



# Children Act 1989

## 1989 CHAPTER 41

### PART IV

#### CARE AND SUPERVISION

##### *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

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- (b) where the child [<sup>F1</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**

**F1** 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**

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

**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 [<sup>F2</sup>child arrangements order with respect to the living arrangements of] 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.

[<sup>F3</sup>(3A) For the purposes of subsection (3), a child arrangements order is one made with respect to the living arrangements of the child concerned if the arrangements regulated by the order consist of, or include, arrangements which relate to either or both of the following—

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

(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—

- <sup>F4</sup>(a) .....
- <sup>F5</sup>(b) .....
- (c) in a case which falls within subsection (1)(a), the disposal of the application;

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- (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;
  - [<sup>F6</sup>(da) in a case which falls within subsection (1)(b) and in which—
    - (i) no direction has been given under section 37(4), and
    - (ii) no application for a care order or supervision order has been made with respect to the child,the expiry of the period of eight weeks beginning with the date on which the order is made;]
  - (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.
- <sup>F7</sup>(5) .....
- (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.
  - [<sup>F8</sup>(7A) A direction under subsection (6) to the effect that there is to be a medical or psychiatric examination or other assessment of the child may be given only if the court is of the opinion that the examination or other assessment is necessary to assist the court to resolve the proceedings justly.
  - (7B) When deciding whether to give a direction under subsection (6) to that effect the court is to have regard in particular to—
    - (a) any impact which any examination or other assessment would be likely to have on the welfare of the child, and any other impact which giving the direction would be likely to have on the welfare of the child,
    - (b) the issues with which the examination or other assessment would assist the court,
    - (c) the questions which the examination or other assessment would enable the court to answer,
    - (d) the evidence otherwise available,
    - (e) the impact which the direction would be likely to have on the timetable, duration and conduct of the proceedings,
    - (f) the cost of the examination or other assessment, and
    - (g) any matters prescribed by Family Procedure Rules.]
  - (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
    - (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.

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- (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.

#### Textual Amendments

- F2** Words in s. 38(3) substituted (22.4.2014) by [Children and Families Act 2014 \(c. 6\), s. 139\(6\), Sch. 2 para. 32\(2\)](#); [S.I. 2014/889, art. 4\(f\)](#) (with transitional provisions in [S.I. 2014/1042, arts. 3, 4, 6-10](#))
- F3** S. 38(3A) inserted (22.4.2014) by [Children and Families Act 2014 \(c. 6\), s. 139\(6\), Sch. 2 para. 32\(3\)](#); [S.I. 2014/889, art. 4\(f\)](#) (with transitional provisions in [S.I. 2014/1042, arts. 3, 4, 6-10](#))
- F4** S. 38(4)(a) omitted (22.4.2014) by virtue of [Children and Families Act 2014 \(c. 6\), ss. 14\(4\)\(a\)\(i\), 139\(6\)](#); [S.I. 2014/889, art. 4\(c\)](#) (with transitional provisions in [S.I. 2014/1042, arts. 3, 4, 6-10](#))
- F5** S. 38(4)(b) omitted (22.4.2014) by virtue of [Children and Families Act 2014 \(c. 6\), ss. 14\(4\)\(a\)\(ii\), 139\(6\)](#); [S.I. 2014/889, art. 4\(c\)](#) (with transitional provisions in [S.I. 2014/1042, arts. 3, 4, 6-10](#))
- F6** S. 38(4)(da) inserted (22.4.2014) by [Children and Families Act 2014 \(c. 6\), ss. 14\(4\)\(b\), 139\(6\)](#); [S.I. 2014/889, art. 4\(c\)](#) (with transitional provisions in [S.I. 2014/1042, arts. 3, 4, 6-10](#))
- F7** S. 38(5) omitted (22.4.2014) by virtue of [Children and Families Act 2014 \(c. 6\), ss. 14\(4\)\(c\), 139\(6\)](#); [S.I. 2014/889, art. 4\(c\)](#) (with transitional provisions in [S.I. 2014/1042, arts. 3, 4, 6-10](#))
- F8** S. 38(7A)(7B) inserted (22.4.2014) by [Children and Families Act 2014 \(c. 6\), ss. 13\(11\), 139\(6\)](#); [S.I. 2014/793, art. 2](#) (with transitional provisions in [S.I. 2014/1042, arts. 5, 11](#))

