



CHILDREN ORDER

**The Children Order**

**A Guide**

**COG 1**

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## **Introduction**

The Children (Northern Ireland) Order 1995 is the most important reform of the law relating to this century. It brings together for the first time the law relating to the care, protection and upbringing of children. It addresses a wide range of situations from protecting children from physical and sexual abuse, through to providing support to help keep families together when times are difficult, for example, by providing services such as family centres. This Guide illustrates the main principles underlying the Order and, most importantly, the spirit of co-operation and partnership which the Order is intended to promote. It is intended for those who need to have a general knowledge of the Order.

The Guide begins with an introduction to the Children Order: the underlying principles and the main areas which are affected by the law. The next chapters describe briefly the other provisions of the Order, the courts and court orders, and provide advice on where to get further information.

The Order includes statements on the powers and duties of Health and Social Services Boards and Trusts. The Order itself uses the term 'authority' to refer to a HSS Board or Trust. The powers and duties are exercisable by the Board, except where there is an authorisation for the powers and duties to be exercised by a Health and Social Services Trust. In practice, services under the Order are provided by Health and Social Services Trusts which are referred to as social services in this Guide.

## **1. What the Children Order contains**

### ***Public and private law***

The Children Order brings together most of the public and private law relating to children. *Public law* deals with those areas where society intervenes in the actions of individuals (such as care proceedings) and *private law* addresses the behaviour of individuals towards each other (such as with whom a child should live following divorce).

### ***Parental responsibility and parent's rights***

The Order introduces the concept of 'parental responsibility'. This is defined as "*all the rights, duties, powers, responsibilities and authority which, by law, a parent has in relation to a child and his property*". It often refers to parental responsibility, who can obtain it, and how its exercise may occasionally be modified. Parents retain parental responsibility even if their child is looked after by social services. Parental responsibility is only lost if the child is adopted. Unmarried fathers may obtain parental responsibility by a formal agreement with the child's mother or through a court order.

Parents have specific rights under the Children Order, including a statutory right to have contact with a child who is in the care of social services, the right to a say in the plans being made for their child's future and the right to attend or be represented at any court proceedings under the Children Order which involve their child. Services which social services provide to support families with children in need must be provided in partnership with parents. These services are explained in more detail later.

### ***Providing services***

The Children Order establishes that social services should support families with a child assessed by social services to be in need or a child with a disability (*children in need*). It includes provisions on support for families, on children's homes, on fostering services, and on child minding and day care. For the first time, children with a disability are seen as children first and may be eligible for services because they are children in need.

### ***Protecting children***

The Children Order contains a legal framework for the care and protection of children. It introduces a range of court orders for use when children are at risk of significant harm, i.e. care orders, supervision orders, emergency protection and child assessment orders. There are also provisions to enable education and library boards to take action where children are not receiving a proper education. These are discussed in more detail later.

The police also have powers to protect children at risk of significant harm by removing them from, or preventing the removal of them to a dangerous situation. Police protection may not last for more than 72 hours and the police have to inform the child, the child's parents or other adults significant to the child and social services of what is happening. Once social services have been informed that a child is in police protection they have a duty to investigate the case to decide whether they need to take any action.

### ***Looking after children away from home***

Social services have duties towards children who are being looked after away from home. This includes children in nursing homes, residential care homes and children living in a family placement, for example, with foster carers. Social services have a duty to ensure that children's welfare is safeguarded. The Order also makes special provisions for young children who are away from home during the day, by ensuring that facilities such as nurseries and playgroups and people such as child minders are safeguarding the welfare of children in their care. All those providing day care for children under twelve must be registered with social services. Child minders for under twelve year olds are required to register if they provide the service for reward.

