



# Children Act 1989

## 1989 CHAPTER 41

### PART V

#### PROTECTION OF CHILDREN

#### 43 Child assessment orders.

- (1) On the application of a local authority or authorised person for an order to be made under this section with respect to a child, the court may make the order if, but only if, it is satisfied that—
  - (a) the applicant has reasonable cause to suspect that the child is suffering, or is likely to suffer, significant harm;
  - (b) an assessment of the state of the child's health or development, or of the way in which he has been treated, is required to enable the applicant to determine whether or not the child is suffering, or is likely to suffer, significant harm; and
  - (c) it is unlikely that such an assessment will be made, or be satisfactory, in the absence of an order under this section.
- (2) In this Act “a child assessment order” means an order under this section.
- (3) A court may treat an application under this section as an application for an emergency protection order.
- (4) No court shall make a child assessment order if it is satisfied—
  - (a) that there are grounds for making an emergency protection order with respect to the child; and
  - (b) that it ought to make such an order rather than a child assessment order.
- (5) A child assessment order shall—
  - (a) specify the date by which the assessment is to begin; and
  - (b) have effect for such period, not exceeding 7 days beginning with that date, as may be specified in the order.
- (6) Where a child assessment order is in force with respect to a child it shall be the duty of any person who is in a position to produce the child—

*Status: Point in time view as at 01/04/2004.*

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- (a) to produce him to such person as may be named in the order; and
  - (b) to comply with such directions relating to the assessment of the child as the court thinks fit to specify in the order.
- (7) A child assessment order authorises any person carrying out the assessment, or any part of the assessment, to do so in accordance with the terms of the order.
- (8) Regardless of subsection (7), if the child is of sufficient understanding to make an informed decision he may refuse to submit to a medical or psychiatric examination or other assessment.
- (9) The child may only be kept away from home—
- (a) in accordance with directions specified in the order;
  - (b) if it is necessary for the purposes of the assessment; and
  - (c) for such period or periods as may be specified in the order.
- (10) Where the child is to be kept away from home, the order shall contain such directions as the court thinks fit with regard to the contact that he must be allowed to have with other persons while away from home.
- (11) Any person making an application for a child assessment order shall take such steps as are reasonably practicable to ensure that notice of the application is given to—
- (a) the child’s parents;
  - (b) any person who is not a parent of his but who has parental responsibility for him;
  - (c) any other person caring for the child;
  - (d) any person in whose favour a contact order is in force with respect to the child;
  - (e) any person who is allowed to have contact with the child by virtue of an order under section 34; and
  - (f) the child,
- before the hearing of the application.
- (12) Rules of court may make provision as to the circumstances in which—
- (a) any of the persons mentioned in subsection (11); or
  - (b) such other person as may be specified in the rules,
- may apply to the court for a child assessment order to be varied or discharged.
- (13) In this section “authorised person” means a person who is an authorised person for the purposes of section 31.

**Commencement Information**

**II** S. 43 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

**44 Orders for emergency protection of children.**

- (1) Where any person (“the applicant”) applies to the court for an order to be made under this section with respect to a child, the court may make the order if, but only if, it is satisfied that—
- (a) there is reasonable cause to believe that the child is likely to suffer significant harm if—

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- (i) he is not removed to accommodation provided by or on behalf of the applicant; or
    - (ii) he does not remain in the place in which he is then being accommodated;
  - (b) in the case of an application made by a local authority—
    - (i) enquiries are being made with respect to the child under section 47(1)(b); and
    - (ii) those enquiries are being frustrated by access to the child being unreasonably refused to a person authorised to seek access and that the applicant has reasonable cause to believe that access to the child is required as a matter of urgency; or
  - (c) in the case of an application made by an authorised person—
    - (i) the applicant has reasonable cause to suspect that a child is suffering, or is likely to suffer, significant harm;
    - (ii) the applicant is making enquiries with respect to the child’s welfare; and
    - (iii) those enquiries are being frustrated by access to the child being unreasonably refused to a person authorised to seek access and the applicant has reasonable cause to believe that access to the child is required as a matter of urgency.
- (2) In this section—
  - (a) “authorised person” means a person who is an authorised person for the purposes of section 31; and
  - (b) “a person authorised to seek access” means—
    - (i) in the case of an application by a local authority, an officer of the local authority or a person authorised by the authority to act on their behalf in connection with the enquiries; or
    - (ii) in the case of an application by an authorised person, that person.
- (3) Any person—
  - (a) seeking access to a child in connection with enquiries of a kind mentioned in subsection (1); and
  - (b) purporting to be a person authorised to do so,shall, on being asked to do so, produce some duly authenticated document as evidence that he is such a person.
- (4) While an order under this section (“an emergency protection order”) is in force it—
  - (a) operates as a direction to any person who is in a position to do so to comply with any request to produce the child to the applicant;
  - (b) authorises—
    - (i) the removal of the child at any time to accommodation provided by or on behalf of the applicant and his being kept there; or
    - (ii) the prevention of the child’s removal from any hospital, or other place, in which he was being accommodated immediately before the making of the order; and
  - (c) gives the applicant parental responsibility for the child.
- (5) Where an emergency protection order is in force with respect to a child, the applicant—

