;
  - (b) for prescribed orders which—
    - (i) are made by a court in England and Wales; and
    - (ii) appear to the Secretary of State to correspond in their effect to orders which may be made under any provision in force in Northern Ireland,
 to have effect in prescribed circumstances, for prescribed purposes of the law of Northern Ireland, as if they were orders of a prescribed kind made in Northern Ireland.

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- (2) Regulations under subsection (1) may provide for the order concerned to cease to have effect for the purposes of the law of Northern Ireland, or (as the case may be) the law of England and Wales, if prescribed conditions are satisfied.
- (3) The Secretary of State may make regulations providing for prescribed orders which—
  - (a) are made by a court in the Isle of Man or in any of the Channel Islands; and
  - (b) appear to the Secretary of State to correspond in their effect to orders which may be made under this Act,to have effect in prescribed circumstances for prescribed purposes of this Act, as if they were orders of a prescribed kind made under this Act.
- (4) Where a child who is in the care of a local authority is lawfully taken to live in Northern Ireland, the Isle of Man or any of the Channel Islands, the care order in question shall cease to have effect if the conditions prescribed in regulations made by the Secretary of State are satisfied.
- (5) Any regulations made under this section may—
  - (a) make such consequential amendments (including repeals) in—
    - (i) section 25 of the <sup>M70</sup>Children and Young Persons Act 1969 (transfers between England and Wales and Northern Ireland); or
    - (ii) section 26 (transfers between England and Wales and Channel Islands or Isle of Man) of that Act,as the Secretary of State considers necessary or expedient; and
  - (b) modify any provision of this Act, in its application (by virtue of the regulations) in relation to an order made otherwise than in England and Wales.

#### Extent Information

**E5** S. 101 extends to England and Wales only except for s. 101(1)(b)(2)(5)(a)(i) which also extend to Northern Ireland. See s. 108(11)(12)

#### Commencement Information

**I98** S. 101 wholly in force at 14.10.1991 see s. 108(2)(3) and [S.I. 1991/828, art. 3\(2\)](#)

#### Marginal Citations

**M70** 1969 c. 54.

### Search warrants

#### 102 Power of constable to assist in exercise of certain powers to search for children or inspect premises.

- (1) Where, on an application made by any person for a warrant under this section, it appears to the court—
  - (a) that a person attempting to exercise powers under any enactment mentioned in subsection (6) has been prevented from doing so by being refused entry to the premises concerned or refused access to the child concerned; or
  - (b) that any such person is likely to be so prevented from exercising any such powers,

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it may issue a warrant authorising any constable to assist that person in the exercise of those powers, using reasonable force if necessary.

- (2) Every warrant issued under this section shall be addressed to, and executed by, a constable who shall be accompanied by the person applying for the warrant if—
  - (a) that person so desires; and
  - (b) the court by whom the warrant is issued does not direct otherwise.
- (3) A court granting an application for a warrant under this section may direct that the constable concerned may, in executing the warrant, be accompanied by a registered medical practitioner, registered nurse or registered health visitor if he so chooses.
- (4) An application for a warrant under this section shall be made in the manner and form prescribed by rules of court.
- (5) Where—
  - (a) an application for a warrant under this section relates to a particular child; and
  - (b) it is reasonably practicable to do so,
 the application and any warrant granted on the application shall name the child; and where it does not name him it shall describe him as clearly as possible.
- (6) The enactments are—
  - (a) sections 62, 64, 67, 76, 80, 86 and 87;
  - (b) paragraph 8(1)(b) and (2)(b) of Schedule 3;
  - (c) section 33 of the <sup>M71</sup>Adoption Act 1976 (duty of local authority to secure that protected children are visited from time to time).

**Commencement Information**

**I99** S. 102 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

**Marginal Citations**

**M71** 1976 c. 36.

*General*

**103 Offences by bodies corporate.**

- (1) This section applies where any offence under this Act is committed by a body corporate.
- (2) If the offence is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he (as well as the body corporate) shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

**Commencement Information**

**I100** s. 103 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

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## 104 Regulations and orders.

- (1) Any power of the Lord Chancellor or the Secretary of State under this Act to make an order, regulations, or rules, except an order under section 54(2), 56(4)(a), 57(3), 84 or 97(4) or paragraph 1(1) of Schedule 4, shall be exercisable by statutory instrument.
- (2) Any such statutory instrument, except one made under section 17(4), 107 or 108(2), shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) An order under section 17(4) shall not be made unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament.
- (4) Any statutory instrument made under this Act may—
  - (a) make different provision for different cases;
  - (b) provide for exemptions from any of its provisions; and
  - (c) contain such incidental, supplemental and transitional provisions as the person making it considers expedient.

