

Practice Guidance

The Legal Framework

1. Introduction

- 1.1 The protection of children involves the use of the civil and criminal law by LSCB agencies, primarily children's social care and the police. The law in this area can be complex and this note is by way of introduction only to the key concepts. In individual cases, children's social care and the police obtain legal advice in the preparation and presentation of cases to the courts.

2. Using Civil Law to Protect Children:

- 2.1 The Children Act 1989 is the primary legislation enabling and requiring children's social care to protect children in their area from the risk of significant harm.
- 2.2 **Duty to Investigate** Section 47 of the Act places children's social care under a duty to investigate where they have:
'reasonable cause to suspect that a child who lives, or is found, in their area is suffering, or is likely to suffer significant harm'
and to decide whether to take any action to safeguard or promote the child's welfare.
- 2.3 In conducting an enquiry children's social care can ask any of the following organisations for assistance and those organisations are obliged to provide it:
- any local authority
 - any local education authority
 - any housing authority
 - any health authority, Special Health Authority, primary care trust or NHS Trust
 - any person authorised by the Secretary of State.
- 2.4 **Emergency Procedures:** Under section 44 of the Act any person can apply to the court for an Emergency Protection Order (EPO) in respect to a child up to the age of 18 years, although it is usually children's social care that do so. The court has to be satisfied that there is reasonable cause to believe that the child is likely to suffer significant harm unless s/he is not removed to alternative accommodation (e.g. from home to foster care) or does not remain where s/he is currently accommodated (e.g. a safe environment such as a hospital). Alternatively, if during a Section 47 enquiry access to the child in question is frustrated and is required as a matter of urgency then an EPO can be made.
- 2.5 If the Court makes an Emergency Protection Order, under Section 44A it has power to include an exclusion requirement in the Emergency Protection Order provided that the following conditions are met:

- (a) that there is reasonable cause to believe that, if a person is excluded from a dwelling –house in which the child lives then either the child will not be likely to suffer significant harm or enquiries will cease to be frustrated; and
- (b) that another person living in the dwelling – house is able and willing to give to the child the care which it would be reasonable to expect a parent to give him and consents to the inclusion of the exclusion requirement.

2.6 Under Section 44 A (3) an exclusion requirement is any one or more of the following:

- (a) a provision requiring the relevant person to leave a dwelling-house in which he is living with the child.
- (b) a provision prohibiting the relevant person from entering a dwelling house in which the child lives,
- (c) a provision excluding the relevant person from a defined area in which a dwelling-house in which the child lives is situated.

Under Section 44A (6) the court may attach a power of arrest to an exclusion requirement.

2.7 An application can be made to the court without telling the parents of the child concerned. However, if this occurs and an order is made a parent has the right to apply for the order to be discharged and that application will not be heard until the expiry of 72 hours from the making of the order. An EPO lasts for a maximum of 8 days and can be extended for a further 7 days on one occasion only. An EPO gives children’s social care parental responsibility for the duration of the order and acts as a direction for anyone having the child to produce the child to children’s social care. Children’s social care must provide accommodation for the child and afford contact to the parents. Where circumstances change and it is deemed safe for the child to be returned home then children’s social care have an obligation to facilitate that.

2.8 In making an EPO the court can attach directions concerning the medical examinations and assessments, contact issues, or an exclusion requirement in respect of a suspected abuser. The court can also make an order granting a warrant authorising a constable to assist children’s social care in exercising their powers under an EPO.

2.9 **Police Protection**

Under Section 46 the Police have powers if there is reasonable cause to believe that a child would otherwise be likely to suffer significant harm, to:

‘remove a child to suitable accommodation and keep him there or take such steps as are reasonable to ensure that the child’s removal from any hospital, or other place, in which he is then being accommodated is prevented’

2.10 The power lasts for 72 hours. In such circumstances, the police are obliged to liaise with children’s social care. The police do not gain Parental Responsibility for the child.

2.11 Protective Measures through Family Proceedings:

Longer term protection can be secured through the making of a care or supervision order by the courts under Section 31. Only children's social care or the NSPCC can apply for these orders.

2.12 Before making an order the court will need to be 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:

- i) the care given to the child or likely to be given to him if the other order were not made, not being what it would be reasonable to expect a parent to give to him; or
- ii) the child being beyond parental control'

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and that it is better to make an order than to make no order at all.

2.13 An order can only be made provided the child has not reached the age of 17 years (or 16 years if the child is married).

2.14 An application for an order may take a considerable amount of time and the courts have power to make renewable time limited interim orders prior to the making of a final order. Such interim orders can have conditions attached.