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- (a) shall only exercise the power given by virtue of subsection (4)(b) in order to safeguard the welfare of the child;
  - (b) shall take, and shall only take, such action in meeting his parental responsibility for the child as is reasonably required to safeguard or promote the welfare of the child (having regard in particular to the duration of the order); and
  - (c) shall comply with the requirements of any regulations made by the Secretary of State for the purposes of this subsection.
- (6) Where the court makes an emergency protection order, it may give such directions (if any) as it considers appropriate with respect to—
- (a) the contact which is, or is not, to be allowed between the child and any named person;
  - (b) the medical or psychiatric examination or other assessment of the child.
- (7) Where any direction is given under subsection (6)(b), the child may, if he is of sufficient understanding to make an informed decision, refuse to submit to the examination or other assessment.
- (8) A direction under subsection (6)(a) may impose conditions and one under subsection (6)(b) may be to the effect that there is to be—
- (a) no such examination or assessment; or
  - (b) no such examination or assessment unless the court directs otherwise.
- (9) A direction under subsection (6) may be—
- (a) given when the emergency protection order is made or at any time while it is in force; and
  - (b) varied at any time on the application of any person falling within any class of person prescribed by rules of court for the purposes of this subsection.
- (10) Where an emergency protection order is in force with respect to a child and—
- (a) the applicant has exercised the power given by subsection (4)(b)(i) but it appears to him that it is safe for the child to be returned; or
  - (b) the applicant has exercised the power given by subsection (4)(b)(ii) but it appears to him that it is safe for the child to be allowed to be removed from the place in question,
- he shall return the child or (as the case may be) allow him to be removed.
- (11) Where he is required by subsection (10) to return the child the applicant shall—
- (a) return him to the care of the person from whose care he was removed; or
  - (b) if that is not reasonably practicable, return him to the care of—
    - (i) a parent of his;
    - (ii) any person who is not a parent of his but who has parental responsibility for him; or
    - (iii) such other person as the applicant (with the agreement of the court) considers appropriate.
- (12) Where the applicant has been required by subsection (10) to return the child, or to allow him to be removed, he may again exercise his powers with respect to the child (at any time while the emergency protection order remains in force) if it appears to him that a change in the circumstances of the case makes it necessary for him to do so.

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- (13) Where an emergency protection order has been made with respect to a child, the applicant shall, subject to any direction given under subsection (6), allow the child reasonable contact with—
- (a) his parents;
  - (b) any person who is not a parent of his but who has parental responsibility for him;
  - (c) any person with whom he was living immediately before the making of the order;
  - (d) any person in whose favour a contact order is in force with respect to him;
  - (e) any person who is allowed to have contact with the child by virtue of an order under section 34; and
  - (f) any person acting on behalf of any of those persons.
- (14) Wherever it is reasonably practicable to do so, an emergency protection order shall name the child; and where it does not name him it shall describe him as clearly as possible.
- (15) A person shall be guilty of an offence if he intentionally obstructs any person exercising the power under subsection (4)(b) to remove, or prevent the removal of, a child.
- (16) A person guilty of an offence under subsection (15) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**Commencement Information**

**I2** S. 44 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

**[<sup>F1</sup>44A Power to include exclusion requirement in emergency protection order.**

- (1) Where—
- (a) on being satisfied as mentioned in section 44(1)(a), (b) or (c), the court makes an emergency protection order with respect to a child, and
  - (b) the conditions mentioned in subsection (2) are satisfied,
- the court may include an exclusion requirement in the emergency protection order.
- (2) The conditions are—
- (a) that there is reasonable cause to believe that, if a person (“the relevant person”) is excluded from a dwelling-house in which the child lives, then—
    - (i) in the case of an order made on the ground mentioned in section 44(1)(a), the child will not be likely to suffer significant harm, even though the child is not removed as mentioned in section 44(1)(a)(i) or does not remain as mentioned in section 44(1)(a)(ii), or
    - (ii) in the case of an order made on the ground mentioned in paragraph (b) or (c) of section 44(1), the enquiries referred to in that paragraph will cease to be frustrated, and
  - (b) that another person living in the dwelling-house (whether a parent of the child or some other person)—
    - (i) is able and willing to give to the child the care which it would be reasonable to expect a parent to give him, and

