

CHILDREN AND ADOPTION ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS AND SCHEDULES

Part 1 - Orders with respect to children in family proceedings

Section 4 - Enforcement orders

30. **Section 4** inserts provision in the 1989 Act for a court to make an ‘enforcement order’ (sections 11J to 11N of the 1989 Act). An enforcement order imposes an unpaid work requirement on a person who has breached a contact order. Before making an enforcement order, the court must be satisfied beyond reasonable doubt that the person was in breach of the contact order. A breach of a contact activity condition, or of a condition attached to a contact order under section 11(7) of the 1989 Act, constitutes a breach of a contact order. The court may not make an enforcement order if it is satisfied that the person in breach of the contact order had a reasonable excuse for breaching the order. The burden of proving that there was a reasonable excuse for breach falls upon the person who claims to have had a reasonable excuse, and the standard of proof is the balance of probabilities.
31. Enforcement orders may only be made in response to an application by the following:
 - the person who is, for the purposes of the contact order, the person with whom the child concerned lives or is to live;
 - the person whose contact with the child concerned is provided for in the contact order;
 - any individual subject to a section 11(7)(b) condition or a contact activity condition imposed by the contact order;
 - the child concerned (with the leave of the court).
32. Section 11K of the 1989 Act provides that a court may not make an enforcement order against a person unless the person has received a copy of a notice under section 11I of the 1989 Act, or has been otherwise informed of its terms. It also provides that an enforcement order cannot be made against anyone who was aged under 18 at the time of the breach in question, or in relation to a breach of an ‘excepted order’.
33. Section 11L of the 1989 Act provides that in deciding whether to make an enforcement order, the court must be satisfied that the making of the order is necessary to secure compliance with the contact order in question and that the order is proportionate to the seriousness of the breach.
34. That section also requires the court, before making an enforcement order, to obtain and consider information about the person on whom the order would be imposed, and the likely effect of the order on him including, in particular, any conflict with his religious beliefs, or times at which he is at work or attending an educational establishment. The court must be satisfied that the enforcement measure is available within the local justice area in which the person subject to the enforcement order resides. The court may

*These notes refer to the Children and Adoption Act 2006
(c.20) which received Royal Assent on 21 June 2006*

ask a CAFCASS officer to provide the information required under this section. When considering making an enforcement order, the court must take into account the welfare of the child concerned.

35. Section 11M of the 1989 Act provides that the court may ask a CAFCASS officer to monitor, or arrange for the monitoring of, a person's compliance with an enforcement order, and to report to the court on failure to comply and on any unsuitability to undertake the unpaid work.
36. Section 11N of the 1989 Act provides that where an enforcement order is made, the court must attach a notice warning of the consequences of breaching that order. The possible consequences are the imposing of a further enforcement order, or the enhancing of the existing enforcement order under paragraph 9 of Schedule A1 to the 1989 Act as inserted by Schedule 1, or the use of existing sanctions for contempt.
37. [Section 4](#) also introduces Schedule 1 which inserts Schedule A1 to the 1989 Act.