



The Children Act 1989

Guidance and

Regulations

Volume 1

Court Orders

department for
children, schools and families



The Children Act 1989

Guidance and Regulations

Volume 1

Court Orders

department for
children, schools and families

London: TSO



Published by TSO (The Stationery Office) and available from:

Online

www.tsoshop.co.uk

Mail, Telephone, Fax & E-mail

TSO

PO Box 29, Norwich, NR3 1GN

Telephone orders/General enquiries: 0870 600 5522

Fax orders: 0870 600 5533

E-mail: customer.services@tso.co.uk

Textphone 0870 240 3701

TSO Shops

16 Arthur Street, Belfast BT1 4GD

028 9023 8451 Fax 028 9023 5401

71 Lothian Road, Edinburgh EH3 9AZ

0870 606 5566 Fax 0870 606 5588

TSO@Blackwell and other Accredited Agents

Department for Children, Schools and Families

Sanctuary Buildings

Great Smith Street

London SW1P 3BT

Tel: 0871 011 2345

Published with the permission of the Department for Children, Schools and Families on behalf of the Controller of Her Majesty's Stationery Office.

© Crown Copyright 2008

All rights reserved.

Copyright in the typographical arrangement and design is vested in the Crown.

Applications for reproduction should be made in writing to

HMSO, The Licensing Division, St Clements House, 2-16 Colegate, Norwich NR3 1BQ

First published 2008

ISBN 978 0 11 271196 4

Printed on paper containing 75% recycled fibre content minimum

Printed in the United Kingdom by The Stationery Office Limited

N5753076 C50 2/08

Preface

Volume 1 of the Children Act Guidance and Regulations, first published in 1991, provides guidance, primarily addressed to local authorities and their staff, about the court-related provisions set out in the Act. Following the *Review of the Child Care Proceedings System in England and Wales*, published in May 2006, and public consultation on draft guidance between June and September 2007, this revised volume of guidance has been prepared. This replaces the 1991 edition and comes into effect from 1 April 2008.

Volume 1 is issued as guidance 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. The guidance should be complied with by local authorities when exercising these functions, unless local circumstances indicate exceptional reasons that justify a variation.

The guidance is primarily addressed to children services practitioners and front-line managers who, supported by their legal advisers, have particular responsibilities for safeguarding and promoting the welfare of children. It is also highly relevant to Directors of Children's Services and other senior local authority managers, who together oversee the exercise by local authorities of their functions under the Children Act 1989, in relation to safeguarding and promoting the welfare of children.

Volume 1 also provides a complete account of the range of court orders set out in the Act, including those that are predominantly used in 'private law' proceedings, where local authorities are less often directly involved. The guidance also describes the key principles underpinning the Act and the roles of the police and of the Children and Family Court Advisory and Support Service (Cafcass) in relation to the Act.

Alongside the publication of the guidance, the President of the Family Division, Sir Mark Potter, is issuing a new Practice Direction (guidance to judges and magistrates) which sets out a 'Public Law Outline', determining how section 31 care and supervision proceedings cases (and other types of 'public law' cases) are to be managed. This Practice Direction, which is annexed to this guidance, replaces the *Protocol for Judicial Case Management in Public Law Children Act Cases*, published in 2003. The focus of the 'Public Law Outline' is on improved case preparation, active case management, the early identification of the key issues requiring determination and cooperation between the parties to achieve timely decisions within the 'timetable for the child'.

Contents

Chapter 1	Introduction	5
	Summary – Paras 1.1–1.7	5
	Children and their families – Para 1.8	5
	Child centred welfare principles – Paras 1.9–1.15	6
	Concurrent system of jurisdiction – Paras 1.16–1.18	7
	Appeals – Paras 1.19–1.21	8
	Role of Cafcass – Paras 1.22–1.26	8
	Arrangement of the guidance – Paras 1.27–1.29	9
Chapter 2	Parental Responsibility and Private Law Aspects of the Act	11
	Summary – Paras 2.1–2.4	11
	Introduction – Para 2.5	11
	The meaning of parental responsibility – Paras 2.6–2.7	12
	Married and unmarried parents – Paras 2.8–2.11	12
	Step parents – Paras 2.12–2.14	13
	Delegation of the exercise of parental responsibility – Para 2.15	14
	Responsibility of carers – Paras 2.16–2.17	14
	Guardianship – Para 2.18	14
	Appointment of guardians – Paras 2.19–2.23	15
	Revocation, disclaimer and termination – Paras 2.24–2.26	16
	Section 8 orders – Paras 2.27–2.28	16
	Residence orders – Paras 2.29–2.34	17
	Contact orders – Paras 2.35–2.36	18
	Prohibited steps orders – Para 2.37	19
	Specific issue orders – Paras 2.38–2.41	19
	The meaning of family proceedings – Paras 2.42–2.44	20
	Applications for section 8 orders – Paras 2.45–2.54	21
	The position of local authority foster parents – Paras 2.55–2.56	23
	The position of local authorities – Para 2.57	23
	Older children – Para 2.58	23
	Special guardianship – Paras 2.59–2.66	24

Family assistance orders – Paras 2.67–2.71	25
Risk assessment – Para 2.72	26
The court’s duty when considering whether to make an order – Paras 2.73–2.75	27
The relationship between private law orders and public law proceedings – Paras 2.76–2.77	27
Financial provision for children – Paras 2.78–2.79	28
Chapter 3 Care and Supervision Orders	30
Summary – Paras 3.1–3.5	30
Care and supervision orders – Paras 3.6–3.11	31
Assessment processes – Paras 3.12–3.18	32
Applications for care and supervision orders (Sections 31 and 32) – the order making powers of the court – Paras 3.19–3.21	35
Matters to be considered by local authorities before making an application for a care order or supervision order – Paras 3.22–3.33	36
The making of the application – Para 3.34	38
Conditions for a care or supervision order – Paras 3.35–3.42	39
Initial hearings: court requirements and party status – Para 3.43	40
Interim orders – Paras 3.44–3.47	41
Duration of interim orders – Para 3.48	41
Directions on examination and assessment when an interim order is made – Paras 3.49–3.52	42
Including an exclusion requirement – Paras 3.53–3.56	43
Effects of, and responsibilities arising from, interim orders – Para 3.57	44
Effect of care orders – Paras 3.58–3.64	44
Discharge of care orders and discharge and variation of supervision orders – Paras 3.65–3.69	45
Appeals against care and supervision orders – Para 3.70	46
Contact with children in care – Paras 3.71–3.79	46
Supervision orders – Paras 3.80–3.84	48
Wardship and the inherent jurisdiction of the High Court – Paras 3.85–3.88	50

Chapter 4	Protection of Children	51
	Summary – Paras 4.1–4.5	51
	Introduction – Paras 4.6–4.9	52
	Child assessment orders section 43 – Paras 4.10–4.14	52
	Commencement and duration – Paras 4.15–4.23	53
	Practice issues – Para 4.24	55
	Emergency protection orders, sections 44, 44A, 44B and 45 – Paras 4.25–4.31	55
	The grounds for making an emergency protection order: section 44 – Para 4.32	57
	EPO on grounds that access to the child has been frustrated – Paras 4.33–4.38	57
	EPO on general grounds – Paras 4.39–4.52	58
	Court directions – Paras 4.53–4.56	61
	Duration of EPOs – Paras 4.57–4.58	62
	Appeal and discharge of EPOs – Paras 4.59–4.63	62
	Police powers – Paras 4.64–4.72	63
	Local authorities’ duty to make enquiries under section 47 – Paras 4.73–4.82	65
	Abduction of children in care – Paras 4.83–4.84	67
	Recovery orders – Paras 4.85–4.89	67
Chapter 5	Secure Accommodation Orders	69
	Summary – Para 5.1	69
	Introduction – Paras 5.2–5.3	69
	Criteria for the restriction of liberty – Paras 5.4–5.8	70
	Applications to the court – Paras 5.9–5.17	71
Annex 1	Letter before proceedings – template letter	73
Annex 2	The Public Law Outline – Guide to Case Management in Public Law Proceedings	76
Annex 3	The Public Law Outline – Flowcharts: Court Proceedings and Pre-Proceedings	112
	References and Internet Links	114

Chapter 1: Introduction

Summary

- 1.1 This Chapter identifies the key principles underpinning the Children Act 1989, in particular those relating to the paramountcy of children’s welfare as the court’s key consideration in a range of family proceedings concerning the upbringing of children, the desirability of avoiding delay and the expectation that a court will only make an order where it is better for the child than for no order to be made.
- 1.2 The ‘welfare checklist’ (section 1(3)) is set out, alongside the freedom of the court to make a range of orders in Children Act proceedings, above and beyond the specific order that might have been the subject of the application before it.
- 1.3 The range of courts able to hear cases is listed, as are the levels of court at which appeals may be heard. The functions of Cafcass (the Children and Family Court Advisory and Support Service) are also set out.
- 1.4 The Children Act 1989 (‘the Act’) provides a single coherent legislative framework for the private and public law relating to children. It strikes a balance between the rights of children, the responsibilities of both parents to the child and the duty of the state to intervene when the child’s welfare requires it.
- 1.5 The courts have considerable scope for discretion in their decisions about children. It is therefore important that practitioners in the field have a proper understanding of the legislative framework and the way in which it is operated in practice.
- 1.6 This guidance considers the orders available under Parts 1, 2, 4 and 5 of the Act as well as secure accommodation orders (Part 3, section 25).
- 1.7 As with much else in the Act, court orders should not be seen as a free-standing end product but must be considered within the context of a wide range of provisions available under the Act to safeguard and promote the welfare of children, before, after and outwith court proceedings. This guidance needs to be read in conjunction with other guidance and Regulations in relation to the Act.

Children and their families

- 1.8 The Act is based on the belief that children are generally best looked after within the family, with their parents playing a full part in their lives and with least recourse to legal proceedings. That belief is reflected in:
 - (a) the concept of parental responsibility;

- (b) the ability of unmarried fathers to share that responsibility by agreement with the mother, by joint registration at birth or by court order;
- (c) the local authority's duty to provide services which support children and their families;
- (d) the local authority's duty to return a child looked after by them to his family unless this is against his interests; and
- (e) the local authority's duty, unless it is not reasonably practicable or consistent with his welfare, to endeavour to provide contact between a looked after child and his parents and others.

Child-centred welfare principles

- 1.9 Section 1 sets out the overarching welfare principle to be applied in all proceedings under the Act.
- 1.10 In deciding any question about a child's upbringing and the administration of his property, the court must treat the welfare of the child as its paramount consideration. This applies as much to disputes between parents as it does to care proceedings and emergency protection proceedings.
- 1.11 The Act makes it clear that any delay in court proceedings is generally harmful to children, not only because of the uncertainty it creates for them but also because of the harm it may cause to the future parenting of the child. Progress of a case is controlled by the court (rather than by the parties) through active case management, in accordance with court rules and guidance to the judiciary issued by the President of the Family Division. Parties must ensure that they comply with any directions made by the court to ensure the progression of cases and should expect to be answerable to the court if its directions are not followed.
- 1.12 In contested section 8 proceedings, special guardianship applications and in all care and supervision proceedings the court, when applying the welfare principle, should have regard to the following checklist of factors, which focuses not only on the needs of the child but also on his views and the options available to the court:
- (a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);
 - (b) his physical, emotional and educational needs;
 - (c) the likely effect on him of any change in his circumstances;
 - (d) his age, sex, background and any characteristics of his which the court considers relevant;
 - (e) any harm which he has suffered or is at risk of suffering;
 - (f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs; and
 - (g) the range of powers available to the court under this Act in the proceedings in question.

- 1.13 The Act makes clear that, whatever the order applied for in private law (section 8) proceedings, the court may make any other private law order if it thinks it is best for the child, or may trigger a local authority investigation (under section 37), through which the authority will ascertain whether it should apply for one of the public law orders available to protect the child. The full range of orders, including public law orders, private law orders or no order, is also available to a court hearing a local authority application for a care or other order in respect of the child. A court may make a private law order in any other family proceedings (as defined by section 8(4)) plus the inherent jurisdiction of the High Court.
- 1.14 The Act prohibits the court from making an order unless it would be better for the child than making no order at all. This prohibition applies even where the court, in section 31 care and supervision proceedings, determines that the harm threshold condition is satisfied. In such cases, the court will consider whether or not an order is necessary.
- 1.15 There are three aims underpinning this principle. The first is to discourage unnecessary court orders from being made. The restriction of orders to those cases where they are necessary to resolve a specific problem is intended to reduce conflict and promote parental agreement and co-operation. The second aim is to ensure that the order is granted only where it is likely positively to improve the child's welfare and not simply because the grounds for making the order are made out. For example, in care proceedings the court may decide that it would be better for a particular child not to be made the subject of a care order, which would place that child in local authority care. The application by the court of this 'no order' principle should not deter local authorities from bringing proceedings in those cases where they believe that a care or supervision order is necessary in order to safeguard and promote a child's welfare. The third aim is to discourage the making of unnecessary applications.

Concurrent system of jurisdiction

- 1.16 The Act creates a concurrent system of jurisdiction for a wide range of family proceedings in magistrates' courts, county courts and the High Court. Rules and guidance governing the allocation and transfer of cases, either vertically between the various tiers or horizontally within tiers, are intended to ensure that cases are directed to the most appropriate level of court.
- 1.17 In practice, many public law cases will be heard entirely in the magistrates' court (also known as the family proceedings court) as this will usually be the most appropriate court and this is where most applications have to commence. In private law cases, applicants may choose either the magistrates' court or the county court. Both levels of court have powers to transfer cases to each other if that is the most appropriate venue. The term 'public law' refers to cases concerning children where the applicant is generally a public body, most typically a local authority. The term 'private law' describes cases where issues about children have arisen as a result of disagreements between family members (most commonly the parents) about arrangements for their children.
- 1.18 An allocation order sets out the criteria on which decisions about transfers between different levels of court should be based, which take into account the overriding principle that delay is likely to prejudice the welfare of the child.

Appeals

- 1.19 There is a general right of appeal from a magistrates' court to the High Court against both the making of and refusal to make any order. The major exception is that there can be no appeal against the making of or refusal to make an emergency protection order, though provisions exist for discharge applications to be made. The Act contains three provisions in relation to appeals in care proceedings, namely:
- (a) appeals lie to the High Court (where the original proceedings were heard in the magistrates' court);
 - (b) appeals lie against the refusal as well as the making of a care or supervision order;
 - (c) the local authority and any other party have full rights of appeal.

An appeal against a decision of a district judge in a county court lies to a judge of the county court. An appeal by a district judge of the High Court lies to a judge of the High Court. An appeal against a decision of a judge of the county court or a judge of the High Court lies to the Court of Appeal.

- 1.20 The rules of court, which regulate the proceedings across all three tiers of jurisdiction have been designed to promote, as far as is possible, a non-adversarial style in court, within which issues are resolved as constructively as possible, in the interests of the child. Following application, preliminary hearings and Issues Resolution Hearings may be held, at which directions are made by a judge or magistrate. These are aimed at minimising delay and narrowing issues of difference between parties, by identifying the key issues which require resolution in order to determine the application.
- 1.21 To facilitate ease of transfer between different jurisdictional tiers and to encourage the preparation of documentary evidence and advance disclosure, applications for most public and private law orders are made by way of prescribed forms. Applicants are required to give a considerable amount of information as to the nature of their case, the order (and any accompanying directions) sought and, where relevant, their future plans for the child.

Role of Cafcass

- 1.22 The function of the Children and Family Court Advisory and Support Service (Cafcass) is, in respect of family proceedings where the welfare of children is or may be in question, to:
- safeguard and promote the welfare of the children;
 - give advice to any court about any application made to it in such proceedings;
 - make provision for the children to be represented in such proceedings; and
 - provide information, advice and other support for the children and their families.

The Cafcass officer is under a statutory duty (section 41(2)) to safeguard the interests of children in family proceedings and in doing so must have regard to the 'no delay' principle (section 1 (2)) and the matters listed in section 1(3). In private law cases, Cafcass provides an early intervention service, working directly with families to promote good and safe outcomes for children and to reduce conflict over contact and residence arrangements. Where agreement cannot be reached through such interventions a range of options is open

to the court. Cafcass may be asked to recommend a case plan for further work, or the court may order a report under section 7 of the Act. Section 6 of the Children and Adoption Act 2006 also provides for Cafcass practitioners to undertake and report to the court on risk assessments, in particular in private law cases. The court may request that a local authority provides a section 7 report. This may arise in situations where local authorities are already actively involved with such families, perhaps through the provision of services to a child in need.

- 1.23 The Children and Adoption Act 2006 inserted a new section 16A into the Act, which places a duty on Cafcass practitioners to carry out a risk assessment in relation to a child in certain circumstances and to provide that risk assessment to the court. The circumstances in which a risk assessment should be carried out are where the officer is carrying out a function in connection with family proceedings in which the court has the power to make an order under Part 2 of the Act, or in which a question with respect to such an order arises, or he is carrying out a function in connection with an order made in such proceedings and he 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.
- 1.24 When the court orders a report, the Cafcass practitioner makes enquiries into the circumstances of the family, interviews all parties (including the child(ren) and parents) and writes a case analysis or report with a recommendation to the court on the arrangements that would be in the child's best interests. The court makes the final decision based on all the evidence submitted, including the Cafcass analysis or report and evidence from the parents or others.
- 1.25 Where a child is involved in a particularly complex private law case, he can be separately represented, usually by a Cafcass practitioner and solicitor, under rule 9.5 of the Family Proceedings Rules 1991. In such cases, the child becomes a party to the proceedings.
- 1.26 In public law proceedings under the Act, Cafcass provides Children's Guardians to represent the interests of children and to appoint a solicitor for the child.

Arrangement of the guidance

- 1.27 The chapters in this guidance follow broadly the relevant parts of the Act. Chapter 2 considers private law matters relating to children under Parts 1 and 2. These focus on the child's interests and the need to resolve specific areas of dispute. The orders are designed to settle particular matters. They are made principally in private family proceedings, though certain Part 2 orders, such as residence orders and special guardianship orders, may also be made as a result of public law section 31 proceedings (described in Chapter 3). Separate guidance is available on special guardianship orders, which are briefly described in Chapter 2.
- 1.28 Parts 4 and 5 of the Act establish the framework for compulsory intervention in the care, supervision and protection of children. The basis for statutory intervention is directed towards the existence of current or likely future harm to the child. Chapter 3 deals with care and supervision orders. The law on the protection of children is discussed in Chapter 4.

1.29 Chapter 5 provides the basic statutory framework in the Act governing the restriction of liberty of children being looked after by local authorities and how this protection is extended to children in other types of accommodation.

Chapter 2: Parental Responsibility and Private Law Aspects of the Act

Summary

- 2.1 This Chapter opens by describing the concept of ‘parental responsibility’, identifying who, beyond a child’s mother (who automatically has parental responsibility), has it or may acquire it. An explanation is then provided of the concept of guardianship for children, as well as the means by which it can be revoked, disclaimed or terminated.
- 2.2 This Chapter then goes on to describe the range of orders that may be applied for under section 8 of the Act: residence, contact, prohibited steps and specific issues. Information is then provided about who may apply for such orders and the meaning of the term ‘family proceedings’, within which section 8 orders may be made.
- 2.3 Specific guidance is given about the position, as applicants for section 8 orders, of local authority foster parents and of local authorities themselves. An explanation is also provided about special guardianship orders and how these may be obtained. Family assistance orders are also described.
- 2.4 An explanation is provided about the relationship between private law orders and public law proceedings, given the ability of the court to make private law orders in a wider range of proceedings than section 8 proceedings alone. Finally, the statutory code governing financial provision for children is explained.

Introduction

- 2.5 Part 2 of the Children Act 1989 makes provision for private law matters relating to children. The term ‘private law’, as distinct from ‘public law’, signifies that public bodies, in particular local authorities, are not normally a party to proceedings under this part of the Act. Under Part 2 of the Act, the courts have the power to make a range of orders in respect of children in ‘family proceedings’, as defined by the Act. These orders are intended to underpin the resolution, in the interests of the affected child, of specific areas of dispute, to promote safe and positive outcomes for children and to encourage both parents to maintain their involvement in the child’s life. They are made principally in private family proceedings, but some may also be made in public law (care and supervision) proceedings under Part 4 of the Act and also in adoption proceedings.

The meaning of parental responsibility

- 2.6 Parental responsibility is defined by section 3 of the Act as “all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to a child and his property” (section 3(1)). Parental responsibility is concerned with bringing the child up, caring for him and making decisions about him, but does not affect the relationship of parent and child for other purposes. Thus, whether or not a parent has parental responsibility for a child does not affect any obligation towards the child, such as the statutory duty to maintain him (section 3(4)(a)).
- 2.7 In reading any provision of the Act relating to a parent, therefore, it is important to consider whether it applies to any parent or only to a parent with parental responsibility. 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 1990), while an unmarried father only has parental responsibility if he has acquired it through one or another of the means set out in paragraph 2.8 below.

Married and unmarried parents

- 2.8 If the child’s father and mother were married to one another at the time of his birth, they each have parental responsibility for the child (section 2(1)). The same applies if they are or have been married to one another at any time since the child’s conception (by virtue of section 1(2) and (4) of the Family Law Reform Act 1987). If the child’s father and mother were not married to one another at the time of the child’s birth and have not subsequently married one another, only the mother automatically has parental responsibility (section 2(2)). An unmarried father may, however, acquire parental responsibility in four different ways:
- (a) by applying to the court for a parental responsibility order under section 4(1). Where the court makes a residence order in favour of an unmarried father who does not already have parental responsibility, it must also make a parental responsibility order under section 4 (section 12(1)): in this way his parental responsibility will not automatically come to an end should the residence order end;
 - (b) by making an agreement with the mother under section 4(1), in the form and recorded in the manner prescribed by the relevant Secretary of State in Regulations (section 4(2)) (Parental Responsibility Agreement Regulations 1991 SI 1991/1478 and Parental Responsibility Agreement (Amendment) Regulations 2005 SI 2005/2808): this is intended to convey to parents the importance and legal effect of such an agreement, which is the same as an order under section 4(1) and can only be brought to an end by a court order;
 - (c) by jointly registering, with the mother, the child’s birth (section 4(1)(a) and 4(1A)). (Parental responsibility through joint registration applies only to children born on or after 1 December 2003- joint registration prior to this date did not confer parental responsibility on unmarried fathers.) Any of the above ways of acquiring parental responsibility under section 4 places the unmarried father in the same position as a married father, sharing parental responsibility with the mother, save that, unlike a married father or mother, he can lose his parental responsibility, should the court make an order to that effect; or

(d) by being appointed guardian, either by the mother or by a court, to assume parental responsibility after the mother's death.

- 2.9 If, following a child's birth, the mother and father wish to share responsibility for bringing up the child it will, in most circumstances, be in the child's interests for an unmarried father to acquire parental responsibility by registering the child's birth with the mother or by making a parental responsibility agreement.
- 2.10 Any of the means of acquiring parental responsibility under section 4(1) (by agreement with the mother, by jointly registering the child's birth or by court order) can only be brought to an end by a court order. Any person who has parental responsibility for the child (which includes the father), or the child himself with leave of the court (which may only be granted if the court is satisfied that the child has sufficient understanding to make the application) (section 4(4)), may apply for the parental responsibility, acquired under section 4(1), to be brought to an end (section 4(3)). Otherwise, parental responsibility acquired under section 4(1) will end automatically when the child reaches the age of eighteen (section 91(7) and (8)).
- 2.11 An unmarried father who does not have parental responsibility is nevertheless a 'parent' for the purposes of the Act. He therefore has the same right as any other parent to apply to the courts for any type of order (section 10(4)) under Part 2 and is entitled to reasonable contact with a child in care (under section 34(1)). He is not, however, entitled to remove a child from accommodation provided under section 20, he is not automatically a party to section 31 (care and supervision) proceedings, his consent to placement for adoption or adoption of his child is not required, nor can he appoint a guardian.

Step-parents

- 2.12 The Adoption and Children Act 2002 inserted a new section (4A) into the Children Act 1989, which allows step-parents to acquire parental responsibility for their step-children. Parental responsibility can be obtained under this section by a person who is married to or the civil partner of a parent with parental responsibility for the child, either with the consent of the parent (and the child's other parent, if they have parental responsibility for the child) (section 4A(1)(a)), or by court order (section 4A(1)(b)). An agreement under section 4A(1)(a) is also a 'parental responsibility agreement'. Section 4A was inserted to allow step-parents to acquire parental responsibility for their step-children without having to go through the adoption process and therefore without depriving the child's other parent of their status.
- 2.13 Parental responsibility acquired under section 4A can only be brought to an end by a court order on the application of anyone with parental responsibility for the child or, with the court's leave, on the application of the child himself (section 4A(3)). Leave to apply should only be granted to the child if the court is satisfied that the child has sufficient understanding to make the application (section 4A(4)).
- 2.14 A parental responsibility agreement under section 4A must also be in the form prescribed in the Parental Responsibility Agreement Regulations 1991/1478 (as amended by SI 2005/2808).

Delegation of the exercise of parental responsibility

2.15 Informal arrangements for the delegation of parental responsibility are covered by section 2(9), which provides that a person with parental responsibility cannot surrender or transfer any part of that responsibility to another, but may arrange for some or all of it to be met by one or more persons acting on his behalf. The person to whom responsibility is delegated may already have parental responsibility for the child, for example if he is the other parent (section 2(10)). Such an arrangement will not, however, affect any liability of a person with parental responsibility for the child for failure to meet that responsibility (section 2(11)). Thus, the Act recognises the right of parents to delegate responsibility for their child on a temporary basis, for example to a babysitter or for specific purposes such as a school trip, but it will still be the parent's duty to ensure that the arrangements made for temporary care of the child are satisfactory. Otherwise, the parent may be guilty of an offence relating to the neglect or abuse of a child.

Responsibility of carers

2.16 The position of the temporary carer is clarified by section 3(5), which provides that a person who has care of the child but does not have parental responsibility may do "what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child's welfare" (section 3(5)). This covers actions taken by people looking after a child who is being accommodated by a local authority under section 20, provided that these are reasonable in the circumstances. What is reasonable will depend upon the urgency and gravity of what is required and the extent to which it is practicable to consult a person with parental responsibility.

2.17 The remaining provisions relating to the sharing of parental responsibility are dealt with below.

Guardianship

2.18 The object of guardianship under the Act is to ensure that an appropriate person can exercise parental responsibility for a child whose parents have died. Guardians will, of course, generally not be parents of the child. A guardian must be an 'individual', which term does not include a local authority, voluntary organisation or trust corporation. Once the appointment takes effect, the guardian will have the same parental responsibility as a birth parent (section 5(6)). It is not possible to appoint a guardian who is responsible for the child's property but not for bringing him up (save that Rule 21.13 of the Civil Procedure Rules 1998 (SI 1998/3132) allows the court to appoint the Official Solicitor to act as guardian of the child's estate in certain specific cases, for example in handling criminal injuries compensation or other compensation awarded by the court to a child, though such an appointment must be with the agreement of all persons with parental responsibility for the child, unless the court considers that their consent can be dispensed with). A guardian may be appointed by any parent with parental responsibility, or by any guardian (including a special guardian) or by a court. However, it is important to note that a private appointment only takes effect, and a court appointment can only be made, if the child has no parent with parental responsibility for him, the parent, guardian or special guardian who had a residence order in his or her favour dies (though a private appointment only takes effect if there is also

no parent with parental responsibility) or there is no surviving special guardian (see 2.22 below).