## 2. The main principles of the Children Order

A number of very important principles underpin the Children Order

- the welfare of the child is the paramount consideration in court proceedings;
- wherever possible and consistent with their welfare, children should be brought up and cared for within their own families;
- children should be safe and protected by effective intervention if they are in danger, but the intervention should be open to challenge by parents in the courts;
- when dealing with children, courts should ensure that delay is avoided, and may only make an order if to do so is better than making no order at all;
- children should be kept informed about what happens to them, and should be encouraged to participate when decisions are made about the future;
- parents will continue to have parental responsibility for their children, even when their children no longer live with them. They should be kept informed about their children and participate when decisions are made about their children's future;
- parents with children in need should be helped by a range of family support services to bring up their children themselves;
- this help should be provided as a service to the child and his or her family and should;
  - be provided in partnership with parents
  - meet each child' identified needs
  - be appropriate to the child's religion, race, culture and language
  - be open to effective independent representations and complaints procedures
  - draw upon effective partnership between social services and other agencies including voluntary agencies.

### 3. Duties and powers of social services

The Children Order imposes various duties and powers on social services. A duty is something which social services are legally obliged to do. Occasionally a duty is qualified by requiring social services to do what they consider appropriate or reasonable. Powers are functions that social services have discretion whether or not to undertake.

#### *Family support*

The Children Order imposes on social services two general duties with respect to children in need:

- to safeguard and promote their welfare;
- to promote wherever possible their upbringing by their families.

The Children Order defines a child in need as follows:

*“he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by an authority;*

*his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services; or he is disabled”.*

Children with a disability will be treated as children first, with particular needs, and will be entitled to the same general level of services as other children in need, to lead their lives to their full potential. In addition to the two general duties described above, the Children Order outlines the following specific duties and powers:

- to identify the extent to which there are children in need in their area and publish information about services available to them;
- to provide services for children in need living with their own families;
- to provide accommodation for children in need;
- to prevent neglect and abuse by the provision of services;
- to reduce the need to bring court proceedings by the provision of services.

### *What social services must do*

Support for families with a child in need of one of the most important functions of social services under the Children Order. Services should be provided in partnership with the family after discussing their needs and seeking their views. Social services may recover the cost of providing services, other than advice, guidance or counselling, if the person liable to refund the cost can reasonably afford to pay and is not in receipt of income support, family credit, disability working allowance or an income-based jobseekers allowance.

The Order recognises that social services are not always the sole provider of services for children and encourages collaborative working with education and library boards, district councils, the Northern Ireland Housing Executive and others. Social services are also encouraged to provide services in partnership with voluntary organisations, to provide the most appropriate package of services for individual families.

When a child is identified as 'in need' the services which might be provided include:

- services to families to improve the quality of life for children, eg. day care, out of school care, toy libraries, drop-in centres etc;
- the provision of family centres or home help etc. which, once a problem has arisen, may help to avoid the need to apply for a court order, or to provide accommodation for the child;
- advice, guidance and counselling to families;
- provision of accommodation on a voluntary basis for children who are not able to live at home. The primary duty of social services in such cases is to safeguard and promote the welfare of the child. They have a duty to:
  - plan arrangements in partnership with the parents and the child,
  - review that plan regularly in consultation with the parents, the child and others who are significant in the child's life,
  - produce written agreements as a record of the arrangements made, and to signify everyone's commitment to working together for the welfare of the child;
- services which enhance the quality of life for children living away from home, such as working to maintain links with the family;
- a 'representations' procedure, including complaints, with an independent element for people who are not satisfied with the services which social services are providing;

- aftercare for children who are no longer looked after by social services. Social services must provide ‘advice and befriending’; they may also provide ‘assistance’ which could, for example, take the form of help with the cost of training or education, or enabling someone to live near their place of work, training or education. This service can be provided for young people up to the age of 21, if they had been looked after by social services or were in certain other types of care when aged 16 or 17.

### ***Publicise services***

Social services also have a duty to publish information about the services provided by them and others, and to ensure that the information reaches those who might benefit from such services.

## 4. The Courts

The Children Order makes some very important changes to public and private law proceedings affecting children. Broadly, there are changes to the principles influencing the way that courts make their decisions, the statutory orders for the care and protection of children and in the courts' structure and operation.

### *Principles*

Four main principles determine the way that the courts will deal with cases under the Children Order:

- the welfare of the child must be the paramount consideration when a court makes a decision on the upbringing of a child;
- any delay in proceedings is likely to prejudice the child's welfare;
- where a court is considering whether or not to make an order under the Children Order, it can only make that order if it would be better for the child than making no order at all;
- in deciding most cases, the court must have regard to the following 'check-list';
  - the child's wishes and feelings,
  - his or her physical, emotional and educational needs,
  - the likely effect of any changes in circumstances,
  - the child's age, sex, background and any other characteristics which the court considers relevant,
  - any harm which he or she has suffered or is at risk of suffering,
  - how capable the child's parents (or any other person the court considers relevant) are of meeting his or her needs,
  - the range of powers available to the court under the Children Order in the proceedings in question.

