



Department
for Education

Court orders and pre-proceedings

For local authorities

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Summary

About this guidance

This is statutory guidance from the Department for Education. It outlines the key principles of the Children Act 1989 and explains the changes to some of the court-related sections of the Act following provisions in the Children and Families Act 2014. Chapter 5 also sets out an explanation of orders in relation to adoption, which reflects provisions in the Adoption and Children Act 2002.

It is issued under section 7 of the Local Authority Social Services Act 1970 which requires local authorities in exercising their social services functions, to act under the general guidance of the Secretary of State. This guidance must be complied with by local authorities when exercising these functions, unless there are exceptional reasons which justify a departure in individual cases.

This guidance replaces the 2008 guidance *The Children Act 1989 guidance and regulations: Volume 1- Court Orders* and Chapter 8 of the *statutory guidance on Adoption* July 2013.

Expiry or review date

This guidance was published in April 2014 following the granting of Royal Assent of the Children and Families Act 2014.

What legislation does this guidance refer to?

- The Children Act 1989
- The Adoption and Children Act 2002
- The Children Act 2004
- The Children and Adoption Act 2006
- The Family Procedure Rules 2010 (as amended)
- The Children and Families Act 2014

Who is this guidance for?

This guidance is for:

- Local authorities: social work practitioners, lawyers and Directors of Children's Services (It may also be a useful reference tool for key local authority partners)

Introduction

1. This revised volume of guidance is being issued in light of the family justice provisions in the Children and Families Act 2014 and changes in practice following the Family Justice Review¹. It should be read in conjunction with the statute and accompanying court rules and practice directions, as well as with wider supporting materials.²
2. The content is intended to provide a high-level guide to the law, setting out the different private and public law orders, including placement and adoption orders, and processes relating to care and court proceedings (including pre-proceedings). Where appropriate, links to relevant practice materials have also been included.
3. In deciding any question about the upbringing of a child the court must treat his or her welfare as its paramount consideration,³ and in relation to certain decisions⁴, must have regard to the factors set out in the ‘welfare checklist’.⁵ The court should also have regard to the general principle that when determining any question with respect to the upbringing of the child, any delay is likely to prejudice the welfare of that child.
4. A key principle of the Children Act 1989 is that children are generally best looked after within the family, save where that is not consistent with their welfare, with their parents playing a full part in their lives and with least recourse to legal proceedings. No order should be made unless it would be better for the child than making no order at all.⁶

Reforming the family justice system

5. The Children and Families Act 2014 implements the Government’s reforms in response to the Family Justice Review. These legislative changes are accompanied by a simplification of the court system with the majority of family cases heard by a Single Family Court. In private law, reforms make clear that, where safe and appropriate, a child should have the opportunity to benefit from the involvement of both parents. In public law new legislation addresses unjustified and potentially damaging delays in court proceedings.

¹ [Family Justice Review](#) and [:Government Response](#)

² Chapter 1 in Working Together to Safeguard Children (DfE 2013) is of particular relevance to this guidance. [Link to Working together-](#)

³ s1(1) of the Children Act 1989 and s1(2) of the Adoption and Children Act 2002

⁴ Where the court is deciding whether to make, vary or discharge a section 8 order and this is disputed; and where the court is deciding whether to make, vary or discharge a special guardianship order or an order under Part 4 of the Children Act 1989.

⁵ s1(3) and 1(4) of the Adoption and Children Act 2002

⁶ s1 (5) of the Children Act 1989 and s1(4) of the Adoption and Children Act 2002

Chapter 1: Private Law

Introduction

1. This chapter focuses only on those private law elements of the Children Act 1989 which are of particular relevance to local authorities and local authority social workers. It begins by setting out the circumstances in which a person may have parental responsibility, since this is relevant in considering many of the provisions of the Children Act 1989.

Parental responsibility

2. Set out below are the circumstances in which an individual has, or may acquire, parental responsibility⁷.
 - **A mother** always has parental responsibility (unless she has subsequently lost it through adoption or through a parental order under the Human Fertilisation and Embryology Act (HFEA) 1990).
 - **The child's father has parental responsibility for a child if he was married** to the child's mother at the time of the child's birth. Similarly, the mother's civil partner will (subject to the conditions section 42 of the Human Fertilisation and Embryology Act (HFEA) 2008) have parental responsibility.
 - **An unmarried father** may take steps to acquire parental responsibility. He will have parental responsibility automatically if he registered the birth with the mother on or after 1 December 2003. Alternatively, he may acquire parental responsibility by: marrying the child's mother; applying to the court for a parental responsibility order; making a parental responsibility agreement with the child's mother; or being appointed guardian (see below). Similar provisions apply to second female parents (who meet the conditions in section 43 of the HFEA 2008).
 - **A step-parent** may acquire parental responsibility for a child if he or she is married to, or the civil partner of, a person with parental responsibility for the child, either by agreement with the parent (and with any other person with parental responsibility), by court order, or through adoption.
 - **A special guardian** has parental responsibility for the child. Subject to any other orders, a special guardianship order allows the special guardian to exercise parental responsibility to the exclusion of others with parental

⁷ Parental responsibility is defined in law as "all the rights, duties, powers, responsibilities and authority, which by law a parent has in relation to the child and his/her property."

responsibility (except another special guardian), subject to certain statutory exceptions⁸.

- A person **named in a child arrangements order** as a person with whom a child lives has parental responsibility⁹
- A **guardian** who is appointed for a child under section 5 of the Act) has parental responsibility.
- A **local authority** acquires parental responsibility for a child if a care order (or interim order) is in place. It also acquires limited parental responsibility by virtue of an emergency protection order (in such cases, parental responsibility is limited to action reasonably required to safeguard or promote the welfare of the child).

Appointment of a guardian with parental responsibility for the child

3. As set out above, the Children Act 1989 makes provision for the court to appoint a guardian for a child, either of its own motion or on application, who will have parental responsibility for the child. (It should be noted that this is unrelated to the appointment of a Children's Guardian, whose role is to provide welfare representation for a child party in private law proceedings).
4. A guardian may also be appointed by any parent with parental responsibility and by guardians themselves, or special guardians. Such appointments take effect on the death of the person making the appointment, where the child has no parent with parental responsibility or where the person making the appointment was named in a child arrangements order as the person with whom the child is to live, or he/she was the child's only or last surviving special guardian.

Section 8 orders

5. For cases which proceed to court, section 8 of the Act provides for the making of three different orders by the courts: child arrangements orders (introduced by the Children and Families Act 2014 to replace contact and residence orders); prohibited steps orders; and specific issue orders. These, along with any order varying or discharging such an order, are referred to in the Act as section 8 orders.
6. Section 8 orders are defined as follows:

⁸ An exception applies in circumstances where the law provides that the consent of more than 1 person with parental responsibility is required. (for example the sterilisation of a child)- [Special guardianship](#)

⁹ Courts also have the power to grant parental responsibility to a person named in a child arrangements order as a person with whom a child spends time or otherwise has contact.

- *child arrangements order*: an order regulating arrangements concerning with whom a child is to live, spend time or otherwise have contact and when a child is to live, spend time or otherwise have contact with any person. From 22 April 2014, existing contact orders and residence orders are deemed to be child arrangements orders. They will remain valid, and any allowances or other entitlements which are linked to them are not therefore affected by the change.
 - *prohibited steps order*: an order that no step which could be taken by a parent in meeting his parental responsibility for a child, and which is of a kind specified in the order, shall be taken by any person without the consent of the court.
 - *specific issue order*: an order giving directions for the purpose of determining a specific question which has arisen, or which may arise, in connection with any aspect of parental responsibility for a child.
7. A section 8 order does not usually extend beyond the child's 16th birthday and cannot continue beyond the child's 18th birthday.

Eligibility to apply

8. The Act sets out those who may apply for any section 8 order without first seeking the court's permission. These are:
- a parent (including an unmarried father), guardian or special guardian;
 - a step parent who has acquired parental responsibility; and
 - where a child arrangements order is in force, any person named in that order as a person with whom a child is to live.

The following people may apply for a child arrangements order

- any party to a marriage or civil partnership in relation to which the child is a child of the family (primarily step parents who have not acquired PR);
- any person with whom the child has lived for a period of at least 3 years;
- where a child arrangements order is in force, any person who has the consent of each of the persons named in the order as a person with whom the child is to live;
- where the child is in the care of the local authority, any person who has the consent of the local authority; or
- any person who has the consent of each of those with parental responsibility.

- a relative of the child may apply for a child arrangements order which sets out with whom the child is to live, providing that he/she has cared for the child for at least one year immediately preceding the application.
 - a local authority foster carer may apply for a child arrangements order which sets out with whom the child is to live, provided that he/she has cared for the child for at least one year immediately preceding the application.
9. Any other person – including the child himself – may apply for a section 8 order with the prior leave of the court. A local authority may not apply for a child arrangements order.
10. Restrictions on applications for section 8 orders in specific circumstances are included in Annex D which highlights some of the principal interactions between public and private law orders.

Other orders

11. There are other orders a court can make in family proceedings, in addition to those described above. **A family assistance order** is intended to make available a Cafcass¹⁰ or local authority officer to advise, assist or befriend any person named in the order. The aim of the order is to provide focused, short-term help to a family to help overcome the problems and conflict associated with parents' separation; it cannot be made for more than 12 months. A court may not make a family assistance order unless it has the consent of every person (other than the child) to be named in the order. A family assistance order cannot require a local authority to make an officer available unless the local authority consents or the child concerned lives or will live within the authority's area.
12. In cases where a family assistance order and section 8 order are both in force at the same time, the court may direct the Cafcass officer¹¹, or local authority officer to report to the court on any aspect of the section 8 order the court considers appropriate.
13. Where a family assistance order is in force at the same time as a child arrangements order which provides for a child to spend time with or otherwise have contact with a person, the court may direct the officer to advise and assist that person with regard to establishing, improving and maintaining contact.
14. **A special guardianship order**¹² may only be made in favour of someone who is at least 18 years of age and is not the child's parent. The following people may apply for a special guardianship order:

¹⁰ Or Welsh proceedings officer in Wales

¹¹ Or Welsh proceedings officer in Wales

¹² See [Special Guardianship guidance at www.gov.uk/government/publications](http://www.gov.uk/government/publications/special-guardianship-guidance)

- Any guardian of the child;
 - Where a child arrangements order is in force, anyone named in that order as a person with whom a child is to live;
 - Any person with whom the child has lived for 3 out of the last 5 years;
 - A local authority foster parent or a relative with whom the child has lived for at least one year immediately preceding the application.
 - Any person who:
 - in any case where a child arrangements order is in force with respect to the child, has the consent of each of the persons named in the order as a person with whom the child is to live;
 - in any case where the child is in the care of a local authority, has the consent of that authority; or
 - in any other case, has the consent of each of those (if any) who have parental responsibility for the child.
15. Anyone outside these categories will require the permission of the court to make an application, although the court can make a special guardianship order of its own motion, where it considers it appropriate to do so.
16. The court may only make a special guardianship order if it has received a report from the local authority which deals with, among other issues, the suitability of the applicant to be a special guardian.
17. A court **may order** that a father or second female parent (under section 43 of the Human Fertilisation and Embryology Act 2008) shall have parental responsibility for a child. It may do so on the application of the person concerned, or as part of proceedings. In cases where a child arrangements order is made which names the father or second female parent as a person with whom the child is to live, and he or she does not already have parental responsibility, the court will award it under section 4 or 4ZA respectively.
18. If the father or second female parent is named in a child arrangements order as someone with whom a child is to spend time or otherwise have contact (but not live), the court must decide whether (if the person concerned does not already hold parental responsibility) it would be appropriate for him or her to have parental responsibility. If the court decides that it is appropriate, then it must also make an order giving him or her that responsibility. In cases where a child arrangements order names someone other than a parent or guardian as a person with whom a child is to live, that person is given parental responsibility only for the duration of the order. The court may provide for a person other than a parent or guardian who is named in a child arrangements order as a

person with whom the child is to spend time or otherwise have contact to have parental responsibility for as long as the relevant provision of the order remains in force.

19. The relationship between private law orders and public law proceedings is summarised in **Annex [D]**¹³

Risk assessments and welfare reports

20. Under section 16A, Cafcass officers (or Welsh proceedings officers in Wales) are required to carry out a risk assessment in relation to a child in certain circumstances and to provide a report to the court in respect of that risk assessment. The circumstances in which a risk assessment must be carried out are where the Cafcass officer is carrying out a function in connection with private family law proceedings and the officer is given cause to suspect that the child concerned in those proceedings is at risk of harm. A risk assessment is defined as an assessment of the risk of the child suffering the harm that is suspected. The risk of harm to the child may relate directly to harm experienced by the child himself or to harm caused by the witnessing of harm.
21. In considering any question regarding a child under the Act, the court may – under section 7 – ask a local authority or Cafcass officer to report on such matters relating to the welfare of the child as are required. The local authority or Cafcass officer is under a duty to comply with such a request.