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- (ii) consents to the inclusion of the exclusion requirement.
- (3) For the purposes of this section an exclusion requirement is any one or more of the following—
- (a) a provision requiring the relevant person to leave a dwelling-house in which he is living with the child,
  - (b) a provision prohibiting the relevant person from entering a dwelling-house in which the child lives, and
  - (c) a provision excluding the relevant person from a defined area in which a dwelling-house in which the child lives is situated.
- (4) The court may provide that the exclusion requirement is to have effect for a shorter period than the other provisions of the order.
- (5) Where the court makes an emergency protection order containing an exclusion requirement, the court may attach a power of arrest to the exclusion requirement.
- (6) Where the court attaches a power of arrest to an exclusion requirement of an emergency protection order, it may provide that the power of arrest is to have effect for a shorter period than the exclusion requirement.
- (7) Any period specified for the purposes of subsection (4) or (6) may be extended by the court (on one or more occasions) on an application to vary or discharge the emergency protection order.
- (8) Where a power of arrest is attached to an exclusion requirement of an emergency protection order by virtue of subsection (5), a constable may arrest without warrant any person whom he has reasonable cause to believe to be in breach of the requirement.
- (9) Sections 47(7), (11) and (12) and 48 of, and Schedule 5 to, the Family Law Act 1996 shall have effect in relation to a person arrested under subsection (8) of this section as they have effect in relation to a person arrested under section 47(6) of that Act.
- (10) If, while an emergency protection order containing an exclusion requirement is in force, the applicant has removed the child from the dwelling-house from which the relevant person is excluded to other accommodation for a continuous period of more than 24 hours, the order shall cease to have effect in so far as it imposes the exclusion requirement.]

#### Textual Amendments

**F1** Ss. 44A and 44B inserted(*l.10.1997*) by 1996 c. 27, s. 52, **Sch. 6 para. 3**(with Sch. 9 para. 5); S.I. 1997/1892, **art. 3**

#### **F2**44B Undertakings relating to emergency protection orders.

- (1) In any case where the court has power to include an exclusion requirement in an emergency protection order, the court may accept an undertaking from the relevant person.
- (2) No power of arrest may be attached to any undertaking given under subsection (1).
- (3) An undertaking given to a court under subsection (1)—
  - (a) shall be enforceable as if it were an order of the court, and

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- (b) shall cease to have effect if, while it is in force, the applicant has removed the child from the dwelling-house from which the relevant person is excluded to other accommodation for a continuous period of more than 24 hours.
- (4) This section has effect without prejudice to the powers of the High Court and county court apart from this section.
- (5) In this section “exclusion requirement” and “relevant person” have the same meaning as in section 44A.

#### Textual Amendments

**F2** Ss. 44A and 44B inserted(1.10.1997) by 1996 c. 27, ss. 52, **Sch. 6 para. 3**(with Sch 9 para. 5); S.I. 1997/1892, **art.3**

#### 45 Duration of emergency protection orders and other supplemental provisions.

- (1) An emergency protection order shall have effect for such period, not exceeding eight days, as may be specified in the order.
- (2) Where—
  - (a) the court making an emergency protection order would, but for this subsection, specify a period of eight days as the period for which the order is to have effect; but
  - (b) the last of those eight days is a public holiday (that is to say, Christmas Day, Good Friday, a bank holiday or a Sunday),the court may specify a period which ends at noon on the first later day which is not such a holiday.
- (3) Where an emergency protection order is made on an application under section 46(7), the period of eight days mentioned in subsection (1) shall begin with the first day on which the child was taken into police protection under section 46.
- (4) Any person who—
  - (a) has parental responsibility for a child as the result of an emergency protection order; and
  - (b) is entitled to apply for a care order with respect to the child,may apply to the court for the period during which the emergency protection order is to have effect to be extended.
- (5) On an application under subsection (4) the court may extend the period during which the order is to have effect by such period, not exceeding seven days, as it thinks fit, but may do so only if it has reasonable cause to believe that the child concerned is likely to suffer significant harm if the order is not extended.
- (6) An emergency protection order may only be extended once.
- (7) Regardless of any enactment or rule of law which would otherwise prevent it from doing so, a court hearing an application for, or with respect to, an emergency protection order may take account of—
  - (a) any statement contained in any report made to the court in the course of, or in connection with, the hearing; or
  - (b) any evidence given during the hearing,

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which is, in the opinion of the court, relevant to the application.