Appointment of guardians

- 2.19. The appointment of a ‘guardian’ for a child under these provisions should not be confused with the appointment of a Cafcass Children’s Guardian in public law proceedings (see chapter 3). A court can appoint a guardian either on application or of its own motion in any family proceedings (section 5(1) and (2)). The appointment of a guardian might therefore be made instead of, or even in addition to, a care order in care proceedings. However, the court only has power to appoint a guardian in three situations:
- (a) where the child has no parent with parental responsibility for him, either because both parents have died, or because his mother has died and his father does not have parental responsibility;
 - (b) where there was a residence order in force in favour of a parent, guardian or special guardian who has died, and there is no surviving parent who also has a residence order (section 5(9)); this is to cater for a child whose parents or special guardians are separated when the parent with whom he is living dies and there is a court order providing that the child is to live with one particular parent or guardian; or
 - (c) where paragraph (b) above does not apply (i.e. there was no residence order in force) and the child’s only or last surviving special guardian dies.
- 2.20. If any of the above situations arise in relation to a child who is the subject of a care order, the local authority may wish to consider whether it would be in the child’s interests for someone, perhaps a member of the family, to be appointed to take the place of the parent who has died. That person would share parental responsibility with the authority, in whose favour the care order has been made, and would be entitled to reasonable contact with the child under section 34(1), to apply for the care order to be discharged under section 39(1) and to withhold agreement to the child’s adoption unless this could be dispensed with on any of the usual grounds. For some children this could be a valuable way of demonstrating the continued commitment and concern of their extended family, even if for the time being they are to remain in local authority care.
- 2.21 For a child who is accommodated under section 20, it may be even more beneficial for a guardian to be appointed, particularly if the threshold criteria for making a care order do not exist. Even if they do, the authority may wish to consider whether the appointment of a guardian would serve the child’s interests better than making a care order.
- 2.22 Guardians may also be appointed by any parent with parental responsibility (section 5(3)) and by guardians themselves or by special guardians (section 5(4)). These appointments only take effect in the situations where a court has power to make an appointment, i.e. when there is no surviving parent with parental responsibility or when the person making the appointment had a residence order in his favour immediately before his death or he was the child’s only or last surviving special guardian (section 5(7)) unless the residence order was made in favour of a surviving parent as well (section 5(9)).

2.23 The formalities for the private appointment of a guardian (or guardians) do not require that the appointment be made only by deed or by will. Instead, an appointment will be valid provided it is in writing and is dated and signed by the person making the appointment. Alternatively, the person making the appointment may direct another person to sign on his behalf, provided this is done in his presence and in the presence of two witnesses who each attest the signature (section 5(5)). A person appointed as a guardian under section 5 has parental responsibility for the child (section 5(6)) but the appointment only takes effect once the person making the appointment has died.

Revocation, disclaimer and termination

2.24 Section 6 governs the revocation, disclaimer and termination of guardianship. The basic principle is that any later private appointment revokes an earlier one made by the same person in respect of the same child, unless it is clear that the purpose was to appoint an additional rather than a substitute guardian (section 6(1)). Any appointment made in a will or codicil is revoked if the will itself is revoked in accordance with the special rules relating to the revocation of wills (section 6(4)), but all appointments, however made, can also be revoked in the same simple way that an appointment can be made (section 6(2): see paragraph 2.23 above), and an appointment made in a document other than a will or codicil can be revoked by destroying the document with the intention of revoking the appointment (section 6(3)). An appointment is also revoked if the person appointed is the spouse or civil partner of the person making the appointment and the marriage or civil partnership is subsequently dissolved or annulled (section 6(3A) and (3B)).

2.25 There is also a right for a privately appointed guardian formally to disclaim his appointment by written instrument, signed by him and made within a reasonable time of his first knowing that the appointment has taken effect (section 6(5)).

2.26 Guardianship comes to an end automatically when the child reaches the age of 18 (section 91(7) and (8)), whether the appointment was made by the court or privately. Any appointment may also be brought to an end by order of the court on the application of:

- (a) any person, including a local authority, who has parental responsibility for the child;
- (b) with leave, the child himself; or
- (c) of the court's own motion in any family proceedings (section 6(7)).

Section 8 orders

2.27 Section 8 provides for the following orders: contact orders, prohibited steps orders, residence orders and specific issue orders. These are defined in section 8(1) as follows:

“a contact order” means an order requiring the person with whom a child lives, or is to live, to allow the child to visit or stay with the person named in the order, or for that person and the child to have contact with each other;

“a prohibited steps order” means 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;

“a residence order” means an order settling the arrangements to be made as to the person with whom a child is to live; and

“a specific issue order” means 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.

Any of these orders, or any order varying or discharging such an order, is referred to in the Act as ‘a section 8 order’. The court is able to make a section 8 order either upon application or of its own motion (section 10(1)(a) and (b)), unlike care and supervision orders which may not be made of the court’s own motion, except on an interim basis (section 38(1)(b)). The court also has power, when making any section 8 order, to include directions about how it is to be carried into effect, to impose conditions to be complied with (i) by any person in whose favour the order is made, or (ii) a parent, or (iii) a non-parent with parental responsibility, or (iv) a person with whom the child is living, to specify the period over which the order, or any provision contained in it, will have effect, and to make such incidental, supplemental or consequential provision as the court thinks fit.

- 2.28 Under section 91(10), subject to any specific provisions in the order to the contrary made under section 9(6) or section 12(5) a section 8 order ceases to have effect when the child reaches the age of 16. Section 91(11) provides that where a section 8 order is to have effect beyond the age of 16, it ceases to have effect when the child reaches the age of 18. A section 8 order cannot continue past the child’s eighteenth birthday. See 2.58 for further guidance on the extension of orders beyond a child’s sixteenth birthday.

Residence orders

- 2.29 A residence order is flexible and able to accommodate a variety of shared care arrangements. The intention is that both parents should feel that they have a continuing role to play in relation to their children, on a defined basis if necessary.
- 2.30 Section 2(5) provides that more than one person may have parental responsibility for a child at the same time while the effect of section 2(6) is that a person with parental responsibility for a child does not lose it just because some other person subsequently acquires it. Thus, the making of a residence order in favour of one parent does not take away parental responsibility from the other. Nor do the parent or parents of a child lose parental responsibility when a third party who is neither parent nor guardian of the child acquires parental responsibility, through the making of a residence order or a special guardianship order in his or her favour (section 12(2)). The making of a care order has the effect of discharging any pre-existing section 8 order (including a residence order) in force in respect of that child (section 91(2)). The making of a residence order in respect of a child who is the subject of a care order discharges the care order (section 91(1)).
- 2.31 Section 2(7) provides that, where parental responsibility is shared, each person with parental responsibility may act independently of the other in meeting that responsibility. Thus, although the making of a residence order in favour of one parent may curb the other parent’s ability to act independently, to the extent that in practice the day to day care of the child is largely controlled by the parent with whom the child lives, when the child is with the non-resident parent he or she may meet his or her parental responsibility to the full, without

the need for consultation with the other parent. The only restrictions on this are that neither parent may act independently in matters where the consent of more than one person is expressly required by statute (section 2(7)), for example under section 1 of the Child Abduction Act 1984 in relation to removal of the child from the United Kingdom or under section 19 of the Adoption and Children Act 2002 in relation to agreement to placement for adoption; nor may either parent act in any way that is incompatible with any order made in respect of the child (section 2(8)). Thus, for example, one parent may not remove the child from the physical care of the parent (or indeed any other person) with whom the child is to live by virtue of a residence order but could take the same interest as any other parent in his child's education. The same would apply in the case of a non-parent with whom the child is to live by virtue of a special guardianship order.

- 2.32 By section 12(2) the making of a residence order in favour of a person who is neither parent nor guardian of a child has the effect of conferring parental responsibility on him or her while the residence order remains in force. However, he or she, like a local authority with a care order in its favour (see section 33(6)), does not acquire the right to consent or refuse consent to the placement of a child for adoption or to the making of a placement order, the making of an adoption order or the right to appoint a guardian. By section 12(1), where a residence order is made in favour of an unmarried father the court must also make an order under section 4 giving him parental responsibility. Under section 12(4), this must not be brought to an end while the residence order remains in force. Indeed, if the residence order is subsequently discharged the order giving him parental responsibility will continue unless it is specifically revoked. In such cases it will usually be in the child's interests for his father to retain parental responsibility for him.
- 2.33 Another effect of a residence order is that no person may cause the child to be known by a new surname nor remove him from the United Kingdom without either the written consent of every person who has parental responsibility for him or the leave of the court (section 13(1)). This does not, however, prevent the person in whose favour the residence order has been made from removing the child for a period of less than one month (section 13(2)). There is no limit on the number of these short trips and if the non-resident parent feels that the child is being taken out of the United Kingdom too frequently or that there is a danger of abduction he or she may seek a prohibited steps order.
- 2.34 A residence order may be made in favour of more than one person at the same time even though they do not live together, in which case the order may specify the periods during which the child is to live in the different households concerned (section 11(4)). A shared residence order may be appropriate in those cases where the child is to spend considerable amounts of time with both parents.

Contact orders

- 2.35 A contact order usually provides for the child to visit or stay with the person named in the order, though a contact order may take the form of an order of no contact with a named person (or persons). The order may provide for the child to have contact with any person, not just a parent, and more than one contact order may be made in respect of a child or the court may order that there be no contact between the child and a particular person. 'Contact' includes both direct face-to-face contact, such as long and short visits and stays, as well as indirect contact by letter, e-mail, telephone or other means. A contact order may

provide for no contact, for reasonable contact or it may specify the details and nature of contact. Contact orders, which require the parent with whom the child lives to allow contact with his other parent will, like residence orders, lapse if the parents subsequently live together for a period of more than six months (section 11(5) and (6)) and are discharged if a care order is made in respect of the child (section 91(2) and see below) or if the child is authorised to be placed for adoption (also see 2.44).

- 2.36 Section 8 contact orders (as well as prohibited steps orders and specific issue orders) cannot be made if the child is the subject of a care order (section 9(1)), because in this case the local authority has a statutory duty (under section 34 of the Act) to allow the child reasonable contact with his parents (whether or not they both have parental responsibility), any guardian or special guardian, anyone who has parental responsibility under section 4A and any other person with whom the child was living by virtue of a residence order immediately before the care order was made.

Prohibited steps orders

- 2.37 Both prohibited steps orders and specific issue orders are concerned with ‘single issues’. The purpose of the prohibited steps order is to impose a specific restriction on the exercise of parental responsibility. It could, for example, be used to prohibit a child’s removal from the country where no residence order has been made and therefore no automatic restriction on removal applies. Another example could be to prevent the child’s removal from his school before the court has had time to decide what specific issue order, if any, should be made. A prohibited steps order may be made against anyone but can only prohibit “a step which could be taken by a parent in meeting his parental responsibility” for the child.

Specific issue orders

- 2.38 A specific issue order may be made in conjunction with a residence order, a contact order, a prohibited steps order or on its own. Its aim is to enable a particular dispute over the exercise of parental responsibility to be resolved by the court. This may, where necessary, necessitate the making of detailed directions.
- 2.39 The wardship jurisdiction remains to fill any gaps in the statutory provision, as it has been held that the court in the exercise of its wardship jurisdiction is not limited to the powers that a parent has to act on a child’s behalf. For example, the court in the exercise of its inherent jurisdiction over minors will have the authority to override the wishes of a child with sufficient age and understanding to make an informed decision who refuses to undergo medical treatment (see *Re W (a minor)(medical treatment)* [1992] 4 All ER 627).
- 2.40 Similarly, a prohibited steps or specific issue order may not be made “with a view to achieving a result which could be achieved by making a residence or contact order” (section 9 (5)(a)). This is to avoid either of these orders being used to achieve much the same practical results as residence and contact orders but without the same legal effects.
- 2.41 Local authority use of wardship is severely restricted by section 100, which provides that the jurisdiction cannot be used for the purpose of placing a child in care, or in local authority accommodation, or under the supervision of a local authority (section 100(2) and paragraph 3.85 below). The making of a care order in respect of a child who is a ward of court brings

that wardship to an end. However, local authorities will, in circumstances where a care order is not in force, be able to apply for specific issue and prohibited steps orders, provided that they first obtain the court's leave (see below). For example, this may arise where a child is accommodated voluntarily by the authority and the child is felt to be in urgent need of a particular course of medical treatment and the parents cannot be contacted. If, in all the circumstances of the case, the decision is likely to cause controversy at some future date, the local authority should seek a section 8 specific issue order.

The meaning of family proceedings

2.42 The court may make a section 8 order with respect to a child in any family proceedings in which a question arises with respect to the welfare of that child (section 10(1)). 'Family proceedings' are defined by section 8(3) as any proceedings:

- (a) under the inherent jurisdiction of the High Court in relation to children; and
- (b) under the enactments mentioned in section 8(4)

but do not include proceedings in relation to applications for leave under section 100(3).

The enactments listed in section 8(4) are: Parts 1, 2 and 4 of the Act, the Matrimonial Causes Act 1973, Schedule 5 to the Civil Partnership Act 2004, the Adoption and Children Act 2002, the Domestic Proceedings and Magistrates' Courts Act 1978, Schedule 6 to the Civil Partnership Act 2004, Part 3 of the Matrimonial and Family Proceedings Act 1984, the Family Law Act 1996 and sections 11 and 12 of the Crime and Disorder Act 1998.

2.43 Section 8 orders may therefore be made in most proceedings specifically relating to the care and upbringing of children. These comprise wardship proceedings and proceedings under the Act itself, including applications for care and supervision orders and adoption proceedings (although see below). Section 8 orders may not be made in emergency protection and child assessment proceedings under Part 5 of the Act or in secure accommodation proceedings under section 25 (Part 3). Orders may also be made in certain proceedings which are primarily concerned with disputes between adults but in which the interests of the children may be very important. These include divorce, dissolution of civil partnerships, nullity and judicial separation proceedings, maintenance proceedings, occupation and non-molestation order proceedings and applications for child safety orders.

2.44 Section 8 orders may also be made in proceedings under the Adoption and Children Act 2002 but, under section 26 of that Act, where an adoption agency is authorised to place a child for adoption (i.e. by consent under section 19 or by a placement order under section 21), or a child who is less than six weeks old is placed for adoption, any provision for contact under the 1989 Act ceases to have effect. While the adoption agency is authorised to place for adoption or the child is placed, no application under section 8 may be made, although the court may order that contact take place either on an application under section 26 from the persons listed in section 26(3) or of its own motion. An application for a section 8 contact order may nevertheless also be made if it is to be heard together with an adoption order application (section 26(5)). Annex A to the Adoption and Children Act 2002 Guidance provides information on placement orders, their effect, contact arrangements and the interaction with orders under the Children Act 1989: see paragraphs 36 to 62. That Guidance

is available at: <http://www.everychildmatters.gov.uk/resources-and-practice/search/IG00032/>

Applications for section 8 orders

- 2.45. Section 8 orders may be made on application or of the court's own motion under section 10(1) in the course of family proceedings or, in the absence of any other proceedings, as a freestanding application under section 10(2). Section 10 also sets out the categories of applicants for section 8 orders. Where the court makes a section 8 order of its own motion within family proceedings, it can even make an order in favour of someone who is ineligible, as of right, to apply for such an order. However, this is likely only to be done in the most exceptional circumstances and with cogent reasons justifying it in the interests of the child. The intention underpinning this limitation is to respect the privacy of a child's family life, while at the same time for those who have a 'family life' with a child to bring issues about a child's upbringing before the court.
- 2.46 In the first category are people who may apply as of right for any section 8 order. These are
- parents (including unmarried fathers);
 - guardians;
 - special guardians;
 - step-parents with parental responsibility under section 4A; and
 - any person in whose favour a residence order is in force with respect to the child (section 10(4)).
- 2.47. In the second category are people who may, in addition to those set out above, apply as of right for a residence or contact order. These are
- any party to a marriage or civil partnership (whether or not subsisting) in relation to which the child is a child of the family;
 - any person with whom the child has lived for a period of at least three years (which need not be continuous); and
 - any person who;
 - (i) where a residence order is in force with respect to the child, has the consent of each of the persons in whose favour the order was made;
 - (ii) where the child is in the care of a local authority, has the consent of that local authority; or
 - (iii) in any other case, has the consent of each of those (if any) who have parental responsibility for the child (section 10(5)).
- 2.48 The first group in this second category consists primarily of step-parents, who have not acquired parental responsibility under section 4A. Those who have parental responsibility can apply for any section 8 order under section 10(4)(aa). The term 'child of the family' is defined at section 105(1) as being "in relation to parties to a marriage, or to two people who are civil partners of each other (a) a child of both of them, and (b) any other child, other than

a child placed with them as foster parents by a local authority or voluntary organisation, who has been treated by both of them as a child of their family” (section 105(1)). Children formerly privately fostered may therefore be included.

- 2.49. Other people who do not have the consent of all the requisite people with parental responsibility and are not local authority foster parents (see below) must have had the child living with them for a total of three years. The period of three years need not be continuous but must not have begun more than five years before, or ended more than three months before, the making of the application (section 10(10)). The three months will give them time to make an application if the child has been removed against their wishes. Where a special guardianship order is in force, the leave of the court is required for any application for a residence order (section 10(7)) if the person wishing to apply for the order is not otherwise entitled to apply without leave (section 10(7A)).
- 2.50 Additionally, as a third category, foster parents may apply as of right for a residence order if the child has been living with them for 12 months or more immediately preceding the application (section 10(5A)).
- 2.51 Section 10(6) provides that any person who does not otherwise fall into any of the above categories is nevertheless entitled to apply for the variation or discharge of a section 8 order if either the order was made on his application or, in the case of a contact order, he is named in the order.
- 2.52. The fourth category covers anyone else with the leave of the court, who may apply for any section 8 order (although in the case of local authorities and their foster parents there are certain restrictions, which are dealt with below). This enables anyone who considers that they have a genuine interest in the child’s welfare to seek the leave of the court to apply for a section 8 order. The child himself can apply for leave, which may be granted if the court is satisfied that he has sufficient understanding to make the proposed application (section 10(8)). Where the applicant is not the child concerned, the court must have particular regard to a number of factors in deciding whether to grant leave (section 10(9)). These are: the nature of the proposed application, the applicant’s connection with the child, any risk of the proposed application disrupting the child’s life to such an extent that he would be harmed by it and, where the child is being looked after by a local authority, the authority’s plans for the child’s future and the wishes and feelings of the child’s parents (section 10(9)). In general, leave is likely to be granted if it is in the child’s best interests to do so and the court will also need to consider the Article 6 (right of access to a fair trial) and Article 8 (right to respect for private and family life) rights of the applicant and give due weight to the considerations in section 10(9) (see *Re:J (a child)* (leave to issue application for residence order) [2002] EWCA Civ 1346).
- 2.53 There are restrictions on applications for certain section 8 orders under the Adoption and Children Act 2002, where the child has been placed for adoption or an adoption agency is authorised to place a child for adoption under section 19 (i.e. with the consent of the child’s parents or guardians). In these circumstances, a parent or guardian of the child cannot apply for a residence order and a guardian cannot apply for a special guardianship order, unless an application for an adoption order has been made and the parent or guardian has the leave of the court under section 47 to oppose the making of the adoption order (section 28 Adoption and Children Act 2002).

2.54 Where a placement order has been made in respect of a child, this order has the effect of ending any section 8 order (or supervision order) in force in respect of that child (section 29(2) Adoption and Children Act 2002). Where a placement order is in force, the court cannot make a residence order, a contact order (under section 8), prohibited steps order or specific issue order. The only exception to this is in relation to residence or special guardianship orders where an application for an adoption order has been made and the person applying for the order has the leave of the court under either section 47 or section 29, as appropriate. (See also Annex A to the Adoption and Children Act 2002 Guidance, paragraphs 36 to 62. That Guidance is available at: <http://www.everychildmatters.gov.uk/resources-and-practice/search/IG00032/>)

The position of local authority foster parents

2.55 Section 9(3) means that a local authority foster parent may only apply for leave to apply for a section 8 order if they fall into one of the following categories:

- they have the consent of the local authority; or
- they are a relative of the child.

Where the child has lived with the local authority foster parent for at least one year preceding the application, leave is not required (section 10(5A)).

2.56 This restriction is intended to prevent applications by foster parents at a stage when the local authority is still in the process of assessing what is best for the child in the long term. The restriction is also intended to prevent parents from being deterred from asking for their child to be accommodated on a voluntary basis with a local authority foster parent.

The position of local authorities

2.57 The Act draws a clear distinction between children who are provided with accommodation or other family support services by a local authority and children formally in the care of a local authority (although both are looked after). Parental responsibility for a child can only be acquired by a local authority by means of a care order, which will only be granted if the criteria set out in section 31 are met. For this reason, a local authority may not in any circumstances apply for or be granted a residence or contact order (section 9(2)). Furthermore, once a care order has been made in respect of a child, the court's private law powers should not be used to interfere with the local authority's exercise of its statutory parental responsibilities. It is therefore provided by section 9(1) that no court shall make any section 8 order, other than a residence order, with respect to a child in care. The restrictions in section 9(1) do not, however, apply where the child is being voluntarily accommodated by the local authority under Part 3 of the Act. Under section 91(2), the making of a care order discharges any section 8 orders in respect of the child.

Older children

2.58 Section 9(6) and (7) provide respectively that the court shall not make any section 8 order which is to have effect beyond a child's sixteenth birthday nor should an order be made once the child has reached the age of 16 unless the court is satisfied that the circumstances

of the case are exceptional. This first provision is subject to section 12(5), which reflects the provisions for special guardianship orders to continue until the child is 18 and provides that if a person in whose favour a residence order is made so requests, the court has the power to direct that the residence order continue in force until the child reaches 18. This does not apply to residence orders made in favour of parents or guardians, for whom parental responsibility continues after the residence order ceases to have effect (until the child reaches 18). Section 9(6) reflects the reality that, as young people mature through their teenage years, it becomes increasingly inappropriate to make orders concerning them against their wishes. An example of such a circumstance might be where an older child has impaired cognitive development. In such circumstances, it might be appropriate for a section 8 order to continue until the child is eighteen.

Special guardianship

- 2.59 The Adoption and Children Act 2002 inserted new provisions into the Children Act 1989, which created a new type of order, called a special guardianship order (SGO). These provisions are in sections 14A – 14G of the Children Act 1989 and in the Special Guardianship Regulations 2005 SI 2005/1109.
- 2.60 A special guardian must be at least 18 years of age and must not be the parent of the child (section 14A(2)). Certain people are entitled to apply for a SGO, these are set out in section 14A(5) :
- (i) Any guardian of the child;
 - (ii) Anyone in whose favour a residence order is in force;
 - (iii) Any person with whom the child has lived for 3 out of the last 5 years;
 - (iv) A local authority foster parent with whom the child has lived for at least one year immediately preceding the application.
 - (v) Any person—
 - (a) in any case where a residence order is in force with respect to the child, has the consent of each of the persons in whose favour the order was made;
 - (b) in any case where the child is in the care of a local authority, has the consent of that authority; or
 - (c) in any other case, has the consent of each of those (if any) who have parental responsibility for the child.
- 2.61 Anyone outside these categories will require the leave of the court to make an application, although the court can make a special guardianship order without an application having been made, where it considers it appropriate to do so (section 14A(6)). Leave must be obtained before notice may be given to the local authority.
- 2.62 Before making an application for a special guardianship order, the applicant must give 3 months' notice to the local authority looking after the child (if the child is a looked after child), or else to the local authority where the applicant is ordinarily resident. Where a potential applicant needs the leave of the court to apply for a special guardianship order,

notice cannot be given until and unless leave is granted. Upon receipt of the notice, the local authority has to prepare a report for the court dealing with the applicant's suitability to be a special guardian and other matters which are prescribed in Regulations (Special Guardianship Regulations 2005 SI 2005/1109 regulation 22).

- 2.63 A special guardianship order gives the special guardian parental responsibility for the child. Unlike an adoption order, a special guardianship order does not terminate the parental responsibility of others (although it does end a care order or a residence order) but, subject to any other orders, it does allow the special guardian to exercise parental responsibility to the exclusion of others (except another special guardian) with parental responsibility (section 14C). A special guardianship order lasts until the child is 18, unless discharged before then.
- 2.64 Section 14F requires local authorities to set up special guardianship support services. There is further provision for these services in the Special Guardianship Regulations 2005. This includes financial support. The circumstances in which the local authority can provide financial support are set out in the Regulations and are fairly broad. The support can continue past the child's eighteenth birthday, where the child continues in full-time education. Where the special guardian is a former foster parent, the support may include an element of remuneration in certain circumstances (regulation 7).
- 2.65 Section 14F(3) (together with the Special Guardianship Regulations 2005) also requires the local authority to carry out an assessment of need at the request of certain people, where the child is, or was prior to the making of the order, a looked after child. If the child does not fall into this category, section 14F(3) still allows the local authority to carry out an assessment, where requested to do so. There are further detailed provisions in the Regulations on what issues must be considered in the assessment and what action must be taken once the assessment has been carried out.
- 2.66 Special guardianship was intended as a permanent option for children for whom adoption was not suitable, often because it was not appropriate to sever the ties with the birth family, as happens in the case of adoption. There is no general rule that special guardianship will be more appropriate than adoption in cases concerning children being cared for by members of their extended family. The appropriate outcome will be a matter for judicial determination, in light of the facts of the case, based on the best interests of the child. These principles were confirmed by the Court of Appeal in *Re S* [2007] 1 FLR 819, *Re AJ* [2007] 1 FLR 507 and *Re M-J* [2007] 1 FLR 691. The judgment in *Re S* attaches a schedule analysing the main differences between special guardianship and adoption orders.

Family assistance orders

- 2.67 Section 16 of the Act provides for family assistance orders. These may be made in any family proceedings where the court has power to make an order under Part 2 with respect to any child, whether or not it actually makes such an order, and can only be made by the court acting of its own motion. A family assistance order is intended to provide focused short-term help to a family to overcome the problems and conflicts associated with their parents' separation. The nature of the help to be provided will normally be set out in the assessment or case analysis provided by Cafcass to the court.

2.68 The order requires a Cafcass practitioner to be made available, or that a local authority is to make an officer of the authority available, “to advise, assist and (where appropriate) befriend any person named in the order” (section 16(1)).

The persons who may be named in the order are:

- (a) any parent, guardian or special guardian of the child;
- (b) any person with whom the child is living or in whose favour a contact order is in force with respect to the child;
- (c) the child himself.

The order may also require any of the persons named in it to take specified steps with a view to enabling the officer concerned to be kept informed of the address of any person named in the order and to be allowed to visit any such person (section 16(4)).

2.69 When making family assistance orders the court will wish to make clear why family assistance is needed and what it is hoped to achieve by it. As the aim of the order is to provide voluntary assistance, it is also necessary for the court to obtain the consent of every person to be named in the order, except the child (section 16(3)(b)). Since it is only intended as a short-term remedy, no order can have effect for a period of more than 12 months (section 16(5)), although there is no restriction on making any further order.

2.70 When both a family assistance order and a section 8 order are in force at the same time with respect to a child, the court can ask the officer concerned to report to the court on any aspect of the order the court considers appropriate, including whether the section 8 order should be varied or discharged (section 16(6)).

2.71 Where the family assistance order is in force at the same time as a contact order, the court can also request that the officer advise and assist any person named in the order as regards establishing, improving and maintaining contact (section 16(4A)). A family assistance order can only require a local authority to make an officer available with that authority’s consent unless the child concerned lives or will live within the authority’s area (section 16(7)).

Risk assessment

2.72 The Children and Adoption Act 2006 inserted a new section 16A into the Act, which places a duty on a Cafcass practitioner 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 should be carried out are where the officer is carrying out a function in connection with family proceedings in which the court has power to make a Part 2 order under the Act, or in which a question with respect to such an order arises, or the officer is carrying out a function in connection with an order made in such 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, perhaps to a parent who is experiencing domestic violence.

The court's duty when considering whether to make an order

- 2.73 There are several situations where the court is likely to consider it better for the child to make an order than to make no order. If the court has had to resolve a dispute between the parents, it is likely to be better for the child to make an order about it. Even if there is no dispute, the child's need for stability and security may be better served by making an order. There may also be specific legal advantages in doing so.
- 2.74 The welfare principle, set out in section 1(1) of the Act, requires that whenever a court determines any question with respect to (a) the upbringing of a child; or (b) the administration of a child's property or the application of any income arising from it, the child's welfare shall be the court's paramount consideration. Not all proceedings affecting children's upbringing or property are governed by the welfare principle. For example, it is expressly excluded by section 105(1) from applications for maintenance for a child, and financial issues on divorce (section 25(1) of the Matrimonial Causes Act 1973 provides that the child's welfare shall be the court's "first" consideration). On an application for an order under section 1 of the Matrimonial Homes Act 1983 the welfare of the child is neither first nor paramount. It is merely one of the factors to which the court must have regard.
- 2.75 It should be noted, however, that the welfare checklist in section 1(3) does not apply in all 'family proceedings', but only in contested applications for a section 8 order or any applications for special guardianship orders or proceedings under Part 4 of the Act.

