

## Chapter 26

### Safeguarding children: Armed forces child protection powers

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## Chapter 26

### Safeguarding children: Armed forces child protection powers

#### Introduction

1. This chapter provides an overview of child protection powers available through the Armed Forces Act 1991 (AFA 91) as amended by the AFA 2006 (the Act) and the related Statutory Instrument<sup>1</sup>. It includes an overview of the procedures that may need to be followed in order to safeguard children residing or staying outside the British Isles with Service families or with the families of civilians subject to Service discipline (relevant civilians). Detailed guidance on safeguarding children is contained in JSP 834 (Safeguarding Children), which covers all aspects of safeguarding of children. This is wider than child protection under the AFA 91, as amended by the Act, which focuses on the particular measures with legal effect which may be taken, usually when a specific risk to the wellbeing of a child has been identified.

2. In the UK, the MOD does not lead on safeguarding; as with all other local, regional and national service provision, this is the responsibility of the appropriate authorities<sup>2</sup>. The statutory duties and powers for such authorities include those that relate directly to child protection. MOD staff will cooperate with the statutory authorities in discharging their responsibilities. Typically this is enabled through the chain of command with the advice and assistance of specialist staff, such as the single-Service welfare agencies. The full range of such support is articulated in JSP 770 (Welfare).

3. Overseas, however, the MOD seeks to replicate, as far as appropriate and practical, the same procedures and levels of service as would be found in England. In general, this is delivered as a matter of policy and practice. For child protection, however, specific powers are available in AFA 91, as amended by the Act, that mirror those that would be available in relevant legislation<sup>3</sup> to Local Authorities in England.

#### Legal basis

4. AFA 91 as amended by the Act provides for:
- a. The application for, making of, variation and discharge of assessment orders;
  - b. The making, review and discharge of protection orders; and
  - c. The removal of children by Service Police in an emergency.

Under the changes made by the Act, these powers are no longer held by a CO, but by relevant practitioners (applications for assessment orders), Service Police (removal in an emergency) or judge advocates (all other matters). The continued involvement of the chain of command is summarised in this chapter and is described in detail in JSP 834 (Safeguarding Children).

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<sup>1</sup> The Armed Forces (Protection of Children of Service Families) Regulations 2009/1107.

<sup>2</sup> In England and Wales, Local Authorities; in Scotland, Social Work Departments; in NI, Health and Social Services Trusts.

<sup>3</sup> Particularly the Children Act 1989 as amended by the Children Act 2004.

## Principles

5. **Definitions.** A full list of definitions and glossary of terms are in the Annexes to JSP 834 (Safeguarding Children). For the purposes of this chapter:

Child	Anyone who has not yet reached their 18 <sup>th</sup> birthday. This includes members of the Armed Forces, whose status or entitlement to services or protection under the Children Act 1989 does not change <sup>4</sup> .
Child in need of protection	A child who is suffering, or likely to suffer, significant harm unless action is taken (such as removal to safe accommodation) to safeguard or promote their welfare.
Child protection enquiry	Making enquiries to decide whether a relevant authority should take action to safeguard or promote the welfare of a child who is suffering, or likely to suffer, significant harm <sup>5</sup> .
Harm/significant harm	The result of not mitigating the risk of neglect or physical, emotional or sexual abuse. Detailed categories of abuse are defined in JSP 834 (Safeguarding Children).

6. **Duty to safeguard.** The basic tenet in the practice and policy of safeguarding is that it is a parental responsibility to bring up children and that it is in the best interests of all children to be brought up in their own families wherever possible. State (relevant authority) intervention must be seen from the perspective of the duty to safeguard and promote the welfare of children. Intervention should only be considered where it is assessed that a child may be in danger of significant harm. However, if the danger of significant harm exists then intervention must be.

7. **Working together.** The expectation that all parties will work together in order to safeguard and promote the welfare of children is captured in the Government publication Working Together to Safeguard Children (2006). This publication draws the attention of relevant local and national authorities to the circumstances of Service families and to the single-Service welfare agencies that provide specialist welfare and social work support to the Armed Forces. It also summarises the mechanisms for the passage of information between authorities for children in need of protection that move between countries or authorities; for example, between the UK (where local or equivalent authorities have the lead) and overseas (where MOD assumes the lead, through overseas commands).

