Section 20 Summary:

Should not be used:

* For long periods of time before issuing proceedings;
* For parents/carer (any person who has parental responsibility) lacking capacity;
* Under pressure;
* Without clear explanation of what it is, how long for and that consent can be withdrawn at any time;
* If imposing conditions on removing a child from S20 accommodation; or
* For very young babies unless in exceptional circumstances

**Using S20**

Consent can be given by anyone with parental responsibility. This can include a Special Guardian.

Consent does not need to be in writing but ought to be followed up in writing at the earliest opportunity.

The written document should be clear and precise as to its terms, drafted in simple and straightforward language that the particular parent can readily understand.

The written document should spell out, following the language of section 20(8), that the parent can "remove the child" from the local authority accommodation "at any time".

The written document should not seek to impose any fetters on the exercise of the parent's right under section 20(8).

There should be a clear case recording of what was said and agreed made within 24 hours (sooner if possible) if the consent is not initially in writing. It should cover all detail of what was discussed, the issues, the parent’s presentation at the time, capacity and right to withdraw consent.

Each recording for S20 needs to set out under which subparagraph of S20 the accommodation is made. If accommodated under S20(5) the child is not a LAC.

If parent is not fluent in English it is vital to ensure that the parent has a proper understanding of what precisely they are being asked to agree to, then any written document should be translated.

Basis of the accommodation must be recorded as this may affect decision making in certain cases. For example, a young person accommodated under s20(5) is not a looked after child.

Cases with an international element where consent is properly given: Consider impact on contact and cultural matches for placements, including loss of mother tongue. Also always consider jurisdiction and the impact of not resolving early.

It is a short term measure.

Should not cause a delay to or preclude the issuing of care proceedings.

Every social worker obtaining parental consent is under a personal duty to be satisfied that the person giving the consent does not lack the capacity to do so. The social worker must actively address the issue of capacity and take into account all the circumstances prevailing at the time and consider the questions raised by s 3 of the Mental Capacity Act 2005, and in particular the mother's capacity at that time to use and weigh all the relevant information. If in doubt seek advice via management structure.

Consent must be fully informed:

i. Does the parent fully understand the consequences of giving such a consent?

ii. Does the parent fully appreciate the range of choice available and the consequences of refusal as well as giving consent?

iii. Is the parent in possession of all the facts and issues material to the giving of consent?

If not satisfied that the answers to (a)–(c) above are all 'yes', no further attempt should be made to obtain consent on that occasion and advice should be sought as above and the social work team should further consider taking legal advice if thought necessary.

Must also be satisfied **the giving of such consent and the subsequent removal is both fair and proportionate**. Consider/ask:

i. What is the current physical and psychological state of the parent?

ii. If they have a solicitor, have they been encouraged to seek legal advice and/or advice from family or friends?

iii. Is it necessary for the safety of the child for her to be removed at this time?

iv. Would it be fairer in this case for this matter to be the subject of a court order rather than an agreement?

Ensure parent knows and understands ability to withdraw consent.

Depending on the age of the child, the child’s wishes and feeling ought to be obtained.

[***N (Children) (Adoption: Jurisdiction)* [2015] EWCA Civ 1112**](https://www.familylawweek.co.uk/site.aspx?i=ed150974) (November 2015) 2 specific points but also see attached Briefing Note:

"Firstly the form in which the parents' consent is recorded. Although there is no legal requirement for the agreement to be evidenced in writing he stated that 'a prudent local authority will surely always wish to ensure that an alleged parental consent in such a case is properly recorded in writing and evidenced by the parent's signature.'"

“Secondly, he considered that local authorities often show reluctance to return the child to the parents immediately upon a withdrawal of parental consent. He held that "a local authority which fails to permit a parent to remove a child in circumstances within section 20(8) acts unlawfully, exposes itself to proceedings at the suit of the parent and may even be guilty of a criminal offence" and went on to say " I am exceedingly sceptical as to whether a parent can lawfully contract out of section 20(8) in advance, as by agreeing with the local authority to give a specified period of notice before exercising their section 20(8) right."

 **The legislation

*Section 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.

(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 and feelings regarding the provision of accommodation; and

(b) give due consideration (having regard to his age and understanding) to such wishes and feelings 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.

 **Section 20 and delay**The court will severely criticise the LA for accommodating children under s.20 agreements for unacceptable lengths of time before issuing proceedings, especially where it causes delay for the child, uncertainty for permanency and can be considered an abuse of power. Longer S20 may be right for older children in certain circumstances.