The relationship between private law orders and public law proceedings

- 2.76 The court may make a section 8 order as an interim measure when a care application is pending. Section 11(3) provides that the court may make a section 8 order at any time during the course of the proceedings in question even though it is not in a position finally to dispose of those proceedings. Section 11(7) enables a section 8 order to be made for a specified period. The court could therefore, for example, regulate the child's contact with his parents by means of a contact order or prevent it altogether by means of a prohibited steps order. It should be noted however that if, pending an application for a care or supervision order the court decides to make a residence order with respect to the child, it must also make an interim supervision order "unless satisfied that his welfare will be satisfactorily safeguarded without an interim order being made" (section 38(3)).
- 2.77 Although under section 39 application may be made for discharge of a care order, or discharge or variation of a supervision order, by any person who has parental responsibility for the child, or the child himself or the local authority/supervisor concerned, those without parental responsibility, such as some unmarried fathers and other relatives of the child, have no right to make such an application. They may, however (first seeking leave as necessary), apply for a residence order which, if granted, would have the effect of discharging any existing care order by virtue of section 91(1). Since a residence order not only provides for the child to live with the person in whose favour it is made but also gives parental responsibility to that person while the order is in force (or, in the case of an unmarried father who has not acquired parental responsibility already, he will acquire it by virtue of a separate order under section 4), the continuation of a care order would be inconsistent with the making of a residence order. Equally, the making of a care order with respect to a child

who is the subject of a section 8 order will discharge that order (section 91(2)) (but will not discharge a special guardianship order), the making of a care order with respect to a child who is a ward of court will bring the wardship to an end (section 91(4)) and the making of a special guardianship order with respect to a child who is the subject of a care order discharges that order and any order under Section 34 (Section 91(5A)).

Financial provision for children

2.78. The Act created a statutory code governing financial provision for children, which is contained in section 15 and Schedule 1. Paragraph 1 of Schedule 1 enables the court to make a periodical payments order, a secured periodical payments order or a lump sum order and, in the High Court or county court, a settlement of property or transfer of property order. However, the court's jurisdiction to order maintenance for a child under the Children Act 1989 or in divorce proceedings under the Matrimonial Causes Act 1973 has now been greatly limited by the Child Support Act 1991 (CSA 1991) to situations where:

- (i) a qualifying child, the non-resident parent, or the person with care is not habitually resident in the United Kingdom (section 44 CSA 1991);
- (ii) the child is or has been married or a civil partner, or is at least 16 (unless under 18 and registered for work or work-based learning for young people and has recently left education or is under 19 and in full-time, non-advanced education) (section 55 CSA 1991);
- (iii) the parties have entered into a written agreement which makes provision for the non-resident parent to make periodical payments of child maintenance and the parties consent to a maintenance order being made in the same terms, in all material respects, as the written agreement (section 8(5)),
- (iv) the Court makes a "top up" order where a maintenance calculation is in force and the non-resident parent's net weekly earnings exceeds a maximum amount specified in the CSA 1991, (section 8(6)); a school fees order (section 8(7)), or an order to meet some or all of the expenses for a disabled child (section 8(8) CSA 1991);
- (v) the claim is against the person with care (section 8(10));
- (vi) the parents have not yet separated. Applications concerning financial relief for a child made only under the 1989 Act qualify as 'family proceedings' as defined in section 8(3), so that the court is also able to make any section 8 order in those proceedings. The courts still have power, however, to make orders for financial provision for children in matrimonial proceedings under the Matrimonial Causes Act 1973 and the Domestic Proceedings and Magistrates' Court Act 1978, subject to the limitations in the Child Support Act 1991 on the courts' jurisdiction to order maintenance for a child as set out above. Applications under the schedule may be made by a parent or guardian or by any person in whose favour a residence order is in force with respect to the child (schedule 1, paragraph 1(1)). Where the Child Support Agency would have jurisdiction to make a calculation, the court may not circumvent the limitations on its jurisdiction in the Child Support Act 1991 by making a lump sum order as a form of capitalised maintenance (*Phillips v. Peace* [1996] 2 FLR 230).

2.79 Paragraph 2 of Schedule 1 allows an adult child (over the age of 18), whose parents are not living together and in respect of whom there was no periodical payments order in force before he reached the age of 16, to apply for periodical payments or a lump sum if he is receiving further education or training, or there are special circumstances. If a periodical payments order was in force before he reached the age of 16, the court can extend this beyond the child's eighteenth birthday where the child will be in further education or training, or there are special circumstances to justify the continuation of the order. Paragraph 4 sets out the circumstances to which the court must have regard when making orders for financial relief.

Chapter 3: Care and Supervision Orders

Summary

- 3.1 This Chapter focuses on the processes that are to take place before and during public law proceedings under section 31 of the Act. The Chapter opens by describing the referral and assessment processes undertaken by local authorities with responsibilities for children's social care functions, in particular initial and core assessments. If, following or as a result of these local authorities are concerned that children may be suffering, or are likely to suffer, significant harm, the guidance then sets out the processes that are to be followed in moving towards making an application to the court for a care or supervision order. Guidance on the emergency steps that may be taken is set out in Chapter 4.
- 3.2 Where such concerns arise, they may be so serious that the local authority will reach the view that it is no longer possible, without a care or supervision order (or emergency action), for it any longer to safeguard and promote the welfare of a particular child by promoting their upbringing by their family. In arriving at such a view, the local authority will have considered, through the core assessment process, not only the child's needs but also the needs and capacities both of the child's parents and those to be found in the wider family and community.
- 3.3 Before making an application for a care or supervision order a local authority is expected to seek legal advice and to communicate with the parents (and child, if of sufficient age and understanding) the nature and extent of their concerns. Prior to submitting an application to the court, and where the short term safety and welfare of the child permits, the local authority should send a 'Letter Before Proceedings' to the parents, the contents of which should also be explained carefully and directly to the parents, taking into account the way in which information is presented in the light of the parents' cognitive and linguistic abilities. The purpose of such a letter is to enable the parents to obtain legal assistance and advice, prior to a meeting with the local authority, the intention of which is either to deflect proceedings or, at least, to narrow and focus the issues of concern. It is recognised, of course, that there will be some emergency and other situations where the welfare of the affected child will not permit even a brief period for such correspondence and direct discussions to take place. To assist local authorities and others, a standard template letter is provided as an annex to the guidance.
- 3.4 Where, regardless of whether the 'Letter Before Proceedings' (see Annex 1) process has been followed, the local authority then issues an application, a pre-proceedings checklist sets out clearly the documentation that the local authority needs to provide to the court, comprising material already available to the local authority as well as that which has been recently created specifically for the purposes of the application. Both a flowchart (Annex 3) and the relevant Practice Direction (Annex 2), containing a 'pre-proceedings checklist' (after paragraph 9(2)) are annexed to this guidance

3.5 The conditions under which a court may make a care or supervision order are set out as are the processes that are followed in initial hearings and which underpin the making of any interim order. The effect of care orders is then described as are the processes that are to be followed where care orders, once made, are discharged and where supervision orders are either discharged or varied. Extensive guidance is provided on arrangements for children in care (i.e. looked after children who are the subject of care orders) to have contact with their parents and other significant people, such as siblings, in the context of the local authority's duty to promote contact. The effects of supervision orders are also described in detail. Guidance is also provided on wardship and the exercise of the inherent jurisdiction of the High Court.

Care and supervision proceedings

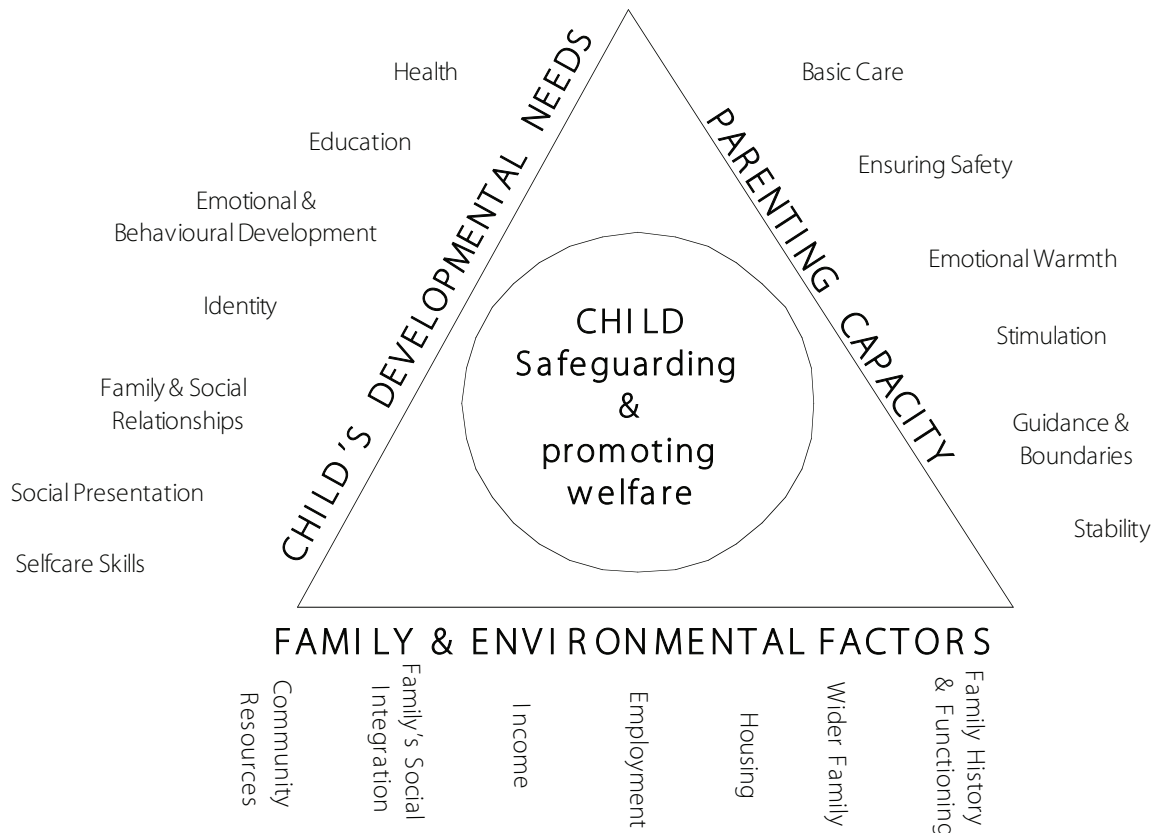
- 3.6 The scheme for care and supervision proceedings is founded on a number of principles. The first is that the local authority can only intervene in the care and upbringing of a child without the parents' agreement if the authority obtains a court order following proceedings in which the child, his parents and others who are connected with the child are able fully to participate. The proceedings should establish what action, if any, is in the child's interests, and the procedure must be fair to all concerned. The term 'care' is used in the Act in relation to a child who is the subject of a care order. This term does not extend to cover a child accommodated by a local authority under voluntary arrangements (section 105(1) of the Act).
- 3.7 Secondly, the local authority has a general duty, under section 17 of the Act, to promote the upbringing of children in need by their families so far as this is consistent with its duty to safeguard and promote the welfare of children, in particular through the provision of family support services to children in need and their families. This means that voluntary arrangements for the provision of services to the child and his family including the consideration of potential alternative carers should always be fully explored prior to making an application under section 31, provided that this does not jeopardise the child's safety and welfare. The local authority should ensure, when assessing wider family and environmental factors within the core assessment (undertaken in accordance with the *Framework for the Assessment of Children in Need and Their Families*), that it considers the capacity and willingness of the wider family to provide care for the child on a short or a longer-term basis. The local authority should also bear in mind that the court has a duty to make no order unless it considers that making an order would be better for the child than making no order at all (section 1(5) of the Act). It is possible that care proceedings may be avoided altogether or that a different application, such as for a special guardianship order or a residence order, made by a relative or carer, may be more appropriate, rather than a care order application by the local authority.
- 3.8 A family group conference (FGC) can be an important opportunity to engage friends and members of the wider family at an early stage of concerns about a child, either to support the parents or to provide care for the child, whether in the short or longer term. In either case, FGCs can reduce or eliminate the need for the child to become looked after. In presenting a care plan to the court in any application for a care order, the local authority will be required to demonstrate that it has considered family members and friends as potential carers at each stage of its decision making.

- 3.9 Thirdly, there are common grounds for making care or supervision orders: the local authority must identify the actual or likely significant harm to the child and how this is occurring or may occur. Factors such as the child's parents having learning disabilities or misusing substances are not grounds in themselves for making a care or supervision order, unless they contribute to the harm suffered or likely to be suffered by the child and provide evidence of inadequate, or lack of proper, parenting.
- 3.10 Fourthly, ascertaining the wishes and feelings of the child in such proceedings is essential (and forms part of the welfare checklist to which the Court must have regard under section 1(3) of the Act). Children and Family Court Advisory and Support Service (Cafcass) Children's Guardians must be appointed in most kinds of public law proceedings unless the court is satisfied that this is not necessary in order to safeguard the child's interests. A Children's Guardian should normally be appointed as soon as practicable after the commencement of proceedings. A Children's Guardian appointed in respect of emergency proceedings (emergency protection order or child assessment order) should, wherever practicable, continue to represent the child in subsequent proceedings for a care or supervision order. The role of the Children's Guardian is to safeguard the interests of the child and, for that purpose, is subject to the duties set out in rules of court.
- 3.11 Fifthly, when a care order is in force the local authority and parents share parental responsibility for the child, subject to the authority's power to limit the exercise of such responsibility by the parents where it is necessary to do so in order to safeguard or promote the child's welfare (and to some specific limitations on the authority (section 33 (6) and (7))). Where a child is in the care of the authority (including where an interim care order has been made), the authority must allow the child reasonable contact with his parents and specified others, subject to court orders and limited local authority powers of action to refuse to allow contact in emergencies (section 34 of the Act and paragraph 15 of Schedule 2 to the Act).

Assessment processes

- 3.12 Where a child is referred to the local authority as a child who may be in need, the local authority should decide, within one working day of the referral whether to undertake an initial assessment. This decision would normally follow discussion with the person who has made the referral and consideration of other information which the authority may hold or obtain. Any assessment should be undertaken in accordance with the *Framework for the Assessment of Children in Need and Their Families* (the 'Assessment Framework') (Department of Health et al, 2000). The initial assessment should be completed within seven working days of the date of the referral. Information should be gathered and analysed using the dimensions and domains set out in the Assessment Framework, namely:
- the child's developmental needs;
 - the parents' or caregivers' capacity to respond appropriately to those needs; and
 - the wider family and environmental factors.

Assessment Framework



By undertaking an initial assessment, which may be very brief in urgent safeguarding situations, the local authority may then ascertain whether:

- the child is a child in need (a 'child in need' is defined in section 17 (10) of the Act); and
- there is reasonable cause to suspect that the child is suffering, or is likely to suffer, significant harm (section 47 of the Act).

3.13 Where concerns about significant harm do not emerge or are not substantiated, but the child is assessed as being a 'child in need', the local authority may have sufficient information to determine what services, if any, should be provided, on the basis of the initial assessment and to agree a 'child in need' plan with the child and family. In determining what services to provide, the local authority is required to ascertain and take into account the wishes and feelings of the child.¹

3.14 If the child is assessed as being in need and the local authority is concerned that the child is suffering, or is at risk of suffering, significant harm, the authority is under a duty to make, as soon as practicable and, in any event, within 48 hours of the authority receiving the information, such enquiries as it considers necessary to enable it to decide whether it should take action to safeguard or promote the welfare of the child (section 47 (1) of the Act) and what action may be appropriate in the circumstances. Emergency action may be required, to secure the immediate protection of the child (see Chapter 4 of this guidance and *Working*

¹ See Section 17 (4A) of the Act.

Together to Safeguard Children (2006) for further guidance on Emergency Protection Orders (section 44 of the Act) and the exercise of police protection powers (section 46 of the Act)). Where emergency action has been taken, such section 47 enquiries as may be necessary should follow quickly.

- 3.15 The core assessment is the means by which section 47 enquiries are carried out. In all cases where an initial assessment concludes that there is cause to suspect that a child is suffering or is likely to suffer significant harm, a *core assessment should be completed*, informed by the information obtained through the initial assessment. The need to complete a core assessment should not deter necessary safeguarding action from being taken. Compliance with the requirement to complete the core assessment will be scrutinised by the responsible court as part of the court's first consideration of any application under section 31 of the Act that it receives.
- 3.16 A core assessment is "an in-depth assessment which addresses the central or most important aspects of the needs of a child and the capacity of his or her parents or caregivers to respond appropriately to these needs within the wider family and community context" (Assessment Framework 3.11). The core assessment should build on the initial assessment, utilise any prior specialist assessments that may have been carried out and be completed within 35 working days of its commencement. It is recognised that newly-commissioned specialist assessments from other agencies or independent professionals will not necessarily be completed within this period, but clear timescales for their completion should have been agreed with those bodies from which they have been commissioned, which should be specified in the core assessment. Once these specialist assessments are available, these will need to be taken into account and, depending on their relevance, may influence the local authority's planning for the child.
- 3.17 The core assessment forms the central part of the evidence supporting any application that the local authority may make for a care or supervision order under section 31 of the Act. Local authorities must ensure that an up to date core assessment is available in relation to any child who is the subject of a section 31 application under the Act.
- 3.18 The plan for the care of the child should be based on findings from the initial and core assessments. It should set out the aims of the plan and the intended outcomes for the child, informed by the findings from the assessments i.e. the identified developmental needs of the child and the capacity of the parents to respond to the child's needs in the context of their wider family and environmental factors. The structure of the plan should follow the Assessment Framework domains and dimensions in accordance with the Integrated Children's System (ICS) care plan exemplar and be explicit about the nature, frequency and intensity of services which will be provided by each involved agency. The plan should also set out the outcomes which are being sought in relation to the needs and services identified. Local authority circular LAC(99)29 provides further guidance on the preparation of care plans in applications under section 31 of the Act. Additionally, section 31A of the Act provides that where an application is made, from which a care order might be made with respect to a child, the local authority must within the timetable directed by the court prepare a care plan, and no care order may be made until the Court has considered that plan (section 31(3A)).

Applications for care and supervision orders (sections 31 and 32) – the order-making powers of the court

- 3.19 A child is in the care of a local authority where the court has made a care order (including an interim order) under section 31. Aside from voluntary accommodation under section 20 or where the court has made a supervision order (including an interim order) under section 31, the only other circumstances in which a child may be placed in local authority accommodation are set out in section 21. These include children who are in police protection, children who are on remand and children who are subject to a supervision order made in criminal proceedings that imposes a local authority residence requirement or a foster parent residence requirement (which are different to a supervision order made under section 31).
- 3.20 Care and supervision proceedings, and indeed all proceedings under Part 4 of the Act, are ‘family proceedings’ (see section 8(3) of the Act), and may be heard at any level of the family courts, with most cases starting in the family proceedings court. The court hearing an application for a care or supervision order may on its own initiative make an order under section 8 or a special guardianship order as an alternative to a care or supervision order. A local authority may apply for a care or supervision order if it considers that the threshold criteria at section 31 of the Act are established and those proceedings may be joined with other proceedings under²:
- (a) the inherent jurisdiction of the High Court in relation to children;
 - (b) the Matrimonial Causes Act 1973;
 - (c) Parts 1, 2 and 4 of the Act;
 - (d) Schedule 5 to the Civil Partnership Act 2004;
 - (e) the Adoption and Children Act 2002;
 - (f) the Domestic Proceedings and Magistrates’ Courts Act 1978;
 - (g) Schedule 6 to the Civil Partnership Act 2004;
 - (h) Part 3 of the Matrimonial and Family Proceedings Act 1984;
 - (i) the Family Law Act 1996; or
 - (j) sections 11 and 12 of the Crime and Disorder Act 1998.
- 3.21 Although a local authority may not apply for a residence order or special guardianship order, such orders may be made as a result of local authority section 31 applications, though such orders may not be made in favour of a local authority. Specific issue orders and prohibited steps orders cannot be used to achieve what may be achieved by the other section 8 orders, but a local authority may apply for these two types of section 8 order in respect of a child not in its care. If the child is the subject of a care order, contact arrangements will be dealt with under section 34 and not by a contact order under section 8.

¹ See section 31(4) and section 8(3)-(4).

Matters to be considered by local authorities before making an application for a care or supervision order

- 3.22 Only a local authority or authorised person (as defined in section 31(9)) may apply for a care or supervision order. 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.
- 3.23 The local authority, in applying for an order under section 31, is likely to rely on a range of contributions from others, such as those already involved in the care of the child (including parents and relatives) as well as those providing specific information or findings from specialist assessments. Full inter-agency co-operation, including the sharing of information for the purpose of safeguarding children, is essential whenever a potential care or supervision order case is identified, both because of the need to obtain as complete as possible a picture of actual or likely harm to the child but also to plan appropriate provision to meet the child's needs, if the order is made. Information from health professionals is likely to be of particular importance.
- 3.24 Within the local authority, the legal advisers have a key role to play in providing advice about the requirements of the courts and in relation to the making of the application. Parents, the child (if they are of sufficient age and understanding) and others with a legitimate interest in the child's future should, as far as possible, be involved, in the pre-application assessment processes and should, to the extent that it is possible to do so, be consulted on the local authority's plans for the child. Thus, even before the local authority reaches a decision that it should apply for a care or supervision order, parents will already have been made aware of the local authority's concerns about the child. Before reaching such a decision, the local authority should have taken such steps as are possible, perhaps through a family group conference or other family meeting, to explore whether care for the child can be safely provided by a relative or friend, have assessed the suitability of possible arrangements and have considered the most appropriate legal status of such arrangements.
- 3.25 Where the local authority decides, having sought and considered legal advice, that it intends to apply for a care or supervision order, the local authority must immediately notify that decision to the parents and others with parental responsibility for the child, using language and methods of communication, both in writing and orally, that will be understood by them. In particular the local authority should consider whether the parent (or other person with parental responsibilities) appears to have the capacity to instruct their legal representative, as the Official Solicitor may act as guardian ad litem/Next Friend/Litigation Friend for parties who lack litigation capacity (within the meaning of the Mental Capacity Act 2005) to represent themselves in proceedings, where there is no other person willing or suitable to do so. Further advice may be obtained from the official Solicitor (<http://www.officialsolicitor.gov.uk>).
- 3.26 The parents (and any others with parental responsibility for the child), on receipt of the local authority's written notification of its intention to apply for a care or supervision order, (known as the 'Letter Before Proceedings' (see Annex 1)) are entitled to non-means tested publicly funded legal advice at 'Level 2', which covers liaison and negotiations with the local authority.

- 3.27 With the exception of those cases where urgent court action, including emergency protection proceedings, is needed to safeguard the child, the local authority should liaise with the parents (and those with parental responsibility) with a view to considering what steps, if any, can be taken to avoid proceedings, including by improving parental engagement with the local authority, by further explaining the local authority's position and concerns and, where proceedings cannot be avoided, by narrowing the issues. Once the application for a care or supervision order has been made, parents will be entitled to 'Level 3' legal representation, which is also available on a non-means tested basis.
- 3.28 Where any affected child is of a sufficient age and level of understanding, the intention to initiate care or supervision proceedings must also be explained to him, unless to do so would exacerbate any significant harm that they might already be suffering, have suffered or be likely to suffer. However, it is recognised that, in a number of cases, there may be parental sensitivity about the local authority's involvement with the child, leading to parental consent for such involvement being withheld, which will mean that such information can only be provided after the commencement of proceedings, at which point the Cafcass Children's Guardian will also have a role to play. In this connection, it will be helpful for Cafcass planning purposes for the local authority to notify it of the prospect of the commencement of proceedings at the point at which parents are notified, though identifying details of the child should only be disclosed to Cafcass with the parents' consent.
- 3.29 The notification to the parents should, in its written version and where the urgency of the safeguarding concerns about the child permits its use, take the form of a 'Letter Before Proceedings'. A standard template letter is included as an annex to this guidance (Annex 1), but the letter, in cases where it is used, will need to be adjusted to fit the particular circumstances of the case. It should include:
- a summary of the local authority's concerns about the actual or likely harm to the child and the evidence on which these concerns are based;
 - information about what the local authority has done to safeguard and promote the child's welfare, what needs to be addressed, what support will be provided and what the outcome will be if the problems are not addressed; and
 - information about how to obtain legal help (on a non-means tested basis) and advice (including, in particular, details of local solicitors who provide a legal aid service in public law Children Act 1989 cases) together with encouragement to seek such advice as soon as possible.
- 3.30 It is recognised there will be some cases where, while inappropriate to be the subject of applications for Emergency Protection Orders, will nevertheless need to be the subject of an immediate section 31 application by the local authority. This is likely to occur where the scale, nature and urgency of the local authority's safeguarding concerns are such that the local authority considers that it is not in the interests of the child for a 'Letter Before Proceedings' to be sent. It may also be the case, in situations of this type, that not all of the other pre- proceedings steps will have been completed. In such circumstances, the local authority's application to the court will need to make explicit the reasons for any missing documentation or absent steps.
- 3.31 At or immediately after the meeting with the parents (and their legal representative) that takes place as a result of the 'Letter Before Proceedings', the local authority should provide in writing a revised plan for the child, setting out what the parents and the local authority

are to do to safeguard the child and the steps that the local authority will take if this action is not effective in safeguarding the child. The outcome of the meeting should also be explained orally to the parents by the local authority.

- 3.32 The follow up letter and, as relevant, the plan for the child should make explicit what consideration has been given to the possibility, in the light of the needs of the child identified by the core assessment, of the child living with a relative or a friend. This plan will be based on findings from the up to date core assessment and any other current assessments or previous plans and the outcome of any previous family group conference or other family meeting, as well as reflecting the outcome of the meeting triggered by the 'Letter Before Proceedings'. It will identify how the child's short term needs will be met (and also set out any longer terms plans if information to support these is available).
- 3.33 If, despite the meeting following the 'Letter Before Proceedings', the local authority continues to be concerned (or again becomes concerned) that the child is suffering, or is likely to suffer, significant harm, it remains responsible for making an application to the court for a care or supervision order. See Annex 3 for a flow chart which sets out the pre-proceedings steps that are to be taken by local authorities.

The making of the application

- 3.34 Once the local authority has obtained information from the relevant range of agencies and disciplines, but before proceeding with an application, the local authority should always obtain and consider legal advice on:
- (a) whether, in the circumstances of the case and in the light of the available evidence, the court is likely to be satisfied :
 - (i) that the section 31(2) criteria are met; and
 - (ii) that an order is in the best interests of the child and that the section 1(5) 'no order' test is likely to be met;³
 - (b) its care plan for the child, which will identify how the child's short term needs will be met (and also set out any longer terms plans if information to support these is available). In those relatively few cases where the identified permanence option, at the point of the commencement of proceedings, is for the adoption of the child, and where the decision that the child should be placed for adoption has been taken in accordance with the Adoption Agencies Regulations 2005 (SI 2005/389)⁴, the local authority must apply for a placement order within the care proceedings (in accordance with the Adoption and Children Act 2002, its regulations and guidance⁵). Where the child is subject to a care order and each parent or guardian of the child has consented

3 The court has made clear that any intervention under Part 4 or 5 of the Act must be proportionate to the legitimate aims of protecting the welfare and interests of the child. Interference with family life may only be justified by the overriding necessity of the interests of the child. See in particular *Re O (Supervision) Order* [2001] 1 FLR 923, *Re B (Care: Interference with Family Life)* [2003] 2 FLR 813, and summary of *Munby J in X VB (Emergency Protection Orders)* [2004] EWHC 2015 (Fam).

4 See *Re P-B* [2007] 1 FLR 1106

5 See Chapter 2 of and Annex A to the Adoption and Children Act 2002 Guidance.

6 See section 22 of the Adoption and Children Act 2002

to the child being placed for adoption under section 19 of the 2002 Act⁶, it is not required that a placement order application be made;

- (c) the court to which the application should be made ; and
- (d) whether to ask the court to make an interim care or supervision order and what directions should be sought (e.g. in relation to further assessments).

Annex 2 of this guidance is the *Practice Direction – Guide to Case Management in Public Law Proceedings*. The table following paragraph 9.2 of this judicial guidance specifies, in the form of a 'pre-proceedings checklist', the documents that are to be disclosed to the court from the local authority's files, in support of the local authority's section 31 application. It also lists those additional documents that are to be prepared for the proceedings.

