



Department
for Education

Draft statutory guidance on court orders and pre- proceedings

For local authorities

April 2014

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Summary

About this guidance

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

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

This guidance replaces the 2008 guidance *The Children Act 1989 guidance and regulations: Volume 1- Court Orders*.

Expiry or review date

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

What legislation does this guidance refer to?

- The Children and Families Act 2014
- The Children Act 1989
- The Adoption and Children Act 2002
- The Children and Adoption Act 2006
- The Family Procedure Rules 2013
- (Full list to be included in the Annexes)

Who is this guidance for?

This guidance is for:

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

Ministerial Foreword

To be added before formal publication. This will include information on:

- Children and Families Act
- Family Justice Review/ Government reforms
- 26 weeks/ Delay
- Placement/Adoption orders
- PLO
- Partnership working

Introduction

1. This revised volume of guidance is being issued in light of the family justice provisions in the Children and Families Act 2014 and changes in practice following the Family Justice Review¹. It should be read in conjunction with the statute and accompanying court rules and practice directions, as well as with wider supporting materials.²
2. The content is intended to provide a high-level guide to the law, setting out the different private and public law orders, including placement and adoption orders, and processes relating to care and court proceedings (including pre-proceedings). A glossary is provided in **Annex D** to explain specific terminology. Where appropriate, links to relevant best practice materials have also been included.
3. In deciding any question about a child the court must treat his or her welfare as its paramount consideration³, and in relation to certain decisions⁴, must have regard to the factors set out in the ‘welfare checklist’⁵. The court should also have regard to the general principle that when determining any question with respect to the upbringing of the child, any delay is likely to prejudice the welfare of that child.
4. A key principle of the Children Act 1989 is that children are generally best looked after within the family, with their parents playing a full part in their lives and with least recourse to legal proceedings. No order should be made unless it would be better for the child than making no order at all⁶.

Reforming the family justice system

5. The Children and Families Act 2014 implements the Government’s reforms in response to the Family Justice Review⁷. These legislative changes are accompanied by a simplification of the court system with the majority of family cases heard by a single Family Court.
6. In private law, reforms make clear that, where safe and appropriate, a child should have the opportunity to benefit from the involvement of both parents. In public law new legislation addresses damaging delays in court proceedings.

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

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

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

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

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

⁶ s 1 (5) of the Children Act 1989 and s1(4) of the Adoption and Children Act 2002

⁷ Family Justice Review and Government response

Chapter 1: Private Law

Introduction

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

Parental responsibility

2. Set out below are the circumstances in which an individual has, or may acquire, parental 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 (HFEA) 1990).
 - **The child's father has parental responsibility for a child if he was married to the child's mother at the time of the child's birth.** Similarly, the mother's civil partner will (subject to the conditions section 42 of the Human Fertilisation and Embryology Act (HFEA) 2008) have parental responsibility.
 - **An unmarried father** may take steps to acquire parental responsibility. He will have parental responsibility automatically if he registered the birth with the mother on or after 1 December 2003. Alternatively, he may acquire parental responsibility by: applying to the court for a parental responsibility order; making a parental responsibility agreement with the child's mother; or being appointed guardian (see below). Similar provisions apply to second female parents (who meet the conditions in section 43 of the HFEA 2008).
 - **A step-parent** may acquire parental responsibility for a child if he or she is married to, or the civil partner of, a person with parental responsibility for the child, either by agreement with the parent (and with any other person with parental responsibility), by court order, or through adoption.
 - A **special guardian** has parental responsibility for the child. Subject to any other orders, a special guardianship order allows the special guardian to exercise parental responsibility to the exclusion of others with parental responsibility (except another special guardian).
 - A person **named in a child arrangements order** as a person with whom a child lives has parental responsibility⁸

⁸ Courts also have the power to award parental responsibility to a person named in a child arrangements order as a person with whom a child spends time or otherwise has contact.

- A **guardian** who is appointed for a child under section 5 of the Act has parental responsibility on the death of the child's parent(s) or the person named in a child arrangements order as the person with whom a child is to live.
- A **local authority** acquires parental responsibility for a child if a care order is in place.

Appointment of a guardian with parental responsibility for the child

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

Section 8 orders

5. For cases which proceed to court, section 8 of the Act provides for the making of three different orders by the courts: child arrangements orders (introduced by the Children and Families Act 2014 to replace contact and residence orders); prohibited steps orders; and specific issue orders. These, along with any order varying or discharging such an order, are referred to in the Act as section 8 orders. However, section 1 of the Act makes clear that the court, when considering making any order under the Act with respect to a child, shall not do so unless it considers that making an order would be better for the child than making no order at all. This is often referred to as the 'no order principle'.
6. Section 8 orders are defined as follows:
 - *child arrangements order*: an order regulating arrangements concerning with whom a child is to live, spend time or otherwise have contact and when a child is to live, spend time or otherwise have contact with any person.
 - *prohibited steps order*: an order that no step which could be taken by a parent in meeting his parental responsibility for a child, and which is of a kind specified in the order, shall be taken by any person without the consent of the court.
 - *specific issue order*: an order giving directions for the purpose of determining a specific question which has arisen, or which may arise, in connection with any aspect of parental responsibility for a child.

7. Subject to any specific provisions in the order to the contrary, a section 8 order ceases to have effect when the child reaches the age of 16. A section 8 order cannot in any case continue beyond the child's 18th birthday.

Eligibility to apply

8. The Act sets out those who may apply for any section 8 order without first seeking the court's permission. These are:
- a parent (including an unmarried father), guardian or special guardian;
 - a step parent who has acquired parental responsibility; and
 - where a child arrangements order is in force, any person named in that order as a person with whom a child is to live.
- The following people can apply for a child arrangements order
- any party to a marriage or civil partnership in relation to which the child is a child of the family (primarily step parents who have not acquired PR);
 - any person with whom the child has lived for a period of at least 3 years;
 - a relative who has cared for the child for at least one year
 - a local authority foster carer who has cared for the child for at least one year;
 - where a child arrangements order is in force, any person who has the consent of each of the persons named in the order as a person with whom the child is to live;
 - where the child is in the care of the local authority, any person who has the consent of the local authority; or
 - any person who has the consent of each of those with parental responsibility.
9. Any other person – including the child himself – may apply for a section 8 order with the prior leave of the court. A local authority may not apply for a child arrangements order.
10. Restrictions on applications for section 8 orders in specific circumstances are included in Annex D which highlights some of the principal interactions between public and private law orders.

Other orders

11. There are other orders a court can make in private law, in addition to those described above. **A family assistance order** is intended to provide focused, short-term help to a family to help overcome the problems and conflict associated with parents' separation; it cannot be made for more than 12 months in the first instance. The nature of the help to be provided will normally be set out in the assessment submitted by Cafcass or by a local authority officer to the court.

12. In cases where a family assistance order and section 8 order are both in force at the same time, the court may direct the Cafcass officer,⁹ or local authority officer to report to the court on any aspect of the section 8 order the court considers appropriate. A family assistance order cannot require a local authority to make an officer available unless the local authority consents or the child concerned lives or will live within the authority's area.
13. Where a family assistance order is in force at the same time as a child arrangement order which makes provision for contact, the court may direct the officer to advise and assist any person named in the order (as a person with whom the child has contact) with regard to establishing, improving and maintaining contact.
14. **A special guardianship order** may only be made in favour of someone who is at least 18 years of age and is not the child's parent. The following people may apply for a special guardianship order:
- Any guardian of the child;
 - Where a child arrangements order is in force, anyone named in that order as a person with whom a child is to live (existing residence orders are deemed to be a child arrangement order, which makes provision as to where a child lives, by means of order);
 - Any person with whom the child has lived for 3 out of the last 5 years;
 - A local authority foster parent or a relative with whom the child has lived for at least one year immediately preceding the application.
 - Any person who:
 - in any case where a child arrangements order is in force with respect to the child, has the consent of each of the persons named in the order as a person with whom the child is to live;
 - in any case where the child is in the care of a local authority, has the consent of that authority; or
 - in any other case, has the consent of each of those (if any) who have parental responsibility for the child.
15. Anyone outside these categories will require the permission of the court to make an application, although the court can make a special guardianship order of its own motion, where it considers it appropriate to do so.
16. The court may only make a special guardianship order if it has received a report from the local authority which deals with, among other issues, the suitability of the applicant to be a special guardian.
17. Local authorities are required by the Act to set up special guardianship support services. There is further provision for these services – including financial support – in

⁹ Or Welsh proceedings officer in Wales

the Special Guardianship Regulations 2005. The circumstances in which the local authority can provide financial support 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.