In [***Re P (A child: Use of section 20)* [2014] EWFC 775**](http://www.bailii.org/ew/cases/EWFC/HCJ/2014/775.html) HHJ Atkinson stressed the potential harm that delay and uncertainty can have upon a child, including the impact upon them: changes in carers before proceedings were issued, living away from parents with no real sense of why or for how long and the damage caused without any plan for the future.

In [***Northamptonshire County Council v AS and Others* [2015] EWHC 199**](https://www.familylawweek.co.uk/site.aspx?i=ed143130)the local authority accommodated a 15 day old baby under a s.20 agreement in January 2013 and did not issue proceedings until November of that year. Keehan J held that the use of the provisions of s.20 were "seriously abused by the local authority in this case". He also considered the use of s.s.20 in cases involving babies, stating that he could not "conceive of circumstances where it would be appropriate to use those provisions to remove a very young baby from the care of its mother, save in the most exceptional of circumstances and where the removal is intended to be for a matter of days at most."

Keehan J also highlighted the impact of accommodation under s.20 on both the rights of the child and the powers of the court, holding in respect of the child that it "deprived him of the benefit of having an independent children's guardian to represent and safeguard his interests" and in respect of the court that it "deprived the court of the ability to control the planning for the child and to prevent or reduce unnecessary and avoidable delay".  The judge concluded that this delay had breached the child and mother's Article 6, 8 and 13 rights and ordered that the local authority pay a total of £17,000 in damages.

**In *N (Children) (Adoption: Jurisdiction)* [2015]** the President provided an overview of the string of cases criticising local authorities for their misuse of s.20 and concluded that the local authority had again misused their s.20 powers in this case where two children were placed in foster care under s.20 for over eight months. The President held the following:

"Section 20 may, in an appropriate case, have a proper role to play as a short-term measure pending the commencement of care proceedings, but the use of section 20 as a prelude to care proceedings for a period as long as here is wholly unacceptable. It is, in my judgment, and I use the phrase advisedly and deliberately, a misuse by the local authority of its statutory powers." [para 157]

**Section 20 and valid consent**Linked to delay – in the consent reviewed? Is it enduring? Is it being gained by pressure or other explanations such as ‘until a specific assessment’? Has capacity been consistent?

***Capacity to consent (from case law):***

"i) every social worker obtaining consent to accommodation of a child from a parent (with parental responsibility) is under a personal duty to be satisfied that the person giving consent does not lack the required capacity;

ii) the social worker must actively address the issue of capacity, take into account all the prevailing circumstances and must consider the questions raised by Mental Capacity Act 2005, section 3 and in particular the mother's capacity to use and weigh all the relevant information;

iii) if the social worker has doubts about capacity, no further attempt should be made to obtain consent on that occasion. Advice should be sought from the social work team leader or management."

If a parent lacks capacity, they cannot consent to S20 – the children will have been accommodated unlawfully.

***Duress(from case law):***

Use of section 20 "must not be compulsion in disguise" and that any such agreement requires genuine consent, not a mere "submission in the face of asserted State authority"; and

"It is the responsibility of the local authority to ensure that they [parents] give proper consent. Unless they abandon their child, they do not give consent by omission."

***Equating a lack of parental objection with consent (from case law):*** A local authority cannot interpret s.20 as enabling them, as part of their duty to accommodate, to do so in an open-ended manner without parental consent. For example, because of an emergency such as being detained in hospital due to mental ill-health & unable to care for the child.

The duty to accommodate under s.20(1)(c), and/or its discretion under s.20(4), can arise because of the emergency (mother being detained in hospital due to mental ill-health for example) but a parent that then does not object does not equate to providing positive consent.

Helpless acquiescence by a parent is not valid consent.

Failing to object is not valid consent.

**Exceeding the legal limitations of s.20**There are statutory means of removing a child from their parents' care that require more stringent tests and controls such as ICOs and EPOs. If parental consent is not given to S20 in an informed and proper manner, including the right to withdraw that consent, then S20 cannot be used.

**Consequences of s.20 failings**Grave injustices caused to children and their families and interferences with their fundamental rights that this often entails, there may be severe financial consequences for local authorities found to have abused their s.20 powers. Various local authorities have been ordered to pay large sums in damages to the families affected and damages in cases have ranged between £3,000 and up to £40,000.