## 5. Court Orders

The Children Order introduces a range of new court orders which are discussed below. An emergency protection order may be applied for by any person. Care orders, supervision orders and child assessment orders can only be applied for by social services or an authorised person. An authorised person means the NSPCC or a person authorised by the Department of Health and Social Services.

### *The Emergency Protection Order*

The emergency protection order replaces the place of safety order, and has a number of important features:

- it may be made for a maximum of eight days, with a possible further extension of up to seven days;
- if the parents were not present when the order was made, they have an opportunity to challenge it after 72 hours;
- the court may only make the order if it is satisfied that:
  - there is reasonable cause to believe that the child is likely to suffer significant harm if he or she is not removed to another place; or the child's removal from where he or she is accommodated is not prevented,
  - in the case of an application made by social services or the NSPCC, the applicant "*has reasonable cause to suspect that a child is suffering, or is likely to suffer, significant harm*" and enquiries which are being made "*are being frustrated by access to the child being unreasonably refused, and the applicant believes that access is required as a matter of urgency*".

### *The Child Assessment Order*

This order addresses those situations where there is good cause to suspect that a child is suffering significant harm but is not at immediate risk, and the applicant believes that an assessment (medical, psychiatric or other) is required. If the parents seem unwilling to co-operate, social services can apply for a child assessment order. The order:

- has a maximum duration of seven days;
- will direct the type and nature of the assessment which is to be carried out, and whether the child should be kept away from home for the purposes of the assessment.

## ***Care Order***

The Children Order establishes that a child can only be taken into compulsory care where:

- “(a) ..*the child concerned is suffering, or is likely to suffer significant harm; and*
- (b) *the harm, or likelihood of harm is attributable to –*
  - (i) *the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or*
  - (ii) *the child’s being beyond parental control”.*

The making of a care order gives social services parental responsibility for the child (see page 2). However, this does not mean that the parents lose it. It is in fact shared with social services who have the power to decide how much the parents may exercise their parental responsibility. Parental responsibility will only be restricted if it is necessary to safeguard and promote the child’s welfare. Social service must allow parents reasonable contact with children who are the subject of a care order, unless this will put the child’s welfare at risk. Social services will have to produce a plan for the future of each child in care, and the progress of each child will be subject to periodic review, to ensure that the child is being provided with the right kind of care.

## ***Supervision Order***

A supervision order can only be granted if the conditions at (a) and (b) above for a care order are satisfied. The court will use its discretion as to whether to make a supervision order, rather than a care order, *or vice versa*. A supervision order can initially be made for a maximum period of three years. It does not give social services parental responsibility.

The person in whose favour the court makes the order is called the *supervisor*. The supervision of the child will require the co-operation of the *responsible person*, i.e. the child’s parent, other person with parental responsibility or with whom the child is living. The responsible person may be directed by the court to take all reasonable steps to ensure that the child complies with any directions given by the supervisor.

## ***Education Supervision Order***

The education supervision order, which is applied for by an education and library board rather than social services, places a child of compulsory school age who is not being properly educated, under the supervision of the education and library board.

The duties of the supervisor, who will normally be an education welfare officer, are to “*advise, assist, befriend and give directions to*” the child and his or her parents. The objective is to ensure that the child receives and benefits from full-time education suitable to his or her age, ability and aptitude and to any special educational needs.

### ***Recovery Order***

This order is available where there is reason to believe that a child who is in care, police protection or the subject of an emergency protection order has been abducted, has run away or is missing. The order directs any person who can produce the child or provide information about the child’s whereabouts to do so. Recovery orders may only be sought by a person who has a care order or emergency protection order or, where the child is in police protection, the designated officer.