8. **Children in need of protection.** Only a child assessed as in need of protection can be the subject of a protection order or, in an emergency, removed from its family for its own protection. These are children who are suffering, or likely to suffer, significant harm unless action is taken (such as removal under a protection order) in order to safeguard or promote its welfare. Guidance on the thresholds for such actions can be found in JSP 834 (Safeguarding Children).

9. **Confidentiality.** General guidance on confidentiality is available in JSP 834 (Safeguarding Children). In all areas of child protection work, the need for confidentiality is governed by the need to protect and maintain the interests of the child above all other considerations. Particular care must be taken to prevent further harm to a child at risk or distress to a family by the unnecessary disclosure of case details. Most practitioners will also

<sup>4</sup> See also 2009DIN01-024 Policy on the care of Service personnel under the age of 18.

<sup>5</sup> See also Children Act 1989 section 47.

be governed by professional codes of conduct which they must observe. However, it is essential that information is shared where failure to do so would otherwise risk harm to the child concerned.

## **Key elements of child protection under AFA 91 and the Act**

10. **General.** All children should be safe and should be able to develop to their full potential without risk or fear of abuse in any form. The safeguarding of children is vital and child protection procedures must be well known, effective and work consistently both in the UK (where local and other devolved authorities take the lead) and across all overseas commands. AFA 91, as amended by the Act, provides for child protection powers that may be used in order to meet the needs of safeguarding children living in the Service community overseas. The main components of these powers are summarised below however detailed guidance should be followed as contained in JSP 834 (Safeguarding Children). The following paragraphs do not provide comprehensive guidance on the law.

11. **Assessment orders.** An assessment order is a tool to ensure that a child can be seen and assessed by relevant practitioners in order to determine whether that child is suffering, or likely to suffer, harm. It may also be required in order to ensure that the child can be assessed for need for special services, without which, outcomes for the child such as a reasonable standard of health or development will not be achieved. The order must specify the date by which an assessment is to begin and will be for a period of not more than 7 days. Those involved who are capable of producing the child for assessment are required to do so and will be committing an offence if they intentionally obstruct this objective. The subject child, however, if of sufficient understanding to make an informed decision, may refuse to submit to any examination or assessment. The process for assessment orders includes:

a. **Applications.** An application for an assessment order can be made in writing, by an appropriate practitioner to a judge advocate. An applicant will usually be a statutorily qualified and registered social worker, but may be a registered medical practitioner. Most overseas commands will have appropriately qualified and registered staff directly in support of the command. Some smaller locations have arrangements for on-call support from other locations. In isolated locations where there is no command or on-call support, it may be necessary to repatriate the family to the UK on the basis that the family cannot be adequately supported in the isolated location. It should be noted that the chain of command is not empowered directly to apply for an assessment order but, in view of their command responsibilities, should be kept aware of any significant concerns that may lead a practitioner to consider making an application.

b. **Making of assessment orders.** Once an application is received, the court administration officer (CAO) must set, and inform the applicant of, a date, time and place of a hearing. It is the applicant's responsibility to take reasonable steps to ensure that those involved (such as the child, parents, others with parental responsibility or with whom the child is residing such as fosterers, or others with a right to contact with the child, for example, through a contact order) are given at least 7 clear days' notice of the details of the hearing. The judge advocate must consider any representations made by the applicant or those involved before deciding whether or not to make an assessment order. Representations can be heard in person or by live link if this is in the best interests of the child or the only practical or expeditious way to consider the application. For example, this may be the most practical arrangement when the application is being made from a remote location where there is no judge advocate on hand or easily available. The judge advocate must ensure that: a written record is made of the substance of any representations, notice is given

of any decision made and the reason for it, and a copy of the assessment order (if made) is provided to the applicant and those others involved.

c. **Variation and discharge.** Any person involved (as described above including the child, parents, others with parental responsibility, etc.) can apply, in writing, to a judge advocate to have the assessment order varied or discharged. The judge advocate must afford an opportunity for representations to be heard from the applicant of the original order and others involved before considering variation or discharge. If the assessment order is varied or discharged, the judge advocate must ensure that notice is given of his decision, with reasons and a copy of the amended order (if relevant), to all those afforded an opportunity to make representations.

12. **Protection orders.** Any person can apply to a judge advocate for a protection order if there is reasonable cause to believe that a child is likely to suffer significant harm unless action is taken. The action will be either:

a. To remove the child from their current to other accommodation (for example, from their home to an emergency foster home); or

b. To prevent removal of the child from where it is being accommodated (for example, to ensure a child is not removed from hospital).