Conditions for a care or supervision order

- 3.35 The child must be under seventeen years old (or under 16 if married) at the time the order is made. The court is likely to look particularly carefully at a case for making an order if the young person is approaching his seventeenth birthday. A care or supervision order ceases to have effect at age eighteen unless brought to an end earlier (section 91 of the Act).
- 3.36 The court may not make an order unless satisfied that the threshold conditions are met (section 31(2)):
- (a) the child concerned is suffering significant harm, or is likely to suffer significant harm; and
 - (b) 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 order were not made, not being what it would be reasonable to expect a parent to give him; or
 - (ii) the child is beyond parental control.

If the threshold criteria are met the court must go on to apply the welfare checklist at section 1(3) and the 'no order' principle (section 1(5)). The court must consider the wide range of powers to make orders and to give directions. Having done so, the court must make whichever order (or no order) is most consistent with the welfare interests of the child. In doing this, the court will have as its paramount consideration the welfare of the child. The court will want to be satisfied that a care or supervision order is a necessary and proportionate response to the legitimate aim of protecting the welfare and interests of the child.

- 3.37 The court must be satisfied that both elements of the threshold criteria have been met. The first focuses on actual or likely significant harm. The second is that the harm is attributable to the parenting of the child or to the child being beyond parental control.
- 3.38 The first limb of the definition of 'harm' concerns ill-treatment or the impairment of health or development. This includes impairment suffered from seeing or hearing the ill-treatment of another person.⁷ Ill-treatment is defined as including sexual abuse and forms of ill-

⁷ See amendment made to the definition of harm by section 120 of the Adoption and Children Act 2002.

treatment that are not physical (section 31(9)). Whether the harm suffered by the child is 'significant' is matter for the court to determine on the particular facts of the case.

- 3.39 In most cases impairment of health or development is likely to provide the evidence of 'harm'. Health is defined as physical or mental health; development as physical, intellectual, emotional, social or behavioural development (section 31(9)). Where the question of whether harm suffered by a child is significant turns on the child's health or development, this will be compared with that which could reasonably be expected of a similar child.
- 3.40 The second limb requires the court to be satisfied either that the harm, or likelihood of harm, is "attributable to the care given, or likely to be given, to the child not being what it would be reasonable for a parent to give to the child" or that the child is "beyond parental control". If the issue is the adequacy of parenting, there must be a direct connection between the harm suffered (or likely to be suffered) by the child and the care given by the parent. Harm caused solely by a third party is not therefore relevant, unless the parent could have been expected to intervene to prevent it and, unreasonably, did not do so. The quality of care given to the child will be compared with what it would be reasonable to expect a parent, having regard to the child's needs, to give the child. 'Care' is not defined but in the context is interpreted as including responsibility for making proper provision for the child's health and welfare (including promoting his physical, intellectual, emotional, social and behavioural development) and not just meeting basic survival needs.
- 3.41 If the child is determined by the court as being beyond parental control, this means that, whatever the standard of care provided by the parents, the child is suffering or is likely to suffer significant harm because of lack of parental control. This requires the court to determine whether as a matter of fact, the child is beyond control: it is immaterial who, if anyone, is to blame. In such cases, the local authority will need to demonstrate how the child's situation will improve if the court makes an order – how his behaviour can be brought under control, and why an order is necessary to achieve this.
- 3.42 Case law makes it clear that "when deciding whether to make a care order, the court should normally have before it a care plan which was sufficiently firm and particularised for all concerned to have a reasonably clear picture of the likely way ahead for the foreseeable future. The court must always maintain a proper balance between the need to satisfy itself about the appropriateness of the care plan and the avoidance of over zealous investigation into matters which were properly within the administrative discretion of the local authority." (see *Re S and W* [2002] 1FCR 577). Section 31A provides that on an application for a care order local authorities must prepare a care plan for the future care of the child. While the child remains looked after, both during the course of court proceedings and subsequently, the local authority keep that care plan under review in accordance with the Review of Children's Cases Regulations 1991 (SI 1991/895).

Initial hearings: court requirements and party status

- 3.43 The local authority's legal adviser will advise on and have conduct of the legal proceedings, on instructions from the relevant local authority member of staff (usually a social worker or social work manager). Proceedings under the Act are governed by a number of statutory instruments including the Family Proceedings Rules 1991 (SI 1991/1247), the Family Proceedings Courts (Children Act 1989) Rules 1991 (SI 1991/1395) as amended and, for

placement orders, the Family Procedure (Adoption) Rules 2005 (SI 2005/2795). Further requirements relating to the conduct of proceedings are set out in Practice Directions (issued by the President of the Family Division).

Interim orders

- 3.44 Interim care and supervision orders are similar in effect to full care and supervision orders except in two particulars: the court determines the duration of the interim order; and it may give directions to the local authority as to the medical or psychiatric examination of the child or other assessment. Interim orders represent a substantial, if time-limited, intervention in the care and upbringing of the child, and should not be regarded as an automatic stage in the process of an application for a full care or supervision order. Interim care or supervision orders enable the local authority compulsorily to intervene in the family to protect the child, for example after an emergency protection order or at the expiry of a period of police protection where the circumstances necessitate ongoing intervention. In addition, courts will wish to be clear about the local authority's immediate plans for the placement of the child under the terms of any interim care order.
- 3.45 The court may make an interim care order or interim supervision order when it adjourns proceedings relating to an application for a care or supervision order or directs the local authority to investigate a child's circumstances under section 37(1) of the Act in private family law proceedings. Before making an interim order, the court must be satisfied (it will not rubber-stamp an application, even if unopposed) that there are *reasonable grounds* for believing that the child's circumstances fulfil the criteria for a care or supervision order (i.e. that the child is suffering or is likely to suffer significant harm due to inadequate parenting or the child being beyond parental control).
- 3.46 If the test for making an interim care order is satisfied, the court must then address the welfare checklist (s1(3)) and the no order (s1(5)) principle. It must determine whether the welfare of the child justifies the making of an interim care or supervision order⁸. In order to make such a determination it will need to consider the local authority's care plan alongside any alternative course which may be proposed by the parents or by the Cafcass Children's Guardian.
- 3.47 The court can instead make a section 8 order as an interim measure (section 11(3)), pending final disposal of the proceedings. If it makes a residence order in these circumstances it must also make an interim supervision order unless satisfied that the child's welfare will be satisfactorily safeguarded without one (section 38(3)). A residence order gives the person in whose favour the order is made parental responsibility for the child while it is in force. The order may contain directions about how it is to be carried into effect, impose conditions and deal with other matters such as contact arrangements and educational provision. It is likely to be for a specified period, until the care or supervision application is decided (section 11(7)). This may be particularly relevant in circumstances where the local authority's care plan has identified placement with a relative as a preferred option for permanence.

⁸ See judgment of Thorpe LJ in *Re M (A child) (Interim Care Order)* [2002] 1 FCR 350.

Duration of interim orders

3.48 The first interim order can last for up to 8 weeks. Subsequent orders can normally only last for up to 4 weeks. The court will consider the appropriate duration for the first and each subsequent interim order having regard to the likely prejudicial effect on the child's welfare of any delay in finally disposing of the proceedings (section 1(2)), the timetable for the case determined by the court, in accordance with the *Public Law Outline* and the limits on the maximum duration of the order set out in section 38(4).

Directions on examination and assessment when an interim order is made

3.49 The Act gives the court the power when making an interim care order or interim supervision order to give any directions it considers appropriate about medical or psychiatric examination or other necessary assessment of the child. However, if the child is of sufficient understanding he may refuse to submit to the examination or assessment (section 38(6)). The court's powers under this provision are limited to a process that can properly be characterised as "assessment" rather than "treatment". Any proposed assessment must be necessary to enable the court to discharge properly its function of deciding whether or not to make a care or supervision order. The court may also direct that no examination or assessment shall take place or make any it subject to its specific approval (section 38(7)). Directions can be given when the order is made or at any other time while it is in force and can be varied on an application made by any party to the proceedings in which the directions were given. In *Re G (A child) (Interim Care Order: Residential Assessment)* 2005 UKHL 68 the House of Lords held that the court hearing care proceedings had no powers to order the local authority to provide specific services for anyone – that was a matter for the authority. The purpose of section 38 (6) and (7) was to enable the court to obtain the information it needed.

3.50 The court has similar directions powers when making a child assessment order (section 43(6)(b)) and emergency protection order (section 44(6)(b)) (see Chapter 4). The court's powers are more limited when a final supervision order is made and it does not have power to give any directions when making a final care order as thereafter decisions on examinations and assessment fall within the scope of local authority's parental responsibility. However, the court will have considered the local authority's care plan, prior to making a care order, and will expect that its key elements will be implemented, unless the child's circumstances change markedly.

3.51 A medical, psychiatric or other type of specialist assessment, with or without an examination of the child, will often be an important part of the core assessment, prior to the application for a care or supervision order. Such assessments will have been important in identifying whether there is any evidence that the child is suffering, or is likely to suffer, significant harm. In other cases, as an alternative to section 31 proceedings, the local authority should consider whether satisfactory arrangements for specialist assessments of the child can be made, whether with the agreement of the parents or by making an application for a child assessment order under section 43 of the Act.

3.52 Court directions on examination or assessment do not override the right of the child who is of sufficient understanding to make an informed decision to refuse to submit to an

examination or assessment (sections 38(6), 43(8) and 44(7)). Examination or assessment without the child's consent may be an assault. For consent to be valid the person giving consent must be competent, i.e. understand the nature of what he or she is consenting to (and the risks) and consent must be freely given. A child of 16 is presumed in law to be capable of giving, or withholding, consent unless there is evidence of incapacity. Children under 16 are not automatically presumed to be legally competent but may be so in relation to a particular issue. There is no specific age at which a child becomes competent to consent to treatment: it depends both on the child and on the seriousness and complexity of the intervention being proposed. Detailed guidance on consent is provided in '*Seeking consent: working with children*' DH 2001 (www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyandGuidance/DH_4007005).

Including an exclusion requirement

- 3.53 If the court is satisfied that there are reasonable grounds for believing that the child is suffering or is likely to suffer significant harm, and the harm is attributable to the care given to the child not being what it would be reasonable to expect a parent to give him, it has power to include in an interim care order an exclusion requirement (section 38A(1), inserted by the Family Law Act 1996) that:
- (a) requires a particular person to leave the child's home;
 - (b) prohibits a particular person from entering the child's home;
 - (c) excludes a particular person from a defined area in which the child's home is situated (section 38A(3)).
- 3.54 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 the child's home, the child will cease to suffer, or cease to be likely to suffer, significant harm; and
 - (b) that another person living in the child's home is able and willing to care for the child and consents to the exclusion requirement (section 38A (2)).
- 3.55 The requirement may last as long as the interim order or may be for a shorter period (sub-section (4)), 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 (sub-section (5)). 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 (sub-section (10)).
- 3.56 In any case where it could impose an exclusion requirement, the court has power to accept an undertaking from the relevant person which is enforceable as if it were an order of the court although a power of arrest cannot be attached (section 38B). An undertaking given under this section ceases to have effect in the same circumstances as an exclusion requirement; that is, when the interim order lapses, when the interim order is varied to that effect or is discharged or when the child is removed to other accommodation for more than 24 hours. Local authority circular LAC(97)15 provides further guidance about this issue.

(www.dh.gov.uk/en/Publicationsandstatistics/Lettersandcirculars/LocalAuthorityCirculars/AllLocalAuthority/DH_4004746).

Effects of, and responsibilities arising from, interim orders

3.57 Interim care and supervision orders have the same effect and give the same responsibilities to local authorities as full care orders, save for the fact that the court specifies the length of any interim order and may also give directions. An interim care order confers on the local authority parental responsibility for the child for as long as the interim care order is in force and, like a care order, its effect is that the local authority is under a duty to allow the child reasonable contact with his parents and others, such as siblings (see section 34). Interim supervision orders do not confer parental responsibility on the local authority and therefore the parents' contact with the child who is the subject of such an order may only be defined by a section 8 contact order. During the currency of an interim care order, the local authority is responsible for ensuring or enabling the provision of services identified in the care plan, which may well inform the development of the local authority's proposals for the future care of the child, which might involve rehabilitation to the child's parents, placement with a relative or friend or a permanent placement outside the child's family of origin. The emergence of such proposals should be notified both to the local authority's legal advisers and to the Cafcass Children's Guardian.

Effect of care orders

- 3.58 Section 33 of the Act sets out the effect of a care order and establishes the legal basis for the local authority's welfare responsibilities towards children in care. The effect of a care order on other orders is set out in section 91. At the conclusion of care proceedings the Cafcass Children's Guardian will, in all relevant cases, ensure that the care plan, as agreed by the court, is made available to the Independent Reviewing Officer (also see paragraph 3.67).
- 3.59 The local authority designated by the care order is responsible for looking after the child (section 33 (1)). It must provide accommodation for him and maintain him (section 23); safeguard and promote his welfare (section 22(3)(a)); and give effect to or act in accordance with the other welfare responsibilities set out in sections 22 to 26 and in Part 2 of Schedule 2 and in regulations made under the Act.
- 3.60 The local authority designated in the care order has parental responsibility for the child for as long as the order is in force. The local authority has power to determine the extent to which the child's parents and others with parental responsibility (who do not lose their parental responsibility on the making of the order) may meet their responsibility (section 33(3)(b)). The local authority may only use its powers to limit the parents' and others' exercise of parental responsibility if it is necessary to do so in order to safeguard and promote the child's welfare (section 33(4)); such limitations should be discussed with the parent and child; and recorded in the care plan, ensuring also that any restriction is kept under regular review.
- 3.61 In exercising its parental responsibility the local authority must also ascertain the wishes and feelings of the child and his parents, and any other person with parental responsibility for the child or whom the authority considers relevant before taking key decisions about the child (section 22(4)). Further specific limitations on the local authority's parental

responsibility are set out in section 33(6): the local authority must not cause the child to be brought up in any religious persuasion other than in which he would have been brought up had the order not be made; they do not have the right to agree (or refuse to agree) to the making of an adoption order with respect to the child, or to appoint a guardian for the child. The exercise of parental responsibility by the authority and others is further restricted by sub-section (7): no one can cause the child to be known by a new surname without a court order or the written consent of every other person who has parental responsibility and similarly no one can remove the child from the UK without an order or everyone's consent, except that (sub-section (8)) gives the local authority the power to take the child abroad for a period of up to one month. This limit does not affect any arrangements that may be made for the child to live outside England and Wales, which are governed by Schedule 2 paragraph 19.

- 3.62 The child's parents retain all rights, duties, powers, responsibilities and authority in relation to the child and his property which they have under other legislation and also continue to have financial responsibility for the child.
- 3.63 Subject to the specific restrictions mentioned above, the local authority has all the rights, duties, powers, responsibilities and authority to act as parent of a child for whom it is the authority designated in the care order. It may not transfer any part of the parental responsibility to another, but can arrange for some or all of it to be met by someone else acting on its behalf e.g. a local authority foster parent or a voluntary organisation (section 2(9)).
- 3.64 A care order automatically discharges the following orders made with respect to the child: a residence order and any other order made under section 8; a supervision order; and a school attendance order. It also brings wardship to an end (section 91). An education supervision order ceases to have effect on the making of a care order with respect to the child (paragraph 15(6)(b) of Schedule 3).

Discharge of care orders and discharge and variation of supervision orders

- 3.65 The child, local authority and any person having parental responsibility for the child may apply for discharge or variation of a care or supervision order under section 39 of the Act. Other persons with whom the child is living may apply for variation of a supervision order in so far as it affects them (section 39(3)). The welfare principle and the checklist in section 1 apply to the court's decision on an application under section 39 as they do to the court's determination of any other question concerning the upbringing of a child that falls to be determined under section 8 or Part 4 of the Act. The court may on an application for discharge of a care order substitute a supervision order without having to re-establish that the grounds (section 31(2)) for making a supervision order still exist. However, a care order can only be made where the child was subject to a supervision order if the local authority satisfies the court that the criteria in section 31(2) are met. The supervision order is automatically discharged on the making of a care order (section 91(3)).
- 3.66 A care order is automatically discharged by the making of a residence order (section 91(1)) or by the making of a special guardianship order (section 91(5A)). A care order is suspended but not discharged by the making of a placement order (section 29(1) of the Adoption and

Children Act 2002) and will revive if the placement order is later discharged. A person in whose favour a residence order is made will have parental responsibility for the child (if he does not already have it) and may apply for discharge or variation of a supervision order under section 39(2)(a).

- 3.67 Local authorities are required by the Review of Children’s Cases Regulations 1991 to consider, at least at every statutory review (of a case of a child in care) whether to apply for discharge of the care order. The reviews must be chaired by an Independent Reviewing Officer (IRO). Part of the IRO’s role is to ensure that the child’s wishes and feelings are understood and taken into account in the authority’s plans for the child’s future care. At each review, as appropriate, the child should be informed of steps he can take for himself in relation to the order, or which an eligible adult might take on his behalf. These include applying for:
- discharge of the order;
 - an order with respect to contact or for variation of an existing order (section 34);
 - leave to apply for a residence order (section 10(8)); or
 - leave to apply for a special guardianship order (section 14A).
- 3.68 A supervision order will last only one year (or less if the court so specifies) unless discharged earlier or the local authority applies for an extension. It can be extended for up to 3 years from the date of the original order. The local authority should consider whether or not to apply for the order to be varied or discharged where it has not been complied with (e.g. where a child of sufficient understanding refuses consent to a medical examination required by the order) or where circumstances have changed so that it may no longer be necessary.
- 3.69 Where an application for discharge of a care order or supervision order or to substitute a supervision order for a care order has been disposed of, no further application of this kind may be made within six months, without leave of the court. This does not apply to interim orders or applications to vary a supervision order (section 91(15) and (16)).

Appeals against care and supervision orders

- 3.70 Rules of court provide that anyone who had party status in the original proceedings may appeal against the making of a care or supervision order, including an interim order, or of an order varying or discharging such an order, or against the court’s refusal to make such an order. 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 Part 8 of the Family Proceedings Rules 1991 (SI 1991/1247), rule 29 of the Family Proceedings Courts (Children Act 1989) Rules 1991 (SI 1991/1395) as amended and, for placement orders, Part 19 of the Family Procedure (Adoption) Rules 2005 (SI 2005/2795).

Contact with children in care

- 3.71 The local authority, in pursuit of its duty to promote contact, must allow a child who is the subject of a care order to have reasonable contact with his parents and certain other people, unless directed otherwise by a court order, or unless the local authority temporarily decides to refuse contact in urgent circumstances (section 34). The court must consider contact

arrangements before making a care order (see section 34 (11) and has wide powers to make orders appropriate to the particular circumstances. The underlying principle is that the local authority, the child and other persons concerned should as far as possible agree reasonable arrangements for contact before the care order is made, but should be able to seek the court's assistance if agreement cannot be reached or the authority considers that contact between the child and a person who would otherwise be entitled to it would not be in the child's best interests.

- 3.72 Section 34 creates the presumption that local authorities should enable contact to take place between children in care and their parents (and other people who are significant to them, such as siblings). The pro-active role given to the court in managing the arrangements during the course of proceedings reflects the importance of contact for the child. Regular contact with parents, grandparents, other relatives and friends will usually be an important part of the child's upbringing in his new environment and will be essential for successful rehabilitation. Lack of contact can, over a period, have serious consequences for the rights of parents and children; it can be a major factor in deciding whether to discharge a care order or to dispense with parental agreement to adoption. Contact arrangements for children in care are handled entirely separately from applications for contact orders under section 8. A section 8 contact order cannot be made when a child is the subject of a care order (section 9(9)), and an existing section 8 order is automatically discharged by the making of a care order (section 91(2)).
- 3.73 In addition to allowing the child reasonable contact with his parents, the local authority must under section 34 also allow reasonable contact with any guardian or special guardian, any person in whose favour a residence order was in force with respect to the child immediately before the care order was made and any person who had care of the child under wardship immediately before the care order was made.
- 3.74 There are a number of ways in which the local authority's proposals for contact may be scrutinised or challenged:
- (a) the court, before making a care order, must consider the arrangements made or proposed by the authority and ask parties to the proceedings to comment on them (section 34(11));
 - (b) any person to whom the Act's presumption of reasonable contact applies, or any other person who has obtained the leave 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 for contact by the local authority;
 - (c) the child can apply for his contact with another person to be terminated or for any order with respect to contact to be varied or discharged (section 34(4) and (9));
 - (d) the court, if it is satisfied that it should do so under section 1(5), 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 conditions can be as specific as the court considers necessary, for example, that contact is supervised or takes place at a particular time or place, or is reviewed at prescribed intervals.

- 3.75 The local authority has the same powers as the child to apply for an order with respect to contact, and can also 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 (section 34(6)). The local authority must be satisfied that it is necessary to refuse contact to safeguard and promote the child's welfare, and the refusal must need to be decided on 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). The authority, child or other person named in the order may apply at any time for an order to be varied or discharged; and any party to the proceedings (including the local authority) can appeal against the making of, or refusal to make, an order.
- 3.76 A decision to refuse contact under section 34(6) is a serious step which should not be undertaken lightly. The Contact with Children Regulations 1991 (SI 1991/891) set out the steps that the local authority must take when refusing contact under section 34(6). If the conditions set out in section 34(6) and the 1991 Regulations are not met, the local authority can exercise its parental responsibility in relation to a child subject to a care order to permit or refuse contact between the child and any person with whom it is not required to allow contact by virtue of section 34(1). It should always consult the child and their parents before making such a decision and inform any person denied contact of their right to apply for an order in respect of contact under section 34(3), and of the local authority's procedure for handling representations and complaints made under section 26(3).
- 3.77 Repeat applications for orders under section 34 are controlled by section 91(17). If an application for an order has been refused, the person concerned may not re-apply for the same order in respect of the same child within six months without the permission of the court. The court has a further power to control applications under Section 91(14) but will consider carefully whether it should use this power, in accordance with the expectation that restrictions on contact and on access to the courts will only be imposed where they are necessary to protect the rights of others.
- 3.78 Certain other provisions in the Act bear on the question of contact more generally, in relation to all looked after children not just those who are the subject of care orders (paragraph 15 of schedule 2). In addition to the local authority's general duty to promote contact between the child and his parents (and others – see 3.71 above), it must take reasonable steps to keep parents informed of the child's whereabouts, such as when another authority takes over the provision of accommodation, unless the child is the subject of a care order and there is reasonable cause for believing that giving that information would be prejudicial to the child's welfare. In no other circumstances may the local authority withhold information on the child's whereabouts. Where the authority provides accommodation for a child whether under a care order or otherwise it must ensure that the accommodation is as near his home as is reasonably practicable and consistent with his welfare (section 23(7)), so that contact is facilitated.
- 3.79 The local authority has the power to make payments to assist contact (Schedule 2 paragraph 16) for example towards the costs incurred by parents and others visiting the child or by the child in visiting or maintaining contact by means of letters, telephone or electronic communication.

Supervision orders

3.80 Supervision orders and interim supervision orders have for the most part been dealt with in the preceding sections of this guidance – those on the court’s order-making powers, applications, criteria for orders, court directions and variation and discharge of orders, for example – where the provisions are common both to supervision orders and care orders or raise common points. The following paragraphs deal more specifically with supervision orders.

3.81 A supervision order puts the child under the supervision of a designated local authority. The local authority has three specific duties:

- (a) to advise, assist and befriend the child;
- (b) to take all reasonable steps to see that the order is given effect; and
- (c) to consider whether to apply for variation or discharge of the order where it is not being wholly complied with or the authority considers that the order may no longer be necessary (section 35(1)).

Where a person is receiving medical treatment pursuant to a condition in the order, the local authority must also refer back to the court specific issues relating to that treatment in accordance with paragraph 5(7) of Schedule 3 should the need arise.

3.82 A supervision order may also require the child to comply with any directions given by the local authority which require him to do all or any of the following:

- (a) live at a place specified in directions given by the supervisor;
- (b) take part in education or training activities; and
- (c) report to particular places at particular times.

The local authority cannot give directions in respect of any medical or psychiatric examination or treatment (Schedule 3 paragraph 2(3)). These are matters for the court to require by order but it should be noted that the court cannot make a direction requiring the child to submit to psychiatric or medical examination or treatment unless the child, if of sufficient understanding to do so, consents to its inclusion in the order (Schedule 3 paragraph 4). The local authority should always consider very carefully when contemplating an application under section 31 whether these powers, coupled with the power of the court and supervisor to impose requirements on a responsible person (Schedule 3 paragraph 3) , with the consent of that person, are sufficient to promote and safeguard the welfare of the child. A responsible person is any person with parental responsibility for the child and any other person with whom the child is living (Schedule 3 paragraph 1).

3.83 There is no prescribed remedy for breach of a requirement set out in the order itself or of a local authority’s direction. In case of breach, the local authority would have to consider whether to apply to the court to vary or discharge the order (section 35(3)). If the supervisor is prevented from visiting the child or having reasonable contact with him under paragraphs 8(1)(b) and (2)(b) of Schedule 3, he may apply to the court for a warrant under section 102. The warrant is intended to enable the person concerned to exercise his powers. If the supervisor considered that urgent action should be taken to protect the child, he should

consider whether to apply for an emergency protection order (section 44) or ask a constable to take the child into police protection under section 46.

- 3.84 Unless otherwise discharged, a supervision order will last for one year (Schedule 3 paragraph 6(1)). Before its expiry, the supervisor can apply for an extension, or further extensions, for any period not exceeding 3 years in total from the date of the first order. A supervision order is otherwise discharged by order of the court; the making of a care order with respect to the child; the making of a placement order under the Adoption and Children Act 2002; the child reaching the age of 18; or if a court takes certain action under the Child Abduction and Custody Act 1985 for example by making an order for the return of the child. An interim supervision order may accompany a residence order in the circumstances described in section 38(3). A local authority, when exercising responsibility for a supervision order, will need to consider whether also to operate a child protection plan or a child in need plan.

Wardship and the inherent jurisdiction of the High Court

- 3.85 The impact of the Act on the inherent jurisdiction of the High Court is considerable. Section 100 prohibits the use of the court's inherent jurisdiction in general, and wardship in particular, as an alternative to public law orders. If a care order is made in respect of a child who is a ward of court then the wardship comes to an end (section 91(4)). While a child is in care he cannot be made a ward of court (section 100(2) and section 41 of the Supreme Court Act 1981 as amended by paragraph 45 of Schedule 13).
- 3.86 The inherent jurisdiction remains available as a remedy of last resort where a local authority seeks the resolution of a specific issue concerning the future of a child in its care. But there are restrictions: the local authority must have the High Court's leave to apply for the exercise of its inherent jurisdiction (section 100(3)). Leave may only be granted where the court is satisfied that the local authority could not achieve the desired result through the making of any order other than one under the inherent jurisdiction (section 100(4)). Where there are other statutory remedies, the local authority will be instead expected to use them. Even if there is no other statutory remedy within the Act, the court must be satisfied that there is reasonable cause to believe that the child is likely to suffer significant harm if the inherent jurisdiction is not exercised.
- 3.87 Since the local authority has parental responsibility for children in its care, it should make decisions that affect the child's welfare in consultation with the parents as appropriate and after taking the child's wishes and feelings into account. Occasions where recourse to the High Court is appropriate should be very rare and relate to matters that are unusual or highly contentious, or that have the potential permanently to affect the child's exercise of his human rights. An example might be the sterilisation of a child in care. Other less extreme situations may also merit High Court intervention, for example, to restrain harmful publicity about a child or to provide injunctive protection against third parties. In such cases when the inherent jurisdiction is the only means of obtaining the remedy, it should not be too difficult to satisfy the leave criteria.
- 3.88 The Act further prevents the High Court from exercising its inherent jurisdiction "for the purposes of conferring on any local authority power to determine any question which has arisen, or which may arise in connection with any aspect of parental responsibility". Thus, in making an order under its inherent jurisdiction, the court cannot confer on the local

Chapter 4: Protection of Children

Summary

- 4.1 This Chapter sets out the range of provisions that exist under Part 5 of the Act relating to the protection of children. The Practice Direction (at Annex 2) applies not only to care and supervision proceedings brought under Part 4 of the Act but also, as far as practicable, it is to be applied to all other public law proceedings, including child assessment orders (section 43). This order is described in this Chapter, with guidance given about the circumstances in which its use may be appropriate. Guidance is set out on the commencement and duration of these orders.
- 4.2 Extensive guidance is provided about use of the provisions relating to emergency protection orders, which may be applied for where there is a genuine emergency affecting the safety of a child. While the court will require clear and compelling evidence that a child's is in imminent danger, the guidance also makes clear that emergency protection orders may be applied for where access to a child has been frustrated. Here, the guidance makes clear the difference between circumstances where there is a genuine emergency and those where a child assessment order may be the more appropriate route to take. The guidance makes clear that, saving wholly exceptional circumstances, applications for emergency protection orders are to be made on notice, with the parents being notified that an application is being made. The Practice Direction (at Annex 2) does not apply to EPOs.
- 4.3 The guidance goes on to explain the effects of emergency protection order have, both on those caring for the child and on the applicant for the order. The guidance goes on to set out the circumstances in which orders may be challenged and the limitations on applicants who wish to seek the discharge an order.
- 4.4 The powers of the police under section 46 of the Act are set out in this Chapter, with specific guidance being provided about the role of the 'designated officer'. The relationship between the police and the local authority is described.
- 4.5 The duty of local authorities to enquire into children's welfare under section 47 of the Act is also set out in this Chapter. The link between these enquiries and assessments undertaken in accordance with the *Framework for the Assessment of Children in Need and their Families* is described, as is the duty of a range of other specified statutory bodies to assist local authorities in conducting enquiries under this section. Brief guidance is provided about the abduction of children in care and the recovery of children, through recovery orders, of children who have been unlawfully taken away or kept away from a 'responsible person'.

