



# Children Act 1989

## 1989 CHAPTER 41

### PART III

#### LOCAL AUTHORITY SUPPORT FOR CHILDREN AND FAMILIES

##### *Duties of local authorities in relation to children looked after by them*

#### **22 General duty of local authority in relation to children looked after by them.**

- (1) In this Act, any reference to a child who is looked after by a local authority is a reference to a child who is—
  - (a) in their care; or
  - (b) provided with accommodation by the authority in the exercise of any functions (in particular those under this Act) which [<sup>F1</sup>are social services functions within the meaning of] the <sup>M1</sup>Local Authority Social Services Act 1970 [<sup>F2</sup>, apart from functions under sections [<sup>F3</sup>17] 23B and 24B].
- (2) In subsection (1) “accommodation” means accommodation which is provided for a continuous period of more than 24 hours.
- (3) It shall be the duty of a local authority looking after any child—
  - (a) to safeguard and promote his welfare; and
  - (b) to make such use of services available for children cared for by their own parents as appears to the authority reasonable in his case.

[<sup>F4</sup>(3A) The duty of a local authority under subsection (3)(a) to safeguard and promote the welfare of a child looked after by them includes in particular a duty to promote the child’s educational achievement.]

- (4) Before making any decision with respect to a child whom they are looking after, or proposing to look after, a local authority shall, so far as is reasonably practicable, ascertain the wishes and feelings of—
  - (a) the child;
  - (b) his parents;

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- (c) any person who is not a parent of his but who has parental responsibility for him; and
  - (d) any other person whose wishes and feelings the authority consider to be relevant,
- regarding the matter to be decided.
- (5) In making any such decision a local authority shall give due consideration—
- (a) having regard to his age and understanding, to such wishes and feelings of the child as they have been able to ascertain;
  - (b) to such wishes and feelings of any person mentioned in subsection (4)(b) to (d) as they have been able to ascertain; and
  - (c) to the child’s religious persuasion, racial origin and cultural and linguistic background.
- (6) If it appears to a local authority that it is necessary, for the purpose of protecting members of the public from serious injury, to exercise their powers with respect to a child whom they are looking after in a manner which may not be consistent with their duties under this section, they may do so.
- (7) If the [<sup>F5</sup>appropriate national authority] considers it necessary, for the purpose of protecting members of the public from serious injury, to give directions to a local authority with respect to the exercise of their powers with respect to a child whom they are looking after, [<sup>F6</sup>the appropriate national authority] may give such directions to [<sup>F7</sup>the local authority] .
- (8) Where any such directions are given to an authority they shall comply with them even though doing so is inconsistent with their duties under this section.

#### Textual Amendments

- F1** Words in s. 22(1)(b) substituted (26.10.2000 for E. and otherwise 28.7.2001) by 2000 c. 22, ss. 107, 108(4), **Sch. 5 para. 19**; S.I. 2000/2849, **art. 2(f)**
- F2** Words in s. 22(1)(b) inserted (1.10.2001) by 2000 c. 35, **s. 2(2)**; S.I. 2001/2191, **art. 2**; S.I. 2001/2878, **art. 2**
- F3** Word in s. 22(1) inserted (7.11.2002) by 2002 c. 38, **ss. 116, 148** (with Sch. 4 paras. 6-8)
- F4** S. 22(3A) inserted (1.7.2005 for E. and 1.4.2006 for W.) by Children Act 2004 (c. 31), **s. 52**; S.I. 2005/394, **art. 2(3)(b)**; S.I. 2006/885, **art. 2(2)**
- F5** Words in s. 22(7) substituted (13.11.2008) by Children and Young Persons Act 2008 (c. 23), ss. 39, 44, **Sch. 3 para. 6(a)**
- F6** Words in s. 22(7) substituted (13.11.2008) by Children and Young Persons Act 2008 (c. 23), ss. 39, 44, **Sch. 3 para. 6(b)**
- F7** Words in s. 22(7) substituted (13.11.2008) by Children and Young Persons Act 2008 (c. 23), ss. 39, 44, **Sch. 3 para. 6(c)**

#### Modifications etc. (not altering text)

- C1** S. 22 applied (1.10.1992) by Children and Young Persons Act 1969 (c. 54, SIF 20), **s. 23(13)(a)** (as substituted (1.10.1992) by Criminal Justice Act 1991 (c. 53, SIF 39:1), **s. 60(1)**; S.I. 1992/333, **art. 2(2)**, **Sch. 2**.
- C2** S. 22(4)(b)-(d)(5)(b): power to apply with modifications or exclude conferred (7.2.2004 for W. and 7.12.2004 for E.) by 2002 c. 38, **ss. 53(1)(2), 148** (with Sch. 4 paras. 6-8); S.I. 2004/252, **art. 2(b)**; S.I. 2004/3203, **art. 2(1)(h)**
- C3** S. 22(4)(b) excluded (30.12.2005) (E.) by The Adoption Agencies Regulations 2005 (S.I. 2005/389), **art. 45(2)(a)**