18. The local authority is required by section 14F(3) (together with the Special Guardianship Regulations 2005) to carry out an assessment of a person's need for support services 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, the local authority may still carry out an assessment, where requested to do so.
19. The relationship between private law orders and public law proceedings is summarised in **Annex [D]**¹⁰

Risk assessment

20. Under section 16A, Cafcass is required to carry out a risk assessment in relation to a child in certain circumstances and to provide a report to the court in respect of that risk assessment. The circumstances in which a risk assessment must be carried out are where the Cafcass officer is carrying out a function in connection with private family law proceedings and the officer is given cause to suspect that the child concerned in those proceedings is at risk of harm. A risk assessment is defined as an assessment of the risk of the child suffering the harm that is suspected. The risk of harm to the child may relate directly to harm experienced by the child himself or to harm caused by the witnessing of harm.

¹⁰ Guidance on special guardianship orders can be found at www.gov.uk/government/publications/special-guardianship-guidance

Chapter 2: Pre-proceedings

Introduction

1. This chapter provides guidance on what should happen before the initiation of public law proceedings under section 31 of the Children Act 1989. It outlines the duties on local authorities to ensure the early identification of potential concerns and to provide support for children and their families to work through these issues, where possible.
2. The Children Act 1989 is based on the principle that, where consistent with children's welfare, local authorities should promote the upbringing of the child with their families.¹¹ Where problems do arise and are identified by a local authority, the local authority is under a duty to act¹². The guidance in this chapter highlights the requirement for local authorities to work closely with families to ensure that key steps are taken to help parents address problems in a timely way. Where a child cannot remain living with his or her parents, the local authority should identify and prioritise suitable family and friends placements, if appropriate. Where possible, identification should take place before care proceedings are issued, as it may avoid the need for proceedings.
3. Where a decision is taken by the local authority that parenting cannot be improved within the child's timescale and that the 'threshold'¹³ for care proceedings has been met in principle, it should engage with other relevant agencies to determine whether to bring proceedings to achieve a positive solution for the child as quickly as possible. During this period, the local authority should continue to explore potential wider family placements, to clarify the realistic options available for the child.
4. Comprehensive guidance on the principles and parameters of assessing the needs of individual children and organisational responsibilities for the safeguarding of children can be found in chapters one and two of *Working Together to Safeguard Children, 2013*¹⁴.

Early Identification and support

5. Providing early help is more effective in promoting the welfare of children than reacting later. Local authorities will need to work with other agencies, as appropriate to put processes in place for the effective assessment of the needs of individual children who may benefit from early help services. Where children and families would benefit from help from more than one agency (e.g. education, health, housing, police), this should be an inter-agency assessment¹⁵.

¹¹ This is consistent with the child's right to respect for family life under Article 8 ECHR

¹² Under s 17 and 47 of the Children Act

¹³ The Children Act 1989 s31(2) Defined in Chapter 3 paragraph 6

¹⁴ See Working Together guidance link in annex

¹⁵ Co-operation between authorities: section 27, Children Act 1989

6. This early help assessment should identify what help the child and family require to prevent needs escalating to a point where intervention would be needed via a statutory assessment under the Children Act 1989. Further information on the early help assessment and the wider assessment process is in *Working Together to Safeguard Children*¹⁶. Local areas should have a range of effective services in place to address any assessed needs. Services may also focus on improving family functioning and building the family's own capability to solve problems, which should be done within a structured, evidence-based framework, involving regular review to ensure that real progress is being made.
7. Assessments should be carried out in a timely manner, reflecting the needs and history of the individual child, taking account of the impact of any previous services and analysing what further action might be needed to be taken. They should be undertaken by a lead professional,¹⁷ who should provide support to the child and family, acting as their representative and co-ordinating the delivery of support services.
8. All professionals involved in this work should ensure that their communications with the family about expectations and support are clear and consistent. Information should always be confirmed in writing and given to the family with sufficient time allowed for them to be able to reflect on it and take advice, as appropriate. If, in the course of early work with a family, capacity issues become apparent, the local authority should consider whether any additional support should be provided, including a possible referral to adult learning disability services.

Statutory assessments under the Children Act 1989

9. Where the lead practitioner considers that early help services cannot address concerns, the case should be referred to local authority children's social care for further assessment. This includes where the parents and/or the child do not consent to an early help assessment, and the local authority considers that the problems will escalate to the extent that they will place the child at risk of significant harm or where the child may be a child in need.
10. Where a child is referred to the local authority children's social care, the local authority should acknowledge receipt of the referral and indicate the type of action that will be taken, **within one working day**.¹⁸ The local authority should respond to all referrals, whether or not action is deemed necessary.
11. Following the local authority's acceptance of a referral, the lead professional role falls to a social worker. The social worker will determine whether a child requires immediate protection; is a child in need and needs an assessment under section 17 Children Act 1989; or is a child in need of protection and instigate enquiries under

¹⁶ Working together to safeguard children, 2013

¹⁷ [Lead Professional guidance](#)

¹⁸ See Chapter 1 in *Working together to safeguard children* (timeliness of referrals)

section 47 Children Act 1989. It is important that whether acting under sections 17 or 47 there is a clear rationale for the local authority taking action and providing help, with reasons recorded.¹⁹

12. For children who are in need of immediate protection, action must be taken. If parents are not willing to agree protective action, measures under Part 5 of the Children Act should be used as soon as possible.²⁰
13. Assessment should be a continuous and dynamic process, which analyses and responds to the changing nature and level of risk faced by the child and reflect the unique characteristics of the child within their family and community context. They should build on the history of the case, including any early help assessments, and monitor and record the impact of services on the child and family, reviewing the impact of the help provided. Assessments must be proportionate to the needs of the individual child, timely and transparent.
14. A good assessment should consider:
 - the child's developmental needs;
 - the parents' or caregivers' capability to respond appropriately to those needs and the potential impact on the child of any gaps in capability; and
 - the wider family and family environmental factors
15. The maximum timeframe for a statutory assessment to conclude, such that it is possible for the local authority to reach a decision on next steps, should be no longer than 45 working days from the point of referral. If an assessment exceeds 45 working days, the social worker should record the reasons for exceeding the time limit²¹.

Safeguarding

16. Where particular needs are identified at any stage of the assessment, the local authority should not wait until the assessment has been completed before commissioning or providing services to support the child and his or her family.
17. Following the assessment, the local authority should follow a precise set of steps to assess and provide services for children who may be in need, or there is reasonable cause to suspect may be suffering or likely to suffer significant harm.²²
18. For cases which result in court proceedings, the information generated by the assessment will often form the central part of evidence that supports an application

¹⁹ Full details on the statutory assessments contained in section 17 and 47 are detailed in Annex A.

²⁰ Further information on Emergency protection powers be found in Chapter 4 (Other Orders) and in Chapter 1 and Appendix B of *Working together to safeguard children*

²¹ Chapter One – *Working together to safeguard children*

²² Processes for managing individual cases, Pages 26-46 *Working Together to Safeguard Children*

for a care or supervision order, and will include, as appropriate, primary evidence from the range of agencies involved²³.

19. Where proceedings are not initiated, the assessment will provide a valuable platform for further engagement, including the provision of services where children are assessed as being in need. Where the local authority later decides that it is necessary to make an application to court, the related assessment will provide the baseline for work with the family.

Helping families to engage early

20. The period when proceedings are being considered is likely to be stressful for both the child and his/her parents. Early parental engagement in the child protection process is key to avoiding the creation of barriers between the local authority and the family. This engagement should include early, direct and clear written communication with the parents, setting out the local authority's specific concerns, outlining what needs to be done to address concerns and indicating the likelihood of proceedings.
21. In circumstances where parents may not have the capacity to engage fully with the process, all efforts must be made, such as working in partnership with adult services, to secure appropriate advocacy to ensure that local authority actions are fully understood by parents. The advocacy could be provided by an appointed solicitor or independent advocacy services.