Introduction

- 4.6 Part 5 of the Act aims to ensure that effective action can be taken to protect children within a framework of proper safeguards and reasonable opportunities for parents (or others with parental responsibility for the child) to challenge relevant actions before a court. The measures are short-term and time-limited, and may or may not lead to further action by the local authority under Part 3 or 4 of the Act.
- 4.7. Local authorities, when exercising their functions under Part 5 of the Act, will also need to have particular regard to the guidance set out in *Working Together to Safeguard Children* (www.ecm.gov.uk/workingtogether) and the *Framework for the Assessment of Children in Need and Their Families* (www.dh.gov.uk/en/Publicationsandstatistics/PublicationsPolicyAndGuidance/DH_4003256).
- 4.8 Proceedings under Part 5 are not classified as family proceedings for the purpose of the Act. This means that in Part 5 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 the court's specific authority to make an emergency protection order (EPO) instead of a child assessment order under s43(4) if it considers it to be appropriate to safeguard the child through an EPO in the particular circumstances of the case.
- 4.9 However when making an order under this Part, as with any other Part of the Act, the court's paramount consideration must be the child's welfare (section 1(1)). The court must also have regard to the 'no order' principle (section 1(5) of the Act and Chapter 1 of this guidance). The checklist of relevant factors (section 1(3)) does not apply to orders made under Part 5 but applicants should bear it in mind when preparing and presenting applications, in particular in those cases where proceedings under this part are likely to be followed by other proceedings under the Act, to which the checklist does apply. Where an application for an EPO is made without notice to the parents (or others with parental responsibility, or persons with whom the child is living, as the case may be), the authority must make out a compelling case for applying for the EPO without giving the parents notice. The case must be genuinely one of emergency or other great urgency. There should be clear reasons to believe the safety of the child will be compromised if the parents are alerted to the application.

Child assessment orders: section 43

- 4.10 The child assessment order deals with the issue of enabling an assessment of the child's health or development, or of the way in which 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 parents' care is required;
 - the local authority considers that an assessment is required but his parents have refused to co-operate; and
 - it is intended to allow the local authority to find out enough about the state of the child's health or development or the way in which he has been treated to decide what further action, if any, it should take. It should not be used where the circumstances of the case suggest that an application for an EPO or a care or supervision order would be more appropriate.

- 4.11 Only a local authority or a person authorised for the purposes of section 31 (i.e. the NSPCC) may apply for a child assessment order. The court has to be satisfied that:
- the applicant has reasonable cause to suspect (as opposed to reasonable grounds to believe, which is the test that has to be satisfied to obtain an EPO (see 4.25 onwards)) that the child is suffering, or is likely to suffer, significant harm (“significant harm” has the same meaning here as in section 31 (section 105(1)));
 - an assessment of the state of the child’s health and development, or of the way he has been treated, is required to enable the applicant to determine whether or not the child is suffering, or is likely to suffer, significant harm; and
 - it is unlikely that such an assessment will be made or be satisfactory in the absence of a child assessment order.

- 4.12 A child assessment order will usually be more appropriate where the suspected harm to the child appears to be longer-term and cumulative rather than sudden and severe. The examples of such circumstances include:

- a persistent concern about a child who appears to be failing to thrive;
- parents who are ignorant of or unwilling to face up to possible harm to their child arising from his state of health or development; or
- the existence of some evidence that the child may be subject to continuing or periodic wilful neglect or abuse, but not to such an extent as to place him at serious immediate risk.

However, emergency action should be taken where disclosure of the abuse is itself likely to put the child at immediate risk of significant harm and/or where there is an urgent need to gather particular forensic evidence which would not otherwise be available.

- 4.13 One of the essential ingredients of a child assessment order is that an assessment is needed to help establish basic facts about the child’s condition. It will be appropriate in cases where insufficient information is available to justify an application for a care or supervision order. However, if possible the child should recently have been seen by someone who is competent to form a judgement about the child’s welfare and development. The views of professionals such as the child’s health visitor or GP are important. A parent’s refusal to allow a social worker to see a child about whom there is serious concern (as opposed to an objection to the child being examined or assessed) may indicate that the child is at immediate risk of significant harm, and justify an application for an EPO.

- 4.14 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. 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 with them.

Commencement and duration

- 4.15 A child assessment order must specify the date by which the assessment is to begin (it need not begin immediately) and it 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 medical, intellectual, emotional, social and behavioural needs can be completed within the specified period. This assessment should be of sufficient depth to establish whether the child is suffering, or likely to suffer, significant harm and, if so, what further intervention is required.

4.16 The child assessment order has two main effects. It 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 also authorises the carrying out of the assessment in accordance with the terms of the order. Unlike an EPO or a care order, the order does not confer on the local authority parental responsibility for the child. A child of sufficient understanding to make an informed decision may refuse to consent to the assessment (section 43(8)).

4.17 When making a child assessment order, the court may make directions about related matters, such as whether the assessment should be limited to a medical examination or cover other aspects of the child's health and development, by whom and where it should be conducted and whether the child's parents' or medical or other representatives may be present. The court should be asked to include in the order the details of those to whom the results of the assessment should be given.

4.18 The court has power to direct that the child should be kept away from home for a specified period or periods, but only if it is necessary for the purpose of the assessment (section 43(9)).

4.19 If the court directs that the child may be kept away from home, it must also give directions as it thinks fit about the contact the child must be allowed with other persons during this period.

4.20 The court cannot make a child assessment order if it is satisfied that there are grounds for making an EPO, and that it ought to make an EPO instead of a child assessment order (section 43(4)). In that event, it may treat the application as if it were an application for an EPO and proceed under sections 44 and 45 of the Act.

4.21 Procedural requirements for child assessment orders are outlined in sections 43(11) and (12) and detailed more fully in the rules of court. They reflect the non-emergency nature of the order. An application for a child assessment order can only be made on notice to the parents, at a full hearing enabling all the parties to participate fully in the process. The rules of court provide for the circumstances in which, and by whom, an application to vary or discharge a child assessment order may be made. There is a right of appeal against the court's decision to make (or not to make) a child assessment order.

4.22 The applicant should be prepared for the possibility that the persons responsible for the child fail to produce him for the assessment in accordance with the order. Deliberate refusal to comply is very likely to add to concern for the child's welfare and would probably justify an application for an EPO (or a care order) or a request to the police that their police protection powers be exercised (see paragraphs 4.64 to 4.72). If the court considers, when

hearing the application for the child assessment order, that there is a real danger that the order will not be complied with, it may, if the grounds for an EPO are also satisfied, instead make an EPO.

- 4.23 A child assessment order can subsist alongside a section 8 order or an education supervision order. It is not appropriate where a care order, EPO or supervision order is in force. Where the child is the subject of a care order or an EPO, the local authority already has parental responsibility for the child and therefore has no need of a child assessment order, even in circumstances where the child's parents object. Where the child is the subject of a supervision order, the local authority should apply to vary the order to make provision for any assessments that may be necessary and that cannot otherwise be arranged.

Practice issues

- 4.24 A number of important practice issues arise. One is that as far as possible the child assessment order should be used to assess a child where there is serious concern about a child's health or development, and a child assessment order is needed to determine whether the child is suffering, or is likely to suffer significant harm, and it is unlikely that such an assessment will be made in the absence of a child assessment order. Although less intrusive in family life than other orders made under Parts 4 and 5 of the Act, child assessment orders should not be used for a child whose parents are simply reluctant to use child health services. The local authority should consult other relevant agencies and share information about the case as appropriate. Where protection of the child is required and evidence exists, care proceedings should be commenced. If there is insufficient evidence to issue care proceedings and parents are not co-operating with the assessment requirement then an application for an EPO should be made. However, local authorities should bear in mind the emergency nature of EPOs. They are not to be used where an emergency situation does not exist.

Emergency protection orders: sections 44, 44A, 44B, and 45

- 4.25 EPOs enable the child, in an emergency, to be removed from where he is or to be kept where he is if, and only if, this is necessary to provide immediate short-term protection. It should be remembered that an EPO, which has the effect of separating a child from his parents, is a "draconian" and "extremely harsh" measure, and one requiring "exceptional justification" and "extraordinarily compelling reasons"⁹. The courts have confirmed the findings of the European Court of Human Rights. The child must be in "imminent danger". The court must be satisfied that the EPO is both necessary and proportionate and that there is "no less radical form of order available".¹⁰ Local authorities should obtain and consider legal advice before making an application for an EPO.

9 See particularly the judgments of Munby J in *X Council v B* [2004] EWHC 2015 (Fam) and McFarlane J in *Re X: Emergency Protection Orders* [2006] EWHC 510 (Fam) which summarise the law and practice relating to EPOs and provide guidance which the family courts and lay magistrates must consider when considering an application for an EPO.

10 See the judgment of Mr Justice Munby in *Re X Council* (ibid).

4.26 The essential features of the EPO are:

- (a) the court must be satisfied that there is reasonable cause to believe that the child is likely to suffer significant harm (defined by reference to section 31) or that access to the child by a person authorised to seek access has been frustrated in circumstances where the child might be suffering significant harm ;
- (b) its duration is limited to a period of eight days, with a possible extension of up to a further seven days, a maximum of 15 days (but no EPO should be made for any longer than is strictly necessary to protect the child);
- (c) the child, his parents (or others with parental responsibility) may apply to discharge the order (if they were not given notice of the hearing at which the EPO was made and/or did not attend that hearing). They may not, however, apply to discharge the EPO if they had been given notice and attended the hearing;
- (d) the order confers on the person in whose favour it is made (usually the local authority) limited parental responsibility for the child;
- (e) the child must be permitted to have reasonable contact with his parents and other significant individuals, unless the court directs otherwise;
- (f) the court may make directions in relation to medical or psychiatric examination or other assessment of the child;
- (g) applications may not, save in wholly exceptional circumstances, be made without notice being given to other interested parties;
- (h) the application should name the child, but where it does not, must describe him as clearly as possible; and
- (i) the child must be returned to the parents as soon as it is safe to do so, even if the order is still in force.

4.27 An application for an EPO is a very serious step. It should not be regarded as being an automatic response in a case of suspected child abuse or as a routine first step to initiating care proceedings. The court will require full, detailed, precise and compelling evidence that the situation is sufficiently serious to justify such an interference with family life. Nevertheless if, in the course of making enquiries under section 47 of the Act, the authority is refused access to the child or denied information as to his whereabouts, it should consider applying for an order (either a child assessment order, an EPO, a care or a supervision order) unless satisfied that the child's welfare can be satisfactorily safeguarded without taking such action. A proportion of EPOs are sought in circumstances where the child is already accommodated under section 20, where an application is made to prevent the removal of the child by the parents from the accommodation provided by the local authority. In such cases, the court may apply a less severe test than in cases where the child is to be removed from the parents' direct care.

4.28 Where the need for emergency action to protect the child arises from suspected abuse the local authority should explore the possibility of providing services to and/or accommodation for the alleged abuser as an alternative to the removal of the child (Schedule 2, paragraph 5). Such consideration should form part of the process of assessment (initial or core), identifying what steps may be necessary to protect the child. It should take place in a timely way, as it is essential that it does not hold up any emergency action that may be needed. When

considering whether emergency action is required, consideration should also be given as to whether action is also required to safeguard and promote the welfare of other children in the same household (e.g. siblings), the household of an alleged perpetrator, or elsewhere.

- 4.29 Planned emergency action normally takes place following an immediate strategy discussion between police, the local authority and other agencies as appropriate (including the NSPCC where involved). Where a single agency has to act immediately to protect a child, a strategy discussion should take place as soon as possible after the emergency action has been taken. The local authority should seek and consider legal advice before applying for an EPO.
- 4.30 Any person can apply to the court for an EPO, although in practice the vast majority of applications are likely to be made by local authorities. The applicant must notify the local authority, amongst others, of the application, whereupon the local authority's duty to make enquiries, or to cause them to be made, under section 47 comes into play.
- 4.31 The Emergency Protection Order (Transfer of Responsibilities) Regulations 1991 (www.england-legislation.hmso.gov.uk/si/si1991/Uksi_19911414_en_1.htm) allow the local authority to take over the EPO, where the EPO is granted to another party, and therefore the powers and responsibility for the child that go with it, if they consider that this course of action would be in the child's best interests. Regulation 3 sets out the matters to which the authority must have regard in coming to its decision.

The grounds for making an emergency protection order: section 44

- 4.32 The court may make an EPO if it is satisfied that one of the grounds set out in section 44(1) are met, namely:
- (a) (i) there is reasonable cause to believe that the child is likely to suffer significant harm if he is not removed to accommodation provided by or on behalf of the applicant, or (ii) if he does not remain in the place in which he is then being accommodated;
 - (b) the local authority's attempts under section 47 to establish whether the child is at risk of significant harm are being frustrated by denial of access to the child; or
 - (c) in the case of an application by an authorised person (the NSPCC), the applicant has reasonable cause to suspect the child is suffering or likely to suffer significant harm and has been making enquiries with respect to the child's welfare, and these enquiries are being frustrated by denial of access to the child.

EPO on grounds that access to the child has been frustrated

- 4.33 The local authority can apply for an EPO under section 44(1)(b) if:
- (i) it is carrying out enquiries under section 47(1)(b) (child at risk of significant harm); and
 - (ii) the enquiries are being frustrated by access to the child being unreasonably refused; and
 - (iii) it has reasonable cause to believe that access to the child is required as a matter of urgency.

- 4.34 Under section 44(1)(c) an application can be made on similar grounds to s44(1)(b) but by an authorised person.
- 4.35 The circumstances in which the ‘frustrated access’ grounds justify an EPO must be distinguished from the child assessment order. The local authority should apply for an EPO where access is required as a matter of urgency. If the real purpose of the authority’s application is to enable the authority to assess the child i.e. there is a need for further investigation of the child’s health and development but he is not considered to be in immediate danger then the child assessment order is the more appropriate route for the local authority to follow.
- 4.36 If the local authority’s case meets the criteria set out in section 44(1)(b) (paragraph 4.32 above), the court may treat this combination of factors as evidence of an emergency or the likelihood of an emergency. The court will have to decide whether the refusal of access to the child was unreasonable in the circumstances. A person seeking access must produce evidence of his authority (if asked to do so (section 44(3))), such as an appropriate local authority employee identification card. Failure to do this may make it reasonable to refuse access.
- 4.37 If the local authority is refused access to or denied information about a child’s whereabouts when it is conducting enquiries under its duty in section 47(6), it should apply for an appropriate order (e.g. a child assessment order or an EPO) unless it is satisfied that the child’s welfare can be satisfactorily safeguarded without taking such a step.
- 4.38 If the court makes an EPO under section 44 and it considers that adequate information as to the child’s whereabouts is not available to the applicant local authority but is available to someone else, such as the person who was last known to be looking after him, it may include in the order a provision requiring that person to disclose any information he may have about the child’s whereabouts (section 48(1)). The EPO may also authorise the applicant to enter premises specified in the order to search for the child (section 48(3)) or other children (section 48(4)).

EPO on general grounds

- 4.39 The other ground on which an emergency protection order may be made (section 44(1)(a)) is more of a general purpose provision for emergency situations. The court must be satisfied that there is reasonable cause to believe that the child is likely to suffer significant harm:

S44(1)(a) (i) there is reasonable cause to believe that the child is likely to suffer significant harm if he is not removed to accommodation provided by or on behalf of the applicant, or (ii) if he does not remain in the place in which he is then being accommodated (by implication, a safe place).

There is a clear distinction to be drawn between the significant harm test in section 44(1)(a) and the test set out in subsections (b) and (c). The former test is objective, that is, there must be reasonable cause to believe the child is at risk of significant harm. In the latter, the test is subjective and it will depend on whether the applicant has reasonable cause to believe that access to the child is required as a matter of urgency. The test in relation to significant harm looks to the future. In other words, the EPO is necessary to protect the child from the

likelihood of suffering significant harm. Past or present significant harm is relevant to the extent that it indicates that the child is likely to suffer significant harm in the near future.

4.40 There are a number of additional points to be emphasised about EPOs:

- (a) the court will wish to be satisfied that the emergency action is justified and, if so, what attempts have been made to agree alternative suitable arrangements with the parents (e.g. provision of accommodation under Schedule 2 paragraph 5 of the Act);
- (b) any order must be both necessary and proportionate, providing for the least interventionist solution consistent with the preservation of the child's immediate safety;
- (c) save in wholly exceptional circumstances the application must be made on notice. If an EPO is obtained without notice then the parents must be given information about what happened at the hearing, whether or not they request it;
- (d) the court may take account of any statement contained in any report made to the court in the course of, or in connection with, the hearing, or any evidence given during the hearing which the court believes to be relevant to the application, which might otherwise be inadmissible, for example under the court rules against hearsay evidence;
- (e) the local authority is under a continuing duty to keep the child's case under review, to ensure that the parents and the child are not separated for longer than is necessary to secure the child's safety.

4.41 An emergency protection order has three effects:

- (a) a person who is in a position to do so must comply with any request to produce the child to the applicant;
- (b) the order authorises removal of the child or prevents his removal from the place where he is situated; and
- (c) gives the applicant limited parental responsibility for the child (but does not remove, but merely limits, the parents' parental responsibility).

The local authority can only do what is reasonably required to safeguard or promote the child's welfare in the exercise of his parental responsibility having regard, in particular, to the duration of the order (section 44(5)). The local authority must apply their mind very carefully to whether removal is essential. Although the court makes the decision on whether to grant the EPO, it is for the authority to decide whether to remove the child. Section 44 (10)(a) and (11) imposes a mandatory obligation on the local authority, to return the child it has removed, if it appears to the local authority that it is safe for the child to be returned.

4.42 In situations where persons 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 (section 44(4)(a)).

4.43 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 applicant (section 48(1)). This provision is intended to ensure that access to the child is not frustrated by information being withheld from the applicant. The

named person (or persons) will normally be a person who has previously refused to disclose the information to the applicant and who appears to the court to be in possession of that information.

- 4.44 No one is excused from complying with a direction made under section 48(1) on the grounds that it may incriminate him or his spouse, and “a statement or admission made in complying shall not be admissible in evidence against either of them in proceedings for any offence other than perjury” (section 48(2)). This is intended to encourage witnesses to give evidence and provide vital information, and to avoid delay in children’s cases. Failure to comply with the direction would be contempt of court and may amount to an offence under s44(15) (intentional obstruction of the EPO) punishable by a fine or imprisonment.
- 4.45 The Act gives the courts power to authorise an applicant to enter and search specified premises for a child who is the subject of an EPO (section 48(3)).
- 4.46 If the applicant believes there may be another child on the premises to be searched, who ought also to be the subject of an EPO, he should always seek an order authorising him to search for such a child as well (section 48(4)). Where the applicant cannot name the child, he should be described as clearly as possible in the order.
- 4.47 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 (section 48(5)). The authorised person must report the result of the search to the court whether the child was found and, if so, what action was taken and/or is planned. The court should also be told whether the power to search for the child is being treated as an EPO. If it is, and the applicant for the EPO is not the local authority, the applicant must inform the local authority accordingly, so that the local authority can meet its duty to investigate the child’s circumstances under section 47 of the Act.
- 4.48 It is a criminal offence intentionally to obstruct an authorised person (e.g. a local authority social worker), exercising his powers under section 48(3) and (4). If this does occur, or is anticipated, the court can issue a warrant authorising any constable to assist the authorised person in entering and searching the named premises (section 48(9)). The authorised person may accompany the police officer if he wishes, although the court may direct otherwise (section 48(10)(b)). In practice, where it is the local authority or NSPCC who is the applicant, the social worker would normally accompany the police officer, as he will be responsible for the child when he has been removed from the premises. Any warrant which the court issues to the constable may direct that the police officer may be accompanied by a doctor or nurse (section 48(11)). The warrant will authorise the constable to use reasonable force if necessary in order to assist the applicant in the exercise of his powers to enter and search the premises for the child (section 48(9)).
- 4.49 In dire emergencies, the police can exercise their powers under section 17(1)(e) of the Police and Criminal Evidence Act 1984 to enter and search premises without a warrant, for the purpose of saving life and limb. Similarly, under section 24 of that Act, a constable may, without a warrant, arrest a person in order to protect a child or other vulnerable person from the person in question, i.e. anyone who is about to commit an offence, anyone who is in the act of committing an offence, anyone whom the constable has reasonable grounds for suspecting to be about to commit an offence, anyone whom he has reasonable grounds for

suspecting to be committing an offence, or, if an offence has been committed or the constable has reasonable grounds for suspecting that an offence has been committed, anyone whom he has reasonable grounds to suspect of being guilty of the offence.

- 4.50 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 (section 44(5)). The power to remove the child would persist if the circumstances changed and the order was still in force.
- 4.51 When an EPO is in force and the applicant has removed the child, or prevented the child's removal from a safe place, the applicant is under a duty to return the child or, as the case may be, allow him to be removed if it appears that it is safe for the child to be returned or removed (section 44(10)). In those circumstances, he is under a duty to return the child to the care of the person from whose care the child was removed (section 44(11)(a)). If that is not reasonably practicable the applicant must return the child to the care of his parent or to another person who has parental responsibility for him, or (subject to the court's agreement) to such other person as the applicant considers appropriate (section 44(11)(b)).
- 4.52 If, after the child has been returned, there is subsequently cause for concern, the applicant may exercise his powers under the EPO (if it is still in force) and remove the child once more (section 44(12)). It is an offence (section 44(15)) intentionally to obstruct any person exercising his power (under section 44(4)(b)) to remove, or to prevent the removal of a child.

Court directions

- 4.53 Where the court makes an EPO it may give additional directions as to the contact the child must be allowed to have with certain persons and may be allowed to have with any other named person (section 44(6)(a)). The directions may impose conditions (section 44(8)). Subject to specific directions, there is a general duty on the applicant under section 44(13) to allow the child reasonable contact with his parents; any person who is not a parent but has parental responsibility for him; any person with whom he was living before the order was made; any person in whose favour a contact order is in force with respect to the child (under section 8); any person who is allowed contact by virtue of an order under section 34 and anyone acting on behalf of any of these people.
- 4.54 The court may also give directions about medical or psychiatric examination or other assessment of the child (section 44(6)(b)). The court may also specify which types of examination or assessment should not be made (section 44(8)). In promoting the welfare of the child, the court can therefore ensure that the child is not subjected to unnecessary assessments. Where such directions are given, the child may, if he is of sufficient understanding to make an informed decision, refuse to submit to the examination or other assessment (section 44(7)).
- 4.55 The court may give directions regarding contact and medical or other assessments not only when the EPO is made, but also at any time while it is in force and the court may also vary those directions (section 44(9)).
- 4.56 The court can attach an exclusion requirement to an EPO under section 44A, where it is satisfied three conditions are met:

- where the EPO is made on the basis set out in section 44(1)(a) that there is reasonable cause to believe that if a person (referred to as the “relevant person” in section 44A) is excluded from the child’s home, the child will not then be likely to suffer significant harm, if the child is not removed from his home, or is moved from where he is (the safe place), as the case may be. Where the EPO is made due to enquiries being frustrated under section 44(1)(b) or (c) those enquiries will therefore cease to be frustrated by the fulfilment of the exclusion requirement;
- that a person within the child’s home is able to care for the child; and
- that the person able to care for the child consents to the exclusion requirement in the EPO.

The exclusion requirement can exclude the relevant person from the home, and from a designated area around the home, and a power of arrest can be attached to the exclusion. The exclusion requirement and the power of arrest can be ordered for a period of less than the duration of the EPO granted. The relevant person cannot apply for discharge of the EPO but can apply to vary the exclusion requirement (section 44B). Where the child is removed from the home the exclusion requirement ceases to have effect.

Duration of EPOs

4.57 In the first instance an EPO may be granted for up to 8 days (section 45(1)).

4.58 The courts may extend the duration of the EPO only once (section 45(6)) and for a maximum period of up to seven days (including public holidays and Sundays) up to a maximum duration of 15 days. An application for an extension may be made on notice by a person who:

- (a) is entitled to apply for a care order with respect to the child (section 45(4)) (i.e. only a local authority or authorised person). The court may only extend the period of the EPO if it has reasonable cause to believe that the child concerned is likely to suffer significant harm if the order is not extended (section 45(5)); and
- (b) has parental responsibility for the child as a result of an EPO.

Appeal and discharge of EPOs

4.59 There is no right of appeal against an EPO. The Act specifies the circumstances in which there is no right of appeal as follows: in the making of or the refusal to make an EPO; or the extension of, or refusal to extend an EPO; or the discharge of, or refusal to discharge an EPO; or the giving of, or refusal to give, directions in connection with an EPO.

4.60 The following may apply to the court for an EPO to be discharged:

- the child;
- a parent of his;
- any person who is not a parent but who has parental responsibility for him;
- any person with whom he was living immediately before the making of the EPO.

4.61 However, an application to discharge an EPO will not be allowed:

- (a) where a person who would otherwise be entitled to apply for the EPO to be discharged was given notice and attended the hearing, that person (usually a parent, but in some circumstances can be the local authority) cannot make an application to discharge the order;
- (b) where an EPO has been extended in duration for a period not exceeding 7 days (section 45(11)). The application to extend the duration of the EPO can only be made on notice, which means there will have been an opportunity for representations to be made by all the parties at the hearing on whether or not the EPO should be extended.

Therefore an application to discharge an EPO is limited to those who did not receive notice of the EPO and/or were not present at the hearing.

4.62 Section 45(9) of the Act provides that no application to discharge an EPO may be heard by the court for a period of 72 hours after the EPO has been made.

4.63 Generally the courts accept that there will be circumstances, albeit rare, where it may not be desirable to involve the parents in the decision-making process by giving them notice. Local authorities must conduct a careful assessment of the impact of the proposed measure on the child and the parents and to have considered alternative measures to the removal of the child before applying for an EPO. The local authority must be able to show the court to which it applies relevant and sufficient reasons for any such application that it may make.

Police powers

4.64 The police have specific powers to protect children under Part 5 of the Act. Police powers should only be used in exceptional circumstances where there is insufficient time to seek an Emergency Protection Order, or for reasons relating to the immediate safety of the child. Where a constable has reasonable cause to believe that a child would otherwise be likely to suffer significant harm he may remove the child to suitable accommodation and keep him there. Alternatively, he may take such steps as are reasonable to ensure that the child's removal from hospital, or other place in which he is being accommodated, is prevented (section 46(1)). When a constable has exercised this power the child is held to be in police protection (section 46(2)). 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 Police and Criminal Evidence Act 1984 power (section 17(1)(e)). No child may be kept in police protection for more than 72 hours (section 46(6)).

4.65 As soon as is practicable after taking the child into police protection, the constable concerned must ensure that the case is inquired into by the officer designated by the chief officer of the police area concerned – the “designated officer” (section 46(3)(e)). On completing the inquiry, the designated officer must release the child from police protection, unless he considers that there is still reasonable cause to believe that the child would be likely to suffer significant harm if released (section 46(5)).