- (8) Any of the following may apply to the court for an emergency protection order to be discharged—
- (a) the child;
  - (b) a parent of his;
  - (c) any person who is not a parent of his but who has parental responsibility for him; or
  - (d) any person with whom he was living immediately before the making of the order.
- [<sup>F3</sup>(8A) On the application of a person who is not entitled to apply for the order to be discharged, but who is a person to whom an exclusion requirement contained in the order applies, an emergency protection order may be varied or discharged by the court in so far as it imposes the exclusion requirement.
- (8B) Where a power of arrest has been attached to an exclusion requirement of an emergency protection order, the court may, on the application of any person entitled to apply for the discharge of the order so far as it imposes the exclusion requirement, vary or discharge the order in so far as it confers a power of arrest (whether or not any application has been made to vary or discharge any other provision of the order).]
- (9) No application for the discharge of an emergency protection order shall be heard by the court before the expiry of the period of 72 hours beginning with the making of the order.
- [<sup>F4</sup>(10) No appeal may be made against—
- (a) the making of, or refusal to make, an emergency protection order;
  - (b) the extension of, or refusal to extend, the period during which such an order is to have effect;
  - (c) the discharge of, or refusal to discharge, such an order; or
  - (d) the giving of, or refusal to give, any direction in connection with such an order.]

(11) Subsection (8) does not apply—

    - (a) where the person who would otherwise be entitled to apply for the emergency protection order to be discharged—
      - (i) was given notice (in accordance with rules of court) of the hearing at which the order was made; and
      - (ii) was present at that hearing; or
    - (b) to any emergency protection order the effective period of which has been extended under subsection (5).

(12) A court making an emergency protection order may direct that the applicant may, in exercising any powers which he has by virtue of the order, be accompanied by a registered medical practitioner, registered nurse or [<sup>F5</sup>registered midwife], if he so chooses.

#### Textual Amendments

- F3** S. 45(8A)(8B) inserted (1.10.1997) by 1996 c. 27, s. 52, **Sch. 6 para. 4**(with Sch. 9 para. 5); S.I. 1997/1892, **art. 3**



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- F4** S. 45(10) substituted (14.10.1991) by Courts and Legal Services Act (c. 41, SIF 76:1), s. 116, Sch. 16 para. 19; S.I. 1991/1883, art. 3, Sch.
- F5** Words in s. 45(12) substituted by S.I. 2002/253, art. 54, Sch. 5 para. 10(a) (with art. 3(18)) (the substitution coming into force in accordance with art. 1(2)(3) of the said S.I. 2002/253)

**Commencement Information**

- I3** S. 45 in force at 14.10.1991 see 108(2)(3) and S.I. 1991/828, art. 3(2)

**46 Removal and accommodation of children by police in cases of emergency.**

- (1) Where a constable has reasonable cause to believe that a child would otherwise be likely to suffer significant harm, he may—
- remove the child to suitable accommodation and keep him there; or
  - take such steps as are reasonable to ensure that the child's removal from any hospital, or other place, in which he is then being accommodated is prevented.
- (2) For the purposes of this Act, a child with respect to whom a constable has exercised his powers under this section is referred to as having been taken into police protection.
- (3) As soon as is reasonably practicable after taking a child into police protection, the constable concerned shall—
- inform the local authority within whose area the child was found of the steps that have been, and are proposed to be, taken with respect to the child under this section and the reasons for taking them;
  - give details to the authority within whose area the child is ordinarily resident (“the appropriate authority”) of the place at which the child is being accommodated;
  - inform the child (if he appears capable of understanding)—
    - of the steps that have been taken with respect to him under this section and of the reasons for taking them; and
    - of the further steps that may be taken with respect to him under this section;
  - take such steps as are reasonably practicable to discover the wishes and feelings of the child;
  - secure that the case is inquired into by an officer designated for the purposes of this section by the chief officer of the police area concerned; and
  - where the child was taken into police protection by being removed to accommodation which is not provided—
    - by or on behalf of a local authority; or
    - as a refuge, in compliance with the requirements of section 51, secure that he is moved to accommodation which is so provided.
- (4) As soon as is reasonably practicable after taking a child into police protection, the constable concerned shall take such steps as are reasonably practicable to inform—
- the child's parents;
  - every person who is not a parent of his but who has parental responsibility for him; and
  - any other person with whom the child was living immediately before being taken into police protection,