### ***Private law orders***

There are a range of orders under the Children Order which may be made in private law proceedings (see page 20. Parental responsibility orders have already been mentioned (see page 2). In addition there are:

- ***Article 8 orders.*** These comprise – residence, contact, prohibited steps and specific issue orders. These orders allow a court in private law proceedings (e.g. divorce) to make arrangements with respect to a child’s upbringing, subject to a number of restrictions, they are also available in public law proceedings. However, social services cannot apply for a contact or residence order, or have either order made in their favour. These orders regulate, to varying degrees, the exercise of parental responsibility and are designed to create greater flexibility than the access and custody orders which they replaced.

A ***residence order*** states with whom the child is to live, and is the only Article 8 order which may be made when the child is in care of social services. If made when the child is in care, the care order ends;

A ***contact order*** requires the person with whom a child lives, or is to live, to allow the child to have contact with the person named in the order;

A ***prohibited steps order*** prevents the parents of a child, or any other person, taking certain steps outlined in the order without first obtaining the permission of the court;

A ***specific issue order*** gives the directions about the handling of a specific question which has arisen, or may arise, in relation to the child.

- The ***family assistance order***. This enables the court to direct social services to provide assistance to a family involved in certain proceedings. It can only be

made in exceptional circumstances and where everybody named in the order, other than the child agrees. The court will make the order if it decides that it is necessary to do so when it is hearing an application for another order.

## 6. Changes in the Courts

Under the Children Order the way that courts work will change considerably, affecting both the conduct of cases and the way that decisions are made.

### *Who will hear the case?*

Most public law cases will be heard by a magistrate in a *Family Proceedings Court*. The magistrate will be specially trained to deal with cases under the Children Order.

If cases are particularly complex or urgent, they may be allocated to a higher court. These cases will be heard by judges who have been specially trained, and who sit in courts known as *Care Centres*. The procedure in the courts should be less formal, and less threatening, especially for children.

### *Before the case is heard*

Before the case is heard in court, a *directions appointment* will usually take place. This is an informal preliminary hearing at which directions may be given by the court to those involved on such things as:

- the timetable for the proceedings
- the appointment of a *guardian ad litem* (see page 15) or solicitor
- the transfer of proceedings to another court
- the attendance of a child.

The majority of directions will be given at a directions appointment although they can be given at any time during the proceedings. The purpose of a directions appointment is to clarify the central issues of a case, and to ensure that the case is heard and decided upon quickly and efficiently.

### *The child's voice*

All children will have a chance to put their views to the court hearing their case. A *guardian ad litem* will be appointed in nearly all public law cases under the Children Order. The guardian ad litem is an independent person appointed by the court to represent the child's interests. The guardian ad litem has access to all the social services' records, and will make a written report to the court which will include recommendations as to what is best for the child. Usually the child will also be represented by a solicitor and, if of sufficient age and understanding to do so, will be able to state his or her own views directly to the court.

### *The court's decision*

A fundamental principle of the Children Order is that a court may only make an order with respect to a child if to do so would be better for the child than making no order at all.

Courts will have a much greater degree of flexibility in deciding what order – if any – to make. They will have a choice of making the order applied for, making no order at all or making a completely different order to the one originally applied for.

The court will have to give reasons for any order it makes, and these will be recorded. It will be possible to appeal against the making of or refusal to make any order except an emergency protection order, although an application to have such an order discharged can be made (see page 9).

## **7. Other Changes in the Children Order**

Two of the most important aspects of the Children Order – the provision of services to families with children in need, and the protection of children – have been described. However, the Order will affect almost everyone who works with children. Some other issues addressed by legislation are outlined below.

### ***Fostering***

Fostering services take their place among the range of services which social services are required to provide. Most of the specific requirements on social services are described in Regulations, rather than in the Children Order itself. In general these are set out:

- how social services should approve people as foster carers; what information they should obtain and what conditions must be satisfied; how approval should be reviewed and if necessary terminated;
- what factors should be considered before a placement is made, and how the placement should be supervised and reviewed;
- what records social services should keep;
- in what circumstances persons can be disqualified from acting as foster carers.

When they are making arrangements for a child to live with foster carers, social services must always consider the child's need for continuity. In general this will mean that social services will try to place the child with a family of the same religion, race and culture in a neighbourhood within reach of his or her family, school and friends.