Independent advice and advocacy for parents

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

- understand their rights and options and how child protection planning and decision-making works;
- reflect on why social workers are worried about their child;
- make safe plans for their child (which may include alternative care within the family) within the child's timescale; and
- have their voice heard by professionals.²⁴

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

²⁴ The Protocol of Advice and Advocacy for Parents in Child Protection Cases and the Code of Practice for Professional Advocacy sets out a framework for such specialist advice and advocacy.
<http://www.frg.org.uk/images/PDFS/advocacy-code.pdf>

23. All English local authorities should have published a family and friends care policy designed to ensure that children and young people who are unable to live with their parents should receive the support that they and their carers need to safeguard and promote their welfare, whether or not they are looked after.²⁵
24. Enabling wider family members to contribute to decision making where there are child protection or welfare concerns, including where a child cannot remain safely with birth parents, is an important part of pre-proceedings planning. Wider family meetings, such as family group conferences²⁶ are an important means of involving the family early so that they can provide support to enable the child to remain at home or look at alternative permanence options for the child. Local authorities should consider referring the family to a family group conference service if they believe there is a possibility the child may not be able to remain with their parents, or in any event before a child becomes looked after, unless this would be a risk to the child.

Family Group Conferences

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

Key features of a successful family group conference include:

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

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

Legal planning meeting

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

²⁵ DfE (2011) [Family and Friends statutory guidance](#)

²⁶ <http://www.frg.org.uk/involving-families/family-group-conferences> A programme of accreditation for FGC is currently being developed

work managers, and the local authority lawyer. At the meeting, a decision should be made on whether the threshold criteria have been met in principle. The local authority should then decide whether it is in the best interests of the child to provide a further period of support for the family with the aim of avoiding proceedings, or whether proceedings should be initiated immediately. Where the child has a foster carer, the carer's views should be sought on issues such as the child's progress in their placement and longer term planning decisions.

26. Any potential issues which may affect a parent's capacity to litigate should be flagged at this meeting. The parent's solicitor is responsible for obtaining an opinion on litigation capacity, so any issues should be raised with the parent's legal representative at the formal pre-proceedings stage. Any documentation relevant to a parent's capacity to litigate, such as details of any referrals and assessments made, will need to be included with any future care application in accordance with the requirements of the Public Law Outline (PLO).
27. Proceedings can be avoided if parents are able to demonstrate their capability to safeguard the child by working with relevant services to improve their parenting capability or agreeing to a protective placement for the child, with relatives or under section 20²⁷.

Letter before proceedings

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

Pre-proceedings letter

29. Unless the local authority considers that the level of risk requires an immediate application to court, **the local authority should send a *pre-proceedings letter* to parents and/or others with parental responsibility.**
30. The letter is the formal written notification that proceedings are likely, and it should set out:
- A summary of the local authority's concerns
 - The issues which need to be addressed, and what support will be provided, to avoid proceedings, including timescales
 - Information on how to obtain legal advice and advocacy

²⁷ Children Act 1989: Provision of accommodation for children.

31. The letter should invite the parents or others with parental responsibility to a pre-proceedings meeting to agree proposals for addressing the current problems which have led to concerns about the welfare of the child.
32. At this meeting, the local authority should agree a revised plan for the child, confirmed in writing to the parents, setting out what the parents and the local authority must do to safeguard the child. The plan will indicate the steps the local authority will take to support the parents and the timescales within which progress must be made for proceedings to be avoided. It should also outline the steps that the local authority will take at the end of this period, depending on whether progress has been demonstrated. At the meeting, local authorities should review arrangements for identifying potential family carers, or for assessments with the parents, particularly where these require letters of instruction to assessment services.
33. Setting clear expectations and timescales for improvement will reduce the potential for delay, while also providing an opportunity to avoid proceedings, where this is deemed appropriate by the local authority, informed by the views of the other professionals involved with the case. It is recommended that the local authority should review the child's plan within six weeks of the meeting to ensure sufficient progress is being made.

Letter of Issue

34. Where the local authority considers that proceedings are necessary (or will be once the child is born), it will send a *letter of issue*.
35. On receipt of **either** letter, the parents, or others with parental responsibility for the child, are entitled to non-means tested publicly funded legal advice at 'Level 2'²⁸, which covers, for example, legal advice, representation at the meeting and advocate negotiations with the local authority on their behalf. To assist parents in identifying a solicitor to advise them, the local authority should send an up to date list of relevant solicitors in the local area who undertake legal aid work in child care cases, with the *pre-proceedings letter/letter of issue*.
36. In some cases, the level of concern about a child's welfare may require rapid and sometimes immediate recourse to the courts. There may not be time for a pre-proceedings meeting and the collation of all documentation prior to such an application.²⁹
37. A lack of documentation should never prevent a local authority from bringing a case to court quickly where it believes this is essential to protect the child's welfare. Such cases should never be the norm, however, and where a particular piece of documentation cannot be supplied immediately, the authority must state on the

²⁸ <http://www.justice.gov.uk/legal-aid/make-an-application>

²⁹ Further information on good practice in urgent cases can be found at [Good practice in urgent cases](#).

C110A application form the reasons why it cannot be included and confirm the date when the documents will be submitted to the court.

Section 31 application and evidence linking to the PLO

38. All evidence and assessments on which the local authority intends to rely in support of its court application should be up-to-date and prepared in advance. This includes any specialist assessments, whether commissioned as part of the early help assessments or later in the process, such as those intended to help inform the local authority's final decision about the initiation of proceedings.
39. Specialist reports should have been commissioned with the consent of the parents/carers. Where commissioned later in the process, the local authority should bear in mind their possible future use within proceedings, including the requirements of the court.
40. Additional parenting capability assessments, over and above those prepared as part of any statutory assessment, should be commissioned at the pre-proceedings stage where the local authority has a specific need for specialist expertise to enable it to reach its decision as to whether the threshold has been met and that proceedings would be the best way forward.
41. When making an application for a care or supervision order, **the local authority must:**
- Complete and quality assure the care or supervision application and associated documentation, in line with PLO requirements,³⁰ ensuring that the information is clearly presented in a succinct and analytical form which focuses on the essentials of the case and the rationale for bringing it to court. The evidence submitted, should be consistent with the template attached at **Annex A** (local authority social work evidence template).³¹
 - Consider whether the parent/s (or other person with parental responsibility) appears to have capacity to instruct their legal representative and, if not, whether this needs to be raised with the parents' legal representative. This is covered in C110A.³²
 - Continue to undertake additional assessments which it feels are essential to inform its ultimate decision on the child's needs.
 - Submit the application to the local court so the court's preparation for the case can begin.
 - Notify Cafcass immediately, to enable them to initiate allocation of an identified guardian.

³⁰ Annex B – Flow chart for PLO

³¹ Local authority social work evidence template- this is a draft template.

³² [C110A application form](#)

42. Receipt of the application and the annex documents by the court will be considered as 'Day 1'. At this point, the local authority should share the documents with Cafcass. Following an application to court, the local authority, in common with all other parties, is bound by the case management decisions of the court.³³
43. It is important that the local authority engages the Independent Review Officer (IRO) early in the process, to ensure that the local authority section 31 Care Plan³⁴ for the child fully reflects the child's current needs and that the actions are consistent with the local authority's legal responsibilities in respect of the child.³⁵

³³ Family Procedure Rules: <http://www.justice.gov.uk/courts/procedure-rules/family>

³⁴ Full information on local authority Care Plans contained in Volume 2 – [Volume 2 Children Act guidance](#)

³⁵ The IRO functions in this area are detailed in the "*IRO handbook: Statutory guidance for IROs and local authorities*" - [IRO handbook](#)

Chapter 3: Care, Supervision and Placement Orders

1. This chapter outlines the processes that take place during care, supervision and placement proceedings and incorporates information on changes to care and supervision proceedings as a result of the Children and Families Act 2014.³⁶ It also provides information on placement orders, outlines the links between these orders and care and supervision orders and makes clear and where there are on-going care proceedings, the placement order application should be joined as soon as the decision has been made that the child should be placed for adoption.
2. Under section 31 of the Children Act 1989, on the application of any local authority or authorised person,³⁷ the court may make a care order or a supervision order:
3. A **care order** places the child in the care of a designated local authority.
 - This requires the local authority to provide accommodation for him/her, to maintain and safeguard him/her, to promote his/her welfare and to give effect to or act in accordance with the other welfare responsibilities set out in the Children Act 1989. It gives the local authority parental responsibility for the child and the power to determine the extent to which the child's parents and others with parental responsibility may meet their responsibility, where this is necessary to safeguard or promote the child's welfare.
 - A care order automatically discharges a child arrangements order (or any other order made under section 8 of the Children Act 1989), a supervision order, and education supervision order or a school attendance order. It also brings wardship to an end.
 - A care order is automatically discharged by the making of a special guardianship order or a child arrangement order. It is suspended but not discharged by the making of a placement order and will be revived if the placement order is revoked.³⁸
 - No order can be made if the child is seventeen years old (or 16 if married or in a civil partnership) at the time the order is made. The order will cease to have effect at age eighteen unless brought to an end earlier.
4. A **supervision order** places the child under the supervision of a designated local authority.
 - Under the order, the local authority must advise, assist and befriend the child; the order may require the child to comply with any directions given by the local authority which require him or her to do all or any of the following:

³⁶ New provisions in the Children and Families Act apply to all 'part IV proceedings'- More information can be found in the Glossary

³⁷ 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.