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- of the steps that he has taken under this section with respect to the child, the reasons for taking them and the further steps that may be taken with respect to him under this section.
- (5) On completing any inquiry under subsection (3)(e), the officer conducting it shall release the child from police protection unless he considers that there is still reasonable cause for believing that the child would be likely to suffer significant harm if released.
- (6) No child may be kept in police protection for more than 72 hours.
- (7) While a child is being kept in police protection, the designated officer may apply on behalf of the appropriate authority for an emergency protection order to be made under section 44 with respect to the child.
- (8) An application may be made under subsection (7) whether or not the authority know of it or agree to its being made.
- (9) While a child is being kept in police protection—
- (a) neither the constable concerned nor the designated officer shall have parental responsibility for him; but
  - (b) the designated officer shall do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child's welfare (having regard in particular to the length of the period during which the child will be so protected).
- (10) Where a child has been taken into police protection, the designated officer shall allow—
- (a) the child's parents;
  - (b) any person who is not a parent of the child but who has parental responsibility for him;
  - (c) any person with whom the child was living immediately before he was taken into police protection;
  - (d) any person in whose favour a contact order is in force with respect to the child;
  - (e) any person who is allowed to have contact with the child by virtue of an order under section 34; and
  - (f) any person acting on behalf of any of those persons,
- to have such contact (if any) with the child as, in the opinion of the designated officer, is both reasonable and in the child's best interests.
- (11) Where a child who has been taken into police protection is in accommodation provided by, or on behalf of, the appropriate authority, subsection (10) shall have effect as if it referred to the authority rather than to the designated officer.

#### Commencement Information

**I4** S. 46 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### 47 Local authority's duty to investigate.

- (1) Where a local authority—
- (a) are informed that a child who lives, or is found, in their area—
    - (i) is the subject of an emergency protection order; or

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- (ii) is in police protection; or
    - [<sup>F6</sup>(iii) has contravened a ban imposed by a curfew notice within the meaning of Chapter I of Part I of the Crime and Disorder Act 1998; or]
  - (b) have reasonable cause to suspect that a child who lives, or is found, in their area is suffering, or is likely to suffer, significant harm,  
the authority shall make, or cause to be made, such enquiries as they consider necessary to enable them to decide whether they should take any action to safeguard or promote the child's welfare. [<sup>F7</sup>In the case of a child falling within paragraph (a) (iii) above, the enquiries shall be commenced as soon as practicable and, in any event, within 48 hours of the authority receiving the information.]
- (2) Where a local authority have obtained an emergency protection order with respect to a child, they shall make, or cause to be made, such enquiries as they consider necessary to enable them to decide what action they should take to safeguard or promote the child's welfare.
- (3) The enquiries shall, in particular, be directed towards establishing—
- (a) whether the authority should make any application to the court, or exercise any of their other powers under this Act [<sup>F8</sup>or section 11 of the Crime and Disorder Act 1998 (child safety orders)], with respect to the child;
  - (b) whether, in the case of a child—
    - (i) with respect to whom an emergency protection order has been made; and
    - (ii) who is not in accommodation provided by or on behalf of the authority,  
it would be in the child's best interests (while an emergency protection order remains in force) for him to be in such accommodation; and
  - (c) whether, in the case of a child who has been taken into police protection, it would be in the child's best interests for the authority to ask for an application to be made under section 46(7).
- (4) Where enquiries are being made under subsection (1) with respect to a child, the local authority concerned shall (with a view to enabling them to determine what action, if any, to take with respect to him) take such steps as are reasonably practicable—
- (a) to obtain access to him; or
  - (b) to ensure that access to him is obtained, on their behalf, by a person authorised by them for the purpose,
- unless they are satisfied that they already have sufficient information with respect to him.
- (5) Where, as a result of any such enquiries, it appears to the authority that there are matters connected with the child's education which should be investigated, they shall consult the relevant local education authority.
- (6) Where, in the course of enquiries made under this section—
- (a) any officer of the local authority concerned; or
  - (b) any person authorised by the authority to act on their behalf in connection with those enquiries—
    - (i) is refused access to the child concerned; or
    - (ii) is denied information as to his whereabouts,

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the authority shall apply for an emergency protection order, a child assessment order, a care order or a supervision order with respect to the child unless they are satisfied that his welfare can be satisfactorily safeguarded without their doing so.

