



# Children Act 1989

## 1989 CHAPTER 41

### 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 <sup>F1</sup> . . .
- (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.

*Status: Point in time view as at 31/01/2005.*

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- (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 [<sup>F2</sup>section 63(1) of the Powers of Criminal Courts (Sentencing) Act 2000]; or
    - (iii) a supervision requirement within the meaning of [<sup>F3</sup>Part II of the Children (Scotland) Act 1995].
- (8) The local authority designated in a care order must be—
- (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 [<sup>F4</sup>including, for example, impairment suffered from seeing or hearing the ill-treatment of another];
- “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.

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#### Textual Amendments

- F1** Words in s. 31(1)(b) repealed (1.4.2001) by 2000 c. 43, ss. 74, 75, Sch. 7 Pt. II para. 90, **Sch. 8**; S.I. 2001/919, **art. 2(f)(ii)(g)**
- F2** Words in s. 31(7)(b)(ii) substituted (25.8.2000) by 2000 c. 6, ss. 165, 168(1), **Sch. 9 para. 127**
- F3** Words in s. 31(7)(b)(iii) substituted (1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 48(2)**(with ss. 90, 103(1)); S.I. 1996/3201, **art. 3(7)**
- F4** S. 31(9): words in definition of "harm" inserted (31.1.2005) by 2002 c. 38, ss. 120, 148 (with Sch. 4 paras. 6-8); S.I. 2004/3203, **art. 2(2)**

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

- C1** S. 31 applied (14.10.1991) by S.I. 1991/2032, **art. 3(1)**.
- C2** S. 31(1)(a) extended (30.9.1998) by 1998 c. 37, **s. 12(6)(a)(7)**; S.I. 1998/2327, **art. 2(1)(c)** (subject to arts. 5-8)
- C3** S. 31(2) modified (30.9.1998) by 1998 c. 37, **s. 12(7)**; S.I. 1998/2327, **art. 2(1)(c)** (subject to arts. 5-8).

#### Commencement Information

- I1** S. 31 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, **art. 3(2)**

### [<sup>F5</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.
- (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

- F5** 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)

- C4** 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)**

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### **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**

**I2** S. 32 wholly in force at 14.10.1991 see s. 108(2)(3) and [S.I. 1991/828, art. 3\(2\)](#)

### *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—

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- (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>M1</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).
- (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**

**I3** S. 33 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

**Marginal Citations**

**M1** 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—

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- (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.
- (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**

**I4** S. 34 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

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### *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**

**I5** S. 35 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### **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 [F<sup>6</sup>section 437 of the Education Act 1996] 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 [F<sup>7</sup>section 444] 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.

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- (8) Where a local education authority propose to make an application for an education supervision order they shall, before making the application, consult the <sup>F8</sup> . . . 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.

#### Textual Amendments

- F6** Words in s. 36(5) substituted (1.11.1996) by 1996 c. 56, ss. 582(1), 583(2), **Sch. 37 Pt. I para. 85(a)**(with s. 1(4))
- F7** Wods in s. 36(5) substituted (1.11.1996) by 1996 c. 56, ss. 582(1), 583(2), **Sch. 37 Pt. I para. 85(b)**(with s. 1(4))
- F8** Words in s. 36(8) repealed (1.10.1993) by 1993 c. 35, s. 307(1)(3), Sch. 19 para. 149, **Sch. 21 Pt. II; S.I. 1993/1975, art. 9, Sch. 1, Appendix.**

#### Commencement Information

- I6** S. 36 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, **art. 3(2)**

### *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.



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- (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>[F9]</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

- F9** 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

- I7** 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 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;

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- (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
  - (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)**

- C5** 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)**
- C6** S. 38(1) restricted (14. 10. 1991) by [S.I. 1991/1395](#), rules. 1,28

**Commencement Information**

- I8** S. 38 wholly in force at 14.10.1991 see s. 108(2)(3) and [S.I. 1991/828](#), **art. 3(2)**

**[<sup>F10</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,

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the court may include an exclusion requirement in the interim care order.

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

**F10** Ss. 38A and 38B inserted(*l.10.1997*) by 1996 c. 27, ss. 52, **Sch. 6 para. 1**(with Sch. 9 para. 5); S.I. 1997/1892, **art.3**

*Status: Point in time view as at 31/01/2005.*

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### **<sup>F11</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.
- (5) In this section “exclusion requirement” and “relevant person” have the same meaning as in section 38A.

