



Children Act 1989

1989 CHAPTER 41

PART IV

CARE AND SUPERVISION

Powers of court

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 [^{F1}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.

[^{F2}(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.]

Changes to legislation: Children Act 1989, Section 38 is up to date with all changes known to be in force on or before 16 April 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) View outstanding changes

(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—

^{F3}(a)

^{F4}(b)

(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;

[^{F5}(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.

^{F6}(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.

[^{F7}(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,

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- (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.
- (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

- F1** 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)
- F2** 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)
- F3** 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)
- F4** 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)
- F5** 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)
- F6** 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)
- F7** 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

- I1** S. 38 wholly in force at 14.10.1991, see s. 108(2)(3) and [S.I. 1991/828](#), art. 3(2)

Changes to legislation:

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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)