- (7) If, on the conclusion of any enquiries or review made under this section, the authority decide not to apply for an emergency protection order, a child assessment order, a care order or a supervision order they shall—
- (a) consider whether it would be appropriate to review the case at a later date; and
  - (b) if they decide that it would be, determine the date on which that review is to begin.
- (8) Where, as a result of complying with this section, a local authority conclude that they should take action to safeguard or promote the child's welfare they shall take that action (so far as it is both within their power and reasonably practicable for them to do so).
- (9) Where a local authority are conducting enquiries under this section, it shall be the duty of any person mentioned in subsection (11) to assist them with those enquiries (in particular by providing relevant information and advice) if called upon by the authority to do so.
- (10) Subsection (9) does not oblige any person to assist a local authority where doing so would be unreasonable in all the circumstances of the case.
- (11) The persons are—
- (a) any local authority;
  - (b) any local education authority;
  - (c) any local housing authority;
  - (d) any [<sup>F9</sup>Health Authority, Special Health Authority][<sup>F10</sup>, Primary Care Trust][<sup>F11</sup>, National Health Service trust or NHS foundation trust]; and
  - (e) any person authorised by the Secretary of State for the purposes of this section.
- (12) Where a local authority are making enquiries under this section with respect to a child who appears to them to be ordinarily resident within the area of another authority, they shall consult that other authority, who may undertake the necessary enquiries in their place.

#### Textual Amendments

- F6** S. 47(1)(a)(iii) inserted (30.9.1998) by 1998 c. 37, s. 15(4)(a); S.I. 1998/2327, art. 2(1)(e) (subject to arts. 5-8)
- F7** Words in s. 47(1) inserted (30.9.1998) by 1998 c. 37, s. 15(4)(b); S.I. 1998/2327, art. 2(1)(e) (subject to arts. 5-8).
- F8** Words in s. 47(3)(a) inserted (30.9.1998) by 1998 c. 37, s. 119, Sch. 8 para. 69; S.I. 1998/2327, art. 2(1)(y)(2)(u) (subject to arts. 5-8).
- F9** Words in s. 47(11)(d) substituted (1.4.1996) by 1995 c. 17, s. 2(1)(3), Sch. 1 Pt. III, para. 118(7)(with Sch. 2 para. 6)
- F10** Words in s. 47(11)(d) inserted (8.2.2000) by S.I. 2000/90, art. 3(1), Sch. 1 para. 24(7)
- F11** Words in s. 47(11)(d) substituted (1.4.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), s. 34, Sch. 4 para. 79; S.I. 2004/759, art. 2

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#### **Commencement Information**

**I5** S. 47 in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

### **48 Powers to assist in discovery of children who may be in need of emergency protection.**

- (1) Where it appears to a court making an emergency protection order that adequate information as to the child's whereabouts—
  - (a) is not available to the applicant for the order; but
  - (b) is available to another person,it may include in the order a provision requiring that other person to disclose, if asked to do so by the applicant, any information that he may have as to the child's whereabouts.
- (2) No person shall be excused from complying with such a requirement on the ground that complying might incriminate him or his spouse of an offence; but a statement or admission made in complying shall not be admissible in evidence against either of them in proceedings for any offence other than perjury.
- (3) An emergency protection order may authorise the applicant to enter premises specified by the order and search for the child with respect to whom the order is made.
- (4) Where the court is satisfied that there is reasonable cause to believe that there may be another child on those premises with respect to whom an emergency protection order ought to be made, it may make an order authorising the applicant to search for that other child on those premises.
- (5) Where—
  - (a) an order has been made under subsection (4);
  - (b) the child concerned has been found on the premises; and
  - (c) the applicant is satisfied that the grounds for making an emergency protection order exist with respect to him,the order shall have effect as if it were an emergency protection order.
- (6) Where an order has been made under subsection (4), the applicant shall notify the court of its effect.
- (7) A person shall be guilty of an offence if he intentionally obstructs any person exercising the power of entry and search under subsection (3) or (4).
- (8) A person guilty of an offence under subsection (7) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (9) Where, on an application made by any person for a warrant under this section, it appears to the court—
  - (a) that a person attempting to exercise powers under an emergency protection order has been prevented from doing so by being refused entry to the premises concerned or access to the child concerned; or
  - (b) that any such person is likely to be so prevented from exercising any such powers,it may issue a warrant authorising any constable to assist the person mentioned in paragraph (a) or (b) in the exercise of those powers using reasonable force if necessary.