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- S. 22(4)(b) excluded (30.12.2005) (W.) by [The Adoption Agencies \(Wales\) Regulations 2005 \(S.I. 2005/1313\)](#), [art. 46\(2\)\(a\)](#)
- C4** S. 22(4)(c) modified (30.12.2005) (E.) by [The Adoption Agencies Regulations 2005 \(S.I. 2005/389\)](#), [art. 45\(2\)\(b\)](#)
- S. 22(4)(c) applied (with modifications) (30.12.2005) (W.) by [The Adoption Agencies \(Wales\) Regulations 2005 \(S.I. 2005/1313\)](#), [art. 46\(2\)\(b\)](#)
- C5** S. 22(5)(b) modified (30.12.2005) (E.) by [The Adoption Agencies Regulations 2005 \(S.I. 2005/389\)](#), [art. 45\(2\)\(c\)](#)
- S. 22(5)(b) applied (with modifications) (30.12.2005) (W.) by [The Adoption Agencies \(Wales\) Regulations 2005 \(S.I. 2005/1313\)](#), [art. 46\(2\)\(c\)](#)

#### Commencement Information

- II** S. 22 wholly in force at 14.10.1991 see 108(2)(3) and [S.I. 1991/828](#), [art. 3\(2\)](#)

#### Marginal Citations

- M1** 1970 c. 42.

## [<sup>F20</sup> 22A Provision of accommodation for children in care

When a child is in the care of a local authority, it is their duty to provide the child with accommodation.

#### Textual Amendments

- F20** Ss. 22A-22F substituted (1.9.2009 for E. and 26.4.2010 for W. for the insertion of ss. 22C(11), 22F, 1.4.2011 otherwise for E.) for s. 23 by [Children and Young Persons Act 2008 \(c. 23\)](#), [ss. 8\(1\)](#), 44; [S.I. 2009/2273](#), [art. 2\(2\)\(a\)](#); [S.I. 2010/1329](#), [art. 2\(a\)](#); [S.I. 2010/2981](#), [art. 4\(a\)](#)

## 22B Maintenance of looked after children

It is the duty of a local authority to maintain a child they are looking after in other respects apart from the provision of accommodation.

#### Textual Amendments

- F20** Ss. 22A-22F substituted (1.9.2009 for E. and 26.4.2010 for W. for the insertion of ss. 22C(11), 22F, 1.4.2011 otherwise for E.) for s. 23 by [Children and Young Persons Act 2008 \(c. 23\)](#), [ss. 8\(1\)](#), 44; [S.I. 2009/2273](#), [art. 2\(2\)\(a\)](#); [S.I. 2010/1329](#), [art. 2\(a\)](#); [S.I. 2010/2981](#), [art. 4\(a\)](#)

## 22C Ways in which looked after children are to be accommodated and maintained

- (1) This section applies where a local authority are looking after a child (“C”).
- (2) The local authority must make arrangements for C to live with a person who falls within subsection (3) (but subject to subsection (4)).
- (3) A person (“P”) falls within this subsection if—
  - (a) P is a parent of C;
  - (b) P is not a parent of C but has parental responsibility for C; or

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- (c) in a case where C is in the care of the local authority and there was a residence order in force with respect to C immediately before the care order was made, P was a person in whose favour the residence order was made.
- (4) Subsection (2) does not require the local authority to make arrangements of the kind mentioned in that subsection if doing so—
  - (a) would not be consistent with C's welfare; or
  - (b) would not be reasonably practicable.
- (5) If the local authority are unable to make arrangements under subsection (2), they must place C in the placement which is, in their opinion, the most appropriate placement available.
- (6) In subsection (5) “placement” means—
  - (a) placement with an individual who is a relative, friend or other person connected with C and who is also a local authority foster parent;
  - (b) placement with a local authority foster parent who does not fall within paragraph (a);
  - (c) placement in a children's home in respect of which a person is registered under Part 2 of the Care Standards Act 2000; or
  - (d) subject to section 22D, placement in accordance with other arrangements which comply with any regulations made for the purposes of this section.
- (7) In determining the most appropriate placement for C, the local authority must, subject to the other provisions of this Part (in particular, to their duties under section 22)—
  - (a) give preference to a placement falling within paragraph (a) of subsection (6) over placements falling within the other paragraphs of that subsection;
  - (b) comply, so far as is reasonably practicable in all the circumstances of C's case, with the requirements of subsection (8); and
  - (c) comply with subsection (9) unless that is not reasonably practicable.
- (8) The local authority must ensure that the placement is such that—
  - (a) it allows C to live near C's home;
  - (b) it does not disrupt C's education or training;
  - (c) if C has a sibling for whom the local authority are also providing accommodation, it enables C and the sibling to live together;
  - (d) if C is disabled, the accommodation provided is suitable to C's particular needs.
- (9) The placement must be such that C is provided with accommodation within the local authority's area.
- (10) The local authority may determine—
  - (a) the terms of any arrangements they make under subsection (2) in relation to C (including terms as to payment); and
  - (b) the terms on which they place C with a local authority foster parent (including terms as to payment but subject to any order made under section 49 of the Children Act 2004).
- (11) The appropriate national authority may make regulations for, and in connection with, the purposes of this section.