³⁸ Table of orders can be found at Annex D

- live at a place specified in directions given by the supervisor;
 - take part in specified activities; and
 - report to particular places at particular times.³⁹
5. Under Section 22 of the Adoption and Children Act 2002 on the application of a local authority, the court may make a **placement order** authorising the local authority to place a looked after child for adoption with any prospective adopters who may be chosen by the local authority.
- Under a placement order, parental responsibility is shared between the local authority and the birth parents and, where the child is living with prospective adopters, the prospective adopters.
 - An application or a placement order cannot be made before the local authority's decision maker (ADM) has decided that the child should be placed for adoption.⁴⁰
 - Any existing child arrangement or supervision order ceases to have effect. A placement order restricts the application for other orders.⁴¹
 - A care order is suspended during the life of the placement order. It is automatically reactivated if the placement order is revoked.
 - A placement order continues in force until it is revoked, or an adoption order is made in respect of the child or the child marries, forms a civil partnership or attains the age of 18 years.
6. The court can only make a care or supervision order if it is satisfied:
- that the child concerned is suffering, or is likely to suffer, significant harm; and
 - that the harm, or likelihood of harm, is attributable to:
 - the care given to the child, or likely to be given to him/her if the order were not made, not being what it would be reasonable to expect a parent to give to him/her; or
 - the child's being beyond parental control⁴².
7. If the court is satisfied that the threshold criteria have been met, then it will apply the welfare checklist at section 1(3) of the Children Act 1989 and the no order principle.⁴³
8. Unless otherwise discharged, a supervision order will last for one year. This can be extended for any period not exceeding 3 years in total from the date of the first order.

³⁹ Further details on the effect of care and supervision orders (including Parental Responsibility and breaches of orders) can be found in the Glossary in Annex A page x

⁴⁰ There are a range of circumstances when a placement order must or may be applied for; see section 22 of the Adoption and Children Act 2002.

⁴¹ A prohibited steps order, specific issues order, supervision order, child assessment order or child arrangement order may not be applied for in respect of the child.

⁴² Children Act 1989 section 31 (2)

⁴³ s 1(5)) of the Children Act 1989 or, as applicable, section 1(6) of the Adoption and children Act 2002.

9. When considering whether threshold has been met, the consignment of a party to a pool of perpetrators during previous proceedings may be viewed as a relevant fact. When this is taken with other relevant facts it may constitute a sufficient factual basis for a finding of threshold although such consignment will not on its own satisfy threshold. Further information on the threshold conditions can be found in the Glossary, attached at Annex D.
10. The court can only make a placement order if:
 - The child is subject to a care order;
 - The court is satisfied that the threshold set out in paragraphs 7-9 above is met; and
 - The child has no parent or guardian
11. It will also need to apply the welfare checklist at section (1) 4 of the Adoption and Children Act 2002 and the no order principle., The court will make a placement order if satisfied that the threshold set and that adoption is the most appropriate permanence option for the child.⁴⁴

Care and Supervision cases

13. When timetabling a case, the court should consider the impact of the timetable on the welfare of the child. Proceedings should be disposed of within 26 weeks.⁴⁵
14. There will always be cases which are highly complex for which 26 weeks is not a realistic timeframe for completing the case. In those cases the court has the discretion to extend the timetable where it is “necessary to enable the court to resolve the proceedings justly”.⁴⁶
15. It will be possible to grant extensions for periods of up to eight weeks at a time (with no limit on the number of extensions) from the end of the 26 week period (or from the day on which the extension is granted– whichever is the later).⁴⁷ In order to prevent unnecessary bureaucracy, requests to extend the timetable for the proceedings will be considered as far as possible during the existing hearings scheduled for the case. As set out in the PLO, extensions should not be the norm and the court will need to give specific reasons for granting an extension to all involved, highlighting why delay has occurred.
16. To ensure adherence to the 26 week time limit, it is important that the local authority works in partnership with the court administrators, the parents’/carers’ legal representative, Cafcass Guardian and any family and friends carers. This will help to ensure that cases can be progressed efficiently, particularly where cases have had to

⁴⁴ Further detail on the threshold conditions can be found in the Glossary at Annex D.

⁴⁵ This time limit applies to all Part IV proceedings.

⁴⁶ Children and Families Act 2014

⁴⁷ Full details on expected practice are in the PLO- <http://www.justice.gov.uk/protecting-the-vulnerable/care-proceedings-reform>

be brought very rapidly to the court. By day 2, following the issue of the application and earlier if possible, the local authority must have copied the application and annex documents to the other parties.

Care Plans

17. When a court is deciding whether to make a care order, it is required to consider the ‘permanence provisions’⁴⁸ of the local authority section 31A plans, but is not required to consider the remainder of the plan.⁴⁹ This is intended to focus the court’s attention on the long term plan for the upbringing of the child i.e. whether the child should live with parents, other family or friends, or be adopted or placed in other long term care provision.
18. This does not mean the court is prevented from looking at the detail of the care plan where the court considers it is in the best interests of the child to do so. Rather, it is anticipated that better planning and preparation of cases pre-proceedings will reduce the need for detailed scrutiny once they have come to court.
19. The court will still have a duty to consider local authority contact arrangements between the child and the wider family under section 34(11).
20. The detail of the Care Plan, for example the day to day plans relating to a child’s health or education, is the responsibility of the local authority, who should ensure that it meets that child’s needs and circumstances. The ability of the court to focus on the permanence provisions will be dependent on the court’s confidence that the plan is relevant and appropriate to meet that child’s needs. More details on care plans can be found in the Volume 2 of the Children Act 1989 statutory guidance.⁵⁰

Use of expert evidence

21. The court can only agree that expert evidence be commissioned in family proceedings if it deems it necessary to resolve proceedings justly. Decisions about commissioning such evidence should be made early in the proceedings, usually at the Case Management Hearing.
22. Where an expert is permitted in a case, all parties should work collaboratively in conjunction with the court, to ensure that the instructions which the expert receives are focused and give clear and explicit direction as to what is required. In turn, the reports which experts submit must be as analytical, concise and conclusive as

⁴⁸ These are defined as the plans provisions setting out the long term plan for the upbringing of the child – section X of the Children and Families Act 2014.

⁴⁹ as defined in the Care Planning Regulations 2010

<http://www.legislation.gov.uk/ukxi/2010/959/contents/made>

⁵⁰ <http://www.education.gov.uk/aboutdfe/statutory/g00224478/stat-guid-care-plan>

possible. Any evidence put before the court without the required permission will be inadmissible (unless the court rules otherwise).⁵¹

Placement Orders

23. Where adoption is the permanence plan for the child and no care order has been made, the local authority should make combined care and placement order applications so that decisions about children can be made swiftly. Where there are on-going care proceedings, the placement order application should be joined⁵² as soon as the ADM decision has been made. The court can make both orders so that the child remains protected should the placement order be revoked as the care order would automatically be reactivated
24. Placement applications are not subject to the 26 week time limit, but an early application by the local authority will ensure best use of court time and help keep to a minimum the overall length of the process.

