

## SCHEDULES

### SCHEDULE 1

Section 6.

#### ACCESS TO CHILDREN IN CARE—ENGLAND AND WALES

#### PART I

##### ADDITION OF PART IA TO CHILD CARE ACT 1980

1 The following shall be inserted after section 12 of the Child Care Act 1980—

#### “PART IA

##### ACCESS TO CHILDREN IN CARE

#### **12A Children to whom Part 1A applies.**

- (1) Subject to subsection (2) below, this Part of this Act applies to any child in the care of a local authority in consequence—
  - (a) of a care order (including an interim order);
  - (b) of an order under section 2(1) of the Matrimonial Proceedings (Magistrates' Courts) Act 1960;
  - (c) of committal under section 23(1) of the Children and Young Persons Act 1969 ;
  - (d) of an order under section 2(2)(b) of the Guardianship Act 1973 ;
  - (e) of an order under section 17(1)(b) of the Children Act 1975 or section 26(1)(b) of the Adoption Act 1976 (order on refusal of adoption order);
  - (f) of an order under section 36(2) or (3)(a) of the Children Act 1975 (order on revocation of custodianship order);
  - (g) of an order under section 10(1) of the Domestic Proceedings and Magistrates' Courts Act 1978 ; or
  - (h) of a resolution under section 3 above.
- (2) This Part of this Act does not apply to a child in the care of a local authority in consequence of an order made by the High Court.

#### **12B Termination of access.**

- (1) A local authority may not terminate arrangements for access to a child to whom this Part of this Act applies by its parent, guardian or custodian, or refuse to make such arrangements unless they have first given the parent, guardian or custodian notice of termination or refusal in a form prescribed by order made by the Secretary of State.

---

*Status: This is the original version (as it was originally enacted).*

---

- (2) A notice under this section shall contain a statement that the parent, guardian or custodian has a right to apply to a court for an order under section 12C below.
- (3) A notice terminating access shall state that access will be terminated as from the date of service of the notice.
- (4) A local authority are not to be taken to terminate access for the purpose of this section in a case where they propose to substitute new arrangements for access for existing arrangements.
- (5) A local authority are not to be taken to refuse to make arrangements for access for the purposes of this section in a case where they postpone access for such reasonable period as appears to them to be necessary to enable them to consider what arrangements for access (if any) are to be made.
- (6) A notice under this section may be served on a parent, guardian or custodian either by delivering it to him or by leaving it at his proper address or by sending it by post.
- (7) For the purposes of this section, and of section 7 of the Interpretation Act 1978 in its application to this section, the proper address of a person shall be his last known address.

#### **12C Access orders—general.**

- (1) A parent, guardian or custodian on whom a notice under section 12B above is served may apply for an order under this section (in this Part of this Act referred to as an "access order").
- (2) An application under subsection (1) above shall be made by way of complaint to an appropriate juvenile court.
- (3) An access order shall be an order requiring the authority to allow the child's parent, guardian or custodian access to the child subject to such conditions as the order may specify with regard to commencement, frequency, duration or place of access or to any other matter for which it appears to the court that provision ought to be made in connection with the requirement to allow access.
- (4) A juvenile court is an appropriate juvenile court for the purposes of this Part of the Act if it has jurisdiction in the area of the authority serving the notice under section 12B above.
- (5) An appeal shall lie to the High Court against any decision of a juvenile court under this Part of this Act.

#### **12D Variation and discharge of access orders.**

- (1) Where an access order has been made—
  - (a) the parent, guardian or custodian named in the order; or
  - (b) the local authority,may apply for the variation or discharge of the order.

---

*Status: This is the original version (as it was originally enacted).*

---

- (2) An application under this section shall be made by way of complaint to an appropriate juvenile court.

### **12E Emergency orders.**

- (1) A qualified justice of the peace may make an order under this subsection where he is satisfied that continued access to a child by its parent, guardian or custodian in accordance with the terms of an access order will put the child's welfare seriously at risk.
- (2) Subject to subsection (3) below, an order under subsection (1) above shall be an order suspending the operation of the access order for 7 days beginning with the date of the order under subsection (1) above, or for such shorter period beginning with that date as may be specified in that order.
- (3) If during the period for which the operation of the access order is suspended the local authority make an application for its variation or discharge to an appropriate juvenile court, its operation shall be suspended until the date on which the application to vary or discharge it is determined or abandoned.
- (4) An application for an order under subsection (1) above may be made ex parte.
- (5) A justice of the peace is a qualified justice of the peace for the purposes of this section if he is a member of a juvenile court panel formed under Schedule 2 to the Children and Young Persons Act 1933.

### **12F Safeguarding of interests of child.**

- (1) A court—
  - (a) to which an application for an access order or any other application under this Part of this Act is made ; or
  - (b) to which an appeal under this Part of this Act is brought,shall regard the welfare of the child as the first and paramount consideration in determining the matter.
- (2) In any proceedings before a court under this Part of this Act the court may, where it considers it necessary in order to safeguard the interests of the child, by order make the child a party to the proceedings.
- (3) If the court makes the child a party to the proceedings, it shall in accordance with rules of court appoint a guardian ad litem of the child for the purposes of the proceedings unless it is satisfied that to do so is not necessary for safeguarding the interests of the child.
- (4) A guardian ad litem appointed in pursuance of this section shall be under a duty to safeguard the interests of the child in the manner prescribed by rules of court.

### **12G Code of practice.**

- (1) The Secretary of State shall prepare, and from time to time revise, a code of practice with regard to access to children in care.

---

*Status: This is the original version (as it was originally enacted).*

---

- (2) Before preparing the code or making any alteration in it the Secretary of State shall consult such bodies as appear to him to be concerned.
- (3) The Secretary of State shall lay copies of the code and of any alteration in the code before Parliament; and if either House of Parliament passes a resolution requiring the code or any alteration in it to be withdrawn the Secretary of State shall withdraw the code or alteration and, where he withdraws the code, shall prepare a code in substitution for the one which is withdrawn.
- (4) No resolution shall be passed by either House of Parliament under subsection (3) above in respect of a code or alteration after the expiration of the period of 40 days beginning with the day on which a copy of the code or alteration was laid before that House ; but for the purposes of this subsection no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (5) The Secretary of State shall publish the code as for the time being in force.”.

## PART II

### OTHER AMENDMENTS

- (2) The following subsection shall be added at the end of section 64 of the Child Care Act 1980—
  - “(8) Part IA of this Act applies to a child in respect of whom a resolution under subsection (1) above is in force as it applies to a child such as is mentioned in section 12A above, and accordingly references to a local authority in that Part of this Act include references to a voluntary organisation in which the parental rights and duties with respect to a child have vested under such a resolution.”.
- 3 The following paragraph shall be added at the end of Part I of Schedule 1 to the Legal Aid Act 1974—
  - “9 Proceedings under Part IA of the Child Care Act 1980.”.
- 4 The following sub-paragraph shall be added at the end of section 103(1)(a) of the Children Act 1975—
  - “(iv) section 12F of the Child Care Act 1980 ;”.