### ***Private fostering***

Private foster children are those cared for and accommodated for a period of more than 28 days by private arrangement with a person who is not related to the child or who does not have parental responsibility for the child. Anyone proposing to foster a child privately must notify social services. Social services must be satisfied that the welfare of children who are privately fostered is being satisfactorily safeguarded and promoted and must ensure that the private foster carers are given any advice which they need. Social services can inspect a home where a child is privately fostered as well as interview the child who is being privately fostered, and may prohibit people from privately fostering a particular child (or children) in a particular place.

### ***Day care and child minding***

Child minders and those providing day care for children under twelve are required to register with social services. Registration is of the 'person', not the premises, although the fitness of the premises and the suitability of the equipment will be taken into account. Child minders are only required to register if they undertake this task for reward.

Other changes introduced by the Children Order include:

- a social services inspection at least once a year of every registered person and their premises;
- the power to cancel registration where social services consider that the care being given to an individual child is seriously inadequate;
- social services may impose requirements on those providing day care as a condition of registration.

Social services must liaise with education and library boards and district councils when reviewing day care services in their area used by children under twelve, and must publish a report on their review. The initial review should be carried out within a year of the commencement of the Children Order. Subsequent reviews must be carried out every three years.

### ***Adoption Contact Register***

The Adoption Contact Register, which has been operating since 19 February 1996, facilitates the possibility of contact between adopted adults and their birth parents or other relatives. It ensures that responsibility for initiating contact rests solely with the adopted person, and provides a safe and confidential way for birth parents to assure an adopted person that contact would be welcome. The Register is operated by the Registrar General for Northern Ireland. Information about the Register and application forms may be obtained free from:

**The General Register Office  
Oxford House  
49/55 Chichester Street  
Belfast BT1 4HL**

### ***Children in residential accommodation***

The Children Order brings together all the legislation relating to residential accommodation for children. Children's homes can be those:

- run by social services;

- run by voluntary organisations;
- privately run.

Children's homes will need to provide a service which meets the needs of individual children, as well as the common needs of all the children they look after. Social services will be required to take reasonable steps to ensure the welfare of all children looked after in children's homes in their area.

Private children's homes and voluntary homes are required to register with a Health and Social Services Board.

All children's homes will be required to provide a 'statement of purpose', which describes what the home sets out to do and the way in which care is provided. It must also give details of staffing and of the admissions procedure.

### ***Independent visitors***

An independent visitor is a person appointed by social services to visit a child they are looking after. Whether the child is living in a family placement or in a children's home, an independent visitor will be appointed if the child has not been visited by his or her parents or person with parental responsibility in the last year or visits are infrequent, and it is felt that the child would benefit from being visited regularly. The child has a right to object to the appointment of an independent visitor. An independent visitor's duties are to "*visit, befriend and advise*" the child.

### ***Regulations***

The Children Order gives a number of Government Departments the power to make Regulations. These have the full force of law, and contain the more detailed aspects of the legislation. To accompany the Regulations the Department of Health and Social Services has issued *guidance* for social services, as to what is considered 'good practice'.

### ***Rules of Court***

Rules of Court lay down the procedures which must be followed by the courts hearing cases under the Children Order.

## ***8. Further Information***

The emphasis on partnership with families means that people should no longer feel reluctant to approach social services directly to discuss any problems or difficulties they may be experiencing. Social services have a duty to publicise the services which they provide to help families with children in need, and it is likely that they would wish to involve local advisory agencies in this task, to ensure that dissemination is as wide as possible. The availability of this material will assist and encourage parents to seek help, if they need it.

### ***Other leaflets in this series***

The leaflets listed below are available from social services and provide more detail on various aspects of the Order:

**COG 2 The Children Order and You – A Guide for Young People**

**COG 3 The Children Order and the Courts – A Guide for Children and Young People**

**COG 4 Getting help from Social Services – A Guide for Children and Young People**

**COG 5 Living away from Home: Your Rights – A Guide for Children and Young People**

**COG 6 The Children Order and Social Services – A Guide for Parents**

**COG 7 The Children Order and the Courts – A Guide for Parents**

**COG 8 Child Minding and Day Care – A Guide to Help you with Registration**