- 4.66 The constable concerned (rather than the designated officer) must also do the following (section 46(3)):
- (a) inform the local authority within whose area the child was found of the steps that have been and are proposed to be taken with respect to the child and the reasons for taking them;
 - (b) give details to the local authority within whose area the child is ordinarily resident of the place at which the child is being accommodated;
 - (c) inform the child (if he appears capable of understanding) of the steps that have been taken, the reasons for taking them and of any further steps that may be taken;
 - (d) take such steps as are reasonably practicable to ascertain the wishes and feelings of the child;
 - (e) take steps to enable the child to be moved to accommodation provided by the local authority;
 - (f) take such steps as are reasonably practicable to inform the child's parents (and every other person who is not a parent of his, but who has parental responsibility for him, and any other person with whom the child was living immediately before being taken into police protection) of the steps that have been taken with respect to the child, the reasons for taking them and the further steps that may be taken.
- 4.67 The local authority where the child is ordinarily resident (and the local authority in whose area the child was found by the police, if different) have concurrent duties to make enquiries about whether they should take any action to safeguard or promote the child's welfare (section 47(1)). One such course of action is for the local authority to ask the police to apply for an EPO (section 47(3)(c) and section 46(7)).
- 4.68 The designated officer has a number of additional responsibilities. 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 (section 46(7) and (8)). However, the police do not have any power to apply for an EPO to be extended nor can they commence care proceedings.
- 4.69 Neither the constable concerned nor the designated officer acquires parental responsibility for a child who is in police protection following the exercise of section 46 powers. The designated officer must nevertheless do what is reasonable in all the circumstances to promote the child's welfare, bearing in mind that the child cannot be kept in police protection for more than 72 hours (section 46(6) and (9)).
- 4.70 The designated officer must also allow the following persons to have such contact with the child as, in his 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.

If the child in police protection is accommodated by the local authority for the area in which he usually lives, then the authority is required to afford such contact to these people (section 46(11)).

- 4.71 Local authorities and the police need to work closely together, through the Local Safeguarding Children Board and in light of the guidance *Working Together to Safeguard Children*, 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.
- 4.72 If the developing circumstances of a case are so urgent that there is no time to apply for an EPO, the police may be asked by the local authority to use their powers under section 46 to take the child into police protection.

Local authorities' duty to make enquiries under section 47

- 4.73 A local authority is under a duty to make enquiries into a child's welfare, or cause them to be made, in a number of circumstances. An application by the local authority for either a child assessment order or an EPO should always be preceded by an initial assessment, however brief, in accordance with *Framework for the Assessment of Children In Need and Their Families*, together with a strategy discussion (unless a single agency has had to act immediately to protect a child, in which case one should take place as soon as possible after such action). The local authority should make all reasonable efforts to persuade parents to co-operate with section 47 enquiries before deciding to apply for an order. The local authority is unlikely to be able to satisfy the court that there are adequate grounds for making an order, without first being able to point to the findings of such assessments and enquiries, however limited these might be in emergency situations. Emergency action might be necessary as soon as a referral is received, or at any point in a local authority's involvement with children and families, recognising that the need for such action may become apparent only over time as more is ascertained about the circumstances of a child. Neglect, as well as abuse, can pose such a risk of significant harm to a child that urgent action may be required to protect the child.
- 4.74 The local authority has a duty to make enquiries when:
- (a) directed to do so by a court exercising its powers under section 37(1) in any family proceedings;
 - (b) directed to do so by a court under Schedule 3(17), on the discharge of an education supervision order;
 - (c) a local authority with education responsibilities notifies them that a child is persistently failing to comply with directions made under an education supervision order (Schedule 3(19));
 - (d) it is informed that a child who lives, or is found, in their area is the subject of an emergency protection order or is in police protection (section 47(1)(a));
 - (e) it has reasonable cause to suspect that a child who lives, or is found, in their area is suffering or is likely to suffer significant harm (section 47(1)(b));
 - (f) it has obtained an emergency protection order with respect to a child (section 47(2)).

- 4.75 The purpose of undertaking enquiries is to enable the authority to decide what action it should take to safeguard or promote the child's welfare. Enquiries conducted under section 47 must focus, in particular, on whether the authority should make any application to the court or exercise any of their other powers under the Act with respect to the child (section 47(3)(a)).
- 4.76 In the case of a child who is the subject of an EPO and who is not in accommodation provided by (or on behalf of) the local authority, the local authority's enquiries should also consider whether it would be in the child's best interests (while the EPO remains in force) for him to be so accommodated (section 47(3)(b)).
- 4.77 In the case of a child who has been taken into police protection, the local authority should consider whether it would be in the child's best interests to ask the police to make an application for an emergency protection order (sections 47(3)(c) and 46(7)).
- 4.78 In making their enquiries under section 47(1), the local authority must take such steps as are reasonably practicable (unless they are satisfied that they already have sufficient information) to obtain access to the child or to ensure that access to him is obtained on their behalf by a person authorised by them for that purpose (section 47(4)). They must also, as far as reasonably practicable and consistent with the child's welfare, ascertain and give due consideration to the child's wishes and feelings regarding action to be taken with respect to him (section 47(5A)).
- 4.79 Where, as a result of such enquiries, it appears to the authority that matters concerned with the child's education should be investigated, they must consult the relevant local authority with education responsibilities (which will often be another part of the same local authority undertaking the enquiries) (section 47(5)).
- 4.80 Where, in the course of making their enquiries, the local authority is refused access to the child concerned, or information as to his whereabouts is denied, the local authority should consider applying for a child assessment order, or an EPO, or a care order or a supervision order, unless it is satisfied that the child's welfare can be satisfactorily safeguarded without such an application (section 47(6)).
- 4.81 If the authority decides not to apply for any of the above orders, it should consider whether it would be appropriate to review the case at a later date. If it decides that it would be appropriate, the date of that review should be set (section 47(7)). Where a local authority concludes that it should take action to safeguard or promote the child's welfare, it shall take that action, so far as it is both within its power and reasonably practicable for it to do so (section 47(8)).
- 4.82 Where a local authority is conducting enquiries under section 47, it is the duty of any of the following persons to assist them with those enquiries, and in particular, by providing them with relevant information and advice, if requested:
- (a) any local authority;
 - (b) any local education authority;
 - (c) any local housing authority;

- (d) any health authority, Special Health Authority, Primary Care Trust, National Health Service Trust or NHS Foundation Trust;
- (e) any person authorised by the Secretary of State for this purpose.

However, this provision does not oblige any person to assist a local authority where doing so would be unreasonable in all the circumstances of the case (sections 47(9), (10) and (11)). The policies and procedures of the Local Safeguarding Children Board are likely to set out how local co-operation is to be delivered in practice. Where a local authority is making enquiries under this section with respect to a child who appears to them to be ordinarily resident within the area of another authority, it must consult that other authority, who may undertake the necessary enquiries in their place (section 47(12)). Only when the other authority expressly accepts responsibility is the first authority relieved of its responsibility to make enquiries. Such acceptance should be confirmed in writing.

Abduction of children in care

- 4.83 A person is guilty of an offence, if knowingly and without lawful authority or reasonable excuse takes a child away from any person (the 'responsible person') who for the time being has care of him by virtue of a care order, EPO or police protection. The offence extends to keeping such a child away from the 'responsible person' or assisting or inciting such a child to run away or stay away from the 'responsible person' (section 49(1)).
- 4.84 Where a voluntary children's home or private children's home, or a local authority or voluntary organisation foster parent provides a refuge for children who appear to be at risk of harm, and has been issued with a certificate by the Secretary of State under section 51, the organisation is exempt from the provisions of section 49.

Recovery orders

- 4.85 A court may make a recovery order in respect of a child to whom section 49 applies if there is reason to believe that the child has been unlawfully taken away or is being unlawfully kept away from the responsible person; the child has run away or is staying away from the responsible person; or the child is missing (sections 50(2)).
- 4.86 A recovery order can only be made on the application of, and must name, any person who has parental responsibility for the child by virtue of a care order or an EPO or, where the child is in police protection, the designated officer (section 50(4)). It must also name the child. The application may be made without notice to any other interested party.
- 4.87 A recovery order has four effects. These are:
 - (a) to direct any person who is in a position to do so, to produce the child on request to any authorised person¹¹;

¹¹ An authorised person' means any person specified by the court; any constable ; any person who is authorised after the recovery order is made and by a person who has parental responsibility for the child by virtue of a care order or an emergency protection order to exercise any power under a recovery order. A 'designated officer' means an officer designated by the chief officer of the police areas concerned to secure that the case is inquired into following the remand of the child in an emergency into police protection (sections 50(7) and 46(3)(e)).

- (b) to allow an authorised person to remove the child;
- (c) to require any person who has information as to the child's whereabouts to disclose that information if asked to do so to a constable or officer of the court;
- (d) to authorise a constable to enter any premises specified and search for the child, using reasonable force if necessary (section 50(3)). The premises may only be specified if it appears to the court that there are reasonable grounds for believing the child to be on them (section 50(6)).

4.88 Where a person is an authorised person for the purposes of section 50 he must, if asked to do so (and should, in any event), produce some duly authenticated document showing that he is authorised and that this is related to the identified recovery order. Obstructing a person exercising his power to remove the child is an offence (sections 50(9) and (10)). When an authorised person requires a person to disclose information about the whereabouts of the child, that person cannot be excused from complying with the request on the grounds that it might incriminate him or his spouse of an offence (section 50(11)).

4.89 Where a child is made the subject of a recovery order whilst being looked after by a local authority, any reasonable expenses incurred by an authorised person in giving effect to the order should be reimbursed by the authority. A recovery order made in England or Wales has effect in Scotland as if it had been made there (sections 50(12) and (13)). A recovery order may also be made in Northern Ireland (section 50(14)).

Chapter 5: Secure Accommodation Orders

Summary

- 5.1 This Chapter describes secure accommodation as being a provision to meet the needs of particularly troubled and troublesome children and young people. It makes clear that the placement of children and young people in such accommodation should be regarded as a placement of choice rather than as a last resort, where the identified needs of the child require safe and secure placement with skilful staff delivering specialist programmes. The threshold conditions are set out, which are either that a child is likely to abscond, linked to which he is likely to suffer significant harm, or that unless accommodated in a secure setting he may injure himself or others. The circumstances surrounding court applications are described. The arrangements arising where children are remanded to local authority accommodation, in the context of criminal proceedings, are also set out as well as the maximum periods that courts may authorise for children to remain in secure accommodation.

Introduction

- 5.2 Restricting the liberty of children is a serious step which should only be taken where the needs of the child cannot be met by a more suitable placement elsewhere. However, it should not be considered as a 'last resort' in the sense that all other options must have been tried without success. Such an approach could lead to the inappropriate placement of children and young people in the community, where their needs may not be met, possibly with highly adverse consequences, both for such children and young people themselves and the wider community. It may also result in children and young people becoming involved in the criminal justice system, reinforcing their experiences of failure and the likelihood of future poor outcomes, when their needs could be better met at an earlier stage through secure provision.
- 5.3 Secure accommodation should be seen as part of the range of positive options available to placing authorities when reviewing and planning to meet the needs of children and young people whose behaviour leads to high levels of concern. It has an important role to play amongst the range of residential services and facilities. For some troubled and troublesome children and young people it will represent a positive intervention capable of meeting their complex needs. Both in terms of the safety and security of the premises, the skills and enhanced levels of staff available, and the specialist programmes which can be provided, 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. A decision to place a child in secure accommodation must be based on the assessed needs of the child at the relevant time and never because no other placement is available, because of inadequacies of staffing in a child's current placement, because the child is simply being a nuisance or where he or she runs away from their accommodation and is not likely to suffer significant harm as a result of this. It should never be used as a form of punishment.

Criteria for the restriction of liberty

- 5.4 The use of secure accommodation by local authorities is subject to restrictions both in terms of the circumstances in which children they are looking after may be locked up and the maximum periods for which such accommodation may be used, with or without a court order. Similar restrictions are now also placed on children accommodated by health authorities, or in residential care, nursing or mental nursing homes, unless such children are subject to detention under mental health legislation (section 25 and the Children (Secure Accommodation) Regulations 1991, as amended). Where such placements are to exceed 72 hours the local authority, or other body, must seek the authority of the court. The courts empowered to make secure orders are the youth, magistrates' or Crown Court in criminal proceedings (e.g. remands and committal for trial or sentence) and the family proceedings court (or county or High Court where a secure order is made in the course of other proceedings in such courts) in all other cases.
- 5.5 Apart from certain juveniles remanded to local authority accommodation, no child described above may be placed, or kept, in accommodation provided for the purpose of restricting liberty unless it appears:
- (a) that
 - (i) he has a history of absconding and is likely to abscond from any other description of accommodation; and
 - (ii) if he absconds, he is likely to suffer significant harm; or
 - (b) that if he is kept in any other description of accommodation he is likely to injure himself or other persons.

(section 25(1): for the meaning of 'harm' and whether harm is 'significant' see sections 31(9) and 31(10) and the discussion in chapter 3).

- 5.6 For certain children remanded to local authority accommodation, the criteria for restriction of liberty set out in paragraph 5.4 above are modified. The children are those:
- (i) charged with or convicted of a violent or sexual offence, or of an offence punishable, in the case of a person aged 21 or over, by imprisonment for 14 years or more; or
 - [(ii) with a recent history of absconding while remanded to local authority accommodation, and charged with or convicted of an imprisonable offence alleged or found to have been committed whilst on remand.

Regulation 6 sets out the modified criteria for restriction of liberty which apply in such cases, which are that such children may not be placed or kept in secure accommodation unless it appears that any accommodation other than that provided for the purpose of restricting liberty is inappropriate because:

- “(a) the child is likely to abscond from such accommodation; or
- (b) the child is likely to injure himself or other people if he is kept in any such accommodation.”

- 5.7 A child under the age of 13 years must not be placed in secure accommodation in a children's home without the prior approval of the Secretary of State to the placement of that child: approval is subject to such terms and conditions as the Secretary of State sees fit (Regulation 4).
- 5.8 A secure order cannot be obtained in relation to a child over the age of 16, who is being accommodated under section 20(5) of the Act (accommodation of persons over 16 but under 21) (Regulation 5).

Applications to the court

- 5.9 A child meeting the above criteria may be placed in secure accommodation for a maximum period of 72 hours without court authority (Regulation 10(1), but see also Regulation 10(3) for exceptional arrangements at weekends and public holidays). A local authority, or other body, wishing to keep the child in secure accommodation beyond this period must make application to the relevant court for authority to keep the child in secure accommodation. Such applications may only be made by the local authority looking after the child or, as the case may be, the health authority, local education authority, or person carrying on the residential care home, nursing home or mental nursing home (Regulation 8).
- 5.10 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 in section 25(1) or Regulation 6, as appropriate, have been met. In non-criminal proceedings, applications to keep a child in secure accommodation are 'specified proceedings' within the meaning of section 41. The court is required to appoint a Children's Guardian for the child unless it is satisfied that it is not necessary to do so in the interests of the child.
- 5.11 A court must not exercise the powers conferred by section 25 unless the child who is the subject of the application is legally represented in that court. The only exception is where a child, having been informed of his right to apply for legal aid and having had the opportunity to do so, has refused or failed to apply (section 25(6)). The provision of legal aid in such proceedings is described in section 99 of the Act which, by amendment to section 15 of the Legal Aid Act 1988 requires that "representation must be granted where a child who is brought before a court under section 25 of the 1989 Act (use of accommodation for restricting liberty) is not, but wished to be, legally represented before the court."
- 5.12 Where the court, is satisfied that the relevant criteria for restriction of liberty have been met, it must make an order authorising the child to be kept in secure accommodation and specifying the maximum period the child may be so kept (section 25(4)).
- 5.13 For juveniles remanded to local authority accommodation the maximum period a court may authorise restriction of liberty is the period of the remand, except that no such order may extend beyond a period of 28 days (Regulation 13). Other than when the child is committed to a Crown Court for trial, when different remand arrangements apply, the maximum period will be the period of remand and authority to keep a child in secure accommodation will need to be renewed (if application is made by the local authority) on each occasion the child returns to court for his remand case to be reviewed. In Crown Court cases the secure order

may not extend beyond 28 days and a further application must be made by the local authority accommodating the child if they wish to keep the child in secure accommodation beyond that period.

- 5.14 For non-remand cases the maximum periods a court may authorise a child to be kept in secure accommodation are:
- (a) three months, on first application to the court (Regulation 11); or
 - (b) six months, in respect of any further application to the court to continue to keep that child in secure accommodation (Regulation 12).
- 5.15 On any adjournment of the hearing of an application for authority to keep a child in secure accommodation, the court may make an interim order permitting the child to be kept during the period of adjournment in secure accommodation (section 25(5)).
- 5.16 Any secure order made is subject to review. Each local authority looking after a child in secure accommodation on a children's home must appoint at least three people who are responsible for carrying out this function within one month of the placement commencing and then at intervals of no more than three months (Regulations 15 and 16).
- 5.17 The arrangements for appeals against the granting, or otherwise, of authority to keep a child in secure accommodation are set out in section 94 of the Act. Both the child and the authority, or body, making application to the court may appeal to the High Court against the making, or refusal to make, by a magistrates' court of an order under section 25.

Annex 1: Letter before proceedings – template letter

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

Office Address
Contact
Direct line

My ref
Fax
E-mail
Date

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

**Re: [insert name of Local Authority] CONCERNS ABOUT [insert name(s) of child(ren)] –
LETTER BEFORE PROCEEDINGS**

HOW TO AVOID GOING TO COURT

I am writing to let you know how concerned [name of LA] have become about your care of your child/ren. I am writing to tell you that [name of the Local Authority] is thinking about starting Care Proceedings in respect of [name(s) of child(ren)]. This means that we may apply to Court and [name(s) of child(ren)] could, if the Court decides that this is best for him/her/them, be taken into care.

We are so worried about your child/ren that we will go to court unless you are able to improve things. There are things you can do which could stop this happening. We have set out in this letter the concerns that we have about [name(s) of child(ren)] and the things that have been done to try to help your family.

AN IMPORTANT MEETING ABOUT WHAT WILL HAPPEN NEXT

Please come to a meeting with us to talk about these concerns 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. Please contact your social worker on [tel.no.] to tell us if you will come to the meeting

At the meeting we will discuss with you and tell you what you will need to do to make your child safe. We will also talk to you about how we will support you to do this. We will also make clear what steps we will take if we continue to be worried about [name(s) of child(ren)].

PLEASE BRING A SOLICITOR TO THE MEETING ON *[insert date]*

Take this letter to a solicitor and ask them to come to the meeting with you. The solicitor will advise you about getting legal aid (free legal advice). 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 helpful if you do.

Information your Solicitor will need is:

Local Authority Legal Contact:
Name, Address & Telephone:

WHAT WILL HAPPEN IF YOU DO NOTHING

If you do nothing we will have to go to Court. If you do not answer this letter or come to the meeting, we will go to Court as soon as we can to make sure *[name(s) of child(ren)]* are safe.

YOUR WIDER FAMILY

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 children, we will first try and place them with one of your relatives, if it is best for your child to do this. At the meeting we will want to talk to you and your solicitor about who might look after your child 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 Law Society Children Panel Solicitors
List of things we are worried about

PLEASE SHOW / TAKE THIS TO A SOLICITOR

HERE ARE THE MAIN THINGS THAT WE ARE WORRIED ABOUT:

1. ***[Outline concern and give examples of when this happened. This should capture chronic ongoing concerns as well as acute episodes/incidents]***

<i>Date(s)</i>	<i>Problem</i>

- 2.

<i>Date(s)</i>	<i>Problem</i>

WHAT CHILDREN'S SERVICES HAVE DONE TO TRY TO HELP

<i>[Who?]</i>	<i>[What help has been given?]</i>	<i>[When?]</i>

WHAT YOU HAVE TO DO SO THAT WE WILL NOT GO TO COURT:

1. Confirm that you will come to a meeting to talk about these concerns. Please try to bring a solicitor with you.
2. Continue to see and work with your social worker ***[insert name]*** and allow him/her to see ***[name(s) of child(ren)]***.
3. At the meeting you will be asked to talk about how ***[name(s) of child(ren)]*** will be kept safe, with our help.

Annex 2: The Public Law Outline – Guide to Case Management in Public Law Proceedings

The Practice Direction below is made by the President of the Family Division under the powers delegated to him by the Lord Chief Justice under Schedule 2, Part 1, paragraph 2(2) of the Constitutional Reform Act 2005, and is approved by the Lord Chancellor.

Practice Direction

Guide to Case Management in Public Law Proceedings

Scope

- 1.1 This Practice Direction applies to care and supervision proceedings. In so far as practicable, it is to be applied to all other Public Law Proceedings.
- 1.2 This Practice Direction will come into effect on 1st April 2008. It does not apply to applications issued before 1st April 2008 but the court may direct in any individual case that the Case Management Tools and Case Management Documentation referred to in the Direction will apply either wholly or partly to those applications. This is subject to the overriding objective below and to the proviso that such a direction will neither cause further delay nor involve repetition of steps already taken or decisions already made in the case.
- 1.3 This Practice Direction is to be read with the Rules and is subject to them.
- 1.4 A Glossary of terms is at paragraph 25.

The overriding objective

- 2.1 This Practice Direction has the overriding objective of enabling the court to deal with cases justly, having regard to the welfare issues involved.

Dealing with a case justly includes, so far as is practicable –

- (1) ensuring that it is dealt with expeditiously and fairly;
- (2) dealing with the case in ways which are proportionate to the nature, importance and complexity of the issues;
- (3) ensuring that the parties are on an equal footing;
- (4) saving expense; and
- (5) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

The Public Law Outline

Application by the court of the overriding objective

- 2.2 The court must seek to give effect to the overriding objective when it –
- (1) exercises the case management powers referred to in this Practice Direction; or
 - (2) interprets any provision of this Practice Direction.

Duty of the parties

- 2.3 The parties are required to help the court further the overriding objective.

Court case management

THE MAIN PRINCIPLES

- 3.1 The main principles underlying court case management in Public Law Proceedings are –
- (1) judicial continuity: each case will be allocated to one or not more than two case management judges (in the case of magistrates' courts, case managers), who will be responsible for every case management stage in the proceedings through to the Final Hearing and, in relation to the High Court or county court, one of whom may be – and where possible should be – the judge who will conduct the Final Hearing;
 - (2) main case management tools: each case will be managed by the court by using the appropriate main case management tools;
 - (3) active case management: each case will be actively case managed by the court with a view at all times to furthering the overriding objective;
 - (4) consistency: each case will, so far as compatible with the overriding objective, be managed in a consistent way and using the standardised steps provided for in this Direction.

THE MAIN CASE MANAGEMENT TOOLS

The Timetable for the Child

- 3.2 The court will set an appropriate Timetable for the Child who is the subject of the proceedings.
- 3.3 The Timetable for the Child will be set by the court to take account of all significant steps in the child's life that are likely to take place during the proceedings. Those steps include not only legal steps but also social, care, health and education steps.
- 3.4 Examples of the dates the court will record and take into account when setting the Timetable for the Child are the dates of –
- (1) any formal review by the Local Authority of the case of a looked after child (within the meaning of section 22(1) of the 1989 Act);
 - (2) the child taking up a place at a new school;
 - (3) any review by the Local Authority of any statement of the child's special educational needs;
 - (4) an assessment by a paediatrician or other specialist;

- (5) the outcome of any review of Local Authority plans for the child, for example, any plans for permanence through adoption, Special Guardianship or placement with parents or relatives;
- (6) a change or proposed change of the child's placement.

Case Management Documentation

3.5 The case management documents include the –

- (1) Application form;
- (2) Supplementary Form PLO1;
- (3) Schedule of Proposed Findings;
- (4) Allocation Record and the Timetable for the Child;
- (5) Case Analysis and Recommendations provided by Cafcass or Cafcass Cymru;
- (6) Local Authority Case Summary;
- (7) Other Parties' Case Summaries;
- (8) Draft Case Management Orders.

3.6 The court will encourage the use of those case management documents which are not prescribed by the Rules.

The Case Management Record

3.7 The court's filing system for the case will be known as the Case Management Record and will include the following main documents –

- (1) the Supplementary Form PLO1 which will be the index of documents on the Record;
- (2) in care and supervision proceedings, any Letter Before Proceedings and any related subsequent correspondence confirming the Local Authority's position to parents and others with parental responsibility for the child;
- (3) the Case Management Documentation;
- (4) Standard Directions on Issue and on First Appointment;
- (5) the Draft Case Management Orders approved by the court.

3.8 Parties or their legal representatives will be expected to retain their own record containing copies of the documents on the court's Case Management Record.

The First Appointment

3.9 The purpose of the First Appointment is to confirm allocation of the case and give initial case management directions.

The Draft Case Management Order

3.10 The draft form of a Case Management Order is a special form of order containing terms of general application to be used as appropriate for each case. The form of order is not only to be used for drawing up orders in the form prescribed by the Rules at the end of a hearing. The form is also to be used as a case management checklist. The form contains standard provisions designed to help parties, their legal representatives and the court –

The Public Law Outline

- (1) identify the relevant issues and the procedural directions which may be required;
- (2) monitor changes to the relevant issues and compliance with the court's directions;
- (3) focus on what the proceedings are intended to achieve.

Advocates Discussion/Meeting

3.11 The court will consider directing advocates to have discussions before the Case Management Conference and the Issues Resolution Hearing. Advocates may well find that the best way to have these discussions is to meet. Such discussion is intended to facilitate agreement and to narrow the issues for the court to consider. Advocates and litigants in person may take part in the Advocates' meeting or discussions.

The Case Management Conference

3.12 In each case there will be a Case Management Conference to enable the case management judge or case manager, with the co-operation of the parties, actively to manage the case and, at the earliest practicable opportunity to -

- (1) identify the relevant and key issues; and
- (2) give full case management directions including confirming the Timetable for the Child.

The Issues Resolution Hearing

3.13 In each case there will be an Issues Resolution Hearing before the Final Hearing to -

- (1) identify any remaining key issues; and
- (2) as far as possible, resolve or narrow those issues.

ACTIVE CASE MANAGEMENT

3.14 The court must further the overriding objective by actively managing cases.

3.15 Active case management includes -

- (1) identifying the Timetable for the Child;
- (2) identifying the appropriate court to conduct the proceedings and transferring the proceedings as early as possible to that court;
- (3) encouraging the parties to co-operate with each other in the conduct of the proceedings;
- (4) retaining the Case Management Record;
- (5) identifying all facts and matters that are in issue at the earliest stage in the proceedings and at each hearing;
- (6) deciding promptly which issues need full investigation and hearing and which do not;
- (7) deciding the order in which issues are to be resolved;
- (8) identifying at an early stage who should be a party to the proceedings;
- (9) considering whether the likely benefits of taking a particular step justify any delay which will result and the cost of taking it;
- (10) directing discussion between advocates and litigants in person before the Case Management Conference and Issues Resolution Hearing;

- (11) requiring the use of the Draft Case Management Order and directing advocates and litigants in person to prepare or adjust the draft order where appropriate;
- (12) standardising, simplifying and regulating –
 - (a) the use of Case Management Documentation and forms;
 - (b) the court’s orders and directions;
- (13) controlling –
 - (a) the use and cost of experts;
 - (b) the nature and extent of the documents which are to be disclosed to the parties and presented to the court;
 - (c) whether and, if so, in what manner the documents disclosed are to be presented to the court;
 - (d) the progress of the case;
- (14) where it is demonstrated to be in the interests of the child, encouraging the parties to use an alternative dispute resolution procedure if the court considers such a procedure to be appropriate and facilitating the use of such procedure;
- (15) helping the parties to reach agreement in relation to the whole or part of the case;
- (16) fixing the dates for all appointments and hearings;
- (17) dealing with as many aspects of the case as it can on the same occasion;
- (18) where possible dealing with additional issues which may arise from time to time in the case without requiring the parties to attend at court;
- (19) making use of technology; and
- (20) giving directions to ensure that the case proceeds quickly and efficiently.

The Expectations

4.1 The expectations are that proceedings should be –

- (1) conducted using the Case Management Tools and Case Management Documentation referred to in this Practice Direction in accordance with the Table contained in paragraph 9 below and known as the Public Law Outline;
- (2) finally determined within the timetable fixed by the court in accordance with the Timetable for the Child – the target times in the Public Law Outline being adhered to and being taken as the maximum permissible time for the taking of the step referred to in the Outline.