¹³ Guidance on special guardianship orders can be found at www.gov.uk/government/publications/special-guardianship-guidance

Chapter 2: Pre-proceedings

Introduction

1. This chapter provides guidance on what should happen before the initiation of public law proceedings under section 31 of the Children Act 1989. It outlines the duties placed on local authorities to ensure the early identification of potential concerns and, where possible, to provide support for children and their families to address these issues.
2. The Children Act 1989 is based on the principle that, where consistent with children's welfare, local authorities should promote the upbringing of the child by their families.¹⁴ Where concerns do arise and are identified by a local authority, the local authority is under a duty to act.¹⁵ The guidance in this chapter highlights the requirement that local authorities work closely with families to ensure that key steps are taken to help parents address problems in a timely way. Where a child cannot remain living with his or her parents, the local authority should identify and prioritise suitable family and friends placements, if appropriate. Where possible, this identification should take place before care proceedings are issued, as it may avoid the need for proceedings.
3. Where a decision is taken by the local authority that parenting cannot be improved within the child's timescale and that the 'threshold'¹⁶ for care proceedings has been met in principle, it should determine whether to bring proceedings as quickly as possible. This decision should be informed by engagement with other relevant agencies. During this period, the local authority should continue to explore potential wider family placements, to clarify the realistic options available for the child.
4. Comprehensive guidance on the principles and parameters of assessing the needs of individual children and organisational responsibilities for the safeguarding of children can be found in chapters one and two of *Working Together to Safeguard Children, 2013*.¹⁷ Guidance on how local authorities should carry out their responsibilities in relation to care planning, placement and case review for looked after children is contained in *Volume 2: Care planning, placement and Case Review*.¹⁸

¹⁴ This is consistent with the child's right to respect for family life under Article 8 ECHR- [Article 8](#) (EC Human Rights)

¹⁵ Under s17 and s47 of the Children Act 1989

¹⁶ The Children Act 1989 s31(2) Defined in Chapter 3 paragraph 6

¹⁷ See Working Together guidance link in annex

¹⁸ [See Care Planning, placement and Case review guidance](#)

Early Identification and support

5. Providing early help is more effective in promoting the welfare of children than reacting later. Local authorities will need to work with other agencies, as appropriate, to put processes in place for the effective assessment of the needs of individual children who may benefit from early help services and to ensure that support is provided. Where children and families would benefit from help from more than one agency (e.g. education, health, housing, police), this should be an inter-agency assessment.¹⁹
6. This early help assessment should identify what help the child and family require to prevent needs escalating to a point where intervention would be needed via an assessment under the Children Act 1989. Further information on the early help assessment and the wider assessment process can be found in *Working Together to Safeguard Children*.²⁰ Local areas should have a range of services in place to address assessed needs. These services may also focus on improving family functioning and building the family's own capability to solve problems, which should be done within a structured, evidence-based framework, involving regular review to ensure that real progress is being made.
7. The early help assessments should be carried out in a timely manner, reflecting the needs and history of the individual child, taking account of the impact of any previous services and analysing what further action might need to be taken. They should be undertaken by a lead professional, who should provide support to the child and family, act as an advocate on their behalf and co-ordinate the delivery of support services.²¹
8. All professionals involved in this work should ensure that their communications with the family about their child's needs and the support available are clear and consistent. Information should always be confirmed in writing and given to the family with sufficient time allowed for them to be able to reflect on it and take advice, as appropriate. If, in the course of early work with a family, capacity issues become apparent, the local authority should consider whether any additional support should be provided to the parents, including a possible referral to adult learning disability services.²²

¹⁹ Local authorities are under a duty to promote co-operation between their own agencies (and with other authorities): s27 Children Act 1989 and s10 Children Act 2004

²⁰ Working together to safeguard children, 2013

²¹ Further information on the role of the lead professional is contained at [Lead Professional link](#)

²² [National Health service Health and Community Care Act 1990 at www.legislation.gov and Equality Act 2010](#)

Assessments under the Children Act 1989

9. Where the lead professional considers that early help services cannot address concerns, the case should be referred to local authority children's social care for further assessment. This can include where the parents and/or the child do not consent to an early help assessment, and the lead professional (or anyone else) considers that without help the needs of the child will escalate and put the child at risk of harm.
10. Where a child is referred, either by the lead professional or anyone else, to the local authority children's social care, the local authority must acknowledge receipt of the referral and indicate the type of action that will be taken, **within one working day**.²³ The local authority should acknowledge all referrals, whether or not action is deemed necessary.
11. Following the local authority's acceptance of a referral, the lead professional role falls to a social worker. The local authority will determine whether a child requires immediate protection; or whether an assessment should be undertaken to determine whether the child is in need of services under section 17 Children Act 1989; and/ or is in need of protection following investigations under section 47 Children Act 1989. It is important that when acting under sections 17 or 47 there is a clear rationale for the local authority taking action and providing help, with reasons recorded.²⁴
12. For children who are in need of immediate protection, action must be taken. If parents are not willing to agree protective action, measures under Part V of the Children Act should be used as soon as possible.²⁵
13. Assessment should be a dynamic process, which analyses and responds to the changing nature and level of risk faced by the child and reflects the unique characteristics of the child within their family and community context. The assessment should build on the history of the case, including any early help assessments, and monitor and record the impact of services on the child and family, reviewing the impact of the help provided. Assessments must be proportionate to the needs of the individual child, timely and transparent.
14. A good assessment is one that considers all three of the following factors:
 - the child's developmental needs;
 - the parents' or caregivers' capability to respond appropriately to those needs and the potential impact on the child of any gaps in capability; and
 - the wider family and family environmental factors

²³ See Chapter 1 in *Working together to safeguard children* (timeliness of referrals)

²⁴ Full details on the assessments carried out under s17 and s47 are detailed in Annex A.

²⁵ Further information on emergency protection powers be found in Chapter 4 (Other Orders) and in Chapter 1 and Appendix B of *Working together to safeguard children*

15. The maximum timeframe for a statutory assessment to conclude, such that it is possible for the local authority to reach a decision on next steps, should be no longer than 45 working days from the point of referral. If an assessment exceeds 45 working days, the social worker should record the reasons for exceeding the time period.²⁶

Meeting assessed needs

16. Where particular needs are identified at any stage of the assessment, the local authority should not wait until the assessment has been completed before commissioning or providing services to support the child and his or her family.

17. Following the assessment, the local authority should develop, in consultation with the child and his or her family, a plan of action which responds to the nature and level of risk that the child may be facing. This may be, as appropriate, the development of a child in need plan or child protection plan.²⁷

18. Where the assessment identifies concerns, but care proceedings are not initiated, the assessment will provide a valuable platform for ongoing engagement with the child and his or her family, including the provision of services to meet assessed needs. Where the local authority later decides that it is necessary to make an application to court, the related assessment will provide the baseline for work with the family.

19. For cases which result in court proceedings, the information generated by the assessment will be expected to form the central part of evidence that supports an application for a care or supervision order, and will include, as appropriate, primary evidence from the agencies involved.²⁸

Helping families to engage early

20. The period when safeguarding concerns are identified is likely to be stressful for both the child and his or her parents. Early parental engagement in the child protection process is key to avoiding the creation of barriers between the local authority and the family. This engagement should include early, direct and clear written communication with the parents, setting out the local authority's specific concerns, outlining what needs to be done to address concerns and indicating the possibility of proceedings if the situation does not improve within an identified timescale. It is important that throughout this period, the child (subject to his or her age and understanding) is kept aware of what is being proposed,

²⁶ Chapter One – *Working together to safeguard children*

²⁷ Full details on the processes for managing individual cases can be found in Pages 26-46 *Working Together to Safeguard Children*

²⁸

and that his or her views are heard²⁹. Children's advocates can play a role in helping children and young people to understand what is happening and to ensure that their wishes and feeling are ascertained³⁰.

Independent advice and advocacy for parents

Independent specialist advice and advocacy can help parents to participate in local authority planning processes from an informed position. Specifically, it can help them to:

- understand their rights and options and how child protection planning and decision-making works;
- reflect on why social workers are worried about their child;
- make safe plans for their child (which may include alternative care within the family) within the child 's timescale; and
- have their voice heard by professionals.³¹

21. In circumstances where parents may not have the capacity to engage fully with the process, all efforts must be made, such as working in partnership with adult services, to secure appropriate advocacy to ensure that local authority actions are fully understood by parents³².

22. It is important that wider family members are identified and involved as early as possible, as they can play a key role in supporting the child and helping the parents to address identified problems. When problems escalate and children cannot live safely with their parents, local authorities should seek to place children with suitable wider family members where it is safe to do so.

23. All English local authorities should have published a family and friends care policy designed to ensure that children and young people, who live with relatives or friends because they are unable to remain living safely with their parents, receive the support that they and their carers need to safeguard and promote their welfare, whether or not they are looked after.³³

²⁹ [UN Convention Rights of the Child -Article 12 \(Respect for the views of the child\)](#): When adults are making decisions that affect children, children have the right to say what they think should happen and have their opinions taken into account.

³⁰ See links in Further sources of information- p57

³¹ The Protocol of Advice and Advocacy for Parents in Child Protection Cases and the Code of Practice for Professional Advocacy sets out a framework for such specialist advice and advocacy. <http://www.frg.org.uk/images/PDFS/advocacy-code.pdf>

³² Provision should also be made to meet the needs of parents/carers who are not fluent or literate in English

³³ DfE (2011) [Family and Friends statutory guidance](#)

24. Enabling wider family members to contribute to decision making where there are child protection or welfare concerns, including where a child cannot remain safely with birth parents, is an important part of pre-proceedings planning. Wider family meetings, such as family group conferences³⁴ are an important means of involving the family early so that they can provide support to enable the child to remain at home or look at alternative permanence options for the child. Local authorities should consider referring the family to a family group conference service if they believe there is a possibility the child may not be able to remain with their parents, or in any event before a child becomes looked after, unless this would be a risk to the child.

Family Group Conferences

A family group conference is a voluntary process led by family members to plan and make decisions for a child who is at risk. Families, including extended family members and the child (subject to their age and understanding and usually supported by an advocate) are assisted by an independent family group conference co-ordinator to prepare for the meeting.

Key features of a successful family group conference include:

- Having an independent coordinator to facilitate the involvement of the child, family network and professionals in the family group conference process;
- Allowing the family private time at the family group conference to produce their plans for the child or young person; and
- Agreeing and resourcing the family's plan unless it places the child at risk of significant harm.

The use of family group conferences ensures that wider family members understand at an early stage the seriousness of the situation and have the opportunity to make contingency plans for alternative care within the family if the parents do not satisfactorily resolve their problems within the child's timescale.

Legal planning meeting

25. When parenting is not improving enough to protect the child from significant harm, the local authority should hold a **legal planning meeting** to obtain legal advice about a particular case. This should be attended by the child's social

³⁴ <http://www.frg.org.uk/involving-families/family-group-conferences> A programme of accreditation for FGC is currently being developed

worker, relevant social work managers, and the local authority lawyer. At the meeting, a decision should be made in principle about whether the threshold criteria have been met. The local authority should then decide, based on a robust analysis of the level of assessed risk, whether it is in the best interests of the child to provide a further period of support for the family with the aim of avoiding proceedings, or whether proceedings should be initiated immediately. The meeting should also identify any evidence gaps, clarify whether additional assessments will be required, and consider what would be a suitable draft care plan for the child.³⁵

26. Where the child has a foster carer, either because he/she has previously been voluntarily accommodated under section 20 or been taken into care for child protection reasons the child's social worker should actively seek the carer's views and ensure that they are taken into consideration in the legal planning meeting. This may include information on the child's progress in their placement and on the impact of contact with their family.
27. Any potential issues which may affect a parent's capacity to litigate should be flagged at this meeting. Documentation relevant to a parent's capacity to litigate, such as details of any referrals and assessments made, will need to be included with any future care application in accordance with the requirements of the Public Law Outline (PLO).³⁶
28. Proceedings can be avoided if parents are able to demonstrate their capability to safeguard the child by working with relevant services to improve their parenting capability and/or agreeing to a protective placement for the child, with relatives or under section 20.³⁷

Action before the birth of a baby

Care proceedings can only be started after a child's birth. Where the local authority is considering bringing proceedings after birth, the pre-proceedings process provides an effective framework for social work with the parents before the birth of the child, ensuring fairness by enabling parents to get free, non-means-tested legal advice relating to:

- Pre-birth assessments;
- Agreeing arrangements for support of the parents before and after the birth;
- Agreeing arrangements after the baby's discharge from hospital, if required, and
- Assessment of parental care following the birth.