### Commencement Information

**I101** S. 104 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

VALID FROM 13/11/2008

### <sup>F118</sup>104A Regulations and orders made by the Welsh Ministers under Part 3 etc.

- (1) Any power of the Welsh Ministers under Part 3, Part 7 or section 86A to make an order or regulations shall be exercisable by statutory instrument.
- (2) Any such statutory instrument, except one made under section 17(4) or one containing regulations which fall within subsection (4) or (5), shall be subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- (3) An order under section 17(4) or regulations which fall within subsection (4) or (5) shall not be made by the Welsh Ministers unless a draft of the statutory instrument containing the order or regulations has been laid before and approved by a resolution of the National Assembly for Wales.
- (4) Regulations fall within this subsection if they are the first regulations to be made by the Welsh Ministers in the exercise of the power conferred by section 23C(5B)(b).
- (5) Regulations fall within this subsection if they are the first regulations to be made by the Welsh Ministers in the exercise of the power conferred by paragraph 6(2) of Schedule 2.]

### Textual Amendments

**F118** S. 104A inserted (E.W.) (13.11.2008) by [Children and Young Persons Act 2008 \(c. 23\)](#), ss. 39, 44, [Sch. 3 para. 26](#)

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## 105 Interpretation.

(1) In this Act—

“adoption agency” means a body which may be referred to as an adoption agency by virtue of section 1 of the <sup>M72</sup>Adoption Act 1976;

“bank holiday” means a day which is a bank holiday under the <sup>M73</sup>Banking and Financial Dealings Act 1971;

“care order” has the meaning given by section 31(11) and also includes any order which by or under any enactment has the effect of, or is deemed to be, a care order for the purposes of this Act; and any reference to a child who is in the care of an authority is a reference to a child who is in their care by virtue of a care order;

“child” means, subject to paragraph 16 of Schedule 1, a person under the age of eighteen;

“child assessment order” has the meaning given by section 43(2);

“child minder” has the meaning given by section 71;

“child of the family”, in relation to the parties to a marriage, means—

- (a) a child of both of those parties;
- (b) any other child, not being a child who is placed with those parties as foster parents by a local authority or voluntary organisation, who has been treated by both of those parties as a child of their family;

“children’s home” has the same meaning as in section 63;

“community home” has the meaning given by section 53;

“contact order” has the meaning given by section 8(1);

“day care” has the same meaning as in section 18;

“disabled”, in relation to a child, has the same meaning as in section 17(11);

“district health authority” has the same meaning as in the <sup>M74</sup>National Health Service Act 1977;

“domestic premises” has the meaning given by section 71(12);

“education supervision order” has the meaning given in section 36;

“emergency protection order” means an order under section 44;

“family assistance order” has the meaning given in section 16(2);

“family proceedings” has the meaning given by section 8(3);

“functions” includes powers and duties;

“guardian of a child” means a guardian (other than a guardian of the estate of a child) appointed in accordance with the provisions of section 5;

“harm” has the same meaning as in section 31(9) and the question of whether harm is significant shall be determined in accordance with section 31(10);

“health authority” means any district health authority and any special health authority established under the National Health Service Act 1977;

“health service hospital” has the same meaning as in the <sup>M75</sup>National Health Service Act 1977;

“hospital” has the same meaning as in the <sup>M76</sup>Mental Health Act 1983, except that it does not include a special hospital within the meaning of that Act;

“ill-treatment” has the same meaning as in section 31(9);



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“independent school” has the same meaning as in the <sup>M77</sup>Education Act 1944;

“local authority” means, in relation to England and Wales, the council of a county, a metropolitan district, a London Borough or the Common Council of the City of London and, in relation to Scotland, a local authority within the meaning of section 1(2) of the <sup>M78</sup>Social Work (Scotland) Act 1968;

“local authority foster parent” has the same meaning as in section 23(3);

“local education authority” has the same meaning as in the Education Act 1944;

“local housing authority” has the same meaning as in the <sup>M79</sup>Housing Act 1985;

“mental nursing home” has the same meaning as in the <sup>M80</sup>Registered Homes Act 1984;

“nursing home” has the same meaning as in the Act of 1984;

“parental responsibility” has the meaning given in section 3;

“parental responsibility agreement” has the meaning given in section 4(1);

“prescribed” means prescribed by regulations made under this Act;

“privately fostered child” and “to foster a child privately” have the same meaning as in section 66;

“prohibited steps order” has the meaning given by section 8(1);

“protected child” has the same meaning as in Part III of the <sup>M81</sup>Adoption Act 1976;

“registered children’s home” has the same meaning as in section 63;

“registered pupil” has the same meaning as in the Education Act 1944;

“relative”, in relation to a child, means a grandparent, brother, sister, uncle or aunt (whether of the full blood or half blood or by affinity) or step-parent;