Interim orders

25. Following the commencement of proceedings, the court can, in certain circumstances, make either Interim Care Orders (ICOs) or Interim Supervision Orders (ISOs), to place the child temporarily under the care or supervision of the local authority during care proceedings. An interim order cannot be made unless there are reasonable grounds for believing that the threshold test in section 31 (2) has been met. Before making the order the court must apply the welfare checklist at section 1(3) and the no order principle at section 1 (5).
26. Interim orders impose the same responsibilities on local authorities as care and supervision orders, with the exception that the court determines the duration of the interim order. The court may also give directions to the local authority as to the medical or psychiatric examination or other assessment of the child.⁵³
27. When making an interim order the court has the power, in certain circumstances, to include an exclusion requirement which can: require a relevant person to leave the child's home; prohibit a relevant person from entering the child's home; or exclude a relevant person from a defined area in which the child's home is situated.⁵⁴
28. The courts can set interim orders for a period which is considered appropriate in the particular circumstances of the case. However, no ICO or ISO will be able to last

⁵¹ Expert Practice Directions- <http://www.justice.gov.uk/downloads/protecting-the-vulnerable/care-proceeding-reform/experts-pd-flagB-14-01-08.pdf>

⁵² "Joined" - being made party to the case

⁵³ If the child is of sufficient understanding to make an informed decision, he may refuse to submit to the examination or assessment.

⁵⁴ Further details on exclusion requirements and medical assessments are contained in the Glossary. Annex D

beyond the end of the proceedings themselves. Should an ICO or an ISO expire before the proceedings have been resolved, the court is able to make a further order.

29. All children subject to an interim care order must have an Independent Reviewing Officer (IRO) appointed to them before the first review of the care plan.

Contact with children in care

30. Where a child has been placed outside the wider family, regular contact with family and friends will usually be an important part of a child's upbringing in his/her new environment.

31. Local authorities are under a duty to allow a child who is the subject of a care order to have reasonable contact with his/her parents and certain other people⁵⁵, 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 and may make orders appropriate to the particular circumstances experienced by the child.

32. The local authority's proposals for contact may be scrutinised or challenged in the following ways.⁵⁶

- the court, before making a care order, must consider the arrangements made or proposed by the local authority and ask parties to the proceedings to comment on them;
- any person to whom the Act's presumption of reasonable contact applies, or any other person who has obtained the 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.
- the child can apply for contact with another person, for his contact with another person to be terminated or for any order with respect to contact to be varied or discharged;
- the court may make any order about contact that it considers appropriate, either in response to an application or on its own initiative, and can impose any conditions it considers appropriate.
- The Independent Reviewing Officer (IRO) should also address the arrangements for contact during each review of the child's care plan.

⁵⁵ 'Other people': any guardian of him/her; any person who has parental responsibility for him/her; where there was a resident's order in force with respect to the child, the person in whose favour the order was made; where before the care order was made, a person had care of the child by virtue of an order from the High Court.

⁵⁶ Full details on contact with a looked after children who are subject to a placement order, can be found in Annex D.

- The local authority can refuse contact that would otherwise be required under section 34(1), or a court order made under section 34, for up to 7 days without reference to the court. In doing so it must be satisfied that it is necessary to refuse contact to safeguard or promote the child's welfare, and the decision must be taken as a matter of urgency. If the authority considers it necessary to refuse contact for a longer period it must apply for an order under section 34(4).

Good local authority practice during proceedings

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

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

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

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

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

After proceedings

33. Following the completion of proceedings, where the child remains looked after as a result, the IRO should seek information from the children's guardian that may be relevant to the IRO's work on behalf of the child, and work closely with the child's social worker and the broader range of professionals grouped around the child. This

will help to ensure that there is adherence to the care plan for the child, thus facilitating the effective implementation of the permanence plan for the child.

34. The child's social worker should consider the on-going support needs of the parents and family and any other children involved, in consultation with them. It may be necessary to provide targeted support and intervention, or refer parents to adult services, where they are experiencing particular problems.
35. Once permanence is secured for the child, it is good practice for the local authority to carry out a comprehensive review of the effectiveness of its processes over the lifetime of the case, which would also include the views from children/service users and other professionals involved.

Discharge and revocation of orders

36. The child, local authority and any person having parental responsibility for the child may apply to court to have a care order discharged. The child, local authority and any person having parental responsibility for the child may apply to vary or discharge a supervision order.⁵⁷ The welfare principle and 'checklist'⁵⁸ will apply to the court's decision on any such application. A care order is automatically discharged by the making of a special guardianship order or a child arrangements order⁵⁹. A care order is suspended, but not discharged, by the making of a placement order and will be revived if the placement order is later discharged.
37. Local authorities must consider, at least at every statutory review of each case, whether to apply for discharge of the care order. The reviews must be chaired by an IRO⁶⁰ who must ensure that the child's wishes and feelings are understood and taken into account in the plans for the child's future care.
38. Where an application for discharge of a care order or supervision order, or for the substitution of a care order with a supervision order for, has been determined by the court, no further application of this kind may be made within six months without leave of the court.⁶¹
39. Anyone who was a party to the original proceedings may appeal against the making of:
 - a care, supervision or placement order, including an interim order; or
 - an order varying or discharging such an order; or
 - the court's refusal to make such an order.

⁵⁷ Any person with whom the child is living may also apply to vary a supervision order to the extent that any requirement affects him and the supervisor can apply to extend the duration of a supervision order.

⁵⁸ Children Act 1989 s 1(3)

⁵⁹ See other orders chart- Annex D

⁶⁰ See IRO handbook

⁶¹ S91 (15) The Children Act 1989,

40. In certain cases, the permission of the original court may be needed before an appeal may be pursued. The time limits for appeals are set out in the Family Procedures Rules.⁶²

Revocation of placement orders

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

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

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

44. In any application for the placement order to be revoked, the child will be a party to the application. The child will be entitled to be legally represented, and a children's guardian will be appointed. If the application to revoke the placement order is successful, any care order made before or at the same time as the placement order is revived and will continue to have effect, unless separately discharged.

⁶² <http://www.justice.gov.uk/courts/procedure-rules>

Chapter 4: Child protection and secure accommodation orders

1. This chapter provides information on some of the most frequently used public law orders that are available under the Children Act 1989. It outlines the provisions that exist under Part 5 of the Children Act in relation to the protection of children, focusing particularly on child assessment orders and emergency protection orders (EPO), and explains the operation of secure accommodation orders⁶³. A full list of public law orders and their definitions is contained in the Glossary at **Annex D**. Where more detail is contained in other publications, the relevant guidance documents have been highlighted.

Protection of Children

2. Part 5 of the Children Act aims to ensure that effective action can be taken to protect children within a framework of proper safeguards and reasonable opportunities for parents to challenge relevant actions before a court. The measures available are short term and time limited interventions and may not lead to further action by the local authority under Parts 3 and 4 of the Act.⁶⁴
3. When making an order under Part 5 of the Act, the court's paramount consideration must be the child's welfare. It must also have regard to the no order principle.
4. Proceedings under Part 5 are not classified as family proceedings. 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 if, when considering an application for a child assessment order, the court is satisfied that there are grounds for making an EPO. In these circumstances the court may make an EPO instead of a child assessment order.⁶⁵

Child Assessment Orders

5. A child assessment order enables an assessment of the child's health or development, or of the way in which s/he has been treated, to be carried out where significant harm is suspected. Its use is most relevant in circumstances where the child is not thought to be at immediate risk, to the extent that removal from his/her parents' care is required, but where parents have refused to cooperate with attempts to assess the child. This may be where the suspected harm to the child appears to be longer-term and cumulative rather than sudden and severe.
6. It can only be made if the court is satisfied:

⁶³ Secure Accommodation orders- Part III, s 25 *The Children Act 1989*

⁶⁴ When exercising their functions in relations to these provisions, local authorities will need to have particular regard to Working Together to Safeguard Children guidance.⁶⁴