4.2 However, there may be cases where the court considers that the child’s welfare requires a different approach from the one contained in the Public Law Outline. In those cases, the court will –

- (1) determine the appropriate case management directions and timetable; and
- (2) record on the face of the order the reasons for departing from the approach in the Public Law Outline.

The Public Law Outline

How the parties should help court case management

MAIN METHODS OF HELPING

Good Case Preparation

- 5.1 The applicant should prepare the case before proceedings are issued. In care and supervision proceedings the Local Authority should use the Pre-proceedings Checklist.

The Allocation Record and The Timetable for the Child

- 5.2 The applicant must prepare and file the Allocation Record and the Timetable for the Child. The Allocation Record must contain the applicant's allocation proposal and a record of the court's allocation decision and reasons. The Timetable for the Child will be part of the Allocation Record. The applicant should provide information to update the Timetable regularly. The applicant is to be responsible for updating the Allocation Record including the Timetable after each hearing.

Case Management Documentation

- 5.3 The parties must use the Case Management Documentation.

Co-operation

- 5.4 The parties and their representatives should co-operate with the court in case management, including the fixing of timetables to avoid unacceptable delay, and in the crystallisation and resolution of the issues on which the case turns.

Directions

- 5.5 The parties or their legal representatives will –
- (1) monitor compliance with the court's directions; and
 - (2) tell the court or court officer about any failure to comply with a direction of the court or any other delay in the proceedings.

The Case Management Record

- 5.6 The parties or their legal representatives are expected to retain a record containing copies of the documents on the court's Case Management Record.

The Draft Case Management Order

- 5.7 Parties should start to consider the content of the Draft Case Management Order at the earliest opportunity either before or in the course of completing applications to the court or the response to the application. They should in any event consider the Draft Case Management Order after the First Appointment.
- 5.8 There should be ongoing consideration of the Draft Case Management Orders throughout the proceedings. The Draft Case Management Orders should serve as an aide memoire to everyone involved in the proceedings of –
- (1) the Timetable for the Child;
 - (2) the case management decisions;
 - (3) the identified issues.

- 5.9 Only one Draft Case Management Order should be filed with the court for each of the Case Management Conference and the Issues Resolution Hearing. It is the responsibility of the advocate for the applicant, which in care and supervision proceedings will ordinarily be the Local Authority, to prepare those drafts and be responsible for obtaining comments from the advocates and the parties.
- 5.10 In paragraphs 5.3, 5.7 and 5.9 “parties” includes parties’ legal representatives.

Ethnicity, Language, Religion and Culture

- 6 At each case management stage of the proceedings, particularly at the First Appointment and Case Management Conference, the court will consider giving directions regarding the obtaining of evidence about the ethnicity, language, religion and culture of the child and other significant persons involved in the proceedings. The court will subsequently consider the implications of this evidence for the child in the context of the issues in the case.

Adults who may be protected parties

- 7.1 The court will investigate as soon as possible any issue as to whether an adult party or intended party to the proceedings lacks capacity (within the meaning of the Mental Capacity Act 2005) to conduct the proceedings. An adult who lacks capacity to conduct the proceedings is a protected party and must have a representative (a litigation friend, next friend or guardian ad litem) to conduct the proceedings on his or her behalf.
- 7.2 Any issue as to the capacity of an adult to conduct the proceedings must be determined before the court gives any directions relevant to that adult’s role within the proceedings.
- 7.3 Where the adult is a protected party, his or her representative should be involved in any instruction of an expert, including the instruction of an expert to assess whether the adult, although a protected party, is competent to give evidence. The instruction of an expert is a significant step in the proceedings. The representative will wish to consider (and ask the expert to consider), if the protected party is competent to give evidence, their best interests in this regard. The representative may wish to seek advice about ‘special measures’. The representative may put forward an argument on behalf of the protected party that the protected party should not give evidence.
- 7.4 If at any time during the proceedings, there is reason to believe that a party may lack capacity to conduct the proceedings, then the court must be notified and directions sought to ensure that this issue is investigated without delay.

Child likely to lack capacity to conduct the proceedings when he reaches 18

- 8 Where it appears that a child is -
- (1) a party to the proceedings and not the subject of them;
 - (2) nearing his or her 18th birthday; and
 - (3) considered likely to lack capacity to conduct the proceedings when he reaches 18,
- the court will consider giving directions relating to the investigation of a child’s capacity in this respect.

The Public Law Outline

Outline of the process and how to use the main Case Management Tools

- 9.1 The Public Law Outline set out in the Table below contains an outline of -
- (1) the order of the different stages of the process;
 - (2) the purposes of the main case management hearings and matters to be considered at them;
 - (3) the latest timescales within which the main stages of the process should take place.
- 9.2 In the Public Law Outline -
- (1) “CMC” means the Case Management Conference;
 - (2) “FA” means the First Appointment;
 - (3) “IRH” means the Issues Resolution Hearing;
 - (4) “OS” means the Official Solicitor.

Public Law Outline

PRE-PROCEEDINGS	
PRE-PROCEEDINGS CHECKLIST	
The Checklist Documents:	
<p>Documents to be disclosed from the LA’s files:</p> <ul style="list-style-type: none"> • Previous court orders & judgments/reasons • Any relevant Assessment Materials <ul style="list-style-type: none"> - Initial and core assessments - Section 7 & 37 reports - Relatives & friends materials (e.g., a genogram) • Other relevant Reports & Records <ul style="list-style-type: none"> - Single, joint or inter-agency materials (e.g., health & education/Home Office & Immigration documents) - records of discussions with the family - Key LA minutes & records for the child (including Strategy Discussion Record) 	<ul style="list-style-type: none"> • Pre-existing care plans (e.g., child in need plan, looked after child plan & child protection plan) • Social Work Chronology • Letters Before Proceedings <p>Documents to be prepared for the proceedings:</p> <ul style="list-style-type: none"> • Schedule of Proposed Findings • Initial Social Work Statement • Care Plan • Allocation Record & Timetable for the Child
STAGE 1 - ISSUE AND THE FIRST APPOINTMENT	
ISSUE	FIRST APPOINTMENT
On DAY 1 and by DAY 3	By DAY 6
<p>Objectives: To ensure compliance with pre-proceedings checklist; to allocate proceedings; to obtain the information necessary for initial case management at the FA</p>	<p>Objectives: To confirm allocation; to give initial case management directions</p>
<p>On Day 1:</p> <ul style="list-style-type: none"> • The LA files: <ul style="list-style-type: none"> - Application Form - Supplementary Form PLO1 - Checklist documents • Court officer issues application • Court nominates case manager(s) • Court gives standard directions on issue including: <ul style="list-style-type: none"> - Pre-proceedings checklist compliance - Allocate and/or transfer - Appoint children’s guardian - Appoint solicitor for the child - Case Analysis for FA - Invite OS to act for protected persons (non subject children & incapacitated adults) - List FA by Day 6 - Make arrangements for contested hearing (if necessary) <p>By Day 3</p> <ul style="list-style-type: none"> • Allocation of a children’s guardian expected • LA serves the Application Form, Supplementary Form PLO1 and the Checklist Documents on parties 	<ul style="list-style-type: none"> • Parties notify LA & court of need for a contested hearing • Court makes arrangements for a contested hearing • Initial case management by Court including: <ul style="list-style-type: none"> - Confirm Timetable for the Child - Confirm allocation or transfer - Identify additional parties & representation (including allocation of children’s guardian) - Identify “Early Final Hearing” cases - Scrutinise Care Plan • Court gives standard directions on FA including: <ul style="list-style-type: none"> - Case Analysis and Recommendations for Stages 2 & 3 - LA Case Summary - Other Parties’ Case Summaries - Parties’ initial witness statements - For the Advocates’ Meeting - List CMC or (if appropriate) an Early Final Hearing - Upon transfer

The Public Law Outline

STAGE 2 – CASE MANAGEMENT CONFERENCE	
ADVOCATES’ MEETING	CMC
No later than 2 days before CMC	No later than day 45
Objectives: To prepare the Draft Case Management Order; to identify experts and draft questions for them	Objectives: To identify issue(s); to give full case management directions
<ul style="list-style-type: none"> • Consider all other parties’ Case Summaries and Case Analysis and Recommendations • Identify proposed experts and draft questions in accordance with Experts Practice Direction • Draft Case Management Order • Notify court of need for a contested hearing • File Draft Case Management Order with the case manager/case management judge by 11am one working day before the CMC 	<ul style="list-style-type: none"> • Detailed case management by the court <ul style="list-style-type: none"> - Scrutinise compliance with directions - Confirm Timetable for the Child - Identify key issue(s) - Confirm allocation or transfer - Consider case management directions in the Draft Case Management Order - Scrutinise Care Plan - Check compliance with Experts Practice Direction • Court issues Case Management Order • Court lists IRH and, where necessary, a warned period for Final Hearing

STAGE 3 – ISSUES RESOLUTION HEARING	
ADVOCATES’ MEETING	IRH
Between 2 and 7 days before the IRH	Between 16 & 25 weeks
Objective: To prepare or update the Draft Case Management Order	Objectives: To resolve and narrow issue(s); to identify any remaining key issues
<ul style="list-style-type: none"> • Consider all other parties’ Case Summaries and Case Analysis and Recommendations • Draft Case Management Order • Notify court of need for a contested hearing/time for oral evidence to be given • File Draft Case Management Order with the case manager/case management judge by 11am one working day before the IRH 	<ul style="list-style-type: none"> • Identification by the court of the key issue(s) (if any) to be determined • Final case management by the court: <ul style="list-style-type: none"> - Scrutinise compliance with directions - Consider case management directions in the Draft Case Management Order - Scrutinise Care Plan - Give directions for Hearing documents: <ul style="list-style-type: none"> - Threshold agreement or facts/issues remaining to be determined - Final Evidence & Care Plan - Case Analysis and Recommendations - Witness templates - Skeleton arguments - Judicial reading list/reading time/judgment writing time - Time estimate - Bundles Practice Direction compliance - List or confirm Hearing • Court issues Case Management Order

STAGE 4	
HEARING	
In accordance with the Timetable for the Child	
Objective: To determine remaining issues	
<ul style="list-style-type: none">• All file & serve updated case management documents & bundle• Draft final order(s) in approved form	<ul style="list-style-type: none">• Judgment/Reasons• Disclose documents as required after hearing

The Public Law Outline

Starting the Proceedings

10.1 The applicant, which in care and supervision proceedings will ordinarily be the Local Authority, must file the Supplementary Form PLO1 with the application form. The applicant must also file an Allocation Record and Timetable for the Child which includes the applicant's allocation proposal.

Pre-proceedings Checklist

10.2 The documents which the court will expect to see attached to the application form for a care or supervision order are set out in the Pre-proceedings Checklist in the Public Law Outline. The Pre-proceedings Checklist should be used at the earliest opportunity as a guide to what documents the court will expect to see at the start of the proceedings and should be filed with the application form. The Pre-proceedings Checklist will promote good case preparation.

Compliance with Pre-proceedings Checklist

10.3 It is recognised that in some cases the circumstances are such that the safety and welfare of the child may be jeopardised if the start of proceedings is delayed until all of the documents appropriate to the case and referred to in the Pre-proceedings Checklist are available. The court recognises that the preparation may need to be varied to suit the circumstances of the case. The court is likely to make directions relating to the preparation of any missing documentation at the start of the proceedings and at the First Appointment. The court also recognises that some documents on the Pre-proceedings Checklist may not exist and may never exist, for example, the Section 37 report, and that in urgent proceedings no Letter Before Proceedings may have been sent.

What the Court will do at the Issue of Proceedings

Objectives

11.1 The objectives at this stage are for the court –

- (1) in care and supervision proceedings, to ensure compliance with the Pre-proceedings Checklist;
- (2) to allocate proceedings;
- (3) to obtain the information necessary to enable initial case management at the First Appointment.

11.2 The steps which the court will take once proceedings have been issued include those set out in paragraphs 11.3 to 11.5 below.

Allocation

11.3 The court will consider allocation of the case and transfer those cases to the county court which are obviously suitable for immediate transfer. An example of a case of this kind is where there is evidence that a parent may be a protected party and require representation which currently cannot be obtained in the magistrates' court.

Other Steps to be taken by the Court

Directions

11.4 The court will –

- (1) consider giving directions –
 - (a) appropriate to the case including Standard Directions On Issue;
 - (b) in care and supervision proceedings, relating to the preparation and filing of documents on the Pre-proceedings Checklist which are not yet available;
 - (c) relating to representation of any protected party and where appropriate invite the Official Solicitor to act for a protected party or any child who is a party to, but is not the subject of, the proceedings and where appropriate invite the Official Solicitor to act as his or her guardian ad litem;
- (2) appoint a children’s guardian in specified proceedings (in relation to care and supervision proceedings the court will expect that Cafcass or Cafcass Cymru will have received notice from the Local Authority that proceedings were going to be started);
- (3) appoint a solicitor for the child under section 41(3) of the 1989 Act where appropriate;
- (4) request the children’s guardian or if appropriate another officer of the service or Welsh family proceedings officer to prepare a Case Analysis and Recommendations for the First Appointment;
- (5) make arrangements for a contested hearing, if necessary.

Setting a date for the First Appointment

11.5 The court will set a date for the First Appointment normally no later than 6 days from the date of issue of the proceedings and in any event in line with the draft Timetable for the Child.

Case Managers in the Magistrates’ Courts

11.6 In the magistrates’ courts, the justices’ clerk may nominate one but not more than two case managers.

The First Appointment

Objectives

12.1 The First Appointment is the first hearing in the proceedings. The main objectives of the First Appointment are to –

- (1) confirm allocation; and
- (2) give initial case management directions having regard to the Public Law Outline.

12.2 The steps which the court will take at the First Appointment include those set out in paragraphs 12.3 to 12.6 below.

The Public Law Outline

Steps to be Taken by The Court

12.3 The court will -

- (1) confirm the Timetable for the Child;
- (2) make arrangements for any contested interim hearing such as an application for an interim care order;
- (3) confirm the allocation of the case or, if appropriate, transfer the case;
- (4) request the children's guardian or if appropriate another officer of the service or Welsh family proceedings officer to prepare a Case Analysis and Recommendations for the Case Management Conference or Issues Resolution Hearing;
- (5) scrutinise the Care Plan;
- (6) consider giving directions relating to -
 - (a) those matters in the Public Law Outline which remain to be considered;
 - (b) the joining of a person who would not otherwise be a respondent under the Rules as a party to the proceedings;
 - (c) where any person to be joined as a party may be a protected party, an investigation of that person's capacity to conduct the proceedings and the representation of that person and if appropriate invite the Official Solicitor to act for that person;
 - (d) the identification of family and friends as proposed carers and any overseas, immigration, jurisdiction and paternity issues;
 - (e) in Public Law Proceedings other than care and supervision proceedings, the documents to be filed with the court;
 - (f) evidence to be obtained as to whether a parent who is a protected party is competent to make his or her own statement.

Early Final Hearing Cases

12.4 Cases which are suitable for an Early Final Hearing are likely to be those cases where the child has no parents, guardians, relatives who want to care for the child, or other carers. Examples are those cases where the child is an abandoned baby or where a child has been brought into this country and abandoned. The court will -

- (1) identify at the First Appointment whether the case is one which is suitable for an Early Final Hearing; and
- (2) set a date for that Final Hearing.

Setting a date for the Case Management Conference

12.5 The court will set a date for the Case Management Conference normally no later than 45 days from the date of issue of the proceedings and in any event in line with the Timetable for the Child.

Advocates' Meeting/discussion and the Draft Case Management Order

12.6 The court will consider directing a discussion between the parties' advocates and any litigant in person and the preparation of a Draft Case Management Order as outlined below.

Experts

- 12.7 A party who wishes to instruct an expert should comply with the Experts Practice Direction. Where the parties are agreed on any matter relating to experts or expert evidence, the draft agreement must be submitted for the court’s approval as early as possible in the proceedings.

Advocates’ Meeting/discussion and the Draft Case Management Order

- 13.1 The main objective of the Advocates’ Meeting or discussion is to prepare the Draft Case Management Order.
- 13.2 Where there is a litigant in person the court will consider the most effective way in which that person can be involved in the advocates’ discussions and give directions as appropriate including directions relating to the part to be played by any McKenzie Friend.
- 13.3 Timing of the discussions is of the utmost importance. The need for discussions outside the “court room door” of matters, which could have been discussed at an earlier time, is to be avoided. Discussions are to take place no later than 2 days before the Case Management Conference or the Issues Resolution Hearing whichever is appropriate. The discussions may take place earlier than 2 days before those hearings, for example, up to 7 days before them.
- 13.4 Following discussion the advocates should prepare or adjust the Draft Case Management Order. In practice the intention is that the advocate for the applicant, which in care and supervision proceedings will ordinarily be the Local Authority, should take the lead in preparing and adjusting the Draft Case Management Order following discussion with the other advocates.
- 13.5 Where it is not possible for the advocates to agree the terms of the Draft Case Management Order, the advocates should specify on the Draft Case Management Order, or on a separate document if more practicable –
- (1) those provisions on which they agree; and
 - (2) those provisions on which they disagree.
- 13.6 Unless the court directs otherwise, the Draft Case Management Order must be filed with the court no later than 11am on the day before the Case Management Conference or the Issues Resolution Hearing whichever may be appropriate.
- 13.7 At the Advocates’ Meeting or discussion before the Case Management Conference, the advocates should also try to agree the questions to be put to any proposed expert (whether jointly instructed or not) if not previously agreed. Under the Experts Practice Direction the questions on which the proposed expert is to give an opinion are a crucial component of the expert directions which the court is required to consider at the Case Management Conference.

Case Management Conference

Objectives

- 14.1 The Case Management Conference is the main hearing at which the court manages the case. The main objectives of the Conference are to –
- (1) identify key issues; and
 - (2) give full case management directions.

The Public Law Outline

14.2 The steps which the court will take at the Case Management Conference include those steps set out in paragraphs 14.3 to 14.5 below.

Steps to be taken by the Court

14.3 The court will –

- (1) review and confirm the Timetable for the Child;
- (2) confirm the allocation or the transfer of the case;
- (3) scrutinise the Care Plan;
- (4) identify the key issues;
- (5) identify the remaining case management issues;
- (6) resolve remaining case management issues by reference to the Draft Case Management Order;
- (7) identify any special measures such as the need for access for the disabled or provision for vulnerable witnesses;
- (8) scrutinise the Case Management Record to check whether directions have been complied with and if not, consider making further directions as appropriate;
- (9) where expert evidence is required, check whether the parties have complied with the Experts Practice Direction, in particular section 4 (Preparation for the relevant hearing) and consider giving directions as appropriate.

Case Management Order

14.4 The court will issue the approved Case Management Order. Parties or their legal representatives will be expected to submit in electronic form the final approved Draft Case Management Order on the conclusion of, and the same day as, the Case Management Conference.

Setting a date for the Issues Resolution Hearing/Final Hearing

14.5 The court will set –

- (1) a date for the Issues Resolution Hearing normally at any time between 16 and 25 weeks from the date of issue of the proceedings and in any event in line with the Timetable for the Child; and
- (2) if necessary, specify a period within which the Final Hearing of the application is to take place unless a date has already been set.

The Issues Resolution Hearing

Objectives

15.1 The objectives of this hearing are to –

- (1) resolve and narrow issues; and
- (2) identify key remaining issues requiring resolution.

15.2 The Issues Resolution Hearing is likely to be the hearing before the Final Hearing. Final case management directions and other preparations for the Final Hearing will be made at this hearing.

Steps to be taken by the Court

15.3 The court will -

- (1) identify the key issues (if any) to be determined;
- (2) review and confirm the Timetable for the Child;
- (3) consider giving case management directions relating to -
 - (a) any outstanding matter contained in the Draft Case Management Order;
 - (b) the preparation and filing of final evidence including the filing of witness templates;
 - (c) skeleton arguments;
 - (d) preparation and filing of bundles in accordance with the Bundles Practice Direction;
 - (e) any agreement relating to the satisfaction of the threshold criteria under section 31 of the 1989 Act or facts and issues remaining to be determined in relation to it or to any welfare question which arises;
 - (f) time estimates;
 - (g) the judicial reading list and likely reading time and judgment writing time;
- (4) issue the Case Management Order.

15.4 For the avoidance of doubt the purpose of an Issues Resolution Hearing is to -

- (1) identify key issues which are not agreed;
- (2) examine if those key issues can be agreed; and
- (3) where those issues cannot be agreed, examine the most proportionate method of resolving those issues.

15.5 The expectation is that the method of resolving the key issues which cannot be agreed will be at a hearing (ordinarily the Final Hearing) where there is an opportunity for the relevant oral evidence to be heard and challenged.

Attendance at the Case Management Conference and the Issues Resolution Hearing

16 An advocate who has conduct of the Final Hearing should ordinarily attend the Case Management Conference and the Issues Resolution Hearing. Where the attendance of this advocate is not possible, then an advocate who is familiar with the issues in the proceedings should attend.

Flexible Powers of the Court

17.1 Attention is drawn to the flexible powers of the court either following the issue of the application in that court, the transfer of the case to that court or at any other stage in the proceedings.

The Public Law Outline

- 17.2 The court may give directions without a hearing including setting a date for the Final Hearing or a period within which the Final Hearing will take place. The steps, which the court will ordinarily take at the various stages of the proceedings provided for in the Public Law Outline, may be taken by the court at another stage in the proceedings if the circumstances of the case merit this approach.
- 17.3 The flexible powers of the court include the ability for the court to cancel or repeat a particular hearing. For example, if the issue on which the case turns can with reasonable practicability be crystallised and resolved by having an Early Final Hearing, then in the fulfilment of the overriding objective, such a flexible approach must be taken to secure compliance with section 1(2) of the 1989 Act.

Alternative Dispute Resolution

- 18.1 The court will encourage the parties to use an alternative dispute resolution procedure and facilitate the use of such a procedure where it is –
- (1) readily available;
 - (2) demonstrated to be in the interests of the child; and
 - (3) reasonably practicable and safe.
- 18.2 At any stage in the proceedings, the parties can ask the court for advice about alternative dispute resolution.
- 18.3 At any stage in the proceedings the court itself will consider whether alternative dispute resolution is appropriate. If so, the court may direct that a hearing or proceedings be adjourned for such specified period as it considers appropriate –
- (1) to enable the parties to obtain information and advice about alternative dispute resolution; and
 - (2) where the parties agree, to enable alternative dispute resolution to take place.
- 18.4 It is expressly recognised that no party can or should be obliged to enter into any form of alternative dispute resolution if they are unwilling to do so.

Co-operation

- 19.1 Throughout the proceedings the parties and their representatives should co-operate wherever reasonably practicable to help towards securing the welfare of the child as the paramount consideration.
- 19.2 At each court appearance the court will ask the parties and their legal representatives –
- (1) what steps they have taken to achieve co-operation and the extent to which they have been successful;
 - (2) if appropriate the reason why co-operation could not be achieved; and
 - (3) the steps needed to resolve any issues necessary to achieve co-operation.

Agreed Directions

- 20.1 The parties, their advisers and the children’s guardian, are encouraged to try to agree directions for the management of the proceedings.
- 20.2 To obtain the court’s approval the agreed directions must –
- (1) set out a Timetable for the Child by reference to calendar dates for the taking of steps for the preparation of the case;
 - (2) include a date when it is proposed that the next hearing will take place.

Variation of case management timetable

- 21 It is emphasised that a party or the children’s guardian must apply to the court at the earliest opportunity if they wish to vary by extending the dates set by the court for –
- (1) a directions appointment;
 - (2) a First Appointment;
 - (3) a Case Management Conference;
 - (4) an Issues Resolution Hearing;
 - (5) the Final Hearing;
 - (6) the period within which the Final Hearing of the application is to take place; or
 - (7) any discussion between advocates or for the filing of the Draft Case Management Orders.

Who performs the functions of the Court

- 22.1 Where this Practice Direction provides for the Court to perform case management functions, then except where any Rule, Practice Direction, any other enactment or the Family Proceedings (Allocation to Judiciary) Directions ((1999) 2 FLR 799) provides otherwise, the functions may be performed –
- (1) in relation to proceedings in the High Court or in a district registry, by any judge or district judge of that Court including a district judge of the principal registry;
 - (2) in relation to proceedings in the county court, by any judge or district judge including a district judge of the principal registry when the principal registry is treated as if it were a county court; and
 - (3) in relation to proceedings in a magistrates’ court by –
 - (a) any family proceedings court constituted in accordance with sections 66 and 67 of the 1980 Act;
 - (b) a single justice; or
 - (c) a justices’ clerk.
- 22.2 The case management functions to be exercised by a justices’ clerk may be exercised by an assistant justices’ clerk provided that person has been specifically authorised by a justices’ clerk to exercise case management functions. Any reference in this Practice Direction to a justices’ clerk is to be taken to include an assistant justices’ clerk so authorised. The justices’ clerk may

The Public Law Outline

in particular appoint one but not more than two assistant justices' clerks as case managers for each case.

- 22.3 In proceedings in a magistrates' court, where a party considers that there are likely to be issues arising at a hearing (including the First Appointment, Case Management Conference and Issues Resolution Hearing) which need to be decided by a family proceedings court, rather than a justices' clerk, then that party should give the court written notice of that need at least 2 days before the hearing.
- 22.4 Family proceedings courts may consider making arrangements to ensure a court constituted in accordance with s 66 of the 1980 Act is available at the same time as Issues Resolution Hearings are being heard by a justices' clerk. Any delay as a result of the justices' clerk considering for whatever reason that it is inappropriate for a justices' clerk to perform a case management function on a particular matter and the justices' clerk's referring of that matter to the court should then be minimal.

Technology

- 23 Where the facilities are available to the court and the parties, the court will consider making full use of technology including electronic information exchange and video or telephone conferencing.

Other Practice Directions

- 24.1 This Practice Direction must be read with the Bundles Practice Direction.
- 24.2 The Bundles Practice Direction is applied to Public Law Proceedings in the High Court and county court with the following adjustments –
- (1) add “except the First Appointment, Case Management Conference, and Issues Resolution Hearing referred to in the Practice Direction: Guide to Case Management in Public Law Proceedings where there are no contested applications being heard at those hearings” to paragraph 2.2 ;
 - (2) the reference to –
 - (a) the “Protocol for Judicial Case Management in Public law Children Act Cases (2003) 2 FLR 719” in paragraph 6.1;
 - (b) the “Practice Direction: Care Cases: Judicial Continuity and Judicial Case Management” in paragraph 15; and
 - (c) “the Public Law Protocol” in paragraph 15shall be read as if it were a reference to this Practice Direction.
- 24.3 This Practice Direction replaces Practice Direction: Care Cases: Judicial Continuity and Judicial Case Management appended to the Protocol for Judicial Case Management in Public Law Children Act Cases (2003) 2 FLR 719.