³⁵ Care Planning- Vol 2: <http://www.education.gov.uk/aboutdfe/statutory/g00224478/stat-guid-care-plan>

³⁶ Family Procedure Rules 2014: Practice Direction 12A

³⁷ Children Act 1989: Provision of accommodation for children. The s20 placement might be with a relative who is, or becomes, approved as a LA foster parent.

29. If the decision is taken at the legal planning meeting to undertake a formal pre-proceedings process, the local authority will send the parents and anyone else with parental responsibility one of two letters before proceedings. This letter will either be a ***letter before proceedings*** which states that proceedings are being contemplated or a ***letter of issue*** which states that proceedings are being initiated. **Standard templates are included at Annex C.**

Letter before proceedings

30. Unless the local authority considers that the level of risk requires an immediate application to court, **the local authority should send a *Letter before proceedings* to parents and/or others with parental responsibility.**

31. The letter is the formal written notification that proceedings are likely. It should set out:

- A summary in simple language of the local authority's concerns
- A summary of what support has already been provided to the parents
- What parents need to do what support will be provided for them, to avoid proceedings, including timescales
- Information on how to obtain legal advice and advocacy and make clear how important it is for the parent to seek legal representation

32. The letter should invite the parents and/or others with parental responsibility to a pre-proceedings meeting to agree proposals for addressing the current problems which have led to concerns about the welfare of the child.

33. At this meeting, the local authority should:

- Agree a revised plan for the child, which should be subsequently confirmed in writing to the parents, setting out what the parents and the local authority must do to safeguard the child. The plan will indicate the steps the local authority will take to support the parents and the timescales within which progress must be made for proceedings to be avoided;
- Outline the steps that the local authority will take at the end of this period, depending on whether progress has been demonstrated; and
- Review arrangements for identifying potential family carers, and/or for assessments with the parents, particularly where these require letters of instruction to assessment services.

34. Setting clear expectations and timescales for improvement will reduce the potential for delay, while also providing an opportunity to avoid proceedings, where this is deemed appropriate by the local authority, informed by the views of the other professionals involved with the case. It is recommended that the

local authority should review the child's plan within six weeks of the meeting to ensure sufficient progress is being made.

35. On receipt of the letter, the parents, or others with parental responsibility for the child, are entitled to non-means tested legal aid at 'Family Help (lower)',³⁸ which covers, for example, legal advice including at the meeting and negotiations with the local authority on their behalf. To assist parents in identifying a solicitor to advise them, the local authority should send an up to date list of relevant solicitors in the local area who are specialist in child care cases, with the pre-proceedings letter.

Letter of Issue

36. Where the local authority considers that proceedings are necessary (or will be once the child is born), it will send a **Letter of issue**, informing parents that proceedings are being issued and that they should seek legal advice urgently. Legal aid will be available; the form will depend on the work that needs to be done at this stage e.g. if proceedings have been issued at the point the client seeks advice then 'Legal Representation' at Court³⁹ will be appropriate.

Considerations when sending a letter

37. Where a parent may lack capacity, caution is necessary before sending either letter. Such correspondence could easily exacerbate mental health difficulties or may simply not be accessible to the parent. Each case must be considered on its own facts and it may well be that personal discussion, involving an advocate and/or legal representative, should be undertaken before the sending of such a letter.
38. Where the local authority is considering proceedings shortly after birth, the timing of the sending of the pre-proceedings letter or letter of issue should take account of the risk of early birth and help to ensure that discussions and assessments are not rushed. Ideally the letter should be sent at or before 24 weeks.
39. In some cases, the level of concern about a child's welfare may require rapid and sometimes immediate recourse to the courts. There may not be time for a

³⁸ This was previously known as 'Level 2' funding. Info at <http://www.justice.gov.uk/legalaid/make-an-application>

³⁹ This is the legal aid certificate which would cover representation for the clients at court including advocacy

pre-proceedings meeting and the collation of all documentation prior to such an application, as would otherwise be required by the PLO.⁴⁰

40. A lack of documentation should never prevent a local authority from bringing a case to court quickly where it believes this is essential to protect the child's welfare. Such cases should never be the norm, however, and where a particular piece of documentation cannot be supplied immediately, the authority must state on the C110A⁴¹ application form the reasons why it cannot be included and confirm the date when the documents will be submitted to the court.

Section 31 application and evidence linking to the PLO

41. All evidence and assessments on which the local authority intends to rely in support of its court application should be up-to-date and prepared in advance. This includes any specialist assessments, whether commissioned as part of the early help assessments or later in the process, such as those intended to help inform the local authority's final decision about the initiation of proceedings.
42. Specialist reports must not be commissioned without the consent of the parents/carers. Where commissioned later in the process, the local authority should bear in mind their possible future use within proceedings, including the requirements of the court.⁴²
43. Additional parenting capability assessments, over and above those prepared as part of any statutory assessment, should be commissioned at the pre-proceedings stage where the local authority has a specific need for specialist expertise to enable it to reach its decision as to whether the threshold has been met and that proceedings would be the best way forward.
44. When making an application for a care or supervision order, **the local authority must:**
- Complete and quality assure the care or supervision application and associated documentation, in line with PLO requirements,⁴³ ensuring that the information is clearly presented in a succinct and analytical form which focuses on the essentials of the case and the rationale for bringing it to court.
 - If applicable, ensure that any issues of capacity are flagged in the C110A form, and that any available evidence as to the lack of litigation capacity of a

⁴⁰ Further information on good practice in urgent cases can be found at [Good practice in urgent cases](#).

⁴¹ [C110A application form](#)

⁴² Family Procedure Rules- Practice Direction 25A http://www.justice.gov.uk/courts/procedure-rules/family/parts/part_25

⁴³ Annex B – Flow chart for PLO

parent (or other person with parental responsibility) is attached to the social work statement, alongside any information on whether the parties agree with any assessments made about their capacity.⁴⁴

- Continue to undertake additional assessments which it feels are essential to inform its ultimate decision on the child's needs.
- Submit the application to the local court so the court's preparation for the case can begin.
- Notify Cafcass to enable them to identify an officer for appointment by the court as a children's guardian.
- Consider whether the case has an international element. If it does, the court will wish to know at the time of application whether there is any reason to believe that any child, parent or potentially significant adult in the child's life may be habitually resident in another state, and if there is any reason to believe that there may be an issue as to jurisdiction. The court will also wish to know whether a request has been or should be made to obtain information about extended family members. Local authorities should consider making a request for information on extended family members as early as possible so as not to delay proceedings. The request should, where possible, be made at the stage when the child becomes the subject of a child protection plan.⁴⁵

45. Receipt of the application and the annex documents by the court will be considered as 'Day 1'. At this point, the local authority should share the documents with Cafcass. Following an application to court, the local authority, in common with all other parties, is bound by the case management decisions of the court.⁴⁶

46. It is important that, where appropriate, the local authority engages the Independent Reviewing Officer (IRO) early in the process, to ensure that the local authority section 31 Care Plan⁴⁷ for the child fully reflects the child's

⁴⁴ If a parent's particular difficulties, including a lack of capacity to litigate, is not recognised where they ought reasonably to be, any assessment conducted by the Local Authority may be vitiated and will certainly be susceptible to subsequent challenge. Link to The Social Care Institute for Excellence 'A Fair access to Services' ⁴⁴guidance provides important information when assessing thresholds for adult social care services.

⁴⁵ [Council Regulation 2201/2003 \(Brussels IIa\)](#) Requests to foreign states can be made through the England and Wales Central Authority to other Member States of the European Union and to Contracting States to the 1996 Hague Protection of Children Convention [*Link to document*].

⁴⁶ Family Procedure Rules: <http://www.justice.gov.uk/courts/procedure-rules/family>

⁴⁷ Full information on local authority Care Plans contained in Volume 2 – [Volume 2 Children Act guidance](#)

current and future needs and that the actions are consistent with the local authority's legal responsibilities in respect of the child.⁴⁸

⁴⁸ An IRO is responsible for ensuring that children looked after by the Local Authority have regular reviews to consider their care plan and placement. The IRO functions are detailed in full in the the "*IRO handbook: Statutory guidance for IROs and local authorities*"- [IRO handbook](#)

Chapter 3: Care, Supervision and Placement Orders

1. This chapter outlines the processes that take place during care, supervision and placement proceedings and incorporates information on changes to care and supervision proceedings as a result of the Children and Families Act 2014.
2. The chapter also provides information on placement orders, outlines the links between these orders and care orders and makes clear that where there are on-going care proceedings, the placement order application should be submitted as soon as the decision has been made that the child should be placed for adoption. Guidance on placement orders, adoption orders and section 84 orders (contained in chapter 5) should be read in conjunction with the statutory adoption guidance.⁴⁹
3. Under section 31 of the Children Act 1989, on the application of any local authority or authorised person,⁵⁰ the court may make a care order or a supervision order:
4. A **care order** places the child in the care of a designated local authority.
 - This requires the local authority to provide accommodation for him or her, to maintain and safeguard him or her, to promote his or her welfare and to give effect to or act in accordance with the other welfare responsibilities set out in the Children Act 1989. It gives the local authority parental responsibility for the child and the power to determine the extent to which the child's parents and others with parental responsibility may exercise their responsibility, where this is necessary to safeguard or promote the child's welfare.
 - A care order automatically discharges a child arrangements order (or any other order made under section 8 of the Children Act 1989), a supervision order, and education supervision order or a school attendance order. It also brings wardship to an end.
 - A care order is automatically discharged by the making of a special guardianship order or a child arrangements order dealing with the living arrangements of a child. It is suspended but not discharged by the making of a placement order and will be revived if the placement order is revoked.⁵¹
 - No order can be made if the child is seventeen years old (or 16 if married or in a civil partnership) at the time the order is made. The order will cease to have effect at age eighteen unless brought to an end earlier.

⁴⁹ - <https://www.gov.uk/government/publications/adoption-statutory-guidance-2013> - to be published July 2014

⁵⁰ At present only the NSPCC is an authorised person. Its potential role in care proceedings is not addressed in this guidance because it has not exercised these powers for some years.

⁵¹ Table of orders can be found at Annex D

5. A **supervision order** places the child under the supervision of a designated local authority.
- Under the order, the local authority must advise, assist and befriend the child; the order may require the child to comply with any directions given by the local authority which require him or her to do all or any of the following:
 - live at a place specified in directions given by the supervisor;
 - take part in specified activities; and
 - report to particular places at particular times.⁵²

A supervision order can be made for a period up to a year. This can be extended for any period not exceeding 3 years in total from the date of the first order⁵³.

6. The court can only make a care or supervision order if it is satisfied:
- that the child concerned is suffering, or is likely to suffer, significant harm; and
 - that the harm, or likelihood of harm, is attributable to:
 - the care given to the child, or likely to be given to him/her if the order were not made, not being what it would be reasonable to expect a parent to give to him/her; or
 - the child being beyond parental control.⁵⁴
7. If the court is satisfied that the threshold criteria have been met, then it will apply the welfare checklist at section 1(3) of the Children Act 1989 and the 'no order' principle.⁵⁵
8. When considering whether the threshold has been met, the consignment of a party to a pool of perpetrators⁵⁶ during previous proceedings may be viewed as a relevant fact. When this is taken with other relevant facts it may constitute a sufficient factual basis for a threshold finding although such consignment will not on its own satisfy threshold.
9. Under Section 21 of the Adoption and Children Act 2002 on the application of a local authority, the court may make a **placement order** authorising the local authority to place a looked after child for adoption with any prospective adopters who may be chosen by the local authority.

⁵² Supervision orders can also include requirements on the responsible person- sched 3 Part 3 Children Act 1989. Further details on the effect of care and supervision orders (including Parental Responsibility and breaches of orders) can be found in the Glossary in Annex A page x

⁵³ The first final order (as opposed to an interim order)

⁵⁴ Children Act 1989 section 31 (2)

⁵⁵ s 1(5)) of the Children Act 1989 or, as applicable, section 1(6) of the Adoption and children Act 2002.