13. An application for a protection order may also be made by a person who has been designated in an Assessment Order to make or assist in, an assessment and who is being frustrated in that assessment. That person must have reasonable cause to suspect that the child is suffering, or likely to suffer, significant harm and believe that access to the child is required as a matter of urgency. Once a protection order is made, a responsible person (typically a social worker with specialist child protection training) will ensure that the child is removed to or retained in appropriate accommodation. That person is responsible for safeguarding or promoting the child's welfare, including returning the child to the care of the person from whose care he was removed if it appears that it is safe to do so. If subsequently the circumstances change again and the protection order is still in force, the responsible person can remove the child without recourse to a judge advocate. The process for protection orders includes:

a. **Making of protection orders.** A judge advocate must receive any application in writing and ensure that it states the grounds for the order as well as the location (address of the accommodation) of the child and sufficient information to enable the child to be identified. As with assessment orders, the judge advocate must afford an opportunity for those involved to make representations before making an order. He may dispense with this step if it would be impractical, would cause unnecessary delay or if it would not be in the best interests of the child. He can impose exclusion requirements on a person as part of the order; for example, requiring a person to leave or prohibiting them from entering relevant premises where the child lives or a defined area within which the premises is located.

b. **Variation and review.** The maximum duration of a protection order is 28 days, though a judge advocate can specify a shorter period when the order is made. If a shorter period is specified and the judge advocate is satisfied that there is reasonable cause to believe that the child concerned is likely to suffer significant harm unless the order is extended, he can extend the order under the same provisos as making the order. Exclusion requirements of a protection order may be varied or revoked by a judge advocate on written application specifying the grounds on which it is made and under the same provisos as making the order. In general, the protection order itself must be reviewed by a judge advocate every 7 days unless it is due to end

that, or the following, day. The same provisos apply on representations and in addition, the judge advocate may require (by written notice) those involved to provide him with specified information relating to the order.

c. **Discharge.** A judge advocate may not discharge a protection order within 72 hours of having made, reviewed or extended it. Otherwise, he may consider a written application specifying the grounds for discharging the order. The same provision for representations applies, except that the responsible person must be afforded an opportunity to make representations.

d. **Live television link.** As with applications for assessment orders, a live link may be considered for the application, variation, review and discharge of protection orders.

14. **Removal of children by Service Police in an emergency.** The Act amended AFA 91 to include powers for the Service Police to take children into their protection for a period of up to 72 hours. As with protection orders, this may mean removal from accommodation (for example, the child's home) or prevention of removal from a safe place (for example, a hospital). The Service policeman must inform an authorising Service Police officer (of OF2 rank or above and at least the same rank as the informing Service policeman) as soon as reasonably practical of what steps he has taken or is proposing to take and details of where the child is being accommodated. He must also inform the child, if he believes the child capable of understanding, of what action has been or may be taken and why and determine the wishes and feelings of the child. The authorising Service Police officer must inquire into the case and approve the accommodation that the child is in or ensure that the child is moved to other appropriate accommodation. He must also do what is reasonable to safeguard and promote the welfare of the child. The child's parents, others with parental responsibility, those with whom the child was residing immediately before being taken into Service Police protection and those with a contact order, must be informed of the action taken or planned and must be allowed any contact with the child that, in the opinion of the authorising Service Police officer, is both reasonable and in the child's interest. These powers are not a substitute for the appropriate use of assessment and protection orders and are for emergency use only.

## Further advice and guidance

15. Safeguarding children in general and child protection powers in particular can be a complex and emotive area. Comprehensive guidance is available in JSP 834 (Safeguarding Children), in single-Service policy<sup>6</sup> and in overseas command policy. However, direct advice on specific cases should be sought at the earliest opportunity from expert practitioners, especially the appropriate command specialist social work support staff.

## Transitional guidance

16. The 2009 Regulations make transitional provision as to how processes, wholly or partly, begun under the 1996 Regulations are to be completed after the revocation of the 1996 Regulations (i.e. after 30 October 2009). Legal advice should be sought as to what effect the transitional provisions have in relation to particular cases.

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<sup>6</sup> RN: NPFS/RM policy documents, Army: LFSO 3351 and AGAI 83, RAF: AP3392 Volume 2 Chapter 24.