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- (10) Every warrant issued under this section shall be addressed to, and executed by, a constable who shall be accompanied by the person applying for the warrant if—
- (a) that person so desires; and
  - (b) the court by whom the warrant is issued does not direct otherwise.
- (11) A court granting an application for a warrant under this section may direct that the constable concerned may, in executing the warrant, be accompanied by a registered medical practitioner, registered nurse or [<sup>F12</sup>registered midwife] if he so chooses.
- (12) An application for a warrant under this section shall be made in the manner and form prescribed by rules of court.
- (13) Wherever it is reasonably practicable to do so, an order under subsection (4), an application for a warrant under this section and any such warrant shall name the child; and where it does not name him it shall describe him as clearly as possible.

#### Textual Amendments

**F12** Words in s. 48(11) substituted by S.I. 2002/253, art. 54, Sch. 5 para. 10(b) (with art. 3(18)) (the substitution coming into force in accordance with art. 1(2)(3) of the said S.I. 2002/253)

#### Commencement Information

**I6** S. 48 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

## 49 Abduction of children in care etc.

- (1) A person shall be guilty of an offence if, knowingly and without lawful authority or reasonable excuse, he—
- (a) takes a child to whom this section applies away from the responsible person;
  - (b) keeps such a child away from the responsible person; or
  - (c) induces, assists or incites such a child to run away or stay away from the responsible person.
- (2) This section applies in relation to a child who is—
- (a) in care;
  - (b) the subject of an emergency protection order; or
  - (c) in police protection,
- and in this section “the responsible person” means any person who for the time being has care of him by virtue of the care order, the emergency protection order, or section 46, as the case may be.
- (3) A person guilty of an offence under this section shall be liable on summary conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding level 5 on the standard scale, or to both.

#### Commencement Information

**I7** S. 49 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828 art. 3(2)

*Status: Point in time view as at 01/04/2004.*

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## **50 Recovery of abducted children etc.**

- (1) Where it appears to the court that there is reason to believe that a child to whom this section applies—
  - (a) has been unlawfully taken away or is being unlawfully kept away from the responsible person;
  - (b) has run away or is staying away from the responsible person; or
  - (c) is missing,the court may make an order under this section (“a recovery order”).
- (2) This section applies to the same children to whom section 49 applies and in this section “the responsible person” has the same meaning as in section 49.
- (3) A recovery order—
  - (a) operates as a direction to any person who is in a position to do so to produce the child on request to any authorised person;
  - (b) authorises the removal of the child by any authorised person;
  - (c) requires any person who has information as to the child’s whereabouts to disclose that information, if asked to do so, to a constable or an officer of the court;
  - (d) authorises a constable to enter any premises specified in the order and search for the child using reasonable force if necessary.
- (4) The court may make a recovery order only on the application of—
  - (a) any person who has parental responsibility for the child by virtue of a care order or emergency protection order; or
  - (b) where the child is in police protection, the designated officer.
- (5) A recovery order shall name the child and—
  - (a) any person who has parental responsibility for the child by virtue of a care order or emergency protection order; or
  - (b) where the child is in police protection, the designated officer.
- (6) Premises may only be specified under subsection (3)(d) if it appears to the court that there are reasonable grounds for believing the child to be on them.
- (7) In this section—

“an authorised person” means—

  - (a) any person specified by the court;
  - (b) any constable;
  - (c) any person who is authorised—
    - (i) after the recovery order is made; and
    - (ii) by a person who has parental responsibility for the child by virtue of a care order or an emergency protection order,to exercise any power under a recovery order; and

“the designated officer” means the officer designated for the purposes of section 46.
- (8) Where a person is authorised as mentioned in subsection (7)(c)—
  - (a) the authorisation shall identify the recovery order; and
  - (b) any person claiming to be so authorised shall, if asked to do so, produce some duly authenticated document showing that he is so authorised.

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- (9) A person shall be guilty of an offence if he intentionally obstructs an authorised person exercising the power under subsection (3)(b) to remove a child.
- (10) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (11) No person shall be excused from complying with any request made under subsection (3)(c) on the ground that complying with it might incriminate him or his spouse of an offence; but a statement or admission made in complying shall not be admissible in evidence against either of them in proceedings for an offence other than perjury.
- (12) Where a child is made the subject of a recovery order whilst being looked after by a local authority, any reasonable expenses incurred by an authorised person in giving effect to the order shall be recoverable from the authority.
- (13) A recovery order shall have effect in Scotland as if it had been made by the Court of Session and as if that court had had jurisdiction to make it.
- (14) In this section “the court”, in relation to Northern Ireland, means a magistrates’ court within the meaning of the <sup>M1</sup>Magistrates’ Courts (Northern Ireland) Order 1981.