⁶⁵ S43(4), Children Act 1989

- that there is reason to suspect that the child is suffering or is likely to suffer significant harm;
 - that an assessment is required; and
 - that it is unlikely that an assessment would be made in the absence of an order.⁶⁶
7. A child assessment order may be appropriate where insufficient information is available to justify an application for a care or supervision order and an assessment is needed to help establish basic facts about the child's condition.
 8. Before making an application to the court, the local authority should always make enquiries into the child's circumstances. The nature of the case will dictate the manner in which enquiries should be carried out and the degree of urgency. If possible, before an application is made, the child should recently have been seen by someone who is competent to form a judgement about the child's welfare and development. When considering an application for any order, the court will expect to be given details of the enquiries made including, in particular, details of the extent to which, if at all, the enquiries have been frustrated by the failure or refusal of the parents to co-operate with them.
 9. A child assessment order must specify the date by which the assessment is to begin and will have effect for a specified period, not exceeding 7 days from that date. The local authority should make arrangements in advance of the application, so that any necessary multi-disciplinary consideration of the child's needs can be completed within the specified period.
 10. The order requires any person who is in a position to do so (usually a parent) to produce the child to the person named in the order, and comply with any directions relating to the assessment included in the order. It does not confer on the local authority parental responsibility for the child, and a child of sufficient understanding to make an informed decision may refuse to consent to the assessment⁶⁷.
 11. When making a child assessment order, the court may make directions about related matters, for example as to whether the assessment should be limited to a medical examination or cover other aspects of the child's health and development. It also has the power to direct that the child should be kept away from home for a specified period if it is necessary for the purpose of the assessment. In these circumstances it must also give directions as it thinks fit about the contact the child must be allowed with other persons during this period.
 12. If, upon considering an application for a child assessment order, the court is satisfied that there are grounds for making an Emergency Protection Order (EPO), then it should make an EPO instead of a child assessment order. Deliberate refusal by the persons responsible for the child to comply with a child

⁶⁶ S43(1) Children Act 1989

⁶⁷ Provisions detailed in full in s43 of the Children Act 1989

assessment order is very likely to add to concern for the child's welfare and would probably justify an application by the relevant local authority for an EPO (or a care order) or a request to the police that their police protection powers be exercised.

Emergency Protection Orders

13. An EPO enables the child to be removed from where he/she is, or to be kept where he/she is, if this is necessary to provide immediate short-term protection. Any person may apply for an EPO, although in practice the vast majority of applications are likely to be made by local authorities.
14. On receipt of an application, the court can only make an EPO if it is satisfied that there is reasonable cause to believe that s/ he is likely to suffer significant harm if he/she:
 - is not removed to different accommodation provided by the applicant; or
 - does not remain in the place in which the child is then being accommodated.
15. Where the applicant is the local authority or the NSPCC⁶⁸, an emergency protection order may also be made if enquiries (in the case of local authorities, made under section 47) are being frustrated by unreasonable refusal of access to the child, and the applicant has reasonable cause to believe that access is needed as a matter of urgency.
16. If there is a need for further investigation of the child's health and development but s/he is not considered to be in immediate danger then the local authority should apply for a child assessment order.
17. An EPO gives authority to the Local Authority to remove a child to accommodation provided by or on behalf of the applicant. It also confers the person in whose favour it is made (usually the local authority) limited parental responsibility for the child. Applications for an EPO are a very serious step and the court must be satisfied that the EPO is both necessary and proportionate and that there is "no less radical form of order available".⁶⁹
18. Its duration is limited to a maximum period of eight days, with a possible extension of up to a further seven days, to a maximum of 15 days. Applications to extend can be made by the local authority or an authorized person, with the court being able to 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. During the order the child must be permitted to have reasonable contact with his/ her parents and other significant individuals, unless the court directs otherwise.

⁶⁸ The NSPCC is deemed to be an 'authorised person' under s 31(9) of the Children Act 1989

⁶⁹ See Judgement of Munby J in *X Council v B* [2004] EWHC 2015 (Fam)

The court may also give specific directions with regard to contact, and about medical or psychiatric examination or other assessment of the child.

19. The court can attach an exclusion requirement to an EPO which can exclude the relevant person from the home, and from a designated area around the home. A power of arrest can be attached to the exclusion requirement.
20. The court has the power to grant orders without notice being given to parents or on short notice, but will only consider applications without notice in high risk cases where the child's safety would be endangered if the parents knew of the application, or for other reasons it is not possible to notify them.
21. When an EPO is in force and the applicant has removed the child, the applicant is under a duty to return the child to the care of his/her parents as soon as it is safe to do so, even if the order is still in force.
22. When considering whether emergency action is necessary an applicant should always consider the needs of other children in the same household or in the household of an alleged perpetrator.
23. Planned emergency action will normally take place following a strategy discussion between the local authority, police and other relevant agencies. Where an agency has to act immediately, a strategy discussion should take place as soon as possible after that action has been taken; local authorities should also:
 - see the child (where appropriate) to decide how best to protect them and whether to seek an EPO; and
 - obtain legal advice before initiating legal action, in particular when an EPO is being sought.

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

24. In situations where those looking after the child do not readily agree to hand the child over, the EPO provides a formal direction to any person who is in a position to do so to comply with any request to produce the child to the applicant. If the applicant for an EPO does not know the whereabouts of a child, but that information is held by another person, the court may order that person to disclose the information when requested to do so by the 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.
25. The Act also gives the courts power to authorise an applicant to enter and search specified premises for a child who is the subject of an EPO.
26. If the applicant believes there may be another child on the premises to be searched, who ought also to be the subject of an EPO, s/he should always seek an order authorising him/her to search for such a child as well. Where the

applicant cannot name the child, s/he should be described as clearly as possible in the order⁷⁰.

27. If a second child is found on the premises and the applicant is satisfied that there are sufficient grounds for making an EPO, the order authorising the search for the second child has effect as if it were an EPO (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.
28. If an authorised person is obstructed from exercising his/her powers under the EPO the court can issue a warrant authorising any police officer to assist the authorised person in entering and searching the named premises (section 48(9)). The warrant will authorise the police officer 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. If an applicant gains access and finds the child is not harmed and is not likely to suffer significant harm he should not remove the child. The power to remove the child would persist if the circumstances changed and the order was still in force.
29. There is no right of appeal against an EPO, however the child, a parent of the child, any person who is not a parent but who has parental responsibility for him/her, or any person with whom s/he was living immediately before the making of the EPO, may apply to the court for an EPO to be discharged: This right to apply to discharge an EPO is limited to those who did not receive notice of the EPO and were not present at the hearing.

Police Powers

30. The police have specific powers to protect children under Part 5 of the Act. These 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.⁷¹
31. Where a police officer has reasonable cause to believe that a child would otherwise be likely to suffer significant harm s/he may remove the child to suitable accommodation and keep him/her there. Alternatively, s/he may take such steps as are reasonable to ensure that the child's removal from hospital, or other place in which s/he is being accommodated, is prevented.

⁷⁰ S 48 (13) This replicates s 44(1) in relation to EPOs

⁷¹ S46 Children Act 1989- Removal and accommodation of children by police in cases of emergency.

32. When a police officer has exercised this power the child is held to be in police protection. No child may be kept in police protection for more than 72 hours.⁷²
33. As soon as is practicable after taking the child into police protection, the case should be inquired into by a designated officer. On completing the inquiry, the designated officer must release the child from police protection, unless s/he considers that there is still reasonable cause to believe that the child would be likely to suffer significant harm if released.
34. Upon taking the child into police protection, the police officer concerned (rather than the designated officer) must inform the relevant local authority, and where possible inform the child of the steps that have been taken, the reasons for taking them and of any further steps that may be taken. The officer should also take steps to enable the child to be moved to accommodation provided by the local authority.⁷³ The officer should also take such steps as are reasonably practicable to inform the child's parents and those with parental responsibility.⁷⁴
35. The local authority has concurrent duties to make enquiries about whether it should take any action to safeguard or promote the child's welfare. One such course of action is for the local authority to ask the police to apply for an EPO.
36. The designated officer has a number of additional responsibilities. S/he may apply, on behalf of the local authority in whose area the child is ordinarily resident, for an emergency protection order to be made in respect of the child. The EPO application may be made whether or not the authority knows of it or agrees to it being made.
37. Neither the officer concerned nor the designated officer acquires parental responsibility for the child. The designated officer must nevertheless do what is reasonable in all the circumstances to promote the child's welfare.
38. The designated officer⁷⁵ must allow the following persons to have such contact with the child as, in his/her opinion, is both reasonable and in the child's best interests (section 46(10):
- the child's parents;
 - anyone else who has parental responsibility for the child or with whom the child was living immediately before he was taken into police protection;
 - a person who has in his favour an order relating to contact with the child or any person acting on behalf of any of the above.

⁷² 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)).

⁷³ Local authorities and the police need to work closely together to ensure that children taken into police protection are not accommodated in police stations, and that their transfer to local authority accommodation is achieved promptly and carefully, with the minimum of trauma.