Glossary

- 25 In this Practice Direction –
- (1) “the 1989 Act” means the Children Act 1989;
 - (2) “the 1980 Act” means the Magistrates’ Courts Act 1980;
 - (3) “advocate” means a person exercising a right of audience as a representative of, or on behalf of, a party;
 - (4) “Allocation Record and the Timetable for the Child” means a document containing –
 - (a) the Local Authority’s proposal for allocation;
 - (b) the Local Authority’s proposed Timetable for the Child;
 - (c) the court’s allocation decisions and reasons; and
 - (d) the court’s approved Timetable for the Child;
 - (5) “alternative dispute resolution” means the methods of resolving a dispute other than through the normal court process;
 - (6) “assistant justices’ clerk” has the meaning assigned to it by section 27(5) of the Courts Act 2003;
 - (7) “the Bundles Practice Direction” means the Practice Direction Family Proceedings: Court Bundles (Universal Practice to be Applied in all Courts other than Family Proceedings Court) of 27 July 2006;
 - (8) “Case Analysis and Recommendations” means a written or oral outline of the case from the child’s perspective prepared by the children’s guardian or other officer of the service or Welsh family proceedings officer at different stages of the proceedings requested by the court, to provide –
 - (a) an analysis of the issues that need to be resolved in the case including–
 - (i) any harm or risk of harm;
 - (ii) the child’s own views;
 - (iii) the family context including advice relating to ethnicity, language, religion and culture of the child and other significant persons;
 - (iv) the Local Authority work and proposed care plan;
 - (v) advice about the court process including the Timetable for the Child; and
 - (vi) identification of work that remains to be done for the child in the short and longer term; and
 - (b) recommendations for outcomes, in order to safeguard and promote the best interests of the child in the proceedings;
 - (9) “Case Management Documentation” includes the documents referred to in paragraph 3.5;
 - (10) “Case Management Record” means the court’s filing system for the case which includes the documents referred to at paragraph 3.7;
 - (11) “case manager” means the justices’ clerk or assistant justices’ clerk who manages the case in the magistrates’ courts;
 - (12) “Care Plan” means a “section 31A plan” referred to in section 31A of the 1989 Act;

The Public Law Outline

- (13) “Core Assessment” means the assessment undertaken by the Local Authority in accordance with The Framework for the Assessment of Children in Need and their Families (Department of Health, 2000);
- (14) “court” means the High Court, county court or the magistrates’ court;
- (15) “court officer” means –
 - (a) in the High Court or a county court, a member of court staff; and
 - (b) in a magistrates’ court, the designated officer;
- (16) “Draft Case Management Order” means the draft case management document in the form of an order set out at Annex C to this Practice Direction;
- (17) “Experts Practice Direction” means the Practice Direction on Experts in Family Proceedings relating to Children which is to come into force on the same date as this Practice Direction;
- (18) “genogram” means a family tree, setting out in diagrammatic form the family’s background;
- (19) “hearing” includes a directions appointment;
- (20) “Initial Assessment” means the assessment undertaken by the Local Authority in accordance with The Framework for the Assessment of Children in Need and their Families (Department of Health, 2000);
- (21) “Initial Social Work Statement” means a statement prepared by the Local Authority strictly limited to the following evidence –
 - (a) the precipitating incident(s) and background circumstances relevant to the grounds and reasons for making the application including a brief description of any referral and assessment processes that have already occurred;
 - (b) any facts and matters that are within the social worker’s personal knowledge limited to the findings sought by the Local Authority;
 - (c) any emergency steps and previous court orders that are relevant to the application;
 - (d) any decisions made by the Local Authority that are relevant to the application;
 - (e) information relevant to the ethnicity, language, religion, culture, gender and vulnerability of the child and other significant persons in the form of a ‘family profile’ together with a narrative description and details of the social care and other services that are relevant to the same;
 - (f) where the Local Authority is applying for an interim order: the Local Authority’s initial proposals for the child (which are also to be set out in the Care Plan) including placement, contact with parents and other significant persons and the social care services that are proposed;
 - (g) the Local Authority’s initial proposals for the further assessment of the parties during the proceedings including twin track /concurrent planning (where more than one permanence option for the child is being explored by the Local Authority);
- (22) “legal representative” means a barrister or solicitor, solicitor’s employee or other authorised litigator (as defined in the Courts and Legal Services Act 1990) who has been instructed to act for a party in relation to the proceedings;
- (23) “Letter Before Proceedings ” means any letter from the Local Authority containing written notification to the parents and others with parental responsibility for the child of the Local Authority’s plan to apply to court for a care or supervision order;

- (24) “Local Authority Case Summary” means a summary for each case management hearing in the form set out at Annex B to this Practice Direction which must include the following information –
- (a) the applications which have been issued in the current proceedings;
 - (b) any previous proceedings in relation to the child[ren] and any orders made in previous proceedings or in the current proceedings to which the child[ren] is/are subject;
 - (c) the present living arrangements for the child[ren] and arrangements for contact between the child[ren] and parent(s) or other relevant adult or child;
 - (d) a very brief summary of the incident(s) or circumstances giving rise to the application and of the background to the proceedings;
 - (e) a summary of any concerns the Local Authority may have about the mental capacity of an adult to care for the child or the capacity of the adult to prepare for the proceedings;
 - (f) the Key Issues in the case;
 - (g) any agreements that there are as to the Key Issues or the findings of fact sought by the Local Authority;
 - (h) whether an application for placement for adoption is among the range of options that will have to be considered;
 - (i) any current or proposed proceedings (e.g. criminal proceedings, other family proceedings, disciplinary, immigration or mental capacity/health determinations) which are relevant to the determination of the application(s);
 - (j) the issues and directions which the court will need to consider at the Case Management Conference/Issues Resolution Hearing, including any interim orders sought;
 - (k) any steps which have not been taken or directions not complied with, an explanation of the reasons and the effect, if any, on the Timetable for the Child;
 - (l) a recommended reading list and suggested reading time;
 - (m) any additional information relevant to the Timetable for the Child or for the conduct of the hearing or the proceedings;
 - (n) the contact details of all advocates, their solicitors (where appropriate) and other significant persons e.g. the Local Authority key worker or team manager and the children’s guardian;
- (25) “justices’ clerk” has the meaning assigned to it by section 27(1) of the Courts Act 2003;
- (26) “McKenzie Friend” means any person permitted by the court to sit beside an unrepresented litigant in court to assist the litigant by prompting, taking notes and giving advice to the litigant;
- (27) “Other Parties’ Case Summaries” means summaries by parties other than the Local Authority containing –
- (a) the party’s proposals for the long term future of the child (to include placement and contact);
 - (b) the party’s reply to the Local Authority’s Schedule of Proposed Findings;
 - (c) any proposal for assessment / expert evidence; and
 - (d) the names, addresses and contact details of any family or friends who it is suggested be approached in relation to long term care/contact or respite;
- (28) “Pre-proceedings Checklist” means the checklist of documents set out in the Public Law Outline;

The Public Law Outline

- (29) “Public Law Proceedings” means proceedings for –
- (a) a residence order under section 8 of the 1989 Act with respect to a child who is the subject of a care order;
 - (b) a secure accommodation order under section 25 of the 1989 Act;
 - (c) a care order under section 31(1)(a) of the 1989 Act or the discharge of such an order under section 39(1) of the 1989 Act;
 - (d) an order giving permission to change a child’s surname or remove a child from the United Kingdom under section 33(7) of the 1989 Act;
 - (e) a supervision order under section 31(1)(b) of the 1989 Act, the discharge or variation of such an order under section 39(2) of that Act, or the extension or further extension of such an order under paragraph 6(3) of Schedule 3 to that Act;
 - (f) an order making provision for contact under section 34(2) to (4) of the 1989 Act or an order varying or discharging such an order under section 34(9) of that Act;
 - (g) an education supervision order, the extension of an education supervision order under paragraph 15(2) of Schedule 3 to the 1989 Act, or the discharge of such an order under paragraph 17(1) of Schedule 3 to that Act;
 - (h) an order varying directions made with an interim care order or interim supervision order under section 38(8)(b) of the 1989 Act;
 - (i) an order under section 39(3) of the 1989 Act varying a supervision order in so far as it affects a person with whom the child is living but who is not entitled to apply for the order to be discharged;
 - (j) an order under section 39(3A) of the 1989 Act varying or discharging an interim care order in so far as it imposes an exclusion requirement on a person who is not entitled to apply for the order to be discharged;
 - (k) an order under section 39(3B) of the 1989 Act varying or discharging an interim care order in so far as it confers a power of arrest attached to an exclusion requirement;
 - (l) the substitution of a supervision order for a care order under section 39(4) of the 1989 Act;
 - (m) a child assessment order or the variation or discharge of such an order under section 43(12) of the 1989 Act;
 - (n) an order permitting the Local Authority to arrange for any child in its care to live outside England and Wales under paragraph 19(1) of Schedule 2 to the 1989 Act;
 - (o) a contribution order, or the variation or revocation of such an order under paragraph 23(8), of Schedule 2 to the 1989 Act;
- (30) “Rules” means rules of court governing the practice and procedure to be followed in Public Law Proceedings;
- (31) “Schedule of Proposed Findings” means the schedule of findings of fact prepared by the Local Authority sufficient to satisfy the threshold criteria under section 31 (2) of the 1989 Act and to inform the Care Plan;
- (32) “Section 7 report” means any report under section 7 of the 1989 Act;
- (33) “Section 37 report” means any report by the Local Authority to the court as a result of a direction under section 37 of the 1989 Act;

- (34) “Social Work Chronology” means a schedule containing -
 - (a) a succinct summary of the significant dates and events in the child’s life in chronological order- a running record to be updated during the proceedings;
 - (b) information under the following headings -
 - (i) serial number;
 - (ii) date;
 - (iii) event-detail;
 - (iv) witness or document reference (where applicable);
- (35) “specified proceedings” has the meaning assigned to it by section 41(6) of the 1989 Act;
- (36) “Standard Directions on Issue and on First Appointment” includes the directions set out in the Public Law Outline, Stage 1;
- (37) “Strategy Discussion Record” means a note of the strategy discussion within the meaning of “Working Together to Safeguard Children” (2006);
- (38) “Supplementary Form PLO1” means the form set out at Annex A to this Practice Direction which is to be filed with the application form and then used as the Index to the Court’s Case Management Record;
- (39) “Timetable for the Child ” means the timetable set by the court which is appropriate for the child who is the subject of the proceedings and forms part of the Allocation Record.

Annex A: Supplementary Form PLO1

ANNEX A

SUPPLEMENTARY FORM PLO 1

Application for a care order or supervision order: Supplementary Form

PART 1 - Pre-proceedings checklist

This checklist must be completed and filed by the local authority with any application for a care order or supervision order to specify the pre-proceedings documents filed with the application [Column (a)] and to identify those which are not applicable [N/A]. If any relevant document is not filed with the application, the reason and any expected date of filing must be stated [Column (d)]. Columns (b) and (c) are for use by the court to record any pre-proceedings documents filed subsequently.

All documents filed with the application must be clearly marked with their description and numbered consecutively in the following sequence

	Category	Document	N/A	(a) Filed on issue	(b) Filed by FA	(c) Filed by CMC	(d) Reason not filed/ expected date of filing
	Documents prepared for the proceedings						
1		Schedule of Proposed Findings					
2		Initial Social Work Statement					
3		Care Plan					
4		Allocation Record and Timetable for the Child					
	Documents held by the local authority						
5	Previous proceedings	Orders					
		Judgment/reasons					
6	Any relevant assessment materials	Initial/core assessment					
		Section 7 & 37 reports					
		Relatives and friends materials (e.g. a genogram)					
7	Other relevant reports and records	Single, joint or inter-agency materials					
		Records of discussions with the family					
		Key LA minutes and records for the child, (inc. Strategy Discussion Record)					
8		Pre-existing care plans (e.g. child in need plan, looked after child plan & child protection plan)					
9		Social Work Chronology					
10		Letters Before Proceedings					
11		Other relevant pre-proceedings documents (specify)					

The Public Law Outline

PART 2 - Record of case management documents filed

This Part is for use by the court to record case management documents filed with the court for Stages 1, 2 and 3

		Filed for FA	Filed for CMC	Filed for IRH	Notes
1	Local Authority Case Summary				
2	Other Parties' Case Summaries				M
					F
					Other
3	Parties' initial witness statements				M
					F
					Other
4	CAFCASS/ CAFCASS CYMRU Case Analysis and Recommendations				
5	Draft Case Management order for CMC/IRH				
6	Other case management documents (specify)				

Annex B: The Local Authority’s Case Summary

ANNEX B

The Local Authority’s Case Summary

Applications and previous proceedings

1. The applications that have been issued in these proceedings are:

Applicant	Order Sought	Date	Bundle ref.

2. The child[ren] is/are subject to the following orders previously made in these/other proceedings:

Order	in favour of	Court	Date of order	Case no.	Bundle ref.

Arrangements for the child[ren]

3. The present arrangements for the child[ren] is/are

(a) Living arrangements:

Child	Living with:

(b) contact arrangements:

Child	Having contact with:	Frequency

The Public Law Outline

Summary of precipitating events and background

4. The following is a brief summary of the incident(s) or circumstances giving rise to the application and of the background to the proceedings:

--

Mental Capacity

5. The local authority has no/ the following concerns about the mental capacity of the mother/ father/ *[other adult]* to care for the child or to prepare for the proceedings:

--

Key issues and findings

1. The Key Issues in the case are:

a)	
b)	
c)	
d)	

2. With reference to the above Key Issues the following are agreed:

a)	
b)	
c)	
d)	

3. In addition, the following findings of fact sought by the local authority are agreed on the following basis:

Finding sought	Basis of agreement

Related applications/proceedings

4. This is / is not a case where an application for placement for adoption is among the range of options that will have to be considered.
5. The following current or proposed proceedings (eg criminal proceedings, other family proceedings, disciplinary, immigration or mental capacity/health determinations) are relevant to the determination of the application(s):

Proceedings	Parties	Court/Body	Stage reached	Comments.

Issues and directions for CMC/IRH

6. At the Case Management Conference/Issues Resolution Hearing the following issues, directions and interim orders will need to be considered by the court:

a)	
b)	
c)	
d)	
e)	
f)	

Compliance

7. The following steps have not been taken for the reasons explained and the effect on the timetable is as follows:

Key Date	Step to be taken	Reason for non-compliance	Expected date of compliance/ Effect on timetable

The Public Law Outline

Recommended reading list and reading time

8. The following are the key documents to be read in preparation for the hearing:

Document	Author	Status/role	Date	Bundle page

9. The suggested reading time required for the hearing is:

Additional information

10. The following additional information is relevant to the timetable for the child(ren) or for the conduct of the hearing or of the proceedings

Contact details: advocates, solicitors and key professionals

Party	Status	Name	Tel:	Email:
Applicant Local Authority	Advocate			
	Solicitor			
	Key worker/team manager			
Respondents: (1) Mother	(1) Advocate			
	Solicitor			
	(2) Father	(2) Advocate		
	Solicitor			
(3) Other party	(3) Advocate			
	Solicitor			
Child(ren)	Advocate			
	Solicitor			
	Guardian:			

Annex C: Draft Case Management Order

ANNEX C
Draft Case Management Order Case No
Child(ren) No

[] Family Proceedings / County Court
 The High Court sitting at []
 The Principal Registry of the Family Division

PART 1 – Preliminary

The child[ren] is / are:

Name	Boy/Girl	Date of Birth
(1)		
(2)		
(3)		

Date of this Order:
 Ordered by:
 Sitting in private/public
 at the Case Management Conference / Issues Resolution Hearing
 or at the [contested] hearing of an application [made without notice] by
 for
 or [other]

The court heard the advocates for the following parties:

Party	Status	Counsel/solicitor/Advocate
Applicant	Local Authority	
Respondents:		
(1) X	Mother	
(2) Y	Father	
(3) Z	Other	
Child(ren)	Guardian:	

And the following parties in person:

Party	Status

[The court has heard and read the evidence set out on the Record of Hearing [Form C22]]

The Public Law Outline

This order is made on the basis of the information recorded in Part 3 about the timetable for the child(ren), the key issues and any agreements and decisions made

PART 2 - Order

The Court Orders that:

Orders relating to the child

- 1 *Record of Prescribed Forms of Order which are to be issued separately [C23 to C49]*
e.g. Interim care order / interim supervision order / interim residence order / contact order

Joinder of parties/parentage issues

- 2 Party status
- 3 Paternity / Maternity and tracing / involvement of absent parent / previous carers

Appointment of Children's Guardian / Children's Solicitor / Official Solicitor

- 4 Appointment of children's guardian / solicitor for the child
- 5 Appointment of Official Solicitor as guardian ad litem / litigation friend for a non-subject child or protected party

Transfer / Allocation to Case Manager / Case Management Judge

- 6 Transfer
- 7 Allocation

Evidence to be filed

8. Evidence
 - a. local authority
 - b. parents
 - c. [other]
 - d. children's guardian
9. Assessments
 - a. Core and initial
 - b. Parenting (inc residential)
 - c. Friends and Family
 - d. [other, inc specialist]
10. Care planning

Other documents

11. LA's Schedule of Proposed Findings
12. LA Case Summary, Other Parties' Case Summaries and the Case Analysis and Recommendations
13. Disclosure of documents (whether to be filed and/or served)
 - a. Key LA minutes and records not disclosed as pre-proceedings documents
 - b. Health records (inc GP, HV, clinic and hospital)
 - c. Education records (inc SEN)
 - d. Police records (inc DV logs)
 - e. Contact notes

Expert evidence

14. Identification of expert
15. Identification of Key Issue(s) to be addressed
16. Permission to instruct
 - a. Responsibility for instruction (joint/sole)
 - b. Letter of instruction
 - c. Timetable
 - d. Filing and service of report (paper/electronic)
 - e. Questions to expert
 - f. Permission to examine/observe child
 - g. Funding
 - h. Arrangements for expert to give oral evidence (in person or by video/audio-link)
17. Experts' meeting
 - a. Responsibility to arrange and chair
 - b. Questions
 - c. Schedule of agreements and disagreements

Advocates' Meeting

18. Meeting
19. Draft Case Management Order and experts proposals

Further Hearings

20. The next hearing is at [] [a.m.][p.m.] on []
at [] and is:
[The Issues Resolution Hearing]
[An Early Final Hearing]
[A Fact Finding Hearing at which the findings set out in the local authority's schedule of findings are to be determined]
[The Final Hearing at which []]
[Other (specify the AIM of the hearing) []]
21. Special Measures and Security

The Public Law Outline

22. Attendance at court

23. Use of Technology and Special requirements

- a. videolink
- b. conference telephone link
- c. hearing assistance
- d. DDA requirements
- e. translation directions

Other applications

24. Directions in other concurrent applications (e.g. for Residence/Contact)

25. Directions in Placement for Adoption Applications

Bundles for hearings

26. Bundles Practice Direction requirements

- a. Agreed or revised Threshold / Schedule of Findings
- b. Witness Template
- c. Skeleton arguments
- d. Judicial Reading List
- e. Time estimate to specify reading time and judgment writing time
- f. Other (eg [The parties must comply with the President's Practice Direction (Family Proceedings: Court Bundles), 27 July 2006, [2006] 2 FLR 199. The Direction applies to all hearings in this case regardless of the estimated length of the hearing.]

Other orders

27. No document other than a document specified in these directions or filed in accordance with the Rules or any Practice Direction shall be filed by any party without the court's permission.

28. Any application to vary these directions or for any other order is to be made to the allocated judge on notice to [] all parties.

Compliance with directions

29. All parties must immediately inform the Court/Court Officer on [contact telephone / e-mail] if any party fails to adhere to any date specified for a direction or the filing of any document.

Dated

(signed)

Court address:

HCJ/HHJ/DJ/DJ(MC)/JP/[Assistant] JC

PART 3 - Recitals

The timetable for the child(ren)

And key issues, agreements and decisions

It is recorded that:

1. The key dates and events in the Timetable for the Child(ren) are:

a)	
b)	
c)	
d)	

2. There is no [the following] delay in the timetable for the proceedings fixed by the court in accordance with the Timetable for the Child (specify any delay and reasons)

--

3. The Key Issue(s) in the case are:

a)	
b)	
c)	
d)	

4. The parties have agreed the following Key Issues and/or findings of fact:

a)	
b)	
c)	
d)	

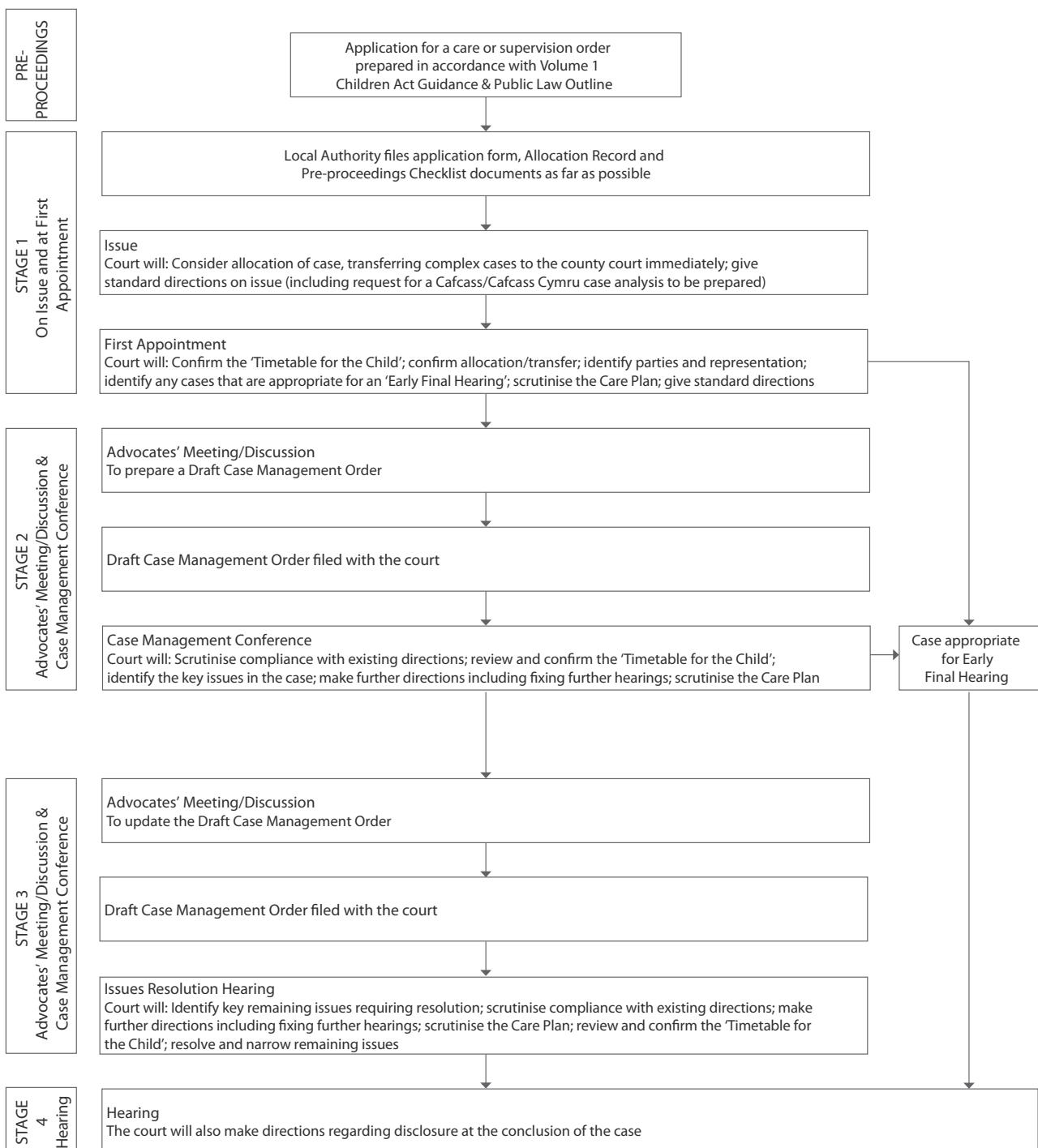
5. The court makes the following findings or decisions as the basis for this order:

a)	
b)	
c)	
d)	

Annex 3: The Public Law Outline

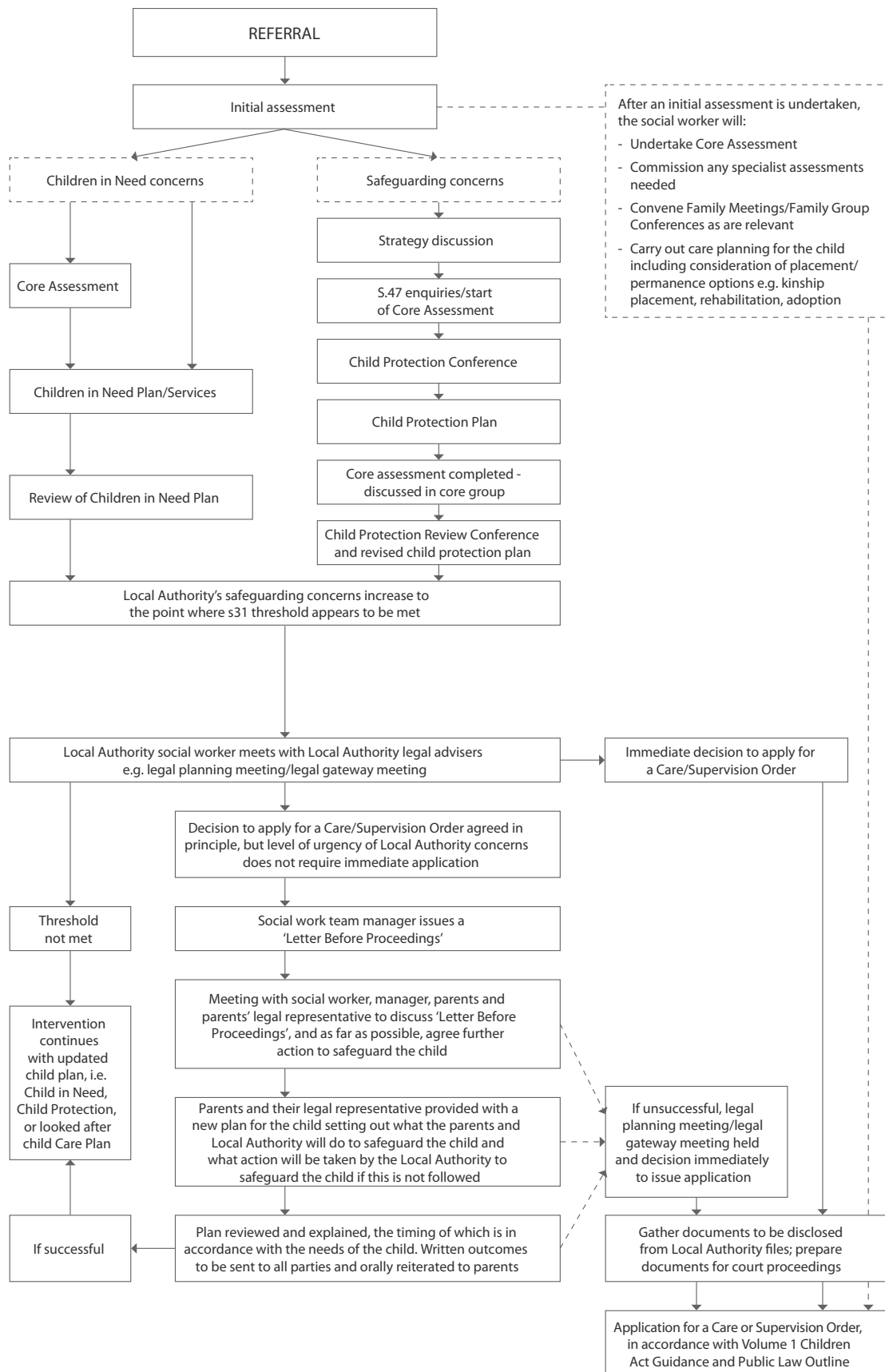
The Public Law Outline

Flowchart: Court Proceedings - Public Law Outline



The Public Law Outline

Flowchart: Pre-proceedings - Public Law Outline



References and Internet Links

Children Act 1989. London. HMSO.

Website: www.opsi.gov.uk/ACTS/acts1989/Ukpga_19890041_en_1.htm

Department for Education and Skills (2004). *Independent Reviewing Officers Guidance*.

London: DfES.

Website: <http://www.everychildmatters.gov.uk/files/6628268E23E48D39BD81E419715215D6.pdf>

Department for Education and Skills (2005a). *Adoption and Children Act 2002 – Guidance*.

London: DfES.

Website: www.everychildmatters.gov.uk/adoption/

Department for Education and Skills (2005b). *Special Guardianship Guidance and Regulations*.

London: DfES.

Website: www.everychildmatters.gov.uk/socialcare/lookedafterchildren/guardianship/

Department of Health (2002). *The Integrated Children's System*. London: DH.

Website: www.everychildmatters.gov.uk/ics

Department of Health, Department for Education and Employment and Home Office (2000).

Framework for the Assessment of Children in Need and Their Families. London: The Stationery Office.

Website: www.archive.official-documents.co.uk/document/doh/facn/fw-00.htm

HM Government (2006). *Working Together to Safeguard Children*. London: The Stationery Office.

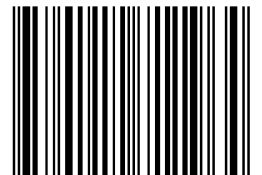
Website: www.everychildmatters.gov.uk/workingtogether/

£15



www.tso.co.uk

ISBN 978-0-11-271196-4



9 780112 711964