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- (12) In this Act “local authority foster parent” means a person who is approved as a local authority foster parent in accordance with regulations made by virtue of paragraph 12F of Schedule 2.

#### Textual Amendments

**F20** Ss. 22A-22F substituted (1.9.2009 for E. and 26.4.2010 for W. for the insertion of ss. 22C(11), 22F, 1.4.2011 otherwise for E.) for s. 23 by [Children and Young Persons Act 2008 \(c. 23\)](#), **ss. 8(1), 44**; S.I. 2009/2273, **art. 2(2)(a)**; S.I. 2010/1329, **art. 2(a)**; S.I. 2010/2981, **art. 4(a)**

### 22D Review of child's case before making alternative arrangements for accommodation

- (1) Where a local authority are providing accommodation for a child (“C”) other than by arrangements under section 22C(6)(d), they must not make such arrangements for C unless they have decided to do so in consequence of a review of C's case carried out in accordance with regulations made under section 26.
- (2) But subsection (1) does not prevent a local authority making arrangements for C under section 22C(6)(d) if they are satisfied that in order to safeguard C's welfare it is necessary—
- (a) to make such arrangements; and
  - (b) to do so as a matter of urgency.

#### Textual Amendments

**F20** Ss. 22A-22F substituted (1.9.2009 for E. and 26.4.2010 for W. for the insertion of ss. 22C(11), 22F, 1.4.2011 otherwise for E.) for s. 23 by [Children and Young Persons Act 2008 \(c. 23\)](#), **ss. 8(1), 44**; S.I. 2009/2273, **art. 2(2)(a)**; S.I. 2010/1329, **art. 2(a)**; S.I. 2010/2981, **art. 4(a)**

### 22E Children's homes provided by appropriate national authority

Where a local authority place a child they are looking after in a children's home provided, equipped and maintained by an appropriate national authority under section 82(5), they must do so on such terms as that national authority may from time to time determine.

#### Textual Amendments

**F20** Ss. 22A-22F substituted (1.9.2009 for E. and 26.4.2010 for W. for the insertion of ss. 22C(11), 22F, 1.4.2011 otherwise for E.) for s. 23 by [Children and Young Persons Act 2008 \(c. 23\)](#), **ss. 8(1), 44**; S.I. 2009/2273, **art. 2(2)(a)**; S.I. 2010/1329, **art. 2(a)**; S.I. 2010/2981, **art. 4(a)**

### 22F Regulations as to children looked after by local authorities

Part 2 of Schedule 2 has effect for the purposes of making further provision as to children looked after by local authorities and in particular as to the regulations which may be made under section 22C(11).]

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### [<sup>F21</sup>22G General duty of local authority to secure sufficient accommodation for looked after children

- (1) It is the general duty of a local authority to take steps that secure, so far as reasonably practicable, the outcome in subsection (2).
- (2) The outcome is that the local authority are able to provide the children mentioned in subsection (3) with accommodation that—
  - (a) is within the authority's area; and
  - (b) meets the needs of those children.
- (3) The children referred to in subsection (2) are those—
  - (a) that the local authority are looking after,
  - (b) in respect of whom the authority are unable to make arrangements under section 22C(2), and
  - (c) whose circumstances are such that it would be consistent with their welfare for them to be provided with accommodation that is in the authority's area.
- (4) In taking steps to secure the outcome in subsection (2), the local authority must have regard to the benefit of having—
  - (a) a number of accommodation providers in their area that is, in their opinion, sufficient to secure that outcome; and
  - (b) a range of accommodation in their area capable of meeting different needs that is, in their opinion, sufficient to secure that outcome.
- (5) In this section “accommodation providers” means—
  - local authority foster parents; and
  - children's homes in respect of which a person is registered under Part 2 of the Care Standards Act 2000.]

#### Textual Amendments

**F21** S. 22G inserted (1.4.2011 for E.) by [Children and Young Persons Act 2008 \(c. 23\)](#), [ss. 9](#), 44; [S.I. 2010/2981](#), [art. 4\(b\)](#)

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