⁷⁴ Full actions that the officer must undertake can be found in s46(3)

⁷⁵ This duty also applies to the LA if the child in police protection is accommodated by the LA

Secure Accommodation orders⁷⁶

39. Secure accommodation orders are used in cases where a child or young person who is looked after by the local authority is identified as needing to be accommodated in a placement, provided for the purpose of restricting their liberty.
40. Restricting the liberty of a child is a serious step that can only be taken if it is the most appropriate way of meeting the child's assessed needs. A decision to place a child in secure accommodation should never be made because no other placement is available, because of inadequacies of staffing in a child's current placement, or because the child is simply being a nuisance. Secure accommodation should never be used as a form of punishment.
41. This does not mean, though, that restriction of liberty should only be considered as a 'last resort'. Restricting the liberty of a child could offer a positive option. A decision to apply for an order under s.25 of the Act should be made on the basis that this represents the best option to meet the particular needs of the child. The placement of a child in a secure children's home should, wherever practicable, arise as part of the local authority's overall plan for the child's welfare.
42. For some children a period of accommodation in a secure children's home will represent the only way of meeting their complex needs, as it will provide them with a safe and secure environment, enhanced levels of staffing, and specialist programmes of support. A secure placement may be the most suitable, and only, way of responding to the likelihood of a child suffering significant harm or injuring themselves or others.

Criteria for the restriction of liberty

43. A child may not be detained in secure accommodation unless it appears that:
- a) (i) the child has a history of absconding and is likely to abscond from any other description of accommodation; and
(ii) if the child absconds, s/he is likely to suffer significant harm; or
 - b) that if the child is kept in any other description of accommodation s/he is likely to injure himself or other persons.
44. A child under the age of 13 must not be placed in secure accommodation in a children's home without the prior approval of the Secretary of State.⁷⁷

⁷⁶ This chapter refers to children detained under s25 of the Children Act. It does not apply to children detained on criminal justice grounds. Guidance on secure accommodation orders in these circumstances is covered at- link to be added.

⁷⁷ The Children (Secure Accommodation) Regulations 1991, regulation 4. ("the 1991 Regulations") [Link to Regs.](#) See Children Act 1989 Guidance Volume 5; Children's Homes – chapter 4. [Link to Vol 5](#)

45. A secure accommodation order cannot be obtained in relation to a child over 16 who has been accommodated under section 20(5) of the Act.⁷⁸; or in relation to a child detained under any provision of the Mental Health Act 1983.

Applications to the Court

46. A child meeting the above criteria may be placed in secure accommodation for a maximum period of 72 hours in any 28 day period without court authority⁷⁹. A local authority wishing to detain a child beyond this point will need to make an application to the family proceedings court for authority to further detain the child.

47. It is the role of the court to safeguard the child's welfare from inappropriate or unnecessary use of secure accommodation, by satisfying itself that those making the application have demonstrated that the statutory criteria have been met. Proceedings under section 25 are specified proceedings for the purposes of section 41 (6) of the 1989 Act. The court is therefore required to appoint a Children's Guardian for the child unless it is of the opinion that it is unnecessary to do so in order to safeguard the child's interests. The child should also be given the opportunity to be legally represented in the proceedings.⁸⁰

48. The maximum period that a court may authorise a child be kept in secure accommodation is three months, on first application to the court, or six months, in respect of any further application to the court to continue to keep that child in secure accommodation.⁸¹

49. On any adjournment of the hearing of an application for a Secure Accommodation Order, a court may make an interim order permitting the child to be kept in secure accommodation during the period of the adjournment⁸².

50. Any secure accommodation order made is subject to review. This review must take place within one month of the placement commencing and then at intervals of no more than three months. Both the child and the authority making the application to the court may appeal to the High Court against the making, or refusal to make, an order.⁸³

⁷⁸ Reg 5 of the 1991 Regulations. Section 20(5) of the Act provides that a local authority may provide accommodation for any person who has reached the age of 16 but is under 21 in any community home which takes children who have reached the age of 16 if they consider that to do so would safeguard or promote his welfare)

⁷⁹ Regulation 10 (1) of the 1991 Regulations. Further information is contained in Volume 5- **insert links**

⁸⁰ The child has a right to legally aided representation under section 25(6) of the Act. This right has been preserved in paragraph 1 of Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

⁸¹ Regulations 11 and 12 of the 1991 Regulations.

⁸² Section 25(5); Children Act 1989

⁸³ Section 94: Children Act 1989

Chapter 5: Adoption orders

1. This chapter outlines the operation of adoption orders. It describes the process for agency, non-agency and inter-country adoptions.

Adoption orders

2. A child becomes adopted when an adoption order⁸⁴ is made. When this happens, parental responsibility is removed from the child's birth parents and others with parental responsibility and awarded to the adopter. In law the child is treated as if he or she had been born to the adopter, who becomes responsible for looking after the child and for making all the key decisions about them in the same way as any other parent. The legal relationship between the child and members of the birth parents' family is terminated too. The adoption order continues in force throughout the child's life unless the order is set aside; this is extremely rare.
3. A prospective adopter may apply to court for an adoption order once the looked after child, who has been placed for adoption with them by a local authority, has had their home with them at all times for at least ten weeks.⁸⁵
4. The local authority should discuss the timing of any application with the prospective adopters and provide them with the information from the child's case record necessary to complete the application form. This will include whether the parents have given advance consent to the making of the adoption order, giving them a copy of any placement order and the child's birth or adoption certificate as well as information about court proceedings relating to the child's full or half blood siblings. When it is important that the prospective adopter's identity is not disclosed to the child's birth parents, the local authority should also advise the prospective adopters that the court can allocate them a serial number, which will be used instead of their name of any documents sent to the other parties.
5. The local authority should consider the adoption support needs of the prospective adopters and the child under section 4 of the Adoption and Children Act 2002 and the Adoption Support Services Regulations 2005. The payment of court fees should not be means tested⁸⁶.
6. When the court has notified the local authority of an application for an adoption order, the local authority must submit to the court a report on the suitability of the applicants within the timetable specified by the court.⁸⁷
7. Although the report is confidential, parts of it are likely to be shared with the parties to the proceedings⁸⁸. In a case where the prospective adopter's identity is not to be

⁸⁴ Full information can be found in 42-52 of the Adoption and Children Act 2002.

⁸⁵ S 42 of the Adoption and Children Act 2002.

⁸⁶ Regulation 15(4) of the Adoption Support Services Regulations 2005

⁸⁷ - S 43 of the Adoption and Children Act 2002 and Rule 14.11 of the Family Procedure Rules 2010.

⁸⁸ Rule 14.13 of the Family Procedure Rules 2010

disclosed to the birth parents, care must be taken to ensure that any identifying information is contained in a separate section which is not to be disclosed except to the court and any children's guardian or family court reporter. Identifying information may include addresses, employment and, for example, the name of the school attended by the child.

8. Birth parents need the court's permission to oppose the making of an adoption order where they had given their consent to the child being placed for adoption, or consented to the making of a future adoption order, or a placement order has been made⁸⁹. Permission may not be granted unless the court is satisfied that there has been a change of circumstances since the consent was given or the placement order made.
9. Where the adoption application is opposed, the local authority and prospective adopters should consider whether the prospective adopter should be legally represented. The cost of legal representation and payment of course fees should not be means tested⁹⁰. Even where the application is not opposed, it may be necessary for the prospective adopter to be legally represented, in order, among other things, to avoid the risk that they attend court in person at the same time as the birth parents.

Post adoption contact

10. On the making of an adoption order any section 26 contact order will cease to have effect. An application for an order allowing contact or no contact with particular individuals can be made by the prospective adopter and the child under section 51A of the Adoption and Children Act 2002. Everyone else, for example the birth parent, must obtain the court's permission to make the application. The court may on its own initiative make a no contact order prohibiting the person named in the order from having contact with the child.⁹¹
11. The application may be heard at the same time as an application for an adoption order or any time after the making of an adoption order. Section 46(6) of the Adoption and Children Act 2002 requires the court making an adoption order to consider whether there should be arrangements for allowing any person contact with the child before making an adoption order. The making of an arrangement for contact does not imply that there should be an order; the court may simply indicate its approval of agreed arrangements, or it may make a section 51A(2)(b) order prohibiting contact if it considers that this is necessary to promote the child's welfare.