⁵⁶ Insert Reference

- An application for a placement order cannot be made before the local authority's decision maker (ADM)⁵⁷ has decided that the child should be placed for adoption.⁵⁸
 - Under a placement order, parental responsibility is shared between the local authority and the birth parents and, where the child is living with prospective adopters, the prospective adopters.
 - On the making of a placement order any existing child arrangement or supervision order ceases to have effect. A placement order restricts the making of an application for other orders.⁵⁹
 - A care order is suspended during the life of the placement order. It is automatically reactivated if the placement order is revoked.
 - A placement order continues in force until it is revoked, or an adoption order is made in respect of the child or the child marries, forms a civil partnership or attains the age of 18 years.
10. When making a decision in any proceedings where the court might make a placement order, the court must apply the welfare checklist at section (1) 4 of the Adoption and Children Act 2002 and must consider the whole range of powers available to it in the child's case (whether under that Act or the Children Act 1989) including making no order.⁶⁰
 11. The court may not make a placement order unless the child is subject to a care order, or the court is satisfied that the conditions for making a care order are met, or the child has no parent or guardian.
 12. The court may only make a placement order if each parent or guardian of the child has consented to their child being placed for adoption with any prospective adopters who may be chosen by the local authority and has not withdrawn the consent, or the court determines that the parent's or guardian's consent should be dispensed with⁶¹.
 13. In making a placement order the court must be satisfied that no other permanence option is appropriate and that only adoption will meet the needs of the child.

⁵⁷ The ADM is a senior social worker within the Local authority with at least 3 years post qualifying experience in the child care social work. The ADM makes decisions on whether a child should be placed for adoption, the suitability of prospective adopters and with whom a child should be placed for adoption.

⁵⁸ There are a range of circumstances when a placement order must or may be applied for; see section 22 of the Adoption and Children Act 2002.

⁵⁹ A prohibited steps order, specific issues order, supervision order, child assessment order or child arrangements order may not be applied for in respect of the child.

⁶⁰ See section 1(6) of the Adoption and Children Act 2002.

⁶¹ s52 Adoption and Children Act

Care and Supervision cases

13. When timetabling a case, the court must have particular regard to the impact of the timetable on the welfare of the child. Proceedings should be disposed of within 26 weeks.⁶²
14. There will always be cases which are highly complex for which 26 weeks is not a realistic timeframe for completing the case. In those cases the court has the discretion to extend the timetable where it is “necessary to enable the court to resolve the proceedings justly.”⁶³
15. It will be possible to grant extensions for periods of up to eight weeks at a time (with no limit on the number of extensions) from the end of the 26 week period (or from the day on which the extension is granted– whichever is the later).⁶⁴ In order to prevent unnecessary bureaucracy, requests to extend the timetable for the proceedings will be considered as far as possible during the existing hearings scheduled for the case. As set out in the PLO, extensions should not be the norm and the court will need to give specific reasons for granting an extension to all involved, highlighting why delay has occurred.
16. To ensure adherence to the 26 week time limit, it is important that the local authority works in partnership with the court administrators, the parents’/carers’ legal representative, the children’s Guardian and any family and friends carers. This will help to ensure that cases can be progressed efficiently, particularly where cases have had to be brought very rapidly to the court. By day 2, following the issue of the application and earlier if possible, the local authority must have copied the application and annex documents to the other parties.

Care Plans

17. When a court is deciding whether to make a care order, it is required to consider the ‘permanence provisions’⁶⁵ of the local authority section 31A care plan, but is not required to consider the remainder of the plan.⁶⁶ This is intended to focus the court’s attention on the long term plan for the upbringing of the child i.e. whether the child should live with parents, other family or friends, or be adopted or placed in other long term care provision.
18. This does not mean the court is prevented from looking at the detail of the care plan where the court considers it is in the best interests of the child to do so.

⁶² s32 The Children Act 1989.

⁶³ Children and Families Act 2014

⁶⁴ Full details on expected practice are in the PLO- <http://www.justice.gov.uk/protecting-the-vulnerable/care-proceedings-reform>

⁶⁵ These are defined as the plans provisions setting out the long term plan for the upbringing of the child – section 15 of the Children and Families Act 2014.

⁶⁶ as defined in the Care Planning Regulations 2010
<http://www.legislation.gov.uk/ukxi/2010/959/contents/made>

Rather, it is anticipated that better planning and preparation of cases pre-proceedings will reduce the need for detailed scrutiny once they have come to court.

19. The court will still have a duty to consider local authority contact arrangements between the child and the wider family under section 34(11).
20. The detail of the care plan, for example the day to day plans relating to a child's health or education, is the responsibility of the local authority, who should ensure that it meets that child's needs and circumstances. The ability of the court to focus on the permanence provisions will be dependent on the court's confidence that the plan is relevant and appropriate to meet that child's needs. More details on care plans can be found in Volume 2 of the Children Act 1989 statutory guidance.⁶⁷

Use of expert evidence

21. The court can only agree that expert evidence be commissioned in family proceedings if it deems it necessary to resolve proceedings justly. Decisions about commissioning such evidence should be made early in the proceedings, usually at the Case Management Hearing.
22. Where an expert is permitted in a case, all parties should work collaboratively in conjunction with the court, to ensure that the instructions which the expert receives are focused and give clear and explicit direction as to what is required. In turn, the reports which experts submit must be as analytical, concise and conclusive as possible. Any evidence put before the court without the required permission will be inadmissible (unless the court rules otherwise). Any evidence provide by an expert must comply with the experts practice directions.⁶⁸

Placement Orders

23. Where adoption is the permanence plan for the child and no care order has been made, the local authority should make combined care and placement order applications so that decisions about children can be made swiftly. Where there are on-going care proceedings, the placement order application should be submitted as soon as the ADM decision has been made.⁶⁹ The court may make both orders, which would ensure that the child remains protected should the

⁶⁷ <http://www.education.gov.uk/aboutdfe/statutory/g00224478/stat-guid-care-plan>

⁶⁸ Family Procedure Rules- Experts http://www.justice.gov.uk/courts/procedure-rules/family/parts/part_25

⁶⁹ See the statutory adoption guidance - <https://www.gov.uk/government/publications/adoption-statutory-guidance-2013> - to be published July 2014 - for guidance on considering whether a child should be placed for adoption, family finding and matching, and placement.

placement order be revoked (as the care order would automatically be reactivated).

24. Placement order applications are not subject to the 26 week time limit, but an early application by the local authority will ensure best use of court time and help keep to a minimum the overall length of the process.
25. All evidence and assessments on which the local authority intends to rely in support of its application should be up-to-date. When making an application for a placement order, the local authority must complete and quality assure the placement order application and associated documentation. The local authority must ensure that the information is clearly presented in a succinct and analytical form which focuses on the essentials of the case and the rationale for bringing it to court. The application must clearly state why the parents cannot parent the child, what other realistic permanence options have been considered and rejected, and why adoption is the only permanence option that meets the needs of the child.
26. Usually the prospective adopter will not yet have been identified at the time of a placement order application, but where they have been and their identity is not to be disclosed to members of the birth family, it is vital that no information which might disclose their identity or whereabouts is contained in the report. If, however, it is relevant and needs to be included, it should be given on a separate sheet with a notice emphasising the importance of not disclosing it to the birth family. In any case, where the identity of the child's current carers or the whereabouts of the child needs to be protected, this must also be made clear.

Interim orders

27. Following the commencement of proceedings, the court can, in certain circumstances, make either an Interim Care Order (ICO) or an Interim Supervision Order (ISO), to place the child temporarily under the care or supervision of the local authority during the proceedings. An interim order cannot be made unless there are reasonable grounds for believing that the threshold test in section 31(2) has been met. Before making the order the court must apply the welfare checklist at section 1(3) and the no order principle at section 1(5).
28. Interim orders impose the same responsibilities on local authorities as care and supervision orders, with the exception that the court determines the duration of

the interim order. The court may also give directions to the local authority as to the medical or psychiatric examination or other assessment of the child.⁷⁰

29. When making an interim order the court has the power, in certain circumstances, to include an exclusion requirement which can: require a relevant person to leave the place where they are living with the child; prohibit a relevant person from entering a house in which the child lives; or exclude a relevant person from a defined area in which a house in which the child lives is situated.⁷¹
30. The courts can set interim orders for a period which is considered appropriate in the particular circumstances of the case. However, no ICO or ISO will be able to last beyond the end of the proceedings themselves. Should an ICO or an ISO expire before the proceedings have been resolved, the court is able to make a further order.
31. All children subject to an interim care order must have an Independent Reviewing Officer (IRO) appointed to them before the first review of the care plan.

Contact with children in care

32. Where a child has been placed outside the wider family, regular contact with family and friends will usually be an important part of a child's upbringing in his/her new environment.
33. Local authorities are under a duty to allow a child who is the subject of a care order to have reasonable contact with his/her parents and certain other people,⁷² unless the local authority temporarily decides for a very limited period to refuse contact in urgent circumstances or the court makes an order authorising the local authority's decision to refuse contact (section 34). The court must consider contact arrangements before making a care order and may make orders appropriate to the particular circumstances experienced by the child.
34. The local authority's proposals for contact may be scrutinised or challenged in the following ways.

⁷⁰ If the child is of sufficient understanding to make an informed decision, he may refuse to submit to the examination or assessment.

⁷¹ Further details on exclusion requirements and medical assessments are contained in the Glossary. Annex D

⁷² 'Other people': any guardian of him/her; any person who has parental responsibility for him/her; where there was a child arrangements order in force with respect to the child, the person in whose favour the order was made; where before the care order was made, a person had care of the child by virtue of an order from the High Court.

- the court, before making a care order, must consider the arrangements made or proposed by the local authority and ask parties to the proceedings to comment on them;
- any person to whom the Act's presumption of reasonable contact applies, or any other person who has obtained the permission of the court, can apply for an order with respect to contact at any time if he is dissatisfied with the arrangements made or proposed.
- the child can apply for contact with another person, for his contact with another person to be terminated or for any order with respect to contact to be varied or discharged;
- the court may make any order about contact that it considers appropriate, either in response to an application or on its own initiative, and can impose any conditions it considers appropriate.
- The Independent Reviewing Officer (IRO) should also address the arrangements for contact during each review of the child's care plan.
- The local authority can refuse contact that would otherwise be required under section 34(1), or a court order made under section 34, for up to 7 days without reference to the court. In doing so it must be satisfied that it is necessary to refuse contact to safeguard or promote the child's welfare, and the decision must be taken as a matter of urgency. If the authority considers it necessary to refuse contact for a longer period it must apply for an order under section 34(4).

Placement order stage

35. Once the adoption agency is authorised to place the child for adoption the contact provisions in the Children Act 1989 cease to apply and any contact order made under that Act will cease to have effect. Contact is dealt with under sections 26 and 27 of the 2002 Act. Once the child is placed with prospective adopters, the local authority must keep the contact arrangements under review

- The local authority's proposals for contact may be scrutinised or challenged in the following ways
- the court must consider the arrangements made or proposed by the agency for contact and invite the views of the parties.
- The court may make an order for contact under section 26 of the Act, and may revoke or vary a section 26 order under section 27 of the Act.
- The court may also make an order under section 26 on its own initiative.

Good local authority practice during proceedings

Throughout the proceedings, the local authority must comply with court directions made regarding the timetabling and conduct of the case and the delivery of additional information and any specialist reports or up-dated assessments relevant to the local authority's case which the court decides are necessary. This additional material should be delivered within the timeframes set by the court. Where compliance becomes problematic the local authority will notify the court without delay and in advance of the deadline and seek an extension.

Both the local authority social worker and the local authority advocate should be in command of the essential evidence and equipped to present this clearly and confidently to the court. The social worker should also be clear on the degree of certainty in the conclusions they have drawn and have to hand the key facts and dates to support their judgements.

Wherever possible, the local authority will maintain a constructive working relationship with the family as well as the child during the lifetime of the case. This can be particularly important where an interim care order has been made and where detailed assessments of the parents/carers or wider family members or friends have yet to be completed.

Where significant new factors or circumstances bearing on the case emerge late in the proceedings, the local authority (or the children's guardian or parent/ lawyer) will draw these to the court's attention, sharing the information with other parties at the earliest opportunity and seeking to reach a common approach on handling before the next court hearing.

Pending final decisions by the court, children's need for stability and security remains a priority and will be reflected in any interim care plans, including plans for contact, which the local authority puts forward to the court. The local authority should ensure appropriate, high quality and stable placements are provided, where necessary, while a child's future is decided.

After proceedings

36. Following the completion of proceedings, where the child remains looked after as a result, the children's guardian should convey to the IRO any information that may be relevant to his or her work on behalf of the child. The IRO should continue to work closely with the child's social worker and the broader range of professionals grouped around the child. This will help to ensure that there is adherence to the care plan for the child, thus facilitating the effective implementation of the permanence plan for the child.
37. The child's social worker should consider the on-going support needs of the parents and family and any other children involved, in consultation with them. It may be necessary to provide targeted support and intervention, or refer parents to adult services, where they are experiencing particular problems.
38. Once permanence is secured for the child, it is good practice for the local authority to carry out a comprehensive review of the effectiveness of its processes over the lifetime of the case, which would also include the views from children/service users and other professionals involved.