“residence order” has the meaning given by section 8(1);

“residential care home” has the same meaning as in the Registered Homes Act 1984;

“responsible person”, in relation to a child who is the subject of a supervision order, has the meaning given in paragraph 1 of Schedule 3;

“school” has the same meaning as in the Education Act 1944 or, in relation to Scotland, in the <sup>M82</sup>Education (Scotland) Act 1980;

“service”, in relation to any provision made under Part III, includes any facility;

“signed”, in relation to any person, includes the making by that person of his mark;

“special educational needs” has the same meaning as in the <sup>M83</sup>Education Act 1981;

“special health authority” has the same meaning as in the <sup>M84</sup>National Health Service Act 1977;

“specific issue order” has the meaning given by section 8(1);

“supervision order” has the meaning given by section 31(11);

“supervised child” and “supervisor”, in relation to a supervision order or an education supervision order, mean respectively the child who is (or is to be) under supervision and the person under whose supervision he is (or is to be) by virtue of the order;

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“upbringing”, in relation to any child, includes the care of the child but not his maintenance;

“voluntary home” has the meaning given by section 60;

“voluntary organisation” means a body (other than a public or local authority) whose activities are not carried on for profit.

- (2) References in this Act to a child whose father and mother were, or (as the case may be) were not, married to each other at the time of his birth must be read with section 1 of the <sup>M85</sup>Family Law Reform Act 1987 (which extends the meaning of such references).
- (3) References in this Act to—
  - (a) a person with whom a child lives, or is to live, as the result of a residence order; or
  - (b) a person in whose favour a residence order is in force,
 shall be construed as references to the person named in the order as the person with whom the child is to live.
- (4) References in this Act to a child who is looked after by a local authority have the same meaning as they have (by virtue of section 22) in Part III.
- (5) References in this Act to accommodation provided by or on behalf of a local authority are references to accommodation so provided in the exercise of functions which stand referred to the social services committee of that or any other local authority under the <sup>M86</sup>Local Authority Social Services Act 1970.
- (6) In determining the “ordinary residence” of a child for any purpose of this Act, there shall be disregarded any period in which he lives in any place—
  - (a) which is a school or other institution;
  - (b) in accordance with the requirements of a supervision order under this Act or an order under section 7(7)(b) of the <sup>M87</sup>Children and Young Persons Act 1969; or
  - (c) while he is being provided with accommodation by or on behalf of a local authority.
- (7) References in this Act to children who are in need shall be construed in accordance with section 17.
- (8) Any notice or other document required under this Act to be served on any person may be served on him by being delivered personally to him, or being sent by post to him in a registered letter or by the recorded delivery service at his proper address.
- (9) Any such notice or other document required to be served on a body corporate or a firm shall be duly served if it is served on the secretary or clerk of that body or a partner of that firm.
- (10) For the purposes of this section, and of section 7 of the <sup>M88</sup>Interpretation Act 1978 in its application to this section, the proper address of a person—
  - (a) in the case of a secretary or clerk of a body corporate, shall be that of the registered or principal office of that body;
  - (b) in the case of a partner of a firm, shall be that of the principal office of the firm; and
  - (c) in any other case, shall be the last known address of the person to be served.

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#### Commencement Information

**I102** S. 105 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, **art. 3(2)**

#### Marginal Citations

**M72** 1976 c. 36.

**M73** 1971 c. 80.

**M74** 1977 c. 49.

**M75** 1977 c. 49.

**M76** 1983 c. 20.

**M77** 1944 c. 31.

**M78** 1968 c. 49.

**M79** 1985 c. 68.

**M80** 1984 c. 23.

**M81** 1976 c. 36.

**M82** 1980 c. 44.

**M83** 1981 c. 31.

**M84** 1977 c. 49.

**M85** 1987 c. 42.

**M86** 1970 c. 42.

**M87** 1969 c. 54.

**M88** 1978 c. 30.

### 106 Financial provisions.

(1) Any—

(a) grants made by the Secretary of State under this Act; and

(b) any other expenses incurred by the Secretary of State under this Act,  
shall be payable out of money provided by Parliament.

(2) Any sums received by the Secretary of State under section 58, or by way of the repayment of any grant made under section 82(2) or (4) shall be paid into the Consolidated Fund.

#### Commencement Information

**I103** S. 106 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, **art. 3(2)**

### 107 Application to Channel Islands.

Her Majesty may by Order in Council direct that any of the provisions of this Act shall extend to any of the Channel Islands with such exceptions and modifications as may be specified in the Order.