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

- C1** S. 38 modified (1.11.2012) by [Parental Responsibility and Measures for the Protection of Children \(International Obligations\) \(England and Wales and Northern Ireland\) Regulations 2010 \(S.I. 2010/1898\), regs. 1\(2\), 5\(2\)](#) (as amended (31.12.2020) by [S.I. 2019/519, reg. 1\(1\), Sch. para. 37\(3\)](#) (with [reg. 8](#) (as amended by [S.I. 2020/1574, regs. 1, 5\(2\)](#))); 2020 c. 1, [Sch. 5 para. 1\(1\)](#))
- C2** S. 38(1) restricted (14.10.1991) by [S.I. 1991/1395, rules 1, 28](#)

#### Commencement Information

- I2** S. 38 wholly in force at 14.10.1991, see s. 108(2)(3) and [S.I. 1991/828, art. 3\(2\)](#)

### [<sup>F9</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)—

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- (i) is able and willing to give to the child the care which it would be reasonable to expect a parent to give him, and
  - (ii) consents to the inclusion of the exclusion requirement.
- (3) For the purposes of this section an exclusion requirement is any one or more of the following—
  - (a) a provision requiring the relevant person to leave a dwelling-house in which he is living with the child,
  - (b) a provision prohibiting the relevant person from entering a dwelling-house in which the child lives, and
  - (c) a provision excluding the relevant person from a defined area in which a dwelling-house in which the child lives is situated.
- (4) The court may provide that the exclusion requirement is to have effect for a shorter period than the other provisions of the interim care order.
- (5) Where the court makes an interim care order containing an exclusion requirement, the court may attach a power of arrest to the exclusion requirement.
- (6) Where the court attaches a power of arrest to an exclusion requirement of an interim care order, it may provide that the power of arrest is to have effect for a shorter period than the exclusion requirement.
- (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

**F9** 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**

#### <sup>F10</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)—

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- (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 [F11 family court ] apart from this section.
- (5) In this section “exclusion requirement” and “relevant person” have the same meaning as in section 38A.

#### Textual Amendments

- F10** 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**
- F11** Words in s. 38B(4) substituted (22.4.2014) by **Crime and Courts Act 2013 (c. 22)**, s. 61(3), **Sch. 11 para. 106**; S.I. 2014/954, **art. 2(e)** (with **art. 3**) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

### 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.
- <sup>F12</sup>[(3A) On the application of a person who is not entitled to apply for the order to be discharged, but who is a person to whom an exclusion requirement contained in the order applies, an interim care order may be varied or discharged by the court in so far as it imposes the exclusion requirement.
- (3B) Where a power of arrest has been attached to an exclusion requirement of an interim care order, the court may, on the application of any person entitled to apply for the discharge of the order so far as it imposes the exclusion requirement, vary or discharge the order in so far as it confers a power of arrest (whether or not any application has been made to vary or discharge any other provision of the order).]
- (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.

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- (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.

#### Textual Amendments

**F12** S. 39(3A) and (3B) inserted(1.10.1997) by 1996 c. 27, ss. 52, 67(3), **Sch. 6 para.2**; S.I. 1997/1892, **art. 3**

#### Commencement Information

**I3** 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 court dismisses an application for a care order; and
  - 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 court dismisses an application for a care order, or an application for a supervision order; and
  - 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—
- its decision is not to have effect; or
  - 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—
- an appeal is made against any decision of a court under this section; or
  - 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—
- 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

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- (b) otherwise, the period during which an appeal may be made against the decision.

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**Commencement Information**

**I4** S. 40 wholly in force at 14.10.1991 see s. 108(2)(3) and [S.I. 1991/828, art. 3\(2\)](#)



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

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

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