Discharge and revocation of orders

39. The child, local authority and any person having parental responsibility for the child may apply to court to have a care order discharged. The child, local authority and any person having parental responsibility for the child may also apply to vary or discharge a supervision order.⁷³ The welfare principle and 'checklist'⁷⁴ will apply to the court's decision on any such application. A care order is automatically discharged by the making of a special guardianship order or a child arrangements order.⁷⁵ A care order is suspended, but not discharged, by the making of a placement order and will be revived if the placement order is later discharged.
40. Local authorities must consider, at least at every statutory review of each case, whether to apply for discharge of the care order. The reviews must be chaired by an IRO⁷⁶ who must ensure that the child's wishes and feelings are as far as possible ascertained and taken into account in the plans for the child's future care.
41. Where an application for discharge of a care order or supervision order, or for the substitution of a care order with a supervision order, has been determined

⁷³ Any person with whom the child is living may also apply to vary a supervision order to the extent that any requirement affects him and the supervisor can apply to extend the duration of a supervision order.

⁷⁴ Children Act 1989 s 1(3)

⁷⁵ See other orders chart- Annex D

⁷⁶ See IRO handbook

by the court, no further application of this kind may be made within six months without permission of the court.⁷⁷

42. Anyone who was a party to the original proceedings may appeal against the making of:

- a care, supervision or placement order, including an interim order; or
- an order varying or discharging such an order; or
- the court's refusal to make such an order.

43. In certain cases, the permission of the original court may be needed before an appeal may be pursued. The time limits for appeals are set out in the Family Procedure Rules.⁷⁸

Revocation of placement orders

44. The child or the local authority may apply to the court at any time for the placement order to be revoked. Where the local authority decides that the child should no longer be placed for adoption following a review under regulation 36 of the Adoption Agencies Regulations 2005, it must revise the child's care plan and apply to the court for revocation of the placement order.

45. A parent or any other person may apply, with the court's permission, for revocation of a placement order provided the child is not at the time placed for adoption. The court may only give its permission if it is satisfied that there has been a change of circumstances since the placement order was made. It does not follow that a change of circumstances will automatically mean that permission is granted or that the placement order will be revoked. While an application for revocation of a placement order is pending, and the child is not placed for adoption, the local authority may not place the child for adoption without the court's permission. An application for permission to apply for revocation does not act as a bar to the child's placement.

46. The local authority must supply the court with up-to-date information about the child's current situation, including his/her views and wishes, and the progress on finding and making a suitable placement. Where a parent or any other person has applied for permission or has made a substantive application, every effort should be made to ensure that the case is heard as quickly as possible.

47. In any application for the placement order to be revoked, the child will be a party to the application. The child will be entitled to be legally represented, and a children's guardian will be appointed. If the application to revoke the placement order is successful, any care order made before or at the same time

⁷⁷ S91 (15) The Children Act 1989,

⁷⁸ <http://www.justice.gov.uk/courts/procedure-rules>

as the placement order is revived and will continue to have effect, unless separately discharged.

Chapter 4: Emergency protection, child assessment and secure accommodation orders

1. This chapter provides information on the provisions that exist under Part V of the Children Act in relation to the protection of children, focusing particularly on child assessment orders and emergency protection orders (EPO). It also explains the operation of secure accommodation orders.⁷⁹ Where more detail is contained in other publications, the relevant guidance documents have been highlighted.

Protection of Children

2. Part 5 of the Children Act aims to ensure that effective action can be taken to protect children, within a framework of proper safeguards and reasonable opportunities for parents to challenge relevant actions before a court. The measures available are short term and time limited interventions and may not lead to further action by the local authority under Parts III and IV of the Act.⁸⁰
3. When making an order under Part V of the Act, the court's paramount consideration must be the child's welfare. It must also have regard to the no order principle.
4. Proceedings under Part V are not classified as family proceedings. This means that, in Part V proceedings, the court must either make or refuse to make the order applied for and cannot make any other kind of order. The only exception is if, when considering an application for a child assessment order, the court is satisfied that there are grounds for making an EPO and that such an order should be made. In these circumstances the court must make an EPO instead of a child assessment order.⁸¹

Child Assessment Orders

5. A child assessment order enables an assessment of the child's health or development, or of the way in which s/he has been treated, to be carried out where significant harm is suspected. Its use is most relevant in circumstances where the child is not thought to be at immediate risk, to the extent that removal from his/her parents' care is required, but where parents have refused to cooperate with attempts to assess the child. This may be where the suspected

⁷⁹ Secure Accommodation orders- Part III, s 25 *The Children Act 1989*

⁸⁰ When exercising their functions in relations to these provisions, local authorities will need to have particular regard to Working Together to Safeguard Children guidance.⁸⁰

⁸¹ S43(4), Children Act 1989

harm to the child appears to be longer-term and cumulative rather than sudden and severe.

6. It can only be made if the court is satisfied:
 - that there is reason to suspect that the child is suffering or is likely to suffer significant harm;
 - that an assessment is required; and
 - that it is unlikely that an assessment would be made in the absence of an order.⁸²
7. A child assessment order may be appropriate where insufficient information is available to justify an application for a care or supervision order and an assessment is needed to help establish facts about the child's condition.
8. Before making an application to the court, the local authority should always make enquiries into the child's circumstances. The nature of the case will dictate the manner in which enquiries should be carried out and the degree of urgency. If possible, before an application is made, the child should have been seen by someone who is competent to form a judgement about the child's welfare and development. When considering an application for any order, the court will expect to be given details of the enquiries made including, in particular, details of the extent to which, if at all, the enquiries have been frustrated by the failure or refusal of the parents to co-operate.
9. A child assessment order must specify the date by which the assessment is to begin and will have effect for a specified period, not exceeding 7 days from that date. The local authority should make arrangements in advance of the application, so that any necessary multi-disciplinary consideration of the child's needs can be completed within the specified period.
10. The order requires any person who is in a position to do so (usually a parent) to produce the child to the person named in the order, and comply with any directions relating to the assessment included in the order. It does not confer on the local authority parental responsibility for the child, and a child of sufficient understanding to make an informed decision may refuse to consent to the assessment.⁸³
11. When making a child assessment order, the court may make directions about related matters, for example as to whether the assessment should be limited to a medical examination or cover other aspects of the child's health and development. It also has the power to direct that the child should be kept away from home for a specified period if it is necessary for the purpose of the assessment. In these circumstances it must also give directions as it thinks fit

⁸² s43(1) Children Act 1989

⁸³ Provisions detailed in full in s43 of the Children Act 1989

about the contact the child must be allowed with other persons during this period.

12. If, upon considering an application for a child assessment order, the court is satisfied that there are grounds for making an Emergency Protection Order (EPO), then it should make an EPO instead of a child assessment order. Deliberate refusal by the persons responsible for the child to comply with a child assessment order is very likely to add to concern for the child's welfare and would probably justify an application by the relevant local authority for an EPO (or a care order) or a request to the police that their police protection powers be exercised.

Emergency Protection Orders

13. An EPO enables the child to be removed from where he or she is, or to be kept where he or she is, if this is necessary to provide immediate short-term protection. Any person may apply for an EPO, although in practice the vast majority of applications are made by local authorities.⁸⁴
14. On receipt of an application, the court can only make an EPO if it is satisfied that there is reasonable cause to believe that the child is likely to suffer significant harm if he or she:
- is not removed to accommodation provided by the applicant; or
 - does not remain in the place in which the child is then being accommodated.
15. Where the applicant is the local authority or the NSPCC,⁸⁵ an emergency protection order may also be made if enquiries (in the case of local authorities, made under section 47) are being frustrated by unreasonable refusal of access to the child, and the applicant has reasonable cause to believe that access is needed as a matter of urgency.
16. If there is a need for further investigation of the child's health and development but s/he is not considered to be in immediate danger, then the local authority should apply for a child assessment order.
17. An EPO gives authority to the local authority to remove a child to accommodation provided by or on behalf of the applicant. It also confers upon the person in whose favour it is made (usually the local authority) limited parental responsibility for the child. That parental responsibility must only be

⁸⁴ From 22 April 2014, the revised care and supervision application form (C110A) should also be used for all applications for EPOs. Part 4 and EPO proceedings can be issued on the same form and at the same time. EPOs have been provided for within the C110A due to the need for the court to identify cases for urgent hearing at the outset.

⁸⁵ The NSPCC is deemed to be an 'authorised person' under s 31(9) of the Children Act 1989. Its potential role in EPO proceedings is not addressed in this guidance because it has not exercised these powers for some years.

exercised to the extent that is necessary to safeguard the child's welfare. Applications for an EPO are a very serious step and the court must be satisfied that the EPO is both necessary and proportionate and that there is "no less radical form of order available".⁸⁶

18. Its duration is limited to a maximum period of eight days, with a possible extension of up to a further seven days, to a maximum of 15 days. Applications to extend can be made by the original applicant, with the court being able to grant an extension if it has reasonable cause to believe that the child concerned is likely to suffer significant harm if the order is not extended. During the order the child must be permitted to have reasonable contact with his/ her parents and other significant individuals, unless the court directs otherwise. The court may also give specific directions with regard to contact, and about medical or psychiatric examination or other assessment of the child.
19. The court can attach an exclusion requirement to an EPO which can exclude the relevant person from the home, and from a designated area around the home. A power of arrest can be attached to the exclusion requirement.
20. The court has the power to grant orders without notice being given to parents or on short notice, but will only consider applications without notice in high risk cases where the child's safety would be endangered if the parents knew of the application, or for other reasons it is not possible to notify them.
21. When an EPO is in force and the applicant has removed the child, the applicant is under a duty to return the child to the care of his/her parents as soon as it is safe to do so, even if the order is still in force.
22. When considering whether emergency action is necessary an applicant should always consider the needs of other children in the same household or in the household of an alleged perpetrator.
23. Planned emergency action will normally take place following a strategy discussion between the local authority, police and other relevant agencies.⁸⁷ Where an agency has to act immediately, a strategy discussion should take place as soon as possible after that action has been taken; local authorities should also:
 - see the child (where appropriate) to decide how best to protect them and whether to seek an EPO; and
 - obtain legal advice before initiating legal action, in particular when an EPO is being sought.

⁸⁶ See Judgement of Munby J in *X Council v B* [2004] EWHC 2015 (Fam)

⁸⁷ Full details on the processes for taking emergency action can be found in pages 26-46 *Working Together to Safeguard Children*

Powers to assist in discovery of children who may be in need of emergency protection

24. In situations where those looking after the child do not readily agree to hand the child over, the EPO provides a formal direction to any person who is in a position to do so to comply with any request to produce the child to the applicant. If the applicant for an EPO does not know the whereabouts of a child, but that information is held by another person, the court may order that person to disclose the information when requested to do so by the applicant⁸⁸ This provision is intended to ensure that access to the child is not frustrated by information being withheld from the applicant.
25. The Act also gives the courts power to authorise an applicant to enter and search specified premises for a child who is the subject of an EPO.
26. If the applicant believes there may be another child on the premises which is to be searched, who ought also to be the subject of an EPO, s/he should always seek an order authorising him/her to search for that child as well. Where the applicant cannot name the child, s/he should be described as clearly as possible in the order.⁸⁹
27. If a second child is found on the premises and the applicant is satisfied that there are sufficient grounds for making an EPO, the order authorising the search for the second child has effect as if it were an EPO. The authorised person must report the result of the search to the court and, what action was taken and/or is planned as a result. The court should also be told whether the order providing the power to search for the child is deemed to have the effect of an EPO, on the basis that the applicant is satisfied that the grounds for making an EPO exist in respect of that second child.
28. If an authorised person is, or is likely to be, obstructed from exercising his/her powers under the EPO the court can issue a warrant authorising any police officer to assist the authorised person in entering and searching the named premises. The warrant will authorise the police officer to use reasonable force if necessary in order to assist the applicant in the exercise of his or her powers to enter and search the premises for the child. If an applicant gains access and finds the child is not harmed and is not likely to suffer significant harm he should not remove the child. The power to remove the child would persist if the circumstances changed and the order was still in force.
29. There is no right of appeal against an EPO, however the child, a parent of the child, any person who is not a parent but who has parental responsibility for him/her, or any person with whom s/he was living immediately before the making of the EPO, may apply to the court for an EPO to be discharged: This

⁸⁸ s48(1) Children Act 1989.

⁸⁹ s48 (13) This replicates s44(1) in relation to EPOs

right to apply to discharge an EPO is limited to those who did not receive notice of the EPO and were not present at the hearing.