#### Commencement Information

**I104** S. 107 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, **art. 3(2)**

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## **108 Short title, commencement extent etc.**

- (1) This Act may be cited as the Children Act 1989.
- (2) Sections 89 and 96(3) to (7), and paragraph 35 of Schedule 12, shall come into force on the passing of this Act and paragraph 36 of Schedule 12 shall come into force at the end of the period of two months beginning with the day on which this Act is passed but otherwise this Act shall come into force on such date as may be appointed by order made by the Lord Chancellor or the Secretary of State, or by both acting jointly.
- (3) Different dates may be appointed for different provisions of this Act and in relation to different cases.
- (4) The minor amendments set out in Schedule 12 shall have effect.
- (5) The consequential amendments set out in Schedule 13 shall have effect.
- (6) The transitional provisions and savings set out in Schedule 14 shall have effect.
- (7) The repeals set out in Schedule 15 shall have effect.
- (8) An order under subsection (2) may make such transitional provisions or savings as appear to the person making the order to be necessary or expedient in connection with the provisions brought into force by the order, including—
  - (a) provisions adding to or modifying the provisions of Schedule 14, and
  - (b) such adaptations—
    - (i) of the provisions brought into force by the order; and
    - (ii) of any provisions of this Act then in force,
 as appear to him necessary or expedient in consequence of the partial operation of this Act.
- (9) The Lord Chancellor may by order make such amendments or repeals, in such enactments as may be specified in the order, as appear to him to be necessary or expedient in consequence of any provision of this Act.
- (10) This Act shall, in its application to the Isles of Scilly, have effect subject to such exceptions, adaptations and modifications as the Secretary of State may by order prescribe.
- (11) The following provisions of this Act extend to Scotland—
  - section 19;
  - section 25(8);
  - section 50(13);
  - Part X;
  - section 80(1)(h) and (i), (2) to (4), (5)(a), (b) and (h) and (6) to (12);
  - section 88;
  - section 104 (so far as necessary);
  - section 105 (so far as necessary);
  - subsections (1) to (3), (8) and (9) and this subsection;
  - in Schedule 2, paragraph 24;
  - in Schedule 12, paragraphs 1, 7 to 10, 18, 27, 30(a) and 41 to 44;
  - in Schedule 13, paragraphs 18 to 23, 32, 46, 47, 50, 57, 62, 63, 68(a) and (b) and 71;

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in Schedule 14, paragraphs 1, 33 and 34;

in Schedule 15, the entries relating to—

- (a) the <sup>M89</sup>Custody of Children Act 1891;
- (b) the <sup>M90</sup>Nurseries and Child Minders Regulation Act 1948;
- (c) section 53(3) of the <sup>M91</sup>Children and Young Persons Act 1963;
- (d) section 60 of the <sup>M92</sup>Health Services and Public Health Act 1968;
- (e) the <sup>M93</sup>Social Work (Scotland) Act 1968;
- (f) the <sup>M94</sup>Adoption (Scotland) Act 1978;
- (g) the <sup>M95</sup>Child Care Act 1980;
- (h) the <sup>M96</sup>Foster Children (Scotland) Act 1984;
  - (i) the <sup>M97</sup>Child Abduction and Custody Act 1985; and
- (j) the <sup>M98</sup>Family Law Act 1986.

(12) The following provisions of this Act extend to Northern Ireland—

section 50;

section 101(1)(b), (2) and (5)(a)(i);

subsections (1) to (3), (8) and (9) and this subsection;

in Schedule 2, paragraph 24;

in Schedule 12, paragraphs 7 to 10, 18 and 27;

in Schedule 13, paragraphs 21, 22, 46, 47, 57, 62, 63, 68(c) to (e) and 69 to 71;

in Schedule 14, paragraphs <sup>F119</sup> . . . , 28 to 30 and 38(a); and

in Schedule 15, the entries relating to the <sup>M99</sup>Guardianship of Minors Act 1971, the <sup>M100</sup>Children Act 1975, the Child Care Act 1980, and the Family Law Act 1986.

#### Extent Information

**E6** [S. 108](#) extends to England and Wales, except s. 108(1)(3)(8)(9) which extend to the United Kingdom. See s. 108(11)(12).

#### Textual Amendments

**F119** Word in [s. 108\(12\)](#) repealed (14.10.1991) by [Courts and Legal Services Act 1990 \(c. 41, SIF 76:1\)](#), ss. 116, 125(7), [Sch. 16 para. 25](#), [Sch. 20](#); S.I. 1991/1883, [art. 3](#), Sch.

#### Marginal Citations

**M89** 1891 c. 3.

**M90** 1948 c. 53.

**M91** 1963 c. 37.

**M92** 1968 c. 46.

**M93** 1968 c. 49.

**M94** 1978 c. 28.

**M95** 1980 c. 5.

**M96** 1984 c. 56.

**M97** 1985 c. 60.

**M98** 1986 c. 55.

**M99** 1971 c. 3.

**M100** 1975 c. 72.

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