

CHILDREN AND ADOPTION ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS AND SCHEDULES

Schedule 1 - Enforcement orders

38. Schedule A1 to the 1989 Act, inserted by Schedule 1 to the Act, makes further provision about enforcement orders.
39. [Paragraphs 2 and 3](#) of Schedule A1 to the 1989 Act modify Chapter 4 of Part 12 of the Criminal Justice Act 2003 ('the 2003 Act') so as to make further provision about enforcement orders under section 11J of the 1989 Act. As well as a number of detailed technical changes to ensure the operation of those provisions, it specifies that the maximum number of hours of unpaid work that may be required is 200, rather than 300, which is the maximum that may be required by a criminal court.
40. [Part 2](#) of Schedule A1 to the 1989 Act gives powers to the court to amend or revoke an enforcement order.
41. [Paragraph 9](#) of Schedule A1 provides that, if the terms of an enforcement order are breached, the court may (in circumstances specified in paragraph 9) amend the original order to make it more onerous, or impose another enforcement order.

Section 5 - Compensation for financial loss

42. Sections 11O and 11P of the 1989 Act, inserted by section 5, allow the court to require a person who has caused financial loss to another person as a result of breaching a contact order (which would include breaching a condition attached to a contact order), to pay compensation up to the amount of the loss. The court must take into account the welfare of any child concerned, and the financial circumstances of the person in breach, when making such an order.
43. Applications for an order under section 11O may be made only by a person falling within one of the following categories:
 - a person who is, for the purposes of the contact order, the person with whom the child concerned lives or is to live;
 - the person whose contact with the child concerned is provided for in the contact order;
 - an individual subject to a condition under section 11(7)(b) or a contact activity condition imposed by the contact order;
 - the child concerned (with the leave of the court).
44. Section 11P of the 1989 Act makes provision for when a court may not make an order for financial compensation. This includes cases where the person in breach did not receive a notice under section 11I and was not otherwise informed of its terms or where the contact order is an excepted order.

Section 6 - Provision as to family assistance orders

45. **Section 6** amends section 16 of the 1989 Act so as to enable family assistance orders (FAOs) to be used more often and for a longer duration. The requirement that FAOs be made only in exceptional circumstances is removed, and the maximum duration of such orders is extended from six to twelve months.
46. The amendments also provide that where an FAO is to be in force at the same time as a contact order with respect to a particular child, the FAO may direct the CAFCASS or local authority officer carrying it out to give advice and assistance about improving and maintaining contact.
47. Finally, the amendment made to section 16(6) of the 1989 Act by *subsection (5)* provides that FAOs may direct the CAFCASS or local authority officer concerned to report to the court on matters regarding any section 8 order¹ which is in force at the same time, including whether the order ought to be varied or discharged.

Section 7 - Risk Assessments

48. **Section 7** adds a new section 16A to the 1989 Act, which requires CAFCASS officers to carry out a risk assessment and provide it to the court if, in the course of carrying out any function in private law family proceedings under the 1989 Act, the officer is given cause to suspect that the child concerned is at risk of harm. Private family law proceedings include applications for residence and contact orders and applications for enforcement of contact orders. The duty applies whenever an officer is involved in any function connected with such proceedings including, for instance, preparing a report for the court under section 7 of the 1989 Act, monitoring of contact orders as provided for by new section 11H of the 1989 Act or working on alternative dispute resolution. It also applies where an officer is carrying out functions under a family assistance order.

Section 8 - Transitional provision

49. **Section 8** makes transitional provision as regards contact orders made before the commencement of sections 4 and 5. The section provides for two ways in which warning notices can be attached to such contact orders. Either a specific application can be made for a warning notice to be attached to the contact order, or the court must attach a warning notice to the contact order if the contact order is in issue in any family proceedings. Attaching a warning notice makes it possible to apply for an enforcement order or an order for financial compensation against the person given the notice.

¹ A section 8 order is an order under section 8 of the 1989 Act. A contact order is a section 8 order.