Police Powers

30. The police have specific powers to protect children under Part V of the Act. These should only be used in exceptional circumstances where there is insufficient time to apply for an Emergency Protection Order, or for reasons relating to the immediate safety of the child.⁹⁰
31. Where a police officer has reasonable cause to believe that a child would otherwise be likely to suffer significant harm s/he may remove the child to suitable accommodation and keep him or her there. Alternatively, s/he may take such steps as are reasonable to ensure that the child's removal from hospital, or other place in which s/he is being accommodated, is prevented.
32. When a police officer has exercised this power the child is held to be in police protection. No child may be kept in police protection for more than 72 hours.⁹¹
33. As soon as is practicable after taking the child into police protection, the case should be inquired into by a designated officer.⁹² On completing the inquiry, the designated officer must release the child from police protection, unless s/he considers that there is still reasonable cause to believe that the child would be likely to suffer significant harm if released.
34. Upon taking the child into police protection, the police officer concerned (rather than the designated officer) must inform the relevant local authority, and where possible inform the child of the steps that have been taken, the reasons for taking them and of any further steps that may be taken. The officer should also take steps to enable the child to be moved to accommodation provided by the local authority.⁹³ The officer should also take such steps as are reasonably practicable to inform the child's parents and those with parental responsibility.⁹⁴

⁹⁰ s46 Children Act 1989- Removal and accommodation of children by police in cases of emergency.

⁹¹ While there are no powers to enter premises to search for a child under section 46, where search and entry is required other powers may be used, for example a warrant under section 48 of the Children Act, or the power to enter without a warrant contained in Police and Criminal Evidence Act 1984 power (section 17(1)(e)).

⁹² An officer designated for the purposes of section 46 by the chief officer of the police area concerned- s46 (3) (e) Children Act

⁹³ Local authorities and the police need to work closely together to ensure that children taken into police protection are not accommodated in police stations, and that their transfer to local authority accommodation is achieved promptly and carefully, with the minimum of trauma.

⁹⁴ Full actions that the officer must undertake can be found in s46(3)

35. The local authority has concurrent duties to make enquiries about whether it should take any action to safeguard or promote the child's welfare. One such course of action is for the local authority to ask the police to apply for an EPO.⁹⁵
36. The designated officer has a number of additional responsibilities. S/he may apply, on behalf of the local authority in whose area the child is ordinarily resident, for an emergency protection order to be made in respect of the child. The EPO application may be made whether or not the authority knows of it or agrees to it being made.
37. Neither the officer concerned, the designated officer (nor the local authority) acquires parental responsibility for the child. The designated officer must nevertheless do what is reasonable in all the circumstances to promote the child's welfare.
38. The designated officer⁹⁶ must allow the following persons to have such contact with the child as, in his/her opinion, is both reasonable and in the child's best interests (section 46(10)):
- the child's parents;
 - anyone else who has parental responsibility for the child or with whom the child was living immediately before he was taken into police protection;
 - a person who has in his favour an order relating to contact with the child or any person acting on behalf of any of the above.

Secure Accommodation orders

39. Secure accommodation orders are used in cases where a child or young person who is looked after by the local authority is assessed as needing to be accommodated in a placement, provided for the purpose of restricting their liberty.⁹⁷
40. Restricting the liberty of a child is a serious step that can only be taken if it is the most appropriate way of meeting the child's assessed needs. A decision to place a child in secure accommodation should never be made because no other placement is available, because of inadequacies of staffing in a child's current placement, or because the child is simply being a nuisance. Secure accommodation should never be used as a form of punishment.

⁹⁵ s47(3)(c) and s46(7) of the Children Act 1989

⁹⁶ This duty also applies to the LA if the child in police protection is accommodated by the LA

⁹⁷ This chapter refers to children detained under s25 of the Children Act. It does not apply to children detained on criminal justice grounds. Guidance on secure accommodation orders in these circumstances is covered at- link to be added.

41. This does not mean, though, that restriction of liberty should only be considered as a 'last resort'. Restricting the liberty of a child could offer a positive option. A decision to apply for an order under s25 of the Act should be made on the basis that this represents the best option to meet the particular needs of the child. The placement of a child in a secure children's home should, wherever practicable, arise as part of the local authority's overall plan for the child's welfare.
42. For some children a period of accommodation in a secure children's home will represent the only way of meeting their complex needs, as it will provide them with a safe and secure environment, enhanced levels of staffing, and specialist programmes of support. A secure placement may be the most suitable, and only, way of responding to the likelihood of a child suffering significant harm or injuring themselves or others.

Criteria for the restriction of liberty

43. A child may not be detained in secure accommodation unless it appears that:
- a) (i) the child has a history of absconding and is likely to abscond from any other description of accommodation; and
(ii) if the child absconds, s/he is likely to suffer significant harm; or
 - b) that if the child is kept in any other description of accommodation s/he is likely to injure himself or other persons.
44. A child under the age of 13 must not be placed in secure accommodation in a children's home without the prior approval of the Secretary of State.⁹⁸
45. A secure accommodation order cannot be made in relation to a child over 16 who has been accommodated under section 20(5) of the Act.⁹⁹; or in relation to a child detained under any provision of the Mental Health Act 1983.

Applications to the Court

46. A child meeting the above criteria may be placed in secure accommodation for a maximum period of 72 hours in any 28 day period without court authority.¹⁰⁰ A local authority wishing to detain a child beyond this point will need to make an application to the single family court for authority to further detain the child.

⁹⁸ The Children (Secure Accommodation) Regulations 1991, regulation 4. ("the 1991 Regulations") [Link to Regs.](#) Children Act 1989 Guidance Volume 5; Children's Homes – chapter 4. [Link to Vol 5](#)

⁹⁹ Reg 5 of the 1991 Regulations. S20(5) of the Act provides that a local authority may provide accommodation for any person who has reached the age of 16 but is under 21 in any community home which takes children who have reached the age of 16 if they consider that to do so would safeguard or promote his welfare)

¹⁰⁰ Regulation 10 (1) of the 1991 Regulations. Further information is contained in Volume 5

47. It is the role of the court to safeguard the child's welfare from inappropriate or unnecessary use of secure accommodation, by satisfying itself that those making the application have demonstrated that the statutory criteria have been met. Proceedings under section 25 are specified proceedings for the purposes of section 41(6) of the 1989 Act. The court is therefore required to appoint a Children's Guardian for the child unless it is of the opinion that it is unnecessary to do so in order to safeguard the child's interests. The child should also be given the opportunity to be legally represented in the proceedings.¹⁰¹
48. The maximum period that a court may authorise a child be kept in secure accommodation is three months, on first application to the court, or six months, in respect of any further application to the court to continue to keep that child in secure accommodation.¹⁰²
49. On any adjournment of the hearing of an application for a Secure Accommodation Order, a court may make an interim order permitting the child to be kept in secure accommodation during the period of the adjournment.¹⁰³
50. Any secure accommodation order made is subject to review. This review must take place within one month of the placement commencing and then at intervals of no more than three months.¹⁰⁴ These reviews are not the same as reviews of the child's overall care plan and are restricted to the specific question about the necessity of a placement in secure accommodation. Where a 'secure accommodation review' concludes the criteria for the child's detention no longer apply, the authority responsible for the child's care should immediately convene a care plan review, chaired by the child's IRO.
51. Both the child and the authority making the application to the court may appeal to the High Court against the making, or refusal to make, an order.¹⁰⁵

¹⁰¹ The child has a right to legally aided representation under section 25(6) of the Act. This right has been preserved in paragraph 1 of Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

¹⁰² Regulations 11 and 12 of the 1991 Regulations.

¹⁰³ Section 25(5); Children Act 1989

¹⁰⁴ Regulation 16 of the 1991 Regulations. Children Act 1989 Guidance Volume 5; Children's Homes :4.39-4.45 and Independent Reviewing Officers Handbook 4.13-4,15 :[IRO handbook](#)

¹⁰⁵ Section 94: Children Act 1989

Chapter 5: Adoption orders

1. This chapter outlines the operation of adoption orders. It describes the process for agency, non-agency and inter-country adoptions.¹⁰⁶
2. A child becomes adopted when an adoption order¹⁰⁷ is made. When this happens, parental responsibility is removed from the child's birth parents and others with parental responsibility and awarded to the adopter. In law the child is treated as if he or she had been born to the adopter, who becomes responsible for looking after the child and for making all the key decisions about him or her in the same way as any other parent. The legal relationship between the child and members of the birth parents' families is terminated. The adoption order continues in force throughout the child's life unless the order is set aside; this is extremely rare.

Agency Adoptions

3. An agency adoption is the adoption of a looked after child who was placed for adoption by an adoption agency (a local authority or a voluntary adoption agency). For the purposes of this chapter, "local authority" is used.
4. A prospective adopter may apply to court for an adoption order once the looked after child, has had their home with them at all times for at least ten weeks.¹⁰⁸
5. The local authority should discuss the timing of any application with the prospective adopters and provide them with the information from the child's case record necessary to complete the application form. This will include whether the parents have given advance consent to the making of the adoption order, giving them a copy of any placement order and the child's birth or adoption certificate as well as information about court proceedings relating to the child's full or half blood siblings. When it is important that the prospective adopter's identity is not disclosed to the child's birth parents, the local authority should also advise the prospective adopters that the court can allocate them a serial number. Any documents sent to the birth parents will show the serial number and not the personal details of the prospective adopters. If the prospective adopters are required to attend the same court hearing as the birth parents, the court will make arrangements to ensure their identity is protected.
6. The local authority should consider the adoption support needs of the prospective adopters and the child under section 4 of the Adoption and Children

¹⁰⁶ See the statutory adoption guidance - <https://www.gov.uk/government/publications/adoption-statutory-guidance-2013> - to be published July 2014

¹⁰⁷ Full information can be found in 46 of the Adoption and Children Act 2002.

¹⁰⁸ See s42 of the Adoption and Children Act 2002.

Act 2002 and the Adoption Support Services Regulations 2005. The payment of court fees should not be means tested.¹⁰⁹

7. When the court has notified the local authority that an application for an adoption order has been made, the local authority must submit to the court a report on the suitability of the applicants within the timetable specified by the court.¹¹⁰
8. Although the report is confidential, parts of it are likely to be shared with the parties to the proceedings¹¹¹. In a case where the prospective adopter's identity is not to be disclosed to the birth parents, care must be taken to ensure that any identifying information is contained in a separate section which is not to be disclosed except to the court and any children's guardian or family court reporter. Identifying information may include addresses, employment and, for example, the name of the school attended by the child.
9. Birth parents need the court's permission to oppose the making of an adoption order where they had given their consent to the child being placed for adoption, or consented to the making of a future adoption order, or a placement order has been made¹¹². Permission may not be granted unless the court is satisfied that there has been a change of circumstances since the consent was given or the placement order made. If the circumstances have changed, the court must be satisfied that the birth parents have demonstrated that they have solid prospects of successfully opposing the making of the adoption order. At all times, the court must remember that the child's welfare is paramount and must consider the child's welfare throughout his or her life.
10. Where the adoption application is opposed, the local authority and prospective adopters should consider whether the prospective adopter should be legally represented. The cost of legal representation and payment of court fees should not be means tested.¹¹³ Even where the application is not opposed, it may be necessary for the prospective adopter to be legally represented, in order, among other things, to avoid the risk that they attend court in person at the same time as the birth parents.

Non-agency adoptions

11. A non-agency adoption is the adoption of a child who was not placed for adoption by an adoption agency (a local authority or voluntary adoption agency).

¹⁰⁹ Regulation 15(4) of the Adoption Support Services Regulations 2005

¹¹⁰ - S 43 of the Adoption and Children Act 2002 and Rule 14.11 of the Family Procedure Rules 2010.

¹¹¹ Rule 14.13 of the Family Procedure Rules 2010

¹¹² See sections 47 and 52 of the Adoption and Children Act 2002

¹¹³ Regulation 15(4) of the Adoption Support Services Regulations 2005

12. Although section 92 of the Adoption and Children Act 2002 prohibits 'private' adoptions, a child may be the subject of an application to adopt even though they were not placed for adoption by a local authority. Applications can be made by partners of the parent of a child (parent's spouse, civil partner or unmarried partner), local authority foster carers, special guardians, relatives of the child, private foster carers and intercountry adopters. Once an application has been made the individuals are called "proposed adopters".
13. The proposed adopter must give formal notice to the local authority where they have their home of their intention to apply for an adoption order. The notice must be given between three months and two years before the application is made to the court.¹¹⁴ An application may not be made unless the child has lived with proposed adopter for a particular period of time ranging from six months to three years depending on the circumstances.¹¹⁵
14. Where the proposed adopters are resident abroad, but still entitled to apply for an adoption order in England, regulation 3 of the Local Authority (Adoption) (Miscellaneous Provisions) Regulations 2005 sets out how the appropriate local authority is to be identified. Usually this is the local authority where they last had their home, but where each partner of a couple lived in different local areas in England, and they have never had a home together in England, they may choose which of the two relevant authorities they wish to give notice.
15. On receipt of the notice of intention the local authority must arrange for the proposed adopters to be investigated and submit a report to the court. The local authority may arrange for another local authority or voluntary adoption agency to carry out the investigation and prepare the report to the court, but it remains responsible for the quality of the work and ensuring that the report is filed with the court without delay. The court must be satisfied that the writer of the report has had sufficient opportunity to see the applicants and the child together in their home. It may be possible to arrange to visit the proposed adopters and the child during periods when they are in England on holiday, for example, but reports will need also to cover their home situation in the place where they currently reside which could be either in England or overseas.
16. The local authority should ensure that the proposed adopters fully understand the implications of adoption, are aware of the court's duty under section 1(6) of the Adoption and Children Act 2002 and are aware of possible alternative courses of action. For foster carers, relatives or private foster carers, a special guardianship or child arrangement order may be suitable, whereas for partners, a parental responsibility agreement or a child arrangement order may be more appropriate. Special guardianship is not an appropriate alternative for the

¹¹⁴ See section 44 of the Adoption and Children Act 2002.