⁸⁹ See sections 47 and 52 of the Adoption and Children Act 2002

⁹⁰ Regulation 15(4) of the Adoption Support Services Regulations 2005

⁹¹ see section 51A(4) of the Adoption and Children Act 2002.

Non-agency adoptions

12. Although section 92 of the Adoption and Children Act 2002 prohibits 'private' adoptions, a child may be the subject of an application to adopt even though they were not placed for adoption by a local authority. Applications can be made by partners of the parent of a child (parent's spouse, civil partner or unmarried partner), local authority foster carers, special guardians, relatives of the child, private foster carers and intercountry adopters. Once an application has been made the individuals are called "proposed adopters".
13. The proposed adopter must give formal notice to the local authority where they have their home of their intention to apply for an adoption order. The notice must be given between three months and two years before the application is made to the court.⁹² An application may not be made unless the child has lived with proposed adopter for a particular period of time ranging from six months to three years depending on the circumstances⁹³.
14. Where the proposed adopters are resident abroad, but still entitled to apply for an adoption order in England, regulation 3 of the Local Authority (Adoption) (Miscellaneous Provisions) Regulations 2005 sets out how the appropriate local authority is to be identified.
15. On receipt of the notice of intention the local authority must arrange for the proposed adopters to be investigated and submit a report to the court. The local authority may arrange for another local authority or voluntary adoption agency to carry out the investigation and prepare the report to the court, but it remains responsible for the quality of the work and ensuring that the report is filed with the court without delay.
16. The local authority should ensure that the proposed adopters fully understand the implications of adoption, are aware of the court's duty under section 1(6) of the Adoption and Children Act 2002 and are aware of possible alternative courses of action. For foster carers, relatives or private foster carers, a special guardianship or child arrangement order may be suitable, whereas for partners, a parental responsibility agreement or a child arrangement order may be more appropriate. Special guardianship is not an appropriate alternative for the partner of a child's parent since a special guardianship order made in favour of them would prevent that birth parent from exercising their own parental responsibility.
17. It will be important to ensure that the child, if of sufficient age and understanding, is aware of what is proposed and is given an opportunity to express a view.
18. The local authority must undertake Disclosure and Barring Service checks in respect of the proposed adopter and adult members of the household, including the child's own birth parent who is the proposed adopter's partner. The existence of a criminal

⁹² See section 44 of the Adoption and Children Act 2002.

⁹³ Section 42 of the Adoption and Children Act 2002 and regulation 9 of the Adoptions with a Foreign Element Regulations 2005 in respect of intercountry adoptions

conviction or caution for a 'specified offence' is not an absolute bar to the grant of an adoption order, but is a matter that will need to be included in the report to the court.

19. The comments regarding the confidentiality of the report in agency cases apply, but in many non-agency cases the identity of the prospective adopter will be known to the birth parent. Nevertheless there will be cases where even though the birth parent is aware of the identity of the prospective adopter there may be good reason for not disclosing information as to the current whereabouts of the child, so care will still be needed in the way the report is set out.

Local authority foster carers

20. Where a local authority receives a notice of intention to adopt from a local authority foster carer with whom they did not place the child, it must inform in writing the local authority looking after the child within seven days.⁹⁴
21. If the foster carer had not previously discussed with the local authority their wish to adopt before notice is given, the local authority should give it serious consideration and ensure that the foster carer is offered information and counselling⁹⁵. If adoption is already the plan for the child, and the local authority considers that the foster carer may be suitable to be approved as an adoptive parent, the foster carer can be assessed using the fast-track procedure under regulation 30F of the Adoption Agencies Regulations 2005. Any application for an adoption order by the foster carer made after they have been assessed and considered suitable to adopt, would proceed as an agency adoption.
22. If the local authority does not consider the foster carer suitable to adopt it may not remove the child from their care without the leave of the court. If there is a case to justify an application for leave to remove the child, action should be taken speedily. The application will be made under Part 18 of the Family Procedure Rules 2010.⁹⁶
23. If the local authority is not authorised to place the child for adoption, the local authority must immediately consider the plan for the child and ascertain the wishes and feelings of the child and birth parents. If the local authority considers that adoption may be appropriate, it must follow the procedure set out in Part 3 of the Adoption Agencies Regulations 2005.
24. If the local authority issues a placement order application before the foster carer's adoption application has been heard, it is open to the court to adjourn the placement order application and proceed to hear the foster carer's adoption application. In this case the foster carer's application would still technically be a non-agency one but for the purposes of adoption support, the child in these circumstances falls within the definition of an 'agency adoptive child' unless the local authority opposes the

⁹⁴ S44 (7) of the Adoption and Children Act 2002.

⁹⁵ Regulation 24 of the Adoption Agencies Regulations 2005

⁹⁶ See section 38 of the Adoption and Children Act 2002

application.⁹⁷ Alternatively, the court may adjourn the foster carer's adoption application and hear the placement order application first so that, if the placement order is granted, the foster carer's adoption application can proceed as an agency application.

Intercountry adoptions – orders made under section 84 of the Adoption and Children Act 2002

25. Section 84 orders relate to inter-country adoption. They confer on the applicant parental responsibility for the child and extinguish the parental responsibility of any other person. The applicant is a person who the court is satisfied intends to adopt a child under the law of a country or territory outside the British Islands.
26. Anyone who meets the requirements as to domicile or habitual residence in England and Wales, (which have to be met for an adoption order to be made in favour of that person including parents, guardians, civil partners, step-parents and relatives) and who wishes to take a child (including a looked after child) outside the British Islands for the purposes of adoption, must first apply to the High Court for an order under section 84 of the Adoption and Children Act 2002.
27. A section 84 order can only be made if, at all times during the preceding ten weeks the child's home was with the applicant or, in the case of a couple, both applicants. A section 84 order may not be made unless the court is satisfied that the local authority has had sufficient opportunity to see the child and the applicant in the home environment⁹⁸.
28. In all applications under section 84, the local authority must prepare a report for the court under section 43 or 44 of the Adoption and Children Act 2002.⁹⁹ Before the court can make a section 84 order it must be satisfied that the regulatory requirements have been met. These requirements differ slightly depending on whether or not the child is intended to be adopted under the Hague Convention.¹⁰⁰

Hague Convention

29. Where the child is intended to be adopted under the Hague Convention the local authority must follow the requirements set out in regulation 48 of the Adoptions with a Foreign Element Regulations 2005. Where the child is not intended to be adopted under the Hague Convention, the local authority must follow the requirements set out in regulation 10 of the Adoptions with a Foreign Element Regulations 2005

⁹⁷ see regulation 2(1) of the Adoption Support Regulations 2005.

⁹⁸ see section 42(7) of the Adoption and Children Act 2002

⁹⁹ see regulation 11 of the Adoptions with a Foreign Element Regulations 2005).

¹⁰⁰ See the Adoptions with a Foreign Element Regulations 2005 and chapter 5 of the statutory adoption guidance.

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

Annexes

Attached separately.

This will include (tbc):

- A glossary
- PLO flowchart
- Template for Letter before proceedings
- Links/ related documents
- Care application template

Further sources of information

Associated resources (external links)

<https://www.cafcass.gov.uk/>

<http://www.adcs.org.uk/>

Community Legal Advice

www.communitylegaladvice.org.uk

<http://legaladviserfinder.justice.gov.uk/AdviserSearch.do>

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

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

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

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

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

ii) The Law Society of England and Wales, 113 Chancery Lane, London WC2A 1PL Tel:
020 7242 1222 Minicom: 0870 600 1560 Fax: 020 7831 0344
info.services@lawsociety.org.uk <http://www.lawsociety.org.uk/choosingandusing/findasolicitor>.

Other departmental advice and guidance you may be interested in

Children Act 1989 <http://www.legislation.gov.uk/ukpga/1989/41/contents>

Working Together to safeguard Children 2013-
<http://www.education.gov.uk/aboutdfe/statutory/g00213160/working-together-to-safeguard-children>

Adoption and Children Act 2002 <http://www.legislation.gov.uk/ukpga/2002/38/contents>

The Children and Adoption Act 2006
<http://www.legislation.gov.uk/ukpga/2006/20/contents>

The Family Procedure Rules 2013
<http://www.justice.gov.uk/courts/procedure-rules/family>

HEFA <http://www.legislation.gov.uk/ukpga/2008/22/contents>



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