2.15 Under Section 31 of the Children Act 1989 a Care Order gives parental responsibility to children's social care which they share with parents but they are able to determine to what extent parents are able to exercise those rights. There are some restrictions on the parental responsibility that children's social care have e.g. they cannot cause the child to be brought up in a different religious persuasion, consent to adoption or appoint a guardian. Children's social care have an obligation to promote contact between the child and its parents and the court is the ultimate arbiter on whether and to what extent there should be contact. An order lasts until the child reaches 18 years or is discharged earlier by the court.

2.16 Under Section 35 of the Children Act 1989 a Supervision order obliges children's social care to 'advise, assist and befriend the supervised child' but does not confer parental responsibility. An order can contain directions as to where the child should live, attending at designated places, and participating in specified activities; as well as requirements concerning medical examinations and treatment. An order can be made for an initial period of 12 months but may be renewed subsequently for up to 3 years.

2.17 Other legal proceedings: The Children Act 1989 also contains the law in respect of the arrangements for children in cases of family breakdown. In proceedings of this nature the courts have certain powers which impact upon children's social care:

- Section 37 provides that a court can order an investigation into a child's circumstances where it believes that a care or supervision order may be appropriate.

- Under Section 7 the court can order the Local Authority or a Cafcass Officer to report into the welfare of a child.
- In exceptional cases the court can make a Family assistance order under Section 16 to advise, assist and befriend any person adult or child named in the order.

2.18 **The Adoption and Children Act 2002:** The Adoption and Children Act 2002 came into force in December 2005. This added a new Section 14A to the Children Act 1989 where an application for a Special Guardianship Order can be made. The Special Guardianship Order appoints 'one or more individuals to be a child's 'special guardian' (or special guardians). A special guardian must be aged eighteen or over and must not be the parent of the child in question'.

2.19 Under Section 3, each local authority must continue to provide within their area an adoption service, designed to meet the needs of children who may be adopted, their parents and guardians, persons wishing to adopt a child and adopted persons, their parents, natural parents and former guardians. Facilities must include making and participating in arrangements for the adoption of children and arrangements for the provision of adoption support services.

2.20 Subsection (6) provides that adoption support services include counselling, advice and information in relation to adoption. Regulations will set out what other services are to fall within this definition. Subsection (7) provides that the Secretary of State must exercise the power under section 2(6)(b) to make regulations so as to secure that local authorities provide financial support.

2.21 **The Civil Court System:** The family court system has 3 tiers:

- Family Proceedings Court (a branch of the Magistrates' Court)
- County Court
- High Court

Each tier has the same powers in respect of children and as a general rule all cases start in the Family Proceedings Court. Although there is some minor restriction on cases being transferred to the other tiers more complex cases will be transferred to the County Court and those of greatest complexity to the High Court.

2.22 In the Family Proceedings Court, decisions are made by lay magistrates (although in some areas legally qualified District Judges hear cases) advised by a legally qualified clerk. County Court cases are heard by District Judges and Circuit Judges; whilst High Court cases are heard by High Court Judges.

2.23 The Courts are advised by officers of the Children and Family Court and Support Service who also represent the interests of the child who is subject of the proceedings. These officers are entitled to access to children's social care records on a child and to be consulted on plans for and to attend meetings about the child whilst the proceedings are ongoing.

3. Using the Criminal Law to Protect Children

- 3.1 Responsibility for the investigation of criminal offences rests with the police. The conduct of an investigation is regulated by the police and Criminal Evidence Act 1984 and the Criminal Procedures and Investigations Act 1996.
- 3.2 The Criminal Justice Act 1988 provides that video recorded interviews may be admitted as evidence in a criminal trial concerning certain sexual and violent offences. Videos are admissible in respect of the violent offences if at the time of making the video the child was under the age of 14 years; and for the sexual offences under the age of 17 years. Best practice in conducting such interviews is provided in guidance issued by the Home Office and Department of Health . Provision is also made for evidence to be given by video links and restrictions on cross-examination by defendants.
- 3.3 Agencies may be approached by either the prosecution or defence in criminal proceedings for access to records that are held about a child witness. These records will be confidential and legal advice should always be sought in such circumstances before any document is handed over.

4 The Human Rights Act 1998

- 4.1 State intervention in children's lives raises significant human rights issues under Article 8 and intervention will need to be in accordance with the law and proportionate.

5 The Data Protection Act 1998

- 5.1 The DPA impacts upon the exchange of information between agencies and the LSCB Chapter 2 – Information Sharing deals with this in more detail.

6. The Protection of Children Act 1999

- 6.1 The Protection of Children Act 1999 came into force in October 2000 and introduced the Protection of Children Act (PoCA) List in which the Secretary of State has duty to record the names of individuals who are considered unsuitable to work with children. All regulated childcare organisations (as defined in the Act) have a regulatory duty to refer the names of those individuals who fulfil certain criteria making them unsuitable to work with Children for possible inclusion in the PoCA List.