¹¹⁵ Section 42 of the Adoption and Children Act 2002 and regulation 9 of the Adoptions with a Foreign Element Regulations 2005 in respect of intercountry adoptions

partner of a child's parent because it has the effect of vesting parental responsibility in the special guardian which they can exercise to the exclusion of anyone else with parental responsibility, including the child's birth parents .

17. It will be important to ensure that the child, if of sufficient age and understanding, is aware of what is proposed and is given an opportunity to express a view.
18. The local authority must undertake Disclosure and Barring Service checks in respect of the proposed adopter and adult members of the household, including the child's own birth parent who is the proposed adopter's partner. The existence of a criminal conviction or caution for a 'specified offence' is not an absolute bar to the granting of an adoption order, but is a matter that will need to be included in the report to the court.
19. The comments regarding the confidentiality of the report in agency cases apply, but in many non-agency cases the identity of the prospective adopter will be known to the birth parent. Nevertheless there will be cases where even though the birth parent is aware of the identity of the prospective adopter there may be good reason for not disclosing information as to the current whereabouts of the child, so care will still be needed in the way the report is set out.

Local authority foster carers wishing to adopt

20. Where a local authority receives a notice of intention to adopt from a local authority foster carer with whom they did not place the child, it must inform in writing the local authority looking after the child within seven days.¹¹⁶
21. If the foster carer had not previously discussed with the local authority their wish to adopt before notice is given, the local authority should give it serious consideration and ensure that the foster carer is offered information and counselling.¹¹⁷ If adoption is already the plan for the child, and the local authority considers that the foster carer may be suitable to be approved as an adoptive parent, the foster carer can be assessed using the fast-track procedure under regulation 30F of the Adoption Agencies Regulations 2005. It is not usually appropriate to leave it to the foster carer to make a "non-agency" adoption application. Any application for an adoption order by the foster carer made after they have been assessed and considered suitable to adopt, would proceed as an agency adoption.

¹¹⁶ S44 (7) of the Adoption and Children Act 2002.

¹¹⁷ Regulation 24 of the Adoption Agencies Regulations 2005

22. If the foster carer has given notice of intention to adopt and the local authority does not consider them suitable to adopt it may remove the child from their care.¹¹⁸
23. If the local authority is not authorised to place the child for adoption, the local authority must immediately consider the plan for the child and ascertain the wishes and feelings of the child and birth parents. If the local authority considers that adoption may be appropriate, it must follow the procedure set out in Part 3 of the Adoption Agencies Regulations 2005.
24. If the local authority makes a placement order application before the foster carer's adoption application has been heard, it is open to the court to adjourn the placement order application and proceed to hear the foster carer's adoption application. In this case the foster carer's application would still technically be a non-agency one but for the purposes of adoption support, the child in these circumstances falls within the definition of an 'agency adoptive child' unless the local authority opposes the application.¹¹⁹ Alternatively, the court may adjourn the foster carer's adoption application and hear the placement order application first so that, if the placement order is granted, the foster carer's adoption application can proceed as an agency application.

Post adoption contact

25. On the making of an adoption order any section 26 contact order will cease to have effect. An application for an order allowing contact or no contact with particular individuals can be made by the prospective adopter and the child under section 51A of the Adoption and Children Act 2002. Everyone else, for example the birth parent, must obtain the court's permission to make the application. The court may on its own initiative make a no contact order prohibiting the person named in the order from having contact with the child.¹²⁰
26. The application may be heard at the same time as an application for an adoption order or any time after the making of an adoption order. Section 46(6) of the Adoption and Children Act 2002 requires the court making an adoption order to consider whether there should be arrangements for allowing any person contact with the child before making an adoption order. The making of an arrangement for contact does not imply that there should be an order; the court may simply indicate its approval of agreed arrangements, or it may make a section 51A(2)(b) order prohibiting contact if it considers that this is necessary to promote the child's welfare.

¹¹⁸ See section 38 of the Adoption and Children Act 2002

¹¹⁹ see regulation 2(1) of the Adoption Support Regulations 2005.

¹²⁰ See s51A(4) of the Adoption and Children Act 2002.

Inter-country adoptions

27. Inter-country adoption (ICA) is the adoption of a child habitually resident in one country by prospective adopters habitually resident in a different country. For our purposes an ICA is the adoption of a child habitually resident outside the British Islands by prospective adopters habitually resident in England or Wales (and occasionally vice versa). There are two different types of ICA: those made under the terms of the Hague Convention and those not made under the terms of the Convention. The statutory adoption guidance¹²¹ sets out the general considerations and the duties of adoption agencies that apply to an ICA.

Orders made under section 84 of the Adoption and Children Act 2002

28. A section 84 order relates to inter-country adoption.¹²² They confer on the applicant parental responsibility for the child enabling the child to be removed from the country for the purposes of adoption and extinguishing the parental responsibility of any other person. The applicant is a person who the court is satisfied intends to adopt a child under the law of a country or territory outside the British Islands.

29. A section 84 order can only be made if the requirements of the Adoptions with a Foreign Element Regulations 2005 have been complied with and, at all times during the preceding ten weeks the child's home was with the applicant or, in the case of a couple, both applicants. A section 84 order may not be made unless the court is satisfied that the local authority has had sufficient opportunity to see the child and the applicant in the home environment which could be either in England or overseas.

30. Before the court can make a section 84 order it must be satisfied that the regulatory requirements have been met. These requirements differ slightly depending on whether or not the child is intended to be adopted under the Hague Convention.

Hague Convention

31. Where the child is intended to be adopted under the 1993 Hague Convention the local authority must follow the requirements set out in regulation 48 of the

¹²¹ <https://www.gov.uk/government/publications/adoption-statutory-guidance-2013> - to be published July 2014

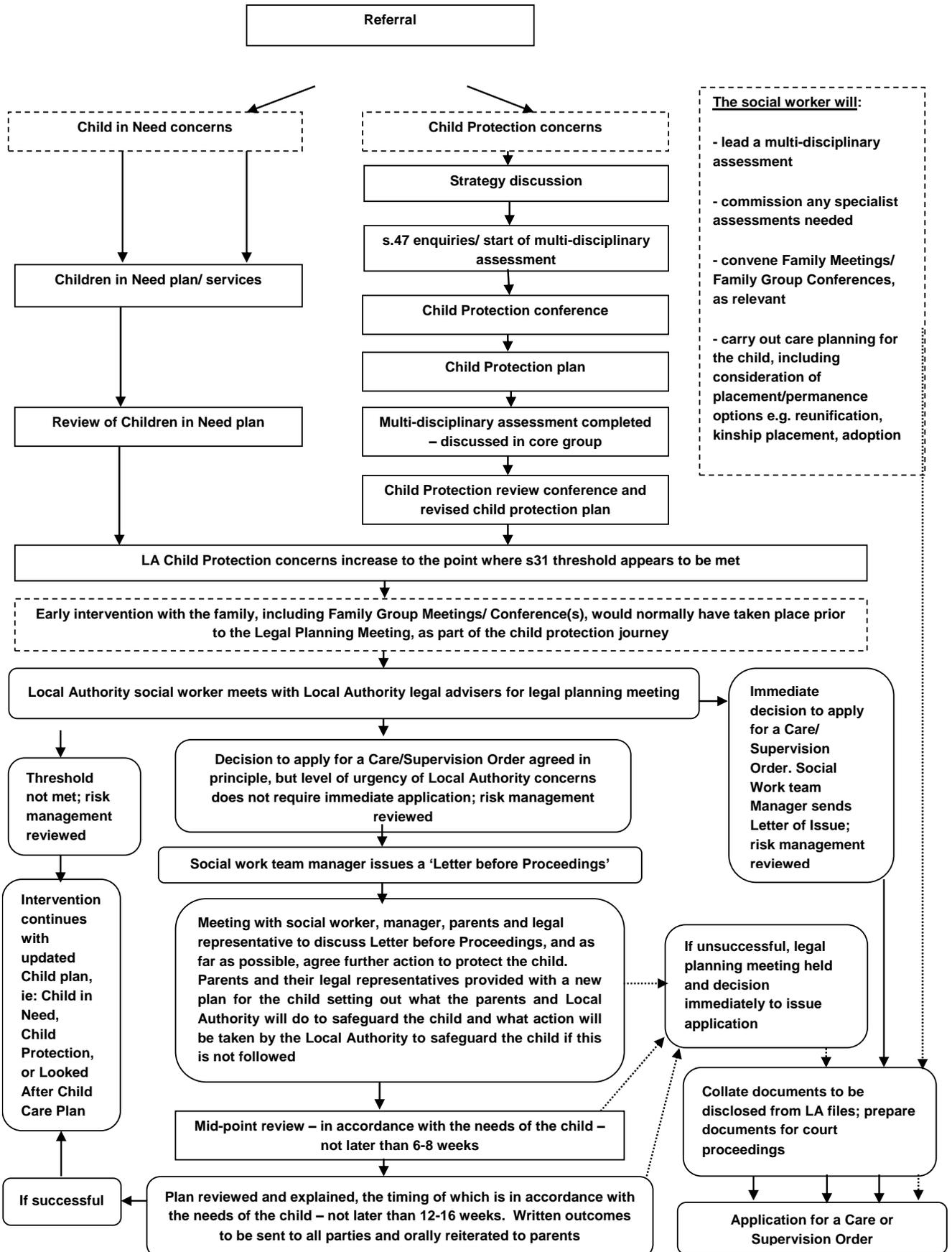
¹²² See regulations 10 and 11 of the Adoptions with a Foreign Element Regulations 2005, sections 42(7) and 84 of the Adoption and Children Act 2002, and the statutory adoption guidance - <https://www.gov.uk/government/publications/adoption-statutory-guidance-2013> - to be published July 2014.

Adoptions with a Foreign Element Regulations 2005. Where the child is not intended to be adopted under the 1993 Hague Convention, the local authority must follow the requirements set out in regulation 10 of the Adoptions with a Foreign Element Regulations 2005

32. Where the court has made an order under section 84, the prospective adopter may leave the UK with the child. If a Convention adoption is subsequently made in the receiving state and the Central Authority receives an Article 23 certificate, it will forward a copy to the local authority.

Annex A: Pre-Proceedings flow chart

C



Annex B: Templates for Letter Before Proceedings and Letter of Issue

Letter before proceedings

**IMPORTANT!
PLEASE DO NOT IGNORE THIS LETTER - TAKE IT TO A SOLICITOR NOW**

**Office Address Contact
Direct line
My ref Fax
E-mail Date**

SENT BY [HAND/ RECORDED DELIVERY]

Dear [parent and/or full name(s) of all people with parental responsibility]

Re: Insert [name(s) of child(ren)] –

LAST OPPORTUNITY TO STOP YOUR CHILDREN BEING REMOVED FROM YOUR CARE

I am writing to you on behalf of [name of LA] Children’s Services.

As you know, [insert name of social worker] has been very concerned about your care of [name(s) of child(ren)] for some time. Things have not improved sufficiently and the situation for your child(ren) has become so serious that we may need to take action.

We are writing to you now to give you a last chance to make the changes to make sure [name(s) of child(ren)] is/are safe. Otherwise we will go to Court to ask for them to be removed from your care, if the Court decides that is best for them.

We have set out below why we are so concerned about your care of [name(s) of child(ren)] and the things you can and MUST do if you want to avoid us asking the Court to remove them from your care.