#### Extent Information

- E1** S. 50 extends to England and Wales and Northern Ireland except s. 50(13) which also extends to Scotland. See s. 108(11)(12)

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

- C1** S. 50 applied (14.10.1991) by S.I. 1991/2032, art. 6(1).  
S. 50 applied (14.10.1991) by S.I. 1991/2032, art. 7(1).

#### Commencement Information

- I8** S. 50 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

#### Marginal Citations

- M1** S.I. 1981/1675 (N.I. 26).

## 51 Refuges for children at risk.

- (1) Where it is proposed to use a voluntary home or [<sup>F13</sup>private] children’s home to provide a refuge for children who appear to be at risk of harm, the Secretary of State may issue a certificate under this section with respect to that home.
- (2) Where a local authority or voluntary organisation arrange for a foster parent to provide such a refuge, the Secretary of State may issue a certificate under this section with respect to that foster parent.
- (3) In subsection (2) “foster parent” means a person who is, or who from time to time is, a local authority foster parent or a foster parent with whom children are placed by a voluntary organisation.
- (4) The Secretary of State may by regulations—
  - (a) make provision as to the manner in which certificates may be issued;



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- (b) impose requirements which must be complied with while any certificate is in force; and
  - (c) provide for the withdrawal of certificates in prescribed circumstances.
- (5) Where a certificate is in force with respect to a home, none of the provisions mentioned in subsection (7) shall apply in relation to any person providing a refuge for any child in that home.
- (6) Where a certificate is in force with respect to a foster parent, none of those provisions shall apply in relation to the provision by him of a refuge for any child in accordance with arrangements made by the local authority or voluntary organisation.
- (7) The provisions are—
- (a) section 49;
  - [<sup>F14</sup>(b) sections 82 (recovery of certain fugitive children) and 83 (harbouring) of the Children (Scotland) Act 1995, so far as they apply in relation to anything done in England and Wales;]
  - (c) section 32(3) of the <sup>M2</sup>Children and Young Persons Act 1969 (compelling, persuading, inciting or assisting any person to be absent from detention, etc.), so far as it applies in relation to anything done in England and Wales;
  - (d) section 2 of the <sup>M3</sup>Child Abduction Act 1984.

#### Textual Amendments

- F13** Word in s. 51(1) substituted (1.4.2002) by 2000 c. 14, s. 116, **Sch. 4 para. 14(7)**; S.I. 2001/4150, **art. 3(3)(a)** (subject to transitional provision in art. 4 of the commencing S.I. and to the amendment of art. 3 by S.I. 2002/1493, **art. 6**); S.I. 2002/920, **art. 3(3)(d)** (with art. 3(4)-(10) and transitional provisions in Schs. 1-3))
- F14** S. 51(7)(b) substituted (1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 48(3)**(with ss. 90, 103(1)); S.I. 1996/3201, **art. 3(7)**

#### Commencement Information

- I9** S. 51 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, **art. 3(2)**

#### Marginal Citations

- M2** 1969 c. 54.  
**M3** 1984 c. 37.

## 52 Rules and regulations.

- (1) Without prejudice to section 93 or any other power to make such rules, rules of court may be made with respect to the procedure to be followed in connection with proceedings under this Part.
- (2) The rules may, in particular make provision—
- (a) as to the form in which any application is to be made or direction is to be given;
  - (b) prescribing the persons who are to be notified of—
    - (i) the making, or extension, of an emergency protection order; or
    - (ii) the making of an application under section 45(4) or (8) or 46(7); and
  - (c) as to the content of any such notification and the manner in which, and person by whom, it is to be given.

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- (3) The Secretary of State may by regulations provide that, where—
- (a) an emergency protection order has been made with respect to a child;
  - (b) the applicant for the order was not the local authority within whose area the child is ordinarily resident; and
  - (c) that local authority are of the opinion that it would be in the child's best interests for the applicant's responsibilities under the order to be transferred to them,
- that authority shall (subject to their having complied with any requirements imposed by the regulations) be treated, for the purposes of this Act, as though they and not the original applicant had applied for, and been granted, the order.
- (4) Regulations made under subsection (3) may, in particular, make provision as to—
- (a) the considerations to which the local authority shall have regard in forming an opinion as mentioned in subsection (3)(c); and
  - (b) the time at which responsibility under any emergency protection order is to be treated as having been transferred to a local authority.

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**Commencement Information**

**I10** S. 52 wholly in force at 14.10.1991 see s. 108(2)(3) and S.I. 1991/828, art. 3(2)

**Status:**

Point in time view as at 01/04/2004.

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