#### **Textual Amendments**

**F11** 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.
- <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).]

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- (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.

#### 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

**I9** 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
  - (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.

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- (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

**I10** 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** [<sup>F13</sup>Representation of child]

- (1) For the purpose of any specified proceedings, the court shall appoint [<sup>F14</sup>an officer of the Service] for the child concerned unless satisfied that it is not necessary to do so in order to safeguard his interests.
- (2) The [<sup>F14</sup>officer of the Service] 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 [<sup>F14</sup>officer of the Service] has been appointed for the child;
  - (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;

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- (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.

[<sup>F15</sup>(6A) The proceedings which may be specified under subsection (6)(i) include (for example) proceedings for the making, varying or discharging of a section 8 order.]

<sup>F16</sup>(7) .....

<sup>F16</sup>(8) .....

<sup>F16</sup>(9) .....

(10) Rules of court may make provision as to—

- (a) the assistance which any [<sup>F14</sup>officer of the Service] may be required by the court to give to it;
- (b) the consideration to be given by any [<sup>F14</sup>officer of the Service], 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 [<sup>F14</sup>officers of the Service] 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 [<sup>F14</sup>an officer of the Service] 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>F16</sup>(12) .....

#### Textual Amendments

**F13** S. 41 side note substituted (1.4.2001) by 2000 c. 43, s. 74, **Sch. 7 Pt. II para. 91(e)**; S.I. 2001/919, **art. 2(f)(ii)**

**F14** Words in s. 41(1)(2)(4)(a)(10)(a)(b)(c)(11)(a) substituted (1.4.2001) by 2000 c. 43, s. 74, **Sch. 7 Pt. II para. 91(a)(b)(c)**; S.I. 2001/919, **art. 2(f)(ii)**

**F15** S. 41(6A) inserted (7.12.2004) by 2002 c. 38, ss. 122(1)(b), 148 (with Sch. 4 paras. 6-8); S.I. 2004/3203, **art. 2(1)(I)**

**F16** S. 41(7)-(9)(12) repealed (1.4.2001) by 2000 c. 43, ss. 74, 75, Sch. 7 Pt. II para. 91(d), **Sch. 8**; S.I. 2001/919, **art. 2(f)(ii)(g)**

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

C7 S. 41(2) modified (14. 10. 1991) by S.I. 1991/1395, rules. 1, 11(1)

#### Commencement Information

I11 S. 41 in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

## 42 [F17] Right of officer of the Service to have access to local authority records]

- (1) Where [F18 an officer of the Service] has been appointed [F19 under section 41] 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 [F20 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; F21 . . .
  - (b) any F21 . . . records of, or held by, a local authority which were compiled in connection with any functions which [F22 are social services functions within the meaning of] the M2 Local Authority Social Services Act 1970, so far as those records relate to that child.
- [F23, 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 [F24 an officer of the Service] 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.
- [F25(4) In this section “authorised person” has the same meaning as in section 31.]

#### Textual Amendments

- F17 S. 42 sidenote substituted (1.4.2001) by 2000 c. 43, s. 74, Sch.7 Pt. II para. 92(c); S.I. 2001/919, art. 2(f)(ii)
- F18 Words in s. 42(1) substituted (1.4.2001) by 2000 c. 43, s. 74, 80, Sch. 7 Pt. II para. 92(a)(i); S.I. 2001/919, art. 2(f)(ii)
- F19 Words in s. 42(1) substituted (1.4.2001) by 2000 c. 43, s. 74, Sch. 7 Pt. II para. 92(a)(ii); S.I. 2001/919, art. 2(f)(ii)
- F20 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.
- F21 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.
- F22 Words in s. 42(1)(b) substituted (26.10.2000 for E. and otherwise 28.7.2001) by 2000 c. 22, ss. 107, 108(4), Sch. 5 para. 20; S.I. 2000/2849, art. 2(f)
- F23 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.



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**F24** Words in s. 42(2) substituted (1.4.2001) by 2000 c. 43, s. 74, **Sch. 7 Pt. II para. 92(b)**; S.I. 2001/919, **art. 2(f)(ii)**

**F25** 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.**

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**Commencement Information**

**I12** S. 42 in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, **art. 3(2)**

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**Marginal Citations**

**M2** 1970 c. 42.

**Status:**

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