HERE ARE OUR MAIN CONCERNS:

[Outline concerns and give examples of when this happened. This should capture ongoing concerns as well as specific concerns]

<i>Date(s)</i>	<i>Problem</i>
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<i>Date(s)</i>	<i>Problem</i>
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WHAT YOU MUST DO SO THAT WE WILL NOT GO TO COURT:

Come to a meeting with us to talk about these concerns. This meeting will be on [date and time] at the [insert name of office]. The address is [address] and there is a map with this letter to help you find it. At the meeting we will:

- discuss with you what you will need to do to make your child(ren) safe;
- discuss with you how we will support you to do this;
- discuss with you who in your family could look after your child(ren) if you are not able to; and
- explain what steps we will take if we continue to be worried about [name(s) of child(ren)].

Please contact your social worker on [tel.no.] to tell us if you will come to the meeting.

- 1. Get a solicitor:** It is really important that you get advice from a solicitor who specialises in family law as soon as possible. They will help you to understand the situation and advise you about your rights and your options. You also have a right to bring your solicitor with you to the meeting. If you give them this letter you will not have to pay.

In case you do not have a solicitor, we have sent with this letter a list of local solicitors who work with children and families. They are all separate from Children's Services. You do not have to bring a solicitor to the meeting, but it will be very helpful if you do.

Information your Solicitor will need is:

Local Authority Legal Contact: Name, Address & Telephone:

- 2. Get your wider family involved:** Our concerns about [name(s) of child(ren)] are very serious. If we do have to go to Court and the Court decides you cannot care for your child(ren), we will first try and place them with one of your relatives or a person or person(s) close to your child(ren), if it is best for your child(ren) to do this. At the meeting we will discuss with you and your solicitor who might look after your child(ren) if the Court decides that it is no longer safe for you to do so.

We look forward to seeing you at the meeting with your solicitor on [date]. If you do not understand any part of this letter, please contact your social worker [name] on [tel. no.]. Please tell your social worker if you need any help with child care or transport arrangements in order to come to the meeting, and we will try to help.

Yours sincerely [name]

Team Manager Local office/service

Cc: Social Worker [name]

Local Authority In-house Legal Team

Enc:

Map of office

List of solicitors firms who are members of the Law Society's Children Law Accreditation Scheme

Letter of Issue

IMPORTANT!

PLEASE DO NOT IGNORE THIS LETTER - TAKE IT TO A SOLICITOR NOW

Our Ref:
Your Ref:
Date:

Telephone No:

SENT BY [HAND/ RECORDED DELIVERY]

Dear [parent and/or full name(s) of all people with parental responsibility]

RE: [NAME OF LOCAL AUTHORITY] CONCERNS ABOUT [INSERT NAME(S) OF CHILD(REN)]

I am writing to you on behalf of [name of LA] Children's Services. The reason I am writing to you is that [Insert name of Local Authority] is extremely worried about your care of [name(s) of child/(ren)]. We set out our concerns in [reference to the Letter before Proceedings/pre-proceedings meeting/child protection case conference/any social work meetings] – a copy is attached. We have tried to work with you to help you to improve your care of [name(s) of child/ren] but things have not changed sufficiently.

I am therefore writing to let you know that ***we are going to Court to try to make sure [name of child(ren)] is/are safe.*** This could mean that [name of child(ren)] will be removed from your care. You will soon receive a copy of our application to the Court and other important documents, which set out the key issues.

WHAT YOU MUST DO NOW:

- 1. Get a solicitor:** It is really important that you get advice from a solicitor who specialises in family law as soon as possible. They will help you understand the situation and advise you about your rights and your options. If you give them this letter you will not have to pay.

In case you do not have a solicitor, we have sent with this letter a list of local solicitors who work with children and families. They are all independent from Children's Services.

Information your Solicitor will need is:

Local Authority Legal Contact: Name, Address & Telephone:

- 2. Get your wider family involved:** Our concerns about [name(s) of child(ren)] are very serious. If the Court decides you cannot care for your child(ren), we will first try and place them with one of your relatives or a person or persons close to your child(ren), if it is best for your child(ren) to do this. You should therefore let us know immediately who in your family might be able to care for your child(ren). Please also ask them to get in touch with us directly.

Yours sincerely

[name]
Team Manager
Local office/service

cc Social Worker [name]
Local Authority in house Legal Team

Enc: List of solicitors firms who have members of the Law Society's Children Law
Accreditation Scheme

Annex C- Court order table

Orders	Legislation	Who can apply	Consequences
<p>Child arrangements order</p> <p>Prohibited steps order</p> <p>Specific issue order</p>	<p>Children Act 1989</p> <p>(section 8)</p>	<p>Section 10 of the Children Act sets out those who are eligible to apply.</p> <p>A local authority may not apply for a child arrangements order.</p>	<p>A child arrangements order which provides for a child to live with a person discharges any existing care order.</p> <p>If a child arrangements order provides for a child to live with a person, that person will also be awarded or be deemed to have parental responsibility if he/she does not already have it.</p> <p>If a child arrangements order provides for a child to spend time with or have other types of contact with a person, the court can, depending upon the circumstances, award or deem parental responsibility to that person if he/she does not already have it.</p>
<p>Special guardianship order</p>	<p>Children Act 1989</p> <p>(sections 14A-14F)</p>	<p>Section 14A of the Children Act sets out who is eligible to apply.</p> <p>Neither a birth parent nor a local authority may apply.</p>	<p>Any care order is automatically discharged.</p> <p>Section 34 order is discharged (parental contact etc with children in care)</p>
<p>Supervision order</p>	<p>Children Act 1989</p> <p>(section 31)</p>	<p>A local authority (or authorised person)</p>	<p>Provides for the child's upbringing to be supervised by the local authority for a year (this can be further extended to a maximum period of three years)</p>
<p>Care order</p>	<p>Children Act 1989</p> <p>(section 31)</p>	<p>A local authority (or authorised person)</p>	<p>The making of a care order discharges a supervision order.</p> <p>A care order also discharges any section 8 order.</p> <p>Where an activity direction is in place, the making of a care order discharges that</p>

Orders	Legislation	Who can apply	Consequences
			<p>direction.</p> <p>When a care order is in force, the court cannot make any section 8 order save for a CAO which makes provision as to where a child is to live.</p> <p>Where a child is a ward of court, the making of a care order brings wardship to an end.</p> <p>A care order has effect subject to any emergency protection order which is made</p>
Placement order	<p>Adoption and Children Act 2002</p> <p>(sections 21-24)</p>	Local authorities only	<p>A care order is suspended during the life of the placement order. It is automatically reactivated if the placement order is revoked.</p> <p>Any existing child arrangements order or supervision order ceases to have effect. [DN – better to leave this out or you need to explain it more fully and say which other orders it restricts]</p> <p>Any order for contact is dealt with under sections 26 and 27 of the 2002 Act.</p>
Order giving parental responsibility to prospective adopters, not domiciled or habitually resident in England or Wales, prior to adoption abroad	<p>Adoption and Children Act 2002</p> <p>(section 84)</p>	<p>A local authority may not apply [DN – not sure you need to say this. A s84 order is one made in favour of someone intending to adopt a child abroad so couldn't be an LA]</p>	<p>Confers on the applicant parental responsibility for the child and extinguishes the parental responsibility of any other person.</p>

Annex D: Additional information

Assessments under the Children Act 1989

Section 17

A child in need is defined under the Children Act 1989 as a child who is unlikely to achieve or maintain a satisfactory level of health or development, or their health and development will be significantly impaired, without the provision of services; or a child who is disabled. In these cases, assessments by a social worker are carried out under **section 17** of the Children Act 1989.

Children in need may be assessed under section 17 in relation to their special educational needs, disabilities, or as a carer, or because they have committed a crime.

Section 20

Some children in need may require accommodation because there is no one who has parental responsibility for them, because they are lost or abandoned or because the person who has been caring for them is prevented from providing them with suitable accommodation or care. Under **section 20** the local authority has a duty to accommodate such children in need in their area.

Section 47

Local authorities, with the help of other organisations as appropriate, also have a duty to make enquiries under **section 47** if they have reasonable cause to suspect that a child who lives in or is found in their area is suffering, or is likely to suffer, significant harm or if they are informed that a child who lives or who has been found in their area is subject to an emergency protection order or is in police protection, to enable them to decide whether they should take any action to safeguard and promote the child's welfare. There may be a need for immediate protection whilst the assessment is carried out.

Other public law orders not mentioned elsewhere in the guidance

Contribution Orders

Under Part III of Schedule 2 of the Children Act 1989, where a local authority is looking after a child it can, in certain circumstances, apply to the court for an order that the child's parents (or the child themselves if they have reached the age of 16) must contribute to the child's upkeep.

Education Supervision Orders

Under section 36 of the Children Act 1989, if a court considers a child of compulsory school age is not being properly educated it can make an order putting the child under the supervision of a particular education authority, (as long as the child is not in local authority care). These orders are usually made for up to 1 year, but can be extended.

Order giving permission to change a child's surname or remove them from the UK

Under section 33(7), while a care order is in place, no person may change a child's surname or remove him or her from UK (for longer than one month) without consent of every person with parental responsibility or permission of the court.

Exclusion requirement for Interim Orders

The court has the power to include in an interim care order an exclusion requirement that:

- (a) requires a particular person to leave the home in which they are living with the child;
- (b) prohibits a particular person from entering a house in which the child lives;

(c) excludes a particular person from a defined area in which a house in which the child lives is situated.

This power may be exercised only if the following conditions are satisfied:

(a) that there is reasonable cause to believe that if the relevant person is excluded from a 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 house is able and willing to give the child care that it would be reasonable to expect a parent to give him and consents to the exclusion requirement

The requirement may last as long as the interim order or may be for a shorter period, and the period may be extended on an application to vary or discharge the interim care order. A power of arrest may be attached to the order. The exclusion requirement will cease to have effect if the local authority removes the child from his home to other accommodation for more than 24 hours.

Further sources of information

Associated resources (external links)

- <https://www.cafcass.gov.uk/>
- <http://www.adcs.org.uk/>

Community Legal Advice

- www.communitylegaladvice.org.uk
- <http://legaladviserfinder.justice.gov.uk/AdviserSearch.do>

Family Rights Group is an organisation which provides free telephone and email advice to family members who are involved with Children's Services about the care and protection of their children.

Contact FRG's advice line for further advice, on 0808 801 0366. It is open Monday-Friday 9.30am-3.00pm. You can also email advice@frg.org.uk Advice sheets are available at <http://www.frg.org.uk/need-help-or-advice/advice-sheets> and discussion boards at: <http://www.frg.org.uk/discussion-board-for-homepage>

Coram Children's Legal Centre provides free independent legal advice to children, parents, carers and professionals. An advisor can be contacted on 08088 020 008. The advice line is open from 9.00am to 5.00pm Monday to Friday.

For solicitors who specialises in childcare law: you can contact:

i) Solicitors Regulation Authority, Ipsley Court, Redditch, Worcestershire B98 0TD
Telephone :0870 606 2555

ii) The Law Society of England and Wales, 113 Chancery Lane, London WC2A 1PL Tel:
020 7242 1222 Minicom: 0870 600 1560 Fax: 020 7831 0344

info.services@lawsociety.org.uk <http://www.lawsociety.org.uk/choosingandusing/findasolicitor>

Legal Aid

- www.justice.gov.uk/legal-aid/make-an-application

Advocacy

For help in finding an advocate for a child or young person

- Voice of the child in care
Website: <http://www.voiceyp.org/young-peoples-zone/talk-voice>
Telephone line: 0808 800 5792
- National Youth Advocacy Service
Website: <http://www.nyas.net/>
- Barnardo's Children's Advocacy Services Website:
http://www.barnardos.org.uk/what_we_do/our_projects/advocacy.htm Contact email service available from that website page.

Protocol of advice and advocacy for parents in child protection cases and code of practice for professional advocacy:

- www.frg.org/images/pdfs/advocacy-code.pdf

ADCS protocol for allocating responsibilities for court reporting

<http://adcs.org.uk/download/position-statements/aug-10/adcs-cafcass-protocol-for-allocation-reponsibilities-final-august-2010.pdf>

Other departmental advice and guidance you may be interested in

- Children Act 1989 <http://www.legislation.gov.uk/ukpga/1989/41/contents>
- Working Together to safeguard Children 2013-
<https://www.gov.uk/government/publications/working-together-to-safeguard-children> Adoption and Children Act 2002
- Adoption and Children Act 2002
<http://www.legislation.gov.uk/ukpga/2002/38/contents>
- The Children and Adoption Act 2006
<http://www.legislation.gov.uk/ukpga/2006/20/contents>
- Public law Outline and related materials
<http://www.justice.gov.uk/protecting-the-vulnerable/care-proceedings-reform>
- The Family Procedure Rules 2013
<http://www.justice.gov.uk/courts/procedure-rules/family>
- HEFA <http://www.legislation.gov.uk/ukpga/2008/22/contents>



Department
for Education

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